UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ANDREA GREGG, ET AL.,

Plaintiffs,

vs.

PROVIDENCE ST. JOSEPH HEALTH, ET AL., AND DOES 1-100,

Defendants.

CASE NO. 4:20-cv-03880-YGR

ORDER GRANTING MOTION TO REMAND; DENYING AS MOOT MOTION TO DISMISS

Re: Dkt. No. 15

Plaintiffs Andrea Gregg and Charlene Davidson bring this putative class action against defendants Providence St. Joseph Health; Providence Health and Services; St. Joseph Health; St. Joseph Health System; St. Joseph Health Northern California, LLC; Queen of the Valley Medical Center; Santa Rosa Memorial Hospital; SRM Alliance Hospital Services d/b/a Petaluma Valley Hospital; St. Joseph Hospital of Eureka; and Redwood Memorial Hospital of Fortuna (collectively "defendants") for unlawful, unfair, and fraudulent business practices in violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, and for intentional interference with contractual relations. (Dkt. No. 1, Notice of Removal [NOR] at Exh. A ["Complaint"] ¶¶ 70, 86, 98, 103-111.) Plaintiffs seek damages, restitution, injunctive, and other relief, individually and on behalf of a proposed class. (Complaint ¶¶ 1-4.) Plaintiffs originally filed their complaint in the California Superior Court, County of San Francisco, on March 26, 2020. (NOR at 1.) Defendants removed the action to this Court, asserting original jurisdiction based on existence of a federal

question and supplemental jurisdiction over California law claims. (*Id*. at 4.)

Now before the Court are plaintiffs' motion to remand (Dkt. No. 15) and defendants' motion to dismiss the complaint (Dkt. No. 11). Both motions are opposed.

Having carefully considered the pleadings and the papers submitted, the matters properly subject to judicial notice,[1] and for the reasons set forth more fully below, the Court **ORDERS** that the motion to remand is **GRANTED**. Although plaintiff Davidson's claims reference her health insurance coverage under the federal Medicare program, defendants fail to establish that her claims "arise under" the federal Medicare statutes and regulations for purposes of federal jurisdiction. Given that jurisdiction has not been shown and this case must be remanded, the motion to dismiss is **DENIED AS MOOT**.

I. BACKGROUND

A. Allegations of the Complaint

Plaintiffs are individuals who sought or received medical services in relation to injuries sustained in separate car accidents. (Complaint ¶¶ 7-8.) Andrea Gregg ("Gregg") was injured in a car accident on November 2016 when she was read-ended. (*Id*. ¶ 7.) Charlene Davidson ("Davidson") was injured in a car accident caused by a third party on June 2018. (*Id*. ¶ 8.) Both received medical services from defendant Queen of the Valley Medical Center ("QVMC"). (*Id*. ¶¶ 74-75.) When admitted to QVMC, both provided information for their respective health insurance plans. (*Id*.) Gregg's plan was with United Healthcare and Davidson was covered by both Medicare and a Kaiser Permanente supplemental insurance plan. (*Id*. ¶¶ 7-8.)

Plaintiffs allege that, rather than billing their health insurance plans, defendants asserted liens under the California Hospital Lien Act ("HLA"), California Civil Code sections 3045.1-3045.6, against their prospective civil recoveries from their tortfeasors. (*Id*. ¶¶ 7-8, 74-75.)

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[1] Defendants request the Court to take judicial notice of the following documents: the complaint in *Phillips v. Kaiser Found. Health Plan, Inc*., N.D. Cal. Case No. 3:11-cv-02326-CRB, as attached to the notice of removal filed May 11, 2011; and excerpts of the Medicare Secondary Payer Manual, as well as a form Medicare provider agreement, from the federal Centers for Medicare & Medicaid Services ("CMS") website. (Request for Judicial Notice ["RJN"], Dkt. No. 10.) The Court GRANTS the request.

Under the HLA, when a hospital provides "emergency and ongoing medical or other services to any person injured by reason of an accident or negligent or other wrongful act" (other than accidents covered by Workers' Compensation), the hospital may assert a lien upon any claim for damages on account of those injuries "to the extent of the amount of the *reasonable and necessary charges* of the hospital" resulting from that accident. Cal. Civ. Code § 3045.1 (emphasis supplied).[2] Plaintiffs allege that, while the HLA limits a hospital's lien to 50 percent of the final judgment or settlement, Cal. Civ. Code § 3045.4, it does not prohibit hospitals from pursuing patients for the balance of the retail amount. (*Id.* ¶ 68.) By sidestepping the patient's health care insurance and seeking the higher "retail" bill through an HLA lien, the hospital deprives the patient of the benefit of their health plan coverage. (*Id.* ¶ 69.)

Here, plaintiffs allege that QVMC refrained from billing their health insurance plans in order to assert HLA liens against potential tort recovery on their automobile accidents at "grossly inflated" retail rates. (*Id.* ¶¶ 76-77.) Both Gregg and Davidson learned QVMC did not submit bills to their health care plans when they received letters from QVMC administrators notifying them of the liens. (*Id.* ¶¶ 74-75.) Plaintiffs allege that their health insurance plans contain terms establishing that contractual rates constitute payment in full. (*Id.* ¶¶ 64, 71.) Plaintiffs allege that by not billing their health insurance plans, defendants denied them the benefit of the bargain of their health insurance contracts and abused the HLA in a way that was not intended by the Legislature. (*Id.* ¶¶ 76, 77.) Plaintiffs allege that the lien amounts exceeded the "reasonable and necessary" limitation in the HLA because the amounts were "in orders" higher than the amount QVMC would have accepted as payment in full had QVMC submitted bills to the plaintiffs' health insurance plans. (*Id.* ¶¶ 74-75.) Based on the foregoing, plaintiffs allege that defendants

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[2] Plaintiffs allege that, as held by the California Supreme Court in *Parnell v. Adventist Health Systems/West*, 35 Cal.4th 595 (2005), the HLA has been interpreted to prohibit hospitals from billing patients' health plans at their contracted rate and then seeking the balance of a "list" or "retail" rate for services by means of an HLA lien, in a practice known as "balance billing," because payment by the health plan had extinguished the debt completely. (*Id.* at ¶¶ 65-67.) Plaintiffs allege that *Parnell* did not address, and thus created incentives for, the practice of hospitals electing not to bill a patient's health plan at all and instead recouping all costs by asserting

intentionally interfered with their contracts and engaged in unfair and unlawful practices under the UCL.

B. Procedural Background

Defendants removed the complaint from state court on the grounds that plaintiff Davidson's claims are predicated on federal law and implicate federal questions under the Medicare Act.[3] (NOR at 3.)[4] Defendants contend that the allegations in the complaint rely on federal Medicare requirements since Davidson seeks to have Medicare pay for defendants' services rather than the third-party responsible for the injuries that necessitated her treatment. (*Id*.) Thus, defendants assert that Davidson essentially has made a claim for benefits under the Medicare Act that will require the Court to interpret, apply, and enforce federal Medicare laws and regulations, including those under the Medicare Secondary Payer ("MSP") rules found in 42 U.S.C. section 1395(y) and implementing regulations at 42 C.F.R. sections 422.1, *et seq*. (*Id*. at 3.)[5]

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[3] Defendants assert that the Court may take supplemental jurisdiction, under 28 U.S.C. section 1367, over co-plaintiff Gregg's claims since they are related to Davidson's claims and part of the same controversy.

[4] Although not stated in their notice of removal, defendants suggest in their opposition brief that federal jurisdiction is also proper under the Class Action Fairness Act ("CAFA"). (*See* Dkt. No. 16 ["Oppo."] at 10-13.) The NOR was expressly "based on federal question jurisdiction," not CAFA. Defendants made only a passing reference to CAFA in a footnote to the NOR, alleging no factual basis to support CAFA jurisdiction. (*See* NOR at 2 n.1) The Court rejects this backdoor attempt to establish removal jurisdiction. *See Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 87 (2014) (notice of removal must track general pleading requirements of Fed. R. Civ. P 8(a)); *Roa v. TS Staffing Servs., Inc.*, No. 2:14-CV-08424-ODW, 2015 WL 300413, at *2 (C.D. Cal. Jan. 22, 2015) (NOR based on CAFA must contain a short and plain statement of all grounds in 28 U.S.C. § 1332(d)).

[5] The MSP provisions, 42 U.S.C. section 1395y(b), "mak[e] Medicare insurance secondary to any 'primary plan' obligated to pay a Medicare recipient's medical expenses, including a third-party tortfeasor's automobile insurance." *Parra v. PacificCare of Ariz., Inc.*, 715 F.3d 1146, 1152 (9th Cir. 2013) (citing 42 U.S.C. § 1395y(b)(2)(A)). Medicare-participating hospitals are required to maintain a system as part of their admissions process to identify any primary payers other than Medicare in order "[t]o bill other primary payers before Medicare" so that incorrect billing and overpayments can be prevented. 42 C.F.R. § 489.20(f)-(g). "The fact that Medicare payments are limited to the [diagnosis-related group or] DRG amount, or the reasonable charge, reasonable cost, capitation or fee schedule rate, does not affect the amount that a primary payer may pay." 42 C.F.R. § 411.31(a). "With respect to workers' compensation plans, no-fault insurers, and employer group health plans, a provider or supplier may bill its full charges and expect those charges to be paid *unless there are limits imposed by laws other than title XVIII of the Act* or by agreements with the

II. APPLICABLE STANDARDS

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (internal citations omitted). The removing party "has the burden to prove, by a preponderance of the evidence, that removal is proper." *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1106-7 (9th Cir. 2010). Removal jurisdiction based upon a federal question is determined from the complaint as it existed at the time of removal. *Libhart v. Santa Monica Dairy, Co*., 592 F.2d 1062, 1065 (citation omitted). The plaintiff is the master of their complaint and "may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar Inc. v. Williams,* 482 U.S. 386, 392 (1987). Only state-court actions that could have been filed in federal court in the first instance may be removed. *Id*. Thus, there generally exists a "strong presumption against removal jurisdiction" when evaluating a motion to remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992); *cf. Dart*, 572 U.S. 81, 89 (presumption does not apply in cases of CAFA removal). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Id*. (citation omitted).

Defendants here removed the complaint from state court on the grounds that plaintiff Davidson's claims are "founded on a claim or right arising under the Constitution, treaties or laws of the United States." 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 1331.[6] Specifically, the NOR alleges that Davidson's claims arise under federal Medicare laws. Where a complaint does not allege a violation of a federal law, treaty, or Constitutional right, the Supreme Court has recognized a "slim category" of cases which may nevertheless be considered to "arise under" federal law. *Empire Healthchoice Assurance v. McVeigh*, 547 U.S. 677, 701 (2006). "A case aris[es] under federal law . . . if a well-pleaded complaint establishes either that federal law

[6] Defendants assert supplemental jurisdiction over plaintiff Gregg's state law claims. *See* 28 U.S.C. § 1367(a) ("in any civil action in which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy

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