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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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