

1 Patients, collectively "Plaintiffs") Complaint (Doc. #1).¹

2
3 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

4 Nutrishare is a healthcare provider specializing in Total
5 Parenteral Nutrition ("TPN") services. CIGNA sells healthcare
6 plans to consumers. The Patients each have Preferred Provider
7 Organization ("PPO") plans with CIGNA and have received services
8 from Nutrishare.

9 Nutrishare has provided services to CIGNA members since
10 1994, but does not have a contract with CIGNA and is considered
11 an out-of-network provider. Nutrishare's practice is to obtain
12 an assignment of the patients' benefits under their health
13 benefits plan with CIGNA.

14 Plaintiffs allege that Nutrishare has submitted a bill to
15 CIGNA for the services provided to CIGNA members, setting forth
16 the charges incurred. CIGNA has refused to pay for the services
17 provided by Nutrishare, regardless of whether the patients have
18 met their coinsurance or copayment obligations. In addition,
19 CIGNA has placed calls to the Patients and their physicians
20 urging them to seek TPN services from an in-network provider
21 rather than Nutrishare.

22 Plaintiffs filed the Complaint, stating eight causes of
23 action: (1) enforcement pursuant to 29 U.S.C. § 1132(a)(1)(B) for
24 failure to pay ERISA plan benefits on behalf of all Plaintiffs;
25 (2) enforcement pursuant to 29 U.S.C. § 1132(a)(2) for breach of
26

27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled
for June 17, 2015.

1 fiduciary duty on behalf of all Plaintiffs; (3) violation of
2 California Business & Professions Code §§ 17200 et seq.,
3 California's unfair competition law ("UCL"), on behalf of
4 Nutrishare; (4) breach of implied contract on behalf of
5 Nutrishare; (5) services rendered on behalf of Nutrishare;
6 (6) breach of covenant of good faith and fair dealing on behalf
7 of the Patients; (7) intentional interference with prospective
8 economic advantage on behalf of Nutrishare; and (8) negligent
9 interference with prospective economic advantage on behalf of
10 Nutrishare.

11 12 II. OPINION

13 A. Preemption of Nutrishare's State Law Claims

14 CIGNA first contends that Nutrishare's state law claims are
15 preempted under ERISA. Although it is disputed by Plaintiffs in
16 their Opposition (Doc. #10, at p. 3 n.1) it does appear CIGNA is
17 arguing that these claims are subject to conflict preemption
18 under ERISA § 514(a), as amended, 29 U.S.C. § 1144(a) ("§
19 514(a)"), and are completely preempted under ERISA § 502(a)
20 ("§ 502(a)"). For the reasons discussed below, the Court finds
21 Nutrishare's claims are completely preempted pursuant to
22 § 502(a).

23 1. Complete Preemption

24 As noted by the Supreme Court, a state law claim may be
25 "completely preempted" under ERISA because § 502(a) reflects
26 Congress' intent to "so completely pre-empt a particular area
27 that any civil complaint raising this select group of claims is
28 necessarily federal in character." Metro. Life Ins. Co. v.

1 Taylor, 481 U.S. 58, 63-64 (1987). The Supreme Court has
2 formulated a two-prong test to determine whether a claim is
3 completely preempted by ERISA. Aetna Health Inc. v. Davila, 542
4 U.S. 200, 210 (2004) ("Davila"); Marin Gen. Hosp. v. Modesto &
5 Empire Traction Co., 581 F.3d 941, 946 (9th Cir. 2009). Under
6 the test, a state law claim is completely preempted if (1) an
7 individual could have brought the claim under § 502(a); and
8 (2) "where there is no other independent legal duty that is
9 implicated by a defendant's actions." Davila, at 210.

10 The Ninth Circuit has continuously reaffirmed the principle
11 that "'ERISA preempts the state law claims of a provider suing as
12 an assignee of a beneficiary's rights to benefits under an ERISA
13 plan.'" Blue Cross of California v. Anesthesia Care Associates
14 Med. Grp., Inc., 187 F.3d 1045, 1051 (9th Cir. 1999) (quoting The
15 Meadows v. Employers Health Ins., 47 F.3d 1006, 1008 (9th Cir.
16 1995)). The dispositive issue presented by this motion is
17 whether Nutrishare brings its state law claims as an assignee of
18 its patients' benefits or as an independent entity based on
19 obligations independent of the ERISA plans.

20 When faced with claims from healthcare providers against
21 insurers, it is imperative that "[c]ourts distinguish between
22 claims brought in the provider's derivative capacity as an
23 assignee of plan benefits, which are preempted by ERISA, and
24 those brought in its independent status as a third-party health
25 care provider, which are not preempted." Pioneers Mem'l
26 Healthcare Dist. v. Robert F. Kennedy Farm Workers Med. Plan, No.
27 08CV747 WQH (CAB), 2008 WL 4350024, at *4 (S.D. Cal. 2008); see
28 also Catholic Healthcare W.-Bay Area v. Seafarers Health &

1 Benefits Plan, 321 F. App'x 563, 564 (9th Cir. 2008) ("ERISA does
2 not preempt 'claims by a third-party who sues an ERISA plan not
3 as an assignee of a purported ERISA beneficiary, but as an
4 *independent entity* claiming damages'") (emphasis in original).

5 "A party can avoid ERISA preemption if it identifies a
6 separate contract between the parties or alleges a specific
7 misrepresentation that does not require interpretation of the
8 ERISA plan and would not affect the relationships of the ERISA
9 participants." Pioneers Mem'l Healthcare Dist., 2008 WL 4350024,
10 at *4; see also Seafarers Health & Benefits Plan, 321 F. App'x at
11 564-65 (finding a provider's claims not preempted where the
12 complaint did "not mention an assignment," but rather asserted
13 claims "based on a direct contractual relationship"); Anesthesia
14 Care Associates, 187 F.3d at 1050-52 (finding a provider's claims
15 not preempted where the insurer and provider executed provider
16 agreements upon which the providers based their contractual
17 claims independent of their patients' rights).

18 2. Analysis

19 CIGNA contends Nutrishare is "proceeding based solely on
20 assignments of benefits from patients under their respective
21 ERISA health benefit plans" and that Nutrishare "does not allege
22 any basis for seeking payment from CIGNA other than the patient
23 assignments." Reply at pp. 3-4. It points to specific
24 allegations in the Complaint itself that Nutrishare is asserting
25 rights as an assignee of its patients. In the Opposition,
26 Plaintiffs argue that Nutrishare's state law claims "assert
27 directly enforceable rights to payment arising under independent
28 state law duties between parties whose relationship is not

1 governed by ERISA." Opp. at p. 4.

2 The Court looks to the Complaint itself for guidance. Each
3 of Nutrishare's state law claims is based on CIGNA's alleged
4 failure to pay benefits rightfully owed to Nutrishare based on
5 its patients' healthcare plans provided by CIGNA. Comp. ¶¶ 48-
6 64; 93-110; 121-143. The Complaint does not assert a basis for
7 Nutrishare's right to payment outside of the assignment of its
8 patients' rights. In fact, the Complaint specifically points out
9 that no contract exists between Nutrishare and CIGNA and that
10 Nutrishare "has not agreed to comply with, or be bound by, any
11 [CIGNA] insurance contracts, policies or procedures." Comp.
12 ¶ 26. Because recovery is based on Nutrishare's status as
13 assignee, the Court finds Nutrishare's state law claims in the
14 third, fourth, fifth, seventh and eighth causes of action are
15 preempted and the Court grants CIGNA's motion to dismiss these
16 derivative claims with prejudice.

17 The Court need not address any remaining preemption
18 arguments put forth by CIGNA regarding these claims.

19 B. Breach of the Covenant of Good Faith and Fair Dealing

20 In response to CIGNA's motion to dismiss the Patients' sixth
21 claim for breach of the covenant of good faith and fair dealing,
22 plaintiffs first argue that the claim is a "tort cause of action"
23 not "related to" the ERISA plan "but rather is simply a state law
24 that regulates the relationship between insureds and insurance
25 companies. See Washington Physicians Service Association v.
26 Gregoire, 147 F.3d 1039, 1045 (9th Cir. 1998)." (As amended on
27 denial of rehearing and rehearing en banc (1998)). Opp. at pp.
28 4-5.

1 Plaintiffs next argue that even if the Patients' claim
2 relates to an ERISA plan, it is saved from preemption by ERISA's
3 savings clause. Opp. at pp. 5-6. The clause provides that the
4 statute shall not be "construed to exempt or relieve any person
5 from any law of any State which regulates insurance." 29 U.S.C.
6 § 1144(b)(2)(A). Plaintiffs rely on UNUM Life Insurance Company
7 of America v. Ward, 526 U.S. 358, 363-64 (1999).

8 Plaintiffs' reliance on Gregoire and Ward is misplaced as
9 both of these cases are distinguishable. Gregoire did not
10 address whether ERISA preempted a common law claim of breach of
11 the covenant of good faith and fair dealing. Rather, it dealt
12 with a Washington state law, the "Alternative Provider Statute,"
13 that directly regulated health plans, providers, and the
14 provision of health services. 147 F.3d at 1042. Ward dealt with
15 a California state law, the "notice-prejudice" rule, that
16 provided an insurer a defense based on an insured's failure to
17 give timely notice of a claim. 526 U.S. at 363-64, 366-67. The
18 implied covenant of good faith and fair dealing, relied on by
19 Plaintiffs in the instant case, makes no mention of healthcare
20 plans, providers or services even if it can be applied in that
21 context under certain circumstances. As CIGNA points out in its
22 Reply, Jabour v. CIGNA Healthcare of California, Inc., 162 F.
23 Supp. 2d 1119 (C.D. Cal. 2001), directly rejected the argument
24 Plaintiffs now assert. Reply at pp. 4-5.

25 The court in Jabour specifically addressed the issue of
26 whether a claim for breach of the implied covenant of good faith
27 and fair dealing is preempted by ERISA, discussing ERISA's
28 savings clause and the impact of Ward. 162 F. Supp. 2d at 1123-

1 29. The court concluded that the Supreme Court's decision in
2 Ward did not undermine the "clearly established line of
3 precedent" holding that claims for breach of the implied covenant
4 of good faith and fair dealing were preempted by ERISA and not
5 "saved" by § 1144(b)(2)(A). Id. It found that "as a matter of
6 common sense" these types of common law, "bad faith" claims are
7 not state laws which "regulate insurance." Id.

8 Applying Jabour to Plaintiffs' sixth cause of action, the
9 Court grants CIGNA's motion to dismiss the Patients' claim.

10 C. Breach of Fiduciary Duty

11 CIGNA moves the Court to dismiss Plaintiffs' second cause of
12 action for breach of fiduciary duty pursuant to 29 U.S.C.
13 § 1132(a)(2). CIGNA contends that claims under § 1132(a)(2) can
14 only be asserted for the benefit of the ERISA plan and because
15 Plaintiff's claim is based on denials of benefits to these
16 specific parties, not the plan as a whole, it should be
17 dismissed. MTD at pp. 11-12.

18 Section 1132(a)(2) provides a right of action to a
19 "participant, beneficiary or fiduciary for appropriate relief
20 under § 1109," which deals with liability for breach of fiduciary
21 duties with respect to ERISA plans. "Individual beneficiaries
22 may bring fiduciary actions against the plan fiduciaries, but
23 they must do so for the benefit of the plan and not their
24 individual benefit." Cinelli v. Sec. Pac. Corp., 61 F.3d 1437,
25 1445 (9th Cir. 1995).

26 Plaintiffs argue that they have alleged a "systematic and
27 willful failure to pay benefits" and thus their claim meets the
28 standards set for a claim under § 1132(a)(2). Opp. at pp. 6-9.

1 Furthermore, they contend relief granted "under this claim would
2 benefit not only the Patients, but all participants in their
3 ERISA plans by seeking an injunction to remove [CIGNA] as the
4 . . . administrator for each of the ERISA plans at issue." Opp.
5 at p. 6. Ehrman v. Standard Ins. Co., No. C06-05454MJJ, 2007 WL
6 1288465, at *2 (N.D. Cal. 2007), cited by CIGNA, is directly on
7 point and addresses and rejects arguments similar to those put
8 forth by Plaintiffs in support of their claim.

9 In Ehrman, the court dismissed a claim under § 1132(a)(2)
10 because the plaintiff failed to "establish that the claim is for
11 the benefit of the [ERISA] Plan." 2007 WL 1288465, at *2. The
12 court found the complaint clearly indicated the claim was
13 ultimately for the underpaying of benefits to individual
14 participants in the plan. Id. The court disregarded the
15 plaintiff's "conclusory" claim that removal of the defendant
16 fiduciary would benefit the plan as a whole. Id. It similarly
17 found unpersuasive allegations that the actions of the defendant
18 were "systematic," "repeated," and "willful." Id.

19 The Court finds the analysis in Ehrman persuasive. Simply
20 using the words "systematic" or "willful" in the Complaint does
21 not change the fact that Plaintiffs' § 1132(a)(2) claim is
22 ultimately based on CIGNA's denial of benefits for individual
23 participants. Similar to the claim in Ehrman, the claim here is
24 not for the benefit of the ERISA plan as a whole despite
25 Plaintiff's conclusory claim that removing CIGNA as administrator
26 would benefit all participants in the plan. The Court grants
27 CIGNA's motion to dismiss the second cause of action. However,
28 because it is not clear to the Court that further amendment would

1 be futile, the motion to dismiss this claim is granted without
2 prejudice.

3 D. The Patients' Anonymity

4 CIGNA contends the Patients have failed to establish
5 exceptional circumstances necessary to proceed anonymously in
6 this litigation. MTD at pp. 14-17. Plaintiffs contend anonymity
7 is necessary to protect the sensitive medical information of the
8 Patients. Opp. at pp. 12-13.

9 As they relate to identification of parties in a complaint,
10 the Federal Rules of Civil Procedure require the caption to
11 include the names of all the parties. Fed. R. Civ. Proc. 10(a).
12 There is a presumption that litigants will use their real names.
13 Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate, 596 F.3d
14 1036, 1042 (9th Cir. 2010). There are limited exceptions.
15 "[M]any federal courts, including the Ninth Circuit, have
16 permitted parties to proceed anonymously when special
17 circumstances justify secrecy." Does I Thru XXIII v. Advanced
18 Textile Corp., 214 F.3d 1058, 1069 (9th Cir. 2000). A party may
19 be allowed to use a pseudonym when nondisclosure of the party's
20 identity is necessary to protect the party from harassment,
21 injury, ridicule or embarrassment. Id. at 1067-68; Doe ex rel.
22 Doe v. Sierra Cnty., No. 2:14-CV-01552-MCE, 2014 WL 5035301, at
23 *1 (E.D. Cal. 2014). However, a party will only be permitted to
24 retain his or her anonymity when "the party's need for anonymity
25 outweighs prejudice to the opposing party and the public's
26 interest in knowing the party's identity." Advanced Textile
27 Corp., at 1069; see also Doe v. John F Kennedy Univ., No. C-13-
28 01137 DMR, 2013 WL 4565061, at *3 (N.D. Cal. 2013).

1 will be allowed to proceed anonymously; however, the issue may be
2 revisited as this litigation progresses. Plaintiffs shall file
3 an Amended Complaint within twenty days of this Order and CIGNA
4 shall file its responsive pleading within twenty days thereafter.
5 If Plaintiffs elect not to amend their complaint, the case shall
6 proceed on the remaining first cause of action.

7 IT IS SO ORDERED.

8 Dated: July 10, 2015

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11 JOHN A. MENDEZ,
12 UNITED STATES DISTRICT JUDGE
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