

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**United States District Court
Central District of California**

LACY ATZIN; MARK ANDERSEN, on behalf of themselves and a class of similarly situated individuals,

Plaintiff,

v.

ANTHEM, INC and ANTHEM UM SERVICES,

Defendants.

Case No 2:17-CV-06816-ODW (PLAx)

ORDER DENYING DEFENDANTS' MOTION TO DISMISS [20]

I. INTRODUCTION

Plaintiffs Lacy Atzin and Mark Andersen bring this putative class action on behalf of themselves and others similarly situated against Defendants Anthem, Inc. (“Anthem”) and Anthem UM Services (AUMS).¹ (*See generally* Complaint, ECF No. 1.) Atzin alleges claims against Defendants for: 1) the denial of plan benefits in violation of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(a)(1)(B); and 2) breach of fiduciary duty in violation of ERISA, 29 U.S.C. § 1132(a)(3).

¹ The Court refers to all defendants collectively as “Defendants.”

1 Defendants move to dismiss the Complaint because: 1) Anthem is not is not a
2 proper defendant; and 2) Plaintiffs’ breach of fiduciary duty claim is duplicative of
3 their claim for plan benefits.

4 II. FACTUAL BACKGROUND²

5 Anthem provides health benefit plans that are administered by its wholly owned
6 subsidiaries. (Compl. ¶ 1.) AUMS is one such subsidiary and serves as the claims
7 administrator for all Anthem plans. (*Id.* ¶ 2.) Anthem assists AUMS in carrying out
8 various administrative duties, including formulating coverage guidelines and
9 determining the types of claims that will be approved or denied. (*Id.*) Plaintiffs allege
10 that Defendants wrongfully denied them benefits by refusing to grant their requests for
11 microprocessor controlled prostheses, an artificial extension that replaces a missing
12 body part. (*Id.* ¶¶ 3, 49–60.)

13 Anthem plans deny coverage for treatments that are not “medically necessary”
14 or “investigational.” (*Id.* ¶¶ 19–20.) To assist in administering the plans, Defendants
15 also adhere to coverage guidelines for specific treatments, such as OR-PR.00003,
16 Anthem’s medical policy for microprocessor controlled prostheses. (*Id.* ¶¶ 16, 21.)

17 Plaintiffs allege that OR-PR.00003—which applies to all Anthem plans—is
18 wrongful because it contradicts their plans’ definition of the “medical necessity” and
19 “investigational” exclusions. (*Id.* ¶¶ 3, 16, 18–20.) OR-PR.00003 sets forth four
20 criteria to determine whether a microprocessor controlled prostheses is “medically
21 necessary” for any given claimant. (*Id.* ¶ 21.) The policy only covers claimants if the
22 individual: 1) is physically and mentally capable of using a microprocessor controlled
23 prosthesis; 2) is able to ambulate faster than their baseline rate using a standard
24 prosthesis; 3) has a need for daily long distance ambulation at variable rates outside of
25 their home; and 4) has a need for regular ambulation on uneven terrain or regular use
26 on stairs outside of their home or place of employment. (*Id.*) Plaintiffs contend that

27
28 ² All factual references are allegations taken from Atzin’s Complaint and accepted as true for purposes of this Motion. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

1 this policy unreasonably strict and therefore “erroneous.” (*Id.* ¶ 22.) Plaintiffs also
2 contend that Or-PR.00003 contains a blanket policy of denying all requests for
3 microprocessor controlled foot-ankle prostheses, which flies in the face of medical
4 studies demonstrating the benefits of such prostheses. (*Id.* ¶ 23, 24.)

5 **III. LEGAL STANDARD**

6 A motion to dismiss under either Rule 12(c) or 12(b)(6) is proper where the
7 plaintiff fails to allege a cognizable legal theory or where there is an absence of
8 sufficient facts alleged under a cognizable legal theory. *Bell Atl. Corp. v. Twombly*,
9 550 U.S. 544, 555 (2007); *see also Shroyer v. New Cingular Wireless Serv., Inc.*, 622
10 F.3d 1035, 1041 (9th Cir. 2010). That is, the complaint must “contain sufficient
11 factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
12 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

13 **IV. DISCUSSION**

14 **A. Request for Judicial Notice**

15 Plaintiffs request the Court take judicial notice of a court order Denying Motion
16 to Dismiss issued in *Lawrence Bradford v. Anthem, Inc. et al.*, Case No. 2:17-cv-
17 5098-AB (KSx) (C.D. Cal. Nov. 2, 2017). *Bradford* is not a related proceeding³ and
18 Plaintiffs rely on *Bradford* not for the adjudicative facts, but for its legal authority. It
19 is unnecessary to take judicial notice of case law, but the Court will consider *Bradford*
20 as persuasive legal authority. *See McVey v. McVey*, 26 F. Supp. 3d 980, 984 (C.D.
21 Cal. 2014); *see also* Fed. R. Evid. 201. Plaintiff’s Request for Judicial Notice is
22 therefore **DENIED**.

23 **B. Anthem is a Proper Defendant for Both Claims**

24 Defendants argue that Anthem should be dismissed from both claims because it
25 is not a proper defendant. (Mot. 9, 13.)

26
27 ³ Plaintiffs previously attempted to transfer the case as a related proceeding to Judge André Birotte,
28 Jr., who is presiding over *Bradford*. (*See* ECF No. 21.) Judge Birotte declined the transfer, stating
that the cases are not related in part because they involve different treatments for different medical
conditions. (*See* ECF No. 24.)

1 In *Cyr v. Reliance Standard Life Insurance Co.*, 642 F.3d 1202 (9th Cir. 2011)
2 (en banc), the Ninth Circuit analyzed the Supreme Court’s holding in *Harris Trust &*
3 *Savings Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000), and concluded that
4 there was no limit as to who could be sued under both § 1132(a)(3) and
5 § 1132(a)(1)(B). Broadly stated, “an entity other than the plan itself or the plan
6 administrator may be sued under [ERISA] in appropriate circumstances . . . as long as
7 that party’s individual liability is established.” *Cyr*, 642 F.3d at 1204, 1207. Liability
8 extends at least to any party that can deny a claimant’s “request for increased benefits
9 even though . . . it was responsible for paying legitimate benefits claims.” *Id.* at 1207.
10 The Ninth Circuit thus held the insurer in *Cyr* liable because it “effectively controlled
11 the decision whether to honor or deny a claim under the program.” *Id.* at 1204.

12 The Ninth Circuit later clarified the reach of *Cyr* in *Spinedex Physical Therapy*
13 *USA Inc. v. United Healthcare of Arizona, Inc.*, 770 F.3d 1282 (9th Cir. 2014).
14 “[P]roper defendants under § 1132(a)(1)(B) for improper denial of benefits at least
15 include ERISA plans, formally designated plan administrators, insurers or other
16 entities responsible for payment of benefits, and de facto plan administrators that
17 improperly deny or cause improper denial of benefits.” *Id.* at 1297. Suits may also be
18 brought “against the plan as an entity and against the fiduciary of the plan.” *Id.*,
19 quoting *Hall v. Lhaco, Inc.*, 140 F.3d 1190, 1194 (8th Cir. 1998) (emphasis omitted);
20 see 29 U.S.C. § 1002(21)(A) (a fiduciary is any entity that exercises discretionary
21 authority or control over the plan’s management, administration, or disposition of
22 assets).

23 In this case, there is no dispute that Anthem is neither the plan nor plan
24 administrator. (Compl. ¶¶ 1–3.) However, Plaintiff alleges that Anthem is a de facto
25 administrator due to the control it wields over the policy making process. (Opp’n 4.)
26 Specifically, Plaintiffs allege that Anthem aided AUMS in developing and
27 implementing OR-PR.00003, which sets forth specific criteria that must be met before
28 a claimant’s request for a microprocessor controlled prosthesis is granted. (Compl. ¶¶

1 2, 21.) Plaintiffs also allege that OR-PR.00003 contains a categorical rule mandating
2 blanket denials of microprocessor controlled foot-ankle prostheses. (*Id.* ¶ 23.) By
3 creating such policies, Plaintiffs contend that Anthem “collaborat[es] with Anthem
4 UM on the types of claims that will be approved or denied.” (*Id.* ¶ 2.)

5 Anthem argues that these allegations only show that Anthem helped to develop
6 the medical policies at issue, but the development of those policies are a “step
7 removed” from administrative decisions. (Mot. 12.) However, under *Spinedex* and
8 *Cyr*, whether a party actually makes the final administrative decision is not
9 dispositive. The relevant inquiry is whether it “den[ies] or *cause[s]* improper denial
10 of benefits.” *Spinedex*, 770 F.3d at 1297 (emphasis added). This is what Anthem
11 has done. The coverage guidelines developed by Anthem “cause” grants or denials by
12 foreclosing certain claims—such as claims for microprocessor controlled foot-ankle
13 prostheses—regardless if AUMS would otherwise find them “medically necessary”
14 and not “investigational” under plan definitions. (*See Compl.* ¶ 23.)

15 Anthem’s reliance on *Cox v. Reliance Standard Life Insurance Co.*, 2014 WL
16 896985 (E.D. Cal. Mar. 6, 2014) and *Cox v. Allin Corporation Plan*, 2013 WL
17 1832647 (N.D. Cal. May 1, 2013) is misplaced. In both cases, the plaintiffs sought to
18 sue their employer as sponsors of their respective plans. *See Reliance*, 2014 WL
19 896985 at *3; *Allin*, 2013 WL 1832647 at *4. The courts dismissed the employers as
20 improper defendants because the plaintiffs did not make any allegations that their
21 employers had the authority or obligation to resolve claims. *See Reliance*, 2014 WL
22 896985 at *3–4, 6; *Allin* 2013 WL 1832647 at *4. In contrast, Plaintiffs allege that
23 Anthem had a hand in developing coverage guidelines that determine what types of
24 claims should be granted or denied. (*Compl.* ¶¶ 2, 21–23.)

25 For these reasons, the Court finds that Anthem is a proper defendant for
26 Plaintiffs claims under § 1132(a)(1)(B) and § 1132(a)(3).

27
28

1 **C. Duplicative Claims**

2 Defendants also move to dismiss Plaintiffs’ second claim for breach of
3 fiduciary duty on the grounds that it is duplicative of their first claim for denial of plan
4 benefits. (Mot. 15.)

5 ERISA allows plaintiffs to seek relief under both §1132(a)(1)(B) and
6 § 1132(a)(3). *Moyle v. Liberty Mut. Ret. Ben. Plan*, 823 F.3d 948, 960–61 (9th Cir.
7 2016), *citing CIGNA Corp. v. Amara*, 563 U.S. 421 (2011). Although plaintiffs are
8 prohibited from seeking “duplicate recoveries when a more specific section of the
9 statute . . . provides a remedy similar to what the plaintiff seeks under the equitable
10 catchall provision [of § 1132(a)(3),]” plaintiffs are permitted to present both
11 § 1132(a)(1)(B) and § 1132(a)(3) as alternative theories of liability so long as there is
12 no double recovery. *Id.* at 961, quoting *Silva v. Metro. Life Ins. Co.*, 762 F.3d 711,
13 726 (8th Cir. 2014) (emphasis in original). In other words, “§ 1132(a)(1)(B) and §
14 1132(a)(3) claims can proceed simultaneously if they plead distinct remedies.” *Id.*

15 Plaintiff’s § 1132(a)(1)(B) claim requests the “payment of medical expenses,
16 interest thereon, [and] a clarification of rights.” Plaintiff’s § 1132(a)(3) claim seeks 1)
17 declaratory relief that Defendant’s denials of requests for microprocessor controlled
18 prostheses are wrong and improper; 2) an accounting; and 3) injunctive relief
19 requiring Defendants to reevaluate and reprocess Plaintiffs’ requests; 4) provide notice
20 of the reevaluation and reprocessing; and 5) precluding Defendants from relying on
21 specific reasons not recited in their form denial letters. (*See* Compl. ¶ 60(a)–(f).)
22 Although some of the requested relief for their § 1132(a)(3) claim—an injunction
23 requiring reevaluation of Plaintiffs’ claims, for example—may be duplicative,
24 Plaintiffs request relief under § 1132(a)(3) that plainly is not. For instance, injunctive
25 relief precluding Defendants from relying on specific reasons not recited in their form
26 denial letters is distinct from payment of unpaid benefits. Accordingly, Plaintiffs’
27 § 1132(a)(3) claim is not duplicative of their § 1132(a)(1)(B) claim.

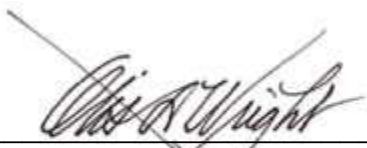
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For the reasons discussed above, the Court **DENIES** Defendants' Motion to Dismiss.

IT IS SO ORDERED.

January 19, 2018



**OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE**