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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Jerry T Collen, et al.,

10 Plaintiffs,

11 v.

12 UnitedHealthCare Insurance Company, et  
13 al.,

14 Defendants.

No. CV-19-05692-PHX-MTL

**ORDER**

15 Plaintiff Elizabeth Collen and her husband, Jerry, (collectively the “Collens”) have  
16 sued their employer-sponsored healthcare insurer United Healthcare Insurance Company  
17 (“United”). It is alleged in the Amended Complaint (Doc. 7) that United wrongfully denied  
18 coverage for healthcare services. The Amended Complaint asserts two claims for relief:  
19 (1) “Violation of ERISA: Improper Denial of Rights and Breach of Fiduciary Duty” and  
20 (2) “Misrepresentation and Detrimental Reliance.” (*Id.* at 4.) The Employee Retirement  
21 Income Security Act of 1974 (“ERISA”) governs employer-sponsored benefits such as the  
22 healthcare plan at issue in this case. United moves to dismiss based on ERISA preemption  
23 and pleading insufficiencies. (Doc. 9.) The Court will grant the Motion.

24 I.

25 The Motion seeks dismissal of the Collens’ ERISA-based claim for relief under *Bell*  
26 *Atlantic Corp. v. Twombly*, 550 U.S. 544 (2009), because it fails to “raise a right to relief  
27 above the speculative level.” *Id.* at 555. The Court agrees. ERISA § 502(a) provides  
28 exclusive civil remedies for plaintiffs. The Amended Complaint, however, does not assert

1 critical facts to provide United with notice of the ERISA claim. This includes asserting  
2 plan provisions that the Collens contend that United violated. In their Response brief, the  
3 Collens admit that their Amended Complaint lacks this detail because they did not have  
4 the “plans or documents” from which to assert their claim. (Doc. 12 at 2.) The Collens’  
5 ERISA-based claim for relief will be dismissed with leave to assert a proper civil remedy  
6 under § 502(a).\*

7 The Collens assert an ERISA-based claim for breach of fiduciary duty and United  
8 argues that it fails as a matter of law. “The claim for fiduciary breach gives a remedy for  
9 injuries to the ERISA plan as a whole, but not for injuries suffered by individual  
10 participants as a result of a fiduciary breach.” *Wise v. Verizon Communications, Inc.*, 600  
11 F.3d 1180, 1189 (9th Cir. 2010). A breach of fiduciary duty claim, moreover, must assert  
12 that “the fiduciary injured the benefit plan or otherwise jeopardized the entire plan or put  
13 at risk plan assets.” *Id.* (citation and internal quotation marks omitted). This lawsuit arises  
14 from what the Collens contend was a wrongful denial of benefits to Ms. Collen. They do  
15 not assert a breach of fiduciary duties to the plan itself. The Court agrees with United on  
16 the merits of its argument and this aspect of the ERISA claim will be dismissed also.

17 II.

18 A.

19 In order to promote uniformity among the states, Congress intended the civil  
20 remedies provided for in § 502(a) of ERISA to be the exclusive remedies for disputes  
21 concerning of the denial of benefits. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208-09  
22 (2004). This principle derives from two ERISA sections, the comprehensive remedial  
23 scheme in § 502(a) itself and in the § 514(a) preemption provision. 29 U.S.C.  
24 §§ 1132(a)(1)(B), 1144(a). Such is the language of these provisions that the United States  
25 Supreme Court has held “any state-law cause of action that duplicates, supplements, or

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27 \* What is perplexing about the Collens’ explanation is that, prior to filing its Motion to  
28 Dismiss, United’s counsel offered them the opportunity to amend their complaint to include  
this necessary detail. *See* LRCiv. 12.1(c). Plaintiffs’ counsel appears to have refused that  
offer. (Doc. 16-1 at 5-6.) Had Plaintiffs’ counsel taken that offer seriously and amended  
their complaint, that would have saved a great deal of client resources and judicial effort.

1 supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent  
2 to make the ERISA remedy exclusive and is therefore pre-empted.” *Davila*, 542 U.S. at  
3 209. The Collens’ second claim for relief, misrepresentation and detrimental reliance, is  
4 pleaded as a state-law cause of action. This claim is premised on the argument that United  
5 failed to cover procedures that the Collens contend should be covered under the plan. This  
6 claim impermissibly “duplicates, supplements, or supplants the ERISA civil enforcement  
7 remedy.” *Id.* It will therefore be dismissed as preempted under ERISA.

8 B.

9 While ERISA preemption is unforgiving to state-law claims for relief, there is a  
10 narrow exception where independent state-law claims against the insurer may be asserted.  
11 *Marin General Hosp. v. Modesto & Empire Traction Co.*, 581 F.3d 941 (9th Cir. 2009).  
12 These include circumstances where an independent contract, be it written or oral, exists  
13 between the insurer and the insured or a healthcare provider. *Id.*; *see also Emergency*  
14 *Group of Ariz. Professional Corp. v. United Healthcare Inc.*, --- F. Supp. 3d. ---, 2020 WL  
15 1451464 (D. Ariz. Mar. 25, 2020). The pleading allegations indicate that United promised  
16 to provide additional coverage for Ms. Collen that was not fulfilled. (Doc. 7 at ¶¶ 18, 20-  
17 21.) The Amended Complaint does not make clear whether United promised additional  
18 coverage that was not ultimately provided to Ms. Collen. Mindful of counsel’s obligations  
19 under Rule 11 of the Federal Rules of Civil Procedure, the Court will grant leave to amend  
20 allowing Plaintiffs an opportunity to assert any such state-law claim for relief arising from  
21 an independent obligation undertaken by United that was, ultimately, not provided.

22 III.

23 Accordingly,

24 **IT IS ORDERED** that the Motion to Dismiss Amended Complaint (Doc. 9) is  
25 **GRANTED**.

26 **IT IS FURTHER ORDERED** that Plaintiffs’ request for an award of costs and  
27 fees is **DENIED**. (Part of Doc. 12.)

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