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United States District Court
For the Northern District of California

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

INTERNATIONAL LONGSHORE &
WAREHOUSE UNION-PACIFIC
MARITIME ASSOCIATION
WELFARE PLAN BOARD OF
TRUSTEES and INTERNATIONAL
LONGSHORE & WAREHOUSE
UNION-PACIFIC MARITIME
ASSOCIATION WELFARE PLAN,

No. C 11-01215 WHA

**ORDER GRANTING IN
PART AND DENYING
IN PART DEFENDANTS'
MOTIONS TO DISMISS
AND VACATING HEARING**

Plaintiffs,

v.

SOUTH GATE AMBULATORY
SURGERY CENTER, LLC, a California
limited liability company; JEFFREY T.
HO, M.D., an individual; STEWART
GOLDSTEIN, M.D., an individual; and
DOES 1 through 50, inclusive,

Defendants.

INTRODUCTION

In this ERISA action for recovery of alleged overpayments and erroneous payments, defendants bring parallel motions to dismiss the claims against them. For the reasons stated below, the motion by Dr. Stewart Goldstein is **GRANTED IN PART AND DENIED IN PART**, and the motion by South Gate Ambulatory Surgery Center and Dr. Jeffrey T. Ho is **DENIED**.

STATEMENT

1
2 The operative complaint alleges the following. Plaintiff International Longshore &
3 Warehouse Union-Pacific Maritime Association Welfare Plan is an employee welfare benefit plan
4 established pursuant to ERISA. Plaintiff International Longshore & Warehouse Union-Pacific
5 Maritime Association Welfare Plan Board of Trustees is the plan administrator and serves as the
6 plan's fiduciary (First Amd. Compl. ¶¶ 10–11).

7 The plan provides coverage to its members for medical care that is medically necessary,
8 meets established treatment protocols in the United States, and is not experimental. By its own
9 terms, the plan pays only usual, customary, and reasonable rates for services that are covered
10 (*id.* at ¶¶ 21–22).

11 Defendants Jeffrey T. Ho, M.D., and Stewart Goldstein, M.D., are physicians who have
12 provided medical services to plan members at defendant South Gate Ambulatory Surgery
13 Center's facilities. Defendants submitted claims to the plan for services provided to plan
14 members, and plaintiffs paid them. In this action, plaintiffs now seek the return of some of the
15 money they paid to the doctors for those claims (*id.* at ¶¶ 12–15, 26–27).

16 The plan provided, in pertinent part (*id.* at ¶ 19):

17 If a third party provider of Benefits hereunder, through error,
18 misrepresentation, or fraud, receives payment of Welfare Fund
19 assets in an amount greater than the amount authorized under the
20 Plan, the Trustees, in their sole, absolute, and unreviewable
21 discretion, may collect the amount of any such overpayment(s) and
22 any amounts expended or incurred in investigating the matter and
23 collecting the overpayment(s) (including, but not limited to,
expenses of the Trustees' staff and reasonable fees of any
investigators, attorneys, and/or consultants retained by or on behalf
of the Trustees). The Trustees also may, in their sole, absolute,
and unreviewable discretion, disallow any future assigned Benefit
claims presented by such provider, and take any other action they
may deem necessary or appropriate under the circumstances.

24 A recent ongoing review by professional experts revealed that a substantial percentage
25 of the medical services underlying the claims defendants submitted to the plan since
26 approximately 2008 were not medically necessary, not generally accepted in the medical field,
27 and/or not performed in accordance with established treatment protocols. Additionally, the
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1 amounts billed exceeded the usual, customary, and reasonable rates for medical services covered
 2 by the plan. Plaintiffs therefore assert that the claims were not covered by the plan
 3 (*id.* at ¶¶ 27–29).

4 Defendants are not plan members, but plaintiffs allege that defendants submitted the
 5 claims pursuant to contractual assignments from plan members. Plaintiffs argue that in doing so,
 6 defendants agreed to the plan’s provision requiring the repayment of erroneous payments and
 7 overpayments (*id.* at ¶ 26).

8 In March 2011, plaintiffs filed the instant action seeking restitution of those payments
 9 deemed to be overpayments or payments made to the defendants in error. Plaintiffs filed a first
 10 amended complaint in July 2011, alleging the existence of an equitable lien or a constructive trust
 11 on the overpayments and erroneous payments, and seeking restitution and declaratory and
 12 injunctive relief (Dkt. Nos. 1, 42). Defendants South Gate and Dr. Ho move to dismiss plaintiffs’
 13 first amended complaint for failure to state a claim or in the alternative to stay the action pending
 14 resolution of a state court action involving most of the same parties. Dr. Goldstein moves to
 15 dismiss the complaint for failure to state a claim and also moves to dismiss the plan as a plaintiff
 16 for a lack of standing. This order follows full briefing.

17 ANALYSIS

18 1. DEFENDANTS’ MOTIONS TO DISMISS THE COMPLAINT 19 FOR FAILURE TO STATE A CLAIM.

20 To survive a motion to dismiss, a complaint must contain sufficient factual matter,
 21 accepted as true, to state a claim for relief that is plausible on its face. FRCP 12(b)(6); *Ashcroft v.*
 22 *Iqbal*, 129 S. Ct. 1937, 1949 (2009). A claim is facially plausible when there are sufficient
 23 factual allegations to draw a reasonable inference that defendants are liable for the misconduct
 24 alleged. While a court “must take all of the factual allegations in the complaint as true,” it is “not
 25 bound to accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 129 S. Ct. at
 26 1949–50.¹ Dismissal is only proper if there is either a “lack of a cognizable legal theory” or “the

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¹Unless indicated otherwise, internal citations are omitted from all quoted authorities.

1 absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police*
2 *Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

3 A plan fiduciary may bring a civil action under ERISA “(A) to enjoin any act or practice
4 which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other
5 appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this
6 subchapter or the terms of the plan.” 29 U.S.C. 1132(a)(3). The Supreme Court has construed
7 Section 1132(a)(3), also known as Section 502(a)(3) of ERISA, “to authorize only ‘those
8 categories of relief that were *typically* available in equity.’” *Sereboff v. Mid Atl. Med. Servs.,*
9 *Inc.*, 547 U.S. 356, 361 (2006).

10 The parties do not dispute that the board is a fiduciary under ERISA. The legal issue
11 presented is whether the relief requested by plaintiffs, labeled restitution, is “equitable” under
12 Section 502(a)(3)(B). Plaintiffs seek the return of money payments, but “the fact that this relief
13 takes the form of a money payment does not remove it from the category of traditionally equitable
14 relief.” *CIGNA Corp. v. Amara*, 131 S. Ct. 1866, 1880 (2011). The Supreme Court has defined
15 what constitutes equitable relief, stating that the nature of the recovery sought by the plaintiff and
16 the basis for the claim must both be equitable. *Sereboff*, 547 U.S. at 361–63. Here, plaintiffs
17 have pled sufficient facts to make it plausible that their claim sounds in equity.

18 In the operative complaint, plaintiffs state that their claims for relief are equitable
19 because an equitable lien by agreement or a constructive trust exists on the payments in question.
20 This order finds that plaintiffs have pled sufficient facts to make the existence of an equitable lien
21 by agreement plausible. Because pleading sufficient facts to support one plausible theory is
22 enough to survive a Rule 12(b)(6) motion, this order does not reach the theory of a
23 constructive trust.

24 Plaintiffs allege that the plan accepts benefit claims only from members and providers to
25 whom members have assigned their claims. The Summary Plan Description states: “Assignment.
26 Generally, Welfare Plan benefits or the rights to receive such benefits may not be assigned to any
27 third party other than doctors or other providers of care.” (First Amd. Compl. ¶ 20). Furthermore,
28 plaintiffs allege that defendants submitted claims for services directly to the plan by holding

1 contractual assignments from patients who were plan members (*id.* at ¶¶ 26, 39). Taking these
2 allegations as true, plaintiffs have alleged sufficient facts to make it plausible that the funds
3 received by defendants were subject to the same contingencies as if dispersed to actual plan
4 members because defendants agreed to an equitable lien on the funds. Thus, the nature
5 (restitution) and the basis (lien by agreement) for the claims is equitable and properly brought
6 under ERISA.

7 All three defendants raise the same arguments in response to plaintiffs' equitable lien
8 contentions. Defendants argue that the assignment provision in the contract relied on by plaintiffs
9 conflicts with other contract language, and that the scope of the assignment was not intended to
10 include all plan conditions. This is not enough. All reasonable inferences must be drawn in favor
11 of plaintiffs at this stage of the proceedings, and plaintiffs' claims will not be dismissed based on
12 conflicting views of the plan documents. At best, these arguments present questions of contract
13 interpretation to be decided on summary judgment or at trial, with the benefits of discovery and a
14 full evidentiary record.

15 Defendants further argue that the relief sought is not equitable because plaintiffs have not
16 identified a particular fund distinct from defendants' general assets to which the lien has attached.
17 No such identification is required. The Supreme Court decision on which defendants rely states
18 that "no tracing requirement . . . applies to equitable liens *by agreement or assignment.*"
19 *Sereboff*, 547 U.S. at 365 (emphasis added). Plaintiffs' plan document states that overpayments
20 received by third party providers may be recovered by the plan (First Amd. Compl. ¶ 19). This
21 is sufficient.

22 Defendant Goldstein next argues that the use of "error" in the plan language refers to a
23 mistake of fact or a clerical mistake, not the type of overpayment plaintiff alleges. Again,
24 plaintiffs' claims will not be dismissed due to conflicting contract interpretations. Defendant
25 Goldstein cites only to an out-of-circuit decision discussing the interpretation of "excess
26 payments," which is not the term at issue here. *See Cent. States, Se. and Sw. Areas Health &*
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1 *Welfare Fund v. Pathology Labs. of Ark.*, 71 F.3d 1251, 1255 (7th Cir. 1995). Moreover, the plan
 2 provides that the board is the sole interpreter of the plan terms (First Amd. Compl. Exh. 1
 3 at ¶ 5.11).

4 Plaintiffs have pled sufficient facts to make it plausible that defendants, via contractual
 5 assignment from plan members, agreed to a lien on the alleged overpayments and erroneous
 6 payments when they submitted claims to the plan. Defendants have not carried their burden of
 7 showing that plaintiffs' claims do not seek equitable relief proper under ERISA. Accordingly,
 8 both motions to dismiss the complaint for failure to state a claim are **DENIED**.

9 **2. MOTION BY DEFENDANT GOLDSTEIN TO DISMISS THE PLAN**
 10 **FOR LACK OF STANDING.**

11 Defendant Goldstein moves to dismiss the plan as a plaintiff under FRCP 12(b)(1) for
 12 lack of standing to bring a civil action under ERISA. It is a plaintiff's burden to prove it has
 13 standing. The plan has failed to do so.

14 Section 502(e) of ERISA grants exclusive jurisdiction to the district courts to hear "civil
 15 actions under this subchapter brought by the Secretary or by a participant, beneficiary, [or]
 16 fiduciary." 29 U.S.C. 1132(e)(1). Similarly, Section 502(a)(3) states that "a participant,
 17 beneficiary, or fiduciary" has standing to enforce any ERISA provisions. Federal courts do not
 18 have jurisdiction to hear a civil action under ERISA that is brought by someone other than a
 19 "participant, beneficiary, or fiduciary." *See Local 159, 342, 343, 444 v. Nor-Cal Plumbing, Inc.*,
 20 185 F.3d 978, 981–83 (9th Cir. 1999).

21 Because the plan does not fit within any of these categories, it cannot sue under ERISA.
 22 Our court of appeals has clearly stated, "the Trust Funds, as ERISA plans, are not fiduciaries
 23 entitled to sue under ERISA. Accordingly, subject matter [jurisdiction] does not exist under
 24 ERISA over this action" *Id.* at 983–84. So too here. The plan does not have standing to sue
 25 under ERISA.

26 Plaintiffs do not argue that the plan is a participant, beneficiary, or fiduciary under
 27 ERISA. Instead, they assert that this distinction is a "technicality of no consequence" because it
 28 is undisputed that the board, also suing as a plaintiff, does have standing. Plaintiffs cite to

1 decisions from other circuits and claim the courts are split on the issue of whether to allow a plan
2 itself to sue. This authority is not controlling, and the law in this circuit is clear. *See id.*
3 at 981–84. Defendant Goldstein’s motion to dismiss the plan for lack of standing is **GRANTED**.

4 * * *

5 Defendants South Gate and Dr. Ho also moved under FRCP 12(b)(1) to stay this action
6 pending the outcome of a state court action. That motion, however, was withdrawn in their reply
7 brief (Reply Br. 9–10). The stay motion is therefore **MOOT**. Defendants South Gate and Dr. Ho
8 requested judicial notice of six documents that do not bear on the foregoing analysis; that request
9 is **DENIED AS MOOT**.

10 **CONCLUSION**

11 For the reasons stated above, defendants’ motions to dismiss for failure to state a claim
12 are both **DENIED**. Defendant Goldstein’s motion to dismiss the plan for lack of standing is
13 **GRANTED**. The International Longshore & Warehouse Union-Pacific Maritime Association
14 Welfare Plan is no longer a party to this action. The motion by defendants South Gate and Dr. Ho
15 to stay this action was withdrawn and is therefore **MOOT**. Their request for judicial notice is
16 **DENIED AS MOOT**. The motion hearing set for October 6, 2011, is **VACATED**.

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18 **IT IS SO ORDERED.**

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20 Dated: September 12, 2011.

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23 WILLIAM ALSUP
24 UNITED STATES DISTRICT JUDGE
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