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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Andrew Berrey,

Plaintiff,

v.

Plaintiff Investment Funding LLC, et al.,

Defendants.

No. CV-14-00847-PHX-BSB

ORDER

This is an interpleader action in which Plaintiff Andrew Berrey asserts jurisdiction under 28 U.S.C. § 1335.¹ (Doc. 15 at ¶ 6.) Berrey has deposited funds in the Court’s registry and asserts that there are conflicting claims to these funds and therefore he may be exposed to multiple liability if the Court does not determine the correct claimants. (*Id.*)

As set forth below, Berrey does not face multiple liability to the deposited funds based on claims from diverse claimants. Instead, two of the claimants, Plaintiff Investment Funding, LLC (PIF), and Injury Assistance, LLC (Injury Assistance), have potential contract claims against Berrey, but do not have claims to the deposited funds. The Court’s conclusion that PIF and Injury Assistance do not have claims against the deposited funds does not resolve Berrey’s potential contract liability to these claimants.

¹ For statutory interpleader under § 1335, Plaintiff must establish “minimal diversity,” or “diversity of citizenship between two or more claimants, without regard to the circumstance that other rival claimants may be co-citizens.” *See State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 530 (1967). In addition, under statutory interpleader, the amount in controversy requirement is only \$500. 28 U.S.C. § 1335.

1 The Court, however, does not have federal question or diversity jurisdiction over these
2 contract claims. *See* 28 U.S.C. §§ 1331, 1332.

3 The third claimant, Scottsdale Healthcare Corporation, is an Arizona corporation
4 doing business in Arizona, and Berrey resides in Arizona. (Doc. 15 at ¶¶ 1, 4.)
5 Therefore, Berrey and Scottsdale Healthcare are not diverse claimants and the Court does
6 not have jurisdiction over an interpleader claim between Berrey and Scottsdale
7 Healthcare under § 1335. *See State Farm*, 386 U.S. at 530. Because the Court does not
8 have original jurisdiction over the any of the parties' claims, it cannot exercise
9 supplemental jurisdiction over the potential contract claims. *See* 28 U.S.C. § 1367.
10 Therefore, the Court will dismiss this matter with prejudice.

11 **I. Procedural Background**

12 In his First Amended Complaint in Interpleader, Berrey alleges that “there are
13 actual conflicting claims to certain settlement proceeds payable to [him] by reason of the
14 settlement of a claim for bodily injury.” (*Id.* at 2, ¶ 8.) Berrey deposited \$30,000 in
15 settlement proceeds in the Court’s registry. (Docs. 25, 27, and 112.) The parties later
16 stipulated to the disbursement of \$5,500 from the settlement proceeds to Defendant
17 Dignity Health, Inc., d/b/a Mercy Gilbert Hospital. (Docs. 43, 57, and 58.) The parties
18 also stipulated to the disbursement of \$11,549.98 to Berrey for payment of his attorney’s
19 charging lien.² (Docs. 62, 63 and 64.) Thus, \$12,950.02 of the settlement proceeds
20 remain in the Court’s registry.

21 **A. Berrey’s and Injury Assistance’s Motions for Summary Judgment**

22 Plaintiff Berrey and Defendant Injury Assistance filed cross motions for summary
23 judgment.³ (Docs. 66, 72.) In his motion, Berrey argued that Injury Assistance cannot
24 assert a claim against the settlement proceeds based on a health care provider lien, or

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26 ² The parties subsequently disputed this disbursement. Injury Assistance filed a
27 motion to disgorge attorney’s fees (Doc. 79), which the Court denied. (Doc. 93.) In
28 response, Berrey filed a motion for sanctions (Doc. 84), which the Court also denied.
(Doc. 110.)

³ The factual and procedural background for the cross motions for summary
judgment is set forth in the Court’s order on those motions. (Doc. 89.)

1 assert a claim against these proceeds based on the parties' contract for medical services.
2 Berrey argued that under Arizona law such claims are barred as an unenforceable
3 assignment of the proceeds of his personal injury claim. (Doc. 66 at 4, 9.) Therefore,
4 Berrey argued that he is entitled to summary judgment on Injury Assistance's affirmative
5 defense that it has health care provider lien rights, and on Injury Assistance's
6 counterclaim for breach of contract. (Doc. 66 at 5-7.)

7 In its opposition to Berrey's motion and in its cross motion for summary
8 judgment, Injury Assistance argued that it has lien rights to the settlement proceeds as the
9 agent or assignee of Berrey's health care providers, and that it also has an enforceable
10 contract with Berrey for payment for medical services. (Doc. 72 at 8-9.) Thus, Injury
11 Assistance argued that Berrey's motion should be denied and that the Court should enter
12 summary judgment for Injury Assistance on its counterclaim for breach of contract.
13 (Doc. 72 at 9.)

14 **B. The Court's Order on the Motions for Summary Judgment**

15 The Court entered an order related to these cross motions, partially granting and
16 denying the motions. (Doc. 89.) The Court found that the contract for medical services
17 between Berrey and Injury Assistance contained lien provisions that attempted to create a
18 legally enforceable interest for Injury Assistance in any recovery from Berrey's personal
19 injury claim. (*Id.* at 16.) The Court found that the lien provisions of the contract were
20 unenforceable under Arizona law as a prohibited assignment of Berrey's personal injury
21 claim.⁴ (*Id.* (citing *Druke*, 576 P.2d at 492 (Ariz. 1978)).) Therefore, the Court entered
22 summary judgment in Berrey's favor on Injury Assistance's counterclaim to the extent
23 that claim asserted lien rights against the settlement proceeds of Berrey's personal injury
24 claim. (*Id.*)

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26 ⁴ As set forth in the Court's order on the cross motions for summary judgment
27 (Doc. 89 at 13-15), under Arizona law, personal injury claims and the proceeds of such
28 claims are not assignable. See *Brockman v. Metro Life. Ins. Co.*, 609 P.2d 61, 63 (Ariz.
1980); *Allstate Ins. Co. v. Druke*, 576 P.2d 489, 491-92 (Ariz. 1978); *State Farm Mut.
Ins. Co. v. St. Joseph's Hosp.*, 489 P.2d 837, 842 (Ariz. 1971); *Lingel v. Oblin*, 8 P.3d
1163, 1168 (Ariz. Ct. App. 2000); *Piano v. Hunter*, 840 P.2d 1037, 1040-41 (Ariz. Ct.
App. 1991); *Karp v. Speizer*, 647 P.2d 1197, 1199 (Ariz. Ct. App. 1982).

1 However, the Court also found that the contract included reimbursement
2 provisions that were independent of Berrey's personal injury claim and were not based on
3 a lien against the proceeds of that claim. (*Id.* at 17 (citing *Blankenbaker v. Jonovich*, 71
4 P.3d 901, 915 (Ariz. 2003)).) The Court found that these contractual reimbursement
5 rights were not an assignment of Berrey's personal injury claim and therefore denied
6 Berrey's motion for summary judgment on Injury Assistance's counterclaim for breach
7 of contract. (Doc. 89 at 18.) The Court also denied Injury Assistance's motion for
8 summary judgment on its counterclaim for breach of contract because Injury Assistance
9 had not established an undisputed factual basis from which the Court could enter
10 summary judgment in its favor. (*Id.* at 18-19.)

11 The Court also addressed Injury Assistance's affirmative defense that it has health
12 care provider lien rights as the agent or assignee of the health care providers, but did not
13 decide whether a health care provider lien could be assigned or whether an agent
14 authorized to record a lien for a health care provider had any rights to enforce the lien.
15 (*Id.* at 9-10, n.9.) The Court concluded that even if Injury Assistance could assert health
16 care provider lien rights as the agent or assignee of Berrey's medical providers, it would
17 only have the rights of those providers. (*Id.* at 10 (citing *K.B. v. State Farm Fire and*
18 *Cas. Co.*, 941 P.2d 1288, 1292 (Ariz. Ct. App. 1997)).) However, the Court could not
19 determine from the parties' motions whether the medical providers properly perfected
20 health care provider liens, assigned such lien rights to Injury Assistance, or authorized
21 Injury Assistance to act as their agent to record and enforce liens. Therefore, the Court
22 ordered Injury Assistance and Berrey to provide supplemental briefing on these issues
23 and to submit copies of any relevant documents. (Doc. 89 at 12-13.)

24 Additionally, the Court concluded that if Injury Assistance did not have health
25 care provider lien rights as the assignee or agent of the medical providers, then Injury
26 Assistance would not have a claim against the interpleaded settlement funds, but would
27 only have a breach of contract claim. (*Id.* at 20.) Therefore, the Court also ordered
28 Berrey and Injury Assistance to provide supplemental briefing on the Court's

1 supplemental jurisdiction over Injury Assistance’s possible breach of contract claim.
2 (*Id.*) As directed, Berrey and Injury Assistance filed supplemental briefing on these
3 issues. (Docs. 97, 98.)

4 Finally the Court raised issues with PIF’s claims. Although PIF is a limited
5 liability company, and is the only claimant that Berrey alleged to have diverse
6 citizenship, the parties had not addressed the citizenship of PIF’s owners or members.
7 (Doc. 89 at 21 (citing *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899
8 (9th Cir. 2006)).) Furthermore, the parties had not submitted copies of the agreements
9 between PIF and Berrey, which purportedly formed the basis of PIF’s claim to the
10 settlement proceeds, and Berrey had not asserted that its agreements with PIF were
11 unenforceable as assignments of his personal injury claim. (Doc. 89 at 21.)

12 The Court noted that PIF could have a claim against the settlement proceeds, or
13 that it could have only a contract claim against Berrey, and the nature of PIF’s claim
14 could affect the Court’s jurisdiction. Therefore, the Court ordered Berrey and PIF to
15 provide supplemental briefing on the citizenship of PIF’s owners or members and on the
16 nature of PIF’s claim against the settlement proceeds, including whether PIF’s claim may
17 be unenforceable as an assignment of a personal injury claim. (*Id.* at 21-22.) The Court
18 also directed the parties to submit copies of the relevant documents.

19 In response, PIF filed a brief and supporting affidavit addressing the citizenship of
20 its members. (Doc. 95 at 1-2, Ex. 1.) From this information, the Court finds that PIF’s
21 members are not citizens of Arizona and therefore PIF is a diverse claimant. However,
22 PIF and Berrey did not file supplemental briefing addressing the nature of PIF’s claims
23 against the settlement proceeds and did not submit copies of the agreements between
24 Berrey and PIF that purportedly formed the basis of PIF’s claim against the settlement
25 proceeds. (Docs. 95, 96, 107.) Instead, PIF filed a brief stating that the day after the
26 Court’s order directing the parties to file supplemental briefing, PIF and Berrey entered a
27 “novated” settlement agreement that “supersedes all previous agreements between PIF
28 and Mr. Berrey” and in which Berrey “assigns any present interest he has in the

1 interplead funds to PIF.”⁵ (Doc. 95 at 2-3. Ex. 2.) Berrey filed a joinder to PIF’s brief.
2 (Doc. 96.)

3 The Court reviewed the novated settlement agreement, and PIF’s and Berrey’s
4 arguments, and found that if the novated settlement agreement created a legally
5 enforceable interest for PIF in the settlement proceeds then it would be unenforceable as
6 an assignment of Berrey’s personal injury claim. (Doc. 107 at 4-7 (citing *Brockman*, 609
7 P.2d at 63; *Druke*, 576 P.2d at 491-92; *St. Joseph’s Hosp.*, 489 P.2d at 842; *Lingel*, 8 P.3d
8 at 1168; *Piano*, 840 P.2d at 1040-41; *Karp*, 647 P.2d at 1199).) Alternatively, the Court
9 found that if the novated settlement agreement did not create an interest for PIF in the
10 settlement proceeds, and if PIF had no other basis to assert a claim to these funds, then
11 PIF would not have a claim in interpleader, but could have a contract claim. (Doc. 107 at
12 8.)

13 Because PIF and Berrey did not comply with the Court’s order on supplemental
14 briefing, the Court issued an order to show cause, which provided them another
15 opportunity to file supplemental briefing addressing the basis of PIF’s claim to the
16 settlement proceeds.⁶ (*Id.* at 8-9.) The Court stated that “Berrey’s and PIF’s responses to
17 this order to show cause must include copies of PIF’s loan agreements with Berrey. In
18 addition, Berrey’s and PIF’s responses must address the loan agreements between Berrey
19 and PIF. The Court will not consider any additional argument based on the [novated]
20 settlement agreement.” (*Id.* at 9.) PIF and Berrey filed a joint response to the order to
21 show cause. (Doc. 113.)

22 **II. Injury Assistance’s Asserted Lien Rights to the Settlement Funds**

23 As previously stated, the Court ordered Berrey and Injury Assistance to file

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25 ⁵ A novation extinguishes the previous agreement. *See Dunbar v. Steiert*, 253 P.
26 1113, 1114 (Ariz. 1927) (novation requires the extinguishment of the old contract); *Cely*
27 *v. DeConcini, McDonald, Brammer, Yetwin & Lacy, P.C.*, 803 P.2d 911, 912 n.2 (Ariz.
28 Ct. App. 1990) (a novation extinguishes the old obligation by substituting a new one.);
58 Am. Jur. 2d *Novation* § 19 (2015) (in a novation, the previous agreement is
extinguished).

⁶ PIF’s brief also included unauthorized arguments related to Injury Assistance’s
claim, which the Court ordered stricken and does not consider. (Doc. 107 at 2.)

1 supplemental briefing addressing whether the referred providers properly perfected health
2 care provider liens, or assigned such lien rights to Injury Assistance, or authorized Injury
3 Assistance to act as their agent to record and enforce liens.⁷ (Doc. 89 at 12-13.) The
4 Court also directed the parties to submit relevant documents to support their positions on
5 these issues.

6 Although Injury Assistance filed a supplemental brief addressing the issues set
7 forth in the Court’s order, it did not submit any health care provider liens that the referred
8 providers had filed with the county recorder in accordance with the perfection provisions
9 of Ariz. Rev. Stat. § 33-932. *See Blankenbaker*, 71 P.3d at 914 (health care provider lien
10 must be properly perfected to be enforceable). As set forth below, Injury Assistance also
11 did not submit any agency agreements in which the referred providers authorized Injury
12 Assistance to file and enforce health care provider liens on their behalf, or any
13 assignments or agreements in which the referred providers assigned any lien rights to
14 Injury Assistance.

15 **A. Right to File and Enforce Liens as the Agent of the Providers**

16 In response to the Court’s order directing supplemental briefing, Injury Assistance
17 submitted seventeen agreements it had entered with the referred providers, which are
18 each identified as “Notice of Sale and Agreement” (Agreements). (Doc. 98, Ex. 1.)
19 These Agreements are identical, except for the identity of the referred provider, the date
20 signed, and the amount of the account at issue. In each Agreement, the provider sells and
21 assigns all of its “rights, title, and interest” in an account to Injury Assistance.⁸ (*Id.*)
22 Relying on these Agreements, generally and without citation to any specific language,
23 Injury Assistance argues that “[e]very provider that treated Berrey named IA as its
24 agent.” (Doc. 98 at 2 (citing Ex. 1).) However, contrary to that assertion, the

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26 ⁷ Consistent with the parties’ cross motions for summary judgment, and its earlier
27 order, the Court refers to Berrey’s medical providers collectively as the referred
28 providers. (Doc. 89 at 5 n.6.)

⁸ Plaintiff submitted two of these Agreements with the cross motions for summary
judgment. (Doc. 77, Ex B.) The Court addressed these Agreements in its order on the
motions. (Doc. 89 at 6, 12.)

1 Agreements do not include any language from which the Court could find that the
2 providers named Injury Assistance as their agent. *See id.*

3 Therefore, the Court finds that the referred providers and Injury Assistance did not
4 enter an agency relationship through these Agreements. Instead, in these Agreements the
5 providers sold their rights to medical accounts to Injury Assistance. As Injury Assistance
6 acknowledges, “the medical providers decided to sell and assign their accounts receivable
7 to IA.” (Doc. 98 at 4.) Therefore, the Court finds that these Agreements authorized
8 Injury Assistance to collect on these accounts, but did not authorize Injury Assistance to
9 file or enforce liens on behalf of the referred providers.

10 Injury Assistance also asserts that every provider entered a contract providing that
11 “NHF shall act as an agent of behalf of Medical Provider so as to record the lien and
12 assignment in the county or other appropriate recording office as required.” (*Id.* at 5.)
13 Injury Assistance did not submit a copy of any contract with this provision or a sworn
14 statement setting forth any such contract provision. In addition, the quoted language
15 refers to “NHF,” not Injury Assistance, and Injury Assistance provides no other
16 information, such as the relevant time period that these contracts were purportedly in
17 effect. Therefore, the Court finds that there is no competent evidence to support Injury
18 Assistance’s assertion it entered contracts to act as the providers’ agent. *See Beyene v.*
19 *Coleman Sec. Servs., Inc.*, 854 F.2d 1179, 1181 (9th Cir. 1988) (inadmissible evidence
20 was insufficient to satisfy moving party’s burden of production on a motion for summary
21 judgment).

22 Therefore, the Court concludes that Injury Assistance has not provided any
23 relevant documents or other evidence to support its assertion that it was authorized to act
24 as the agent of the preferred providers and thus to file and enforce liens. Without
25 deciding whether such agency would be valid under Arizona law, the Court finds that
26 Injury Assistance has not established that it was the agent of the referred providers.
27 Thus, Injury Assistance’s purported agency relationship with the referred providers does
28 not support its affirmative defense asserting health care provider lien rights.

1 **B. Right to File and Enforce Liens as the Assignee of the Providers**

2 The Court also finds that the referred providers did not assign any health care
3 provider lien rights to Injury Assistance through the Agreements. Although each of the
4 Agreements states that it is “supported by the attached duly executed lien,” there are no
5 liens attached to the Agreements.⁹ (Doc. 98, Ex. 1.) Instead, Injury Assistance argues
6 that because it “was appointed agent for all liens filed, it is entirely proper for IA to file
7 valid liens for the providers in question.” (*Id.* at 2.) Injury Assistance then argues that
8 the lien it filed on February 24, 2011 satisfied the requirements for perfecting a lien under
9 Ariz. Rev. Stat. § 33-932.¹⁰ (*Id.* at 2, Ex. 2.) Thus, it appears that Injury Assistance is
10 arguing that through the Agreements, and the lien it filed on February 24, 2011, it filed
11 health care provider liens as the assignee of the providers.

12 As an initial matter, this argument fails because, as set forth above, Injury
13 Assistance has not presented any documents or other evidence to establish that it was
14 acting as the referred providers’ agent. In addition, Injury Assistance has not provided
15 any evidence that the referred providers filed health care provider liens and thus had lien
16 rights that could be assigned to Injury Assistance. Therefore, even if the Court accepted
17 Injury Assistance’s argument that health care provider lien rights can be assigned under
18 Arizona law, Injury Assistance’s rights, as the assignee of the providers, could not exceed

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20 ⁹ Injury Assistance does not argue that the reference to an “attached duly executed
21 lien” refers to its February 24, 2011 lien. The Court previously reviewed this language in
22 two of the Agreements and noted that it could refer to Injury Assistance’s February 24,
23 2011 lien. (Doc. 89 at 6.) However, Injury Assistance has submitted fifteen additional
24 Agreements in which it purchased the referred providers’ accounts. From these
25 additional Agreements, the Court finds that the reference to an “attached duly executed
26 lien” does not refer to the February 24, 2011 Injury Assistance lien. Fifteen of the
27 seventeen Agreements are dated *after* the Injury Assistance lien and therefore the
28 Agreements could refer to the lien, which was executed before the Agreements were
signed. However, two of the Agreements are dated *before* the lien was filed and
therefore the reference to an “attached duly executed lien” could not refer to the Injury
Assistance lien, which had not yet been executed. Thus, it appears that to the extent the
providers and Injury Assistance intended for the providers to file health care provider
liens, and then assign the lien rights to Injury Assistance by attaching those liens to the
Agreements, they failed to do so.

¹⁰ The Court examined the Injury Assistance lien (Doc. 16, Ex. 1; Doc. 98, Ex. 2),
and found that it did not comply with Ariz. Rev. Stat. § 33-392(A), which establishes the
requirements to perfect a lien. (Doc. 89 at 5, 12.)

1 the providers' rights as assignors. *See K.B.*, 941 P.2d at 1292 (“An assignee steps in to
2 the shoes of [its] assignor.”) Because there is no evidence that the providers filed any
3 health care provider liens, or authorized Injury Assistance to file liens, the Court finds
4 that the providers did not have any lien rights that they could assign to Injury Assistance.

5 The Injury Assistance lien, filed February 24, 2011, is valid only to the extent
6 Injury Assistance had the right to file a health care provider lien. Injury Assistance has
7 acknowledged that it is not a health care provider and thus could assert lien rights only as
8 the agent or assignee of the providers. (Doc. 89 at 8.) Therefore, the Court finds that
9 Injury Assistance's lien does not create any valid rights to the settlement proceeds.
10 Because Injury Assistance does not have valid lien rights against the settlement proceeds,
11 the Court grants Berrey's motion for summary judgment on Injury Assistance's
12 affirmative defense that it has lien rights. (Doc. 66.)

13 **III. PIF's Claim to the Settlement Funds**

14 **A. PIF's and Berrey's Response to the Order to Show Cause**

15 As previously stated, in response to the Court's order directing PIF and Berrey to
16 file supplemental briefing addressing the nature of PIF's claims to the settlement
17 proceeds, PIF and Berrey entered a “novated” settlement agreement that purported to
18 assign Berrey's rights in the settlement proceeds to PIF. (Doc. 95 at 2-3; Ex. 2.) The
19 Court has already concluded that this settlement agreement is either unenforceable as an
20 attempted assignment of the proceeds of Berrey's personal injury claim, or that it
21 provides only the basis for a possible contract claim, not a claim in interpleader.
22 (Doc. 107 at 4-5, 8.) The Court also entered an order to show cause, again directing PIF
23 and Berrey to address the basis for PIF's claim against the settlement proceeds from
24 Berrey's personal injury claim. The Court explicitly ordered PIF and Berrey to “address
25 the loan agreements between Berrey and PIF” and warned that it would “not consider any
26 additional argument based on the [novated] settlement agreement.” (*Id.* at 9.)

27 In response to the order to show cause, PIF submitted copies of three purchase
28 agreements with Berrey. (Doc. 113, Ex. 1.) PIF, however, did not make any argument

1 that these agreements provide a basis for its claim against the settlement proceeds.
2 Although the Court provided PIF two opportunities to explain how its prior agreements
3 with Berrey established a claim to the settlement proceeds, in the Court’s order directing
4 supplemental briefing and its order to show cause (Docs. 89, 107), PIF has not done so.
5 Furthermore, PIF has argued that the novated settlement agreement “supersedes all
6 previous agreements between PIF and [] Berrey.” (Doc. 95 at 2.) Therefore, the Court
7 will not review the prior agreements and attempt to fashion an argument for PIF to
8 establish a basis for its claim to the settlement funds.

9 Despite the Court’s clear order to address the loan agreements and its warning that
10 it would not consider arguments based on the settlement agreement (Doc. 107 at 9), PIF
11 nonetheless responded to the order to show cause by arguing that “the novated settlement
12 agreement . . . unequivocally grants PIF ‘some entitlement to the money or property at
13 issue’ in this action.” (Doc. 113 at 5.) PIF further argued that, based on the settlement
14 agreement, Berrey’s interest in the settlement proceeds, up to \$12,000, were “sold,
15 assigned, and transferred” to PIF and therefore “PIF has *an interest in seeing that the*
16 *interpleaded funds are properly distributed.*” (*Id.* at 1.) PIF further argues that based on
17 the settlement agreement it has a “legal right to be paid from the funds in interpleader.”¹¹
18 (*Id.* at 4.)

19 Thus, PIF did not make any arguments based on the loan agreements and instead
20 based its arguments on the settlement agreement. The Court could dismiss PIF’s claims

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22 ¹¹ PIF’s argument that the settlement agreement establishes that it has a “legal
23 right” to the interpleaded funds either ignores or misunderstands the Court’s prior orders,
24 which explained that, under Arizona law, “if an asserted right of reimbursement ‘create[s]
25 an interest in any recovery against a third party for bodily injury . . . [it] is the legal
26 equivalent of an assignment and therefore unenforceable.’” (Doc. 89 at 14 (quoting
27 *Druke*, 576 P.2d at 492), and (citing *Lingel*, 8 P.3d at 1168 (contract to share proceeds of
28 wrongful death claim was an unenforceable assignment of a personal injury claim
because plaintiffs were asserting “a direct interest in the proceeds” of the claim); *see also*
Doc. 107 at 4, 7 (explaining that to the extent the novated settlement agreement creates
an interest or right to the proceeds of Berrey’s personal injury claim for PIF, it is an
unenforceable assignment).) PIF’s argument, in response to the order to show cause, that
it has a “legal right to be paid from the funds in interpleader” (Doc. 113 at 4), establishes
that the settlement agreement in the “legal equivalent of an assignment and therefore
unenforceable.” *See Druke*, 576 P.2d at 492. Therefore, the settlement agreement does
not establish that PIF has a right to the interpleaded funds.

1 based on this violation of its order to show cause. *See* Fed. R. Civ. P. 41(b); *Link v.*
2 *Wabash R.R. Co.*, 370 U.S. 626, 629-31 (1962) (recognizing that a federal district court
3 has the inherent power to dismiss a case under Rule 41(b)). Nonetheless, the Court will
4 consider PIF’s arguments based on the settlement agreement.

5 **B. PIF’s Claims under the Settlement Agreement**

6 PIF argues that “even if the Court finds PIF’s claim for payment unenforceable, it
7 cannot find — on that basis alone — that jurisdiction fails because PIF is not a proper
8 party to the action.” (Doc. 113 at 3.) PIF further asserts that it “is entitled to participate
9 in this interpleader because it has an undeniable interest in ensuring that the funds on
10 deposit with the Court are not distributed in a manner that would unlawfully diminish the
11 pool of funds from which PIF has agreed it will accept payment-in-full.” (*Id.*)

12 Thus, PIF is arguing that, even if it does not have a claim against the interpleaded
13 funds because its settlement agreement with Berrey is unenforceable under Arizona law
14 as an assignment of a personal injury claim, the Court nonetheless has interpleader
15 jurisdiction under § 1335 because Berrey may not have sufficient resources to pay its
16 contractual obligations to PIF and other creditors. As set forth below, this argument fails
17 because it disregards the nature of an interpleader claim.

18 PIF argues that interpleader actions proceed in two stages: first, the court
19 determines whether the stakeholder is entitled to bring the action; and second, the court
20 determines the competing rights of the competing claimants to the fund. (*Id.* at 2.) PIF
21 argues that the first requirement has been met because minimal diversity has been
22 established, and because “Berrey has demonstrated that he legitimately fears multiple
23 liability directed against a single fund, *regardless of the merits of the competing*
24 *claims.*”¹² (*Id.*)

25
26 ¹² PIF asserts that the Court has interpleader jurisdiction and “any investigation
27 into the merits of PIF’s claims is irrelevant to that discussion.” (Doc. 113 at 2.) PIF
28 nonetheless argues that the Court should consider the merits of Injury Assistance’s claim
against the interpleaded settlement funds and reject those claims. (Doc. 113 at 3 (the
Court should not order the proceeds distributed to Injury Assistance based on its “false
lien or claimed contract”).)

1 Although PIF correctly notes that interpleader is designed to protect stakeholders
2 from multiple claims against the same fund, it assumes, without analysis, that Berrey
3 faces multiple claims to a single fund. As the Ninth Circuit has explained, “a basic
4 jurisdictional requirement of a statutory interpleader action is that there be ‘adverse
5 claimants’ to a particular fund.” *Libby, McNeill, and Libby v. City Nat’l Bank, et al.*, 592
6 F.2d 504, 507 (9th Cir. 1979) (citations omitted). Interpleader is designed to protect the
7 stakeholder from the possibility of multiple liability “when only a single obligation is
8 owing.”¹³ *Id.* at 509 (citations omitted).

9 “The requirement that the claims as to which interpleader is sought be adverse to
10 each other ‘is not met when . . . the ‘stakeholder’ may be liable to both claimants.”
11 *Reserve Int’l Liquidity Fund, Ltd. v. Caxton Int’l Ltd.*, 2010 WL 1779282, at *10 (S.D.
12 N.Y. Apr. 29, 2010) (citations omitted). “Thus, the protection against ‘double or multiple
13 liability’ . . . is protection only against double or multiple liability that is unjustifiable
14 because the plaintiff has but a single obligation.” *Id.* (finding that stakeholder faced
15 conflicting claims to a common fund’s assets); *see also Bradley v. Kochenash*, 44 F.3d
16 166, 168 (2d Cir. 1995) (“Interpleader is designed to prevent multiple recoveries only
17 when there are not multiple obligations; it is not intended to telescope multiple
18 obligations into one. Since in principle multiple recoveries would be justifiable in light
19 of the multiplicity of duties owed by these plaintiffs, interpleader was properly denied.”).

20 Here, the Court has already determined that Injury Assistance and PIF do not have
21 claims against the settlement proceeds because their claims are unenforceable as the legal
22 equivalent of an assignment of Berrey’s personal injury claim. Instead, PIF and Injury
23 Assistance may have contract claims against Berrey, but they do not have a right of
24 payment from the settlement proceeds deposited with the Court. Therefore, Berrey does
25 not face multiple claims to a single fund, or multiple liability based on a single

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27 ¹³ For example, when the proceeds of an insurance policy are subject to several
28 competing claims, a stakeholder may file an interpleader action to protect itself from the
problems posed by multiple claimants to a single fund. *See Minnesota Mut. Life Ins. Co.
v. Ensley*, 174 F.3d 977, 980 (9th Cir. 1999).

1 obligation. Instead, Berrey faces possible multiple liability based on multiple contractual
2 obligations. *See Nevada v. Pioneer Cos., Inc.*, 245 F. Supp. 2d 1120, 1128 (D. Nev.
3 2003) (interpleader inappropriate when stakeholder’s liability arose from a variety of
4 contractual relationships it had entered, which resulted in competing obligations).

5 PIF’s asserts that it has an “interest in seeing that the interplead funds are properly
6 distributed,” and in ensuring that these funds are not “distributed in a manner that would
7 unlawfully diminish the pool of funds.” (Doc. 113 at 1, 2.) Thus, it asserts interpleader
8 jurisdiction is appropriate in this case. In *Nevada*, the court rejected a similar argument
9 that interpleader would be appropriate based on the concern that the stakeholder would
10 not have sufficient money to satisfy its multiple contractual obligations. 245 F. Supp. 2d
11 at 1128. The court explained that:

12 While this eventuality may occur, a suit in interpleader is inappropriate to
13 resolve the underlying conflicts. Here, the alleged insufficiency of the fund
14 does not result from several companies’ vying for priority with respect to a
15 “single obligation.” Instead, the potential insufficiency of the fund results
16 from multiple, competing obligations [the stakeholder] voluntarily made
with a number of companies. In other words, the fight here is over who
gets paid first out of a limited coffer — as opposed to a fight over who gets
paid at all.

17 *Id.* (citing *State Farm*, 386 U.S. at 536 (“None of the legislative and academic sponsors
18 of a modern federal interpleader device viewed their accomplishment as a ‘bill of peace,’
19 capable of sweeping dozens of lawsuits out of the various state and federal courts in
20 which they were brought and into a single interpleader proceedings.”)). Interpleader is
21 not available whenever there are multiple claimants against a particular defendant.
22 *Nevada*, 245 F. Supp. 2d at 1128 (citing 4 James Wm. Moore, et al, *Moore’s Federal*
23 *Practice* § 22.02[1] (3d ed. 2002)). Therefore, the Court finds that PIF and Injury
24 Assistance do not have claims to the interpleaded funds, and therefore Berrey cannot
25 establish the requirements of statutory interpleader based on their claims.

26 **C. PIF’s Unjust Enrichment Claim**

27 PIF also asserts that it has a claim to the interpleaded settlement funds under the
28 theory of unjust enrichment. (Doc. 113 at 4-5.) To establish this claim, PIF must

1 establish, in part, an “absence of a remedy provided by law.”¹⁴ To establish this element,
2 PIF argues that it advanced money to Berrey, “the source of funds intended to reimburse
3 PIF are the proceeds of Berrey’s personal injury litigation,” and because “Arizona is an
4 anti-subrogation state,” PIF will have no legal remedy to recover the advanced funds.
5 (Doc. 113 at 4.) In other words, PIF is arguing that if its claim to the settlement funds is
6 unenforceable under Arizona law as an assignment of the proceeds of Berrey’s personal
7 injury claim, then it should be allowed to circumvent Arizona law and assert an interest in
8 the settlement funds under the theory of unjust enrichment.

9 PIF cites no authority or Arizona case applying the theory of unjust enrichment in
10 this manner. Indeed, Arizona cases have rejected unjust enrichment claims based on
11 contracts that are illegal or that violate public policy. *See Mousa*, 218 P.3d at 1044
12 (plaintiff could not recover under theory of unjust enrichment for performing contract for
13 broker services, which was prohibited by law because he was not licensed broker);
14 *Landis v. Arkules*, 835 P.2d 458, 467-68 (Ariz. Ct. App. 1992) (contract was
15 unenforceable because it involved conducting private investigation without a license,
16 therefore equitable relief of unjust enrichment was not available because contract was
17 void as against public policy).

18 As the Arizona Court of Appeals explained in *Landis*, when a contract is illegal,
19 the person entering this contract is denied enforcement and restitution. *Landis*, 835 P.2d
20 at 468 (citation omitted). The court further stated that if restitution were allowed, it
21 would encourage illegal contracts:

22 If restitution were granted, this may in some situations, prove tantamount to
23 enforcement. At the very least, it would provide a floor or cushion on
24 which an illegal actor might fall back, sure that if his illegal conduct were
25 not challenged, he could profit by it, and that if it were challenged, he could
at least get his money or property back. This would [no] doubt encourage
such illegal contracts.

26
27 ¹⁴ The elements of unjust enrichment are (1) an enrichment, (2) an
28 impoverishment, (3) a connection between the enrichment and impoverishment, (4) the
absence of any justification for the enrichment and impoverishment, and (5) the absence
of any remedy provided by law. *Mousa v. Saba*, 218 P.3d 1038, 1045 (Ariz. Ct. App.
2009).

1 *Id.*

2 Furthermore, PIF's argument, if accepted, would nullify Arizona law prohibiting
3 the assignment of personal injury claims. PIF's argument that it does not have a legal
4 remedy to recover advanced funds because its agreement is prohibited by Arizona law,
5 would apply with equal force to every assignment of a personal injury claim. Therefore,
6 the Court rejects this argument and finds that PIF does not have a claim to the
7 interpleaded settlement funds under the theory of unjust enrichment.

8 **IV. Conclusion**

9 As set forth above, Berrey does not face multiple liability to the interpleaded funds
10 based on claims from diverse claimants. Instead, PIF and Injury Assistance have
11 potential contract claims against Berrey, but do not have claims to the interpleaded funds.
12 The only claimants to the interpleaded funds, Berrey and Scottsdale Healthcare, are not
13 diverse and therefore the Court does not have jurisdiction under § 1335. Because the
14 Court does not have original jurisdiction over the parties' claims, it cannot exercise
15 supplemental jurisdiction over any claims. Therefore, Court will dismiss this matter with
16 prejudice.

17 Accordingly,

18 **IT IS ORDERED** that the Court lifts its Order (Doc. 89) holding the cross
19 motions for summary judgment in abeyance pending supplemental briefing on portions of
20 Berrey's motion for summary judgment (Doc. 66) and Injury Assistance's cross motion
21 for summary judgment. (Doc. 72.) The Court **GRANTS** Berrey's motion for summary
22 judgment on Injury Assistance's affirmative defense that it has statutory lien rights to
23 Berrey's settlement proceeds (Doc. 66) and **DENIES** Injury Assistance's cross motion on
24 its affirmative defense that it has statutory lien rights to Berrey's settlement proceeds.
25 (Doc. 72) The Court's ruling on the cross motions for summary judgment is now
26 completed and the Clerk of Court shall terminate the motions. (Docs. 66, 72.)

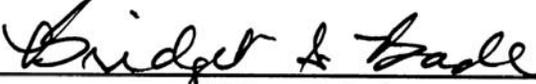
27 The Court has previously denied Berrey's motion for summary judgment
28 (Doc. 66) and Injury Assistance's cross motion for summary judgment (Doc. 72) on

1 Injury Assistance's counter claim for breach of contract. (Doc. 89.) The Court does not
2 have supplemental jurisdiction over Injury Assistance's contract claim. The Court finds
3 that PIF does not have a claim to the interpleaded funds, but may have a contract claim
4 against Berrey. The Court does not have supplemental jurisdiction over PIF's contract
5 claim. The Court also finds that Berrey and Scottsdale Healthcare are not diverse
6 claimants and the Court does not have jurisdiction over an interpleader claim between
7 Berrey and Scottsdale Healthcare under § 1335.

8 **IT IS FURTHER ORDERED** that this matter is dismissed with prejudice.

9 **IT IS FURTHER ORDERED** that the Clerk of Court will disburse the remaining
10 funds deposited in the Court's registry, \$12,950.02 with any accrued interest, payable to
11 Andrew Berrey, by mailing a check for these funds to his attorney Michael Love,
12 Ridenour Hienton & Lewis, PLLC, 201 North Central Avenue, Suite 3300, Phoenix,
13 Arizona 85004-1052.

14 Dated this 28th day of August, 2015.

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Bridget S. Bade
19 United States Magistrate Judge
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