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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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AVIATION WEST CHARTERS, LLC  
d/b/a ANGEL MEDFLIGHT,

Plaintiff,

v.

UNITEDHEALTHCARE INSURANCE  
COMPANY,

Defendant.

CIV. NO. 2:16-436 WBS AC

MEMORANDUM AND ORDER RE: MOTION  
FOR SUMMARY JUDGMENT AND MOTION  
TO STRIKE

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Plaintiff Aviation West Charters, LLC ("Aviation West") brought this action against defendant UnitedHealthcare Insurance Company ("United"), alleging that defendant violated ERISA when it failed to pay plaintiff for ambulatory services provided to a beneficiary of a medical plan provided by defendant. Before the court is defendant's Motion for summary judgment and Motion to strike. (Docket Nos. 23, 36.)

While on vacation in La Paz, Mexico, non-party minor M.M. sustained a fractured right leg, and was subsequently taken

1 to a Mexican hospital. M.M. is covered by a healthcare plan  
2 ("the Plan"), for which United is the insurer and claims  
3 administrator. (See Stalinski Decl., Ex. A ("Plan") (Docket No.  
4 24-1).) The Plan offers emergency and non-emergency ambulatory  
5 services.

6 On January 10, 2014, Aviation West, an air ambulance  
7 service, requested pre-authorization for air and ground ambulance  
8 service to transport M.M. from Mexico to Seattle Children's  
9 Hospital in Seattle, Washington. (Stalinski Decl., Ex. B at 1  
10 (Docket No. 24-1).) United did not respond, and on January 11,  
11 Aviation West flew M.M. from Mexico to Seattle, at a cost of  
12 \$495,925. (Stalinski Decl., Ex. D ("Health Ins. Claims Form") at  
13 203 (Docket No. 24-2).) Aviation West submitted a reimbursement  
14 claim for emergency transportation, which United denied.  
15 (Stalinski Decl., Ex. C at 1-2 (Docket No. 24-1).)

16 Aviation West brought three internal appeals to the  
17 denial of this claim as M.M.'s authorized representative, which  
18 United denied. (See PX15; PX16; PX21.) Aviation West then filed  
19 a request for external review as M.M.'s authorized  
20 representative, which United also denied. (See PX41.) On March  
21 1, 2016, Aviation West initiated this action against United,  
22 seeking to recover benefits due under the Plan and ERISA, 29  
23 U.S.C. § 1132(a), as M.M.'s purported assignee. (See First Am.  
24 Compl. (Docket No. 13).)

25 Defendant moves for summary judgment on the basis,  
26 among others, that Aviation West lacks standing to bring this  
27 action. Under 29 U.S.C. § 1132(a), a civil ERISA enforcement  
28 action may be brought only by a plan participant, beneficiary,

1 fiduciary, or the Secretary of labor. A healthcare provider  
2 cannot bring claims on its own behalf, but may do so if a  
3 beneficiary assigned its benefits claims to the healthcare  
4 provider. See Cromwell v. Equicor-Equitable HCA Corp., 944 F.2d  
5 1272, 1277 (6th Cir. 1991); Misic v. Building Serv. Emps. Health  
6 & Welfare Trust, 789 F.2d 1374, 1377 (9th Cir. 1986) (per  
7 curiam). M.M., as the beneficiary to the Plan, assigned her  
8 rights under the Plan to Aviation West. (See Health Ins. Claim  
9 Form at 208.)

10           However, a beneficiary may not assign her rights under  
11 the plan if the plan contains a non-assignment clause. See  
12 Davidowitz v. Delta Dental Plan of Cal., Inc., 946 F.2d 1476,  
13 1481 (9th Cir. 1991); Quaresma v. BC Life & Health Ins. Co., 623  
14 F. Supp. 2d 1110, 1128-29 (E.D. Cal. 2007) (Wanger, J.)  
15 (dismissing causes of action against insurer by assignee because  
16 non-assignment clause prevented the purported assignee from  
17 having standing to recover under the ERISA plan). Here, it is  
18 undisputed that the Plan contains a non-assignment clause that  
19 prevents a beneficiary from assigning "Benefits under the Policy  
20 to a non-Network provider without [United's] consent." (Plan at  
21 46.) Plaintiff cites no evidence that United consented to the  
22 assignment of M.M.'s benefits to Aviation West.

23           Aviation West nonetheless argues it has standing to  
24 bring this action because United waived the non-assignment clause  
25 when (1) it did not object to the assignment of benefits document  
26 and (2) it did not object to the assignment during the internal  
27 administrative process.

28           First, M.M. and Aviation West signed an Assignment of

1 Benefits document, which states that if the assignment is  
2 prohibited "by the terms of an anti-assignment provision . . . ,  
3 [United should] advise and disclose to [Aviation West] in writing  
4 . . . within ten (10) days upon receipt of [the] Assignment";  
5 otherwise "any anti-assignment provision is waived." (Health  
6 Insurance Claim Form at 208.) Aviation West argues that because  
7 United did not object to the assignment within ten days of  
8 receipt, United waived its non-assignment clause. Requiring  
9 United to affirmatively reject an assignment is contradictory to  
10 the express terms of the Plan, which states that United must  
11 consent to an assignment. (Plan at 46.) Further, while Aviation  
12 West submitted this document to United, United did not sign or  
13 otherwise acknowledge this agreement and Aviation West provides  
14 no authority suggesting that United can be bound by a contract it  
15 did not sign. Therefore, United's failure to object to the  
16 assignment contract that it did not sign does not constitute a  
17 waiver of the Plan's non-assignment clause.

18           Second, the Ninth Circuit has held that an insurer is  
19 required to provide a reason for denying a claim when  
20 communicating the denial and an insurer waives the right to rely  
21 on "a known or reasonably knowable reason" not cited in the  
22 denial letter. Spinedex Physical Therapy USA Inc. v. United  
23 Healthcare of Ariz., Inc., 770 F.3d 1282, 1296 (9th Cir. 2014);  
24 see Harlick v. Blue Shield of Cal., 686 F.3d 699, 719 (9th Cir.  
25 2012) ("A plan administrator may not fail to give a reason for a  
26 benefits denial during the administrative process and then raise  
27 that reason for the first time when the denial is challenged in  
28 federal court . . . ."); Aceves v. Allstate Ins. Co., 68 F.3d

1 1160, 1163-64 (9th Cir. 1995) ("Waiver providers insurers with an  
2 incentive to investigate claims diligently. The doctrine  
3 prevents insurers from denying claims for one reason, then coming  
4 forward with several other reasons after the insured defeats the  
5 first."). During the internal appeals, United never relied on  
6 the non-assignment clause to deny the claim for benefits.

7           However, if an insurance provider was not aware that  
8 the healthcare provider was acting as an assignee in the  
9 administrative appeal, there is no waiver of a non-assignment  
10 clause. See Spinedex, 770 F.3d at 1296. In Spinedex, 770 F.3d  
11 at 1297, the Ninth Circuit held that there was no evidence that  
12 the insurance provider was aware, or should have been aware, of  
13 the fact that the healthcare provider was acting as the  
14 beneficiaries' assignee during the internal administrative  
15 process claim. Instead, the insurance provider believed that the  
16 healthcare provider was acting as the insured's authorized  
17 representative charged with filing, collecting, or appealing a  
18 claim on behalf of the patient. Id. Therefore, the insurance  
19 provider did not waive the plan's non-assignment clause when it  
20 objected to the assignment for the first time in the district  
21 court. Id.; see also Care First Surgical Ctr. v. ILWU-PMA  
22 Welfare Plan, CASE NO. CV 14-01480 MMM (AGRx), 2014 WL 12573014,  
23 at \*17 (C.D. Cal. Dec. 26, 2014) (finding anti-assignment clause  
24 was not waived because there were "[n]o allegations . . . that  
25 defendants knew that [plaintiff] was acting as [the  
26 beneficiaries'] assignee, rather than as their authorized  
27 representative").

28           Similar to Spinedex, United had no reason to believe

1 that Aviation West was acting as M.M.'s assignee, as opposed to  
2 M.M.'s authorized representative, during the administrative  
3 process. Prior to any appeals, Aviation West requested  
4 information from United as the authorized representative of the  
5 insured. (See PX01 at 1, 4.) Aviation West brought three  
6 internal administrative appeals and the request for external  
7 appeal "in its capacity as the authorized representative of  
8 [M.M.]" (PX015 at 1; PX016 at 1; PX021 at 1; PX041 at 1.)  
9 Nowhere in the internal appeals or the request for external  
10 review does Aviation West indicate it is acting as M.M.'s  
11 assignee. With each appeal, Aviation West submitted an  
12 authorized representative form. United believed that Aviation  
13 West was acting as M.M.'s authorized representative, and had no  
14 reason to believe Aviation West was an assignee. Because there  
15 is no evidence that United knew Aviation West was acting as  
16 M.M.'s assignee, United did not waive the non-assignment clause  
17 by failing to rely on the non-assignment clause in its benefits  
18 denial.<sup>1</sup>

19 IT IS THEREFORE ORDERED that defendant's Motion for  
20 summary judgment as to plaintiff Aviation West (Docket No. 23)  
21 be, and the same hereby is, GRANTED.

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23 <sup>1</sup> Defendant's motion to strike the declaration of Dina  
24 Miller because it is not part of the administrative record and  
25 contains testimony that is inadmissible under the Federal Rules  
26 of Evidence (see Docket No. 36) is better captioned as objections  
27 to the court's consideration of this evidence and not a motion to  
28 strike. Because the court will construe this motion as  
objections to the Miller Declaration and the court does not rely  
on the Miller Declaration in its Motion, the court denies this  
motion and overrules these objections as moot.

1           IT IS FURTHER ORDERED that any renewed Motion for  
2 summary judgment based upon grounds not addressed in this Order  
3 shall be filed by September 18, 2017. Any opposition to such  
4 motion shall be filed by October 2, 2017. Any reply to such  
5 opposition shall be filed by October 16, 2017. Any hearing on  
6 such motion shall take place on October 30, 2017, at 1:30 p.m.

7 Dated: August 23, 2017



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8 WILLIAM B. SHUBB  
9 UNITED STATES DISTRICT JUDGE  
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