

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

REACH AIR MEDICAL SERVICES, LLC, §
CALSTAR AIR MEDICAL SERVICES, LLC, §
GUARDIAN FLIGHT LLC, MED-TRANS §
CORP., and AIR EVAC EMS, INC., §

Plaintiffs, §

vs. §

AETNA HEALTH, INC., AETNA LIFE §
INSURANCE CO., and AETNA HEALTH §
AND LIFE INSURANCE CO., §

Defendants. §

Civil Action No. 4:23-cv-00805

Consolidated with:

(Civil Action No. 4:23-cv-00826)

AETNA’S NOTICE OF SUPPLEMENTAL AUTHORITY

Aetna¹ submits this Notice of Supplemental Authority in support of its motion to dismiss (see Dkt. 12) and respectfully shows the Court as follows:

On February 8, 2024, United States District Judge Dale S. Fischer of the Central District of California issued a decision (*Stanford-Franz*) in which the court found that there is no private cause of action under the No Surprises Act (“NSA”) as it appears under Title 26 of the United States Code. See **Exhibit A** at 3–4 (citing 26 U.S.C. § 9816).

As a brief refresher, the NSA amended three statutes: (i) the Internal Revenue Code, which is administered by the Department of Labor and codified in Title 26 of the United States Code; (ii) ERISA, which is administered by the Department of Labor and codified primarily in Title 29 of

¹ “Aetna” refers collectively to Aetna Health Inc., Aetna Life Insurance Co., and Aetna Health and Life Insurance Co.

the United States Code; and (iii) the Public Health Service Act, which is administered by the Department of Health and Human Services and codified in Title 42 of the United States Code.²

The statutes contain near-identical provisions. *See* 26 U.S.C. § 9816; 29 U.S.C. § 1185e; 42 U.S.C. § 300gg-111; *see also* 42 U.S.C. § 300gg-112 (air ambulance-specific). Relevant here, all three statutes establish the same independent dispute resolution process (i.e., IDR process) for out-of-network payment disputes³ and limit judicial review of IDR awards to the four well-known and extraordinarily narrow grounds for vacatur under the Federal Arbitration Act.⁴

As extensively briefed, Plaintiffs have manifestly failed to point to a direct or indirect expression by Congress of any intent to provide an implied⁵ private right of action or remedy for health care providers under the NSA. *See* Dkt. 16 at 2–4; Dkt. 21 at 2–4; Dkt. 37 at 3–5; *see also* Exhibit A at 3 (“The Supreme Court has elevated intent into a supreme factor, and the other three factors are used to decipher congressional intent.” (cleaned up)).

Analyzing the same statutory framework at issue in this case, Judge Fischer correctly found that the NSA’s “extensive dispute resolution process between insurers and medical providers with very limited judicial review . . . indicate[s] the intent of Congress not to provide any private right of action under § 9816 using typical litigation in federal courts.” Exhibit A at 4 (applying the *Cort*⁶ factors).

² *See* Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2758–2890 (2020).

³ *See* 26 U.S.C. § 9816(c); 29 U.S.C. § 1185e(c); and 42 U.S.C. §§ 300gg-111(c), 300gg-112(b)(5)(D) (air ambulance-specific).

⁴ *See* 26 U.S.C. § 9816(c)(5)(E)(i); 29 U.S.C. § 1185e(c)(5)(E)(i); and 42 U.S.C. §§ 300gg-111(c)(5)(E)(i), 300gg-112(b)(2) (air ambulance-specific).

⁵ Plaintiffs concede that there is no express private right of action under the NSA. *See* Dkt. 13 at 7–8.

⁶ *Cort v. Ash*, 422 U.S. 66, 78 (1975).

For the reasons explained above, Aetna respectfully requests that the Court consider this supplemental authority (Exhibit A) when deciding the pending motion to dismiss. *See* Dkt. 12.

Respectfully submitted,

By: /s/ John B. Shely
JOHN B. SHELBY
Texas State Bar No.18215300
jshely@HuntonAK.com
Attorney-in-Charge
M. KATHERINE STRAHAN
Texas State Bar No. 24013584
kstrahan@HuntonAK.com
DAVID HUGHES
Texas State Bar No. 24101941
DHughes@huntonAK.com
HUNTON ANDREWS KURTH LLP
600 Travis, Suite 4200
Houston, Texas 77002
Telephone: (713) 220-4200
Facsimile: (713) 220-4285

**Attorneys for Defendants
Aetna Health Inc.,
Aetna Life Insurance Co., and
Aetna Health and Life Insurance Co.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on February 14, 2024. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ David Hughes
David Hughes

EXHIBIT A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LOS ROBLES EMERGENCY
PHYSICIANS MEDICAL
GROUP, et al.,
Plaintiffs,

v.

CARRIE L. STANFORD-FRANZ,
Defendant.

2:23-cv-9487-DSF-MARx

Order GRANTING Motion to
Dismiss Counterclaims (Dkt. 25)

Plaintiffs and Counterdefendants Los Robles Emergency Physicians Medical Group and Richard Benedon have moved to dismiss Defendant Carrie L. Stanford-Franz's Counterclaim. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15.

I. LEGAL STANDARD

Rule 12(b)(6) allows an attack on the pleadings for failure to state a claim on which relief can be granted. "[W]hen ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). Allegations contradicted by matters properly subject to judicial notice or by exhibit need not be accepted as true, Produce Pay, Inc. v. Izguerra Produce, Inc., 39 F.4th 1158, 1161 (9th Cir. 2022); and the court is "not bound to accept as true a legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555

(2007)). “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” Id. (alteration in original) (quoting Twombly, 550 U.S. at 557). A complaint must “state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. This means that the complaint must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. There must be “sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively . . . and factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

Ruling on a motion to dismiss will be “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – ‘that the pleader is entitled to relief.’” Iqbal, 556 U.S. at 679 (alteration in original) (quoting Fed. R. Civ. P. 8(a)(2)). “Dismissal under Rule 12(b)(6) is proper when the complaint . . . fails to allege sufficient facts to support a cognizable legal theory.” Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013).

II. ANALYSIS

The Court will not recount the subject matter of this case and the related case, 2:23-cv-7829-DSF-MAR, in any detail. Suffice it to say that both cases involve a dispute in which Stanford-Franz asserts that she was overbilled for medical services provided by Plaintiffs, among others, and the various cascading events arising out of that dispute. In this case, Plaintiffs allege that Stanford-Franz essentially hijacked the Los Robles Emergency Physicians Medical Group name via registration

of a website, creation of corporate entities, and redirection of mail. Stanford-Franz is further alleged to have libeled Plaintiff Richard Benedon to several parties.

For her part, Stanford-Franz has filed a counterclaim for malicious prosecution, fraud, negligence, breach of contract, unfair competition, and violation of the federal No Surprises Act, 26 U.S.C. § 9816. Plaintiffs/Counterdefendants move to dismiss.

Stanford-Franz's malicious prosecution claim fails because a malicious prosecution claim requires, among other things, that a previous suit was terminated in favor of the person bringing the malicious prosecution claim. Zamos v. Stroud, 32 Cal. 4th 958, 965 (2004). There is no allegation that Plaintiffs/Counterdefendants ever brought a previous claim against Stanford-Franz that was resolved in Stanford-Franz's favor.

The fraud claim is based on California Penal Code § 550 and the No Surprises Act, 26 U.S.C. § 9816. California Penal Code § 550 does not provide a private right of action. Ag. Ins. Co. v. Superior Ct., 70 Cal. App. 4th 385, 399-400 (1999).

While there is no clearly established law on the question, the Court also finds that the No Surprises Act fails to provide a private right of action. There are four factors – the Cort factors – to consider when deciding whether a federal statute provides a private right of action: “(1) whether the plaintiff is one of the class for whose especial benefit the statute was enacted; (2) whether there is any indication of legislative intent, explicit or implicit, either to create a private right of action or to deny one; (3) whether an implied private cause of action for the plaintiff is consistent with the underlying purposes of the legislative scheme; and (4) whether the cause of action is one traditionally relegated to state law.” Lil’ Man in the Boat, Inc. v. City & Cnty. of San Francisco, 5 F.4th 952, 958 (9th Cir. 2021) (simplified). “The Supreme Court has elevated intent into a supreme factor, and [the] other three factors are used to decipher congressional intent.” Id.

There is no explicit private right of action provided in § 9816. Examining the Cort factors, the Court finds Plaintiff is arguably a member of the class the statute is intended to benefit and the cause of action is not particularly one traditionally relegated to state law. However, and more importantly, a review of § 9816 reveals an extensive dispute resolution process between insurers and medical providers with very limited judicial review. See generally 26 U.S.C. § 9816(c); see also 26 U.S.C. § 9816(c)(5)(E)(i). These provisions indicate the intent of Congress not to provide any private right of action under § 9816 using typical litigation in federal courts. As intent is the “supreme factor,” this implicit signal of intent is dispositive.

Stanford-Franz’s professional negligence claim also fails because the allegations in the complaint – as well as numerous filings in this and the related case – make clear that the medical services were provided to Stanford-Franz’s son, not Stanford-Franz herself.

Stanford-Franz’s breach of contract claim fails because a review of the contract at issue indicates that Plaintiffs/Counterdefendants did not waive or release any claims against Stanford-Franz.¹ Stanford-Franz’s arguments about lack of consideration would, if valid, attack the enforceability of the underlying contract; they do not provide any rationale for interposing contract terms that do not exist on the face of the contract.

The factual basis for Stanford-Franz’s California Business and Professions Code § 17200 claim is unclear, but the claim appears to arise out of Plaintiff/Counterdefendants’ litigation of this case involving the trademarks at issue. Such a claim is barred by the California

¹ **“Error! Main Document Only.** A court may consider evidence on which the complaint ‘necessarily relies’ if: (1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion.” **Error! Main Document Only.** Marder v. Lopez, 450 F.3d 445, 448 (9th Cir. 2006) (citations and internal quotation marks omitted).

litigation privilege, which applies to pleadings and process in legal actions. Cal. Civ. Code § 47.

III. CONCLUSION

The motion to dismiss is GRANTED. Leave to amend is granted with respect to the § 17200 claim, which, after amendment, could potentially be based on actions not covered by the litigation privilege. Leave to amend is denied with respect to all other claims because those claims are barred on legal grounds and cannot be cured by amendment.

An amended counterclaim, if any, must be filed and served no later than February 26, 2024. Failure to file by that date will waive the right to do so. The Court does not grant leave to add new counterdefendants or new claims. Leave to add defendants or claims must be sought by a separate, properly noticed motion.

IT IS SO ORDERED.

Date: February 8, 2024

Wale S. Fischer

Dale S. Fischer
United States District Judge

General Information

Case Name	Guardian Flight LLC et al v. AETNA Life Insurance Company Inc et al
Court	U.S. District Court for the District of Connecticut
Date Filed	Thu Apr 11 00:00:00 EDT 2024
Judge(s)	Michael P. Shea
Federal Nature of Suit	Statutes: Other Statutory Actions [890]
Docket Number	3:24-cv-00680
Parties	AETNA Life Insurance Company Inc; Global Medical Response, Inc.; REACH Air Medical Services, LLC; CVS Pharmacy, Inc.; Cigna Health and Life Insurance Co.; Reach Air Medical Services LLC; Aetna Health Inc; Aetna Health and Life Insurance Company; CVS Health Corporation; Calstar Air Medical Services, LLC; Med-Trans Corporation; Air Evac EMS, Inc.; Guardian Flight LLC; AirMed International, LLC