

1 the full policy amount by “swearing a false oath” that he was decedent’s sole heir. Id. That began
2 a number of phases of litigation between Plaintiffs and Sepúlveda.

3 In 2013, Plaintiffs initiated a division of the estate proceeding against Sepúlveda in the Court
4 of First Instance of the Commonwealth of Puerto Rico, in the Judicial District of Arecibo. (Docket
5 No. 8-5.) That case was resolved by a court-approved settlement on October 8, 2014. Id. In that
6 proceeding, the parties discussed the separation of the decedents estate, as well as the life insurance
7 policy. (Docket Nos. 8-6, 8-7.) The settlement agreement did not expressly include the life
8 insurance policy within its terms. (Docket Nos. 8-5.) However, the court-approved settlement
9 indicated that “[a]ny other account or assets remaining” in decedent’s name would become the
10 property of Sepúlveda. Id. at 2.

11 Then, on July 12, 2016, Plaintiffs filed the instant complaint against Prudential and
12 Sepúlveda in the Court of First Instance of the Commonwealth of Puerto Rico, Arecibo Superior
13 Part. (Docket Nos. 10-1.) Plaintiffs alleged Defendants’ breach of contract resulting from
14 Prudential’s allegedly improper life insurance payment to Sepúlveda. Id. As damages, Plaintiffs
15 sought to recover \$87,360.00, the full policy amount paid to Sepúlveda. Id. at 2. Subsequently, on
16 October 5, 2016, Prudential removed this case to federal court, as per 28 U.S.C. § 1441 and 1446.

17 **II. Standard of Review**

18 Rule 12(b)(6) requires that a complaint contain sufficient factual matter “to state a claim to
19 relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “If the
20 merits are at issue, the mere fact that a motion to dismiss is unopposed does not relieve the district
21 court of the obligation to examine the complaint itself to see whether it is formally sufficient to state
22 a claim.” Vega-Encarnación v. Babilonia, 344 F.3d 37, 41 (1st Cir. 2003). Altogether, “the
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1 combined allegations, taken as true, must state a plausible, not a merely conceivable, case for relief.”
2 Sepulveda-Villarini v. Dep’t of Educ. of P.R., 628 F.3d 25, 29 (1st Cir. 2010) (citations omitted).

3 **III. Discussion**

4 A. Removal Jurisdiction

5 Removal of a state court complaint to federal court is governed by statute, 28 U.S.C. § 1441,
6 which provides a defendant may remove “any civil action brought in a State court of which the
7 district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). Prudential
8 timely removed Plaintiffs’ complaint to this Court. (Docket No. 1.) Co-defendant Sepúlveda did
9 not consent (or object) to removal. Generally, all defendants must consent to removal. 28 U.S.C.
10 § 1446(b)(2)(A). However, a co-defendant’s consent to removal is not required where the claim
11 against a co-defendant is not within the district court’s original jurisdiction and does not arise from
12 the same case or controversy as the claim against the other defendants. See 28 U.S.C. § 1367(a)
13 (supplemental jurisdiction for claims that “form part of the same case or controversy” under Article
14 III); § 1441(c) (removal jurisdiction “if the action would be removable without inclusion of the
15 claim” lacking original or supplemental jurisdiction).

16 Under the general rule—*i.e.*, the well-pleaded complaint rule—a plaintiff’s state law
17 complaint “does not arise under federal law for purposes of federal question jurisdiction and so
18 cannot be removed even if the defendant’s defense is rooted in federal law.” Negron-Fuentes v.
19 UPS Supply Chain Solutions, 532 F.3d 1, 6 (1st Cir. 2008). Plaintiffs’ complaint does not reference
20 federal law, and thus does not raise a federal question on its face. (Docket No. 10-1.)

21 However, certain claims are subject to removal, even when those claims rely only on state
22 law, because federal law completely preempts the subject matter of the claim. Metro. Life Ins. Co.
23 v. Taylor, 481 U.S. 58, 66-67 (1987). The Employee Retirement Income Security Act of 1974, 29

Civil No. 16-2777 (GAG)

1 U.S.C. §§ 1001-1461, (“ERISA”) embraces such preemptive power—it converts ordinary state law
2 claims into federal ones, thereby creating removal jurisdiction. See id. at 65. Prudential’s removal
3 is proper under 28 U.S.C. § 1441(c)(1), and this Court has jurisdiction to entertain Plaintiffs’ claim
4 against Prudential under 28 U.S.C. § 1331, because the removed complaint raises a federal question
5 through the complete preemption exception to the well-pleaded complaint rule. See Aetna Health
6 Inc. v. Davila, 542 U.S. 200, 207-08 (2004); Negron-Fuentes, 532 F.3d at 6.

7 B. Motions to Deem as Unopposed at Docket Nos. 15 and 38

8 Before turning to the substance of Prudential’s motion to dismiss, Prudential requests the
9 motion to dismiss be deemed unopposed because Plaintiffs have not responded. (Docket Nos. 15,
10 38.) After Prudential renewed their motion to deem as unopposed (Docket No. 38), Plaintiffs’
11 counsel, who is not admitted to the federal bar, withdrew her appearance. (Docket No. 39.) Since
12 then, no other counsel has appeared on Plaintiffs’ behalf.

13 A party who fails to properly oppose a motion within fourteen days “shall be deemed to have
14 waived [any] objection.” L. Cv. R. 7(b). Failure to respond to a dispositive motion may subject a
15 party to “involuntary dismissal, pursuant to [Federal Rule] 41(b), for failure to prosecute.” Vega-
16 Encarnacion, 344 F.3d at 40 (quotations omitted). Nevertheless, involuntary dismissal for such a
17 failure to prosecute is discretionary, not automatic. See NEPSK, Inc. v. Town of Houlton, 283 F.3d
18 1, 7 (1st Cir. 2002) (comparing non-responsiveness in the context of a Rule 12(c) motion for
19 judgment on the pleadings and Rule 56 motion for summary judgment). Here, where Prudential’s
20 bases for dismissal are merits-based, involuntary dismissal is not warranted. See, e.g., id. at 7-8.
21 Therefore, the Court **NOTES** Prudential’s motions to deem as unopposed at Docket Nos. 15 and 38,
22 and moves to the merits of Prudential’s motion to dismiss.

Civil No. 16-2777 (GAG)

1 C. Motion to Dismiss at Docket No. 8

2 Prudential seeks dismissal of Plaintiffs’ complaint for three reasons: (1) Plaintiffs’ breach of
3 contract claim is preempted by ERISA, 29 U.S.C. § 1144(a); (2) Plaintiffs failed to exhaust
4 administrative remedies for any ERISA claim; and (3) Plaintiffs’ claim is barred under the doctrine
5 of judicial estoppel. (Docket No. 8.) Sepúlveda did not join Prudential’s motion.

6 As mentioned above, Plaintiffs’ complaint does not refer to ERISA. Nevertheless, Prudential
7 argues that ERISA preempts Plaintiffs’ breach of contract claim because Plaintiffs allege they were
8 improperly denied benefits under an ERISA plan. ERISA is “a comprehensive statute designed to
9 promote the interests of employees and their beneficiaries in employee benefit plans.” Shaw v. Delta
10 Air Lines, 463 U.S. 85, 90 (1983). Through its preemption provision, ERISA “supersede[s] any and
11 all State laws insofar as they may now or hereafter relate to any employee benefit plan.”² 29 U.S.C.
12 § 1144. The key phrase in the preemption provision is “relate to.” “The Supreme Court has distilled
13 the statute’s ‘relate to’ language into two independently sufficient alternatives: ‘a connection with
14 or reference to’ an ERISA plan will result in preemption.” Merit Const. Alliance v. City of Quincy,
15 759 F.3d 122, 128 (1st Cir. 2014) (quoting Shaw, 463 U.S. at 90).

16 ERISA also creates a civil enforcement mechanism for beneficiary disputes. 29 U.S.C.
17 § 1132. A beneficiary may bring a civil action to “recover benefits due” under the plan, to enforce
18 provisions of either ERISA or the benefit plan, and for “appropriate equitable relief” to redress
19 violations. § 1332(a)(1)(B), (3)(B). This civil action is exclusively federal in nature. Metro Life,
20 481 U.S. at 63. Accordingly, “any state-law cause of action that duplicates, supplements, or
21 supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make
22 the ERISA remedy exclusive and is therefore preempted.” Aetna Health, 542 U.S. at 209.

23 _____
24 ² ERISA includes Puerto Rico within the statutory definition of “State.” 29 U.S.C. § 1002(10).

Civil No. 16-2777 (GAG)

1 Plaintiffs’ seek to recover a benefit due under an ERISA plan. Taking the pleadings as true,
2 it is undisputed that the Prudential insured policy is an ERISA plan, that Plaintiff is a beneficiary
3 with standing to sue, and that Prudential is an ERISA entity. The conduct forming the basis of
4 Plaintiffs’ state law claim—*i.e.*, Prudential’s wrongful payment to Sepúlveda—is essentially the
5 same as the conduct that would create an ERISA civil enforcement claim under section 1132.
6 Accordingly, Plaintiffs’ claim to recover the policy payment “relate[s] to” an employee benefit plan
7 because it “duplicates, supplements, or supplants” ERISA’s civil enforcement remedy. See Guerra-
8 Delgado v. Popular, Inc., 774 F.3d 776, 781 (1st Cir. 2014) (citing Hampers v. W.R. Grace & Co.,
9 202 F.3d 44, 52 (1st Cir. 2000) (a cause of action “relates to” an ERISA plan when a court must
10 evaluate or interpret the terms of the ERISA-regulated plan to determine liability under the state law
11 cause of action). Therefore, ERISA preempts Plaintiffs’ breach of contract claim against Prudential.

12 Since ERISA preempts Plaintiffs’ claim against Prudential, Plaintiffs cannot prevail on their
13 breach of contract claim. See Holtz v. Blue Cross and Blue Shield of Mass., Inc., 292 F.3d 57, 60-
14 61 (1st Cir. 2002) (state statutes prohibiting unfair insurance claims practices preempted by ERISA);
15 Morris v. Highmark Life Ins. Co., 255 F. Supp. 2d 16, 26-27 (D.R.I. 2003) (ERISA preempts a
16 garden-variety breach of contract claim for the same reasons as a claim under a state bad faith
17 statute). Plaintiffs cannot prevail on an ERISA claim against Prudential because their complaint
18 lacks sufficient information to plausibly allege an ERISA claim. See Tompkins v. United Healthcare
19 of New England, Inc., 203 F.3d 90, 96-97 (1st Cir. 2000) (affirming dismissal for failure to state a
20 claim where Plaintiffs’ breach of contract claim preempted by ERISA). Moreover, even if Plaintiffs
21 had properly pleaded an ERISA claim, such a claim is non-cognizable because Plaintiffs’ allege no
22 efforts to exhaust administrative remedies before bringing suit. See Terry v. Bayer Corp., 145 F.3d
23 28, 40 (1st Cir. 1998) (before suing to recover ERISA plan benefits, a beneficiary must exhaust
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Civil No. 16-2777 (GAG)

1 administrative remedies). Altogether, this means Plaintiffs cannot recover the policy payment from
2 Prudential. So, Plaintiffs' claim against Prudential must be dismissed with prejudice.

3 However, Plaintiffs' claim against Sepúlveda rests on different footing. The premise of
4 Plaintiffs' claim against Sepúlveda is that Sepúlveda was *not* a plan beneficiary. Rather, Plaintiffs
5 allege Sepúlveda obtained the policy payment by fraudulent means. There is no ERISA preemption
6 because Sepúlveda is not an ERISA entity. See § 1132(d) ("An employee benefit plan may sue or
7 be sued under this subchapter as an entity."); see also Morstein v. Nat'l Ins. Serv. Inc., 93 F.3d 715,
8 722 (11th Cir. 1996) (en banc) ("ERISA entities are the employer, the plan, the plan fiduciaries, and
9 the beneficiaries under the plan."). Thus, to the extent Plaintiffs seek recovery from Sepúlveda,
10 Plaintiffs' claim cannot be reasonably construed as "connect[ed] with or [in] reference to" an
11 "employee benefit plan" within the meaning of ERISA's section 1144(a) preemption clause.

12 Instead, Plaintiffs' allege a state law tort claim of intentional conversion against Sepúlveda.
13 (Docket No. 10-1.) See, e.g., Barretto Peat, Inc. v. Luis A. Ayala Colon Sucrs., Inc., 709 F. Supp.
14 321, 323 (D.P.R. 1989) (citations omitted) (describing intentional conversion elements under Article
15 1802). Accordingly, whether Sepúlveda is liable to Plaintiffs for intentional conversion, fraud, or
16 some other theory of liability is governed by state law, not federal law. Likewise, whether the prior
17 state court settlement bars Plaintiffs from re-litigating their right to the policy payment is also a
18 matter of state law. These issues have only a remote, peripheral connection to a covered plan, so
19 preemption does not apply to Plaintiffs' claims against Sepúlveda. See Combined Mgmt. v.
20 Superintendent of the Bureau of Ins., 22 F.3d 1, 3 (1st Cir. 1994) (citations omitted) (finding a
21 workers' compensation plan as too peripheral to "relate to" an ERISA benefit plan).

22 Plaintiffs' claim against Sepúlveda does not raise a federal question, and the parties are not
23 of diverse citizenship. (Docket No. 10-1.) Thus, there is no basis for federal subject matter
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Civil No. 16-2777 (GAG)

1 jurisdiction for Plaintiffs’ claim against Sepúlveda. See 28 U.S.C. §§ 1331, 1332. In the absence
2 of subject matter jurisdiction, federal courts are powerless to act. See, e.g., Espinal-Dominguez v.
3 Commonwealth of P.R., 352 F.3d 490, 495 (1st Cir. 2003) (federal courts have “an unflagging
4 obligation to notice jurisdictional defects” and pursue them at any time). Here, where only Plaintiffs’
5 state law claim against Sepúlveda remains, the proper course is to remand the state law claim
6 pursuant to 28 U.S.C. § 1447(c) for lack of subject matter jurisdiction.

7 **IV. Conclusion**

8 For the reasons set forth above, Prudential’s motions to deem as unopposed at Docket Nos.
9 15 and 38 are **NOTED**. Prudential’s motion to dismiss for failure to state a claim at Docket No. 8
10 is **GRANTED**. Plaintiffs’ complaint at Docket No. 1 as to Prudential is **DISMISSED with**
11 **prejudice**. Plaintiffs’ complaint at Docket No. 1 as to Sepúlveda is **REMANDED** to the Court of
12 First Instance of the Commonwealth of Puerto Rico, Arecibo Superior Part.

13 The Clerk of Court is directed to send notice of the Opinion and Order to the following
14 parties: Plaintiffs; Plaintiffs former counsel (see Docket No. 39); and the court from which this
15 matter was removed (see Docket Nos. 1-1; 10-1).

16 **SO ORDERED.**

17 In San Juan, Puerto Rico, on this 7th day of August, 2017.

18 *s/ Gustavo A. Gelpí*
19 GUSTAVO A. GELPI
United States District Judge