

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 CHARLES SCHLEGEL,

No. 2:07-cv-00520-MCE-KJM

12 Plaintiff,

13 v.

MEMORANDUM AND ORDER

14 KAISER FOUNDATION HEALTH  
15 PLAN, et al.,

16 Defendants.  
17

-----oo0oo-----  
18

19 Presently before the Court is Defendants' Amended Motion for  
20 Reconsideration and Protective Order. Defendants challenge the  
21 decision of the magistrate judge to grant Plaintiff's Motion to  
22 Compel production of United Network for Organ Sharing ("UNOS")  
23 documents. However, because this Court determines it lacks the  
24 jurisdiction over this action, this case is hereby remanded.<sup>1</sup>

25 ///

26  
27 

---

<sup>1</sup> Because oral argument will not be of material assistance,  
28 the Court ordered this matter submitted on the briefing. E.D.  
Cal. Local Rule 78-230(h).

1 **BACKGROUND**

2  
3 Plaintiff originally initiated this suit in Sacramento  
4 Superior Court on February 9, 2007, alleging violations of state  
5 law resulting from Defendants' improper care while Plaintiff was  
6 awaiting a kidney transplant.

7 In his Complaint, Plaintiff alleges, "On or about  
8 December 18, 2001, Charles enrolled in the Kaiser Plan. Charles  
9 purchased the plan individually and not through his employment.  
10 Charles has been continuously covered under that plan until the  
11 present." Complaint, ¶ 13. Plaintiff attached a copy of that  
12 enrollment form, which provided specifically, and exclusively,  
13 for individual coverage.

14 Defendants removed the case to federal court asserting that  
15 Plaintiff's claims were completely preempted by the Employee  
16 Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.  
17 ("ERISA"), and therefore arose under federal law as required by  
18 28 U.S.C. § 1331. Defendants based their argument on Plaintiff's  
19 subsequent enrollment in a group plan through his employer,  
20 Vacaville Towing. Plaintiff allegedly enrolled in that group  
21 plan on or about December 12, 2005.

22 On March 18, 2008, Plaintiff filed a Motion to Compel the  
23 production of documents. Just a few days later, on March 21,  
24 2008, Defendants filed a Motion to Dismiss.

25 ///

26 ///

27 ///

28 ///

1 On September 11, 2008, this Court denied the Motion to  
2 Dismiss on the grounds that it was premature to be able to  
3 determine whether ERISA preempted Plaintiff's state law claims.  
4 On October 14, 2008, the magistrate judge granted Plaintiff's  
5 Motion to Compel.

6 Against this background, Defendants filed a Motion for  
7 Reconsideration of the magistrate judge's ruling granting  
8 Plaintiff's Motion to Compel. However, this Court instead holds  
9 that it lacks jurisdiction over Plaintiff's claims and now  
10 remands this action to state court.

#### 11 12 **STANDARD** 13

14 A defendant may remove any civil action from state court to  
15 federal district court if the district court has original  
16 jurisdiction over the matter. 28 U.S.C. § 1441(a). Generally,  
17 district courts have original jurisdiction over civil actions in  
18 two instances: (1) where there is complete diversity between the  
19 parties, or (2) where a federal question is presented in an  
20 action arising under the Constitution, federal law, or treaty.  
21 28 U.S.C. §§ 1331 and 1332.

22 The removing party bears the burden of establishing federal  
23 jurisdiction. *Ethridge v. Harbor House Rest.*, 861 F.2d 1389,  
24 1393 (9th Cir. 1988). Furthermore, courts construe the removal  
25 statute strictly against removal. *Gaus v. Miles, Inc.*, 980 F.2d  
26 564, 566 (9th Cir. 1992) (citations omitted). If there is any  
27 doubt as to the right of removal in the first instance, remand  
28 must be granted. See *Id.*

1 Therefore, if it appears before final judgment that a district  
2 court lacks subject matter jurisdiction, the case shall be  
3 remanded to state court. 28 U.S.C. § 1447(c).

4 When the sole basis of jurisdiction is alleged to derive  
5 from 28 U.S.C. § 1331, the district court determines whether  
6 removal is proper by first determining whether a federal question  
7 exists on the face of the plaintiff's well-pleaded complaint.  
8 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). If a  
9 complaint alleges only state-law claims and lacks a federal  
10 question on its face, then the federal court must remand. See  
11 28 U.S.C. § 1447(c).

12 However, under the "artful pleading" doctrine, there are  
13 rare exceptions when a well-pleaded state-law cause of action  
14 will be deemed to arise under federal law and support removal.  
15 "[C]ourts have used the artful pleading doctrine in: (1) complete  
16 preemption cases, and (2) substantial federal question cases."  
17 *Lippitt v. Raymond James Financial Services, Inc.*, 340 F.3d 1033,  
18 1041 (internal citations omitted). Thus, "[w]hen a federal  
19 statute wholly displaces the state-law cause of action through  
20 complete pre-emption,' the state claim can be removed." *Aetna*  
21 *Health Inc. v. Davila*, 542 U.S. 200, 207 (2004), quoting  
22 *Beneficial Nat. Bank v. Anderson*, 539 U.S. 1, 8 (2003). "This is  
23 so because '[w]hen the federal statute completely pre-empts the  
24 state-law cause of action, a claim which comes within the scope  
25 of that cause of action, even if pleaded in terms of state law,  
26 is in reality based on federal law.' ERISA is one of these  
27 statutes." *Id.* at 207-208.

28 ///

1 Therefore, "if an individual, at some point in time, could have  
2 brought his claim under ERISA § 502(a)(1)(B), and where there is  
3 no other independent legal duty that is implicated by a  
4 defendant's actions, then the individual's cause of action is  
5 completely pre-empted by ERISA § 502(a)(1)(B)." Davila at 210.

## 6 7 **ANALYSIS** 8

9 Through his Complaint, Plaintiff alleges only state law  
10 causes of action against non-diverse defendants. Accordingly,  
11 the Court lacks jurisdiction unless Plaintiff's claims arise  
12 under federal law. Defendants removed based on just such a  
13 theory, claiming that Plaintiff's state law claims are completely  
14 pre-empted by ERISA. Defendants made this assertion based on the  
15 fact that Plaintiff was, at the time of filing of the Complaint,  
16 covered by a group insurance policy that he had obtained through  
17 his employer. The parties agree that claims made under  
18 Plaintiff's individual policy are not covered by ERISA and,  
19 therefore, cannot be completely pre-empted by federal law, such  
20 that this Court would have jurisdiction. See Waks v. Empire Blue  
21 Cross/Blue Shield, 263 F.3d 872, 875 (9th Cir. 2001). Therefore,  
22 if Plaintiff's claims arise only under that individual policy,  
23 they are not completely pre-empted and removal was improper.

24 It is clear from the face of Plaintiff's Complaint that the  
25 relief he seeks arises solely under his individual policy, and  
26 not under the later group plan in which he enrolled. Plaintiff  
27 specifically states in the Complaint that "[o]n or about  
28 December 18, 1001, Charles enrolled in the Kaiser Plan.

1 Charles purchased the plan individually and not through his  
2 employment." Moreover, Plaintiff attached a copy only of that  
3 individual plan and made no reference to his later group policy.  
4 Additionally, Plaintiff refers to the policy only in the  
5 singular, indicating, consistent with his express allegations,  
6 his intent to proceed only under the terms of his individual  
7 plan.

8 While the complete preemption doctrine allows the Court to  
9 look beyond Plaintiff's well-pleaded complaint to determine the  
10 potential federal nature of his state law claims, the rule does  
11 not allow the Court to alter the factual basis of Plaintiff's  
12 allegations. Though any claims Plaintiff might pursue under the  
13 later group plan could potentially be completely pre-empted by  
14 ERISA, those claims are simply not implicated by Plaintiff's  
15 existing Complaint. Plaintiff expressly seeks relief via his  
16 Complaint only for injuries sustained as a result of coverage he  
17 received through an individual policy.<sup>2</sup> Since such policies are  
18 not covered by ERISA, Plaintiff's claims are not completely pre-  
19 empted such that jurisdiction is proper in this Court.

20 ///

21 ///

22 ///

23 ///

24

---

25 <sup>2</sup> Plaintiff's statements to the contrary in the context of  
26 his Opposition to Defendants' Motion to Dismiss are not relevant  
27 to the Court's interpretation of Plaintiff's Complaint. Despite  
28 his later arguments, the simple fact remains that Plaintiff chose  
to initiate litigation only under the terms of his individual  
policy, a choice that entirely deprives this Court of removal  
jurisdiction over his claims.

1 **CONCLUSION**

2

3 Accordingly, this case is remanded to state court, and the

4 Clerk of the Court is directed to close the file.

5 IT IS SO ORDERED.

6 Dated: January 14, 2009

7 

8 

---

9 MORRISON C. ENGLAND, JR.  
10 UNITED STATES DISTRICT JUDGE

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28