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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 International Air Medical Services
10 Incorporated, et al.,

11 Plaintiffs,

12 v.

13 Triple-S Salud Incorporated,

14 Defendant.

No. CV-15-00149-PHX-DGC

ORDER

15 This case arises under the Employee Retirement Income Security Act (“ERISA”),
16 29 U.S.C. § 1001 *et seq.* Plaintiffs are Francisco Ortiz-Maldonado and International Air
17 Medical Services, Inc. (“IAMS”). IAMS provides air-ambulance services. On March 20,
18 2013, IAMS transported Maldonado from a hospital in Florida to a hospital in Puerto
19 Rico. Maldonado had health-insurance coverage with Defendant Triple-S Salud. To pay
20 IAMS for its services, Maldonado assigned to IAMS his rights under the Triple-S plan.
21 IAMS requested payment from Triple-S, but Triple-S repeatedly denied the request.

22 On January 28, 2015, Plaintiffs brought suit under ERISA for a recovery of plan
23 benefits. Triple-S has now filed a motion to dismiss, arguing that (1) IAMS lacks
24 standing to sue under ERISA; (2) Maldonado has died and is no longer a proper party;
25 and (3) the District of Arizona is an improper venue. Doc. 18. Triple-S also argues that
26 the Court should transfer this case to the District of Puerto Rico if the Court finds
27 dismissal to be improper. The motion is fully briefed and neither party has requested oral
28 argument. Docs. 19, 20. The Court will grant the motion to dismiss.

1 **I. Plaintiffs’ Standing or Capacity to Bring This Action.**

2 **A. IAMS’ Statutory Standing.**

3 Triple-S argues that IAMS lacks standing to sue under ERISA because IAMS is
4 not an ERISA participant, beneficiary, or fiduciary. “ERISA provides for a federal cause
5 of action for civil claims aimed at enforcing the provisions of an ERISA plan.” *Reynolds*
6 *Metals Co. v. Ellis*, 202 F.3d 1246, 1247 (9th Cir. 2000) (citing 29 U.S.C. § 1132(e)(1)).
7 “ERISA’s civil enforcement provision, 29 U.S.C. § 1132(a), identifies only plan
8 participants, beneficiaries, fiduciaries, and the Secretary of Labor as ‘[p]ersons
9 empowered to bring a civil action.’” *Spinedex Physical Therapy USA Inc. v. United*
10 *Healthcare of Ariz., Inc.*, 770 F.3d 1282, 1288-89 (9th Cir. 2014). All other persons lack
11 standing to bring suit under ERISA. *Id.* The question of whether a plaintiff has statutory
12 standing under ERISA is not jurisdictional, but goes to the merits of the plaintiff’s claims.
13 *Leeson v. Transamerica Disability Income Plan*, 671 F.3d 969, 979 (9th Cir. 2012); *see*
14 *also Harris v. Amgen, Inc.*, 573 F.3d 728, 732 n.3 (9th Cir. 2009) (“[A] dismissal for lack
15 of statutory standing is properly viewed as a dismissal for failure to state a claim.”).

16 IAMS does not argue that it is a participant, beneficiary, or fiduciary under the
17 Triple-S health plan. Rather, it argues that it may bring suit derivatively on the basis of
18 Maldonado’s assignment. “ERISA does not forbid assignment by a beneficiary of his
19 right to reimbursement under a health care plan to the health care provider.” *Misic v.*
20 *Bldg. Serv. Employees Health & Welfare Trust*, 789 F.2d 1374, 1377 (9th Cir. 1986).
21 “The issue of assignability is left to the discretion of the contracting parties.” *Metcalf v.*
22 *Blue Cross Blue Shield of Mich.*, 57 F. Supp. 3d 1281, 1294 (D. Or. 2014).

23 Plaintiffs allege in their complaint that “[u]nder the contract with IAMS[,] Ortiz-
24 Maldonado not only selected IAMS as his provider, but also appointed IAMS as his
25 authorized representative for purposes of prosecuting his claim for air ambulance
26 transportation benefits.” Doc. 1, ¶ 50. Plaintiffs also allege that “Ortiz-Maldonado, as a
27 beneficiary under the Plan, is entitled to recover benefits under the terms of the Plan – as
28 is IAMS standing in the shoes of Ortiz-Maldonado relative to such benefits.” *Id.*, ¶ 96.

1 The Court must take these allegations as true. *Cousins v. Lockyer*, 568 F.3d 1063, 1067
2 (9th Cir. 2009). IAMS therefore appears to have standing under ERISA as the assignee
3 of Maldonado’s rights.

4 Triple-S argues that its contract with Maldonado prohibits the assignment of rights
5 to IAMS. In so arguing, Triple-S relies on a translated copy of the contract that Triple-S
6 has attached to its motion. Ordinarily, the Court does not consider evidence or
7 documents beyond the complaint when ruling on a motion to dismiss. *See United States*
8 *v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003); *see also* Fed. R. Civ. P. 12(d). But a
9 court may “consider evidence on which the complaint ‘necessarily relies’ if: “(1) the
10 complaint refers to the document; (2) the document is central to the plaintiff’s claim; and
11 (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion.”
12 *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (citation omitted). Here, Plaintiffs’
13 complaint regularly refers to Maldonado’s contract with Triple-S. Doc. 1, ¶¶ 3, 7, 10, 96.
14 The contract is central to Plaintiffs’ case because Plaintiffs would not have an ERISA
15 claim absent the contract. Finally, neither party questions the authenticity or accuracy of
16 the translated copy of the contract. The Court will therefore consider the contract.

17 “[P]lans may contain anti-assignment clauses in order to constrain the costs of
18 health care.” *Metcalfe*, 57 F. Supp. 3d at 1294. “Anti-assignment clauses in ERISA plans
19 are valid and enforceable.” *Spinedex*, 770 F.3d at 1296 (citing *Davidowitz v. Delta*
20 *Dental Plan of Cal., Inc.*, 946 F.2d 1476, 1481 (9th Cir. 1991)). The relevant portion of
21 the contract reads:

22 **15. Personal Rights:** The participating person will not yield, transfer or
23 dispose of any of the rights and benefits that can be claimed under this
24 contract in favor of a third party; provided, that Triple-S Health reserves the
25 right to recover any expenses incurred in case the participating person, with
26 express or implied consent, allows that a non-participating person use the
27 card issued in the participant’s favor by Triple-S Health; and also
28 establishing that the recovery of such expenses does not preclude Triple-S
Health from cancelling the plan’s contract the moment the illegal use of the
card is discovered, nor will it impede the initiation of a complaint for
criminal prosecution of the participating person or the person that illegally
makes use of said card.

Doc. 18-2 at 19. The statement that a “participating person will not yield, transfer or

1 dispose of any of the rights and benefits that can be claimed under this contract in favor
2 of a third party” is an anti-assignment clause. *See, e.g., City of Hope Nat. Med. Ctr. v.*
3 *Seguros de Servicios de Salud de Puerto Rico, Inc.*, 983 F. Supp. 68, 74 (D.P.R. 1997)
4 (finding that similar language from a Triple-S contract constituted an anti-assignment
5 clause), *aff’d* 156 F.3d 223 (1st Cir. 1998). Maldonado’s contract with Triple-S therefore
6 bars the attempted assignment of rights to IAMS.

7 Plaintiffs argue that the quoted paragraph does no more than prevent a participant
8 from allowing a non-participant to use his card to obtain healthcare benefits. But the
9 opening language of the paragraph is not so limited. It states that a participant “will not
10 yield, transfer or dispose of” his rights and benefits under the contract. An assignment of
11 rights under the contract is clearly a “transfer” of those rights. True, the language that
12 follows this statement clarifies that Triple-S reserves the right to recover expenses and
13 cancel the contract if a participant allows another to use his card. But the Court cannot
14 conclude that this clarification, which begins with the word “provided” – a word that
15 normally signals a narrower caveat to a more general statement – suggests that the entire
16 paragraph is limited to loaned cards. It prohibits the “transfer” of rights as well.

17 Plaintiffs argue that another paragraph in the contract shows that a plan participant
18 may assign rights:

19 **21. Payment of Claims:** The benefits provided under this contract will be
20 payable to the professional or participating service provider, or directly to
21 the participating person, if non-participant facilities or providers were used
22 or services were received that, even if provided by the participants, are paid
based on compensation, as long as all the required evidence and reports
have been provided to Triple-S Health.

23 Doc. 18-2 at 20. Plaintiffs argue that IAMS is a “professional or participating service
24 provider” that is entitled to direct payment from Triple-S. But even if this is true, it does
25 not make IAMS a “participant, beneficiary, or fiduciary” qualified to bring an ERISA
26 action in court. 29 U.S.C. § 1132(a). And it says nothing about Maldonado’s ability to
27 assign his rights under the contract. Because IAMS has not plausibly alleged that it is a
28 participant, beneficiary, or fiduciary of an ERISA plan, its claim must be dismissed.

1 **B. Maldonado’s Death.**

2 Triple-S has produced evidence that Plaintiff Maldonado died in 2013. Doc. 18-1,
3 ¶ 8; Doc. 18-2 at 2. Plaintiffs’ counsel do not dispute this fact.¹ Rather, they seem to
4 argue that a case may continue even after a plaintiff’s death. In so arguing, they cite
5 *Couture v. Gen. Motors, LLC*, No. CV-12-00106-PHX-FJM, 2013 WL 1693598 (D. Ariz.
6 Apr. 18, 2013). But in *Couture*, the court substituted another person for the plaintiff who
7 died. *Id.* at *1. This is the proper procedure under Rule 25, which states:

8 If a party dies and the claim is not extinguished, the court may order
9 substitution of the proper party. A motion for substitution may be made by
10 any party or by the decedent’s successor or representative. If the motion is
not made within 90 days after service of a statement noting the death, the
action by or against the decedent must be dismissed.

11 Fed. R. Civ. P. 25(a)(1). Rather than follow this procedure, the Court finds that dismissal
12 without prejudice is proper. Due to its lack of standing, IAMS cannot prosecute this case
13 in Maldonado’s absence. And as discussed below, the District of Arizona is an improper
14 venue for this case. The Court will therefore dismiss this case without prejudice, thereby
15 allowing Maldonado’s successor or representative to file suit in a proper venue.

16 **II. Improper Venue.**

17 Triple-S argues that the District of Arizona is an improper venue. Fed. R. Civ. P.
18 12(b)(3). “Once a defendant has raised a timely objection to venue, the plaintiff has the
19 burden of showing that venue is proper.” *Bohara v. Backus Hosp. Med. Benefit Plan*,
20 390 F. Supp. 2d 957, 960 (C.D. Cal. 2005) (citing *Piedmont Label Co. v. Sun Garden*
21 *Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979)). ERISA has its own venue provision, 29
22 U.S.C. § 1132(e)(2), which applies instead of the general venue statute, 28 U.S.C. §
23 1391. *See Angel Jet Servs., L.L.C. v. Red Dot Bldg. Systems’ Employee Ben. Plan*, No.
24 CV-09-2123-PHX-GMS, 2010 WL 481420, at *1 (D. Ariz. Feb. 8, 2010). This provision
25 states that “an action [under ERISA] . . . may be brought in [1] the district where the plan

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27 ¹ In their complaint, Plaintiffs state that IAMS was the assignee “pursuant to . . .
28 an Appointment of Personal Representative executed by Ortiz-Maldonado.” Doc. 1, ¶ 11.
The Court assumes that Plaintiffs do not mean that IAMS is the appointed representative
of Maldonado’s entire estate. The entirety of the complaint implies that Maldonado
assigned to IAMS the limited right to recover benefits under his healthcare plan.

1 is administered, [2] where the breach took place, or [3] where a defendant resides or may
2 be found[.]” 29 U.S.C. § 1132(e)(2). Venue is improper in Arizona under this venue
3 provision.

4 First, Plaintiffs’ complaint concedes that the healthcare plan was not administered
5 in the District of Arizona: “Defendant Triple-S Salud is a Puerto Rican entity which
6 provides health care benefits to Puerto Rican businesses and their enrolled employees and
7 families. Triple-S Salud is a licensee of Blue Cross Blue Shield Association, serving
8 citizens and businesses in Puerto Rico.” Doc. 1, ¶ 5.

9 Second, the alleged breach of the plan occurred in Puerto Rico, not Arizona.
10 Many courts have held that the breach of an ERISA plan takes place in the district where
11 the beneficiary was to receive benefits. *See Angel Jet Servs.*, 2010 WL 481420, at *3
12 (collecting cases). Plaintiff alleges that Maldonado was a resident of Puerto Rico and
13 does not allege that he has connections with Arizona. Doc. 1, ¶ 3. Some courts have held
14 that the breach may also take place where an assignee was to receive benefits, and
15 Plaintiffs emphasize that IAMS is an Arizona-based company. *See, e.g., Cole v. Cent.*
16 *States Se. & Sw. Areas Health & Welfare Fund*, 225 F. Supp. 2d 96, 98 (D. Mass. 2002).
17 But as discussed, IAMS is not a valid assignee of Maldonado’s rights under the plan.

18 Third, Plaintiffs have not shown that Triple-S resides or is found in Arizona.
19 Under ERISA’s venue provision, “a defendant may be found in a district where personal
20 jurisdiction would exist.” *Angel Jet Servs.*, 2010 WL 481420, at *4 (citing *Varsic v. U.S.*
21 *Dist. Court for Cent. Dist. of Cal.*, 607 F.2d 245, 248 (9th Cir. 1979)). Broadly speaking,
22 a court may exercise jurisdiction over a defendant if the defendant has ““certain minimum
23 contacts with [the forum] such that the maintenance of the suit does not offend traditional
24 notions of fair play and substantial justice.”” *Walden v. Fiore*, 134 S. Ct. 1115, 1121
25 (2014) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). “[I]t is
26 essential in each case that there be some act by which the defendant purposefully avails
27 itself of the privilege of conducting activities within the forum State, thus invoking the
28 benefits and protections of its laws.” *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

1 Plaintiffs do not discuss whether the Court has personal jurisdiction over Triple-S.
2 Plaintiffs emphasize that Triple-S has contacts with IAMS, which is an Arizona-based
3 company. Specifically, Maldonado chose IAMS as his air-ambulance provider and
4 IAMS requested payment from Triple-S. These companies then debated whether Triple-
5 S should compensate IAMS. At best, these facts show a relationship between Triple-S
6 and IAMS, not contacts between Triple-S and Arizona as required for the exercise of
7 personal jurisdiction. *Walden*, 134 S. Ct. at 1125; *Burger King Corp. v. Rudzewicz*, 471
8 U.S. 462, 475-76 (1985). Furthermore, “[t]he unilateral activity of those who claim some
9 relationship with a nonresident defendant cannot satisfy the requirement of contact with
10 the forum State.” *Hanson*, 357 U.S. at 253. IAMS reached out to Triple-S for payment.
11 This does not create contacts between Triple-S and Arizona.

12 Plaintiffs also argue that Triple-S “availed [itself] to venues within the continental
13 United States, by virtue of their licensee and contractual relationships with U.S.
14 healthcare giant, Blue Cross Blue Shield. Throughout Defendants’ Policy, they flaunt the
15 ‘benefits’ and ‘savings’ of providing Blue Cross Blue Shield benefits to their
16 participants.” Doc. 20 at 12. Plaintiffs’ argument appears to be that Triple-S has
17 purposefully availed itself of the privilege of conducting business in Arizona by virtue of
18 its contract with Blue Cross Blue Shield, which presumably has offices in Arizona.

19 In various contexts, courts have found a defendant’s membership in Blue Cross
20 Blue Shields’ national programs to be insufficient to establish personal jurisdiction. *See*
21 *Angel Jet Servs.*, 2010 WL 481420, at *4-5; *St. Luke’s Episcopal Hosp. v. Louisiana*
22 *Health Serv. & Indem. Co.*, No. CV-08-1870, 2009 WL 47125, at *9 (S.D. Tex. Jan. 6,
23 2009); *Bayada Nurses, Inc. v. Blue Cross Blue Shield of Mich.*, No. CV-08-1241, 2008
24 WL 2945388, at *3-7 (E.D. Pa. July 30, 2008). The Court similarly finds that merely
25 contracting with an organization that does business in all fifty states does not thereby
26 subject Triple-S to the jurisdiction of courts throughout the country. Furthermore,
27 Plaintiffs do not allege or argue that Triple-S has contacted or contracted with Blue Cross
28 Blue Shields’ offices in Arizona. Because Plaintiffs have not shown that Triple-S has

1 sufficient contacts with Arizona, Triple-S is not found in Arizona for purposes of
2 ERISA's venue provision.²

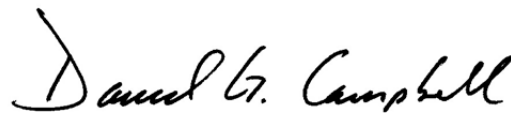
3 Upon a finding of improper venue, a court may "dismiss, or if it be in the interest
4 of justice, transfer such case to any district or division in which it could have been
5 brought." 28 U.S.C. § 1406(a). Plaintiffs do not address whether a transfer is
6 appropriate, and, because neither of the named plaintiffs is a proper party, the Court finds
7 that transfer would not be appropriate. This case will be dismissed without prejudice.
8 Maldonado's successor or representative may bring suit against Triple-S in a proper
9 venue if such suit is legally warranted.

10 Finally, Plaintiffs' counsel are reminded of their obligation to comply with
11 LRCiv 7.1(b)(1), including the requirement of 13-point font in text and footnotes of
12 pleadings and other papers.

13 **IT IS ORDERED:**

- 14 1. Defendant's motion to dismiss (Doc. 18) is **granted**.
- 15 2. The Rule 16 Case Management Conference set for September 9, 2015 at
16 4:30 p.m. is **vacated**.
- 17 3. The Clerk is directed to terminate this action.

18 Dated this 3rd day of September, 2015.

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22 _____
23 David G. Campbell
24 United States District Judge

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26 ² Arguing to the contrary, Plaintiffs once again cite *Couture*, 2013 WL 1693598,
27 where the court exercised jurisdiction in Arizona even though the relevant events
28 occurred in Michigan and Florida. But the court in *Couture* did not discuss venue or
jurisdiction. The Court cannot infer that the court in *Couture* implicitly found that venue
was proper and that it could exercise personal jurisdiction, particularly since both of these
issues may be waived by the defendant.