UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GREENPOINT CHIROPRACTIC, Plaintiff, -against- UNITED HEALTHCARE GROUP and "JOHN DOE CORPORATION", said company being fictitious, as true corporate entity is unknown, Defendants.	Case No.: **NOTICE OF REMOVAL**

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE that Defendant United HealthCare Group ("United") removes the above-entitled action filed by Plaintiff Greenpoint Chiropractic ("Plaintiff"), presently of record at Index No. 512413/2022 in the Supreme Court of the State of New York, County of Kings, to this Court pursuant to 28 U.S.C. §1441(a). In support of removal, Defendant would show unto the Court as follows:

1. On or about April 28, 2022, Plaintiff commenced an action against the Defendant in the Supreme Court of the State of New York, County of Kings. The suit is styled *Greenpoint Chiropractic v. United HealthCare Group and "John Does Corporation",* Index No. 512413/2022.

2. On May 13, 2022, Plaintiff served copies of the Summons and Complaints on the Defendant by personally delivering them via process server to the Defendant's registered agent, CT Corporation. The Summons and Complaint are the initial pleadings Plaintiff sent to the Defendant

forming the basis for this action. A true and correct copy of the Summons and Complaint[1] is attached hereto as **Exhibit A** and proof of service is attached hereto as **Exhibit B**.[2]

3. The 2,514 paragraph Complaint ("Compl.") asserts 114 causes of action (Counts 1-112 and 225-226) against United, all of which (although not labeled) assert New York State law based causes of action for (1) breach of (implied and actual) contract; (2) account stated; (3) fraud; (4) breach of covenant of good faith and fair dealing. The vast majority of Plaintiff's causes of action against United are brought by Plaintiff as the alleged assignee of benefits from various individual patients who are alleged to be members of group health benefit plans insured and/or administered by United. Plaintiff alleges that United improperly denied many of its claims for benefits seeking payment for its charges for services rendered to United's health plan members. (*See* Exhibit A).

4. Defendant removes this lawsuit to federal court based on federal question jurisdiction under 28 U.S.C. §1441(a).

5. The filing of this petition for removal is timely because it is being done within thirty (30) days of the date the Defendant United HealthCare Group first received notice of this case on May 13, 2022. (*See* Exhibit A).[3]

6. By filing this Notice of Removal, Defendant does not waive its right to object to service, service of process, the sufficiency of process, venue or jurisdiction, and specifically reserves the right to assert any defenses and/or objections to which it may be entitled.

THIS ACTION IS REMOVABLE ON THE BASIS OF FEDERAL QUESTION SUBJECT MATTER JURISDICTION UNDER 28 U.S.C.§1441(a)

7. This action is removable to this Court based on federal question subject matter jurisdiction.

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[1] The Complaint has been redacted to remove patient identifying information and includes only initials.

[2] The only other document included on the State Court's docket is attached hereto as **Exhibit C**.

[3] The requirements for consent to removal "does not extent to unserved (let alone unidentified)" fictitious "John Doe" defendants. *Bowen v. Home Depot*, No. 01-cv-2411, 2001 WL 920263 (E.D.N.Y. Aug. 1, 2001).

8. The basis for federal question subject matter jurisdiction is that Plaintiff's Complaint seeks payment of benefits under at least one employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq*., as amended ("ERISA") (*See* Compl. ¶¶ 370-456).

9. As the United States Supreme Court has repeatedly held, the "carefully integrated civil enforcement provisions" in Section 502(a) of ERISA, 29 U.S.C. §1132(a), set forth the "exclusive" remedies available for the allegedly erroneous denial, non-payment, or underpayment of benefits available under an ERISA-governed health benefits plan. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987). Indeed, the exclusivity of ERISA remedies is so strong that it permits removal of any purported state-law cause of action that amounts to an alternative mechanism for enforcing a claim to ERISA-governed benefits. *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64 (1987) (holding the preemptive force of ERISA operates to "convert[]" ordinary state law claims into federal claims for purposes of the well-pleaded complaint rule); *see also Aetna Health, Inc. v. Davila*, 542 U.S. 200, 209 (2004) (holding that "any state-law cause of action that duplicates, supplements or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted").

10. Plaintiff's Complaint alleges that it "accepted a valid assignment of benefits" from each of the dozens of individual patients identified in the Complaint.

11. Specifically, Plaintiff alleges that individuals A.H., E.H., I.H. and L. H.[4] were covered participants or beneficiaries under a group policy of insurance issued to Lendlease Americas Holdings, Inc. by United under group policy number 228599. Compl., ¶¶ 372, 394, 416, 438.

12. Plaintiff alleges that A.H., E.H., I.H. and L. H. each is "an assignor of benefits to Plaintiff" and that "Plaintiff accepted a valid assignment of benefits" from each of those individuals,

[4] The individuals are referred to herein by their initials.

or their parent or legal guardian, as appropriate. Compl., ¶¶ 370, 375, 392, 397, 414, 419, 436, 441.

13. Defendant has reviewed its files and determined that at all relevant times identified in the Complaint, A.H., E.H., I.H. and L. H. were participants and/or beneficiaries in the Lendlease Americas Holdings, Inc. ("Lendlease") Choice Plus Plan (Group No. 228599), which is an employee welfare benefit plan governed by ERISA. *See* **Exhibit D** (2020 SPD) and **Exhibit E** (2021 SPD). The Plan is self-funded by Lendlease and UnitedHealthcare Service, LLC, as the designated claims administrator, administers claims under the Plan pursuant to a full grant of discretionary authority. (*See* Ex. D, pp. 6, 11 and Ex. E pp. 7, 11).

14. The Plan permits participants to assign their benefits under the Plan to non-network providers with United's consent, and provides criteria for what constitutes a valid assignment of benefits under the Plan. Ex. D, p. 88 and Ex. E, p. 87.

15. Both the 2020 and 2021 Plans provide:

> ***Payment of Benefits***
>
> When you assign your Benefits under the Plan to a non-Network provider with UnitedHealthcare's consent, and the non-Network provider submits a claim for payment, you and the non-Network provider represent and warrant that the Covered Health Services were actually provided and were medically appropriate.
>
> To be recognized as a valid assignment of Benefits under the Plan, the assignment must reflect the Covered Person's agreement that the non-Network provider will be entitled to all the Covered Person's rights under the Plan and applicable state and federal laws, including legally required notices and procedural reviews concerning the Covered Person's Benefits, and that the Covered Person will no longer be entitled to those rights….

Ex. D, p. 88 and Ex. E, p. 87.

16. Plaintiff's Complaint alleges that it has received valid assignments of benefits from A.H., E.H., I.H. and L. H. or, where applicable, their parents or guardians. Compl., ¶¶ 375, 397, 416, 438.[5]

[5] United does not concede the validity of any alleged assignments, as Plaintiff has not attached them to the Complaint. Plaintiff will have to prove that any alleged assignments are "valid" pursuant to the terms of the Plan.

17. Plaintiff alleges, for each claim identified for A.H., E.H., I.H. and L. H., that it "billed the assignor's bills" to United, and that "the bills for reimbursement were not paid" by United. *See* Compl.¶¶ 376-77, 399-400, 421-422, 443-444.

18. For each of the foregoing claims, Plaintiff alleges that it is entitled to payment as "agreed to and obligated under the Contract," (Compl., ¶¶ 383, 405, 427, 449). Plaintiff defines the "Contract" as the "contracts of insurance to provide coverage" for medical treatment to the members. Compl., ¶ 13. With respect to A.H., E.H, I.H. and L.H., then, Plaintiff is alleging entitlement to payment pursuant to the "Contract," *i.e.*, the Plan.

19. Because Plaintiff alleges that it is bringing New York State law causes of action based on valid assignments of benefits it received from A.H., E.H., I.H. and L. H., all of whom were participants and/or beneficiaries of an ERISA-governed Plan, and challenges United's determinations on Plaintiff's claims for benefits under the Plan, Plaintiff's claims are completely preempted by ERISA. *See Aetna Health, Inc. v. Davila,* 542 U.S. 200 (2004); *Metropolitan Life Ins. Co. v. Taylor,* 481 U.S. 58 (1987); *Montefiore Medical Center v. Teamsters Local* 272, 642 F.3d 321 (2d Cir. 2011); *Crawley-Mack v. Rite Aid of N.Y., Inc.,* 2017 U.S. Dist. LEXIS 76706, at *6-17 (E.D.N.Y. May 17, 2017)(holding that plaintiff's state law breach of fiduciary duty claim was preempted by ERISA); *Ciampa v. Oxford Health Ins., Inc.,* No. 15-CV-6451, 2016 U.S. Dist. LEXIS 176672, at *8 (E.D.N.Y. Dec. 21, 2016)(holding that plaintiff's state law claims were completely preempted by ERISA because "consideration of the [ERISA] Plan terms was necessary to determine whether defendant committed any deceptive acts"); *Plastic Surgery Group, P.C. v. United Healthcare Ins. Co. of N.Y.,* 64 F. Supp. 3d 459, 468 (E.D.N.Y. 2014)(ruling that plaintiff's state law claims for payment of claims for surgical services were completely preempted); *Enigma Mgmt., Corp. v. Multiplan, Inc.*, 994 F. Supp.2d 290 (E.D.N.Y. 2014) (ruling the provider's claim for breach of contract and unjust enrichment were completely preempted by ERISA); *North Shore-Long Island Jewish Health Care Sys., Inc. v. Multiplan, Inc.*, 953 F. Supp.2d 419 (E.D.N.Y. 2013); *North Shore-Long Island Jewish Health Sys., Inc. v. Local 272 Welfare*

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