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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT MAYBERRY,)	
)	
Plaintiff,)	
)	
v.)	No. 17 C 1748
)	
WALGREENS, CO., et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION

SAMUEL DER-YEGHIAYAN, District Judge

This matter is before the court on Defendants’ motion to dismiss. For the reasons stated below, the motion to dismiss is granted.

BACKGROUND

Plaintiff Robert Mayberry (Mayberry) alleges he is diabetic and uses insulin to control his blood glucose. Defendants allegedly fill prescriptions for insulin pump supplies, including supplying insulin used in pumps. According to Mayberry, Defendants choose to bill insulin to Medicare Part D which results in certain out-of-pocket expenses for Mayberry. Mayberry contends that Defendants should bill the insulin to Medicare Part B. Mayberry includes in his complaint claims brought under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS

505/1 *et seq.* (Count I), Illinois common law fraud claims (Count II), and unjust enrichment claims (Count III). Defendants now move to dismiss the instant action.

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) (Rule 12(b)(1)) requires a court to dismiss an action when it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1); *see also Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995)(stating that when reviewing a motion to dismiss brought under Rule 12(b)(1), the court “must accept as true all well-pleaded factual allegations, and draw reasonable inferences in favor of the plaintiff”). When subject matter jurisdiction is not apparent on the face of the complaint and is contested, “the district court may properly look beyond the jurisdictional allegations of the complaint . . . to determine whether in fact subject matter jurisdiction exists.” *Sapperstein v. Hager*, 188 F.3d 852, 855-56 (7th Cir. 1999)(internal quotations omitted)(quoting *United Transportation Union v. Gateway Western Railway Co.*, 78 F.3d 1208, 1210 (7th Cir. 1996)). The burden of proof in regards to a Rule 12(b)(1) motion is on the party asserting that the court has subject matter jurisdiction. *Id.*

In ruling on a motion to dismiss brought pursuant Federal Rule of Civil Procedure 12(b)(6) (Rule 12(b)(6)), the court must draw all reasonable inferences that favor the plaintiff, construe the allegations of the complaint in the light most favorable to the plaintiff, and accept as true all well-pleaded facts and allegations in