

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FOREST AMBULATORY SURGICAL ASSOCIATES, L.P.,
Plaintiff,
v.
UNITED HEALTHCARE INSURANCE COMPANY et al.,
Defendants.

CASE NO. 5:10-CV-04911-EJD
ORDER TRANSFERRING CASE

Currently pending before the court are two motions brought by all of the defendants that have appeared in this action: (1) an administrative motion to renew the request for change of venue, and (2) a motion to dismiss the Second Amended Complaint for failure to state a claim. For the reasons set forth below, the case is transferred to the Central District of California, the administrative motion is dismissed as moot, and the motion to dismiss is terminated without prejudice.

I. BACKGROUND

A. Underlying Facts

Forest Ambulatory Surgical Associates (“Forest”) is a healthcare services provider that operates a surgery center in San Jose. Second Am. Compl. (“SAC”) ¶¶ 3, 146. Defendants UnitedHealth Group, Inc., United HealthCare Services, Inc., United Healthcare Insurance Company,

1 and Ingenix, Inc. (the “United Defendants”) are various corporate entities that operate together as
2 part of one of the largest health insurance carriers in the United States. Id. ¶¶ 4–7. The remaining
3 defendants are a variety of health plans (and the plans’ administrators and sponsors) which have
4 contracted the United Defendants to administer many of their insurance services. Id. ¶¶ 9–140. The
5 great majority of the health plans are governed by ERISA. Id. ¶¶ 9–132.

6 Like many insurance carriers, United has a network of providers with which it has negotiated
7 price agreements. United passes some of its savings from in-network providers on to members of the
8 health plans, who are in turn more likely to use those providers. Id. ¶ 162. Forest is not in United’s
9 network, so it is an out-of-network provider with respect to each of the defendant health plans. Id.
10 ¶ 146. In-network providers can presumably bill the insurance carrier directly for services performed
11 on member patients; out-of-network providers like Forest obtain assignments of the patient’s
12 individual claim and then pursue the claim on the patient’s behalf. Id. ¶¶ 141–45. According to the
13 complaint, the defendant health plans, acting through the United Defendants, have systematically
14 underpaid Forest for its patients’ claims. Id. ¶¶ 153–214.

15 **B. Procedural History**

16 Forest initially brought this action in California superior court as a breach of contract case
17 against only United Healthcare Insurance Company. Notice of Removal, Oct. 29, 2010, ECF No. 1.
18 The case was removed to this court on the basis of ERISA preemption in October 2010. Id. Forest
19 amended the complaint to expressly plead a cause of action for recover of benefits under ERISA.
20 First Am. Compl. (“FAC”) ¶¶ 16–19, Dec. 17, 2010, ECF No. 11.

21 United Healthcare moved to dismiss the FAC and to transfer the case to the Central District
22 of California, where a number of other actions involving United’s reimbursement methodologies are
23 pending. One of the cases in the Central District—the “Downey Action”¹—is a class action brought
24 on behalf of healthcare providers like Forest who claim to have been under-reimbursed by United;
25 another is a multi-district litigation about out-of-network reimbursement practices in which the
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28 ¹ Case no. 2:09-CV-05457-PSG-CT, U.S. District Court for the Central District of California.

1 Cir. 1985). If the court finds that the first prong of the § 1404(a) analysis is satisfied, it has
2 discretion to engage in an “individualized, case-by-case consideration of convenience and fairness.”
3 Jones v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000) (quoting Stewart Org. v. Ricoh
4 Corp., 487 U.S. 22, 29 (1988)). A court may transfer a case on its own motion. See Muldoon v.
5 Tropitone Furniture Co., 1 F.3d 964, 966 (9th Cir. 1993).

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7 **III. DISCUSSION**

8 **A. Procedural Concerns Regarding Transfer**

9 It would seem strange to transfer this case incident to a grant of defendants’ administrative
10 motion, since that motion merely requests leave to renew the request for a change of venue. But the
11 court can—and will—transfer the case on its own motion. Arguments have already been presented
12 on the issue once (on the first motion to transfer), and to the extent their positions have changed the
13 parties have had the opportunity to outline any developments in the abbreviated briefing permitted
14 on the defendants’ administrative motion.³ Because of this history, any concern about transferring
15 the case without notice would be unfounded.

16 **B. Merits of the Transfer Analysis**

17 Forest and its counsel have made good use of the time that the denial of United’s first
18 transfer motion afforded them: this case has caught up to the Downey Action. The convenience of
19 coordinating the two actions is greater now than it was eight months ago precisely because the cases
20 are at approximately the same stage.

21 The cases are now also more closely related. At the time of United’s first motion to transfer,
22 this was a smaller case: it involved the claims of only 139 patients over an eighteen-month period.
23 FAC ¶ 10. The second amended complaint expands the scope of the case to an indeterminate number
24 of reimbursement claims dating back to 2007. Moreover, the SAC adds two more causes of action
25 under ERISA which are also pleaded in the Downey Action. In short, the SAC more closely

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27 ³ Indeed, Plaintiff seems to acknowledge that the result of the administrative motion might be
28 transfer. See Pl.’s Opp. Defs.’ Admin. Mot. Renew Req. Change Venue at 3, March 14, 2012, ECF
No. 99 (“Forest respectfully requests that the Court deny the Moving Defendants [sic] renewed
motion to transfer this action to the Central District of California.”).

