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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ATON CENTER, INC., a
California corporation,

Plaintiff,

v.

CAREFIRST BLUECROSS
BLUESHIELD, a corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 3:20-cv-00541-WQH-BGS
ORDER

HAYES, Judge:

The matter pending before the Court is the Motion to Dismiss filed by Defendants CareFirst of Maryland, Inc., d/b/a CareFirst BlueCross BlueShield; Group Hospital and Medical Services, Inc., d/b/a CareFirst BlueCross BlueShield; and CareFirst BlueChoice, Inc., d/b/a CareFirst BlueCross BlueShield (all erroneously sued as CareFirst BlueCross BlueShield). (ECF No. 6).

I. PROCEDURAL BACKGROUND

On February 24, 2020, Plaintiff Aton Center, Inc. commenced this action by filing a Complaint in the Superior Court of California for the County of San Diego, assigned case number 37-2020-00010069-CU-BC-NC, against Defendant CareFirst BlueCross BlueShield and DOES 1 through 10. See ECF No. 1-5 at 2. Plaintiff alleges that

1 Defendants “breached their agreements with Plaintiff and/or committed other wrongful
2 acts and omissions by refusing to pay Plaintiff the represented and agreed upon/represented
3 amount, but rather paid different and significantly lower (and inconsistent) amounts for
4 treatment, leaving an unpaid balance of \$238,309.12 owing from Defendants to Plaintiff
5 which has caused Plaintiff substantial hardship.” Id. at 4. Plaintiff brings the following
6 eight causes of action: (1) breach of contract (oral agreement); (2) breach of contract
7 (implied contract); (3) promissory estoppel; (4) quantum meruit; (5) intentional
8 misrepresentation; (6) negligent misrepresentation; (7) intentional concealment; and (8)
9 violation of Business & Professions Code § 17200. See id. at 4-11. Plaintiff seeks “general,
10 special, restitutionary and/or compensatory damages”; prejudgment interest; expenses,
11 attorney’s fees, “and other costs”; “an injunction prohibiting the conduct alleged herein
12 and/or the appointment of a receiver over Defendants”; and “other and further relief as the
13 Court may deem just and proper.” Id. at 11.

14 On March 23, 2020, Defendants CareFirst of Maryland, Inc., d/b/a CareFirst
15 BlueCross BlueShield (“CareFirst of Maryland”); Group Hospital and Medical Services,
16 Inc., d/b/a CareFirst BlueCross BlueShield (“Group Hospital”); and CareFirst BlueChoice,
17 Inc., d/b/a CareFirst BlueCross BlueShield (“CareFirst BlueChoice”) (all erroneously sued
18 as CareFirst BlueCross BlueShield) removed the action to this Court pursuant to 28 U.S.C.
19 § 1332, diversity jurisdiction, 28 U.S.C. § 1441(b), and 28 U.S.C. § 1446. See ECF No. 1
20 at 2.

21 On April 23, 2020, Defendants CareFirst of Maryland, Group Hospital, and
22 CareFirst BlueChoice and filed a Motion to Dismiss Plaintiff’s Complaint for lack of
23 personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). (ECF No. 6).
24 On June 1, 2020, Plaintiff filed a Response in opposition. (ECF No. 9). On June 5, 2020,
25 Defendants filed a Reply. (ECF No. 10). On the same day, Defendants filed an Objection.
26 (ECF No. 11).

1 II. ALLEGATIONS OF THE COMPLAINT

2 “Plaintiff is a corporation authorized to do and doing business in the City of
3 Encinitas, County of San Diego, State of California ... as an inpatient residential substance
4 abuse treatment facility” (ECF No. 1-5 at 2). Plaintiff “provided residential treatment
5 care services which were or should have been covered by health insurance policies which
6 ... were provided, sponsored, supplied, underwritten, administered and/or implemented by
7 Defendants” Id. at 2-3. “Defendant CareFirst BlueCross BlueShield ... is a corporation
8 authorized to do and doing substantial insurance and/or health plan/policy administration
9 business in the city of Encinitas, county of San Diego, and state of California, within the
10 jurisdiction of this court.” Id. at 3 (emphasis omitted).

11 Plaintiff’s “patients were insured under health insurance policies/plans issued by ...
12 Defendants” Id. “While the subject plans/policies were in effect, patients who were
13 insured under plans issued by Defendants sought treatment with Plaintiff.” Id. “Plaintiff
14 took reasonable steps to verify available benefits, ... including calling Defendants at the
15 phone number provided by the Defendants” Id. at 3-4. Plaintiff “was advised in these
16 verification of benefit ([“]VOB[”]) calls that the policies provided for and Defendants
17 would pay for inpatient treatment, based on the usual, customary and reasonable rate
18 ([“]UCR[”]) and/or prior payment history.” Id. at 4. “UCR is a certain and well-known
19 term of art, and methodology for determining a payment rate, in the health care industry.”
20 Id. “Plaintiff admitted and treated the patients and submitted claims for payment in
21 accordance with these representations and agreements.” Id. “Based on the representations
22 that the payment would be based on the UCR, prior payment history, authorization and
23 agreement of the Defendants ..., Plaintiff provided the agreed upon services and has
24 performed all conditions, covenants and promises required to be performed in accordance
25 with the agreements referred to herein above except, if applicable, those that have been
26 excused, waived or are otherwise inapplicable.” Id.

27 “Defendants breached their agreements with Plaintiff and/or committed other
28 wrongful acts and omissions by refusing to pay Plaintiff the represented and agreed

1 upon/represented amount, but rather paid different and significantly lower (and
2 inconsistent) amounts for treatment, leaving an unpaid balance of \$238,309.12 owing from
3 Defendants to Plaintiff which has caused Plaintiff substantial hardship.” Id. “[A]t the time
4 benefits were verified[,] Defendants had information regarding the different/lower daily
5 payment amounts but withheld that information from Plaintiff.” Id. “[A]n unconscionable
6 injury would result to Plaintiff if Defendants are not required to pay the represented/agreed
7 to payment rate based on the UCR and payment history” Id. Defendants are “equitably
8 estopped from denying the agreement/obligation to pay that amount.” Id.

9 **III. STANDARD OF REVIEW**

10 Under Federal Rule of Civil Procedure 12(b)(2), a defendant may move to dismiss a
11 complaint for lack of personal jurisdiction. See Fed. R. Civ. P. 12(b)(2). In opposing a
12 defendant’s Rule 12(b)(2) motion, “the plaintiff bears the burden of establishing that
13 jurisdiction is proper.” *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008) (citing
14 *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)). Where the court considers the
15 motion without holding an evidentiary hearing, “the plaintiff need only make a prima facie
16 showing of jurisdictional facts to withstand the motion to dismiss.” *Mavrix Photo, Inc. v.*
17 *Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (citing *Brayton Purcell LLP v.*
18 *Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010), abrogated on other grounds
19 as recognized by *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064 (9th Cir. 2017)).
20 “The plaintiff cannot ‘simply rest on the bare allegations of its complaint,’ but
21 uncontroverted allegations in the complaint must be taken as true.” Id. (quoting
22 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)). “[W]e
23 may not assume the truth of allegations in a pleading which are contradicted by affidavit
24 ... but we resolve factual disputes in the plaintiff’s favor” Id. (first alteration in original)
25 (internal quotation marks and citations omitted). In other words, “the plaintiff need only
26 demonstrate facts that if true would support jurisdiction over the defendant.” *Ballard v.*
27 *Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995) (citation omitted).

28

1 **IV. CONTENTIONS OF THE PARTIES**

2 Defendants contend that Plaintiff's Complaint should be dismissed for lack of
3 personal jurisdiction. Defendants contend that this Court lacks general jurisdiction because
4 Defendant CareFirst of Maryland is a Maryland corporation with its principal place of
5 business in Maryland and Defendants Group Hospital and CareFirst BlueChoice are
6 District of Columbia corporations with principal places of business in the District of
7 Columbia. Defendants contend that this Court lacks specific jurisdiction. Defendants
8 contend that they did not purposefully avail themselves of the privilege of doing business
9 in California. Defendants contend that Plaintiff's claims for relief against Defendants do
10 not arise out of forum-related conduct. Defendants contend that exercising personal
11 jurisdiction would be unreasonable.

12 Plaintiff contends that there is general jurisdiction over Defendants. Plaintiff
13 contends that Defendants conduct significant business in California by verifying benefits,
14 authorizing services for Anthem Blue Cross ("Anthem"), and using Anthem as its agent
15 for processing claims. Plaintiff asserts that Defendants must have been involved in claims
16 for hundreds, if not thousands, of insured members who were treated by Plaintiff and other
17 California substance abuse treatment providers. Plaintiff contends that there is specific
18 jurisdiction over Defendants. Plaintiff contends that Defendants have purposefully
19 directed their activities at California and purposefully availed themselves of the privilege
20 of conducting activities in California. Plaintiff contends that Defendants purposefully
21 direct California substance abuse treatment providers to contact Defendants to verify
22 insurance benefits and obtain payment information. Plaintiff contends that it relied on
23 Defendants' misrepresentations regarding payment to admit seven patients for treatment.
24 Plaintiff contends that exercising personal jurisdiction would be reasonable.

25 **V. DISCUSSION**

26 "Federal courts apply state law to determine the bounds of their jurisdiction over a
27 party." Axiom Foods, 874 F.3d at 1067 (citation omitted). "California authorizes its courts
28 to exercise jurisdiction 'to the full extent that such exercise comports with due process.'"

1 Id. (citation omitted); see also Cal. Civ. Proc. Code § 410.10 (“A court of this state may
2 exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of
3 the United States.”). “Accordingly, ‘the jurisdictional analyses under [California] state law
4 and federal due process are the same.’” *Axiom Foods*, 874 F.3d at 1067 (quoting *Mavrix*
5 *Photo*, 647 F.3d at 1223) (alteration in original). “There are two forms of personal
6 jurisdiction that a forum state may exercise over a nonresident defendant—general
7 jurisdiction and specific jurisdiction.” *Boschetto*, 539 F.3d at 1016.

8 **1. General Jurisdiction**

9 “[A] finding of general jurisdiction permits a defendant to be haled into court in the
10 forum state to answer for any of its activities anywhere in the world.” *Schwarzenegger*,
11 374 F.3d at 801 (citation omitted). The standard for general jurisdiction “is an exacting
12 standard” *Id.* (citation omitted). For general jurisdiction to exist, a defendant’s
13 affiliations with the forum state must be “so ‘continuous and systematic’ as to render them
14 essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)
15 (citations omitted). To determine whether a nonresident defendant’s contacts are
16 sufficiently substantial, continuous, and systematic, the Court of Appeals considers their
17 “[l]ongevity, continuity, volume, economic impact, physical presence, and integration into
18 the state’s regulatory or economic markets” *Tuazon v. R.J. Reynolds Tobacco Co.*, 433
19 F.3d 1163, 1172 (9th Cir. 2006). In the case of a corporation, “[t]he paradigmatic locations
20 where general jurisdiction is appropriate over a corporation are its place of incorporation
21 and its principal place of business.” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1069 (9th Cir.
22 2015) (citing *Daimler*, 571 U.S. at 137). “Only in an ‘exceptional case’ will general
23 jurisdiction be available anywhere else.” *Martinez v. Aero Caribbean*, 764 F.3d 1062,
24 1070 (9th Cir. 2014) (quoting *Daimler*, 571 U.S. at 139 n.19).

25 Defendant CareFirst of Maryland “is incorporated in Maryland, with its principal
26 place of business in Baltimore, Maryland.” *Lessner Decl.* ¶ 5, ECF No. 6-2 at 3. Defendant
27 Group Hospital “is incorporated in the District of Columbia, with its principal place of
28 business in the District of Columbia.” *Id.* at ¶ 6, ECF No. 6-2 at 3. Defendant CareFirst

1 BlueChoice is incorporated in the District of Columbia, with its principal place of business
2 in the District of Columbia.” Id. at ¶ 7, ECF No. 6-2 at 3. “Defendants are not subsidiaries
3 or corporate affiliates in any way of any licensee of the BlueCross BlueShield Association
4 whose service area is in California.” Id. at ¶ 8, ECF No. 6-2 at 3.

5 “In the case of individuals who purchase their own insurance contracts, Defendants
6 do not sell such contracts to individuals living outside of their service area.” Id. at ¶ 9,
7 ECF No. 6-2 at 3. “For employer groups, with a few exceptions that are not relevant in
8 this case, Defendants will only insure or administer health plan benefits for businesses or
9 entities that are headquartered in their service areas.” Id. at ¶ 10, ECF No. 6-2 at 4.
10 “Defendants also function as third-party administrators for certain self-funded health plans
11 located in their service areas” but “Defendants administer such self-funded plans from
12 within their home territories.” Id. at ¶ 11, ECF No. 6-2 at 4.

13 “Defendants are not licensed to conduct business in California.” Id. at ¶ 12, ECF
14 No. 6-2 at 4. “Defendants do not own or rent any property in California.” Id. at ¶ 14, ECF
15 No. 6-2 at 4. “Defendants do not maintain any bank accounts in California.” Id. at ¶ 19,
16 ECF No. 6-2 at 5. “Defendants do not have an agent for service of process in California.”
17 Id. at ¶ 15, ECF No. 6-2 at 4. “[N]o employee, agent or representative of any Defendant
18 travels to California for the purpose of conducting or cultivating business there.” Id. at ¶
19 18, ECF No. 6-2 at 4. “Defendants are not regulated by California insurance regulators or
20 the California Department of Managed Health Care.” Id. at ¶ 21, ECF No. 6-2 at 5.
21 “Defendants do not direct advertis[e] [sic] into California.” Id. at ¶ 16, ECF No. 6-2 at 4.
22 “Defendants do not solicit either individuals or groups from California to purchase health
23 insurance or administrative services products.” Id. at ¶ 17, ECF No. 6-2 at 4.

24 The Court concludes that Plaintiff fails to present sufficient evidence demonstrating
25 an “exceptional case” for “general jurisdiction [to] be available” in California. *Martinez*,
26 764 F.3d at 1070 (9th Cir. 2014) (quoting *Daimler*, 571 U.S. at 139 n.19). The Court
27 further concludes that Plaintiff fails to present sufficient evidence to meet the “exacting
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1 standard” necessary to establish general jurisdiction. Schwarzenegger, 374 F.3d at 801
2 (citation omitted).

3 **2. Specific Jurisdiction**

4 “The inquiry whether a forum State may assert specific jurisdiction over a
5 nonresident defendant ‘focuses on the relationship among the defendant, the forum, and
6 the litigation.’” Axiom Foods, 874 F.3d at 1068 (quoting Walden v. Fiore, 571 U.S. 277,
7 284 (2014)). “Two principles animate the ‘defendant-focused’ inquiry.” Id. (quoting
8 Walden, 571 U.S. at 284). “First, the relationship between the nonresident defendant, the
9 forum, and the litigation ‘must arise out of contacts that the defendant himself creates with
10 the forum state.’” Id. (quoting Walden, 571 U.S. at 284) (emphasis in original) (internal
11 quotation marks omitted). “Second, the minimum contacts analysis examines ‘the
12 defendant’s contacts with the forum State itself, not the defendant’s contacts with persons
13 who reside there.’” Id. (quoting Walden, 571 U.S. at 285). “It follows that ‘a defendant’s
14 relationship with a plaintiff or third party, standing alone, is an insufficient basis for
15 jurisdiction.’” Id. (quoting Walden, 571 U.S. at 286).

16 The Court of Appeals employs a three-prong test to assess whether a defendant’s
17 contacts with the forum state are sufficient to subject it to specific jurisdiction:

- 18 (1) The non-resident defendant must purposefully direct his activities or
19 consummate some transaction with the forum or resident thereof; or perform
20 some act by which he purposefully avails himself of the privilege of
21 conducting activities in the forum, thereby invoking the benefits and
22 protections of its laws;
- 22 (2) the claim must be one which arises out of or relates to the defendant's
23 forum-related activities; and
- 23 (3) the exercise of jurisdiction must comport with fair play and substantial
24 justice, i.e. it must be reasonable.

25 *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1205-06
26 (9th Cir. 2006) (citing Schwarzenegger, 374 F.3d at 802). “The plaintiff bears the burden
27 of satisfying the first two prongs of the test.” Axiom Foods, 874 F.3d at 1068 (quoting
28 Schwarzenegger, 374 F.3d at 802). “If the plaintiff meets that burden, ‘the burden then

1 shifts to the defendant to present a compelling case that the exercise of jurisdiction would
2 not be reasonable.” Id. at 1068-69 (quoting Schwarzenegger, 374 F.3d at 802) (internal
3 quotation marks omitted).

4 **a. Purposeful Availment**

5 “We have typically treated ‘purposeful availment’ somewhat differently in tort and
6 contract cases.” Yahoo!, 433 F.3d at 1206. “Although some of [Plaintiff]’s claims sound
7 in tort, all arise out of [Plaintiff]’s [alleged] contractual relationship with [] [D]efendants.”
8 Sher, 911 F.2d at 1362. “If a claim is dependent upon the existence of an underlying
9 contract, the claim sounds in contract, as opposed to tort.” Stanford Ranch, Inc. v.
10 Maryland Cas. Co., 89 F.3d 618, 625 (9th Cir. 1996) (citation omitted).

11 “Purposeful availment analysis examines whether the defendant’s contacts with the
12 forum are attributable to his own actions or are solely the actions of the plaintiff.” Sinatra
13 v. National Enquirer, Inc., 854 F.2d 1191, 1195 (9th Cir. 1988) (citations omitted). “The
14 purposeful availment prong is satisfied when a defendant takes deliberate actions within
15 the forum state or creates continuing obligations to forum residents.” Hirsch v. Blue Cross
16 Blue Shield of Kansas City, 800 F.2d 1474, 1478 (9th Cir. 1986) (citing Burger King Corp.
17 v. Rudzewicz, 471 U.S. 462, 476-77 (1985)). In other words, to have purposefully availed
18 itself of the privilege of doing business in the forum, a defendant must “have performed
19 some type of affirmative conduct which allows or promotes the transaction of business
20 within the forum state.” Sher, 911 F.2d at 1362 (quoting Sinatra, 854 F.2d at 1195). “By
21 taking such actions, a defendant purposefully avails itself of the privilege of conducting
22 activities within the forum State, thus invoking the benefits and protections of its laws.”
23 Schwarzenegger, 374 F.3d at 802 (internal quotation marks and citation omitted). “In
24 return for these ‘benefits and protections,’ a defendant must—as a quid pro quo—‘submit
25 to the burdens of litigation in that forum.’” Id. (quoting Burger King, 471 U.S. at 476).
26 This requirement ensures that non-resident defendants “will not be haled into a jurisdiction
27 solely as a result of random, fortuitous, or attenuated contacts, ... or of the unilateral
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1 activity of another party or a third person” Burger King, 471 U.S. at 475 (internal
2 quotation marks and citations omitted).

3 “In the contract context ... the existence of a contract with a resident of the forum
4 state is insufficient by itself to create personal jurisdiction over the nonresident.” Roth v.
5 Garcia Marquez, 942 F.2d 617, 621 (9th Cir. 1991) (citing Burger King, 471 U.S. at 478).
6 “[I]n contract cases, we typically inquire whether a defendant ‘purposefully avails itself of
7 the privilege of conducting activities’ or ‘consummate[s][a] transaction’ in the forum,
8 focusing on activities such as delivering goods or executing a contract.” Yahoo!, 433 F.3d
9 at 1206 (quoting Schwarzenegger, 374 F.3d at 802) (second and third alteration in original).
10 Where a defendant “freely negotiate[s]” a contractual obligation in another state, the effects
11 of the defendant’s actions in that forum may be considered “contemplated and bargained
12 for.” Hirsch, 800 F.2d at 1479 (internal quotation marks and citations omitted).

13 In this case, the Court must determine whether the California activities and contacts
14 of a non-resident insurance company are sufficient for the exercise of specific personal
15 jurisdiction in a California forum. The Court of Appeals addressed the exercise of personal
16 jurisdiction over defendant insurance companies in Hunt v. Erie Ins. Group and Hirsch v.
17 Blue Cross, Blue Shield of Kansas City.

18 In Hunt, the Court of Appeals addressed the exercise of personal jurisdiction over
19 an east coast insurance company in a case in which a third-party beneficiary to an insurance
20 policy moved to California for medical care after sustaining injuries in an automobile
21 accident in Colorado. See Hunt v. Erie Ins. Group, 728 F.2d 1244, 1245 (9th Cir. 1984).
22 The plaintiff “received \$75,000 from [the defendant insurance company] ten months after
23 she first endeavored to receive benefits under the ‘no-fault’ policy. Id. at 1245-46. The
24 defendant insurance company “mailed its refusal to assume unlimited liability for [the
25 plaintiff]’s medical care to [the plaintiff]’s attorney in California.” Id. at 1246.
26 “Dissatisfied with the amount [the defendant insurance company] was willing to pay, [the
27 plaintiff] brought suit in California state court for breach of contract, bad faith, breach of
28 fiduciary duties, unfair practices, breach of statutory duties and declaratory relief.” Id. The

1 defendant insurance company “removed the action to federal court on diversity grounds
2 and moved to dismiss for lack of personal jurisdiction.” *Id.* The plaintiff argued that
3 personal jurisdiction existed for the following three reasons: (1) “the [] policy cover[ed]
4 accidents occurring anywhere within the United States” and the “d[id] not specify the place
5 where the benefits will be paid”; (2) the defendant insurance company “availed itself of the
6 benefit of California’s welfare programs” because public assistance had funded the
7 plaintiff’s medical needs after her move to California; and (3) the defendant insurance
8 company “availed itself of the privilege of doing business in California by mailing into the
9 State some payments on the policy and [by] its bad faith refusal to pay the amount [the
10 plaintiff] contends was due.” *Id.* at 1246-47. The Court of Appeals held that these contacts
11 were insufficient to support the assertion of personal jurisdiction over the defendant
12 insurance company. The Court found that the “failure to structure its policy to exclude the
13 possibility of defending a suit wherever an injured claimant requires medical care cannot,
14 in our view, fairly be characterized as an act by which [a defendant insurance company]
15 has purposefully availed itself of the privilege of conducting activities in California.” *Id.*
16 at 1247. The Court further determined that “[t]o predicate jurisdiction on the basis of [the
17 plaintiff’s unilateral decision to] move to California, and the public assistance she received
18 as a result, would shift the focus of the inquiry from the relationship among the defendant,
19 the forum, and the litigation to that among the plaintiff, the forum, ... and the litigation...”
20 *Id.* at 1248 (third and fourth alterations in original) (internal quotation marks and citation
21 omitted). The Court concluded that “[w]e cannot agree that the requisite minimum contacts
22 are established because a plaintiff’s move into a state requires the defendant to send
23 communications into that forum.” *Id.*

24 In *Hirsch*, the Court of Appeals determined that the exercise of personal jurisdiction
25 in a California forum over an out-of-state insurance company was appropriate. See *Hirsch*,
26 800 F.2d at 1476. In *Hirsch*, the defendant insurance company Blue Cross “contracted
27 with” Southwest “to provide group health care coverage for Southwest’s employees”,
28 “none of [who]m lived in California” at the time. *Id.* “Under the [contract], all of

1 Southwest’s full-time employees were eligible to participate” and participation was not
2 subject to “any geographical exclusions” or “restrict[ed] [by] the [contract]’s execution
3 date.” Id. “During the period covered by the [contract], Southwest added the [plaintiff]
4 and two other new California employees to the Southwest group policy.” Id. at 1476-77.
5 The plaintiff “filled out enrollment application forms in California and returned them to
6 Southwest’s Kansas City office.” Id. at 1477. “In return, the [plaintiff] received a Blue
7 Cross membership card, generated by Blue Cross offices in Kansas City, with his
8 California address written on its face.” Id. “Southwest deducted health care premiums
9 from [the plaintiff]’s payroll checks, and forwarded the payments to Blue Cross.” Id. The
10 plaintiff “allege[d] that in March 1984, Blue Cross refused to pay incurred medical
11 expenses.” Id. The plaintiff “filed an action in California state court, claiming breach of
12 contract and bad faith”, “Blue Cross removed the action to federal court on diversity
13 grounds, and then filed a motion under Fed.R.Civ.P. 12(b)(2) to dismiss for lack of personal
14 jurisdiction.” Id. The Court of Appeals noted that Blue Cross might not have foreseen that
15 its contract with Southwest would have effects in California at the time it signed the
16 contract but determined that “Blue Cross, through its own actions in agreeing to provide
17 coverage to Southwest and its California employee, [the plaintiff], created a continuing
18 obligation to them, and a substantial connection with California.” Id. at 1479-80 (emphasis
19 in original) (citations omitted). The Court “conclude[d] that Blue Cross, by voluntarily
20 and knowingly obligating itself to provide health care coverage to Southwest’s California
21 employees, in exchange for premiums partly derived from premiums paid by California
22 residents, purposefully availed itself of the benefits and protections of that forum.” Id. at
23 1480 (citations omitted).

24 In this case, the Complaint alleges that “Defendant CareFirst BlueCross BlueShield
25 ... is a corporation authorized to do and doing substantial insurance and/or health
26 plan/policy administration business in the city of Encinitas, county of San Diego, and state
27 of California, within the jurisdiction of this court.” (ECF No. 1-5 at 3) (emphasis omitted).
28 The Complaint alleges that Plaintiff’s “patients were insured under health insurance

1 policies/plans issued by ... Defendants” Id. The Complaint alleges that “[w]hile the
2 subject plans/policies were in effect, patients who were insured under plans issued by
3 Defendants sought treatment with Plaintiff.” Id. The Complaint alleges that “Plaintiff took
4 reasonable steps to verify available benefits, ... including calling Defendants at the phone
5 number provided by the Defendants” Id. at 3-4. The Complaint alleges that Plaintiff
6 “was advised in these [VOB] calls that the policies provided for and Defendants would pay
7 for inpatient treatment, based on the [UCR] and/or prior payment history.” Id. at 4. The
8 Complaint alleges that “Plaintiff admitted and treated the patients and submitted claims for
9 payment in accordance with these representations and agreements.” Id. The Complaint
10 alleges that “Defendants breached their agreements with Plaintiff and/or committed other
11 wrongful acts and omissions by refusing to pay Plaintiff the represented and agreed
12 upon/represented amount, but rather paid different and significantly lower (and
13 inconsistent) amounts for treatment, leaving an unpaid balance of \$238,309.12 owing from
14 Defendants to Plaintiff which has caused Plaintiff substantial hardship.” Id.

15 “Plaintiff ... [i]s an out-of-network or non-par provider, in that it d[oes] not have a
16 contract with any California-based licensee of the BlueCross BlueShield Association.”
17 Lessner Decl. ¶ 25, ECF No. 6-2 at 5. “Defendants do not encourage or direct its members
18 to obtain treatment from non-participating providers.” Id. at ¶ 26, ECF No. 6-2 at 6.
19 “Defendants’ preferred-provider option contracts generally contain financial incentives for
20 members to utilize in-network providers.” Id.

21 “Patient A.A. was enrolled in an individual plan issued by [Defendant Group
22 Hospital] through the District of Columbia exchange.” Id. at ¶ 28, ECF No. 6-2 at 6.
23 “Patient A.A.’s address of record is in the District of Columbia.” Id. “Patient P.E. was
24 enrolled in a self-funded government plan ... administered by [Defendant CareFirst of
25 Maryland].” Id. at ¶ 29, ECF No. 6-2 at 6. “Patient P.E.[’s] [sic] address of record is in
26 Maryland.” Id. “Patient J.H. was a dependent of someone enrolled in a self-funded
27 government plan ... administered by [Defendant Group Hospital].” Id. at ¶ 30, ECF No.
28 6-2 at 6. “[A]t the time he first enrolled in the plan through his father as a dependent

1 beneficiary, Patient J.H.’s address of record was in Maryland.” Id. “[A]t some point after
2 Patient J.H. enrolled in the plan, he moved to California.” Id. “Patient A.K. was enrolled
3 in an individual plan issued through the Maryland exchange by [Defendant CareFirst]
4 BlueChoice.” Id. at ¶ 31, ECF No. 6-2 at 7. “Patient A.K.’s address of record is in
5 Maryland.” Id. “Patient S.M. was enrolled in a self-funded, employee benefit plan ...
6 administered by [Defendant CareFirst of Maryland].” Id. at ¶ 32, ECF No. 6-2 at 7.
7 “Patient S.M.’s address of record is in Maryland.” Id. “Patient F.T. was enrolled in an
8 individual plan issued through the Maryland exchange by [Defendant Group Hospital].”
9 Id. at ¶ 33, ECF No. 6-2 at 7. “Patient F.T.’s address of record is in Maryland.” Id. “Patient
10 S.W. was enrolled in self-funded employee benefit plan ... administered by [Defendant
11 Group Hospital].” Id. at ¶ 34, ECF No. 6-2 at 7. “Patient S.W.’s address of record is in
12 the State of Washington.” Id. “Defendants did not direct any of those members to obtain
13 services from Plaintiff.” Id. at ¶ 35, ECF No. 6-2 at 7.

14 In this case, Plaintiff contends that Defendants have availed themselves of the
15 privilege of doing business in California by engaging in VOB phone calls with Plaintiff,
16 issuing some payments for Plaintiff’s substance abuse treatment services, and refusing to
17 pay the amount Plaintiff contends is due. See *Hunt*, 728 F.2d at 1247 (“*Hunt* contends two
18 other contacts demonstrate *Erie* has intentionally availed itself of benefits from the State....
19 *Erie* availed itself of the privilege of doing business in California by mailing into the State
20 some payments on the policy and its bad faith refusal to pay the amount *Hunt* contends was
21 due.”). Unlike in *Hirsch*, the Complaint in this case fails to allege and Plaintiff fails to
22 present sufficient evidence to “make a prima facie showing” that Defendants “purposefully
23 availed [themselves] of the benefits and protections of” California by “voluntarily and
24 knowingly obligating [themselves] to provide health care coverage to [] California
25 employees, in exchange for premiums partly derived from premiums paid by California
26 residents” *Mavrix Photo*, 647 F.3d at 1223 (citation omitted); *Hirsch*, 800 F.2d at 1480;
27 see also *Hajjar v. Blue Cross & Blue Shield of Texas*, No. SACV09-00362-CJC(JTLx),
28 2009 WL 2902482, at *4 (C.D. Cal. Sept. 10, 2009) (“Ms. Hajjar asserts that BCBST

1 availed itself of the privilege of conducting activities in California by collecting premiums
2 from her while she resided in California, by providing access to its network providers in
3 California and Arizona, and by paying claims for medical care rendered in California. Ms.
4 Hajjar is correct.”).

5 The Court of Appeals has stated that the “mere unilateral activity of those who claim
6 some relationship with a nonresident defendant cannot satisfy the requirement of contact
7 with the forum State.” Hunt, 728 F.2d at 1248 (internal quotation marks and citation
8 omitted). The Complaint in this case fails to allege and Plaintiff fails to present sufficient
9 evidence to “make a prima facie showing” that Defendants “purposefully avail[ed]
10 [themselves] of the privilege of conducting activities within” California. Mavrix Photo,
11 647 F.3d at 1223 (citation omitted); Schwarzenegger, 374 F.3d at 802 (internal quotation
12 marks and citation omitted); see also Aylward v. SelectHealth, Inc., No. 18cv494-WQH-
13 MDD, 2018 WL 3615873, at *7 (S.D. Cal. July 26, 2018) (“In this case, Plaintiff provides
14 uncontroverted factual allegations and evidence sufficient to make a prima facie case that
15 Aylward did not unilaterally seek treatment in California.... Plaintiff alleges that Aylward
16 sought and received treatment at UCSD only upon receiving authorization from
17 Defendants. Plaintiff alleges that Defendants then specifically authorized a consultation,
18 lung transplant work-up and evaluation, and a lung transplant at UCSD. Additionally,
19 Plaintiff provides copies of multiple communications between Defendants and UCSD
20 coordinating Aylward’s treatment at UCSD in exhibits attached to the declaration of Erica
21 S. Phillips.... Plaintiff makes a prima facie showing that Defendants purposefully availed
22 themselves of the privilege of conducting activities in California through Defendants’
23 multiple authorizations of Aylward’s treatment at UCSD in California and efforts to
24 coordinate coverage for his medical care with UCSD under the health insurance plan.”).

25 Plaintiff cites to Moncrief v. Clark in support of the contention that Defendants
26 personally availed themselves of the benefits of California by allowing their insureds to
27 seek treatment in California and verifying their benefits. In Moncrief, “Moncrief was sued
28 for legal malpractice arising from a failed purchase of farm equipment.” Moncrief, 238

1 Cal. App. 4th 1000, 1003 (2015). “In response, Moncrief cross-claimed against Clark, the
2 attorney who represented the farm equipment company, for misrepresentations he made in
3 connection with the purchase.” Id. “Clark filed a motion to quash service of summons in
4 response to Moncrief’s cross-complaint, arguing that California lacked personal
5 jurisdiction over him.” Id. at 1004. The Court of Appeal stated that “while Moncrief and
6 Clark engaged in a single transaction, Clark targeted Moncrief with the specific purpose of
7 inducing Moncrief’s client to finalize the purchase of farm equipment from Texas Hill
8 Farms.” Id. at 1007. The Court of Appeal found, in relevant part,

9 We find that Moncrief has established that Clark purposely availed himself of
10 the benefits of California such that California can exercise personal
11 jurisdiction over Clark. Clark’s representations were made with the sole
12 purpose of facilitating the sale between Moncrief’s California client and
13 Clark’s Arizona client. Clark’s communications with Moncrief were
14 purposely and voluntarily directed toward California “so that he should
15 expect, by virtue of the benefit he receive[d], to be subject to the court’s
16 jurisdiction based on’ his contacts with the forum. [Citation.]”

17 Id. (alterations in original).

18 However, “[b]oth [the Court of Appeals] and the courts of California have concluded
19 that ordinarily use of the mails, telephone, or other international communications simply
20 do not qualify as purposeful activity invoking the benefits and protection of the [forum]
21 state.” Peterson v. Kennedy, 771 F.2d 1244, 1262 (9th Cir. 1985) (third alteration in
22 original) (internal quotation marks and citations omitted). The Court of Appeals has
23 concluded that “[t]he making of telephone calls and the sending of letters to the forum state
24 [are] legally insufficient to enable the court to exercise personal jurisdiction over the non-
25 resident defendant.” Id. The Court of Appeals has further held that “phone calls” between
26 a plaintiff healthcare provider and a defendant health insurance company “are insufficient
27 evidence of purposeful availment” when the plaintiff healthcare provider “initiated the calls
28” Healthcare Ally Mgmt. of California, LLC v. Blue Cross Blue Shield of Minnesota,
787 F. App’x 417, 418 (9th Cir. 2019). In these situations, the defendant health insurance

1 companies “d[o] not ‘reach[] out’ into California.” Id. (quoting *Walden*, 571 U.S. at 285)
2 (second alteration in original).

3 In this case, the Complaint alleges that Plaintiff “call[ed] Defendants at the phone
4 number provided by the Defendants” (ECF No. 1-5 at 3-4). The Complaint alleges
5 that Plaintiff “was advised in these [VOB] calls that the policies provided for and
6 Defendants would pay for inpatient treatment, based on the [UCR] and/or prior payment
7 history.” Id. at 4. The Court finds that the VOB phone calls from Plaintiff to Defendant
8 fail to show that Defendant “purposefully avail[ed] itself of the privilege of conducting
9 activities within the forum State” *Schwarzenegger*, 374 F.3d at 802 (internal quotation
10 marks and citation omitted); see e.g., *Dokoozian Constr. LLC v. Exec. Risk Specialty Ins.*
11 *Co.*, No. C15-703 MJP, 2015 WL 12085859, at *3 (W.D. Wash. July 28, 2015) (“A
12 telephone call in which Colony allegedly verbally represented that it would pay a
13 Washington firm selected by Dokoozian to defend Dokoozian (but subsequently failed to
14 do so), meanwhile, falls far short of insurer actions in cases in which federal courts found
15 personal jurisdiction, such as an collecting premiums from a resident of a state and paying
16 benefits within the state to that resident ... or explicitly contracting with forum-state health-
17 care-management firms”); *Healthcare Ally Mgmt. of California, LLC v. Blue Cross*
18 *Blue Shield of Minnesota*, No. CV 16-7042-DMG (AFMx), 2017 WL 7201870, at *6 (C.D.
19 Cal. July 27, 2017) (“Healthcare Ally is left only with allegations in the Complaint, where
20 it alleges that Minnesota Blue Cross ‘informed and promised that [La Peer] would be paid
21 for medical services’ at certain market rates.... Such allegations, however, are not entitled
22 to a presumption of truth as Minnesota Blue Cross presents contradictory evidence
23 supported by a declaration. It submits the phone call transcripts that capture the
24 conversations between La Peer and Minnesota Blue Cross for all five of the La Peer
25 Patients. They demonstrate that while La Peer placed calls to obtain benefit information
26 for its Patients, Minnesota Blue Cross made no affirmative promises of payment.... Given
27 the above, the Court finds that Healthcare Ally has not established purposeful availment
28 by way of Minnesota Blue Cross’ affirmative promises of payment to the Medical

1 Providers.”); see also *Healthcare Ally Mgmt. of California, LLC v. Blue Cross Blue Shield*
2 of Massachusetts, No. CV 2:18-05268 SJO (AGRx), 2018 WL 6340756, at *4-5 (C.D. Cal.
3 Sept. 10, 2018) (“Unlike the defendant in Peterson, Defendant’s actions went beyond
4 merely responding to Medical Provider’s telephonic inquiries about Patient’s insurance
5 policy or mailing correspondence related to payment. Here, Defendant used the telephone
6 medium to confirm that Medical Provider was authorized to render Medical Care to Patient
7 in a California facility, and affirmatively promised to pay Medical Provider at 70% of the
8 UCR rate for such services.... For these reasons, the Court finds that the purposeful
9 availment prong is met.”).

10 The Court concludes that Plaintiff fails to present sufficient evidence to “make a
11 prima facie showing of jurisdictional facts to withstand the motion to dismiss.” *Mavrix*
12 *Photo*, 647 F.3d at 1223 (citation omitted). The Court need not determine whether specific
13 personal jurisdiction is lacking for other reasons because Plaintiff has not met its burden
14 of establishing the first prong for specific jurisdiction. See e.g., *Dokoozian Constr.*, 2015
15 WL 12085859, at *3 (“Because the Court lacks personal jurisdiction over Colony under
16 the first prong of the minimum contacts test, the Court does not reach the two remaining
17 factors.”).

18 VI. JURISDICTIONAL DISCOVERY

19 “A court may permit discovery to aid in determining whether it has in personam
20 jurisdiction.” *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 n.1 (9th Cir.
21 1977) (citation omitted). “In granting discovery, the trial court is vested with broad
22 discretion” *Id.* (citation omitted). “Discovery may appropriately be granted where
23 pertinent facts bearing on the question of jurisdiction are controverted or where a more
24 satisfactory showing of the facts is necessary.” *Id.* (citation omitted); see also *Mitan v.*
25 *Feeney*, 497 F. Supp. 2d 1113, 1119 (C.D. Cal. 2007) (stating that discovery is warranted
26 only if the plaintiff “make[s] a ‘colorable’ showing,” which is “less than a prima facie
27 showing,” of “‘some evidence’ tending to establish personal jurisdiction over the
28 defendant.”). “[W]here a plaintiff’s claim of personal jurisdiction appears to be both

1 attenuated and based on bare allegations in the face of specific denials made by the
2 defendants, the Court need not permit even limited discovery” *Pebble Beach Co. v.*
3 *Caddy*, 453 F.3d 1151, 1160 (9th Cir. 2006) (alterations in original) (citation omitted). A
4 court need not grant discovery based on “purely speculative allegations of attenuated
5 jurisdictional contacts” *Getz v. Boeing Co.*, 654 F.3d 852, 860 (9th Cir. 2011).

6 Plaintiff requests “discovery into the marketing of [Defendants’] plans to
7 employers”; “discovery into the numbers of claims [Defendants] ha[ve] with other
8 California providers”; and “discovery into the Blue Card program and how it relates to
9 [Defendants] and the claims herein” (ECF No. 9 at 10). Plaintiff further requests “the
10 opportunity to cross examine” Ms. Lessner. *Id.* The Court finds that the discovery Plaintiff
11 seeks would not change the Court’s jurisdictional analysis at this stage in the proceedings.
12 Plaintiff’s claim of personal jurisdiction is both speculative and based on attenuated
13 jurisdictional contacts. See *Getz*, 654 F.3d at 860. Plaintiff fails to make a colorable
14 showing of personal jurisdiction in this case. See *Mitan*, 497 F. Supp. 2d at 1119. The
15 Court declines to exercise its discretion to permit jurisdictional discovery.

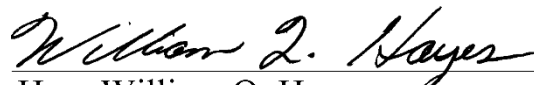
16 VII. CONCLUSION

17 IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendants
18 CareFirst of Maryland, Inc., d/b/a CareFirst BlueCross BlueShield; Group Hospital and
19 Medical Services, Inc., d/b/a CareFirst BlueCross BlueShield; and CareFirst BlueChoice,
20 Inc., d/b/a CareFirst BlueCross BlueShield (all erroneously sued as CareFirst BlueCross
21 BlueShield) (ECF No. 6) is GRANTED.

22 IT IS FURTHER ORDERED that Plaintiff’s request for jurisdictional discovery is
23 DENIED.

24 The case is dismissed without prejudice.

25 Dated: August 3, 2020

26 
27 Hon. William Q. Hayes
28 United States District Court