

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Bert Martinez v. Beatrice Lynn Duarte, et al.

No. CV-25-00130-PHX-DJH (D. Ariz. Feb. 10, 2026) · No. No. CV-25-00130-PHX-DJH; 2:25-cv-00130 ·

Decided February 10, 2026

SUMMARY

The United States District Court for the District of Arizona granted motions to dismiss filed by Beatrice Lynn Duarte and Kaiser Foundation Health Plan Incorporated in Bert Martinez's action concerning payment for an out-of-network air ambulance service. The court held that the No Surprises Act barred enforcement of the alleged contract to collect the unpaid balance from the insured and that the requested appointment of an arbitrator was not legally cognizable. The court also held that it lacked general and specific personal jurisdiction over Kaiser, dismissed the claims with prejudice, awarded Duarte entitlement to attorney fees under Arizona law, and directed the Clerk to close the case.

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Bert Martinez, No. CV-25-00130-PHX-DJH 10 Plaintiff, ORDER 11 v. 12
Beatrice Lynn Duarte, et al., 13 Defendants. 14 15 Before the Court are two Motions to Dismiss.
(Docs. 39 & 49).

The first is brought 16 by Defendant Beaurtrice Lynn Duarte (“Duarte”) and her husband
(collectively the 17 “Duartes”) (Doc. 39) and the second is brought by Defendant Kaiser
Foundation Health 18 Plan Incorporated (“Kaiser”) (Doc. 49). Pro se Plaintiff Bert Martinez
(“Martinez”) has 19 filed his Opposition to both Motions and both Duarte and Kaiser have filed a
Reply.

20 (Docs. 41, 51, 45 & 52). For the reasons set forth below, the Court will grant both Motions 21
to Dismiss and dismiss this action. 22 I. Background 23 Duarte was in El Salvador when tragedy
struck. (Doc. 38 at 4). She suffered a 24 medical emergency and had to be transported by
helicopter back to her home in Los 25 Angeles. (Id.). At the time, Duarte was insured by Kaiser.

(Id. at 5). She was helicoptered 26 out of El Salvador by a company called Air Ambulance. (Id. at
6). Somewhere in that 27 chronology, Duarte’s husband¹ signed a contract with Air Ambulance to
fly her to a 28 1 Martinez attached an alleged contract for services with Air Ambulance and signed
by Duarte’s husband to his Second Amended Complaint (“SAC”). (Doc. 38 at 11).

1 hospital near her home. Because she was insured, Air Ambulance billed Kaiser in the 2 amount
of \$729,030.00. (Id. at 7). Kaiser paid only \$94,852.69 out of that amount. (Id.) 3 Martinez states

that he was assigned Air Ambulance's rights as to the rest of the money. 4 (Id. at 11).

In his SAC he brings the following claims against Duarte, her husband, and 5 Kaiser: (1) breach of contract; (2) breach of fiduciary duty; and (3) request for appointment 6 of arbitrator. (Id. at 4–6). 7 II. Legal Standard 8 A successful motion to dismiss under Rule 12(b)(6) must show either that the 9 complaint lacks a cognizable legal theory or fails to allege facts sufficient to support its 10 theory.

Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013) (citing *Mendiondo v. 11 Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008)). A complaint that sets 12 forth a cognizable legal theory will survive a motion to dismiss if it contains “sufficient 13 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” 14 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl.*

Corp. v. Twombly, 550 U.S. 15 544, 570 (2007)). A claim has facial plausibility when “the plaintiff pleads factual content 16 that allows the court to draw the reasonable inference that the defendant is liable for the 17 misconduct alleged.” Id. (citing *Twombly*, 550 U.S. at 556). “The plausibility standard is 18 not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a 19 defendant has acted unlawfully.” Id. 20 In ruling on a 12(b)(6) motion, the Court takes the plaintiff's well-pleaded factual 21 allegations as true and construes them in the light most favorable to the plaintiff.

Cousins 22 v. Lockyer, 568 F.3d 1063, 1067 (9th Cir. 2009). Legal conclusions couched as factual 23 allegations are not entitled to a presumption of truth and are not sufficient to defeat a 24 12(b)(6) motion. *Iqbal*, 556 U.S. at 678. A complaint does not need to have detailed 25 factual allegations, but it must have more than a “the-defendant-unlawfully-harmed-me 26 accusation.” Id. 27 III.

Discussion 28 The Court finds that Martinez's breach of contract claim against Duarte and her 1 husband cannot go forward because the No Surprises Act (“NSA”) precludes enforcement 2 of Martinez's contract. Moreover, his claim for the Court to appoint an arbitrator under 3 the NSA is not legally cognizable.

As for the claims against Kaiser, the Court finds that it 4 does not have either general or specific jurisdiction over the company. Therefore, the Court 5 will grant the Duartes' and Kaiser's Motions to Dismiss. 6 A. Duarte's Motion to Dismiss 7 Duarte attacks the sufficiency of Martinez's breach of contract claim against her and 8 husband by stating that the NSA preempts the state law breach of contract claim.

(Doc. 39 9 at 3). She argues that the NSA was passed to prohibit the kind of conduct that the contract 10 seeks to enforce, i.e., those that require Duarte to pay the difference between the amount 11 Martinez billed Kaiser and the amount Kaiser paid Martinez. (Doc. 39 at 4–5).

In response, 12 Martinez states that a valid contract exists between the parties, predicated on “informed 13 consent or contractual obligation.” (Doc. 41 at 3). As an aside, he argues that at this point 14 in the litigation the Court should not decide the issue. (Id.) 15 1. Contracts for Balance Billing and the NSA 16 Congress passed the NSA to protect patients from surprise medical bills in situations 17 where they have no choice over whether their provider is in-network.

See Consolidated 18 Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, 2758–890 (2020). 19 Especially important to Congress when it passed the NSA was the elimination of surprise 20 balance billing. Id. Before the Act’s passage, when an out of network healthcare provider 21 proffered medical care to a patient, the patient’s insurance company could simply refuse to 22 pay the bill or decide what amount to pay and leave the patient holding the bag for the rest.

23 Id. 24 Three types of situations can make it so that a patient does not have a choice who 25 her provider is: (1) when the insured receives emergency care from an out-of-network 26 provider, see 42 U.S.C. § 300gg–131; (2) when the insured receives non-emergency 27 medical services at an in-network facility but the services themselves are provided by an 28 out of network provider, see id. § 300gg–132; and (3) when the insured is transported by 1 an out-of-network air-ambulance provider, see id. § 300gg–135.

In these three situations, 2 the NSA caps the insured’s share of liability to out-of-network providers at an amount 3 comparable to what the insured would have owed had she received care from an in-network 4 provider. This is called the qualifying payment amount (“QPA”). See 42 U.S.C. § 300gg– 5 111(a)(3)(E)(i) (setting rates to determine liability for both the patient and the insurer, 6 otherwise called the qualifying payment amount).

7 The QPA is important for the insured, the insurer, and the provider. The insured 8 would be billed as if the out-of-network provider were in network, meaning that the insured 9 would not have to cover any costs greater than the QPA. Id. § 300gg-111(a)(1)(C)(ii)–(iii), 10 (3)(H)(ii), (b)(1)(A)–(B). This process is the same for air-ambulance providers. See 42 11 U.S.C. § 300gg-112.

The insured does not have to pay more than the QPA to an out-of- 12 network air ambulance provider. Id. If an out-of-network service provider is unhappy with 13 the QPA they have received from the insurer, the statute provides a means for them to seek 14 more compensation.

After a provider submits a bill for an out-of-network service, the 15 insurer has thirty days to respond by either issuing some type of payment, or by providing 16 a notice denying payment. Whichever response may follow, if the provider does not like 17 the insurer’s response, the provider can then open up an initial period of negotiation for 18 thirty days. § 300gg-111(a)(1)(C)(iv), (b)(1)(C), (c)(1)(A).

If contentions remain between 19 the provider and the insurer, both parties can then seek independent dispute resolution 20 (“IDR”) where an arbitrator will determine how much the insurer must pay the provider. 21 § 300gg-111(c)(1)(B), (4)(A).

The arbitrator’s decision is binding on both parties and not 22 subject to judicial review except under the circumstances described in the Federal 23 Arbitration Act. §§ 300gg-111(c)(5)(E)(i), 300gg-112(b)(5)(D). The final amount is offset 24 by the patient’s cost-sharing obligation and any amounts already paid by the insurer. 25 § 300gg-111(a)(1)(C)(iv)(II), (b)(1)(D).

26 The present situation falls squarely within the protections against balance billing 27 codified in the NSA. The SAC alleges that Duarte is insured by Kaiser and that Air 28 1 Ambulance² provided Duarte out-of-network services when Duarte suddenly fell ill in El 2 Salvador and needed to be helicoptered out of the country. Kaiser, as Duarte’s insurer, 3 paid Air Ambulance \$94,852.69 for the cost of transporting Duarte out of El Salvador and 4 to safety.

Unhappy with the amount paid by Kaiser, Martinez now seeks to obtain the 5 balance from Duarte and her husband. The NSA was passed to prevent exactly this type 6 of situation. 7 The contract Martinez references³ has a clause called “Guarantee of Payment & 8 Assignment of Benefits.” (Doc. 38 at 11, Ex. 3).

The clause states the following: “I agree 9 to pay AIR AMBULANCE 911’s charges for the Services, including but not limited to any 10 co-payments, deductibles or other expenses not covered by insurance.” (Id. (emphasis 11 added)). But that is exactly the type of conduct the NSA prohibits. See 42 U.S.C. § 300gg- 12 112 (stating that the insured does not have to pay more than the QPA for an out-of-network 13 air ambulance provider).

Making the insured pay the difference between what is owed and 14 what insurance has paid is balance billing and prohibited by statutory mandate under the 15 NSA. (Id.) “[A] contract which violates or contravenes a federal or state constitution, 16 statute, or regulation is illegal, invalid, unenforceable, and void.” 17A Am. Jur. 2d 17 Contracts § 229 (2008) (footnotes omitted).

Therefore, setting aside the preemption issue 18 raised by the Duartes,⁴ the Court finds that Martinez has not stated enough facts or a legally 19 cognizable theory for the Court to find that he has pleaded a viable breach of contract action 20 2 The SAC alleges that Martinez is the assignee of Air Ambulances’ rights. 21 3 The contract was signed by Duarte’s husband, not Duarte herself (presumably because Duarte was incapacitated).

Any issues surrounding this discrepancy are not fully briefed 22 by the parties but need not be addressed as the Martinez seeks to enforce the agreement solely to collect on the unpaid balance, which is prohibited by the NSA. 23 4 Congress has only entirely preempted state law in three instances: (1) Section 301 of the 24 Labor Management Relations Act; (2) Section 502(a)(1)(B) of

the Employee Retirement Income Security Act of 1974; and (3) Sections 85 and 86 of the National Bank Act.

Sullivan 25 v. American Airlines, 424 F.3d 267 (2d Cir.2005) (interpreting the Supreme Court of the United States decision in Beneficial National Bank v. Anderson, 539 U.S. 1, (2003)); see 26 also Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (adopting this reasoning and holding the same).

The Court will not task itself to say that all state law 27 breach of contracts claims are forever preempted by the NSA at this time. 28 1 against Duarte and her husband. See Smilecare Dental Group v. Delta Dental Plan, 88 2 F.3d 780, 783 (9th Cir. 1996) (stating that the Court may dismiss a claim when it is not 3 based on a cognizable legal theory). Additionally, because the breach of contract claim is 4 not legally cognizable, the Court finds that leave to amend as to the breach of contract 5 would be futile.

See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996) 6 (stating that futility is good reason to deny leave to amend). 7 2. Martinez’s Request for Appointment of Arbitrator under the NSA 8 Martinez’s SAC asked the Court to compel the parties to arbitration and appoint an 9 arbitrator to resolve this dispute. (Doc. 38 ¶¶ 27–29). Duarte points out that the NSA does 10 not allow for such relief.

(Doc. 39 at 9). The Court is inclined to agree. 11 The NSA provides a mechanism and an established procedure for arbitrating such 12 claims. See 42 U.S.C. § 300gg-112. Martinez acknowledges the existence of “federally 13 mandated Independent Dispute Resolution (IDR) process under the No Surprises Act 14 (NSA)” and ask “that the Court acknowledge the applicability of the NSA and compel the 15 parties to participate in the IDR process.” (Doc.

38 at ¶¶ 3, 29). He says “Kaiser failed to 16 respond and would not participate in the NSA’s IDR process.” (Id. at ¶ 8). Notably, 17 however, the statute does not require Duarte, the insured, to participate in the IDR process. 18 See 42 U.S.C. § 300gg-112 (stating who may participate in the IDR process, leaving out 19 the insured). Indeed, Martinez seems to acknowledge as much.

See e.g., Doc. 38 ¶ 27 20 (“The NSA establishes a mandatory Independent Dispute Resolution process for payment 21 disputes between out-of-network providers and insurers.”) (emphasis added); (Doc. 38 22 at ¶ 28) (“The QPA (Qualifying Payment Amount) mechanism is central to determining 23 fair payment for ALL parties.”). Duarte is neither an out-of-network provider or insurer.

24 Under these circumstances, the Court finds that Martinez has not stated a legally cognizable 25 claim to force either Duarte and her husband to engage in the IDR process with him. See 26 Smilecare Dental Group, 88 F.3d at 783.

Because this claim, like the breach of contract 27 claim against Duarte, is also not legally cognizable, the Court finds that leave to amend 28 should not be granted because it would be futile. *Carrico v. City and Cty. of San Francisco*, 1 656 F.3d 1002, 1008 (9th Cir. 2011). 2 B. Kaiser's Motion to Dismiss 3 Kaiser argues that the Court has neither general nor specific personal jurisdiction 4 over Kaiser.

(Doc. 49 at 5–6). Martinez says that Kaiser is subject to both. (Doc. 51 at 3). 5 The Court agreed with Kaiser. 6 A plaintiff always has the burden to establish that proper personal jurisdiction exists 7 when opposing a motion to dismiss. *Marvix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 8 1218, 1223 (9th Cir. 2011).

However, “the plaintiff need only make a prima facie showing 9 of jurisdictional facts.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th 10 Cir. 2004). “Where... there is no applicable federal statute governing personal jurisdiction, 11 the district court applies the law of the state in which the district court sits.” *Id.* (referencing 12 Fed.

R. Civ. P. 4(k)(1)(A)). 13 Arizona's long arm statute is co-extensive with federal due process requirements; 14 therefore, a personal jurisdictional analysis under Arizona law is the same as a federal 15 analysis. *Atkins v. Calypso Systems, Inc.*, 2015 WL 5856881 at *2 (D. Ariz. Oct. 8, 2015). 16 Under the Due Process Clause, “[a]lthough a nonresident's physical presence within the 17 territorial jurisdiction of the court is not required, the nonresident generally must have 18 certain minimum contacts... such that the maintenance of the suit does not offend the 19 traditional notions of fair play and substantial justice.” *Walden v. Fiore*, 571 U.S. 277, 283 20 (2014); see also *Ford Motor Co. v. Mont.*

Eighth Jud. Dist. Ct., 592 U.S. 351, 358 (2021). 21 A court may assert general or specific personal jurisdiction over a nonresident defendant. 22 *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). 23 1. General Personal Jurisdiction 24 To provide support that it is not subject to the Court's general jurisdiction, Kaiser 25 states that it is incorporated and has its principal place of business in California.

(Doc. 49 26 at 5). Martinez argues that Kaiser is registered to do business in Arizona, thereby 27 supporting a finding that Kaiser is subject to general personal jurisdiction. (Doc. 51 at 3). 28 General jurisdiction exists when the nonresident defendant maintains “continuous 1 and systematic” contacts with the forum state, so much as to render the nonresident “at 2 home.” *Id.* at 127 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 3 915, 919 (2011)).

The Ninth Circuit will evaluate a defendant's minimum contacts based 4 on the contacts' “[l]ongevity, continuity, volume, economic impact, physical presence, and 5 integration into the [forum] state's regulatory or economic markets.” *Gonzalez v. United 6 Seating and Mobility LLC*,

2024 WL 3226550, at *2 (D. Ariz. Jun. 28, 2024) (citing *Mavrix 7 Photo, Inc.*, 647 F.3d 1218, 1224 (9th Cir.

2011)). 8 The Court finds that it does not have general personal jurisdiction over Kaiser. 9 Kaiser is incorporated under the laws of California. (Doc. 49 at 5–6). Likewise, its 10 principal place of business is in California where it is headquartered and from where its 11 officers and directors manage its operations. (Id. at 5). According to Kaiser, it does not 12 “advertise, deliver, manage, or operate health plans in Arizona.” (Doc.

49 at 7). 13 Additionally, Kaiser “does not own property, lease property, have an office, maintain 14 records, or advertise or solicit business in Arizona.” (Id.) Martinez meanwhile maintains 15 that Kaiser is registered to do business in Arizona. (Doc. 51 at 3). But that alone cannot 16 confer the Court with general personal jurisdiction over Kaiser. See *Pac.*

Sci. Energetic 17 Materials Co. (Arizona) LLC v. Ensign-Bickford Aerospace & Def. Co., 2011 WL 18 4434039, at *5, fn. 4 (D. Ariz. Sept. 23, 2011) (stating that merely registering to do business 19 in Arizona does not confer general jurisdiction based on this Arizona case: *Armstrong v. 20 Aramco Services Co.*, 746 P.2d 917, 924 (Ariz. Ct. App. 1987); see also *McCard v. Circor 21 Int’l, Inc.*, 2021 WL 1212745, at *4 (E.D.

Cal. Mar. 31, 2021) (same); see also *Chatwal 22 Hotels & Resorts LLC v. Dollywood Co.*, 90 F. Supp. 3d 97, 105 (S.D.N.Y. 2015) (same). 23 Therefore, the Court finds that it does not have general personal jurisdiction over Kaiser. 24 2. Specific Personal Jurisdiction 25 Kaiser also argues that the Court does not have specific personal jurisdiction over 26 it.

Kaiser argues that it did not purposefully avail itself of the privilege of doing business 27 in Arizona, nor does the conduct alleged by Martinez arise out of or relate to the forum in 28 any way. (Doc. 49 at 6–8).

To counter, Martinez contends that by paying Duarte’s 1 insurance claim to Air Ambulance, an Arizona corporation, Kaiser has subjected itself to 2 specific personal jurisdiction. (Doc. 51 at 2). 3 Specific jurisdiction may be asserted against a nonresident defendant if the 4 controversy arises from or is related to the defendant’s specific contact with the forum 5 state.

Helicopteros Nacionales de Columbia v. Hall, 466 U.S. 408, 414 (1984). The Ninth 6 Circuit follows a three-prong test for analyzing whether specific jurisdiction has been 7 established: 8 (1) the non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which 9 he purposefully avails himself of the privilege of conducting activities in the forum, 10 thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to the defendant’s forum- 11 related activities; and 12 (3) the exercise of jurisdiction must comport with fair play or substantial justice, i.e. it must be reasonable.

13 Schwarzenegger, 374 F.3d at 802. A plaintiff bears the burden of satisfying the first two 14 prongs of the test. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). If the 15 plaintiff satisfies the first two prongs, the burden then shifts to the defendant to “present a 16 compelling case that the exercise of jurisdiction would not be reasonable.” *Id.* at 476–78.

17 The “purposefully availment” requirement in the first prong ensures that a defendant will 18 not be hauled into a jurisdiction solely because of “‘random,’ ‘fortuitous,’ or ‘attenuated’ 19 contacts.” *Id.* at 475. 20 At the Motion to Dismiss stage, the burden is on Martinez, at least on the first two 21 prongs to establish specific personal jurisdiction. *Burger King Corp.*, 471 U.S. at 475.

22 Martinez argues that by paying a claim to Air Ambulance, an Arizona company, Kaiser 23 purposefully directed its activities towards Arizona. (Doc. 51 at 2). Payment of the claim, 24 Martinez alleges, is conduct that arises out of or gives rise to Kaiser’s forum-related 25 activities. (Id.)

The Court disagrees. The conduct Martinez references occurred entirely 26 in El Salvador (where Duarte suffered her medical emergency) between Air Ambulance 27 and two California residents (Duarte and her husband). And although Martinez received 28 payment from Kaiser, a California corporation, that is not sufficient for the Court to find 1 that it purposefully directed its acts to Arizona.

See *Thuney v. Lawyer’s Title of Arizona*, 2 2019 WL 467697, at *6 (D. Ariz. Feb. 6, 2019), judgment entered sub nom. *Thuney v. 3 Lawyer’s Title of Arizona Inc.*, 2019 WL 13197981 (D. Ariz. Apr. 5, 2019) (stating that 4 money transfers are normally not a sufficient basis for a federal court to exercise specific 5 jurisdiction, especially when the transfer is done at the plaintiff’s request).

Therefore, the 6 Court finds that it lacks specific jurisdiction over Kaiser. 7 Leave to amend may be denied when “the court determines that the allegation of 8 other facts consistent with the challenged pleading could not possibly cure the deficiency.” 9 *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). 10 Here, there are no facts consistent with the alleged unpaid balance that would give the 11 Court jurisdiction over Kaiser.

Thus, any amendment to Martinez’s SAC would be futile 12 and amendment is therefore properly denied. *Carrico*, 656 F.3d at 1008. 13 IV. Count Two: Violation of Duty 14 In his SAC, Martinez alleges Kaiser violated “Arizona fiduciary principles and the 15 No Surprises Act, 42 U.S.C. § 300gg–111(c)” when it failed “to act in good faith and deal 16 fairly when processing claims” and “failed to timely respond to billing and failed to initiate 17 or participate in the federally required IDR process.” (Doc.

38 at ¶¶ 23–26). Because the 18 Court lacks jurisdiction over Kaiser, this claim will also be dismissed. 19 V. Attorney Fees 20 Duarte requests her attorneys’ fees under A.R.S § 12-341.01(A)

in her Motion to Dismiss. (Doc. 39 at 10).

The statute specifically provides that “[i]n any contested action arising out of a contract, express or implied, the court may award the successful party reasonable fees.” Ariz. Rev. Stat. § 12–341.01(A). “The proper inquiry for determining whether a claim ‘arise[s] out of a contract’ is whether the claim could not exist ‘but for’ the breach or avoidance of contract.

Harris v. Maricopa Cnty. Superior Ct., 631 F.3d 963, 26 974 (9th Cir. 2011) (internal quotation marks omitted). The current action arose out of a contract dispute. Martinez brought this case because of a contract signed between Air Ambulance and Duarte’s husband and Martinez alleged a breach of contract claim. 1 || (Doc. 38 at 4). Martinez’s only response to Duarte’s request for fees is that he believes 2|| they are premature at this stage.

(Doc. 41 at 5). Though determining reasonableness of 3 || the fees may be premature, determining Duarte’s entitlement to fees is not. The Court finds that Duarte is entitled to attorneys fees under A.R.S. § 12—341.01(A). 5 Accordingly, 6 IT IS ORDERED that Defendant Beatrice Lynn Duarte’s Motion to Dismiss (Doc. 39) for failure to state a claim is granted and Plaintiff Bert Martinez’s Second 8 || Amended Complaint as to Defendant Beatrice Lynn Duarte is dismissed, with prejudice.

9 IT IS FURTHER ORDERED that Defendant Kaiser Foundation Health Plan ☐☐ Incorporated’s Motion to Dismiss (Doc. 49) for lack of jurisdiction is granted and Plaintiff 11 |} Bert Martinez’s Second Amended Complaint against Defendant Kaiser Foundation Health 12 || Plan Incorporated is dismissed, with prejudice. 13 IT IS FURTHER ORDERED the Clerk of Court is directed to enter judgment accordingly and close this matter.

15 IT IS FINALLY ORDERED that Beatrice Lynn Duarte may file a motion for costs and attorneys’ fees in accordance with Local Rule of Civil Procedure 54.2 within || fourteen (14) days of the entry of this Order. 18 Dated this 10th day of February, 2026. 19 20 oC.. oo Le 21 norable’ Diang4. Huntetewa United States District Fudge 23 24 25 26 27 28 -ll-