

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

BAY AREA SURGICAL GROUP, INC.,	)	Case No.: 10-CV-05867-LHK
	)	
Plaintiff,	)	ORDER GRANTING MOTION TO
v.	)	DISMISS WITH LEAVE TO AMEND
	)	AND DENYING MOTION TO STRIKE
ANTHEM BLUE CROSS LIFE & HEALTH	)	AS MOOT
INSUR. CO., ET AL.,	)	
	)	
Defendants.	)	

Plaintiff Bay Area Surgical Group, Inc. (“Plaintiff”) brings the instant action against Defendants Anthem Blue Cross Life and Health Insurance Company (“Anthem”), Health Care Service Corporation Illinois State PAC, NFP, and Blue Cross Blue Shield of Illinois (collectively “Defendants”). In brief, Plaintiff alleges that, pursuant to a written assignment agreement, it is entitled to receive full payment from Defendants for a surgical procedure it performed on a patient as the patient’s assignee. Defendants move to dismiss the complaint for failure to state a claim upon which relief may be granted. Defendant Anthem also moves to strike portions of the complaint. Although Plaintiff’s oppositions were due no later than March 31, 2011, as of the date of this Order, Plaintiff has not filed any oppositions. The Court deems these motions appropriate for resolution without oral argument, and vacates the April 21, 2011 motion hearing and case management conference. See Civ. L. R. 7-1(b). For the reasons explained below, Defendants’

1 motion to dismiss is GRANTED with leave to amend. Defendant Anthem’s motion to strike is  
2 DENIED as moot.

### 3 I. BACKGROUND

4 In the Complaint, Plaintiff describes itself as an ambulatory surgery center that provides  
5 health care services at its facility in Santa Clara, California. *See* Compl. ¶ 9. On June 4, 2009, a  
6 patient of Plaintiff underwent surgery. Plaintiff alleges that the patient was insured by a “health  
7 benefits agreement” with Defendants. *Id.* at ¶ 11. Under that agreement, Defendants promised to  
8 pay for certain costs of health care services incurred by the patient. *Id.*

9 Plaintiff alleges that, on June 4, 2009, the patient executed an “Assignment of Benefits” to  
10 Plaintiff, which authorized Plaintiff, as the patient’s assignee, to bill the insurance carrier  
11 (Defendants) directly. Pursuant to the assignment agreement, Plaintiff alleges it submitted a timely  
12 claim for payment. *Id.* at ¶ 13. However, according to Plaintiff, Defendants have not made the full  
13 payment of the outstanding charges.

14 Based on these allegations, Plaintiff brings suit for three California state law claims: (1)  
15 breach of contract; (2) implied covenant of good faith and fair dealing; and (3) common counts.  
16 Presently before the Court are Defendants’ motion to dismiss for failure to state a claim and motion  
17 to strike portions of the complaint.

### 18 II. ANALYSIS

19 Dismissal under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim is  
20 “proper only where there is no cognizable legal theory or an absence of sufficient facts alleged to  
21 support a cognizable legal theory.” *Shroyer v. New Cingular Wireless Services, Inc.*, 606 F.3d 658,  
22 664 (9th Cir. 2010) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). In considering  
23 whether the complaint is sufficient to state a claim, the court must accept as true all of the factual  
24 allegations contained in the complaint. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). While a  
25 complaint need not allege detailed factual allegations, it “must contain sufficient factual matter,  
26 accepted as true, to “state a claim to relief that is plausible on its face.” *Iqbal*, 129 S.Ct. at 1949  
27 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). If the court concludes that the  
28 complaint should be dismissed, it must then decide whether to grant leave to amend. “[A] district

1 court should grant leave to amend even if no request to amend the pleading was made, unless it  
2 determines that the pleading could not possibly be cured by the allegation of other facts.” *Lopez v.*  
3 *Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th  
4 Cir. 1995)).

5 Defendants move to dismiss on the ground that each of Plaintiff’s state law causes of action  
6 is preempted by the Employment Retirement Income Security Act of 1974 (“ERISA”), as  
7 amended, 29 U.S.C. §§ 1001 *et seq.* Section 1144(a) of ERISA provides that ERISA provisions  
8 “supersede any and all State laws insofar as they may now or hereafter relate to any employee  
9 benefit plan . . . .” *See* 29 U.S.C. § 1144(a). The provisions of ERISA “apply to any employee  
10 benefit plan if it is established or maintained--(1) by any employer engaged in commerce or in any  
11 industry or activity affecting commerce; or (2) by any employee organization or organizations  
12 representing employees engaged in commerce or in any industry or activity affecting commerce; or  
13 (3) by both.” *See* 29 U.S.C. § 1003(a).

14 Here, Plaintiff seeks to recover payment as the assignee of one of its patients, a patient  
15 covered by a health insurance policy with Defendants. Although Plaintiff did not attach a copy of  
16 the health insurance agreement to the Complaint, Defendants submit what they contend is the  
17 agreement referenced in the Complaint. *See* Exh. D to Notice of Removal (“Agreement”). The  
18 Court will consider the Agreement as incorporated by reference into the Complaint. *See United*  
19 *States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003) (“The doctrine of incorporation by reference  
20 may apply, for example, when a plaintiff’s claim about insurance coverage is based on the contents  
21 of a coverage plan.”). The Court finds that the Agreement is an “employee benefit plan” as defined  
22 in Section 1003(a). *See, e.g.,* Agreement at 94 (referencing participant rights and protection under  
23 ERISA). As the Agreement is covered by ERISA, Plaintiff’s three state law claims based on  
24 violation of the Agreement are preempted. *See Cedars-Sinai Med. Ctr. v. Nal League of*  
25 *Postmasters*, 497 F.3d 972, 978 (9th Cir. 2007) (recognizing that “ERISA preempts the state claims  
26 of a provider suing as an assignee of the beneficiary’s rights to benefits under an ERISA plan”);  
27 *see also The Meadows v. Employers Health Ins.*, 47 F.3d 1006, 1008 (9th Cir. 1995) (affirming  
28

1 “the principle that ERISA preempts the state claims of a provider suing as an *assignee* of a  
2 beneficiary’s rights to *benefits* under an ERISA plan”).<sup>1</sup>

3 **III. CONCLUSION**

4 Accordingly, for good cause shown:

5 (1) the motion to dismiss is GRANTED with leave to amend;

6 (2) the motion to strike portions of the complaint is DENIED as moot;

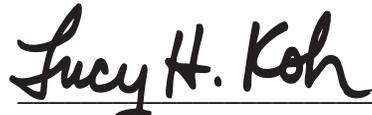
7 (3) any amended pleading must be filed within twenty-one (21) days of the date this Order.

8 Failure to timely amend the complaint will result in dismissal with prejudice; and

9 (4) the April 21, 2011 motion hearing and case management conference are VACATED.

10 **IT IS SO ORDERED.**

11  
12 Dated: April 19, 2011



13 LUCY H. KOH  
14 United States District Judge

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 \_\_\_\_\_  
<sup>1</sup> The Court does not reach Defendants’ other grounds for dismissal.