UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 20-1030JVS(DFMx)	Date	Sept. 21, 2020
Title	Joyce Poisson v. Aetna Life Insurance Company		

Present: The Honorable	**James V. Selna, U.S. District Court Judge**

Lisa Bredahl	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **[IN CHAMBERS] Order Regarding Motion to Dismiss**

Defendant Aetna Life Insurance Company ("Aetna") filed a motion to dismiss the complaint of Plaintiff Joyce Poisson ("Poisson"). MTD, ECF No. 12. Poisson filed an opposition. Opp'n, ECF No. 19. Aetna filed a reply. Reply, ECF No. 20. With leave of Court, ECF No. 26, Poisson filed a sur-reply. Sur-reply, ECF No. 28.

For the following reasons, the Court **DENIES** the motion.

I. BACKGROUND

This cases arises from a tragic motorcycle accident on March 4, 2011. Compl., ECF No. 1, ¶ 5. In that accident, Walter Jones ("Jones") suffered severe trauma to his head and face, resulting in serious, permanent brain damage. Id. Jones was an employee of Qlogic, and covered by Qlogic's employee benefits plan with Aetna (the "Plan"). Id. at ¶ 2. Following his accident, he applied for and received long-term disability benefits from June 3, 2011, until July 25, 2011. Id. at ¶ 6.

On July 24, 2011, Jones returned to work at Qlogic. Id. at 7. Despite returning to work, however, Jones was never able to fully resume the job responsibilities that he had prior to the accident. Id. at ¶ 9. Then, on March 9, 2014, Jones was informed that his employment was being terminated. Id. at 11.

Jones proceeded to initiate a long-term disability claim with Aetna on April 30, 2014. Id. at ¶ 12. Aetna then received an attending physician statement from Dr. Lawrence Chang stating that he was "uncertain about [Jones'] level of disability" in part because he was not Jones' treating physician prior to March 2014. Id. at ¶ 14. Aetna later

denied Jones' long-term disability claim in a letter dated July 29, 2014. Id. at 19.

As the complaint recounts, Jones:

> contacted Aetna again on July 10, 2015. He sent an email that simply said, "I would like to appeal the denial of my long term disability claim." Another email from Jones followed a week later on July 17, 2015: "I need help with this appeal. I never received notice from the appeals that there was a February deadline to appeal!?! I tried to appeal right away a year ago by phone. I have been waiting to hear from someone! Please help...I had a brain injury and have short term memory loss."

Id. at ¶ 20. Jones filed for Social Security Disability Insurance ("SSDI") on October 29, 2015, and underwent a psychological examination by Dr. Halimah McGee on January 12, 2016, which found that "Jones was not competent to manage funds on his own behalf and would require 24-hour care and supervision for the rest of his life." Id. at ¶¶ 21-22. From 2015 to 2019, Poisson, Jones' wife, "attempted to resolve her husband's benefit dispute with Aetna, but she was not legally authorized to act on his behalf." Id. at ¶ 24.

Finding no success, Poisson sought legal counsel starting in 2018. Id. at ¶ 25. Lawyers advised Poisson that she should seek a court order naming her as appointed conservator for Jones, a petition for which she filed on August 16, 2019. Id. at ¶ 26. Then, on March 19, 2020, Jones underwent a neurological consultation with Dr. Arthur Kowell, who concluded that "it is medically probable that the patient would not have been reliably competent in managing his legal and financial affairs since" the time of his motorcycle accident. Id. at ¶¶ 27, 28.

On June 8, 2020, Poisson filed the instant lawsuit. See generally id. Poisson has filed a claim under 29 U.S.C. § 1132(a)(1)(B) of the Employment Retirement Income Security Act of 1974 ("ERISA") for Jones' long-term disability benefits, enforcement and clarification of Jones' rights under the Plan, and clarification of Jones' rights. Id. at ¶¶ 31-36. Poisson also seeks in the alternative equitable relief requiring Aetna to "reopen its claim investigation and consider all relevant information" under 29 U.S.C. § 1132(a)(3). Id. at ¶¶ 37-43.

II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has "facial plausibility" if the plaintiff pleads facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. Nor must the Court "'accept as true a legal conclusion couched as a factual allegation.'" Id. at 678-80 (quoting Twombly, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must "determine whether they plausibly give rise to an entitlement to relief." Id. at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id.

III. DISCUSSION

A. Judicial Notice

Before considering Aetna's arguments to dismiss, the Court first addresses whether it can take judicial notice of the Plan attached to the Montgomery declaration, see Plan, ECF No. 13, 6-41, and the letter from the California Department of Insurance attached to the Montgomery supplemental declaration. See DoI Letter, ECF No. 20-1, 6-7.

Because factual challenges have no bearing under Rule 12(b)(6), generally, the Court may not consider material beyond the pleadings in ruling on a motion to dismiss. Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001), overruled on other grounds, Galbraith v. Cnty. of Santa Clara, 307 F. 3d 1119, 1125 (9th Cir. 2002). There are, however, three exceptions to this rule that do not demand converting the motion to dismiss into one for summary judgment. Lee, 250 F.3d at 688. First, pursuant to Federal Rule of Evidence 201, the Court may take judicial notice of matters of public record, but

it "cannot take judicial notice of disputed facts contained in such public records." Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 999 (9th Cir. 2018), cert. denied sub nom. Hagan v. Khoja, 139 S. Ct. 2615, 204 L. Ed. 2d 264 (2019) (citing Lee, 250 F.3d at 689); see Fed. R. Evid. 201(b). Second, the Court also may take judicial notice of documents attached to or "properly submitted as part of the complaint." Lee, 250 F.3d at 688. Third, if the documents are "not physically attached to the complaint," they may still be considered if the documents' "authenticity . . . is not contested" and the documents are necessarily relied upon by the complaint. Id.; United States v. Corinthian Colleges, 655 F.3d 984, 998–99 (9th Cir. 2011). "However, if the document merely creates a defense to the well-pled allegations in the complaint, then that document did not necessarily form the basis of the complaint" and cannot be incorporated by reference. Khoja, 899 F.3d at 1002.

Poisson does not object to the court taking judicial notice of the Plan. Further, Plaintiffs refer to the Plan throughout the FAC. See FAC, ¶¶ 2, 6, 32-42. The Court therefore takes judicial notice of the Plan. The letter from the California Department of Insurance is not a matter of public record, nor is it attached to or relied upon in the complaint. Consequently, the Court declines to take judicial notice of the letter.

B. The § 1132(a)(1)(B) Claim

Aetna argues that Poisson's claim under 29 U.S.C. § 1132(a)(1)(B) is barred by a three-year limitations period in the Plan. MTD at 3-4. Courts will enforce a limitations period prescribed by an ERISA plan so long as the limitations period is reasonable. Heimeshoff v. Hartford Life & Acc. Life Ins., 571 U.S. 99, 105-06 (2013). The Supreme Court has held a three-year limitations period to be reasonable. Id. at 109. Under the terms of the Plan, "[n]o legal action can be
brought to recover under any benefit after three years from the deadline for filing claims." Plan at 27. Under Heimeshoff, the Plan's limitations period is therefore valid.

The Plan further states that "[t]he deadline for filing a claim for benefits is 90 days after the end of the elimination period." Plan at 26. The elimination period, in turn, is defined as "[t]he first 90 days of a period of total disability." Plan at 9. Finally, "[a] period of total disability starts on the first day you are totally disabled as a direct result of a significant change in your physical or mental condition occurring while you are insured under this Policy." Plan at 19. Aetna deemed Jones' period of total disability as beginning

on March 17, 2014, the date of Jones' visit to Dr. Chang following his end of employment with Qlogic. Compl. Ex. A at 14. Ninety days following March 17, 2014, was June 15, 2014. This means that the limitations period would have ended up on June 15, 2017, before the complaint in this lawsuit was filed on June 8, 2020. See Compl.

Poisson responds that the limitations period was equitably tolled because Jones has been mentally incompetent for the entire relevant period, and therefore the limitations period could not have started until Poisson was named as legal conservator on August 29, 2019. Opp'n at 10-11; see Compl. ¶ 30.[1] As the Supreme Court noted in Heimeshoff, "[t]o the extent the participant has diligently pursued both internal review and judicial review but was prevented from filing suit by extraordinary circumstances, equitable tolling may apply" to a claim under § 1132(a)(1)(B). 571 U.S. at 114. Heimeshoff also held that when "the parties have adopted a limitations period by contract . . . [and] there is no need to borrow a state statute of limitations[,] there is no need to borrow concomitant state tolling rules." Id. at 116. The Court therefore must decide whether Poisson has sufficiently alleged federal common law equitable tolling, not equitable tolling under California Civil Code § 352(a) as Poisson urges. See Opp'n at 14.

Aetna urges the Court to find that the § 1132(a)(1)(B) claim should not be tolled because Jones engaged in activities ranging "from retaining counsel to filing a SSDI claim, to raising issues multiple times with the Department of Insurance," which collectively demonstrate that Jones did not exercise diligence and was not prevented by "extraordinary circumstances." Reply at 7. The Court disagrees. The purpose of equitable tolling is to not bar a claim because a plaintiff was "excusably ignorant of the limitations period." Stallcop v. Kaiser Foundation Hospitals, 820 F.2d 1044, 1050 (9th Cir. 1987) (citing Naton v. Bank of California, 649 F.2d 691, 696 (9th Cir. 1981)). Kantor & Kantor were secured as counsel for Jones in 2019, a date too late to be used to show that Jones had "constructive knowledge" of the limitations period in the five prior years since the limitations period began. See id. As part of Jones' filing for SSDI, Jones underwent a psychological examination that determined both that Jones suffered from "severe cognitive limitation" and that "Jones was not competent to manage funds on his own behalf and would require 24-hour care and supervision for the rest of his life." Compl. at

[1] Poisson also argues that her claim under 29 U.S.C. § 1132(a)(3) is not time barred. Opp'n at 11-12. Aetna never argues that Poisson's § 1132(a)(3) claim is time barred, however.

¶¶ 21, 22. In the Court's view, an application for SSDI with such findings is instead an indication that Jones did suffer from "extraordinary circumstances." Finally, Jones' alleged communications with the Department of Insurance are only substantiated by the letter from the Department of Insurance, which the Court previously declined to take judicial notice of. See supra Section III.A.

Although Aetna argues that Poisson failed to exhibit diligence because she dismissed her first petition for conservatorship in 2017 and thereby delayed the time at which she could have filed the instant lawsuit, Reply at 7-8, the test is whether "the participant" diligently pursued judicial review. See Heimeshoff, 571 U.S. at 114. What actions Poisson took prior to being appointed conservator for Jones in 2019 are irrelevant to determining whether equitable tolling should apply. To hold otherwise would penalize Jones for Poisson's actions even when she did not have the authority to act on his behalf.

"[M]ental incompetence constitutes a ground for equitable tolling. Principles of equity mandate that when mental incompetence precludes a person from asserting his rights during the proper time period, he should not be precluded from later seeking redress for his injuries." Brockcamp v. United States, 67 F.3d 260, 263 (9th Cir. 1995). Poisson has alleged that medical professionals have found that "it is medically probable that [Jones] would not have been reliably competent in managing his legal and financial affairs since" the time of his 2011 motorcycle crash and that "Jones was not competent to manage funds on his own behalf and would require 24-hour care and supervision for the rest of his life." Compl. at ¶¶ 22-28. As such, the Court concludes that Poisson has sufficiently alleged that Jones did suffer from severe mental incompetence that justifies the application of equitable tolling.

The Court therefore **DENIES** Aetna's motion to dismiss Poisson's claim under § 1132(a)(1)(B).

C. The § 1132(a)(3) Claim

Under 29 U.S.C. § 1132(a)(3), a civil action under ERISA may be brought "by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." The Supreme Court has interpreted § 1132(a)(3)'s

authorization of "appropriate equitable relief" as meaning that"where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief normally would not be 'appropriate.'" Varity Corp. v. Howe, 516 U.S. 489, 515 (1996).

Aetna argues that since Poisson's claim under § 1132(a)(1)(B) would also provide adequate relief for the denial of Jones' benefit, Varity dictates that Poisson's claim under § 1132(a)(3) should be dismissed as duplicative. See MTD at 8. Poisson responds by noting that its claim under § 1132(a)(3) is brought in the alternative to its claim under § 1132(a)(1)(B), and therefore is not duplicative under the Ninth Circuit's holding in Moyle v. Liberty Mutual Retirement Benfits Plan, 823 F.3d 948 (9th Cir. 2016). Opp'n at 18-19.

Although Aetna attempts to distinguish Moyle, Aetna's argument is unavailing. Moyle quotes with approval the Eighth Circuit's logic in Silva v. Metropolitan Life Insurance Co., 762 F.3d 711 (8th Cir. 2014) that Varity does not "stand for the proposition that [a plaintiff] may only plead one cause of action to seek recovery [for an ERISA violation]. Rather, we conclude those cases prohibit duplicate recoveries when a more specific section of the statute, such as § 1132(a)(1)(B), provides a remedy similar to what the plaintiff seeks under the equitable catchall provision, § 1132(a)(3)." Moyle, 823 F.3d at 961 (quoting Silva, 762 F.3d at 726) (emphasis in original) (changes in original). The different facts in Moyle do not narrow this broad holding, which represents the Ninth Circuit's understanding of § 1132(a)(3) following CIGNA Corp. v. Amara, 563 U.S. 421 (2011). Here, as in Moyle, Poisson "seek[s] the payment of benefits under § 1132(a)(1)(B), but if that fails, [Poisson seeks] an equitable remedy for the breach of fiduciary duty to disclose under § 1132(a)(3). This is permitted under pre- and post-Amara cases across different circuits." 823 F.3d at 962. None of the cases from the Ninth Circuit that Aetna cites to the contrary acknowledge Moyle.[2]

[2]See Schuman v. Microchip Technology Inc., 302 F. Supp. 3d 1101, 1117 (N.D. Cal. 2018); Biggar v. Prudential Insurance Co. of America, 274 F. Supp. 3d 954, 972 (N.D. Cal. 2017); Englert v. Prudential Insurance Co. of America, 186 F. Supp. 3d 1044, 1048 (N.D. Cal. 2016); Sides v. Cisco Systems, Inc., 2019 WL 1385896, at *10 (N.D. Cal. Mar. 27, 2019); Western v. Unum Life Insurance Co. of America, 2018 WL 6071090, *14 (C.D. Cal. July 3, 2018); Patient One v. UnitedHealth Group, Inc., 2014 WL 12639332, *3 (C.D. Cal. Mar. 5, 2014).

Finally, while Aetna argues in its reply brief that Poisson's relief "has no basis in ERISA jurisprudence," Reply at 11-12, this argument is new and cannot be considered by the Court. See Sandoval v. Law Office of John Bouzane, 2016 WL 7383535, at *2 n.3 (C.D. Cal. Jan. 5, 2016). The Court therefore **DENIES** Aetna's motion to dismiss with respect to Poisson's § 1132(a)(3) claim.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** the motion. The Court finds that oral argument would not be helpful in this matter. Fed. R. Civ. P. 78; L.R. 7-15. Hearing set for September 28, 2020, is ordered **VACATED**.

IT IS SO ORDERED.

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