UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAN ANDREW COTTEN

Plaintiff,

- against -

ALTICE USA, INC.

Defendant.

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ANDREW HORLICK

Plaintiff,

- against -

ALTICE USA, INC.

Defendant.

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MEMORANDUM & ORDER

19-CV-01534 (RJD)(ST)
19-CV-01554 (RJD)(ST)

DEARIE, District Judge:

Dan Andrew Cotten ("Cotten") and Andrew Horlick ("Horlick") (collectively, "Plaintiffs") bring claims against their former employer, Altice USA, Inc. ("Altice" or "Defendant"), related to Altice's alleged failure to pay severance benefits. Plaintiffs sue for breach of contract (Count I) and promissory estoppel (Count II). Cotten Second Amended Complaint, ECF No. 15, ¶¶ 27-36 ("Cotten Compl."); Horlick Second Amended Complaint, ECF No. 15, ¶¶ 26-35 ("Horlick Compl."). Following removal, Plaintiffs amended their pleadings to raise three Employee Retirement Income Security Act ("ERISA") claims in the alternative: failure to pay benefits under an ERISA plan pursuant to § 502(a)(1)(B) (Count III), failure to furnish ERISA plan documents under § 502(a)(1)(A) (Count IV), and breach of fiduciary duty to Plaintiffs and others similarly situated to provide plan documents and timely deliver severance

benefits under § 502(a)(3) (Count V). Cotten Compl. ¶¶ 37-58; Horlick Compl. ¶¶ 36-57. Altice now moves to dismiss, arguing (i) Plaintiffs' state law claims are preempted by ERISA, (ii) Plaintiffs lack standing under ERISA, (iii) Plaintiffs failed to exhaust administrative remedies, and (iv) Plaintiffs' ERISA claims under §502(a)(3) are duplicative of other claims. Def. Mem., Cotten ECF No. 24, Horlick ECF No. 22, at 4-14. For the reasons described below, the Court denies Defendant's Motion to Dismiss as to ERISA preemption, standing, and exhaustion, and reserves decision on dismissal of Count V as duplicative.

BACKGROUND

Cotten began his employment as a Sales Director for Altice on September 25, 2017, and was terminated in July 2018. Cotten Compl. ¶¶ 13, 22. Horlick began his employment as Director of East Coast Sales for Altice on January 2, 2018, and was terminated on June 2, 2018. Horlick Compl. ¶¶ 13, 21. Both Plaintiffs allege that they were terminated "without cause or explanation" and denied severance pay. Cotten Compl. ¶¶ 15, 25; Horlick Compl. ¶¶ 15, 24 (referencing Ex. B).

On or about January 1, 2017, Altice issued a company-wide Altice Severance Benefits Policy ("Altice Policy") that it published on Altice's intranet, widely disseminated, and furnished to Plaintiffs when they accepted employment with Altice. Cotten & Horlick Compls. ¶¶ 6, 8. The Altice Policy outlines severance benefits for Altice employees terminated without cause. Cotten & Horlick Compls, Ex. A at 1-3. The Altice Policy also states: "As approved by the EVP/Head of Function and EVP of Human Resources, severance guidelines are governed by the Company's ERISA-covered severance pay plan and the associated plan document/summary plan description. If you would like to receive a copy please speak with your local Human Resources contact." Id. at 2. The Altice Policy defines "The Company" as "Altice USA." Id.

In removing the action to this Court, Defendant filed a declaration from Altice's Senior Vice President, Compensation, Benefits & HR Operations, Christopher Clarke, and a "Cablevision Severance Pay Plan and Summary Plan Description" ("Cablevision Plan"). See Notice of Removal, Cotten & Horlick ECF No. 1, Ex. C (Cablevision Plan), Ex. D (Clarke Decl.); see also Sweeney Affidavit, Cotten ECF No. 23, Horlick ECF No. 20, Ex. C (Cablevision Plan). With little explanation, Clarke simply states that the Cablevision Plan is the ERISA plan that governs the Altice Policy. Clarke Decl. ¶¶ 3-4. Plaintiffs contend that they were not provided with documents indicating that they were Cablevision employees during the onboarding process nor given the Cablevision Plan prior to this litigation. Cotten Compl. ¶¶ 11-12, 24; Horlick Compl. ¶¶ 11-12, 23; Pl. Opp., Cotten ECF No. 22, Horlick ECF No. 21, at 7, 9.

DISCUSSION

On a motion to dismiss, the Court must "accept all allegations in the complaint as true and draw all inferences in the non-moving party's favor." LaFaro v. N.Y. Cardiothoracic Grp., PLLC, 570 F.3d 471, 472 (2d Cir. 2009). "In considering a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), a district court must limit itself to facts stated in the complaint or in documents attached to the complaint as exhibits or incorporated in the complaint by reference." Kramer v. Time Warner Inc., 937 F.2d 767, 773 (2d Cir. 1991). "[W]here a document is not incorporated by reference, the court may nevertheless consider it where the complaint 'relies heavily upon its terms and effect,' which renders the document 'integral' to the complaint." Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002) (quoting Int'l Audiotext Network, Inc. v. Am. Tel. & Tel. Co., 62 F.3d 69, 72 (2d Cir. 1995)).

As a threshold matter, the Court declines to consider the proffered Cablevision Plan in deciding Defendant's Motion. Despite defense counsel's insistence, it is not apparent that a

Cablevision Plan governs the *Altice* Policy. Indeed, the first reference to the Cablevision Plan is found in Defendant's notice of removal. Compare id. at 154 (finding it improper to consider outside document on motion to dismiss where "the parties disagree as to whether and how the [document] relate[s] to or affect[s] the contractual relationships at issue" and the document could be read as either "irrelevant" or "intended to modify the . . . contracts").

1. Motion to Dismiss State Claims as Preempted by ERISA

Consistent with Congress's goal of "provid[ing] a uniform regulatory regime over employee benefit plans . . . ERISA includes expansive pre-emption provisions which are intended to ensure that employee benefit plan regulation [is] 'exclusively a federal concern.'" Aetna Health Inc. v. Davila, 542 U.S. 200, 208 (2004) (quoting Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 523 (1981)) (citing ERISA § 514; 29 U.S.C. § 1144). "[A]ny state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy . . . is therefore pre-empted." Id. at 209.

Notwithstanding ERISA's broad preemptive force, where there is a factual dispute as to the existence of an enforceable ERISA plan, Plaintiffs may plead state law claims in the alternative. See, e.g., Aiena v. Olsen, 69 F. Supp. 2d 521, 531 (S.D.N.Y. 1999) ("Given the uncertainties concerning (a) whether the [challenged] arrangements were an ERISA plan and (b) the scope of ERISA preemption, it would be foolish to put all of one's eggs in either the ERISA or the state law basket. Resting solely on ERISA would run the risk that a court ultimately would determine that there was no ERISA plan. Resting solely on the state law theory would run the risk that a court would conclude that there was an ERISA plan and that the state claims were preempted."); Aramony v. United Way of Am., 949 F. Supp. 1080, 1084 (S.D.N.Y. 1996) ("[A]s

defendants question the existence of an enforceable ERISA plan, plaintiff's [state law] claim is an acceptable alternative theory that may be pled along with plaintiff's ERISA claims.").

Given uncertainty regarding the existence and identification of Altice's ERISA severance plan, the Court at this time declines to dismiss Plaintiffs' state law claims.

2. Motion to Dismiss ERISA Claims for Lack of Standing

A claim under ERISA may be brought by a "participant or beneficiary" of the ERISA plan. ERISA § 502(a)(1); 29 U.S.C. § 1132(a)(1). See also Chemung Canal Tr. Co. v. Sovran Bank/Maryland, 939 F.2d 12, 14 (2d Cir. 1991) (Those with ERISA standing "are: (1) a participant or beneficiary, (2) the Secretary of Labor, and (3) a fiduciary.").

In addition to disputing the Cablevision Plan's relevance, the parties dispute whether Plaintiffs are designated beneficiaries under Altice's ERISA plan, including whether the Altice Policy constituted such designation. Given outstanding questions regarding Plaintiffs' status under Altice's severance program, the Court cannot now determine that Plaintiffs lack standing. Defendant's Motion to Dismiss as to standing is denied.

3. Motion to Dismiss for Failure to Exhaust Administrative Remedies

ERISA plans must "afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim." 29 U.S.C. § 1133(2). "[R]elying on § 1133, 'courts have developed the requirement that a claimant should ordinarily follow internal plan procedures and exhaust internal plan remedies before seeking judicial relief under ERISA.'" Sibley-Schreiber v. Oxford Health Plans (N.Y.), Inc., 62 F. Supp. 2d 979, 985 (E.D.N.Y. 1999) (quoting Ludwig v. NYNEX, 838 F. Supp. 769, 781 (S.D.N.Y. 1993)). Courts have "dispensed with the exhaustion prerequisite where plaintiffs allege a statutory ERISA violation." De Pace v. Matsushita Elec.

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