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**United States District Court  
Central District of California**

PIH HEALTH HOSPITAL-  
WHITTIER, et al.,

Plaintiffs,

v.

CIGNA HEALTHCARE OF  
CALIFORNIA, INC., et al.,

Defendants.

Case № 2:20-cv-11595-ODW (MAAx)

**ORDER DENYING DEFENDANTS’  
MOTION FOR LEAVE TO FILE A  
FIRST AMENDED NOTICE OF  
REMOVAL [20];  
GRANTING PLAINTIFFS’ MOTION  
TO REMAND AND DENYING  
COSTS [26]**

**I. INTRODUCTION**

On November 20, 2020, Plaintiffs PIH Health Hospital-Whittier and PIH Health Hospital-Downey (collectively, “PIH”) initiated this action in Superior Court against Defendants Cigna Healthcare of California, Inc., Cigna Health and Life Insurance Company, and Connecticut General Life Insurance Company (collectively, “Cigna”). (See Notice of Removal (“NOR”) Ex. 1 (“Complaint” or “Compl.”), ECF No. 1.) PIH asserts causes of action arising from its furnishing emergency services to Cigna-covered patients for which Cigna has failed to pay. On December 23, 2020, Cigna timely removed the action to this Court, alleging federal jurisdiction on the basis that PIH’s claims are completely preempted by the Employee Income Retirement Security Act (“ERISA”). (See NOR.) On January 19, 2021, Cigna moved

1 for leave to file a first amended notice of removal “to effect a clarification of and to  
2 supplement the basis for allegations of jurisdiction.” (Notice Mot. Leave Am. NOR  
3 (“Motion to Amend” or “MTA”) 1, ECF No. 20.) On January 25, 2021, PIH moved to  
4 remand and additionally sought \$11,360 in costs. (Mot. Remand (“MTR”), ECF  
5 No. 26.) For the reasons discussed below, the Court **DENIES** the Motion to Amend,  
6 **GRANTS** the Motion to Remand, and **DENIES** the request for costs.<sup>1</sup>

## 7 **II. BACKGROUND**

8 PIH are hospitals that provide healthcare services to the San Gabriel Valley and  
9 surrounding areas. (Compl. ¶¶ 1, 8–12.) Because of their unique position as  
10 hospitals, federal and state laws require PIH to provide emergency care to those with  
11 life-threatening conditions without first obtaining insurance verification or  
12 authorization. (*Id.* ¶ 23.) Cigna consists of three interrelated health care service  
13 insurers. (*Id.* ¶¶ 2, 13–16.) PIH and Cigna had three previous contracts for health  
14 care services to Cigna’s insureds. (*Id.* ¶ 19.) On August 1, 2019, those three contracts  
15 terminated. (*Id.*) However, PIH continued to provide services to patients Cigna either  
16 insured directly or for whom Cigna administered plans.

17 PIH contends that Cigna breached the earlier written contracts, as well as  
18 implied contracts arising afterwards, by not paying for services rendered. Some  
19 treatment fell within the period the contracts governed, and Cigna still allegedly owes  
20 payment. (*Id.* ¶¶ 20, 22, 26, 28–31, 36.) After August 1, 2019, PIH continued to  
21 provide mandatory emergency treatment and Cigna allegedly purposefully failed to  
22 fully reimburse for those services. (*Id.* ¶ 29.) PIH alleges that, as a result of the prior  
23 relationship, it had a reasonable expectation that Cigna would pay the standard rates  
24 for those services. (*Id.* ¶¶ 56, 63.) Based on the above facts, PIH brought ten causes  
25 of action against Cigna: (1)–(3) breach of written contract; (4)–(5) breach of implied  
26 contract for emergency services; (6)–(7) recovery for services rendered; (8) intentional

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28 <sup>1</sup> Having carefully considered the papers filed in connection with the Motions, the Court deemed the  
matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.



1                   **IV.           MOTION TO AMEND NOTICE OF REMOVAL**

2           Cigna moves to amend the Notice of Removal to cure allegedly defective  
3 allegations of jurisdiction. (*See generally* MTA.) PIH contends that Cigna’s  
4 proposed alterations are untimely substantive changes to the removal allegations and,  
5 even if they were timely, they are futile and fail to cure the deficiencies. (Pls.’ Opp’n  
6 MTA (“PIH Opp’n”) 4–17, ECF No. 31.) The Court finds that, while Cigna’s  
7 proposed alterations qualify as timely, the amended Notice of Removal ultimately  
8 fails to establish removability.

9           **A.       TIMELINESS**

10           After the thirty-day period within which defendants may seek removal, a Notice  
11 of Removal “cannot be amended to add a separate basis for removal jurisdiction.”  
12 *O’Halloran v. Univ. of Wash.*, 856 F.2d 1375, 1381 (9th Cir. 1988). A defendant may  
13 amend a Notice of Removal after the thirty-day window only to correct any “defective  
14 allegation of jurisdiction.” *ARCO Env’t Remediation, LLC v. Dep’t of Health & Env’t*  
15 *Quality*, 213 F.3d 1108, 1117 (9th Cir. 2000) (citing 28 U.S.C. § 1653). But  
16 amending “to assert totally new grounds for removal or ‘to create jurisdiction where  
17 none existed’” is not allowed. *Smiley v. Citibank (S.D.), N.A.*, 863 F.Supp. 1156,  
18 1159 (C.D. Cal. 1993) (quoting *Rockwell Int’l Credit Corp. v. U.S. Aircraft Ins. Grp.*,  
19 823 F.2d 302 (9th Cir. 1987)). “This rule serves to prevent defendants from removing  
20 cases on questionable substantive grounds to comply with the strict thirty day time  
21 limit of § 1446(b) and substituting their stronger arguments later.” *Isom v. Marg*,  
22 No. 2:14-cv-4355-SVW, 2014 WL 3546532, at \*3 (C.D. Cal. July 17, 2014). And  
23 “[l]eave to amend is not proper . . . where amendment would be futile.” *Glob.*  
24 *Concierge Holdings v. Charbo*, No. CV-5203-RGK (MANx), 2013 WL 6241589,  
25 at \*3 (C.D. Cal. Dec. 3, 2013) (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 692  
26 (9th Cir. 2001)).

27           The facts here present an unusual circumstance, as Cigna requests leave to  
28 make substantial *factual* changes to the Notice of Removal, substituting the proffered

1 exemplar with two alternatives, but maintains the original *grounds* for removal. “The  
2 majority of courts . . . allow defendants to amend ‘defective allegations of jurisdiction’  
3 in their notice as long as the initial notice of removal was timely filed and sets forth  
4 the same *legal grounds* for removal.” *Smiley*, 863 F. Supp. at 1159 (emphasis added)  
5 (quoting *Barrow Dev. Co. v. Fulton Ins. Co.*, 418 F.2d 316, 318 (9th Cir. 1969)).  
6 Here, both the original Notice of Removal and the proposed amended version allege  
7 the same legal grounds for removal—complete preemption under ERISA.

8       There is some merit to the argument that the extensive proposed factual changes  
9 are improper “allegations of substance.” However, where PIH, “in its pleadings,  
10 fail[ed] to identify the benefit claims at issue,” Cigna cannot be faulted for an inability  
11 to “conclusively determine whether the . . . contested claims were subject to an  
12 assignment.” *See, e.g., N. Shore-Long Island Jewish Health Care Sys., Inc. v.*  
13 *Multiplan, Inc.*, 953 F. Supp. 2d 419, 434 (E.D. N.Y. 2013). Indeed, Cigna explained  
14 in the original Notice of Removal that PIH did not supply relevant claim-identifying  
15 information until three business days before the removal deadline. “As a result,  
16 Cigna . . . provide[d] the Patient M.A. claim as a single example” but was “confident  
17 that many other reimbursement claims . . . challenge benefit denials under  
18 ERISA-governed plans.” (NOR 4 n.1.) Thus, Cigna now seeks to amend to include  
19 the factual information it referenced initially, and not to assert “totally new grounds  
20 for removal.”

21       As Cigna is not asserting a new *legal* basis for removal, but instead seeks to  
22 clarify the *factual* basis, the proposed amendments are timely.

### 23 **B. FUTILITY**

24       Nevertheless, the Court finds amendment would be futile because Cigna fails to  
25 establish removal is proper.

26       Under the well-pleaded complaint rule, courts determine the existence of  
27 federal question jurisdiction by looking at the plaintiff’s claims rather than the  
28 defendant’s defenses. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004). Thus, a

1 federal defense—such as preemption—typically does not give rise to federal question  
2 jurisdiction. *Id.* However, when “a federal statute wholly displaces the state-law  
3 cause of action through complete pre-emption, the state claim can be removed.” *Id.*  
4 (internal quotation marks omitted). Federal question jurisdiction exists in those  
5 instances because the plaintiff’s claim, “even if pleaded in terms of state law, is in  
6 reality based on federal law.” *Id.* at 208. The Supreme Court has adopted a two-part  
7 test for determining whether ERISA completely preempts state law claims: “if (1) ‘an  
8 individual, at some point in time, could have brought [the] claim under ERISA  
9 § 502(a)(1)(B),’ and (2) ‘where there is no other independent legal duty that is  
10 implicated by a defendant’s actions.’” *Marin Gen. Hosp. v. Modesto & Empire*  
11 *Traction Co.*, 581 F.3d 941, 946 (9th Cir. 2009) (alteration in original) (quoting  
12 *Davila*, 542 U.S. at 210).

13 Cigna fails to persuade the Court that no other independent legal duties are  
14 implicated.<sup>2</sup> “Courts have ruled time and time again that cases involving express or  
15 implied agreements to pay benefits were independent of the terms of the ERISA plans  
16 at issue.” *St. Joseph Hosp. of Orange v. Newegg, Inc.*, No. SACV 20-1704 JVS  
17 (JDEx), 2020 WL 6149716, at \*3 (C.D. Cal. Oct. 20, 2020) (collecting cases). In one  
18 factually similar case, *Reiten v. CIGNA Health and Life Insurance Company*, a  
19 medical provider plaintiff sued an insurer defendant for quantum meruit, specifically  
20 arguing that the insurer owed payments for emergency medical services under implied  
21 promises to pay reasonable value. No. CV 20-2330 FMO (AGRx), 2020 WL  
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23 <sup>2</sup> Although this represents the second prong under *Davila*, the test is conjunctive and failure to  
24 establish either prong is conclusive. The Court chooses to address only the second prong in detail,  
25 but finds, for the same reasons, that PIH’s asserted claims for reimbursement could not be raised  
26 under ERISA; they are not synonymous with any ERISA-based claims Cigna’s insureds may have  
27 assigned to PIH. *See John Muir Health v. Cement Masons Health & Welfare Tr. Fund*,  
28 69 F. Supp. 3d 1010, 1016–18 (N.D. Cal. 2014) (“[T]he enrollee’s assignment of its rights to  
Plaintiff is of no consequence. . . . Plaintiff now seeks payment based upon a different obligation.  
That obligation is wholly separate from the obligations Defendant owes to its enrollee and does not  
duplicate any claim available under section 502(a)(1)(B).” (internal quotation marks and citation  
omitted)).



1 1862462, at \*1 (C.D. Cal. Apr. 14, 2020). The court explained that “medical  
2 providers must render emergency services without regard to a patient’s ability to  
3 pay . . . and under California Health & Safety Code § 1371.4, an insurer must  
4 reimburse providers for emergency services and care provided to its enrollees.” *Id.*  
5 at \*3 (internal quotation marks and citation omitted). Because of that statutory  
6 interplay, “California courts have concluded that an implied contract exists between  
7 providers of emergency services like plaintiff and insurers like defendants.” *Id.* at \*4.  
8 As a result, the *Reiten* court could not “conclude there is an absence of an  
9 ‘independent legal duty’ under which plaintiff may sue.” *Id.* (citing *Davila*, 542 U.S.  
10 at 210).

11 The situation here is substantially similar to *Reiten* and Cigna fails to justify a  
12 different result. PIH mandatorily provided emergency medical services to patients  
13 with Cigna coverage, allegedly creating implied contracts under which PIH now seeks  
14 reimbursement. (*See generally* Compl.) This is an independent right arising out of  
15 California Health & Safety Code section 1371.4. *Reiten*, 2020 WL 1862462 at \*4; *see*  
16 *also Methodist Hosp. of S. Cal. v. Blue Cross of Cal.*, No. CV 09-5612 GAF (JCx),  
17 2011 WL 13186107, at \*12 (C.D. Cal. Mar. 8, 2011) (“By its terms, the statute  
18 requires health plans to reimburse *providers*, not to reimburse their insureds. Thus, a  
19 provider need not have an assignment of benefits to seek reimbursement under an  
20 implied contract theory based on section 1371.4.” (emphasis added)).

21 Cigna attempts to circumvent this legal rule, arguing extensively that PIH’s  
22 claims are truly derivative claims that rely upon patient assignments. Accordingly,  
23 Cigna contends *Cleghorn v. Blue Shield of California*, 408 F.3d 1222 (9th Cir. 2005),  
24 controls and that because interpretation of ERISA plans is required, PIH’s claims are  
25 preempted.<sup>3</sup> (*See* Cigna Opp’n MTR 14–22.) However, the claims PIH asserts here

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27 <sup>3</sup> Cigna also insists that ERISA preempts California Health and Safety Code section 1371.4 because  
28 some of the plans at issue may be self-insured ERISA plans. (Cigna Opp’n MTR 17–18, ECF  
No. 29.) However, Cigna relies on caselaw analyzing ERISA’s *conflict* preemption for this  
conclusion; this case concerns only *complete* preemption under ERISA, making that authority

1 simply do not rely upon the assignments of patients and thus *Cleghorn* is inapplicable.  
 2 *See Cmty. Hosp. of the Monterey Peninsula v. Aetna Life Ins. Co.*, No. 5:14-cv-03903-  
 3 PSG, 2015 WL 138197, at \*3 (N.D. Cal. Jan. 9, 2015) (“Here, as in *Marin General*  
 4 *Hospital*, the plaintiff is not suing as the assignee of an ERISA plan participant or  
 5 beneficiary under Section 502(a)(1)(B), and is not seeking benefits under an ERISA  
 6 plan.”). Even if a claim arising from an assignment is possible, this Court has  
 7 previously recognized that “the mere fact that Plaintiff *could* have asserted a claim  
 8 based on . . . assignments ‘does not automatically mean that Plaintiff could not bring  
 9 some other suit against Defendant based on some other legal obligation.’” *Alta L.A.*  
 10 *Hosps., Inc. v. Blue Cross of Cal.*, No. 2:17-cv-03611-ODW (MRWx), 2017 WL  
 11 3671156, at \*3 (C.D. Cal. Aug. 24, 2017) (brackets omitted) (quoting *Marin*, 581 F.3d  
 12 at 948).

13 Because removal itself is improper, leave to amend is futile and Cigna’s Motion  
 14 to Amend the Notice of Removal is **DENIED**.

#### 15 V. MOTION TO REMAND

16 The above analysis dictates that remand is required. That leaves PIH’s request  
 17 for fees. “Absent unusual circumstances, courts may award attorney’s fees under  
 18 § 1447(c) only where the removing party lacked an objectively reasonable basis for  
 19 seeking removal.” *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 141 (2005).  
 20 Generally, courts “should recognize the desire to deter removals sought for the  
 21 purpose of prolonging litigation and imposing costs on the opposing party, while not  
 22 undermining . . . a right to remove as a general matter, when the statutory criteria are  
 23 satisfied.” *Id.* at 140. Additionally, courts may consider a plaintiff’s “failure to  
 24 disclose facts necessary to determine jurisdiction.” *Id.* at 141. Here, the Court finds

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25  
 26 inapplicable. *See generally Coast Plaza Drs. Hosp. v. Blue Cross of Cal.*, 173 Cal. App. 4th 1179,  
 27 1189 (2009) (explaining that the affirmative defense of ordinary preemption under ERISA § 514(a)  
 28 may apply even if the jurisdictional bar of complete preemption under ERISA § 502(a) is not  
 available, and that section 1371.4 may be *ordinarily* preempted where self-funded ERISA plans are  
 at issue).



1 that fees are not appropriate. Cigna possessed an objectively reasonable basis for  
2 seeking removal as ERISA complete preemption presents a colorable basis for  
3 removal under the facts. “[R]emoval is not objectively unreasonable solely because  
4 the removing party’s arguments lack merit.” *Lussier v. Dollar Tree Stores, Inc.*,  
5 518 F.3d 1062, 1065 (9th Cir. 2008).

6 Based on the foregoing, PIH’s Motion to Remand is **GRANTED**, but the  
7 included request for fees is **DENIED**.

8 **VI. CONCLUSION**

9 For the reasons stated above, Cigna’s Motion to Amend is **DENIED**. (ECF  
10 No. 20.) PIH’s Motion to Remand is **GRANTED** and PIH’s request for costs is  
11 **DENIED**. (ECF No. 26.) The action is remanded to the Superior Court of the State  
12 of California, County of Los Angeles, 12720 Norwalk Blvd., Norwalk, California  
13 90650. The Clerk of the Court shall close this case.

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15 **IT IS SO ORDERED.**

16  
17 August 16, 2021

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20 **OTIS D. WRIGHT, II**  
21 **UNITED STATES DISTRICT JUDGE**  
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