

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

REGINA C. HONEY, individually and as  
natural parent of ADDISON M. HONEY, a  
minor, and LUCAS R. HONEY, a minor;  
ADAM D. HONEY, individually and as  
natural parent of ADDISON M. HONEY, a  
minor, and LUCAS R. HONEY, a minor,

Plaintiffs,

v.

DIGNITY HEALTH, a California non-profit  
corporation, doing business as ST. ROSE  
DOMINICAN HOSPITAL-SIENNA  
CAMPUS; CONEXIS BENEFIT  
ADMINISTRATORS LP, a Texas limited  
partnership; CONEXIS LLC, a California  
limited liability partnership; PAYFLEX  
SYSTEMS, USA, INC., a Nebraska  
corporation; DOE Entities I-V; and ROE  
individuals VI-X.

Defendants.

Case No. 2:12-cv-00416-MMD-GWF

ORDER

(Def.'s Motion for Summary Judgment –  
dkt. no. 85; Plf.'s Motion for Summary  
Judgment – dkt. no. 87)

**I. SUMMARY**

This dispute involves the notification provisions of the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). Plaintiffs Regina C. Honey, Addison M. Honey, Lucas R. Honey, and Adam D. Honey (collectively, "Plaintiffs") allege that Defendant Dignity Health ("Dignity") failed to provide timely and adequate notice regarding Plaintiffs' right to continue participation in Dignity's group health plan following Dignity's termination of Regina's employment. Plaintiffs allege they suffered various harms due to the delayed notice, and request the maximum statutory damages detailed in section 502(c) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(c).

1 Before the Court are the parties' cross motions for summary judgment (dkt. nos.  
2 85, 88), and Plaintiffs' Motion for Leave to File a Sur-Reply (dkt. no. 103). For the  
3 reasons discussed below, the Motion for Leave to File Sur-Reply is granted, and the  
4 parties' cross motions for summary judgment are granted in part and denied in part.

## 5 II. BACKGROUND

6 The following facts are undisputed. Dignity provides health, vision, and dental  
7 insurance coverage to its employees through an "employee welfare benefit plan" (the  
8 "Plan"), as that term is used in 29 U.S.C. § 1002(1). (Dkt. no. 85-1, Ex. A.) Dignity is both  
9 the "sponsor" and the "administrator" of the Plan, as those terms are used in 29 U.S.C. §  
10 1002(16). (Dkt. no. 85.) Until December 31, 2010, Dignity contracted with Defendant  
11 Conexis, LLC ("Conexis") to administer Dignity's compliance with COBRA's notification  
12 provisions for the Plan. (Dkt. no. 86, Ex. B.) After December 31, 2010, Dignity contracted  
13 with Defendant Payflex Systems, USA, Inc. ("Payflex") for the same services. (Dkt. no.  
14 86, Ex. C.)

15 Dignity hired Regina on April 8, 2008, to work as a registered nurse. (Dkt. no. 88-  
16 1 ¶ 2.) Regina participated in Dignity's group health, vision, and dental plans with  
17 Addison as a covered beneficiary. (*Id.*) Adam was also a covered beneficiary for the  
18 dental portion of the Plan only. (*Id.*) Because Regina and Adam were not married until  
19 December 31, 2010, Adam was covered under the Plan as a Legal Domiciled Adult. (*Id.*)

### 20 A. Regina's First Termination

21 In March, 2010, Regina began experiencing signs of pre-term labor and her  
22 doctor ordered bed rest. (*Id.* ¶ 4.) Regina requested leave between March 26 and April  
23 12, 2010, to comply with the doctor's orders. (*Id.*) However, when Regina attempted to  
24 return to work after her symptoms had subsided, she was instructed not to come in, and,  
25 on April 22, 2010, Dignity informed Regina that her employment and benefits were  
26 terminated (the "First Termination"). (*Id.* ¶ 5.) Regina received a COBRA notification  
27 regarding her right to continue her health care benefits on May 19, 2010. (*Id.*)

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1           **B. Regina's Second Termination**

2           After filing a successful grievance against Dignity over the First Termination,  
3           Dignity reinstated Regina, and Regina returned to work on June 10, 2010. (*Id.* ¶ 6.)  
4           However, on June 14, 2010, Regina again experienced symptoms of pre-term labor and  
5           her doctor again ordered bed rest for the remainder of her pregnancy and for a six-week  
6           postpartum period. (*Id.* ¶¶ 7, 9.) Regina remained on bed rest until her son, Lucas, was  
7           born on July 27, 2010. (*Id.*)

8           At the end of her postpartum period, Regina informed her employer that she was  
9           medically cleared to begin working again on September 7, 2010, but she was never  
10          scheduled to return to work. (Dkt. no. 88-4.) In the following days, Regina attempted  
11          several times to reach a representative in Dignity's Human Resources ("HR")  
12          Department regarding her return to work, but she was unable to do so. (Dkt. no. 88-1 ¶¶  
13          11-14.) Regina also attempted to add Lucas to the Plan, but she could not access her  
14          self-service benefits account. (*Id.* ¶ 12; Dkt. no. 85-2, Ex. D, 45:1-47:21.) On September  
15          22, 2010, Regina was finally able to speak to someone in HR, who informed her that  
16          Dignity had retroactively terminated both her employment and her benefits, with effective  
17          dates of June 22, 2010, and June 30, 2010, respectively. (Dkt. no. 88-1 ¶ 15.) On  
18          September 28, 2010, Regina received correspondence from Dignity dated September  
19          15, 2010, formally notifying her of her termination. (*Id.* ¶ 16; Dkt. no. 88-6.)

20          **C. Regina's Attempts to Procure COBRA Notice**

21          During her September 22, 2010, conversation with Dignity's HR representative,  
22          Regina stated that she had yet to receive a notification or information regarding her  
23          continued benefits under COBRA; she expressly requested the notification, conveying  
24          the urgency she felt as a result of medical bills related to her high-risk pregnancy. (Dkt.  
25          no. 88-1 ¶ 15.) The September 28, 2010, termination letter included an attachment  
26          explaining the availability of COBRA coverage. (Dkt. no. 85-2, Ex. E.) However, the letter  
27          did not provide a form for Plaintiffs to elect COBRA coverage. (*Id.*) Rather, the letter  
28          simply stated that enrollment information would be sent separately. (*Id.*) On September

1 30, 2010, Regina again called and left a message for Dignity's HR representative,  
2 informing her that no COBRA notification had arrived. (Dkt. no. 88-1 ¶ 17.) Regina  
3 received no response. (*Id.*)

4 On November 2, 2010, Regina and Adam attended a union meeting to discuss  
5 the issues surrounding her termination. (*Id.* ¶ 18.) At that meeting, Regina informed  
6 Dignity's representatives that she still had not received a COBRA notice. (*Id.* ¶ 19.) One  
7 of those representatives, Ms. Spencer, promised to look into the matter. (*Id.*) On  
8 November 8, 2010, Regina followed up with Ms. Spencer by email regarding her inquiry.  
9 (*Id.* at ¶ 21.) The following week, on November 15, 2010, Ms. Spencer wrote back and  
10 informed Regina that "[a]fter researching the COBRA issue, you were contacted based  
11 on the records. Unfortunately, there is really nothing else I can do." (Dkt. no. 88-8.)  
12 Regina made several more attempts to procure the COBRA notice. (Dkt. no. 88-1 ¶¶ 22-  
13 25.) On November 30, 2010, Regina received an email from Dignity's HR representative,  
14 which stated, "[w]e are contacting Conexis right now to have them issue the missed  
15 Cobra notification." (*Id.*; Dkt. no. 88-12.)

#### 16 **D. The COBRA Notices**

17 Conexis issued the required COBRA notification in connection with Regina's  
18 Second Termination in a correspondence dated December 7, 2010. (Dkt. no. 85-2, Ex.  
19 F.) Although the correspondence was addressed "[t]o Participant and/or any Covered  
20 Dependents," the correspondence listed only Regina and Addison as participants and/or  
21 beneficiaries. (*Id.*) Additionally, the coverage premiums were set out only for Regina and  
22 Addison. (*Id.*) The notice did make a request to "[p]lease verify our records are accurate  
23 and make changes as necessary;" however, the notice was silent about Adam and  
24 Lucas. (*Id.*)

25 On January 18, 2011, Regina contacted Conexis to elect benefits for herself and  
26 Addison. (Dkt. no. 88-1 ¶ 27.) However, Regina was informed that Conexis was no  
27 longer Dignity's co-administrator and that she needed to contact Payflex. (*Id.*) Regina did  
28 so, and was told that she was not in Payflex's system. (*Id.*) Payflex then issued a

1 separate COBRA notice on January 24, 2011. (*Id.* ¶ 28.) Like the Conexis notice, the  
2 Payflex notice only described coverage options for Regina and Addison. (*Id.*; dkt. no. 88-  
3 16.)

#### 4 **E. Regina's Reinstatement**

5 On May 1, 2011, Regina, her union, and Dignity entered into a settlement  
6 agreement, resolving Regina's grievance regarding her Second Termination. (Dkt. no.  
7 85-2, Ex. H.) Under the Agreement, Dignity reinstated Regina's employment, paid  
8 Regina \$600.00 to cover out-of-pocket medical expenses, and paid or wrote off all  
9 Plaintiffs' outstanding medical bills for the period between Regina's Second Termination  
10 and her reinstatement. (*Id.*; Dkt. no. 85-2 at 173.)

#### 11 **F. This Lawsuit**

12 Plaintiffs filed their First Amended Complaint (the "FAC") on March 22, 2013,  
13 claiming violations of COBRA's notice provisions and breach of fiduciary duties. (Dkt. no.  
14 45.) The Court dismissed the breach of fiduciary duty claim pursuant to the parties'  
15 stipulation. (Dkt. no. 91.) The parties also stipulated to dismiss with prejudice Defendants  
16 Conexis and Payflex. (Dkt. nos. 102, 105.) Plaintiffs and Dignity now both move for  
17 summary judgment on the remaining claim for failure to provide the required COBRA  
18 notification. (Dkt. nos. 85, 88.) Plaintiffs have also filed a motion seeking the Court's  
19 permission to file a Sur-Reply to Dignity's Motion for Summary Judgment. (Dkt. no. 103.)

### 20 **III. MOTION FOR LEAVE TO FILE SUR-REPLY**

21 Plaintiffs request permission to file a Sur-Reply in response to an alleged attack  
22 on Regina's credibility in Dignity's Reply to its Motion for Summary Judgment. The  
23 disagreement involves whether Regina elected COBRA coverage after she obtained  
24 adequate notice, or whether she allowed the coverage to lapse.

25 In its various filings, Dignity has consistently argued that Plaintiffs could not have  
26 suffered prejudice because, even after they received COBRA notice, they did not elect  
27 coverage. Dignity offers as support Regina's deposition testimony that she let the  
28 coverage lapse and began negotiating a reinstatement in February 2011. (Dkt. no. 85.)

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