

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Titilayo Adetu v. Northern Cochise Community Hospital
Incorporated, et al.

Adetu · No. CV-25-00409-TUC-RM · Decided March 31, 2026

SUMMARY

The United States District Court for the District of Arizona addressed multiple motions to dismiss and transfer in a pro se physician’s dispute over compensation for emergency medical services. The court enforced a Tennessee forum-selection clause under the doctrine of forum non conveniens and dismissed the claims against several defendants without prejudice to refiling in Tennessee state court. The court also dismissed the claims against Northern Cochise Community Hospital under Rule 12(b)(6), while allowing the plaintiff 30 days to amend those claims.

CASE DETAILS

COURT	United States District Court for the District of Arizona
JURISDICTION	United States District Court for the District of Arizona
DECIDED	March 31, 2026
DOCKET	CV-25-00409-TUC-RM
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed a pro se complaint asserting contract, quasi-contract, and misrepresentation claims. Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), challenged venue and personal jurisdiction, or alternatively sought transfer. The court granted NCCH's Rule 12(b)(6) motion, dismissed the claims against the remaining defendants without prejudice under forum non conveniens, denied the other motions as moot, and granted leave to amend the claims against NCCH.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and construes them in the plaintiff's favor, but need not accept legal conclusions couched as factual allegations. The complaint must contain sufficient factual matter to state a facially plausible claim for relief.
PRECEDENTIAL VALUE	Unknown; District of Arizona order with no reporter or neutral citation identified.

PARTIES

Titilayo Adetu v. Northern Cochise Community Hospital Incorporated,
Troy Kastrup, Melissa Burdette, Timothy Cogar, Edith Devrnja, ERx
Plus

TOPICS

forum non conveniens

venue

motions to dismiss

breach of contract

unjust enrichment

PRACTICE AREAS

civil procedure

contracts

commercial litigation

remedies

QUESTIONS PRESENTED

1. Whether a forum-selection clause requiring litigation in the courts of Tennessee should be enforced through forum non conveniens rather than transfer under 28 U.S.C. §§ 1404(a) or 1406(a) or dismissal under Rule 12(b)(3).
2. Whether the forum-selection clause binds the nonsignatory defendants whose conduct was closely related to the contractual relationship.
3. Whether the claims against Northern Cochise Community Hospital state claims for breach of contract, breach of the implied covenant of good faith and fair dealing, or unjust enrichment.
4. Whether Adetu should be granted leave to amend the claims against Northern Cochise Community Hospital.

HOLDINGS

1. When a forum-selection clause points to a state or foreign forum, the appropriate mechanism for enforcing the clause is forum non conveniens, not transfer under 28 U.S.C. § 1404(a), transfer under § 1406(a), or dismissal for improper venue under Rule 12(b)(3).
2. A nonsignatory defendant may be bound by a forum-selection clause when the defendant's alleged conduct is closely related to the contractual relationship, particularly where the defendant seeks to enforce the clause against a signatory plaintiff.
3. Adetu failed to state a breach of contract claim against NCCH because he did not allege privity of contract with NCCH, and his agency, ratification, and intended-beneficiary theories did not establish NCCH's liability on the ERx contract.
4. Adetu failed to state claims against NCCH for breach of the implied covenant of good faith and fair dealing or unjust enrichment.

KEY QUOTATIONS

“Since no such unusual circumstances exist here, the Court will give effect to the forum selection clause in Plaintiff’s Independent Contractor Agreement.” (Discussion, Venue and Forum Non Conveniens)

“A third-party beneficiary of a contract, however, is not the promisor/promisee to a contract, and therefore cannot be held liable on it.” (Count I)

“This does not mean that ERx’s alleged failure to perform renders NCCH liable for restitution, as there exists a justification for the alleged enrichment and impoverishment.” (Count IV)

FACTUAL BACKGROUND

Adetu, an emergency-medicine physician, entered an Independent Contractor Agreement and a Placement Agreement with ERx Plus to provide services at Northern Cochise Community Hospital in Arizona. The Independent Contractor Agreement contained an exclusive-jurisdiction clause referring to the courts of Tennessee. Adetu later alleged that ERx representatives agreed to pay him \$400 per hour for certain shifts, but that ERx did not pay him at that rate. He sued ERx, NCCH, and several ERx-related individuals for breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, unjust enrichment, fraudulent misrepresentation, and negligent misrepresentation.

PROCEDURAL HISTORY

Adetu filed the action in the District of Arizona on July 21, 2025. The defendants filed multiple motions to dismiss, transfer venue, or dismiss for improper venue. The court held that the contractual forum-selection clause required litigation against the relevant defendants in Tennessee state courts and separately concluded that the claims against NCCH failed to state a claim. The court allowed amendment as to NCCH but dismissed the claims against the other defendants without prejudice to refile in Tennessee state court.

DISPOSITION

other

CASES CITED

- Jasper v. Martinez, No. 217CV03026GMNVCF, 2018 WL 3997262 (D. Nev. Aug. 21, 2018)
- Atlantic Marine Construction Co. v. United States District Court for the Western District of Texas, 571 U.S. 49 (2013)
- Doe 1 v. AOL LLC, 552 F.3d 1077, 1081-82 (9th Cir. 2009)
- Global Quality Foods, Inc. v. Van Hoekelen Greenhouses, Inc., No. 16-CV-00920-LB, 2016 WL 4259126 (N.D. Cal. Aug. 12, 2016)
- LeBlanc v. C.R. England, Inc., 961 F. Supp. 2d 819, 827 (N.D. Tex. 2013)
- Manetti-Farrow, Inc. v. Gucci America, Inc., 858 F.2d 509, 514 n.5 (9th Cir. 1988)
- Holland America Line Inc. v. Wartsila North America, Inc., 485 F.3d 450, 454 (9th Cir. 2007)
- Pestmaster Franchise Network, Inc. v. Mata, No. 16-CV-07268-EMC, 2017 WL 1956927 (N.D. Cal. May 11, 2017)
- Burger King Corp. v. Rudzewicz, Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985)
- Chambers v. NASCO, Inc., 501 U.S. 32 (1991)

- Seagal v. Vorderwuhlbecke, 162 F. App'x 746 (9th Cir. 2006)
- Costlow v. Weeks, 790 F.2d 1486 (9th Cir. 1986)
- Stratton v. Inspiration Consolidated Copper Co., 683 P.2d 327, 329-30 (Ariz. App. 1984)
- Molina v. BMO Harris Bank, N.A., No. 2 CA-CV 2022-0106, 2022 WL 16736929 (Ariz. App. Nov. 7, 2022)
- Leroy v. Seattle Funding Group of Arizona, LLC, No. 1 CA-CV 10-0714, 2012 WL 75644 (Ariz. App. Jan. 10, 2012)
- Sherman v. First American Title Insurance Co., 38 P.3d 1229, 1232 (Ariz. App. 2002)
- Wells Fargo Bank v. Arizona Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund, 38 P.3d 12, 29 (Ariz. 2002)
- Wang Electric, Inc. v. Smoke Tree Resort, LLC, 283 P.3d 45, 50 (Ariz. App. 2012)
- Advance Leasing & Crane Co. v. Del E. Webb Corp., 573 P.2d 525, 527 (Ariz. App. 1977)
- Johnson v. Riverside Healthcare System, LP, 534 F.3d 1116, 1121 (9th Cir. 2008)
- Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Cousins v. Lockyer, 568 F.3d 1063, 1067 (9th Cir. 2009)
- Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001)
- Gallardo v. DiCarlo, 203 F. Supp. 2d 1160, 1162 n.2 (C.D. Cal. 2002)
- Karim-Panahi v. Los Angeles Police Department, 839 F.2d 621, 623 (9th Cir. 1988)

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Titilayo Adetu, No. CV-25-00409-TUC-RM 10 Plaintiff, ORDER 11 v. 12
Northern Cochise Community Hospital Incorporated, et al., 13 Defendants. 14 15 Plaintiff
initiated this action by filing a pro se Complaint on July 21, 2025. (Doc. 1.) 16 Pending before the
Court is Defendant Northern Cochise Community Hospital's Motion to 17 Dismiss Pursuant to
Federal Rule of Civil Procedure 12(b)(6) (Doc.

8); Defendants 18 Timothy Cogar and Edith Devrnja's Motion to Dismiss Case or Alternatively to
Transfer 19 Venue (Doc. 11); Defendant Troy Kastrup's Motion to Dismiss Counts III-VI for
Failure 20 to State a Claim (Doc. 13); Defendant ERx Plus's Motion to Dismiss for Failure to
State a 21 Claim, for Improper Venue, and alternatively to Transfer Venue (Doc. 20); and
Defendant 22 Burdette's Motion to Dismiss for Failure to State a Claim, for Improper Venue, or 23
alternatively to Transfer Venue (Doc.

30). The Motions are all fully briefed. (Docs. 14, 15, 24 16, 17, 18, 21, 24, 25, 28, 31, 32.) 25 For
the following reasons, the Court will grant Defendant Northern Cochise 26 Community Hospital's
Motion to Dismiss; dismiss the claims asserted against Defendants 27 Kastrup, Cogar, Devrnja,

ERx, and Burdette pursuant to the doctrine of forum non 28 conveniens; and deny as moot the remaining Motions to Dismiss.

1 I. Background 2 Plaintiff is an emergency medicine physician, and his claims arise from an 3 agreement he entered to provide emergency medicine services at Defendant Northern 4 Cochise Community Hospital (“NCCH”) in Willcox, Arizona. (Doc. 1 at 4-5.) Defendant 5 ERx Plus (“ERx”) is a professional corporation engaged in the business of staffing 6 physicians at rural hospitals.

(Id. at 3.) After being contacted by an ERx recruiter in October 7 2023, Plaintiff entered into a written Independent Contractor Agreement and a Placement 8 Agreement with ERx in November 2023. (Doc. 1 at 4; Doc. 1-2.) 9 The Independent Contractor Agreement dictated the terms under which Plaintiff 10 would provide physician services, and the Placement Agreement dictated that Plaintiff 11 would provide physician services at NCCH in Willcox, Arizona, at a rate of \$225 per hour.

12 (Doc. 1-2 at 8.) The Placement Agreement specified that Plaintiff would be “entitled to 13 receive any premium for work performed by Provider during a holiday... as determined 14 by ERx in its sole discretion.” (Id.) Furthermore, the Independent Contractor Agreement 15 stated that “any action brought to enforce any right or obligation under this Agreement 16 shall be subject to the exclusive jurisdiction of the courts of the state of Tennessee.” (Doc.

17 1-2 at 7.) 18 Plaintiff performed work during January and February 2024, for which he states he 19 was paid in full. (Doc. 1 at 5.) Plaintiff explains that on June 18, 2024, Defendant Melissa 20 Burdette—an ERx physician scheduler—texted Plaintiff to see if he would be available to 21 do two 24-hour shifts on June 20, 2024, and June 21, 2024, at a rate of \$400 per hour.

(Id. 22 at 5.) Plaintiff agreed to those dates, and that pay rate. (Id.) Plaintiff alleges that his 23 exchanges with Defendant Burdette constituted an agreement for all remaining shifts to be 24 paid at a rate of \$400 per hour, and he attaches screenshots of the relevant text messages. 25 (Id. at 6; Doc. 1-2 at 9.) Plaintiff asserts that he worked 228 hours in July 2024, 225.5 hours 26 in August 2024, and 24 hours in September 2024, and that when he was ultimately paid for 27 his services, ERx did not compensate him at the \$400 per hour rate that Plaintiff believed 28 had been agreed upon.

(Id.) Plaintiff states that Defendant Troy Kastrup is the “Chief 1 Executive Officer of ERx” and that Defendant Edith Devrnja is the “CEO of ERx.” (Id. at 2 4.) Defendant Timothy Cogar is the “controller” of ERx, and “handled payments and rate 3 disputes.” (Id.) 4 As a result of the foregoing events, Plaintiff brings a breach of contract claim against 5 ERx and NCCH in Count 1; a claim for breach of the implied covenant of good faith and 6 fair dealing against ERx and NCCH in Count 2; a promissory estoppel claim against ERx, 7 Kastrup, Cogar, Burdette, and Devrnja in

Count 3; an unjust enrichment claim against all 8 Defendants in Count 4; a fraudulent misrepresentation claim against Kastrup, Cogar, 9 Burdette, ERx, and Devrnja in Count 5; and a negligent misrepresentation claim as an 10 alternative in Count 6, and apparently asserted against the same Defendants.

(Id. at 7.) 11 Every Defendant has moved to dismiss the above-captioned matter. (Docs. 8, 11, 12 13, 20, 30.) Each Defendant asserts that Plaintiff has failed to state a claim upon which 13 relief can be granted. (Docs. 8, 11, 13, 20, 30.) Defendants Cogar, Devrnja, and Burdette 14 further assert that they are not subject to the Court's personal jurisdiction.

(Docs. 11, 30.) 15 Finally, Defendants Cogar, Devrnja, Burdette, and ERx argue that transfer of venue is 16 appropriate, or that this action should be dismissed for improper venue. (Docs. 11, 20.) 17 Defendants Cogar, Devrnja, Burdette, and ERx each explain that in their view, this matter 18 is governed by the forum selection clause executed as part of the Independent Contractor 19 Agreement between Plaintiff and ERx.

(See id.) The Court will first address the venue 20 issues that have been raised and will then address the remaining issues regarding failure to 21 state a claim upon which relief may be granted. 22 II. Discussion 23 a. Venue and Forum Non Conveniens¹ 24 Even where a civil action has been brought in a proper district, a district court is 25 empowered to transfer "any civil action to any other district or division where the action 26 1 Since the Court concludes that this is not the appropriate forum for the majority of Plaintiff's claims, the Court need not address Defendants' arguments regarding personal 27 jurisdiction or failure to state a claim, except as set forth below in subsection (b). "It is well established" that a court may dismiss or transfer as a result of venue problems "even where 28 the [c]ourt lacks personal jurisdiction over defendants." Jasper v. Martinez, No. 217CV03026GMNVCF, 2018 WL 3997262 at *2 (D.

Nev. Aug. 21, 2018). 1 might have been brought" "[f]or the convenience of the parties and witnesses." 28 U.S.C. 2 § 1404(a). Where a civil action has been brought in the wrong district, a district court is 3 empowered to dismiss the case, or, "if it be in the interests of justice," transfer the case to 4 another district where the case could have been brought.

28 U.S.C. § 1406(a). Section 5 1404(a) is "merely the codification of the doctrine of forum non conveniens for the subset 6 of cases in which the transferee forum is within the federal court system." Atl. Marine 7 Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas, 571 U.S. 49, 60 (2013). Where, on the 8 other hand, there exists a "forum selection clause pointing to a state or foreign forum[.]" 9 the "appropriate way to enforce [that clause]... is through the doctrine of forum non 10 conveniens." 2 Id. 11 A forum selection clause referring to "the courts of" a particular state means the 12 state courts of that state, not the federal courts that are located in the state.

Doe 1 v. AOL 13 LLC, 552 F.3d 1077, 1081-82 (9th Cir. 2009). Courts must “evaluate a forum-selection 14 clause pointing to a nonfederal forum in the same way that they evaluate a forum-selection 15 clause pointing to a federal forum.” *Atl. Marine Const. Co.*, 571 U.S. at 61. When a valid 16 forum selection clause is implicated, “the plaintiff’s choice of forum merits no weight,” 17 because the plaintiff is the party “defying the forum-selection clause.” *Id.* at 63.

Nor should 18 a court “consider arguments about the parties’ private interests,” because by agreeing to a 19 forum selection clause, the parties have “waive[d] the right to challenge the preselected 20 forum as inconvenient[.]” *Id.* at 64.

As such, a court considering transfer or dismissal 21 pursuant to the doctrine of forum non conveniens “may consider arguments about public- 22 interest factors only.” *Id.* Since the enforcement of forum selection clauses is in the public 23 interest, it is only in unusual cases that forum selection clauses will not control. *Id.* 24 A district court may raise the doctrine of forum non conveniens of its own accord 25 even where the parties have wrongly raised Section 1404(a), Section 1406(a), or Rule 26 12(b)(3) as the mechanism pursuant to which a case should be dismissed.

Glob. Quality 27 2 A forum selection clause does not render venue “improper” within the meaning of 28 U.S.C. § 1391. *Atl. Marine Const. Co.*, 571 U.S. at 58. Venue being proper within the 28 meaning of that statute, however, does not abrogate the Court’s responsibility to give effect to a valid forum selection clause. *Id.* 1 *Foods, Inc. v. Van Hoekelen Greenhouses, Inc.*, No. 16-CV-00920-LB, 2016 WL 4259126 2 at *4 (N.D.

Cal. Aug. 12, 2016) (collecting cases); see also *LeBlanc v. C.R. England, Inc.*, 3 961 F. Supp. 2d 819, 827 (N.D. Tex. 2013) (applying Fifth Circuit law) (“[T]he moving 4 party’s choice of procedural mechanisms—Rule 12(b)(3) or § 1404(a)—does not dictate 5 the court’s choice of analytical tools.”) (citing 5B *Wright & Miller, Federal Practice & 6 Procedure* § 1352, p. 131 (3d ed.

Supp. 2013)). In *Atlantic Marine Construction Company*, 7 the Court specifically contemplated “a forum non conveniens motion” as the mechanism 8 through which a party seeking to give effect to a forum selection clause pointing to a 9 nonfederal forum would seek dismissal. 571 U.S. at 63. 10 A nonsignatory to a contract may be bound by a forum selection clause where “the 11 alleged conduct of the non-parties is... closely related to the contractual relationship.” 12 *Manetti-Farrow, Inc. v. Gucci America, Inc.*, 858 F.2d 509, 514 n.5 (9th Cir.

1988); 13 *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 454 (9th Cir. 2007). This 14 principle is especially pronounced where a nonsignatory defendant seeks to enforce a 15 forum selection clause against a signatory plaintiff, because in those circumstances “it 16 [cannot] be said that the nonsignatory defendant [is] unfairly subject to jurisdiction without 17 ‘fair warning that a

particular activity may subject [them] to the jurisdiction of a foreign sovereign.” Pestmaster Franchise Network, Inc. v. Mata, No. 16-CV-07268-EMC, 2017 WL 1956927 (N.D.

Cal. May 11, 2017) (citing Burger King Corp. v. Rudzewicz, 471 U.S. 20 462, 472 (1985)). Here, the Defendants who have moved to dismiss or transfer this action due to issues with venue raise Section 1404(a), Section 1406(a), and Rule 12(b)(3) as the bases upon which the Court should grant their Motions, and state that the U.S. District Court for the Eastern District of Tennessee would be the appropriate forum for a transfer.

(See Docs. 11, 25 20, 30.) Defendants point to the forum selection clause in Plaintiff’s Independent Contractor Agreement stating that “any action brought to enforce any right or obligation under this Agreement shall be subject to the exclusive jurisdiction of the courts of the state of Tennessee.” Since the “courts of a state” mean the state courts of that state and not the federal courts located within that state, however, the forum selection clause in the Agreement points to a state forum; specifically, it means the Tennessee state courts.

Since the relevant forum selection clause here points to a state rather than a federal forum, Section 1404(a), Section 1406(a), and Rule 12(b)(3) are not the appropriate mechanisms through which this Court may resolve venue issues, and it would be improper to transfer this action to another federal court.

The Court must instead apply the doctrine of forum non conveniens. As discussed above—the Court must give effect to the forum selection clause unless unusual public interest factors mandate otherwise. Since no such unusual circumstances exist here, the Court will give effect to the forum selection clause in Plaintiff’s Independent Contractor Agreement.

The only remaining question is which Defendants should be bound by the forum selection clause, since only ERx (with signature from Troy Kastrup) and Plaintiff are actually parties to the Independent Contractor Agreement. (Doc. 1-2 at 4-8.)

The Court finds that Defendants Troy Kastrup, Melissa Burdette, Timothy Cogar, and Edith Devrnja—as well as ERx and Plaintiff, the actual parties to the agreement—should be bound by the forum selection clause. This is because the conduct of each of the nonsignatory Defendants, and Troy Kastrup, is very closely related to the contractual relationship at issue; each Defendant was intimately involved in the ratification or execution of the relevant contract.

Kastrup, as CEO of ERx and signatory on behalf of the company, was essential to the contract’s ratification. Burdette helped execute the contract by scheduling Plaintiff for shifts at NCCH, and offered Plaintiff the \$400 rate for certain 3 Even though Defendant Kastrup did not address the forum selection clause in his Motion to Dismiss (Doc. 13), the claims against him will nonetheless be dismissed on this basis because the Court is empowered to raise the issue of forum non conveniens sua sponte.

See 24 *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991) (“[D]ismiss[ing] an action on grounds of forum non conveniens” is one of a federal court’s “inherent powers[.]”); *Seagal v. 25 Vorderwuhlbecke*, 162 F. App’x 746 (9th Cir. 2006) (finding that “no legal basis” existed for “objecting to the sua sponte nature of the district court’s dismissal on [forum non 26 conveniens grounds.]”).

Moreover, Defendant Kastrup had an opportunity to present his views on the forum selection clause; other Defendants—including other nonsignatories— 27 raised the issue in their concurrently briefed Motions to Dismiss. See *Costlow v. Weeks*, 790 F.2d 1486 (9th Cir. 1986) (referring to the “to the long-approved practice of permitting 28 a court to transfer a case sua sponte under the doctrine of forum non conveniens... so long as the parties are first given the opportunity to present their views on the issue.”).

1 shifts. Timothy Cogar, as Controller of ERx, acted on behalf of the company to pay Plaintiff 2 and “handled rate disputes.” Finally, Plaintiff alleges that Edith Devrnja, also as CEO of 3 ERx, “ratified the decision not to pay Plaintiff in full.” (Doc. 1 at 4.)

Moreover, Burdette, 4 Cogar, and Devrnja actively seek to have this action litigated in Tennessee; therefore, 5 enforcing the forum selection clause will not subject them unfairly to the jurisdiction of a 6 separate sovereign. 7 In Plaintiff’s responses to Defendants Cogar, Devrnja, ERx, and Burdette’s 8 arguments regarding the forum selection clause, Plaintiff asserts that the forum selection 9 clause should not apply because Plaintiff’s claims arise not from the Independent 10 Contractor Agreement, but rather from alleged subsequent agreements to pay Plaintiff at a 11 new rate of \$400 per hour.

(Doc. 15 at 6, Doc. 25 at 2-3, Doc. 31 at 6.) Plaintiff argues that 12 the alleged subsequent agreements constitute new contracts not subject to the forum 13 selection clause. (Id.) This argument is unavailing for two reasons.

First, the facts that 14 Plaintiff alleges are undoubtedly more consistent with a claim that the original contract was 15 modified, not that an entirely new contract was executed between the parties.⁴ Second, the 16 Independent Contractor Agreement itself specifies that its term spans “one (1) year from 17 the date of signature affixed hereto” and that the Agreement will “automatically renew for 18 successive one (1) year terms.” (Doc.

1-2 at 6.) The Agreement was signed November 15, 19 2023, and the conduct Plaintiff complains of occurred “between June and September 20 2024,” well within the one-year time period allotted by the Agreement even without 21 automatic renewal. (See Doc. 31 at 6.) 22 In sum, the only Defendant that should not be bound by the forum selection clause 23 in Plaintiff’s Independent Contractor Agreement is NCCH, since NCCH had no intimate 24 involvement with the ratification or execution of the Agreement; NCCH was simply where 25 the parties to the contract agreed that

Plaintiff would perform work.⁵ The Court will ²⁶ ⁴ Indeed, Plaintiff appears to recognize this in his Complaint, referring to the Agreement and its “subsequent written and oral modifications.” (Doc.

¹ at ⁷) (emphasis added). ²⁷ ⁵ Additionally, NCCH filed a response to Cogar and Devrnja’s Motion to Dismiss in which NCCH requests that the Court retain jurisdiction over Plaintiff’s claims against NCCH, due ²⁸ to jurisdictional issues that would arise were the Court to transfer the entirety of this case to a different venue. (Doc. ¹⁶.) ¹ therefore dismiss Plaintiff’s claims against all Defendants except NCCH without prejudice ² to refile in Tennessee state court, and will address in the following section NCCH’s ³ Motion to Dismiss for failure to state a claim.

⁴ b. NCCH’s Motion to Dismiss ⁵ Plaintiff brings three counts against NCCH. (Doc ¹.) These include breach of ⁶ contract, breach of the implied covenant of good faith and fair dealing, and unjust ⁷ enrichment. (Id.) The Court will address each claim in turn. ⁸ i. Standard of Review ⁹ A complaint must contain “a short and plain statement of the claim showing that the ¹⁰ pleader is entitled to relief.” Fed.

R. Civ. P. ⁸(a)(2). Dismissal of a complaint, or any claim ¹¹ within it, for failure to state a claim under Federal Rule of Civil Procedure ¹²(b)(6) may ¹² be based on either a “‘lack of a cognizable legal theory’ or ‘the absence of sufficient facts ¹³ alleged under a cognizable legal theory.’” Johnson v. Riverside Healthcare Sys., LP, ⁵³⁴ ¹⁴ F.3d ¹¹¹⁶, ¹¹²¹ (9th Cir.

²⁰⁰⁸) (quoting Balistreri v. Pacifica Police Dep’t, ⁹⁰¹ F.2d ⁶⁹⁶, ¹⁵ ⁶⁹⁹ (9th Cir. ¹⁹⁹⁰)). “To survive a motion to dismiss, a complaint must contain sufficient ¹⁶ factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” ¹⁷ Ashcroft v. Iqbal, ⁵⁵⁶ U.S. ⁶⁶², ⁶⁷⁸ (2009) (quoting Bell Atl. Corp. v. Twombly, ⁵⁵⁰ U.S. ¹⁸ ⁵⁴⁴, ⁵⁷⁰ (2007)). “A claim has facial plausibility when the plaintiff pleads factual content ¹⁹ that allows the court to draw the reasonable inference that the defendant is liable for the ²⁰ misconduct alleged.” Id. While a complaint need not include “detailed factual allegations,” ²¹ it must contain more than labels, conclusions, “and a formulaic recitation of the elements ²² of a cause of action.” Twombly, ⁵⁵⁰ U.S. at ⁵⁵⁵.

In evaluating a Rule ¹²(b)(6) motion to ²³ dismiss, the court must take as true all well-pleaded factual allegations of the complaint ²⁴ and construe them in the light most favorable to the nonmovant. Cousins v. Lockyer, ⁵⁶⁸ ²⁵ F.3d ¹⁰⁶³, ¹⁰⁶⁷ (9th Cir. ²⁰⁰⁹).

However, the court need not accept as true legal ²⁶ conclusions that are couched as factual allegations. Iqbal, ⁵⁵⁶ U.S. at ⁶⁷⁸. ²⁷ As a general rule, the district court may not consider any material beyond the ²⁸ pleadings when resolving a motion to dismiss for failure to state a claim. Lee v. City of Los ¹ Angeles, ²⁵⁰ F.3d ⁶⁶⁸, ⁶⁸⁸ (9th Cir. ²⁰⁰²), impliedly overruled on other grounds as ² discussed in Gallardo v. DiCarlo, ²⁰³ F.Supp.2d ¹¹⁶⁰, ¹¹⁶² n.2 (C.D.

Cal. 2002). 3 However, the court may consider material submitted as part of the complaint, such as the 4 documents which Plaintiff has attached to his Complaint. See *id.* 5 ii. Count I – Breach of Contract 6 In Count I, Plaintiff asserts a breach of contract claim against NCCH, arguing that 7 NCCH is liable under the Independent Contractor Agreement, as well as the “subsequent 8 written and oral modifications.” (Doc.

1 at 7.) To state such a claim under Arizona law, 9 Plaintiff must demonstrate privity of contract. *Stratton v. Inspiration Consol. Copper Co.*, 10 683 P.2d 327, 329–30 (Ariz. App. 1984). Here, Plaintiff does not contend that he can show 11 privity of contract between himself and NCCH. (See Doc. 14.) Plaintiff instead argues that 12 principles of agency, ratification of contract, and intended beneficiary can support his 13 claim.

(*Id.*) None of these principles support Plaintiff’s position. 14 NCCH is correct that rather than describing an agency relationship between NCCH 15 and ERx, Plaintiff’s response to NCCH’s Motion to Dismiss discusses facts, and caselaw, 16 supporting the existence of an agency relationship between Plaintiff himself and NCCH. 17 Plaintiff discusses the “direct operational control” NCCH exercised over Plaintiff’s work, 18 and explains that “Arizona courts have long recognized hospital liability for the acts of 19 physicians under agency and apparent-agency doctrines.” (Doc.

14 at 4.) Whether or not 20 Plaintiff acted as an agent of NCCH has no bearing upon whether NCCH acted as an agent 21 for ERx or vice versa. 22 Plaintiff’s arguments that NCCH ratified the contract between himself and ERx, and 23 therefore became liable for breach of contract, are similarly without merit. “Ratification is 24 the affirmance of a prior act done by another, whereby the act is given effect as if done by 25 an agent acting with actual authority.” *Molina v. BMO Harris Bank, N.A.*, No. 2 CA-CV 26 2022-0106, 2022 WL 16736929 at *3 (Ariz.

App. Nov. 7, 2022) (citing Restatement 27 (Third) of Agency § 4.01(1) (2006)). “Ratification requires intent to ratify plus full 28 knowledge of all the material facts.” *Leroy v. Seattle Funding Grp. of Arizona, LLC*, No. 1 1 CA-CV 10-0714, 2012 WL 75644 at *3 (Ariz. App. Jan. 10, 2012).

Here, Plaintiff alleges 2 no facts showing that NCCH evinced affirmance of the contract between himself and ERx, 3 much less intent to do so. Plaintiff does not state that anyone from NCCH indicated that 4 NCCH would be responsible for paying Plaintiff, and as NCCH points out, Plaintiff’s 5 Complaint is devoid of facts showing that NCCH was even aware of the rate negotiations 6 occurring between Plaintiff and ERx.

7 Finally, Plaintiff asserts that NCCH was the “intended beneficiary” of the contract 8 between himself and ERx, rendering NCCH liable on that contract. A third-party 9 beneficiary of a contract, however, is not the promisor/promisee to a contract, and therefore 10 cannot be held liable on it. See *Sherman v. First Am. Title Ins. Co.*, 38 P.3d 1229, 1232 11 (Ariz.

App. 2002). Therefore, Plaintiff's "intended beneficiary" theory fails. 12 Plaintiff has failed to state a claim against NCCH in Count I, and Count I will 13 therefore be dismissed. 14 iii. Count II – Breach of the Implied Covenant of Good Faith and 15 Fair Dealing 16 In Count II, Plaintiff asserts a claim for breach of the implied covenant of good faith 17 and fair dealing against NCCH.

(Doc. 1 at 8.) The implied covenant of good faith and fair 18 dealing, however, "exists by virtue of a contractual relationship." Wells Fargo Bank v. 19 Arizona Laborers, Teamsters & Cement Masons Loc. No. 395 Pension Tr. Fund, 38 P.3d 20 12, 29 (Ariz. 2002), as corrected (Apr. 9, 2002). Plaintiff again argues that agency and 21 ratification principles support finding that a contractual relationship existed between 22 himself and NCCH, but as discussed above, these arguments are without merit.

Since no 23 contractual relationship existed between Plaintiff and NCCH, Plaintiff has failed to state a 24 claim against NCCH in Count II, and this claim will be dismissed. 25 iv. Count IV – Unjust Enrichment 26 In Count IV, Plaintiff brings a claim for unjust enrichment against NCCH. (Doc. 1 27 at 9.) "An unjust enrichment claim requires proof of five elements: '(1) an enrichment, (2) 28 an impoverishment, (3) a connection between the enrichment and impoverishment, (4) the 1 absence of justification for the enrichment and impoverishment, and (5) the absence of a 2 remedy provided by law.'" Wang Elec., Inc. v. Smoke Tree Resort, LLC, 283 P.3d 45, 50 3 (Ariz.

App. 2012) (internal citations omitted). 4 As to the fourth element, "[a] person who has conferred a benefit upon another as 5 the performance of a contract with a third person is not entitled to restitution from the other 6 merely because of the failure of performance by the third person." Advance Leasing & 7 Crane Co. v. Del E. Webb Corp., 573 P.2d 525, 527 (Ariz.

App. 1977) (citing Restatement 8 of Restitution § 110)). In addition, instructive here is authority regarding the 9 responsibilities of owners sued by subcontractors for a general contractor's failure to pay. 10 In such cases, where an owner has satisfied their obligations to a general contractor, the 11 owner is not liable to the subcontractor on a theory of unjust enrichment "because the 12 owner is not unjustly enriched if it fully paid its obligation." Wang Elec., Inc. v. Smoke 13 Tree Resort, LLC, 283 P.3d 45, 50 (Ariz.

App. 2012). 14 Here, the facts Plaintiff alleges show that Plaintiff conferred a benefit upon NCCH 15 as part of the performance of a contract with a third party, ERx. This does not mean that 16 ERx's alleged failure to perform renders NCCH liable for restitution, as there exists a 17 justification for the alleged enrichment and impoverishment.

Moreover, comparing the 18 facts here to those of contracting disputes, NCCH—the "owner"—appears to have satisfied 19 its obligation to ERx, the "general contractor." Plaintiff, as the "subcontractor" in this 20 situation, cannot recover against NCCH for ERx's alleged failure to pay.

21 As such, Plaintiff has failed to state a claim against NCCH in Count IV, and this 22 claim will be dismissed.

23 III. Leave to Amend 24 In the Ninth Circuit, “[a] pro se litigant must be given leave to amend his or her 25 complaint unless it is absolutely clear that the deficiencies of the complaint could not be 26 cured by amendment.” *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 27 1988). Pursuant to the doctrine of forum non conveniens, it is clear that Plaintiff’s claims 28 against Defendants Kastrup, Cogar, Devrnja, ERx, and Burdette could not be cured by 1 || filing an amended complaint in this Court.

However, the Court will allow Plaintiff, if he 2|| chooses, to file an amended complaint against Defendant NCCH addressing the || deficiencies discussed above. Plaintiff is warned that his claims against NCCH will be 4|| dismissed if he fails to timely file an amended complaint. 5 Accordingly, 6 IT IS ORDERED that Defendant Northern Cochise Community Hospital’s Motion || to Dismiss Pursuant to Fed.

R. Civ. P. 12(b)(6) (Doc. 8) is granted. Within thirty (30) 8 || days of the date this Order is filed, Plaintiff may file an amended complaint against 9|| Defendant Northern Cochise Community Hospital that cures the deficiencies addressed above. If Plaintiff fails to file an amended complaint within thirty days, the Clerk of Court is directed to enter a judgment of dismissal without prejudice and without further notice to Plaintiff.

13 IT IS FURTHER ORDERED that Defendants Timothy Cogar and Edith Devrnja’s Motion to Dismiss Case or Alternatively to Transfer Venue (Doc. 11); Defendant Troy Kastrup’s Motion to Dismiss Counts II-VI for Failure to State a Claim (Doc. 13); Defendant ERx Plus’s Motion to Dismiss for Failure to State a Claim, for Improper Venue, and alternatively to Transfer Venue (Doc.

20); and Defendant Burdette’s Motion to 18 || Dismiss for Failure to State a Claim, for Improper Venue, or alternatively to Transfer Venue (Doc. 30) are denied as moot. 20 IT IS FURTHER ORDERED that the claims asserted against Defendants Kastrup, Cogar, Devrnja, ERx, and Burdette are dismissed without prejudice to refiling in the state || courts of Tennessee.

23 Dated this 30th day of March, 2026. 24 25 28 United States District -12-