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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SAN JOSE NEUROSPINE,  
Plaintiff,  
v.  
CIGNA HEALTH AND LIFE INSURANCE  
COMPANY, et al.,  
Defendants.

Case No. 16-CV-05061-LHK

**ORDER DENYING PLAINTIFF'S  
MOTION TO REMAND**

Re: Dkt. No. 13

Plaintiff San Jose Neurospine (“Plaintiff”) sues Defendant Cigna Health and Life Insurance Company (“CHLIC”) and Defendant Cigna Healthcare of California (“CHC”) (collectively, “Defendants”) for breach of California Health and Safety Code § 1371.4; breach of implied contract; breach of implied covenant of good faith and fair dealing; negligent misrepresentation; unjust enrichment; unfair business practices; quantum meruit; and recovery of payment for services rendered. *See* ECF No. 15 (First Amended Complaint, or “FAC”). Before the Court is Plaintiff’s motion to remand. Having considered the submissions of the parties, the relevant law, and the record in this case, the Court hereby DENIES Plaintiff’s motion to remand.

**I. BACKGROUND**

**A. Factual Background**

1 Plaintiff is a medical service provider with its principal place of business in Campbell,  
2 California. FAC ¶ 1. On August 30, 2015, Plaintiff provided medical care to “Patient ‘A.M.’” a  
3 patient who is a participant in a self-funded employee health plan whose claims are administered  
4 by Defendant CHLIC, an insurance company with its principle place of business in Connecticut.  
5 ECF No. 19-1 (“Price Decl.”), at 2; *see* FAC ¶ 3. Plaintiff states that it provided \$125,000.00  
6 worth of medical services to Patient A.M., but “Cigna has reimbursed [Plaintiff] for \$28,570.00 of  
7 the total amount, leaving an unpaid balance of \$96,430.000.” FAC ¶¶ 15–18, 36–40.

8 **B. Procedural History**

9 On July 29, 2016, Plaintiff filed suit against CHLIC in the Superior Court of Santa Clara  
10 County. ECF No. 1-2 (Complaint, or “Compl.”). Plaintiff alleged that Plaintiff “called the  
11 Defendant at their designated telephone number to verify covered health benefits” prior to  
12 rendering medical care to Patient A.M. *Id.* ¶ 26. Plaintiff stated that, in providing medical care  
13 benefits to Patient A.M., Plaintiff relied on the reimbursement information that Defendant  
14 provided to Plaintiff over the telephone. *Id.* ¶ 27. Plaintiff alleged that CHLIC’s failure to  
15 reimburse Plaintiff for the full amount of medical care provided to Plaintiff violated implied  
16 contracts that CHLIC made with Plaintiff. *Id.* ¶ 33.

17 Based on these factual allegations, Plaintiff’s Complaint asserted eight state law causes of  
18 action against CHLIC, including breach of California Health and Safety Code § 1371.4; breach of  
19 implied contract; breach of implied covenant of good faith and fair dealing; negligent  
20 misrepresentation; unjust enrichment; unfair business practices; quantum meruit; and recovery of  
21 payment for services rendered. *Id.* ¶¶ 43–98.

22 On August 31, 2016, CHLIC answered Plaintiff’s Complaint in state court. *See* ECF No.  
23 1-3. On September 1, 2016, CHLIC timely removed the case to this Court. ECF No. 1 (“Notice  
24 of Removal”), at 1–2. On September 1, 2016, CHLIC answered the removed Complaint. *See*  
25 ECF No. 1.

26 CHLIC’s Notice of Removal asserted two bases for federal subject-matter jurisdiction. *See*  
27 Notice of Removal at 2. First, CHLIC asserted that a federal question existed, and thus that

1 jurisdiction was proper under 28 U.S.C. § 1331, because Plaintiff’s state law causes of action were  
2 preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §  
3 1332(a). *Id.* Second, CHLIC asserted that diversity jurisdiction existed, and thus that jurisdiction  
4 was proper under 28 U.S.C. § 1332, because Plaintiff and CHLIC are citizens of different states  
5 and Plaintiff alleged in its Complaint that it suffered damages in the amount of \$96,430. *Id.*; *see*  
6 *also* Compl. ¶ 15.

7 On September 29, 2016, Plaintiff filed a First Amended Complaint. ECF No. 15 (First  
8 Amended Complaint, or “FAC”). Plaintiff’s FAC added CHC, a California corporation, as a  
9 defendant. *Id.* at ¶¶ 1–4. Plaintiff’s FAC alleged substantially the same facts as Plaintiff’s state  
10 court Complaint. *See generally id.* The FAC added only that CHC “is a California corporation  
11 with its principal place of business in the county of Los Angeles, California”; that CHC  
12 “operate[s] as a health care service plan pursuant to the Knox-Keene Health Care Service Plan Act  
13 of 1975”; and that “these two Cigna entities coordinate their efforts, utilize the same employees  
14 and assets, have actual or ostensible authority to, and do in fact, act through one another and  
15 otherwise function as a unified whole.” *Id.* ¶¶ 2–4. Plaintiff’s FAC brought the same eight causes  
16 of action as Plaintiff’s state court Complaint against CHLIC, but alleged these eight claims against  
17 both CHC and CHLIC without adding any facts about CHC’s role in the causes of action. *See id.*  
18 at ¶¶ 44–85.

19 Also on September 29, 2016, Plaintiff filed a motion to remand this case to California  
20 Superior Court. ECF No. 13 (“Pl. Mot. to Remand”). Plaintiff’s motion to remand argued that  
21 this case was not preempted by ERISA. Specifically, Plaintiff contended that it asserted only state  
22 law causes of action and that these state law causes of action fell outside of ERISA’s scope. *Id.* at  
23 1–8. Plaintiff’s motion to remand also asserted that, because CHC was a citizen of California,  
24 complete diversity did not exist. *Id.* at 8.

25 On October 13, 2016, Defendants filed a response in opposition to Plaintiff’s motion to  
26 remand. ECF No. 19 (“Def. Opp. to Mot. to Remand”). Specifically, Defendants asserted that  
27 this Court had jurisdiction over Plaintiff’s state law claims because diversity jurisdiction exists.

1 *Id.* at 5–7. Defendants contended that diversity jurisdiction existed at the time of removal and,  
2 although Plaintiff amended its Complaint to add CHC as a party, CHC was added only as a “sham  
3 defendant” to defeat diversity jurisdiction. *Id.* at 6–7. Defendants also asserted that, because  
4 Plaintiff “could have brought” its claims under ERISA, Plaintiff’s state law claims were  
5 completely preempted by ERISA and thus arose under federal law. *Id.* at 7–13.

6 On October 19, 2016, Plaintiff filed a reply in support of its motion to remand. ECF No.  
7 21 (“Pl. Reply to Mot. to Remand”). Plaintiff asserted that CHC was not a sham defendant and  
8 that its FAC adequately alleged that CHC “is a California corporation”; that CHC “is licensed by  
9 the Department of Managed Health Care to operate as a health care service plan”; and that CHC  
10 and CHLIC “coordinate their efforts, utilize the same employees and assets, have actual or  
11 ostensible authority to, and do in fact, act through one another, and otherwise function as a unified  
12 whole.” *Id.* at 3. Plaintiff further contended that Defendants had not established that Plaintiff’s  
13 state law claims were truly ERISA claims. *Id.* at 4.

14 On October 13, 2016, CHLIC answered the FAC. ECF No. 18. On October 20, 2016,  
15 CHC filed a motion to dismiss the FAC’s claims against CHC. ECF No. 22. CHC asserted that it  
16 was joined as a “sham defendant” and that Plaintiff had failed to state a claim against CHC. *Id.*  
17 On November 2, 2016, Plaintiff filed an opposition to CHC’s motion to dismiss, arguing that the  
18 “systematic contacts of CHLIC should be attributed to its subsidiary, CHCA.” ECF No. 23 (“Pl.  
19 Opp. to Mot. to Dismiss”), at 5. On November 10, 2016, CHC filed a reply in support of its  
20 motion to dismiss. ECF No. 28.

21 **II. LEGAL STANDARD**

22 A suit may be removed from state court to federal court only if the federal court would  
23 have had subject matter jurisdiction over the case. 28 U.S.C. § 1441(a); *see Caterpillar Inc. v.*  
24 *Williams*, 482 U.S. 386, 392 (1987) (“Only state-court actions that originally could have been filed  
25 in federal court may be removed to federal court by the defendant.”). If it appears at any time  
26 before final judgment that the federal court lacks subject matter jurisdiction, the federal court must  
27 remand the action to state court. 28 U.S.C. § 1447(c).

1           The party seeking removal bears the burden of establishing federal jurisdiction. *Provincial*  
2 *Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009)). “The removal  
3 statute is strictly construed, and any doubt about the right of removal requires resolution in favor  
4 of remand.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citing  
5 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)).

6           **III. DISCUSSION**

7           Defendant CHLIC removed this case from state court on the grounds of both diversity  
8 jurisdiction and federal question jurisdiction. *See* Notice of Removal at 2. In resolving whether  
9 the Court has subject-matter jurisdiction over this case, the Court first considers whether ERISA  
10 completely preempts Plaintiff’s state law claims such that they arise under federal law, thus  
11 establishing federal question jurisdiction. The Court then considers whether diversity jurisdiction  
12 exists. In answering whether diversity jurisdiction exists, the Court must determine whether  
13 Plaintiff can amend its Complaint after removal to add CHC as a non-diverse defendant. These  
14 issues are discussed below in turn.

15           **A. Federal Question Jurisdiction**

16           For the Court to have federal question jurisdiction over a complaint, the complaint must  
17 arise under federal law. 28 U.S.C. § 1331. Generally speaking, “[a] cause of action arises under  
18 federal law only when the plaintiff’s well-pleaded complaint raises issues of federal law.” *Hansen*  
19 *v. Blue Cross of Cal.*, 891 F.2d 1384, 1386 (9th Cir. 1989). “The well-pleaded complaint rule is  
20 the basic principle marking the boundaries of the federal question jurisdiction of the federal  
21 district courts.” *Met. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987) (internal quotation marks  
22 omitted). Plaintiff’s FAC, like Plaintiff’s Complaint, asserts only state law claims. Generally, a  
23 complaint that asserts only state law claims does not arise under federal law. *Id.*

24           However, Defendants argue that Plaintiff’s state law claims are completely preempted by  
25 ERISA. In rare circumstances, “Congress may so completely pre-empt a particular area [of law]”  
26 that a state law claim arising from this area of law “is necessarily federal in character.” *Id.* at 63–  
27 64. Thus, a completely preempted state law claim inherently arises under federal law, conferring

1 federal question jurisdiction and allowing removal from state court to federal court. The Court  
2 thus considers whether Plaintiff’s state law claims are completely preempted.

3 **1. The Test for Complete Preemption Under ERISA**

4 ERISA completely preempts state law under 29 U.S.C. § 1132(a). ERISA is a  
5 “comprehensive legislative scheme” intended to protect the interests of participants in employee  
6 benefit plans and their beneficiaries. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004). One  
7 distinctive feature of ERISA is the integrated enforcement mechanism provided under 29 U.S.C. §  
8 1132(a), which provides ten “carefully integrated civil enforcement provisions.” *Id.* (quoting *Pilot*  
9 *Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987)). Congress “clearly manifested an intent to  
10 completely preempt causes of action within the scope of § 1132(a), thereby making such causes of  
11 action removable to federal court.” *Met. Life Ins.*, 481 U.S. at 66.

12 Under *Davila*, a state law claim is completely preempted by ERISA under 29 U.S.C. §  
13 1132(a)’s comprehensive legislative scheme if the state law claim meets a two-prong test. *See*  
14 *Marin Gen. Hosp.*, 581 F.3d at 947 (9th Cir. 2009) (citing *Davila*, 542 U.S. at 210–12). A state  
15 law cause of action is completely preempted, and therefore removable, “only if *both* prongs of the  
16 [*Davila*] test are satisfied.” *Id.* (emphasis added).

17 The first *Davila* prong asks “whether a plaintiff seeking to assert a state law claim ‘at some  
18 point in time, could have brought [the] claim under [29 U.S.C. § 1132(a)(1)(B)].” *Id.* (quoting  
19 *Davila*, 542 U.S. at 210). Section 1132(a)(1)(B) provides: “A civil action may be brought—(1)  
20 by a participant or beneficiary . . . (B) to recover benefits due to him under the terms of his plan, to  
21 enforce his rights under the terms of the plan, or to clarify his rights to future benefits due to him  
22 under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights  
23 to future benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B). The second *Davila*  
24 prong asks “whether there is no other legal duty, independent of ERISA, that is implicated by a  
25 defendant’s actions.” *Marin Gen. Hosp.*, 581 F.3d at 949 (quoting *Davila*, 542 U.S. at 210)).  
26 The Court thus turns to consider whether both of *Davila*’s prongs are satisfied here.

27 **2. Defendants Have Not Shown That the First *Davila* Prong is Satisfied**

1           The Court first considers the first *Davila* prong, “whether a plaintiff seeking to assert a  
2 state law claim “could have brought [the] claim under [§ 1132(a)(1)(B)].” *Id.* As stated above, §  
3 1132(a)(1)(B) provides that a “participant or beneficiary” may bring a civil action “to recover  
4 benefits due to him under the terms of his [ERISA] plan, to enforce his rights under the terms of  
5 the [ERISA] plan,” or “to clarify his rights to future benefits” under the terms of the ERISA plan.  
6 *See* § 1132(a)(1)(B).

7           Defendants argue that Plaintiff “could have brought” its state law claims under ERISA  
8 because Patient A.M. “is a participant in a self-funded employee health plan whose claims are  
9 administered by CHLIC” and because Plaintiff’s state law allegations are, at bottom, founded on  
10 CHLIC’s alleged failure to pay Plaintiff the money owed under Patient A.M.’s health plan with  
11 CHLIC. Def. Opp. to Mot. to Remand at 7–15. Plaintiff contends, however, that the first prong of  
12 *Davila* is not satisfied “because [Plaintiff] does not have statutory standing to sue under ERISA,”  
13 and thus Plaintiff could not have brought its state law claims under ERISA, as the first prong of  
14 *Davila* requires. Pl. Mot. to Remand at 6. Thus, the Court considers whether Plaintiff has  
15 standing to sue under ERISA.

16           ERISA provides that civil actions may be brought under the statute “by a participant,  
17 beneficiary, fiduciary,” and the Secretary of Labor. 29 U.S.C. § 1132(a). Accordingly, as the text  
18 of the statute establishes, ERISA does not enumerate healthcare providers such as Plaintiff as  
19 individuals with standing. *Id.*; *see Mistic v. Bldg. Serv. Empls. Hlth. & Welfare Trust*, 789 F.2d  
20 1374, 1378 (9th Cir. 1986) (recognizing that a third-party health care provider was not enumerated  
21 by ERISA). This does not end the inquiry, however. The Ninth Circuit has recognized that health  
22 care providers may sue under ERISA “derivatively, as assignee[s] of beneficiaries.” *Id.*

23           Here, Defendants assert that Plaintiff is an “assignee” of Patient A.M.’s health insurance  
24 plan rights and benefits, and thus Plaintiff “could have brought” its claims under ERISA. Def.  
25 Opp. to Mot. to Remand at 9–11. Specifically, Defendants makes three arguments in support of  
26 Plaintiff’s standing as an “assignee.” *See id.* First, Defendants state that the Court can infer from  
27 Plaintiff’s Complaint that Patient A.M. assigned its benefits to Plaintiff. *Id.* at 10. Second,

1 Defendants state that Patient A.M.’s self-funded employer health plan allows assignments. *Id.*  
2 Third, Defendants attach an “Appeal of Adverse Benefit Determination,” that Plaintiff submitted  
3 to CHLIC on behalf of Patient A.M., in which Plaintiff asserted that it was the “authorized  
4 representative of the Patient and empowered to adjudicate appeals on health benefit claims on  
5 behalf of the Patient.” *Id.* at 10, Price Decl., Ex. B.<sup>1</sup>

6 However, in the context of establishing standing under ERISA, courts have held that “[t]he  
7 party asserting federal jurisdiction must show express evidence of an explicit assignment in order  
8 for a court to find that the alleged assignee has standing.” *Bd. of Trustees of Laborers Hlth. &*  
9 *Welfare Trust Fund for No. Cal. v. Doctors Med. Ctr. of Modesto*, 2007 WL 2385097, at \*5 (N.D.  
10 Cal. Aug. 17, 2007) (citing *Pascack Valley Hosp. v. Local 464A UFCW Welfare Reimbursement*  
11 *Plan*, 388 F.3d 393, 401 (3d Cir. 2004)). Here, however, Plaintiff’s Complaint does not allege any  
12 assignment, and “Defendants have offered no proof that [Patient A.M.] validly assigned their  
13 benefits to Plaintiff.” *Port Med. Wellness Inc. v. Conn. Gen. Life Ins. Co.*, 2013 WL 5315701, at  
14 \*4 (C.D. Cal. Sept. 18, 2013) (remanding case where Defendants failed to offer proof of  
15 assignment). For example, Defendants have not offered any evidence of a “claims form submitted  
16 by Plaintiff reflecting” an assignment, nor have Defendants offered any declarations attesting to  
17 the fact that Patient A.M. assigned its benefits to Plaintiff. *See Lodi Mem. Hosp. Ass’n v. Tiger*  
18 *Lines, LLC*, 2015 WL 5009093, at \*5 (E.D. Cal. Aug. 20, 2015) (finding such evidence sufficient,  
19 considered along with plaintiff’s allegations in the complaint, to show that the plaintiff had  
20 standing under ERISA for purposes of *Davila*’s first prong). Rather, Defendants’ declaration in  
21 support of their opposition to remand states only that Patient A.M.’s benefits were *assignable*, not  
22 that they were actually assigned. Price Decl., at 3; *id.*, Ex. B. Moreover, although Defendants  
23 assert that Plaintiff held itself out to CHLIC as an “authorized representative of the Patient,” *see*  
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26 <sup>1</sup>“Since Plaintiff’s Motion to Remand challenges the basis of the court’s jurisdiction, the  
27 Court may consider evidence outside of the pleading.” *Lodi Mem. Hosp. Ass’n v. Tiger Lines,*  
28 *LLC*, 2015 WL 5009093, at \*5 (E.D. Cal. Aug. 20, 2015) (considering declarations and other  
evidence attached to motion to remand in considering whether Plaintiff’s claims were completely  
preempted by ERISA).



1 Price Decl., Ex. B, Defendants offer no evidence or argument that an “authorized representative”  
2 for purposes of an appeal with CHLIC is the same as an “assignee.” *See* Def. Opp. to Mot. to  
3 Remand at 10.

4 “[T]he removing party bears the burden of proving the existence of jurisdictional facts.”  
5 *Lodi Memorial Hosp. Ass’n, Inc. v. Am. Pac. Corp.*, 2014 WL 5473540, at \*4 (E.D. Cal. Oct. 20,  
6 2014) (finding that the defendant failed to establish *Davila*’s first prong, and thus remanding case  
7 to state court, where the complaint was silent on assignment and defendant offered no argument or  
8 proof as to the fact of assignment). Accordingly, because Defendants have failed to offer any  
9 “evidence of an explicit assignment,” the Court finds that Defendants have not met their burden to  
10 prove the existence of jurisdictional facts. *Doctors Med. Ctr. of Modesto*, 2007 WL 2385097, at  
11 \*5. Thus, Defendants have not met their burden to establish that Plaintiff “could have brought” its  
12 claims under ERISA. *See Port Med. Wellness, Inc.* 2013 WL 5315701, at \*4.

13 Because the Court finds that the first *Davila* prong is not satisfied, the Court need not  
14 consider the second prong of the *Davila* test. *See Marin Gen. Hosp.*, 581 F.3d at 947 (“The two-  
15 prong test of *Davila* is in the conjunctive.”). Thus, because *Davila* is not satisfied, this Court does  
16 not have subject matter jurisdiction under § 1331. The Court turns to consider whether the Court  
17 has diversity jurisdiction over Plaintiff’s claims.

18 **B. Diversity Jurisdiction**

19 Federal district courts have jurisdiction over suits for more than \$75,000 between “citizens  
20 of different States.” 28 U.S.C. § 1332(a)(1). Diversity jurisdiction exists only in cases in which  
21 the citizenship of each plaintiff is diverse from the citizenship of each defendant.” *Caterpillar,*  
22 *Inc. v. Lewis*, 519 U.S. 61, 68 (1996). Here, the parties dispute only whether the requirement of  
23 complete diversity is satisfied.

24 Significantly, at the time of removal, the parties were completely diverse. Plaintiff is a  
25 California citizen, and Plaintiff’s original complaint brought suit against only CHLIC, a citizen of  
26 Connecticut. *See* Compl ¶ 1; Notice of Removal at 2. Plaintiff does not contest that complete  
27 diversity existed at the time of removal. *See generally* Pl. Reply to Mot. to Remand. However,

1 after CHLIC removed Plaintiff’s Complaint to this Court, and on the same day that Plaintiff  
2 moved to remand this case to state court, Plaintiff filed a FAC that added CHC, a California  
3 citizen, as a defendant. *See* Pl. Mot. to Remand; FAC ¶ 2. Accordingly, because both CHC and  
4 Plaintiff are citizens of California, Plaintiff’s amendment of its complaint destroyed complete  
5 diversity. *Caterpillar, Inc.*, 519 U.S. at 68. Thus, in determining whether diversity jurisdiction  
6 exists, the Court must consider the propriety of Plaintiff’s amendment of its complaint to join  
7 CHC as a diversity-defeating defendant.

8 Plaintiff filed its FAC on September 29, 2016,<sup>2</sup> which is approximately twenty-eight days  
9 after Defendant answered Plaintiff’s removed Complaint on September 1, 2016. *See* FAC. Under  
10 Rule 15 of the Federal Rules of Civil Procedure, “[a] party may amend its pleading once as a  
11 matter of course within . . . 21 days after service of a responsive pleading.” Fed. R. Civ. P.  
12 15(a)(1)(B). “In all other cases, a party may amend its pleading only with the opposing party’s  
13 written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Accordingly, because Plaintiff  
14 amended its Complaint over twenty-one days after Defendant answered the Complaint, Plaintiff  
15 should have asked under Rule 15 for leave of Court to amend its Complaint. *Id.* Plaintiff did not  
16 do so.

17 Nonetheless, even if Plaintiff were permitted under Rule 15(a) to amend its complaint as of  
18 right, “when a party attempts to amend a complaint in a manner that destroys a federal court’s  
19 jurisdiction, [28 U.S.C.] § 1447(e) gives the court discretion to consider the propriety and fairness  
20 of allowing that amendment.” *Clinco v. Roberts*, 41 F. Supp. 2d 1080, 1087 (C.D. Cal. 1999); *see*  
21 *also Mayes v. Rapoport*, 198 F.3d 457, 462 n.11 (4th Cir. 1999) (“[A] district court has the  
22 authority to reject a post-removal joinder that implicates 28 U.S.C. § 1447(e), even if the joinder  
23 was without leave of court.”). Section 1447(e) provides: “if after removal the plaintiff seeks to  
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25 <sup>2</sup> Plaintiff attempted to amend its Complaint on September 26, 2016, but Plaintiff failed to list  
26 CHC as a defendant in the case caption. *See* ECF No. 9. Plaintiff filed a correct FAC on  
27 September 29, 2016. *See* ECF No. 15. Even if the September 26, 2016 date is considered,  
28 however, Plaintiff still filed its FAC over twenty-one days after September 1, 2016, the date that  
Defendant answered the removed Complaint.

1 join additional defendants whose joinder would destroy subject matter jurisdiction, the court may  
2 deny joinder, or permit joinder and remand the action to state court.” 28 U.S.C. § 1447(e).

3 Thus, even though Plaintiff has already filed its FAC, the Court must still consider under  
4 28 U.S.C. § 1447(e) whether the Court should exercise its discretion to allow Plaintiff to amend its  
5 complaint to add CHC as a diversity-destroying defendant. *See Clinco*, 41 F. Supp. 2d at 1087;  
6 *see also McGrath v. Home Depot USA, Inc.*, 298 F.R.D. 601, 607 (S.D. Cal. 2014) (“[T]he  
7 majority of district courts in the Ninth Circuit addressing the specific situation of a plaintiff  
8 attempting to use a Rule 15(a) amendment ‘as a matter of course’ to destroy diversity jurisdiction  
9 by adding claims against a non-diverse defendant have scrutinized the plaintiff’s purposes for  
10 amendment under § 1447(e).”).<sup>3</sup>

11 The “decision regarding joinder of a diversity destroying defendant is left to the discretion  
12 of the district court.” *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th Cir. 1998). Under §  
13 1447(e), courts consider several factors in determining whether joinder should be permitted,  
14 including:

- 15 (1) whether the party sought to be joined is needed for just  
16 adjudication and would be joined under Federal Rule of Civil  
17 Procedure 19(a); (2) whether the statute of limitations would  
18 preclude an original action against the new defendants in state court;  
19 (3) whether there has been unexplained delay in requesting joinder;  
20 (4) whether joinder is intended solely to defeat federal jurisdiction;

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21 <sup>3</sup> The parties each argue the issue of fraudulent joinder. *See* Def. Opp. to Mot. to Remand  
22 at 6–7; CHC Mot. to Dismiss at 5. “Fraudulent joinder is an exception to the requirement of  
23 complete diversity [at the time of removal] that permits a district court to disregard the citizenship  
24 of a non-diverse defendant when examining the propriety of removal on diversity jurisdiction  
25 grounds.” *McDonald v. Forest Labs., Inc.*, 2013 WL 1949349, at \*2 (N.D. Cal. May 9, 2013).  
26 “Other circuits have explicitly held that the doctrine of fraudulent joinder is inapplicable to  
27 proposed amendments *after* a suit has been removed.” *Milton v. Xerox Corporation*, 2016 WL  
28 651130, at n.2 (W.D. Wash. Feb. 18, 2016) (citing *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 171  
(5th Cir. 2009)). Similarly, district courts within the Ninth Circuit “have considered the issue of  
fraudulent joinder to be subsumed within the intent factor of a [28 U.S.C.] § 1447(e) analysis” if  
the plaintiff amended its complaint after removal. *Id.*; *see also Taylor v. Honeywell Corp.*, 2010  
WL 1881459, at \*2 n.1 (N.D. Cal. May 10, 2010); *McDonald*, 2013 WL 1949349, at \*2. Thus,  
this Court will analyze the parties’ fraudulent joinder arguments in the context of § 1447(e), as  
discussed below.

1 (5) whether the claims against the new defendant appear valid; and  
2 (6) whether denial of joinder will prejudice the plaintiff.

3 *IBC Aviation Servs., Inc. v. Compania Mexicana de Aviacion, S.A. de CV*, 125 F. Supp. 2d 1008,  
4 1011 (N.D. Cal. 2000). The Court thus considers each of these factors in turn.

5 **1. Whether the Party Sought to Be Joined is Needed for Just Adjudication**

6 Under the first factor, the Court considers “whether the party sought to be joined is needed  
7 for just adjudication and would be joined under Federal Rule of Civil Procedure 19(a).” *IBC*  
8 *Aviation*, 125 F. Supp. 2d at 1011. “Federal Rule of Civil Procedure 19 requires joinder of  
9 persons whose absence would preclude the grant of complete relief, or whose absence would  
10 impede their ability to protect their interests or would subject any of the parties to the danger of  
11 inconsistent obligations.” *Id.* (citing Fed. R. Civ. P. 19(a)); *see also Chan v. Bucephalus Alt.*  
12 *Energy Grp., LLC*, 2009 WL 1108744, at \*3 (N.D. Cal. Apr. 24, 2009) (“A proper party for  
13 joinder under Rule 19(a) is one having an interest in the controversy, and who ought to be made a  
14 party, in order that the court may act on that rule which requires it to decide and finally determine  
15 the entire controversy, and do complete justice, by adjusting all the rights involved in it.” (internal  
16 quotation marks omitted)).

17  
18 In evaluating whether to permit joinder under the first factor, courts “look at least for a  
19 high degree of involvement by the defendant in the occurrences that gave rise to the plaintiff’s  
20 cause of action.” *Boon v. Allstate Ins. Co.*, 229 F. Supp. 2d 1016, 1022 (C.D. Cal. 2002). Here,  
21 Plaintiff’s causes of actions relate to reimbursement owed to Plaintiff for medical care that  
22 Plaintiff gave to Patient A.M. FAC ¶¶ 28–31. Importantly, Patient A.M. has a self-funded health  
23 benefit plan whose claims are administered by CHLIC, not CHC. *See Price Decl.*, at 2–3.  
24 CHLIC is responsible for processing and handling Patient A.M.’s claims, not CHC. *Id.*; *see also*  
25 ECF No. 28-1 (“Jameson Decl.”), at 2. Accordingly, Plaintiff’s causes of action arise out of  
26 CHLIC’s partial reimbursement to Plaintiff of the money owed for Patient A.M.’s medical care,  
27

1 and *CHLIC*'s representations to Plaintiff that Plaintiff would be reimbursed. *See* FAC ¶¶ 15–18,  
2 28–31.

3 Plaintiff points to no actual conduct by CHC that contributed to the harm alleged by  
4 Plaintiff. Rather, Plaintiff alleges only three facts that are specific to CHC: that CHC “is a  
5 California corporation with its principle place of business in the county of Los Angeles,” FAC ¶  
6 2; that CHC “is licensed by the Department of Managed Health Care to operate as a health care  
7 service plan pursuant to the Knox-Keene Health Care Service Plan Act of 1975,” *id.*; and that  
8 CHC and CHLIC “coordinate their efforts, utilize the same employees and assets, have actual or  
9 ostensible authority to, and do in fact, act through one another, and otherwise function as a unified  
10 whole,” FAC ¶ 4. Significantly, Plaintiff’s motion to remand refers only to CHLIC as  
11 “Defendant,” and Plaintiff’s statement of facts in its motion to remand states that “[o]ne patient,  
12 who was a member under health plans sponsored, administered or financed by the Defendant, was  
13 admitted to [Plaintiff] and provided medically necessary care” and that “Defendant grossly  
14 underpaid, leaving a shortfall of \$96,430.00.” Pl. Mot. to Remand at 3–4.  
15  
16

17 Indeed, Plaintiff discusses the liability of CHC only in Plaintiff’s reply in support of its  
18 motion to remand. *See generally* Pl. Reply to Mot. to Remand at 2–4. There, Plaintiff states that  
19 CHC is a subsidiary of CHLIC, and Plaintiff contends that CHC and CHLIC “coordinate their  
20 efforts.” Pl. Reply to Mot. to Remand at 2. According to Plaintiff, CHC may thus be held liable  
21 for the causes of action that Plaintiff asserts against CHLIC. *See id.* at 2–4.  
22

23 However, CHC has presented a declaration from its Secretary, William Jameson  
24 (“Jameson”), that CHC “is not a subsidiary of CHLIC, and CHLIC is not a parent company or  
25 holding company for CHCA.” Jameson Decl. at 2. Further, Jameson avers that CHC and CHLIC  
26 employ different personnel and that “each utilize a different claims process and a different claims  
27 manual from the other, since each of them offer different coverage terms and each are subject to  
28

1 different regulatory structures.” *Id.* Plaintiff offers no facts to contradict these statements, but  
2 rather presents a declaration that states only that “[t]he home page of Cigna’s website . . . states in  
3 large font, ‘Cigna,’” and that the website states that both CHC and CHLIC “offer insurance plans  
4 in all counties in the state.” ECF No. 23-1 (“Van Parys Decl.”), at 2.

5 In sum, Plaintiff’s FAC and motion to remand show that Plaintiff’s causes of action arise  
6 out of CHLIC’s conduct. Pl. Mot. to Remand at 4 (“Defendant grossly underpaid, leaving a  
7 shortfall of \$96,430.00”); FAC ¶¶ 28–31. CHC is not a subsidiary of CHLIC, and Plaintiff points  
8 to no further actions by CHC that link CHC to the facts alleged in Plaintiff’s complaint. *See*  
9 Jameson Decl. at 2. Under these circumstances, CHC does not have a “high degree of  
10 involvement” in the facts at issue in this case. *Boon*, 229 F. Supp. 2d at 1022.

12 Moreover, even assuming that CHC and CHLIC are subsidiaries, there is no indication  
13 that Plaintiff could not obtain “complete relief” against CHLIC in the absence of CHC. *Clinco*,  
14 41 F. Supp. 2d at 1082. Indeed, district courts have denied joinder of non-diverse subsidiaries  
15 where “it d[id] not appear that any greater or different relief could be obtained against the  
16 subsidiary than could not be obtained from the parent.” *Buttons v. Nat’l Broad. Corp., Inc.*, 858  
17 F. Supp. 1025, 1027 (C.D. Cal. 1994). The same is true here. As stated, CHLIC is the  
18 administrator of Patient A.M.’s claims, and CHLIC is the party accused of partially reimbursing  
19 Plaintiff. *See* Compl. ¶¶ 15, 36–40; FAC ¶¶ 28–31; *see also* Pl. Mot. to Remand at 4. Plaintiff  
20 makes no argument as to why CHC is needed as a party for Plaintiff to obtain complete relief for  
21 the misconduct alleged. Rather, “Plaintiff’s allegations against [CHC] are brief and allege no  
22 basis for recovery against [CHC] separate and apart from the relief sought against [CHLIC].”  
23 *McGrath*, 298 F.R.D. at 608.

26 Finally, in evaluating the first factor under § 1447(e), district courts have also recognized  
27 that “a court has discretion to deny joinder of a party whose identity was ascertainable and thus  
28

1 could have been named in the first complaint.” *Murphy v. Am. Gen. Life Ins. Co.*, 74 F. Supp. 3d  
2 1267, 1282 (C.D. Cal. 2015) (finding that a defendant was not necessary where the non-diverse  
3 defendant was only tangentially related to the case and whose identity was ascertainable”); *see*  
4 *also Boon*, 229 F. Supp. 2d at 1023 (noting, in finding that the first § 1447(e) factor weighed  
5 against amendment, that plaintiff “could have stated a claim. . . against [the non-diverse  
6 defendant] in the original complaint”). Here, Plaintiff provides no rationale for why it waited  
7 until the FAC to add CHC as a defendant, rather than naming CHC in its state court Complaint.  
8 *See generally* Pl. Mot. to Remand. Under these circumstances, and for the reasons discussed  
9 above, the Court finds that the first factor weighs against amendment.  
10

## 11 **2. Statute of Limitations**

12 The second factor considers whether “a statute of limitations would affect the plaintiff’s  
13 ability to bring a separate suit against the new party.” *Clinco*, 41 F. Supp. 2d at 1083. Plaintiff  
14 has not addressed any statutes of limitations, nor has Plaintiff suggested that any claims against  
15 CHC would be time-barred. This factor does not support allowing amendment. *See id; Boon*, 229  
16 F. Supp. 2d at 1023 (“Plaintiffs do not argue that a new action against [Defendant] would be time-  
17 barred. Accordingly, this factor does not support allowing the amendment.”).  
18

## 19 **3. Timeliness of Amendment**

20 Under the third factor, the Court considers whether “the amendment was attempted in a  
21 timely fashion.” *Clinco*, 41 F. Supp. 2d at 1083. Plaintiff filed its original Complaint in state  
22 court on July 29, 2016. *See* Compl. Defendant answered the Complaint in state court on August  
23 31, 2016, and removed and answered the removed complaint on September 1, 2016. *See* ECF No.  
24 1. Plaintiff filed its FAC on September 29, 2016, which is two months after Plaintiff filed its  
25 original complaint, and approximately one month after Defendant filed its notice of removal and  
26 answer. *See* FAC; ECF No. 1.  
27

1 District courts within this Circuit have found amendment timely when a plaintiff amended  
2 its complaint “less than three months after [plaintiffs] filed their original complaint in Superior  
3 Court, and less than a month after removal.” *Boon*, 229 F. Supp. 2d at 1023; *see also Clinco*, 41  
4 F. Supp. 2d at 1083 (finding that an amendment occurring after approximately six weeks was  
5 attempted in a timely fashion); *Cruz v. Bank of N.Y. Mellon*, 2012 WL 2838957, at \*5 (N.D. Cal.  
6 July 10, 2012) (finding no delay where “Plaintiff filed the FAC approximately one month after the  
7 case was removed and approximately two months after the original complaint was filed in state  
8 court”).

9  
10 However, in *Boon*, *Clinco*, and *Cruz*, the removing defendant had either yet to file a  
11 responsive pleading to the original complaint or the plaintiff had amended its complaint within  
12 twenty-one days of the filing of a responsive pleading. *See, e.g., Boon*, 229 F. Supp. 2d at 1023  
13 (“[T]he Court finds that plaintiffs’ First Amended Complaint, filed just ten weeks after the filing  
14 of their complaint and prior to any responsive pleading by defendant Allstate, is timely.”); *Clinco*,  
15 41 F. Supp. 2d at 1082, 1086 (finding six weeks not unreasonable where plaintiff amended  
16 complaint prior to a responsive pleading); *Cruz*, 2012 WL 2838957, at \*3 (noting that the plaintiff  
17 had filed its FAC “within 21 days of Defendants’ motion to dismiss”). Accordingly, those cases  
18 are distinguishable from the instant case where, although over twenty-one days had passed since  
19 Defendant answered the Complaint, Plaintiff filed its FAC without stipulation and without asking  
20 for leave of Court, in violation of Federal Rule of Civil Procedure Rule 15. *See Fed. R. Civ. P.*  
21 *15(a) & (b)* (“In all other cases [other than 21 days after serving the pleading or 21 days after a  
22 responsive pleading is filed], a party may amend its pleading only with the opposing party’s  
23 written consent or the court’s leave.”).

24  
25  
26 Moreover, courts considering the timeliness factor under § 1447(e) have also considered a  
27 plaintiff’s explanations for any delay in amending its complaint. *See, e.g., Boone*, 229 F. Supp. 2d



1 at 1023 (noting that plaintiffs “acted timely in filing the amendment especially in light of the  
2 substitution of new counsel that occurred during the early stages of the litigation”); *Chan*, 2009  
3 WL 1108744, at \*5 (finding amendment timely where plaintiff “filed her Amended Complaint  
4 only four days after discovering that the [non-diverse] defendant was not [a] member of [the  
5 diverse defendant], as [plaintiff] had previously believed”). Here, as discussed above, Plaintiff has  
6 offered no explanation as to why Plaintiff “did not know, and with the exercise of reasonable  
7 diligence could not have known, of the basis for his claims against [CHC]” at the time that  
8 Plaintiff filed its Complaint in state court. *See Murphy*, 74 F. Supp. 3d at 1285.  
9

10 Accordingly, under these circumstances, the Court finds that the third factor weighs  
11 against amendment.

#### 12 **4. Motive for Joinder**

13 Under the fourth factor, the Court considers “whether joinder is intended solely to defeat  
14 federal jurisdiction.” *IBC Aviation*, 125 F. Supp. 2d at 1011. The Ninth Circuit has instructed  
15 that, because “motive in seeking joinder” is a relevant factor in determining whether amendment is  
16 appropriate, “a trial court should look with particular care at such motive in removal cases, when  
17 the presence of a new defendant will defeat the court’s diversity jurisdiction and will require a  
18 remand to the state court.” *Desert Empire Bank v. Ins. Co of N. Am.*, 623 F.2d 1371, 1376 (9th  
19 Cir. 1980). For the reasons discussed below, the Court finds that the circumstances here suggest  
20 that Plaintiff had an improper motive in adding CHC as a defendant in its FAC.  
21

22 First, in evaluating motive, courts have considered whether the plaintiff was “aware of the  
23 removal” at the time the plaintiff amended its complaint. *Clinco*, 41 F. Supp. 2d at 1083; *Boon*,  
24 229 F. Supp. 2d at 1024 (noting that plaintiff was aware of removal at the time that plaintiff filed  
25 its FAC, and that plaintiff was aware that the basis for removal was diversity jurisdiction). Here,  
26 as stated above, CHLIC removed the case on the basis of federal question and diversity  
27

1 jurisdiction on September 1, 2016. *See* Notice of Removal at 1. Plaintiff moved to remand the  
 2 case on September 29, 2016. *See* Pl. Mot. to Remand at 1. On that same day, Plaintiff filed the  
 3 FAC to add CHC as a non-diverse party. *See* FAC. Thus, Plaintiff was undoubtedly “aware of the  
 4 removal” at the time that it amended its FAC, and Plaintiff also knew that CHLIC was asserting  
 5 diversity jurisdiction as a basis for removal. *See Boon*, 229 F. Supp. 2d at 1024.

6 Second, in considering motive for joinder, “courts have inferred an improper motive where  
 7 the plaintiff’s proposed amended complaint contains only minor or insignificant changes to the  
 8 original complaint.” *Forward-Rossi v. Jaguar Land Rover N. Am., LLC*, 2016 WL 3396925, at \*4  
 9 (C.D. Cal. June 13, 2016). Here, “the original and first amended complaints are substantially  
 10 similar.” *Clinco*, 41 F. Supp. 2d at 1083. As discussed above, Plaintiff’s FAC adds three factual  
 11 allegations specific to CHC, including that it is a California corporation, it is licensed, and that it  
 12 acts as a “unified whole” with CHLIC. FAC ¶¶ 1–4. Other than these allegations, Plaintiff’s FAC  
 13 alleges all of the same facts as Plaintiff’s state court Complaint. *See generally* Compl; FAC.  
 14 Additionally, Plaintiff’s FAC asserts the same eight causes of action as Plaintiff’s state court  
 15 Complaint, and Plaintiff does not differentiate between the Defendants in the FAC in asserting  
 16 these eight causes of action. *Id.* ¶¶ 44–85. Indeed, the FAC refers inconsistently to “Defendants”  
 17 and “Defendant” throughout. *See id.* Thus, because the two “complaints are substantially  
 18 similar,” and the FAC contains only “minor” changes from the original complaint, the Court can  
 19 infer improper motive. *Clinco*, 41 F. Supp. 2d at 1083; *Forward-Rossi*, 2016 WL 3396925, at \*4.  
 20  
 21  
 22

23 Third, courts evaluating a plaintiff’s motive for amendment have considered whether a  
 24 plaintiff has provided an explanation for why the plaintiff waited to assert claims against the non-  
 25 diverse defendant. *See Chan*, 2009 WL 1108744, at \*5 (finding a proper motive for joinder where  
 26 the plaintiff “amended her Complaint only after discovering that [the non-diverse defendant] was  
 27 no longer associated with [the diverse defendant]”). Here, “Plaintiff has not explained why [it]

1 waited to bring claims against [CHC] until after this action was removed.” *Murphy*, 74 F. Supp.  
2 3d at 1284. Indeed, none of the factual allegations asserted against CHC appear to be in the  
3 exclusive control of Defendants or otherwise unknown to Plaintiff at the time of the filing of its  
4 state court Complaint. *See* FAC ¶¶ 1–4; Van Parys Decl. at 2. “In light of this, one could  
5 justifiably suspect that [Plaintiff’s] amendment of the complaint was caused by the removal rather  
6 than an evolution of [Plaintiff’s] case.” *Clinco*, 41 F. Supp. 2d at 1083. Accordingly, the fourth  
7 factor does not support amendment.  
8

9 **5. Strength of Claims Against CHC**

10 Under the fifth factor, the Court considers “whether a new claim sought to be added seems  
11 to have merit.” *Id.* For the reasons discussed below, the Court concludes that they do not.

12 Plaintiff alleges the same eight causes of action against both Defendants. FAC ¶¶ 44–85.  
13 However, as discussed above, Plaintiff’s causes of action arise out of Plaintiff’s provision of  
14 medical care to Patient A.M., whose self-funded health benefit plan is administered and processed  
15 by CHLIC, not CHC. *See id.*; *see also* Jameson Decl., at 2. Indeed, Plaintiff’s motion to remand  
16 mentions only CHLIC in its statement of facts, and states that “[o]ne patient, who was a member  
17 under health plans sponsored, administered or financed by the Defendant, was admitted to  
18 [Plaintiff] and provided medically necessary care,” and that “Defendant grossly underpaid, leaving  
19 a shortfall of \$96,430.00.” Pl. Mot. to Remand at 4.  
20

21 Again, the only factual allegations in the FAC that relate to CHC are Plaintiff’s allegations  
22 that CHC is “is a California corporation,” FAC ¶ 2; that CHC “is licensed by the Department of  
23 Managed Health Care to operate as a health care service plan,” FAC ¶ 2; and that CHC and  
24 CHLIC “coordinate their efforts, utilize the same employees and assets, have actual or ostensible  
25 authority to, and do in fact, act through one another, and otherwise function as a unified whole.”  
26 FAC ¶ 4. *See* Pl. Reply to Mot. to Remand at 3. Other than these three factual assertions, Plaintiff  
27

1 does not otherwise contend that CHC was involved in administering Patient A.M.’s health  
2 insurance claim, or that CHC ever made representations to Plaintiff.

3 In its reply in support of its motion to remand, Plaintiff makes specific argumentation only  
4 as to Plaintiff’s ability to bring a cause of action against CHC under Count Three, which alleges  
5 breach of the implied covenant of good faith and fair dealing. *See* Pl. Reply to Mot. to Remand at  
6 3–4. “California law recognizes in every contract, including insurance policies, an implied  
7 covenant of good faith and fair dealing.” *Brehm v. 21st Century Ins. Co.*, 83 Cal. Rptr. 3d 410,  
8 416 (Cal. Ct. App. 2008). Generally however, under California law, “a ‘bad faith’ action lies only  
9 against the insurer as the party to the contract which gives rise to the implied covenant” of good  
10 faith and fair dealing. *Monaco v. Liberty Life Assur. Co.*, 2007 WL 420139, at \*4 (N.D. Cal. Feb.  
11 6, 2007). Plaintiff argues that, although CHC did not have a contract with Patient A.M. or  
12 Plaintiff, “where a subsidiary of an insurance holding company is operated by the parent  
13 company, and employees of the parent are managing and administering claims, then the parent  
14 company may be held liable on breach of the insurance contract and of the covenant of good faith  
15 and fair dealing.” *See* Pl. Reply to Mot. to Remand at 4.

16  
17  
18 Plaintiff’s argument, however, is inapposite. In seeking to add CHC as a defendant,  
19 Plaintiff is attempting to hold an alleged *subsidiary* company, CHC, liable for actions of its  
20 alleged *parent* company, CHLIC, even though Plaintiff alleges no independent actions of the  
21 subsidiary. *See id.* Thus, it is irrelevant whether, as Plaintiff argues, a parent company may be  
22 held liable for the actions of its subsidiary. Further, as the Court discussed with regards to the first  
23 § 1447(e) factor above, CHC has presented a declaration that CHC is *not* a “subsidiary” of  
24 CHLIC. Jameson Decl., at 2.

25  
26 Moreover, the case that Plaintiff cites in support of this argument, *Tran v. Farmers Group,*  
27 *Inc.*, 104 Cal.App.4th 1202, 1218–19 (2002), is not applicable to the instant facts. *See* Pl. Reply

1 to Mot. to Remand at 4. That case involved the “unique relationship” of an interinsurance  
2 exchange, which is “an unincorporated business organization made up of subscribers” insured by  
3 the exchange and “managed by an attorney-in-fact.” *Monaco*, 2007 WL 420139, at \*5; *Tran*, 104  
4 Cal. App. 4th at 1218. In the context of interinsurance exchanges, California courts have held  
5 that, “if the attorney-in-fact is such an integral part of the [interinsurance] exchange’s business  
6 that equity requires it to be liable on the contract,” the attorney-in-fact may be held liable for  
7 breach of the implied covenant of good faith and fair dealing, even though it is not a party to the  
8 insurance contract. *Tran*, 104 Cal. App. 4th at 1218. Otherwise, given the unique structure of an  
9 interinsurance exchange, the plaintiff would have no relief. *See id.* at 1217–18 (explaining that a  
10 contrary rule, in the context of an interinsurance exchange, would “deprive a plaintiff from  
11 redress against the party primarily responsible for damages”).

12  
13 Here, by contrast, Defendants did not “act[] as an interinsurance exchange” and there is no  
14 suggestion “that Plaintiff would be without redress unless [it] is permitted to proceed against  
15 [CHC].” *Monaco*, 2007 WL 420139, at \*5 & n.9 (rejecting a plaintiff’s reliance on *Tran* because,  
16 in contrast to *Tran*, the instant case involved a “traditional relationship between an insured and an  
17 insurer”). Thus, Plaintiff’s arguments in support of holding CHC liable for breach of the implied  
18 covenant of good faith and fair dealing, even though CHC is not a party to any contract with  
19 Plaintiff, are unavailing. Again, Plaintiff has not asserted any conduct by CHC that links CHC to  
20 the factual allegations underlying Plaintiff’s claims. *See* Pl. Mot. to Remand at 4; FAC ¶¶ 1–4.

21  
22 Finally, in opposition to CHC’s motion to dismiss the FAC, Plaintiff cites several  
23 additional cases. *See* Pl. Opp. to Mot. to Dismiss. These cases, however, do not support finding  
24 CHC liable for any misconduct. To the contrary, the arguments and citations discussed by  
25 Plaintiff in opposition to CHC’s motion to dismiss relate only to whether this Court may exercise  
26 *personal jurisdiction* over CHC, which is not at issue in this case. *See id.* at 4–6. For example,  
27

1 Plaintiff cites *Bellomo v. Penn. Life Co.*, 488 F. Supp. 744, 745 (S.D.N.Y. 1980), which addressed  
2 only the question of whether “the activities of the New York subsidiaries [of a holding company]  
3 may be attributed to the parent for purposes of venue and personal jurisdiction.” *Bellomo*, 488 F.  
4 Supp. at 745. However, whether CHLIC’s conduct may be attributed to CHC for purposes of  
5 personal jurisdiction has no bearing on whether CHLIC’s conduct may be attributed to CHC for  
6 the purposes of liability. See *Int’l Shoe Co. v. State of Wash.*, 326 U.S. 310, 316 (1945) (“[I]n  
7 order to subject a defendant to a judgment in personam, if he be not present within the territory of  
8 the forum, he have certain minimum contacts with [the forum] such that the maintenance of the  
9 suit does not offend ‘traditional notions of fair play and substantial justice.’”). Thus, Plaintiff’s  
10 arguments in response to CHC’s motion to dismiss are also unavailing.  
11

12 In sum, Plaintiff’s causes of action arise out of CHLIC’s reimbursement to Plaintiff for  
13 medical care given to Patient A.M., and CHLIC’s administration of Patient A.M.’s account, not to  
14 any relationship that Plaintiff has with CHC. See Pl. Mot. to Remand at 4; Price Decl., at 2.  
15 Plaintiff was partially reimbursed by CHLIC, not CHC. See Pl. Mot. to Remand at 4. Plaintiff  
16 has not asserted any specific misconduct by CHC, or otherwise connected CHC to any of the  
17 causes of action in its FAC. See *id.*; FAC ¶¶ 1–4. Thus, consideration of the merits of Plaintiff’s  
18 claims weighs against permitting amendment.  
19

## 20 **6. Prejudice to Plaintiff**

21 Finally, the last factor considers whether Plaintiff will “suffer undue prejudice if the Court  
22 chooses not to exercise its discretion to allow joinder.” *Boon*, 229 F. Supp. 2d at 1025. It does  
23 not appear that Plaintiff will suffer prejudice here. As discussed above, CHC is not involved in  
24 the events giving rise to Plaintiff’s causes of action. Plaintiff has named CHLIC as a defendant,  
25 and CHLIC has answered Plaintiff’s Complaint. See ECF No. 1. Thus, CHLIC “remains a party  
26 to the action and a potential source for payment of damages.” *Boon*, 229 F. Supp. 2d at 1025.  
27

1 Accordingly, this factor weights against amendment.

2 **7. Conclusion as to the § 1447(e) Discretionary Standard**

3 For the reasons discussed above, the Court finds that none of the § 1447(e) discretionary  
4 factors support amendment. As other courts have recognized, “[m]ost significant are the findings  
5 that none of the asserted claims against [the non-diverse defendant] appear valid and that the  
6 apparent reason for the proposed joinder is to add a party whose presence would defeat diversity  
7 jurisdiction.” *Murphy*, 74 F. Supp. 3d at 1286. Thus, the Court will exercise its discretion under  
8 § 1447(e) to not permit Plaintiff to amendment its Complaint to join CHC as a defendant.  
9

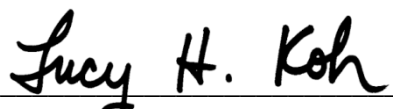
10 Accordingly, “[c]onstruing [Plaintiff’s] filing of the [FAC] as a motion for leave to amend,  
11 the Court denies the motion without prejudice” and STRIKES the claims against CHC in the FAC.  
12 *See Clinco*, 41 F. Supp. at 1088. As a result, there is complete diversity between the parties, and  
13 the Court thus DENIES Plaintiff’s motion to remand.

14 **III. CONCLUSION**

15 For the foregoing reasons, the Court STRIKES the claims against CHC in the FAC and  
16 DENIES Plaintiff’s motion to remand. Finally, because CHC has been dismissed, the Court  
17 DENIES AS MOOT CHC’s separate motion to dismiss the FAC.<sup>4</sup>  
18

19 **IT IS SO ORDERED.**

20 Dated: December 15, 2016

21   
22 \_\_\_\_\_  
23 LUCY H. KOH  
24 United States District Judge

25  
26  
27 <sup>4</sup> Accordingly, the hearing on CHC’s motion to dismiss is hereby VACATED. However, the  
28 December 22, 2016, initial case management conference remains as set at 1:30 p.m.