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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA PACIFIC MEDICAL
CENTER,

Plaintiff,

v.

CONCENTRA PREFERRED
SYSTEMS, INC., et al.,

Defendants.

No. C 04-3083 SBA

ORDER

[Docket Nos. 12, 15, 30]

This matter comes before the Court on Defendants Redwood Empire Electrical Workers Health and Welfare Trust Fund¹ ("Redwood Empire") and Zenith Administrators, Inc.'s ("Zenith") (collectively, "Defendants") motion to dismiss Plaintiff California Pacific Medical Center's ("California Pacific" or "Plaintiff") first amended complaint ("FAC") [Docket No. 12]. Having read and considered the papers submitted by the parties and being fully informed, the Court finds this matter appropriate for resolution without a hearing. The Court hereby GRANTS Defendants' motion [Docket No. 12] and GRANTS Plaintiff leave to file a second amended complaint. Defendant Concentra Preferred Systems, Inc.'s

¹ Sued in this action as Redwood Empire Electrical Workers.

1 ("Concentra") motion to dismiss [Docket No. 15] is DENIED WITHOUT PREJUDICE AS MOOT.²

2 **BACKGROUND**

3 **A. Factual Background**³

4 California Pacific entered into an agreement with Interplan Corporation ("Interplan")⁴ and Redwood
5 Empire (collectively referred to as "Payer" in the agreement) on November 27, 1997, amended October
6 22, 1998, for the purpose of establishing the rates and terms of financial reimbursement California Pacific
7 would receive for the provision of medical services to eligible beneficiaries under Redwood Empire's health
8 care benefit plan ("Interplan Agreement"). *See* Defendants' Exh. 1. Under the Interplan Agreement,
9 California Pacific agreed to furnish certain medical services to eligible beneficiaries under Redwood
10 Empire's healthcare benefit plan (the "Plan"). In return, California Pacific would submit claims for
11 reimbursement of medical services it provided.

12 On April 17, 2001, "M.M." was admitted to California Pacific as an eligible beneficiary under the
13 Plan, for the delivery of a baby boy ("Baby O"). During the delivery of Baby O, there were severe
14 complications which caused trauma to both mother and child and which required additional medical
15 services. The total medical bill for the delivery and treatment of Baby O was \$1,135,480.19. Based on
16 the terms and rates of reimbursement set forth under the Interplan Agreement, California Pacific was
17 entitled to receive \$828,900.54 in reimbursements for the medical services it provided to Baby O.

18 California Pacific contacted both Interplan and Zenith, who was hired as a third party administrator
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21 ² Both Redwood Empire's and Zenith's motion to dismiss [Docket No. 12] and Concentra's motion
22 to dismiss [Docket No. 15] were set for hearing on October 19, 2004. Both motions contend that all of
23 California Pacific's claims are preempted by ERISA. However, even though California Pacific filed a timely
24 opposition to Concentra's motion [Docket No. 21], in lieu of a reply, Concentra filed a statement of non-
25 opposition to its motion [Docket No. 23]. Concentra now seeks leave to file a reply and has filed a stipulated
26 request to continue the hearing date on both of these motions to December 7, 2004. *See* Stip. to Continue
27 Hearing Date [Docket No. 30]. However, since the Court dismisses California Pacific's first amended
28 complaint with leave to amend, as discussed *infra*, Concentra's motion to dismiss is moot and is DENIED
WITHOUT PREJUDICE. Furthermore, the parties' request to continue the hearing date on these motions
[Docket No. 30] is DENIED.

³ These facts are taken from Plaintiff's First Amended Complaint.

⁴ All claims against Interplan have been dismissed with prejudice from this action.

1 of Redwood Empire's employee benefit program, to inquire about payment on the Baby O claim.
2 Defendant Concentra Preferred Systems, Inc. ("Concentra") was hired by Employers Reinsurance
3 Corporation ("Employers Reinsurance"), a reinsurer of Redwood Empire, to assist Employers Reinsurance
4 in the reduction of reimbursement claims. Unbeknownst to California Pacific, on or about March 28, 2002,
5 Concentra ostensibly received a special discount for the medical services California Pacific provided to
6 Baby O from an individual named Audrey Miller. California Pacific contends that Ms. Miller did not have
7 the authority to negotiate or agree to discount any amounts due on such claims.

8 In May 2003, California Pacific discovered that it had been underpaid by \$485,900.54 on its
9 reimbursement claim.

10 **B. Procedural Background**

11 On June 29, 2004 and July 8, 2004, California Pacific filed, respectively, its Complaint and FAC
12 against Concentra, Interplan,⁵ Redwood Empire and Zenith for breach of contract, unfair business
13 practices, services rendered, unjust enrichment, and declaratory relief. On July 29, 2004, Redwood
14 Empire removed the case to federal court, alleging that the action arises under the Employee Retirement
15 Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*⁶

16 On August 24, 2004, Redwood Empire and Zenith filed the instant motion to dismiss. On the same
17 day Concentra filed its motion to dismiss.

18 **LEGAL STANDARDS**

19 Under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss should not be granted unless it
20 appears beyond a doubt that the non-moving party "can prove no set of facts in support of his claim which
21 would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957).
22 For purposes of such a motion, the pleading is construed in a light most favorable to the non-moving party

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24 ⁵ As noted, *supra*, Interplan was dismissed from this case on July 24, 2004.

25 ⁶ "[T]he ERISA civil enforcement mechanism is one of those provisions with such 'extraordinary
26 pre-emptive power' that it 'converts an ordinary state common law complaint into one stating a federal claim
27 for purposes of the well-pleaded complaint rule.' Hence, 'causes of action within the scope of the civil
28 enforcement provisions of § 502(a) [are] removable to federal court.'" *Aetna Health Inc. v. Davila*, 124 S.
Ct. 2488, 2496, 159 L.Ed. 2d 312, 327-28 (2004).

1 and all properly pleaded factual allegations are taken as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421,
2 23 L. Ed. 2d 404, 89 S. Ct. 1843 (1969); *Everest and Jennings, Inc. v. American Motorists Ins. Co.*,
3 23 F.3d 226, 228 (9th Cir. 1994). Although the court is generally confined to consideration of the
4 allegations in the pleadings, when the pleading is accompanied by attached documents, such documents are
5 deemed part of the pleading and may be considered in evaluating the merits of a Rule 12(b)(6) motion. *Hal*
6 *Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 (9th Cir. 1990). "[A] document is not
7 'outside' the [pleading] if the pleading specifically refers to the document and if its authenticity is not
8 questioned." *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994). Moreover, the Court may consider
9 matters of which it may properly take judicial notice without converting the motion to dismiss to one for
10 summary judgment. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (records and reports to
11 administrative bodies); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1198 (9th Cir. 1988) (court
12 records).

13 When the pleading is dismissed for failure to state a claim, "leave to amend should be granted unless
14 the court determines that the allegation of other facts consistent with the challenged pleading could not
15 possibly cure the deficiency." *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401
16 (9th Cir. 1986). Leave to amend is properly denied "where the amendment would be futile." *DeSoto*
17 *Yellow Freight Sys.*, 957 F.2d 655, 658 (9th Cir. 1992).

18 ANALYSIS

19 Defendants argue that dismissal of the FAC is warranted because each claim for relief is preempted
20 by ERISA, as each stems from Defendants' alleged failure to pay health care benefits provided under the
21 Plan. California Pacific does not dispute that the Plan is governed by ERISA. However, California Pacific
22 contends that its claims derive solely from the Interplan Agreement and do not relate to the administration of
23 the Plan or the processing of any covered claim, nor do they impinge on Baby O's ERISA rights.

24 A. ERISA Preemption

25 The Supreme Court has recently held that "any state-law cause of action that duplicates,
26 supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent
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28

1 to make the ERISA remedy exclusive and is therefore pre-empted." *Aetna Health Inc. v. Davila*, 124 S.
2 Ct. 2488, 2495, 159 L. Ed. 2d 312, 327 (2004).

3 ERISA § 502(a)(1)(B) provides:

4 A civil action may be brought--(1) by a participant or beneficiary-- . . . (B) to recover benefits due
5 to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his
6 rights to future benefits under the terms of the plan.

6 29 U.S.C. § 1132(a)(1)(B).

7 According to the Supreme Court:

8 This provision is relatively straightforward. If a participant or beneficiary believes that benefits
9 promised to him under the terms of the plan are not provided, he can bring suit seeking provision of
10 those benefits. A participant or beneficiary can also bring suit generically to "enforce his rights"
11 under the plan, or to clarify any of his rights to future benefits.

11 *Davila*, 124 S.Ct. at 2496. "Congress' intent to make the ERISA civil enforcement mechanism exclusive
12 would be undermined if state causes of action that supplement the ERISA § 502(a) remedies were
13 permitted, even if the elements of the state cause of action did not precisely duplicate the elements of an
14 ERISA claim." *Id.* at 2499-2500.

15 Thus, a plaintiff's state law claim that merely seeks an alternative enforcement mechanism of an
16 ERISA provision is preempted. *Dishman v. UNUM Life Ins. Co. of Am.*, 269 F.3d 974, 983 (9th Cir.
17 2001). The Ninth Circuit has applied a "but for" standard to assess the relationship between the harm
18 alleged and the ERISA-governed plan for purposes of determining whether a plaintiff is seeking such an
19 alternate enforcement mechanism. *Serpa v. SBC Telecomms., Inc.*, 318 F. Supp. 2d 865, 871 (N.D. Cal.
20 2004), citing, *Dishman*, 269 F.3d at 983. To avoid ERISA preemption, California Pacific's claim must
21 exist even without Defendants' failure to pay it the benefit. *Id.*, citing, *Dishman*, 269 F.3d at 983.

22 **B. Discussion**

23 The Interplan Agreement provides "[t]he purpose of this agreement is to establish the rates and
24 terms for financial reimbursement from the Payer to [California Pacific] for the provision of services
25 covered by the health care benefit plan of the Payer for eligible beneficiaries of the benefit plan." Def't Exh.
26 1, § II.A. Furthermore, "[a]pplicable to hospital services reimbursable under this agreement, [California
27 Pacific] shall seek and accept assignment of benefits for payment by the Payer." *Id.* § VII.B

1 (emphasis added). "For services rendered under this agreement and payable by the Payer . . . [California
2 Pacific] shall accept as payment the inpatient and outpatient reimbursement rates and terms stated in the . . .
3 agreement." *Id.* § VII.C.

4 The provision of health care services is Defendants' fundamental purpose in operating the Plan;
5 California Pacific provides those services to the Plan's eligible beneficiaries and then seeks reimbursement
6 for Plan-covered services from Defendants. While California Pacific is ostensibly suing under the Interplan
7 Agreement, Defendants' obligation to reimburse California Pacific for medical services under the Interplan
8 Agreement necessarily implicates Plan administration because such an obligation could only arise if the
9 services (1) are rendered to an eligible beneficiary and (2) covered by the Plan. Moreover, in order to be
10 reimbursed, California Pacific was required to obtain an assignment of benefits from Baby O and/or his
11 mother M.M. Def't Exh. 1, § VII.B; Def't Exh. 2 (Bills for Services, Box 53). Defendants have presented
12 evidence that California Pacific did in fact obtain such an assignment, which California Pacific has not
13 refuted. *Id.*⁷ Thus, a dispute between California Pacific and Defendants over the appropriate
14 reimbursement amount for services provided to Plan participants pursuant to this arrangement is a dispute
15 that goes to the fundamental purpose of the Plan, and therefore affects the Plan's ability to provide benefits
16 to its participants.

17 A review of the FAC shows that Plaintiff's claims would not exist "but for" the Defendants' alleged
18 failure to pay benefits. California Pacific's first claim, for breach of contract, alleges that California Pacific
19 was entitled to receive \$828,900.54 as reimbursement for the services it provided Baby O but that
20 Defendants only paid \$343,000 of that amount. FAC ¶¶ 26-29. California Pacific seeks compensatory
21 damages of at least \$485,900.54—the amount of the shortfall between what was paid by Defendants and
22 what California Pacific claims it is entitled to. The second claim, for unfair business practices, arises from
23 Defendants' "fail[ure] and refus[al] to pay the contracted reimbursement amount due under the Interplan
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26 ⁷ The Court may properly consider documents "whose contents are alleged in a complaint and whose
27 authenticity no party questions, but which are not physically attached to the [plaintiff's] pleading," and
28 documents crucial to the plaintiff's claims, but not explicitly incorporated in his complaint, in the context of a
motion to dismiss. *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-706 (9th Cir. 1998) (citation omitted).

1 Agreement." FAC ¶ 25. California Pacific seeks, in part, restitution of amounts due and unpaid to it. The
2 third and fourth claims, for services rendered and unjust enrichment, respectively, are quasi-contract and/or
3 quantum merit claims that rely upon allegations that California Pacific was "entitled to receive" and
4 "expected to receive \$828,900.54 as reimbursement" but that Defendants "only paid \$343,000 on Baby
5 O's claim" and that Defendants were unjustly enriched by "approximately \$485,900.54." FAC ¶¶ 41, 44,
6 47. California Pacific seeks damages and restitution of the unpaid amount under these claims for relief.
7 The fifth claim, for declaratory relief, is premised on California Pacific's "conten[tion] that the Defendants
8 are required to pay California Pacific for medical services rendered to Baby O." FAC ¶ 49. California
9 Pacific seeks a declaration stating that the special discount that Concentra allegedly negotiated with Ms.
10 Miller is of no effect and that Defendants are required to pay the balance of Baby O's medical bill. *Id.* ¶
11 50.

12 The foregoing supports a finding that the harm that California Pacific has suffered is "inextricably
13 intertwined with the plan's decision not to pay." *Dishman*, 269 F.3d at 983; *see Transitional Hosps.*
14 *Corp. v. Blue Cross & Blue Shield, Inc.*, 164 F.3d 952, 954 (5th Cir. 1999) ("[A] hospital's state-law
15 claims for breach of fiduciary duty, negligence, equitable estoppel, breach of contract, and fraud are
16 preempted by ERISA when the hospital seeks to recover benefits owed under the plan to a plan participant
17 who has assigned her right to benefits to the hospital.").

18 The cases cited by California Pacific in support of its position are distinguishable. In *Hospice of*
19 *Metro Denver, Inc. v. Group Health Ins. of Oklahoma, Inc.*, 944 F.2d 752 (10th Cir. 1991), the issue
20 was whether plaintiff's promissory estoppel claim was preempted by ERISA. *Id.* at 753. In *Hospice*, the
21 plaintiff brought a claim against Blue Cross for its failure to pay hospital expenses after Blue Cross had
22 orally represented that coverage existed under the terms of an ERISA plan, and later sought to deny
23 coverage. In holding the plaintiff's promissory estoppel claim was not preempted that court stated:

24 If a patient is not covered under an insurance policy, despite the insurance company's assurances to
25 the contrary, a provider's subsequent civil recovery against the insurer in no way expands the rights
26 of the patient to receive benefits under the terms if [sic] the health care plan. . . . *A provider's state*
27 *law action under these circumstances would not arise due to the patient's coverage under an*
28 *ERISA plan, but precisely because there is no ERISA plan coverage.*

1 *Id.* at 754-55 (emphasis original). In the instant case, however, there is no dispute that Baby O was
2 covered under the Plan and there is no claim for misrepresentation of coverage. Here, California Pacific
3 accepted an assignment of Baby O's benefits for payment and disputes the amount that it was reimbursed.
4 Thus, California Pacific's claims for damages are specifically related to the processing of a covered claim.

5 In *Geweke Ford v. St. Joseph's Omni Preferred Care*, 130 F.3d 1355 (9th Cir. 1997), the
6 plaintiff sued the third party administrator and the excess insurer of its health benefit plan for allegedly failing
7 to perform their contractual duties to repay it for expenses arising from a payment under the plan. *Id.* at
8 1357. The court noted that plaintiff's claims against the third party administrator were based on the
9 administrator's alleged failure to properly file the claim with the excess insurer, not its failure to administer
10 the plan. *Id.* at 1359. With respect to the excess insurer, the court stated that "a plan's relationship with its
11 insurers is like that with any commercial entity." *Id.* Given this, the court found that plaintiff's state law
12 claims were not preempted by ERISA because those claims did not affect "the relationships regulated under
13 ERISA among employer, plan, participant and fiduciary." *Id.* at 1359. In contrast, here, in providing
14 benefits to patients treated at California Pacific, and negotiating the appropriate reimbursement amount,
15 Defendants were carrying out the core purpose of the Plan. Thus, California Pacific's claims challenging
16 Defendants' reimbursement decision affects the relationships regulated under ERISA, namely between the
17 plan and its participants. *Cf. Mayeaux v. La. Health Serv. & Indem. Co.*, 376 F.3d 420, 433 (5th Cir.
18 2004) ("If a medical practitioner could collaterally challenge a plan's decision not to provide benefits, he
19 would directly affect the relationship between the plan and its beneficiary, two traditional ERISA entities.")

20
21 Given that California Pacific is suing as an assignee of Baby O's rights to benefits under the Plan,⁸
22 its state law claims merely seek an alternative enforcement mechanism of an ERISA provision. *Cf. Davila*,
23 124 S. Ct. at 2496 (noting that a participant or beneficiary who believes that benefits promised to him
24 under the terms of the plan have not been provided can bring suit under ERISA seeking provision of those
25 benefits); *Dishman*, 269 F.3d at 983 (state claims seeking an alternative enforcement mechanism of

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27 ⁸ Def't Exh. 1, § VII.B; Def't Exh. 2 (Bills for Services, Box 53).

1 ERISA provisions are preempted). Accordingly, the Court finds that ERISA preempts California Pacific's
2 state law claims and GRANTS Defendants' motion to dismiss. *See also Misis v. Building Service*
3 *Employees Health & Welfare Plan*, 789 F.2d 1374, 1378 (9th Cir. 1986) (holding that ERISA preempts
4 the state claims of a provider suing as an assignee of a beneficiary's rights to benefits under an ERISA plan).
5 Plaintiff is granted leave to file a second amended complaint in accordance with this Order.

6 **CONCLUSION**

7 Accordingly,

8 IT IS HEREBY ORDERED THAT Defendants Redwood Empire Electrical Workers Health and
9 Welfare Trust Fund and Zenith Administrators, Inc.'s motion to dismiss Plaintiff California Pacific Medical
10 Center's first amended complaint [Docket No. 12] is GRANTED.

11 Plaintiff is granted leave to file a second amended complaint that asserts claims for relief under
12 ERISA § 502(a), 29 U.S.C. § 1132(a) only. Such complaint, if any, must be filed **within thirty (30) days**
13 **of the date of this Order.**

14 IT IS FURTHER ORDERED THAT Defendant Concentra Preferred Systems, Inc.'s motion to
15 dismiss [Docket No. 15] is DENIED WITHOUT PREJUDICE AS MOOT.

16 IT IS FURTHER ORDERED THAT the parties' stipulation and request to continue the hearing
17 date [Docket No. 30] is DENIED.

18 IT IS SO ORDERED.

19 Dated: 10-15-04

20 /s/ Saundra Brown Armstrong
21 SAUNDRA BROWN ARMSTRONG
22 United States District Judge
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