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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BEVERLY OAKS PHYSICIANS)
SURGICAL CENTER, LLC, A)
California Limited)
Liability Company)
Plaintiff,)
v.)
BLUE CROSS BLUE SHIELD OF)
ILLINOIS; and Does 1)
through 100;)
Defendants.)

CV 18-3866-RSWL-JPR
**ORDER re: Defendant's
Motion to Dismiss
Plaintiff's SAC [31]**

Currently before the Court is Defendant Blue Cross Blue Shield of Illinois' ("Defendant") Motion to Dismiss Plaintiff's Second Amended Complaint [31] ("Motion"). Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **GRANTS** Defendant's Motion **WITHOUT LEAVE TO AMEND.**

1
2 **I. BACKGROUND**

3 **A. Factual Background**

4 Plaintiff Beverly Oaks Physicians Surgical Center,
5 LLC, ("Plaintiff") brings this Action against Defendant
6 for recovery of benefits under the Employee Retirement
7 Income Security Act of 1974 ("ERISA"). Plaintiff is an
8 ambulatory surgery center located in Sherman Oaks,
9 California. Second Am. Compl. ("SAC") ¶ 3, ECF No. 30.
10 Defendant is a managed care company that, among other
11 things, insures and/or administers employer health
12 plans typically governed by ERISA. Id. ¶ 6. Defendant
13 carries out its health insurance business activities in
14 each state where covered employees and their dependents
15 are located. Id. ¶ 8. Plaintiff brings this Action as
16 the purported assignee of patients seeking recovery of
17 ERISA benefits they allege Defendant owes them. Id. ¶¶
18 14-16.

19 Plaintiff provided surgery center facility services
20 to eleven patients¹ enrolled in the Teamsters Western
21 Region & Local 177 Health Care Plan ("Teamsters Plan"),
22 a health plan governed by ERISA.² Id. ¶¶ 10, 11.

23
24 ¹ Patients A, B, C, D, F, G, H, I, J, L, and N are all
25 covered under the Teamsters Plan. SAC ¶ 10.

26 ² Plaintiff previously alleged that it also provided
27 services to two patients—M and K—enrolled in the Woodward, Inc.
28 Plan and Williams Lea Inc. Health Care Plan (collectively,
"Woodward and Williams Lea Plans"), and for one patient, Patient
E, whom Plaintiff was unable to locate an applicable ERISA Plan
document for. First Am. Compl. ("FAC") ¶¶ 31, 12-14, ECF No. 18.

1 Plaintiff alleges that all of these patients assigned
2 their health plan benefits to Plaintiff and that
3 Plaintiff submitted seventeen claims for medical
4 services provided to these patients. Id. ¶¶ 21, 46;
5 see id., Ex. A, ECF No. 30-1. Plaintiff alleges that
6 Defendant failed to pay Plaintiff's full billed
7 charges, and that as an assignee of these benefits, it
8 is entitled to recover additional payments from
9 Defendant. Id. ¶¶ 38, 39.

10 Defendant has provided the Teamster's Summary Plan
11 Description document ("Teamsters SPD"). Id. ¶ 17. The
12 Teamsters SPD contains the following clause in a
13 section titled "General Provisions": "Participants are
14 generally responsible for notifying the Fund of changes
15 in family circumstances. Benefits are not assignable,
16 although the Fund will honor qualified medical child
17 support orders." Id. The parties dispute whether this
18 clause is a valid anti-assignment provision ("AAP").
19 The Teamsters SPD is not by itself the Teamsters Plan
20 document, but it expressly references Article X of the
21 Teamsters Plan Rules and Regulations. Id. ¶ 18.
22 Article X of the Teamster Plan Rules and Regulations,
23 Section B provides:

24 Benefits payable hereunder shall not be subject
25 in any manner to anticipation, alienation, sale,
26 transfer, assignment, pledge, encumbrance, or
charge by any person; however, any Eligible

27
28 The Court granted Defendant's Motion to Dismiss Plaintiff's FAC
without leave to amend as to these three patients, and as such,
these claims are no longer before the Court.

1 Employee may direct that benefits due him/her,
2 except benefits payable under Article III, be
3 paid to an institution in which he/she or
4 his/her Dependent is hospitalized, or to any
5 provider of medical, dental or vision care
6 services or supplies in consideration for
7 Hospital, medical, dental or vision care
8 services rendered or to be rendered.

9 Notwithstanding the foregoing, the Fund will
10 honor any "qualified medical child support
11 order" as defined by ERISA Section 609, received
12 with respect to the Fund, and will make any
13 payment required by ERISA Section 609 to a State
14 which has acquired rights under that Section.

15 Id. ¶ 20; see id., Ex. D at 59.

16 **B. Procedural Background**

17 Plaintiff filed its Complaint [1] on May 9, 2018
18 for recovery of benefits under ERISA. Defendant filed
19 a Motion to Dismiss [13] on August 6, 2018. This Court
20 granted Defendant's Motion to Dismiss with leave to
21 amend [17] on November 8, 2018.³ On November 29, 2018,
22 Plaintiff filed its First Amended Complaint ("FAC")
23 [18]. On December 13, 2018, Defendant filed a Motion
24 to Dismiss Plaintiff's FAC [19], which the Court
25 granted on February 27, 2019 [29]. Specifically, the
26 Court dismissed without leave to amend Plaintiff's
27 claims under the Woodward & Williams Lea Plans, and
28 Plaintiff's claim brought on behalf of Patient E. The
Court granted leave to amend solely as to Plaintiff's

³ The Court found that Plaintiff did not adequately allege standing to bring an ERISA claim on behalf of the patients, as 13 of the 14 patients' plans appeared to contain anti-assignment provisions, and Plaintiff did not allege the terms of or identify the remaining patient's plan (Patient E). See Order 13:26-14:11, ECF No. 17. The Court also found that Defendant did not adequately plead estoppel or waiver. Id.

1 claims under the Teamsters Plan.

2 On March 20, 2019, Plaintiff filed its SAC [30].
3 On April 3, 2019, Defendant filed the instant Motion to
4 Dismiss Plaintiff's SAC [31]. Plaintiff timely opposed
5 [33], and Defendant timely replied [34].

6 II. DISCUSSION

7 A. Legal Standard

8 Federal Rule of Civil Procedure 12(b)(6) allows a
9 party to move for dismissal of one or more claims if
10 the pleading fails to state a claim upon which relief
11 can be granted. A complaint must "contain sufficient
12 factual matter, accepted as true, to state a claim to
13 relief that is plausible on its face." Ashcroft v.
14 Iqbal, 556 U.S. 662, 678 (2009) (quotation omitted).
15 Dismissal is warranted for a "lack of a cognizable
16 legal theory or the absence of sufficient facts alleged
17 under a cognizable legal theory." Balistreri v.
18 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
19 1988) (citation omitted).

20 In ruling on a 12(b)(6) motion, a court may
21 generally consider only allegations contained in the
22 pleadings, exhibits attached to the complaint, and
23 matters properly subject to judicial notice. Swartz v.
24 KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007). A court
25 must presume all factual allegations of the complaint
26 to be true and draw all reasonable inferences in favor
27 of the non-moving party. Klarfeld v. United States,
28 944 F.2d 583, 585 (9th Cir. 1991). The question is not

1 whether the plaintiff will ultimately prevail, but
2 whether the plaintiff is entitled to present evidence
3 to support the claims. Jackson v. Birmingham Bd. of
4 Educ., 544 U.S. 167, 184 (2005) (quoting Scheuer v.
5 Rhodes, 416 U.S. 232, 236 (1974)). While a complaint
6 need not contain detailed factual allegations, a
7 plaintiff must provide more than "labels and
8 conclusions" or "a formulaic recitation of the elements
9 of a cause of action." Bell Atl. Corp. v. Twombly, 550
10 U.S. 544, 555 (2007). However, a complaint "should not
11 be dismissed under Rule 12(b)(6) 'unless it appears
12 beyond doubt that the plaintiff can prove no set of
13 facts in support of his claim which would entitle him
14 to relief.'" Balistreri, 901 F.2d at 699 (citing
15 Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

16 **B. Discussion**

17 This case is now before the Court for the third
18 time in the context of a motion to dismiss for failure
19 to state a claim regarding the issue of standing under
20 ERISA. To have standing to state a claim under ERISA,
21 "a plaintiff must fall within one of ERISA's nine
22 specific civil enforcement provisions, each of which
23 details who may bring suit and what remedies are
24 available." Reynolds Metals Co. v. Ellis, 202 F.3d
25 1246, 1247 (9th Cir. 2000) (citing 29 U.S.C. §§
26 1132(a)(1)-(9)). ERISA's civil enforcement provision,
27 29 U.S.C. §1132(a), identifies plan participants,
28 beneficiaries, fiduciaries, and the Secretary of Labor

1 as "[p]ersons empowered to bring a civil action." See
2 Misic v. Bldg. Serv. Emps. Health & Welfare Trust, 789
3 F.2d 1374, 1378 (9th Cir. 1986). A non-participant
4 health care provider cannot bring claims for benefits
5 on its own behalf, but must do so "derivatively,
6 relying on its patient's assignments of their benefits
7 claims." Spinedex Physical Therapy USA Inc. v. United
8 Healthcare of Arizona, Inc., 770 F.3d 1282, 1289 (9th
9 Cir. 2014). A plaintiff lacks standing if the relevant
10 ERISA plan contains a valid and unambiguous AAP. See
11 id. at 1296 (affirming district court's holding that an
12 anti-assignment provision prevented patients from
13 assigning claims); Davidowitz v. Delta Dental Plan of
14 Cal., Inc., 946 F.2d 1476, 1477 (9th Cir. 1991) ("ERISA
15 welfare plan payments are not assignable in the face of
16 an express non-assignment clause in the plan.").⁴

17 The Court previously granted Defendant's Motion to
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20 ⁴ Plaintiff argues that there is a conflict in the Ninth
21 Circuit, specifically that enforcing AAPs is inconsistent with
22 Misic. Plaintiff brings this argument now, for the first time,
23 despite briefing this issue twice before this Court on a motion
24 to dismiss, and despite the Court laying out the Ninth Circuit
25 case law twice before in its Orders. Contrary to Plaintiff's
26 argument, there is no Ninth Circuit split that the Court is aware
27 of as to the enforceability of AAPs. Misic held that there is no
28 statutory bar to assignments of welfare benefits, but did not
itself deal with AAPs. In fact, every Ninth Circuit decision
since Misic that has addressed AAPs, has found them to be
enforceable. See, e.g., DB Healthcare, LLC v. Blue Cross Blue
Shield of Arizona, Inc., 852 F.3d 868, 876 (9th Cir. 2017);
Spinedex Physical Therapy USA Inc. v. United Healthcare of
Arizona, Inc., 770 F.3d 1282, 1296 (9th Cir. 2014); Brand Tarzana
Surgical Inst., Inc. v. Int'l Longshore & Warehouse Union-Pac.
Mar. Ass'n Welfare Plan, 706 F. App'x 442, 443 (9th Cir. 2017).

1 Dismiss Plaintiff's FAC [19], in which it dismissed
2 Plaintiff's claims on behalf of the patients enrolled
3 under the Woodward and Williams Lea Plans finding that
4 a valid AAP barred those claims. See Order re Def.'s
5 Mot. to Dismiss FAC, ECF No. 29. As to the eleven
6 patients under the Teamsters Plan, the Court found that
7 the purported AAP within the Teamsters SPD would bar
8 Plaintiff's claims if it were found to be valid and
9 unambiguous, but the Court declined to make such a
10 determination. As such, the Court dismissed
11 Plaintiff's claim under the Teamster's Plan but granted
12 leave to amend because it found that it was at least
13 plausible the Rules and Regulations of the Teamsters
14 Plan, not before the Court at the time, could elaborate
15 on whether Plaintiff's claims fall within an exception
16 in which the AAP would not apply. See id.

17 The Teamsters SPD contains the following clause
18 that Defendant argues, as it has previously, is a valid
19 AAP:

20 Participants are generally responsible for
21 notifying the Fund of changes in family
22 circumstances. Benefits are not assignable,
23 although the Fund will honor qualified medical
24 child support orders.

25 SAC ¶ 17. Plaintiff's SAC now attaches the Rules and
26 Regulations from the Teamsters Plan for the first time.
27 Defendant argues that with the terms of the Teamsters
28 Plan before the Court now, there is no doubt that the
AAP bars Plaintiff's claims. Plaintiff argues that the

1 language contained in the Rules and Regulations of the
2 Teamsters Plan itself is materially different from the
3 purported AAP in the Teamsters SPD. Specifically,
4 Plaintiff argues that the SPD is not absolute and that
5 the Rules and Regulations contain an exception for
6 benefits payable to a medical services provider in
7 consideration for hospital, medical, dental, or vision
8 care services rendered or to be rendered. Pl.'s Opp'n
9 6:5-19, ECF No. 33. The relevant language contained in
10 the Rules and Regulations, Section B of Article X
11 General Provision ("Section B"), provides:

12 Benefits payable hereunder shall not be subject
13 in any manner to anticipation, alienation, sale,
14 transfer, assignment, pledge, encumbrance, or
15 charge by any person; however, any Eligible
16 Employee may direct that benefits due to
17 him/her, except benefits payable under Article
18 III, be paid to an institution in which he/she
19 or his/her Dependent is hospitalized, or to any
20 provider of medical, dental or vision care
21 services or supplies in consideration for
22 Hospital, medical, dental or vision care
23 services rendered or to be rendered.

24 Notwithstanding the foregoing, the Fund will
25 honor any 'qualified medical child support
26 order' as defined by ERISA Section 609, received
27 with respect to the Fund, and will make any
28 payment required by ERISA Section 609 to a State
which has acquired rights under that Section.

29 SAC ¶ 20; see id., Ex. D, Teamsters Plan Rules and
30 Regulations 59, ECF No. 30-4.

31 Defendant argues that Section B is nothing more
32 than a direct payment provision. Indeed, Section B
33 prohibits the assignment of benefits, but allows
34 "Eligible Employees" to direct any benefits other than
35

1 those payable under Article III, to be paid to a
2 provider. Id. ¶ 20. The ability to assign benefits,
3 and the ability to direct payment are not mutually
4 exclusive, and here, the Court construes Section B to
5 prohibit assignments but allow direct payments to
6 providers. The Court has twice now emphasized that
7 provisions allowing direct payments to the Provider do
8 not afford the Provider "beneficiary" status under
9 ERISA. See DB Healthcare, LLC v. Blue Cross Blue
10 Shield of Arizona, Inc., 852 F.3d 868, 875 (9th Cir.
11 2017) ("Neither a designation in a health benefit plan
12 nor an assignment by a patient allowing a health care
13 provider to receive direct payment for health services
14 entitles a health care provider to "benefits" on its
15 own behalf."); FAC Order at 18; Order re Mot. to
16 Dismiss Compl. 13, ECF No. 17. Even if Section B's
17 direct payment provision did confer standing to
18 Plaintiff, it explicitly excludes benefits payable
19 under Article III, which governs eligible medical
20 expenses like the claims at issue here. See SAC, Ex. D
21 at 33. Consequently, the Court rejects Plaintiff's
22 argument that Section B contains an exception to the
23 AAP.

24 Plaintiff alternatively argues that even if the AAP
25 is valid, it would be contrary to the Financial
26 Responsibility Agreement signed between Plaintiff and
27 its patients. By signing this document the patients
28 agree that the Financial Responsibility Agreement:

1 [] [I]s a direct assignment of my rights and
2 benefits under my insurance plan or policy. I
3 further instruct and direct my insurance plan or
4 policy to pay all entitled plan benefits at the
5 stated plan benefit level directly to [Beverly
6 Oaks] related to services rendered. I
7 understand under applicable ERISA, state and/or
8 federal regulatory guidelines that I have the
9 right and authority to direct where payment for
10 services rendered is sent. If my current policy
11 prohibits direct payment to the provider of
12 service, I under my rights per state and federal
ERISA regulations hereby instruct and direct my
insurance plan or policy to provide
documentation stating such non-assignability
clause to myself and [Beverly Oaks]. Upon proof
of non-assignability documentation, I then
instruct that my insurance plan or policy make
out the check to me and mail it directly to
[Beverly Oaks] at the address listed on the
submitted claim for the professional or medical
expense benefits.

13 SAC ¶ 27; see id., Ex. B, Financial Responsibility
14 Agreement, ECF No. 30-2. However, the Court has
15 already directly rejected this argument, finding that
16 this agreement is between Plaintiff and its patients,
17 and does not reflect the terms of an ERISA Plan, nor
18 does it trump the AAP. See FAC Order at 20 (citing DB
19 Healthcare, 852 F.3d at 876) ("While this agreement
20 does demonstrate the patients' willingness to assign
21 benefits, the 'governing employee benefit plans contain
22 non-assignment clauses that override any purported
23 assignments.'").

24 In sum, the Court finds that Section B does not
25 contradict the Teamsters SPD, but in fact is consistent
26 in providing an express AAP. As a result, Plaintiff
27 lacks standing to bring its claims on behalf of the
28 patients under the Teamsters Plan. See Spinedex, 770

1 F.3d at 1296 (affirming district court's holding that
2 an anti-assignment provision prevented patients from
3 assigning claims); Mull for Mull v. Motion Picture
4 Industry Health Plan, 865 F.3d 1207, 1210 (9th Cir.
5 2017) (citation omitted) (finding SPDs are enforceable
6 "so long as the SPD neither adds to nor contradicts the
7 terms of existing Plan documents"). Because Plaintiff
8 has previously been allowed two attempts to cure its
9 deficiencies, and because the Rules and Regulations of
10 the Teamsters Plan now shows there is a valid AAP
11 denying Plaintiff standing, the Court **GRANTS**
12 Defendant's Motion to Dismiss Plaintiff's SAC **WITHOUT**
13 **LEAVE TO AMEND** as any further amendment would be
14 futile.⁵

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21 ⁵ Defendant argues that the Rules and Regulations establish
22 that Plaintiff's claims are barred by a one-year contractual
23 limitations period. The Rules and Regulations read that "[a]ny
24 legal action or suit to secure judicial review of a claim
25 determination must be filed within one year of the date of the
26 final determination of the Trustees or their claim-review
27 delegate, or judicial review is time barred." SAC, Ex. D at 60.
28 The claims at issue were in 2014 and 2015, but Plaintiff brought
this Action on May 9, 2018. The parties dispute whether there
was a final determination here, causing the time to run, however
the Court need not address this argument as it already found that
the Rules and Regulations contain a valid AAP and that any
amendment would be futile.

1 **III. CONCLUSION**

2 Based on the foregoing, the Court **GRANTS**
3 Defendant's Motion to Dismiss Plaintiff's SAC **WITHOUT**
4 **LEAVE TO AMEND.**

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6 **IT IS SO ORDERED.**

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8 DATED: June 20, 2019 s/ RONALD S.W. LEW

9 HONORABLE RONALD S.W. LEW
10 Senior U.S. District Judge
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