

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

John Attenello MD v. Aetna Life Insurance Company

Attenello v. Aetna · No. 2:25-cv-04869-WLH-E · Decided September 16, 2025

SUMMARY

The United States District Court for the Central District of California denied Plaintiff John Attenello, MD's motion to remand and granted Aetna Life Insurance Company's motion to dismiss. The court held that removal was proper under the federal officer removal statute because Aetna operates as a Medicare Advantage Organization acting under the Centers for Medicare and Medicaid Services. The court dismissed the action without prejudice and with leave to amend, concluding that Plaintiff's reimbursement claims were subject to Medicare Act administrative-exhaustion requirements and were inadequately pleaded.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF
CALIFORNIA 10 JOHN ATTENELLO MD, Case No. 2:25-cv-04869-WLH-E 11 Plaintiff,
ORDER RE PLAINTIFF'S MOTION 12 TO REMAND AND DEFENDANT 13 v. A [1 E 6, T 1
N 5 A] 'S MOTION TO DISMISS 14 AETNA LIFE INSURANCE COMPANY, 15 16
Defendant. 17 18 19 The Court is in receipt of Plaintiff's Motion to Remand (the "MTR") (MTR,
20 Docket No. 16), as well as Defendant's Motion to Dismiss (the "MTD").

(MTD, 21 Docket No. 15). Prior to oral argument, which was set for September 12, 2025, all 22
parties submitted on the Court's tentative order, which is now adopted as a final order. 23 For the
following reasons, the Court DENIES the Motion to Remand and GRANTS 24 the Motion to
Dismiss, dismissing the action in its entirety without prejudice and with 25 leave to amend.

26 // 27 // 28 // 1 I. BACKGROUND 2 Plaintiff John Attenello, MD ("Plaintiff" or "Plaintiff
Attenello") originally 3 filed the present action against Defendant Aetna Life Insurance
Company1 4 ("Defendant" or "Defendant Aetna") in Small Claims Court in the Superior Court of
5 Los Angeles County on April 25, 2025. (Notice of Removal, Docket No. 1-1, Ex. A 6 (the
"Claim") at 1).

Defendant was served with the Claim on April 29, 2025. (Notice 7 of Removal, Docket No. 1-2,
Ex. B ("Service Transmittal") at 1). The Claim alleges 8 Defendant owes Plaintiff \$2,5002 for
"underpaid emergent/post-stabilization emergent 9 care for patient based on state common law
implied in law, implied and verbal 10 contract, unjust enrichment and detrimental reliance."
(Claim at 1).

As support for 11 his Claim, Plaintiff attached relevant the treatment charge breakdown, appointment 12 notes for the patient at issue (the “Patient”), and an invoice of Defendant Aetna’s 13 payment for the treatment. (Id. at 7-14).

The invoice denotes that the payments were 14 “[a]djusted based on the Medicare fee schedule.” (Id. at 8). Plaintiff rendered the 15 care of Plaintiff on February 10 and 13, 2025, which included treatment of lower back 16 pain. (Id. at 9-14). 17 Defendant timely removed the action to this Court on May 29, 2025, alleging 18 federal question jurisdiction as it “involves a federal question under the Medicare Act 19 and relates to benefits and requirements of that Act.” (Docket No. 1 at 1-2).

Plaintiff 20 filed the instant Motion to Remand (“MTR”) on August 4, 2025, for lack of subject 21 matter jurisdiction, along with a Request for Judicial Notice in Support of Motion to 22 Remand. (MTR, Docket No 16 at 2; Pltf. RJN, Docket No 17).

The Motion to 23 Remand is fully briefed. Defendant filed a Motion to Dismiss for Lack of Jurisdiction 24 25 1 Defendant was erroneously sued as “Aetna Health of California Inc.” This Order’s reference to Defendant refers to the correct corporate entity as reflected on the federal 26 docket. 27 2 Plaintiff calculated this amount as follows: “Amount billed minus amount allowed plus 15% interest per annum as per H&S Code 1371.35, 28 CCR § 1300.71.4.” 28 (Claim at 1).

1 on August 6, 2025, and an accompanying Request for Judicial Notice. (MTD, Docket 2 No. 15; Def. RJN, Docket No. 15-9). In its Motion to Dismiss, Defendant proffered 3 evidence that (1) Plaintiff participates in Medicare per the Medicare provider 4 directory, (2) the patient at issue was insured by Medicare, (3) Aetna is a Medicare 5 Advantage Organization (“MAO”) and (4) Plaintiff submitted a reimbursement 6 request through a Center for Medicare and Medicaid approved avenue known as Form 7 1500.

(See RJN, Ex. 1 (“Medicare Provider Profile”); Felder Decl. ¶ 5; Supplemental 8 Declaration of Marilyn Felder in Support of MTD (“Supp. Felder Decl.”) ¶¶ 3-5). In 9 communications with Defendant’s counsel, Plaintiff conceded that he is a “Medicare 10 participating provider” and that he “accept[s] assignment for Medicare-covered 11 services, including those where the patient has authorized payment to the provider.” 12 (MTD, Declaration of Matthew G. Kleiner (“Kleiner Decl.”) ¶ 4).

13 Plaintiff filed an opposition to Defendant’s Motion to Dismiss styled as a 14 Response to Defendant’s Motion to Dismiss as Premature. (Opp’n, Docket No. 19). 15 With Defendant’s Reply in Support of Motion to Dismiss (see Docket No. 25), the 16 Motion to Dismiss is fully briefed. 17 II. DISCUSSION 18 Before the Court are Defendant Aetna’s MTD (see MTD) and Plaintiff’s MTR 19 (see MTR).

The Court begins by assessing Plaintiff's MTR before turning to 20 Defendants' MTD3. For the reasons explained herein, the Court DENIES Plaintiff's 21 MTR and GRANTS Defendant Aetna's MTD, dismissing the action in its entirety 22 without prejudice. 23 // 24 // 25 26 3 Plaintiff, in opposition to Defendant's Motion to Dismiss, characterized the Motion 27 as premature, arguing the "Court must resolve the threshold jurisdictional question before evaluating the merits of Defendant's Motion to Dismiss." (Opp'n at 3).

The 28 Court does precisely that in this Order. 1 A. Requests for Judicial Notice 2 1. Plaintiff's Request 3 Plaintiff seeks judicial notice of (1) Plaintiff's original SC-100 Claim Form 4 filed in Los Angeles Superior Court, (2) the remand order in Advanced Orthopedic 5 Center, Inc. v. UnitedHealthcare Insurance Co., Case No. 2:24-cv-00094-MWF 6 (MAAx) (C.D.

Cal. Feb. 6, 2024), and (3) the U.S. Supreme Court decision in Royal 7 Canin U.S.A., Inc. v. Wulschleger. (Pltf. RJN at 2). 8 First, Plaintiff's SC-100 Claim Form is already part of the record in this case 9 (see generally Claim) and judicial notice is therefore unnecessary. See Gonzalez v. 10 Cnty. of San Bernardino, No. EDCV201363JGBSPX, 2021 WL 1570841, at *1 n.1 11 (C.D.

Cal. Mar. 15, 2021). Second, U.S. Supreme Court decisions "are not an 12 appropriate subject for judicial notice because Federal Rule of Evidence 201 'governs 13 judicial notice of an adjudicative fact only.'" Johnson v. Caliber Home Loans, Inc., 14 No. CV1901387PAGJSX, 2021 WL 4814986, at *2 (C.D. Cal. Feb. 3, 2021) (quoting 15 Gonsalez v. Employment Dev. Dep't, 2019 WL 5107099, at *8 (C.D.

Cal. June 18, 16 2019)). The same goes for district court decisions. See United States v. Pac. Health 17 Corp., No. 12-960, 2014 WL 12859893, at *3 (C.D. Cal. Nov. 5, 2014) (collecting 18 authority to show it is unnecessary to take judicial notice of publicly available court 19 decisions). 20 Accordingly, Plaintiff's Request is DENIED as moot. 21 2. Defendant's Request 22 Defendant seeks judicial notice of (1) Plaintiff's Medicare Provider 23 Profile, as of August 5, 2025, (2) The National Uniform Claim Committee Guidelines, 24 as of August 5, 2025, and (3) List of All Licensed Plans, as of August 5, 2025, 25 obtained from the California Department of Managed Health Care's website.

(Def. 26 RJN at 2-3). Because these are all matters of public record and "not subject to 27 reasonable dispute," see Thomas v Moeller, 741 F. App'x 420, 421 (9th Cir 2018), the 28 Court GRANTS Defendant's Request and judicially notices the aforementioned 1 documents for purposes of this Order. See also Paralyzed Veterans of Am. v. 2 McPherson, No. C 06-4670, 2008 WL 4183981, *5 (N.D.

Cal. Sept. 9, 2008) 3 ("[I]nformation on government agency websites... have often been treated as proper 4 subjects for judicial notice."). 5 Accordingly, the Court GRANTS Defendant's Request as to all three 6 documents. 7 B. The Court DENIES the Motion to Remand 8 1. Legal Standard 9

Pursuant to 28 U.S.C. § 1441(a), a defendant has the right to remove a matter to federal court where the district court would have original jurisdiction.

Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). District courts have “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331 (emphasis added). A district court determines “whether removal is proper by first determining whether a federal question exists on the face of the plaintiff’s well-pleaded complaint.” *Damon v. Korn/Ferry Intern.*, No. CV 15-162640-R, 2015 WL 2452809, at *2 (C.D.

Cal. May 19, 2015) (citing *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)). A case generally has a federal question “when federal law creates the cause of action asserted.” *Gunn v. Minton*, 568 U.S. 251, 257 (2013). There is an exception to this rule, however, “‘when a federal statute wholly displaces the state-law cause of action through complete preemption.’” *Damon*, 2015 WL 2452809, at *2 (quoting *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 8 (2003)).

To that end, “[w]hen the federal statute completely preempts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality, based on federal law.” *Id.* (quoting *Beneficial Nat’l Bank*, 539 U.S. at 8). The federal officer removal statute (“Section 1442(a)”) also authorizes “removal of a civil action brought against any person ‘acting under’ an officer of the United States ‘for or relating to any act under color of such office.’” *Leite v. Crane Co.*, 749 F.3d 1117, 1120 (9th Cir.

2014) (quoting 28 U.S.C. § 1442(a)(1)). To invoke this statute, the removing defendant must show that “(1) it is a ‘person’ within the meaning of the statute[;] (2) a causal nexus exists between a plaintiff’s claims and the actions [the defendant] took pursuant to a federal officer’s direction[;] and (3) it has a ‘colorable’ federal defense to [a] plaintiff’s claims.” *Id.* 6 2.

Analysis Plaintiff asserts three primary arguments as to why this action should be remanded to state court. Plaintiff argues that (1) the Complaint raises only state law and common law claims, (2) preemption prevents his claims from arising under federal law, and (3) Defendant cannot establish federal officer jurisdiction under Section 1442(a). (MTR at 5-6; Reply in Support of Remand (“Reply ISO Remand”), Docket No. 23 at 9).

Because the Court deems removal proper under the officer removal statute (Section 1442(a)), the Court only briefly addresses the preemption arguments raised by Plaintiff. For the reasons explained herein, the Court disagrees with Plaintiff and DENIES the MTR.4 a. Removal Was Proper Under Section 1442(a) Under Section 1442(a), a civil action may be removed when brought against any person “acting under” an officer or agency of the United States “for or relating to any act under color of such office.” 42 U.S.C. § 1442(a).

The Supreme Court has emphasized that the words “acting under” within the statute “are broad” and that the statute should be “liberally construed.” *Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 147 (2007). Plaintiff also argues in his Motion that his “claims do not implicate any federal administrative review process.” (MTR at 7). That administrative exhaustion argument is inapplicable to a motion to remand, so the Court declines to address it as part of its remand analysis.

However, the exhaustion requirement bears on Defendant’s Motion to Dismiss, and the Court will address it in subsequent parts of this Order. A defendant may remove an action pursuant to Section 1442(a) if it can show “(1) it is a ‘person’ within the meaning of the statute, (2) a causal nexus exists between [the] plaintiffs’ claims and the actions [the defendant] took pursuant to a federal officer’s direction, and (3) it has a ‘colorable’ federal defense to [the] plaintiffs’ claims.” *Leite v. Crane Co.*, 749 F.3d 1117, 1120 (9th Cir.

2014) (citing *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006)). A corporation is “acting under” a federal officer or agency when it is involved in “an effort to assist, or to help carry out, the federal superior’s duties or tasks of the federal superior.” *Watson*, 551 U.S. at 152 (citing *Davis v. South Carolina*, 107 U.S. 597, 600 (1883)).

Private entities meet this standard when the relationship is “unusually close,” such as when the private entity “perform[s] a job that, in the absence of a contract... the Government itself would have had to perform[.]” *Id.* at 153, 147. Medicare is a federal health insurance program providing coverage to individuals over 65 and certain individuals with disabilities.

42 U.S.C. §§ 1395 et seq. Congress created the Medicare Advantage Program (“MA Program”) in Part C of the Medicare Act (“Part C”), which establishes private insurance plans as alternatives to original Medicare. *Id.* § 1395w-21-28. Medicare Advantage Organizations (MAOs) are private organizations that operate under contract with the 5 Plaintiff did not contest this element in the MTR or his Reply to Defendant’s opposing briefs.

This element is satisfied because corporations, such as Defendants, are “persons” for purposes of the statute. See 1 U.S.C. § 1 (defining the word person to include corporations). Plaintiff similarly declined to raise arguments with respect to the second and third elements in his MTR, but did offer rebuttal in his MTR Reply. Raising new arguments in reply is improper as it deprives the opposing party with adequate opportunity to respond.

See *United States ex rel. Giles v. Sardie*, 191 F. Supp. 2d 1117, 1127 (C.D. Cal. 2000) (“It is improper for a moving party to introduce new facts or different legal arguments in the reply brief than those presented in the moving papers.”); *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) (“The district court need not consider arguments raised for the first time in a reply brief.”).

The Court accordingly declines to address these arguments. Even if it did, they would not 28 change the outcome of the federal officer removal analysis. 1 Center for Medicare and Medicaid Services (“CMS”), a federal agency, to provide 2 federal subsidized health insurance under Part C. *Inchauspe v. Scan Health Plan*, No. 3 2:17-cv-06011-CAS, 2018 WL 566790, at *3 (C.D.

Cal. Jan. 23, 2018). “Medicare 4 coverage determinations by MAOs are made pursuant to criteria established by the 5 CMS.” *Id.* MAOs that administer benefits under Part C of Medicare “fall within the 6 category of highly regulated private contractors described in *Watson* and thus are 7 ‘acting under’ CMS in a manner that entitles them to removal under [Section] 8 1442(a).” *Id.* Aetna is a registered MAO and contracts with the Centers for Medicare 9 and Medicaid Services to provide Medicare Advantage plans and benefits.

10 (Declaration of Marilyn Felder (“Felder Decl.”) in Support of Defendant’s Notice of 11 Removal, Docket No. 1-5 ¶¶ 4-5). 12 “By administering Medicare benefits, [MAOs] help[] CMS ‘fulfill [a] 13 basic governmental task.’” *Yeomans v. Blue Shield of Cal.*, 712 F.Supp.3d 1336, 1342 14 (C.D. Cal. 2024) (quoting *Watson*, 551 U.S. at 153). Absent the support of MAOs 15 such as Defendant, “‘CMS would be obligated to administer Medicare benefits 16 through Parts A and B to those individuals who currently elect Part C coverage.’” *Id.* 17 (quoting *Body & Mind Acupuncture v. Humana Health Plan, Inc.*, No. 1:16cv211, 18 2017 WL 653270, at *5 (N.D.

W. Va. Feb. 16, 2017)). To that end, the activities of 19 MAOs, such as Defendant’s, “‘involve an effort to assist, or to help carry out, the 20 duties or tasks of’ CMS in a manner much more significant than ‘simply complying 21 with the law.’” *Id.* (quoting *Watson*, 551 U.S. at 153). Not only that, but MAOs’ 22 “benefits determinations and quality of care are subject to detailed regulations and 23 administrative review by CMS, showing that their relationship is ‘an unusually close 24 one involving detailed regulation, monitoring, and supervision.’” *Id.* (quoting 25 *Watson*, 551 U.S. at 153).

In sum, the Court concludes that removal is proper 26 pursuant to Section 1442(a), where Defendant is an MAO “acting under” CMS. 27 b. Plaintiff’s Arguments Related to Whether This Dispute “Arises 28 Under” the Medicare Act Are Misguided and Unpersuasive 1 In his MTR, Plaintiff disputes that his claims “arise under” federal law for 2 purposes of federal question jurisdiction by asserting the inapplicability of the 3 Medicare Advantage preemption clause (42 U.S. Code § 1395w-26(b)(3)) and that 4 “no federal issue appears on the face of the complaint.

(MTR at 5-7). Although the 5 Court finds removal proper under the federal officer removal statute, the Court briefly 6 addresses these arguments. 7 Plaintiff relies primarily on the California Supreme Court’s decision in 8 *Quishenberry v. UnitedHealthcare, Inc.*, 14 Cal.5th 1057 (2023) for the proposition 9 that the “Medicare Advantage preemption clause... applies only to state laws that 10 ‘duplicate, supplement, or supplant’ federal standards.” (MTR at 6).

Plaintiff 11 radically distorts Quishenberry by misattributing a phrase from an amicus curiae brief 12 to the court and misrepresenting its actual holding⁷: that Medicare Part C’s preemption 13 provisions expressly preempted Quishenberry’s state law and common law claims. 14 Quishenberry, 14 Cal.5th at 1074.

Moreover, this argument falls flat in light of Ninth 15 Circuit precedent holding the same. *Aylward v. SelectHealth, Inc.*, 35 F.4th 673, 681 16 (9th Cir. 2022).) (concluding that Medicare “Part C’s preemption provision preempts 17 a state law cause of action that parallels, enforces, or supplements express standards 18 established under Part C and its implementing regulation.”).

Because the 19 reimbursement standards under Medicare Part C “expressly prescribe the relevant 20 duties of MA plans with respect to when expedited treatment is required and what 21 timeframes apply, those standards ‘supersede’ any state law duty that would impose 22 obligations on MA plans on that same subject.” *Id.* 23 As for the presence of a federal issue on the face of the complaint, the Court 24 need look no further than the invoice attached to Plaintiff’s Claim that specifically 25 denotes that the payments were “[a]djusted based on the Medicare fee schedule.” 26 27 28 7 This would be subject to sanctions if done by an attorney.

1 (Claim at 8). To the extent Plaintiff asserts this is not a dispute about Medicare 2 reimbursement, the Court finds that position quite unconvincing. 3 C. The Court GRANTS Defendant Aetna’s Motion to Dismiss 4 1. Legal Standard 5 a. Rule 12(b)(1) 6 As courts of limited jurisdiction, federal courts retain subject matter jurisdiction 7 only over matters “authorized by Constitution and statute.” *Kokkonen v. Guardian 8 Life Ins.*

Co. of Am., 511 U.S. 375, 377 (1994). Courts have an “independent 9 obligation to determine whether subject-matter jurisdiction exists, even in the absence 10 of a challenge from any party.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). 11 Rule 12 authorizes parties to assert a lack of subject matter jurisdiction as a defense 12 via motion to dismiss. See *Fed.*

R. Civ. P. 12(b)(1). 13 On a Rule 12(b)(1) motion, “the plaintiff bears the burden of establishing 14 jurisdiction.” *SAI v. Smith*, No. 16-CV-01024-JST, 2018 WL 534305, at *3 (N.D. 15 Cal. Jan. 24, 2018) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 16 377 (1994)). When the defendant mounts a factual attack by submitting affidavits and 17 other evidence, the plaintiff must “present affidavits or any other evidence necessary 18 to satisfy its burden of establishing that the court, in fact, possesses subject matter 19 jurisdiction.” *Colwell v. Dep’t of Health & Hum.*

Servs., 558 F.3d 1112, 1121 (9th 20 Cir. 2009). Importantly, “[i]n resolving a factual attack on jurisdiction, the district 21 court may review evidence beyond the complaint without converting the motion to 22 dismiss into a motion for summary judgment.” *Safe Air for Everyone v. Meyer*, 373 23 F.3d 1035, 1039 (9th Cir. 2004) (citations omitted).

In evaluating the evidence, “[t]he 24 court need not presume the truthfulness of the plaintiff’s allegations.” *Id.* Factual 25 disputes, however, must be resolved in favor of the plaintiff. *Edison v. United States*, 26 822 F.3d 510, 517 (9th Cir. 2016) (citing *Dreier v. United States*, 106 F.3d 844, 847 27 (9th Cir.1996)). 28 1 b. Rule 12(b)(6) 2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state 3 a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 4 (2009) (quoting *Bell Atl.*

Corp. v. Twombly, 550 U.S. 544, 547 (2007)). The 5 complaint need not include detailed factual allegations but must provide more than a 6 “formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555. 7 Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure is appropriate 8 “only when [the complaint] fails to state a cognizable legal theory or fails to allege 9 sufficient factual support for its legal theories.” *Caltex Plastics, Inc. v. Lockheed* 10 *Martin Corp.*, 824 F.3d 1156, 1159 (9th Cir.

2016); see Fed. R. Civ. P. 12(b)(6). 11 “[The] court must ‘draw all reasonable inferences in favor of the nonmoving 12 party’” and take its non-conclusory allegations as true. *Boquist v. Courtney*, 32 F.4th 13 764, 773 (9th Cir. 2022) (quoting *Retail Prop. Tr. v. United Bhd. of Carpenters & 14 Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014)).

The court is not required, 15 however, “to accept as true a legal conclusion couched as a factual allegation.” 16 *Twombly*, 550 U.S. at 555 (“[A] plaintiff’s obligation to provide the ‘grounds’ of his 17 ‘entitle[ment] to relief’ requires more than labels and conclusions...”). 18 Pursuant to Fed. R. Civ. P. 15(a)(2), when a motion to dismiss is granted, courts 19 should “freely give leave [to amend] when justice so requires.” Fed.

R. Civ. P. 20 15(a)(2). “‘In the absence of any apparent or declared reason – such as undue delay, 21 bad faith or dilatory motive on the part of the movant,... undue prejudice to the 22 opposing party by virtue of allowance of the amendment, futility of amendment, etc.’” 23 leave should be granted in conformity with Rule 15(a)(2). *Hall v. City of Los Angeles*, 24 697 F.3d 1059, 1073 (2012) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

25 2. Analysis 26 Defendant Aetna asserts two primary arguments in support of its MTD, which 27 the Court addresses in turn. First, Defendant asserts that Plaintiff failed to exhaust his 28 administrative remedies as required by the Medicare Act, depriving this Court of 1 subject matter jurisdiction.

Second, Defendant seeks dismissal of all claims under 2 Rule 12(b)(6). 3 4 a. Claims Arising Under the Medicare Act Are Subject to 5 Dismissal for Failure to Exhaust Administrative Remedies 6 Federal judicial review under 42 U.S.C. § 405(g) is “‘the sole avenue for 7 judicial review’ for claims ‘arising under’ the Medicare Act[,]” which may only be 8 pursued following exhaustion of the administrative remedies.

Do Sung Uhm v. 9 Humana, Inc. (“Uhm”), 620 F.3d 1134, 1140 (9th Cir. 2010) (quoting *Heckler v. 10 Ringer*, 466 U.S. 602, 614-15 (1984)). A court “cannot exercise subject matter 11 jurisdiction” until such claims subject to this requirement are properly exhausted. *Id.* 12 at 1141; see also *Glob. Rescue Jets, LLC v. Kaiser Found. Health Plan, Inc.* (“Global 13 Rescue”), 30 F.4th 905, 911 (9th Cir.

2022) (emphasizing that the exhaustion 14 requirement applies to MA Program benefits under Part C, just as it does to benefits 15 under original Medicare). 16 Claims “arise under” the Medicare Act where either: (1) the Medicare Act is 17 “both the standing and the substantive basis for the presentation” of the claims; or 18 (2) the claims are “inextricably intertwined” with a claim for benefits.

Heckler, 466 19 U.S. at 614–15. Claims that are “[c]leverly concealed claims for benefits” are still 20 properly considered claims arising under the Medicare Act. *Uhm*, 620 F.3d at 1141 21 (quoting *Kaiser v. Blue Cross of Cal.* (“Kaiser”), 347 F.3d 1107, 1112 (9th Cir. 22 2003)). 23 Because Defendant lodges a factual attack on jurisdiction with supporting 24 evidence, the Court “may review that evidence [beyond the allegations in the 25 complaint] without converting the motion to dismiss into a motion for summary 26 judgment.” *Safe Air for Everyone*, 373 F.3d at 1039.

Turning to the claims here, the 27 Court accordingly finds the following facts undisputed for purposes of analyzing 28 subject matter jurisdiction: (1) Plaintiff participates in Medicare per the Medicare 1 provider directory, (2) Aetna is a MAO and (3) Plaintiff submitted a reimbursement 2 request through a Center for Medicare and Medicaid approved avenue. (See *RJN*, Ex. 3 1 (“Medicare Provider Profile”); *Felder Decl.* ¶ 5; *Supp. Felder Decl.* ¶¶ 4-5).

4 Plaintiff’s concession that he is a “Medicare participating provider” and that he 5 “accept[s] assignment for Medicare-covered services, including those where the 6 patient has authorized payment to the provider” is all the more telling. (See *MTD*, 7 Declaration of Matthew G. Kleiner (“Kleiner Decl.”) ¶ 4).

Moreover, Plaintiff 8 provided medical services to the patient—who was insured by a Medicare plan—for 9 which he then sought reimbursement from Defendant by submitting a Center for 10 Medicare and Medicaid Services Form 1500 to Defendant. (*Supp. Felder Decl.* ¶¶ 3- 11 4). All things considered, it is evident that Plaintiff, a Medicare provider, delivered 12 Medicare-reimbursable services to the patient at issue.

His discontent with his 13 subsequent reimbursement prompted the instant action, which the Court finds is 14 subject to the administrative exhaustion requirement under the Medicare Act. 15 The Ninth Circuit’s decision in *Global Rescue* is controlling here.

In that case, 16 the plaintiff was an out-of-network medical provider that alleged, among other causes 17 of action, (1) breach of contract as the assignee of the enrollees' right to receive 18 benefits; (2) breach of the implied covenant of good faith and fair dealing; and 19 (3) quantum meruit. 30 F.4th at 910.

The plaintiff contended that the MAO defendant 20 had paid only a "fraction" of the amounts billed and sued to recover the full amounts. 21 Id. Finding that the state law claims, in actuality, arose under the Medicare Act, the 22 district court dismissed the action for lack of subject matter jurisdiction, as the 23 plaintiff failed to exhaust its administrative remedies.

Id. On appeal, the plaintiff 24 argued both that it was not required to exhaust administrative remedies, and that any 25 exhaustion requirement should have been excused. Id. The Ninth Circuit disagreed, 26 upholding the dismissal. Id. The court emphasized that "the district court lacked 27 subject matter jurisdiction over [the plaintiff's] claims to recover benefits allegedly 28 1 owed under [the defendant's] plan[.]" where the plaintiff had failed to exhaust its 2 administrative remedies under Part C (Medicare Advantage).8 Id. at 915.

3 Plaintiff's main argument on this topic is that his claims "do not implicate any 4 federal administrative review process" because he "does not seek Medicare benefits, 5 does not assert a right to federal reimbursement, and does not dispute any federal 6 agency decision." (MTR at 7).

The Court disagrees. As established above, Plaintiff 7 sought Medicare reimbursement for services rendered to a Medicare enrollee from a 8 MAO, as demonstrated by the undisputed evidence proffered by Defendant. Any 9 argument to the contrary is wholly untethered to the record before the Court. 10 Accordingly, the Court agrees with Defendant that Plaintiff's claims—which 11 are governed by the Medicare Act—must be dismissed due to lack of subject matter 12 jurisdiction pursuant to Rule 12(b)(1), where there are no facts alleged regarding 13 administrative exhaustion.

To the extent that Plaintiff has exhausted administrative 14 remedies, these claims are DISMISSED without prejudice and with leave to amend. 15 b. Plaintiff Fails to State a Claim 16 Defendant Aetna also contends that Plaintiff fails to state a claim with respect to 17 his state-law causes of action.

For the purposes of efficiency and with an eye toward 18 an amended complaint being filed after administrative exhaustion, the Court now turns 19 to this basis for dismissal. The Court agrees with Defendant Aetna that Plaintiff has 20 failed to state a claim, as explained below, addressing each cause of action in turn. 21 22 23 8 The Court briefly notes that the administrative exhaustion requirement includes two jurisdictional prerequisites: (1) a "nonwaivable requirement that a claim for benefits 24 shall have been presented to the Secretary[;]" and (2) a "waivable

requirement that the administrative remedies prescribed by the Secretary be pursued fully by the 25 claimant.” Id. at 912-13 (quoting Heckler, 466 U.S. at 617).

The waivable requirement may only be excused if “three conditions are satisfied: (1) the plaintiff’s 26 claim is wholly collateral to a claim for Medicare benefits; (2) the plaintiff has made a 27 colorable showing of irreparable harm; and (3) exhaustion would be futile.” Id. at 919. Plaintiff has not alleged facts on either the nonwaivable or the waivable 28 requirement, nor has it alleged facts demonstrating that exhaustion is waivable here.

1 Pursuant to Rule 12(b)(6), all three claims are DISMISSED without prejudice and 2 with leave to amend. 3 i. Breach of Contract 4 To support a claim for a breach of contract, “a plaintiff must allege (1) the 5 existence of a contract; (2) that he has performed or that his nonperformance is 6 excused; (3) defendant’s breach of the contract; and (4) damages resulting from the 7 breach.” Greenwich Ins.

Co. v. Rodgers, 729 F.Supp.2d 1158, 1163 (C.D. Cal. 2010) 8 (citing Troyk v. Farmers Grp., Inc., 171 Cal.App.4th 1305, 1352 (2009)). “With 9 respect to this first requirement – the need to plead the contract – a plaintiff must, in 10 actions involving breach of a written contract, ‘allege the specific provisions in the 11 contract creating the obligation the defendant is said to have breached.’” In re 12 Anthem, Inc. Data Breach Litigation, 162 F.Supp.3d 953, 978 (N.D.

Cal. 2016) 13 (quoting Young v. Facebook, Inc., 790 F.Supp.2d 1110, 1117 (N.D. Cal. 2011)). 14 The blanket allegation that Defendant Aetna underpaid for services billed is 15 conclusory, absent facts demonstrating its obligation to pay for those services in full 16 or pay for them at all. No particularities of the contractual provision underlying the 17 breach is alleged.

(See generally Claim). For these reasons, the Court GRANTS the 18 MTD with respect to the breach of contract claim. In the event that Plaintiff can 19 supplement its allegations to address the deficiencies noted by the Court, this 20 dismissal is without prejudice and with leave to amend. 21 ii. Quantum Meruit / Unjust Enrichment 22 “Quantum meruit is an equitable theory which supplies, by implication and in 23 furtherance of equity, implicitly missing contractual terms.” Hedging Concepts, Inc. 24 v. First All.

Mortg. Co., 41 Cal.App.4th 1410, 1419 (1996). “The whole point of 25 quantum meruit recovery is to compensate plaintiffs who have provided a benefit to 26 defendants but who do not have a contract – express or implied – with those 27 defendants.” In re De Laurentiis Ent. Grp. Inc., 963 F.2d 1269, 1273 (9th Cir. 1992). 28 Under California law, unjust enrichment is not considered an independent cause of 1 action and is instead “just a restitution claim.” Hill v. Roll Internat.

Corp., 195 2 Cal.App.4th 1295, 1307 (2011); see also Sepanossian v. Nat’l Ready Mix Concrete 3 Co., 97 Cal.App.5th 192, 207 (2023) (emphasizing that “an unjust enrichment claim is 4 grounded in equitable principles of restitution”). 5 “[W]here an equitable relief claim relies upon the same

factual predicates as a 6 plaintiff's legal causes of action, it is not a true alternative theory of relief but rather is 7 duplicative of those legal causes of action." Summit Estate, Inc. v. Cigna Healthcare 8 of Cal., Inc., Case No. 17-cv-03871-LHK, 2017 WL 4517111, at *12 (N.D.

Cal. Oct. 9 10, 2017). Therefore, "at the pleading stage, a complaint 'must set forth facts to show 10 that the breach cannot be adequately compensated for in damages; failing this, it does 11 not state a cause of action.'" Id. (quoting 5 Witkin, California Procedure § 803 (5th 12 ed. 2008). 13 Although the Court liberally construes Plaintiff's Claim filed in state court as 14 pursuing a theory of unjust enrichment, it does not hold water as alleged.

Where 15 Plaintiff has an adequate remedy at law, these causes of action must fail. See Sky 16 Sleep Lab v. Cigna Health and Life Ins. Co., No. 2:24-cv-00770-SVW-PD, 2025 WL 17 736496, at * (C.D. Cal. Jan. 23, 2025) (dismissing quantum meruit and unjust 18 enrichment claims because the court could not conclude the plaintiff "lack[ed] an 19 adequate remedy at law for its alleged injury[.]" where the plaintiff, who also sought 20 money damages against the defendant insurance company, did not allege that 21 restitutionary relief would be more prompt, efficient and certain).

22 iii. Detrimental Reliance 23 The Court construes Plaintiff's detrimental reliance claim as a cause of action 24 for promissory estoppel. Under California law, the elements of a claim for promissory 25 estoppel are: "(1) a promise clear and unambiguous in its terms; (2) reliance by the 26 party to whom the promise is made; (3) [that is] both reasonable and foreseeable; and 27 (4) the party asserting the estoppel must be injured by his reliance.'" B & O Mfg., Inc. 28 v. Home Depot U.S.A., Inc., No. C 07-02864 JSW, 2007 WL 3232276, *6 (N.D.Cal.

1 | Nov. 1, 2007) (quoting Laks v. Coast Fed. Sav. & Loan Ass'n, 60 Cal.App.3d 885, 2 | 890, 131 Cal.Rptr. 836 (1976)). 3 Plaintiff's allegations fail to state a claim because he does not allege a clear 4 | promise or detrimental reliance.

The Claim contains one conclusory statement that is 5 | severely insufficient to meet the basic pleading requirements of Rule 8 and Twombly. 6 Accordingly, for the foregoing reasons explained herein, the Court GRANTS 7 | Defendant Aetna's MTD for failure to state a claim for relief. Plaintiff's three claims 8 || are DISMISSED without prejudice and with leave to amend.

9 | II. CONCLUSION 10 For the foregoing reasons, the Court DENIES Plaintiff's MTR, finding that 11 | removal was proper. The Court GRANTS Defendant Aetna's MTD and 12 | DISMISSES Plaintiff's claims pursuant to Rule 12(b)(1) and Rule 12(b)(6), with 13 | leave to amend. Should Plaintiff wish to file a First Amended Complaint, it must do 14 | so within twenty-one (21) days of this Order.

15 16 17 IT IS SO ORDERED. 18 19 | Dated: September 16, 2025 HON. WESLEY L. HSU 20 UNITED STATES DISTRICT JUDGE 21 22 23 24 25 26 27 28 17

