UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LODI MEMORIAL HOSPITAL ASSOCIATION, INC., a California non-profit public benefit corporation,

Plaintiff,

v.

AMERICAN PACIFIC CORPORATION, a Nevada for profit corporation, and DOES 1 THROUGH 25, INCLUSIVE,

Defendant.

No. 2:14-cv-01865 JAM DAD

**ORDER GRANTING PLAINTIFF'S MOTION TO REMAND AND DENYING DEFENDANT'S MOTION TO DISMISS**

Defendant American Pacific Corporation ("Defendant") brings this Motion to Dismiss Plaintiff Lodi Memorial Hospital Association, Inc.'s ("Plaintiff") Complaint. Plaintiff opposes this Motion and requests that this Court, instead, remand this case to the San Joaquin County Superior Court. For the following reasons, Plaintiff's Motion to Remand is GRANTED and Defendant's Motion to Dismiss is DENIED as moot.[1]

[1] This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was

## I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

Plaintiff Lodi Memorial Hospital Association is a non-profit public benefit California corporation. Compl. ¶ 1. Defendant is a Nevada Corporation, which maintains a health plan for its employees, pursuant to the Employee Retirement Income Security Act ("ERISA"). Compl. ¶ 2. See Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994) ("documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered" in ruling on a motion to dismiss). At all relevant times, Patient J.P. was an employee of Defendant, and was an enrolled beneficiary in Defendant's ERISA health plan. Compl. ¶ 7. Defendant "provided, arranged, and/or paid for healthcare services for its beneficiaries and/or members, including Patient." Compl. ¶ 8.

On July 1, 1990, Plaintiff entered into a written agreement (the "Agreement") with CAPP Care, Inc. ("CAPP Care"). Compl. ¶ 9. Pursuant to the Agreement, CAPP Care would "execute contracts with 'Payor' organizations offering health care insurance." Compl. ¶ 10. Defendant was one of these "Payor" organizations. Compl. ¶ 10. Pursuant to the Agreement, Plaintiff would render medical care to beneficiaries, including Patient J.P., of "Payor" organizations. Compl. ¶ 11. In exchange, CAPP Care "agreed to 'bind' 'Payor' organizations to pay" Plaintiff pursuant to the terms of the Agreement. Compl. ¶ 12. Also pursuant to the Agreement, Plaintiff agreed to submit

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scheduled for September 17, 2014.

its bills to Defendant, which would then pay for medical services rendered by Plaintiff. Compl. ¶ 13.

From March 19, 2013 to March 26, 2013, Plaintiff rendered medical services to Patient J.P. Compl. ¶ 14. Plaintiff alleges that it billed Defendant for the services rendered to Patient J.P., but Defendant failed to pay the entirety of the amount, leaving a balance of $302,177.75. Compl. ¶¶ 15-19.

Defendant contends that, under the terms of the Agreement, its obligation to pay Plaintiff for services rendered to Patient J.P. was linked to the employee benefit plan maintained by Defendant for its employees under ERISA. Mot. at 2. Specifically, Defendant contends that the Agreement only provides that Defendant would pay Plaintiff for services which are covered under the ERISA plan. Mot. at 2. Defendant maintains that the only services it failed to pay for were those that were not covered under Patient J.P.'s ERISA plan.

On April 8, 2014, Plaintiff filed the complaint in San Joaquin County Superior Court. On August 7, 2014, Defendant removed the matter to this Court. The complaint includes the following causes of action: (1) breach of written contract; (2) quantum meruit; and (3) breach of statutory duty – violation of California Health and Safety Code § 1371.4.

## II. OPINION

### A. Judicial Notice

Defendant requests that the Court take judicial notice of the "California Department of Managed Health Care's website which lists all licensed Knox-Keene Act plans[.]" Defendant's Request

for Judicial Notice ("DRJN") (Doc. #18) at 1. Plaintiff does not oppose Defendant's request.

Generally, the Court may not consider material beyond the pleadings in ruling on a motion to dismiss. However, the Court may take judicial notice of matters of public record, provided that they are not subject to reasonable dispute. See, e.g., Sherman v. Stryker Corp., 2009 WL 2241664 at *2 (C.D. Cal. 2009) (citing Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001) and Fed. R. Evid. 201).

The website contains information drawn from the public records of a state agency – the California Department of Managed Health Care. Plaintiff has also not opposed Defendant's request, and the information is not subject to reasonable dispute. Therefore, it is the proper subject of judicial notice. See Fed. R. Evid. 201. Defendant's request is granted.

B. Evidentiary Objections

Plaintiff raises a number of evidentiary objections (Doc. #14) to the Stratton Declaration (Doc. #10), submitted in support of Defendant's motion to dismiss, and moves to strike the offending passages. Plaintiff's objections are based on relevance, lack of foundation, lack of personal knowledge, and speculation. At this early stage in the proceedings, these objections are premature, and are better saved for argument within the briefs. See Burch v. Regents of Univ. of California, 433 F.Supp.2d 1110, 1119 (E.D. Cal. 2006). Accordingly, Plaintiff's evidentiary objections are overruled and Plaintiff's motion to strike is denied.

C. Legal Standard

Generally, a state civil action is removable to federal court only if it might have been brought originally in federal court. See 28 U.S.C. § 1441. This "original jurisdiction" may be based either on diversity of the parties, or on the presence of a federal question in the state court complaint. On removal, the removing defendant bears the burden of proving the existence of jurisdictional facts. See Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

Federal question jurisdiction is governed by the "well-pleaded complaint rule." This provides that subject matter jurisdiction is proper only when a federal question appears on the face of a proper complaint. See, e.g., Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). As a result, a plaintiff "may avoid federal jurisdiction by exclusive reliance on state law." Id. Further, a defendant cannot remove solely "on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue" in the case. Id. at 393.

"There does exist, however, a corollary to the well-pleaded complaint rule, known as the 'complete preemption' doctrine. The Supreme Court has concluded that the preemptive force of some statutes is so strong that they 'completely preempt' an area of state law. In such cases, any claim purportedly based on that preempted state law is considered, from its inception, a federal claim, and therefore arises under federal law." Balcorta v. Twentieth Century-Fox Film Corp., 208 F.3d 1102, 1107 (9th Cir.

2000) (quoting Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 65 (1987)). In these cases, even a well-pleaded state law complaint may be properly removed to federal court.

There are only a "handful of extraordinary situations" in which "complete preemption" provides an adequate basis for removal of a state complaint. See Holman v. Laulo-Rowe Agency, 994 F.2d 666, 668 (9th Cir. 1993). The Supreme Court has identified only two federal acts whose preemptive force is so "extraordinary" as to warrant removal of any "well-pleaded" state law claim: (1) the Labor Management Relations Act, 29 U.S.C. § 185(a) (see Caterpillar, 482 U.S. at 392); and (2) the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. (see Metropolitan Life Ins. Co., 481 U.S. at 65).

D. Analysis

a. ERISA Preemption

Two distinct forms of ERISA preemption exist: (1) "complete preemption," and (2) "conflict preemption." As noted by the Supreme Court, a state law claim may be "completely preempted" under ERISA because § 502(a) reflects Congress' intent to "so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character." Metro. Life Ins. Co. v. Taylor, 481 U.S. 58, 63-64 (1987). The Ninth Circuit has held that a party seeking removal can establish federal question jurisdiction by showing that a state law claim is "completely preempted" by § 502(a) of ERISA. Marin Gen. Hosp. v. Modesto & Empire Traction Co., 581 F.3d 941, 945 (9th Cir. 2009). The Supreme Court has established a two-prong test for complete preemption under § 502(a), which is

discussed below. Aetna Health Inc. v. Davila, 542 U.S. 200, 210 (2004).

Conversely, an affirmative defense of "conflict preemption" arises under § 514(a) of ERISA, when a provision of a state law "relates to" an ERISA benefit plan. Marin, 581 F.3d at 945. The Ninth Circuit has held that "a defense of conflict preemption under § 514(a) does not confer federal question jurisdiction on a federal district court." Id. at 945. Accordingly, federal question jurisdiction does not exist in the present case unless Plaintiff's state law claims are "completely preempted" by § 502(a) of ERISA.

b. The *Davila* Test

The Ninth Circuit has adopted the two-prong Davila "complete preemption" test: "Under Davila, a state-law cause of action is completely preempted if (1) an individual, at some point in time, could have brought [the] claim under ERISA § 502(a)(1)(B), and (2) where there is no other independent legal duty that is implicated by a defendant's actions." Marin, 581 F.3d at 946 (citing Davila, 542 U.S. at 200). As noted by the Ninth Circuit, this test "is in the conjunctive." Id. at 947. In other words, "[a] state-law cause of action is preempted by § 502(a)(1)(B) only if both prongs of the test are satisfied." Id. at 497.

Under the first prong of Davila, Defendant must establish that Plaintiff "could have brought the claim under ERISA § 502(a)(1)(B)." Marin, 581 F.3d at 947. This section provides that a civil action may be brought "by a participant or beneficiary . . . to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan,

or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132. In the present case, Plaintiff is not an ERISA plan participant or a beneficiary; rather, Plaintiff is a hospital. Thus, at first blush, it appears that the first prong of the Davila test is not satisfied, because Plaintiff could not have "brought the claim under ERISA § 502(a)(1)(B)." Marin, 581 F.3d at 946.

The Ninth Circuit has applied the first prong of Davila in a factually analogous case. Marin, 581 F.3d at 946. In Marin, the defendants similarly removed a plaintiff-hospital's state law claims for breach of contract and quantum meruit, among others. Id. at 943-44. The plaintiff-hospital moved to remand, arguing that its causes of action against the ERISA plan administrator were not subject to complete preemption under § 502(a). Id. at 944. In applying the first prong of the Davila test, the Ninth Circuit wrote as follows:

> "[I]n the case before us the patient assigned to the Hospital any claim he had under his ERISA plan. Pursuant to that assignment, the Hospital was paid the money owed to the patient under the ERISA plan. The Hospital now seeks more money based upon a different obligation. The obligation to pay this additional money does not stem from the ERISA plan, and the Hospital is therefore not suing as the assignee of an ERISA plan participant or beneficiary under § 502(a)(1)(B). Rather, the asserted obligation to make the additional payment stems from the alleged oral contract between the Hospital and [defendant ERISA plan administrator]." Id. at 948.

Accordingly, the Ninth Circuit concluded that the first prong of Davila was not satisfied and the hospital's claim was not completely preempted. Id. at 948. After Marin, it appears that a plaintiff-hospital's state law claims only satisfy the first prong of Davila if two criteria are met: (a) the patient has

"assigned to the [h]ospital any claim he had under his ERISA plan;" and (b) the alleged obligation of the ERISA plan administrator to pay the plaintiff-hospital "stem[s] from the ERISA plan." Id. at 948.

In the present case, Defendant has not established that Patient J.P. has "assigned to the [h]ospital any claim he had under his ERISA plan." Id. at 948. In its Notice of Removal, Defendant does not allege that such an assignment has occurred. Nor does this argument appear in its Motion to Dismiss or Reply briefs. Arguing that Plaintiff's contractual claims are necessarily based on the terms of the ERISA plan, Defendant has only addressed the second element of the first-prong of the Davila test: that Defendant's alleged obligation to pay Plaintiff "stem[s] from the ERISA plan." Marin, 581 F.3d at 948. However, the Ninth Circuit's opinion in Marin makes it clear that the "assignment" of Patient J.P.'s rights under ERISA to Plaintiff is a necessary element of the first prong of Davila. Defendant's failure to address the issue of "assignment" is fatal to its argument, as the removing party bears the burden of proving the existence of jurisdictional facts. See Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

Briefly, the Court notes that Defendant's reliance on Lone Star is misplaced. Mot. at 7 (citing Lone Star OB/GYN Associates v. Aetna Health Inc., 579 F.3d 525 (5th Cir. 2009)). Although Defendant maintains that Lone Star is "the controlling case," it is an out-of-circuit case and is non-binding on the Court. A Ninth Circuit case is referenced in Lone Star, but that case does not support the proposition for which it is cited. See Lone

Star, 579 F.3d at 530 (citing Blue Cross of California v. Anesthesia Care Associates Med. Grp., Inc., 187 F.3d 1045 (9th Cir. 1999)). Given that there is a recent Ninth Circuit case that is directly on point, the Court declines to follow the Fifth Circuit's decision in Lone Star.

Having failed to satisfy the first prong of the Davila test, none of Plaintiff's causes of action are subject to "complete preemption" under ERISA § 502(a). See Marin, 581 F.3d at 947 (noting that the Davila test is "in the conjunctive"). As the sole grounds for federal question jurisdiction was complete preemption under ERISA § 502(a), Plaintiff's Motion to Remand is GRANTED, as to all three causes of action in this matter. The Court need not reach the parties' remaining arguments. Moreover, as the matter is remanded to state court, Defendant's Motion to Dismiss is DENIED as moot.

## III. ORDER

For the reasons set forth above, the Court GRANTS Plaintiff's Motion to Remand and finds that Defendant's Motion to Dismiss is DENIED as moot.

IT IS SO ORDERED.

Dated: October 20, 2014

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE