

1 United for recovery of benefits due under the Plan and ERISA, 29
2 U.S.C. § 1132(a). Non-party Dina Miller, acting as legal
3 guardian for her daughter M.M., now moves to intervene as a party
4 plaintiff under Federal Rule of Civil Procedure 24(b). (Docket
5 No. 31.)

6 Under Rule 24(b), the court may permit anyone to
7 intervene who "has a claim or defense that shares with the main
8 action a common question of law or fact." Fed. R. Civ. P.
9 24(b)(1). The court has discretion to permit a party to
10 intervene and, in exercising this discretion, the court considers
11 "whether the intervention will unduly delay or prejudice the
12 adjudication of the original parties' rights." Fed. R. Civ. P.
13 24(b)(3). Permissive intervention "requires (1) an independent
14 ground for jurisdiction; (2) a timely motion; and (3) a common
15 question of law and fact between the movant's claim or defense
16 and the main action." Freedom from Religion Foundation, Inc. v.
17 Geithner, 644 F.3d 836, 843 (9th Cir. 2011). The "requirements
18 for intervention are to be broadly interpreted in favor of
19 intervention." Smith v. L.A. Unified Sch. Dist., 830 F.3d 843,
20 853 (9th Cir. 2016) (quoting United States v. Alisal Water Corp.,
21 370 F.3d 915, 919 (9th Cir. 2004)).

22 The first and third factors are clearly met. First,
23 there is an independent basis for jurisdiction over the
24 applicant's claim based on federal question jurisdiction because
25 the applicant's claim arises under ERISA. There is also a common
26 question of law and fact because Ms. Miller's claim arises from
27 the same set of facts as Aviation West's claim--United's denial
28 of benefits for M.M.'s transportation from Mexico to Seattle.

1 Second, the Motion is timely. While a significant
2 amount of litigation has occurred in this case, Miller brought
3 this Motion just over one month after defendant first objected to
4 the assignment of claims from Miller to plaintiff. Defendant
5 also argues the Motion is not timely because it would prejudice
6 United by requiring the reopening of discovery. Since this is an
7 appeal from a denial of benefits, and the court's review is
8 generally limited to the administrative record, see Burke v.
9 Pitney Bowes Inc. Long-Term Disability Plan, 544 F.3d 1016, 1027-
10 28 (9th Cir. 2008), any necessary discovery would be limited in
11 both time and scope. Moreover, at the hearing on this motion
12 counsel for United stated that it would not need additional
13 discovery prior to another summary judgment motion. Ms. Miller
14 also moved to intervene just over a month after United first
15 argued the proper plaintiff was not before the court. The court
16 therefore finds that this Motion is timely, and all three factors
17 for permissive intervention are met.

18 Further, Ms. Miller--acting as M.M.'s guardian--is the
19 real party in interest in this action. As discussed in this
20 court's Order re: Motion for summary judgment, Aviation West did
21 not have standing to bring this action due to an invalid
22 assignment of M.M.'s claims.

23 Rule 17 of the Federal Rules of Civil Procedure
24 requires that an action "be prosecuted in the name of the real
25 party in interest." Where the action is originally brought by a
26 party other than the real party in interest, Rule 17 provides
27 that a court "may not dismiss an action for failure to prosecute
28 in the name of the real party in interest until, after an

1 objection, a reasonable time has been allowed for the real party
2 in interest to ratify, join, or be substituted into the action."
3 Fed. R. Civ. P. 17(a)(3).

4 IT IS THEREFORE ORDERED that non-party Dina Miller's
5 Motion to intervene as a plaintiff (Docket No. 31) be, and the
6 same hereby is, GRANTED.

7 Dated: August 23, 2017



8 WILLIAM B. SHUBB
9 UNITED STATES DISTRICT JUDGE

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