UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-80545-CIV-MARRA

SHARON PROLOW, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

AETNA LIFE INSURANCE COMPANY and AETNA, INC.,

Defendants.
_____/

OPINION AND ORDER

This cause is before the Court upon Defendants' Motion to Dismiss Plaintiff's Complaint (DE 7) and Defendants' Motion to Stay Discovery (DE 23). The Motions are fully briefed and ripe for review. The Court held a hearing on the Motion to Dismiss on November 17, 2020. The Court has carefully considered the Motions and is otherwise fully advised in the premises.

I. Background

Plaintiff Sharon Prolow, on behalf of herself and all others similarly situated, brings a four-count Complaint (DE 1) against Defendants Aetna Life Insurance Company ("ALIC") and Aetna, Inc.[1] ("Aenta") (collectively, "Defendants") alleging violations of fiduciary obligations pursuant to 29 U.S.C. § 1132(a)(3) (count one); improper denial of benefits pursuant to 29

[1] The Complaint alleges that Aetna, Inc. is the parent company of Aetna Life Insurance Company. (Compl. ¶ 8.)

U.S.C. § 1132(a)(1)(B) (count two); a claim for appropriate equitable relief (count three) and a claim for statutory damages (count four). [2]

This class action Complaint is brought on behalf of beneficiaries of ERISA[3] plans. Plaintiff alleges that the plans are administered by Defendants, and that she and other similarly situated beneficiaries of the plans were wrongfully denied Proton Beam Radiation Therapy ("PBRT"), a treatment for breast cancer, due to Defendants' policy of denying this treatment as experimental or investigational. (Compl. ¶ 1.)

According to the Complaint, Defendants are ERISA fiduciaries. (Compl. ¶ 77.) Defendants allegedly violated their fiduciary duties "by adopting and implementing a policy to deny coverage for PBRT." (Id. at ¶ 79.) Due to the breach of fiduciary duty, Defendants were unjustly enriched, and Plaintiff seeks appropriate equitable relief. (Id. at ¶ ¶ 94-95.)

Defendants move to dismiss the Complaint on the following grounds: (1) counts I and III are brought pursuant to 29 U.S.C. § 1132(a)(3) which cannot be pled when a plaintiff's injury would be adequately remedied under 29 U.S.C. § 1132(a)(1)(B); (2) count III is not a freestanding claim but a remedy and (3) the Complaint is a shotgun pleading which impermissibly lumps the two defendants together.

Plaintiff responds that (1) the 29 U.S.C. § 1132(a)(3) claim for breach of fiduciary duty can proceed alongside her claim for wrongful denial of benefits under 29 U.S.C. § 1132(a)(1)(B); (2) the breach of fiduciary duty claim is adequately pled; (3) the remedies in count III are available under ERISA and (4) the Complaint is not a shotgun pleading.

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[2] In response to the motion to dismiss, Plaintiff seeks to voluntarily dismiss count four. (Resp. at 3 n.1.) It is, however, procedurally improper to attempt to dismiss voluntarily less than all of a party's claims in an action. Klay v. United Healthgroup, Inc., 376 F.3d 1092, 1106 (11th Cir. 2004). The proper procedure is to amend the complaint to eliminate the claim. Id.

[3] ERISA is shorthand for the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq.

II. Legal Standard

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Supreme Court has held that "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations omitted).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quotations and citations omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. Thus, "only a complaint that states a plausible claim for relief survives a motion to dismiss." Id. at 1950. When considering a motion to dismiss, the Court must accept all of the plaintiff's allegations as true in determining whether a plaintiff has stated a claim for which relief could be granted.

III. Discussion

The first question this Court must revolve is whether Plaintiff's claims for "violation of fiduciary obligations" (count I) and "other appropriate equitable relief" (count three) pursuant to 29 U.S.C. § 1132(a)(3) (hereinafter, "section 1132(a)(3)") may proceed alongside Plaintiff's claim for wrongful denial of benefits pursuant to 29 U.S.C. § 1132(a)(1)(B) (hereinafter, "section 1132(a)(1)(B)").

Section 1132(a)(1)(B) allows an ERISA-plan beneficiary to bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). In contrast, section 1132(a)(3) allows an ERISA-plan beneficiary to bring a civil action to "(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." 29 U.S.C. § 1132(a)(3).

In Varity v. Howe, 516 U.S. 489 (1996), the United States Supreme Court held that section 1132(a)(3) serves as a safety net to offer appropriate equitable relief for violations that section 1132(a)(1)(B) does not sufficiently remedy. Id. at 512. Following Varity, the Eleventh Circuit Court of Appeals in Katz v. Comprehensive Plan of Grp. Ins., 197 F.3d 1084 (11th Cir. 1999), held that a plaintiff could not bring a claim under section 1132(a)(3) when she had an adequate remedy under section 1132(a)(1)(B), even if the plaintiff lost on the merits of that claim. Id. at 1088-90.

Next, in Jones v. Am. Gen. Life & Accident Ins. Co., 370 F.3d 1065 (11th Cir. 2004), the court addressed a group life insurance benefit provided to the plaintiff employees. Id. at 1067. The group life insurance benefit provided by the original employer allowed employees who stayed with the employer until retirement to retain the group life insurance benefit after retirement at company expense. Id. The successor employer, however, informed these employees that it was terminating the retiree group life benefit. Id. at 1068. The plaintiffs sought relief under ERISA for breach of contract, equitable estoppel, and breach of fiduciary duty. Id. The breach of contract and equitable estoppel claims sought reinstatement of the plan. Id. With

respect to the breach of fiduciary duty claim, the plaintiffs alleged that they relied on the defendant's misrepresentations to their detriment in making financial plans for themselves and their families. Id. at 1072. The defendant moved to dismiss this claim, arguing that the breach of fiduciary duty claim was only cognizable under section 1132(a)(3), and that pursuant to Katz, the plaintiffs were not entitled to section 1132(a)(3) relief because section 1132(a)(1)(B) afforded them an adequate remedy. Id. The district court agreed and dismissed the breach of fiduciary duty claim based on Varity and Katz. Id. Later, at summary judgment, the district court dismissed the plaintiffs' remaining claims. Id.

With respect to the section 1132(a)(1)(B) claim, the Eleventh Circuit found that the district court did not err in granting summary judgment to the employer because the plan was unambiguous, causing the breach of contract and equitable estoppel claims to fail. Id. at 1071. Addressing the district court's dismissal of the breach of fiduciary claim[4] under section 1132(a)(3), the Eleventh Circuit noted that the plaintiffs pled this claim in the alternative. Id.

The Eleventh Circuit then stated that the district court misapplied Varity and Katz, and ought to have considered whether the allegations supporting the section 1132(a)(3) claim were enough to state a cause of action under section 1132(a)(1)(B), regardless of the relief sought. Id. at 1073-74. The Eleventh Circuit explained that "the relevant concern in Varity, in considering whether the plaintiffs had stated a claim under [section 1132](a)(3), was whether the plaintiffs also had a cause of action, based on the same allegations under [section 1132](a)(1)(B) or ERISA's other more specific remedial provisions." Id. at 1073. In Jones, because the plaintiffs' breach of fiduciary duty claim was premised upon different allegations of misconduct than their claim for benefits, the plaintiffs should have been permitted to plead the breach of fiduciary duty

[4] This claim alleged that the defendants engaged in a pattern of misrepresentation that caused the plaintiffs to believe their insurance benefit would not be changed during their retirement. Id.

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