STAY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 23-02825-MWF (JPRx) **Date: September 27, 2023**
Title: UnitedHealthcare of Texas, Inc. et al v. Radiology Partners, Inc.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION [69]

Before the Court is Defendant Radiology Partners, Inc.'s Motion to Compel Arbitration (the "Motion"), filed on August 18, 2023. (Docket No. 69). Plaintiff United HealthCare Services, Inc. filed an Opposition on September 5, 2023. (Docket No. 76). Defendant filed a Reply on September 12, 2023. (Docket No. 80).

The Court has read and considered the Motion and held a hearing on **September 25, 2023**.

The Motion is **GRANTED** and the action is **STAYED** pending the arbitration proceedings.

I. BACKGROUND

Plaintiff is a Minnesota corporation and one of the largest health plans in the United States. (First Amended Complaint ("FAC") (Docket No. 38) ¶ 25; Motion at 5). Plaintiff executed contracts ("Participation Agreements") with radiology practices (the "Practices") which entitled the Practices to receive reimbursements for services performed by "Medical Group Physicians" as defined in the Participation Agreements. (*Id.* ¶¶ 9–10). The Participation Agreements also stated that the Practices could not assign their rights and responsibilities under the agreement without Plaintiff's written consent and also required the Practices to notify Plaintiff if there were a change in ownership or control of the Practices. (*Id.*¶ 10).

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On April 8, 2022, one of the Practices, Singleton Associates, P.A. ("Singleton"), filed an arbitration demand against United Healthcare of Texas ("UHCTX") — a former party to this case and wholly-owned subsidiary of Plaintiff — for reduced reimbursement rates pursuant to the parties Participation Agreement. (Motion at 1, 7). Singleton and UHCTX both agreed to arbitration. (*Id.*at 7). On March 10, 2023, UHCTX sought a continuance requesting to file counterclaims (the "Counterclaims") in Arbitration, but the arbitration panel (the "Panel") denied the continuance motion. (*Id.* at 8). However, after discovery including document productions, depositions, and evidentiary hearings, the Panel granted UHCTX leave for the Counterclaims and deemed them filed in the Arbitration on April 2, 2023. (*Id.* at 8–9). On April 14, 2023, the plaintiffs in this case, UHCTX and United HealthCare Services, Inc., filed the Original Complaint. (*Id.* at 10; *see also* Original Complaint (Docket No. 1)). But additional discovery, which included more document production and depositions, in the Arbitration was still being held for the Counterclaims. (*Id.* at 9). On June 30, 2023, Singleton filed a Motion for Summary Disposition for the Counterclaims. (*Id.* at 10).

In the FAC, Plaintiff alleges that Defendant, a physician-staffing company, became affiliated with the Practices and began to submit claims for services performed by providers who were not authorized Medical Group Physicians under the Participation Agreements. (*Id.*¶¶ 12, 17, 20, 45, 61, 68, 72). Plaintiff seeks to recover alleged overpayments caused by Defendant and asserts the following claims: fraud; fraud inducement; negligent misrepresentation; money had and received; unjust enrichment; violation of civil RICO, 18 U.S.C. § 1962(c); conspiracy to violate civil RICO, 18 U.S.C. § 1962(d); unfair competition under California Business & Professions Code sections 17200, et seq.; and ERISA, 29 U.S.C. § 1132(a)(3).

The Participation Agreements included the following arbitration clauses:

Texas Practice Group:

> Plan or Payor and Medical Group will work together in good faith to resolve any disputes about their business relationship. If the parties are

> unc1ble to resolve the dispute within 30 days following the date one party sent written notice of the dispute to the other party, and if Plan, Medical Group, or any Payor that has consent in writing to binding arbitration, wishes to pursue the dispute, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association. . . .

(Docket No. 68-4 at 6)

Florida Practice Group:

> The parties will work together in good faith to resolve any and all disputes between them (hereinafter referred to as "Disputes") including but not limited to all questions of arbitrability, the existence, validity, scope or termination of the Agreement or any term thereof.
>
> If the parties are unable to resolve any such Dispute within 60 days following the date one party sent written notice of the Dispute to the other party, and if either party wishes to pursue the Dispute, it shall thereafter be submitted to binding arbitration in accordance with the Commercial Dispute Procedures of the American Arbitration Association, as they may be amended from time to time (see http://www.adr.org). . . .

(Docket No. 68-5 at 5)

North Carolina:

> The parties will work together in good faith to resolve any and all disputes between them (hereinafter referred to as "Disputes") including but not limited to all questions of arbitrability, the existence, validity, scope or termination of the Agreement or any term thereof.
>
> If the parties are unable to resolve any such Dispute within 60 days following the date one party sent written notice of the Dispute to the other party, and if either party wishes to pursue the Dispute, it shall thereafter

> be submitted to binding arbitration in accordance with the Commercial Dispute Procedures of the American Arbitration Association, as they may be amended from time to time (see http://www.adr.org). . . .

(Docket No. 68-6 at 6)

Defendant now moves to compel arbitration, arguing that Plaintiff's claims are subject to mandatory arbitration pursuant to the arbitration clauses in the Participation Agreements. (*See* Motion).

II. LEGAL STANDARD

The Federal Arbitration Act ("FAA") requires district courts to compel arbitration on all claims subject to arbitration agreements. *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (citing 9 U.S.C. §§ 3, 4). The FAA creates a general presumption in favor of arbitration. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24–25 (1991). Under the FAA, a party moving to compel arbitration must show "(1) the existence of a valid, written agreement to arbitrate; and, if it exists, (2) that the agreement to arbitrate encompasses the dispute at issue." *Ashbey v. Archstone Prop. Mgmt., Inc.*, 785 F.3d 1320, 1323 (9th Cir. 2015).

"In determining whether a valid arbitration agreement exists, federal courts 'apply ordinary state law principles that govern the formation of contracts.'" *Nguyen*, 763 F.3d at 1175 (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)). "Federal courts sitting in diversity look to the law of the forum state — here, California — when making choice of law determinations." *Id*. (citation omitted).

III. DISCUSSION

Even though Defendant is a non-signatory to the Participation Agreements, it argues that the doctrines of agency and equitable estoppel support compelling arbitration. (Motion at 1).

A. Agency Theory

Defendant argues that Plaintiff is bound to the Arbitration Clause under the principles of agency. (Motion at 1). Plaintiff argues that Defendant cannot compel arbitration under agency theory because Defendant is a principal and not an agent. (Opp. at 9). In response, Defendant argues that the Practices authorized it to be their agent through management services agreements. (Reply at 10).

Under California's choice-of-law analysis, the Court would only apply the laws of the state of each of the Practices – Texas, Florida, and North Carolina – if the law in those states "materially differs from the law of California." *In re Henson*, 869 F.3d 1052, 1059–60 (9th Cir. 2017) (citing *Washington Mut. Bank, FA v. Superior Court*, 24 Cal. 4th 906, 919, 103 Cal. Rptr. 2d 320 (2001)) (internal quotations omitted). The parties do not dispute that California laws apply due to a lack of material differences between the laws of the state of each of the Practices.

Under California law, "agency is the fiduciary relationship that arises when one [party] (a 'principal') manifests assent to another [party] (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act." *Mavrix Photographs, LLC v. LiveJournal, Inc.*, 873 F.3d 1045, 1054 (9th Cir. 2017) (as amended) (quoting Restatement (Third) of Agency § 1.01 (Am. Law Inst. 2006)). "Courts have generally applied the agency principle to prevent parties from evading arbitration obligations by suing a signatory's agents instead of the principal." *Soto v. Am. Honda Motor Co.*, 946 F. Supp. 2d 949, 956 (N.D. Cal. 2012) (citation omitted).

Defendant argues that the management services agreements of each Practice designated Defendant as its agent to manage day to day operations. (Motion at 19–20 (citing Exs. D, F, G (Docket Nos. 68-7, 68-8, 68-10)). However, Plaintiff argues that Defendant is acting as the principal because Defendant's executives and employees seized control of the Practices by appointing themselves as sole officers and directors of the Practices. (See FAC ¶¶ 65, 69, 74; Opp. at 10–11 (citing Exs. E-Q (Docket Nos. 76-6–76-18)). Defendant argues that sharing employees or officers does not "render

one entity the agent of another" and that individuals not Defendant are the Practices' principals. (Reply at 9–10 (citing *Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003))).

"In considering a motion to compel arbitration, the court applies a standard similar to that under Federal Rule of Civil Procedure 56 on summary judgment." *Smith v. H.F.D. No. 55, Inc.*, No. 2:15-cv-01293, 2016 WL 881134, at *4 (E.D. Cal. Mar. 8, 2016). Defendant, "as the party seeking to compel arbitration, must prove the existence of a valid agreement by a preponderance of the evidence." *Wilson v. Huuuge, Inc.*, 944 F.3d 1212, 1219 (9th Cir. 2019) (citation omitted). However, neither side has presented sufficient evidence demonstrating which company has control of the other. "[O]nly when no genuine disputes of material fact surround the arbitration agreement's existence and applicability may the court compel arbitration." *Smith*, 2016 WL 881134, at *4 (citing *Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136, 1141 (9th Cir. 1991)). Because this is a clear dispute of fact, the Court will not compel arbitration based on agency principles.

B. Equitable Estoppel

California law permits non-signatories to invoke arbitration clauses under the doctrine of equitable estoppel only in limited circumstances. *See In re Henson*, 869 F.3d 1052 (9th Cir. 2017). The two circumstances are:

> (1) when a signatory must rely on the terms of the written agreement in asserting its claims against the "nonsignatory or the claims are intimately founded in and intertwined with the underlying contract, and
>
> (2) when the signatory alleges substantially interdependent and concerted misconduct by the nonsignatory and another signatory and the allegations of interdependent misconduct are founded in or intimately connected with the obligations of the underlying agreement.

Murphy v. DirecTV, Inc., 724 F.3d at 1218, 1229 (9th Cir. 2013) (internal quotation omitted). Defendant argues the first circumstance — that the FAC is intertwined with and dependent on the Participation Agreements. (Motion at 16).

Plaintiff argues that there is a material difference in the equitable estoppel laws of each state, but the Court is not persuaded that the authorities cited in the Opposition for Florida and North Carolina support that proposition. *Compare Kroma Makeup EU, LLC v. Boldface Licensing + Branding, Inc.*, 845 F.3d 1351 (11th Cir. 2017) (applying Florida law), *and Smith Jamison Constr. v. APAC-Atl., Inc.*, 257 N.C. App. 714, 811 S.E.2d 635 (2018) (applying North Carolina law) *with Murphy*, 724 F.3d at 1229. "[A] party contend[ing] that some other law should apply to an issue . . . has the burden to show that the [other] law . . . rather than California law, should apply." *Lemmon v. Snap, Inc.*, No. 19-cv-4504, 2022 WL 1407936, at *2 (C.D. Cal. Mar. 31, 2022) (citation and internal quotations omitted).

Plaintiff argues that Texas does not recognize the first circumstance under *Murphy*. (See Opp. at 21). While Texas Supreme Court has acknowledged the existence of the first circumstance under *Murphy*, it has not decided its validity in Texas. *See V3 Constr. Co., LLC v. Butler*, No. 02-20-00171-cv, 2021 WL 519912 (Tex. App. Feb. 11, 2021). The Fifth Circuit has, however, "predicted" that Texas "would adopt this estoppel formulation." *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 639 (Tex. 2018) (citing *Hays v. HCA Holdings, Inc.*, 838 F.3d 605, 612 (5th Cir. 2016)). Therefore, this Court will adopt the predictions of the Fifth Circuit and because there is no material difference between California and Texas law, the Court will analyze the first circumstance under California law.

Plaintiff argues that the real issue is that the Practices through Defendant fraudulently billed claims for services that the Practices did not perform under the Practices' name and Tax Identification Number. (Opp. at 17). The Court agrees with Plaintiff's argument that if one looked only at the cleverly amended text of the FAC, it would seem that the Court does not need to interpret the Participation Agreements. However, the Court also agrees with Defendant that "it is the substance of Plaintiff's

claim that counts, and not the form of its pleading." (Reply at 13 (quoting *Franklin v. Cmty. Reg'l Med. Ctr.*, 998 F.3d 867, 875 (9th Cir. 2021)).

Equitable estoppel applies to a written agreement containing an arbitration clause when a party must rely on the terms of the written agreement in asserting its claims. *Comer v. Micor, Inc.*, 436 F.3d 1098, 1101 (9th Cir. 2006) ("Equitable estoppel 'precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes.'") (citing *Wash. Mut. Fin. Group, LLC v. Bailey*, 364 F.3d 260, 267 (5th Cir. 2004)). Additionally, while the FAC is the operative pleading, "[a] prior pleading . . .may be admissible in evidence against the pleader; e.g., as an admission or prior inconsistent statement by the pleader." *Robinson v. Salazar*, 885 F. Supp. 2d 1002, 1025 (E.D. Cal. 2012), *aff'd sub nom. Robinson v. Jewell*, 790 F.3d 910 (9th Cir. 2015).

The Original Complaint against Defendant significantly overlaps with the Arbitration Counterclaims. (*See* Redline of Original Complaint and Counterclaims, Docket no. 69-8). When it filed the FAC, Plaintiff removed UHCTX as a party and the tortious interference with contract claim, and added almost parallel allegations against two other practices affiliated with Defendant. (*Compare* Original Complaint *with* the FAC). Defendant alleges that the FAC still references Singleton 136 times and contains 59 paragraphs that are almost verbatim from the Counterclaims. (Motion at 11).

This issue, of course, was extensively addressed at the hearing. Ultimately, the Court agrees with Defendant that it is impossible to understand why the alleged fraud is indeed a "lie" – as Plaintiff's counsel argued – without understanding the relationship between the parties as set forth in the Participation Agreements. Without the context and framework of the Participation Agreements, Plaintiff's allegations do not make sense.

Duplicative litigation undermines the major purpose of the FAA, which is "the efficient and expeditious resolution of claims." *Sink v. Aden Enters., Inc.*, 352 F.3d 1197, 1201 (9th Cir. 2003) (citations omitted). When evaluating estoppel, the Court

cannot turn a blind eye to the Counterclaims in arbitration, the similarities between the Counterclaims and the Original Complaint, nor the changes between the Original Complaint and the FAC. The Court finds that Defendant, by its own admission, is relying on the Participation Agreements containing arbitration clauses as the basis for its claims.

C. Scope of the Arbitration Provision

In addition to showing the existence of an enforceable arbitration provision, the moving party must show that the parties' dispute falls within the scope of the provision. Here, neither party disputes that Plaintiff's claims are within the scope of the Arbitration Provision and the Court agrees.

Accordingly, the Motion is **GRANTED**. Plaintiff is **ORDERED** to submit its claims to arbitration as provided by the Arbitration Provision. 9 U.S.C. § 4.

"A district court may either stay the action or dismiss it outright when, as here, the court determines that all of the claims raised in the action are subject to arbitration." *Johnmohammadi v. Bloomingdale's, Inc.*, 755 F.3d 1072, 1074 (9th Cir. 2014). Notwithstanding this discretion, the Ninth Circuit's preference is for district courts to "stay[ ] an action pending arbitration rather than dismissing it." *MediVas, LLC v. Marubeni Corp.*, 741 F.3d 4, 9 (9th Cir. 2014). The parties proffer no reason here for the Court to depart from the Ninth Circuit's preference.

Accordingly, the Court **STAYS** this action pending completion of the arbitration. *See* 9 U.S.C. § 3. The parties shall file a joint status report every 90 days apprising the Court of the status of the arbitration proceedings, with the first report due on **January 29, 2024**.

IT IS SO ORDERED.