

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
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEROME A CLAY,
Plaintiff,
v.
AT&T UMBRELLA BENEFIT PLAN
NO.3,
Defendant.¹

No. 2:17-cv-00749 KJM GGH PS

FINDINGS AND RECOMMENDATION;
ORDER

Defendant, hereafter AT&T, has moved to dismiss plaintiff’s Second Amended Complaint (SAC), erroneously referenced by plaintiff as the Third Amended Complaint. The Motion to Dismiss is multi-faceted, but one of the primary grounds focused on an alleged failure to exhaust the “administrative” remedies of defendant’s disability plan.

After discussion of this issue at hearing on December 21, 2017, and understanding that a partial exhaustion of such remedies is currently underway,² the undersigned, without objection by the parties, indicated that he would recommend a stay of this action for 60 days, pending the Plan’s administrative decision on plaintiff’s pending appeal.

¹ The previous caption in this case has been termed incorrect by AT&T and is correctly referenced by AT&T as “AT&T Umbrella Benefit Plan No. 3.” The undersigned has changed the caption and will order the Clerk to correct the case records. Plaintiff loses no rights by this re-denomination.

² The present exhaustion proceedings refer to plaintiff’s appeal of his “second denial.” The first denial was reversed by the Plan, and is not at issue in the present administrative appeal.

1 Granting this stay may moot the ground in the Motion to Dismiss regarding exhaustion of
2 remedies, or at the very least, substantially modify the nature of this ground in the Motion to
3 Dismiss. Therefore, the undersigned recommends that the action be stayed for sixty (60) days
4 from the date of this Findings and Recommendation. Any district judge adoption of this
5 recommendation will be *nunc pro tunc* to the date of this Findings and Recommendation.

6 Accordingly, IT IS HEREBY RECOMMENDED that a stay of this action be entered for
7 sixty days commencing with the filed date of this Findings and Recommendation.

8 IT IS HEREBY ORDERED:

9 1. Regardless of whether this Finding and Recommendation is adopted, AT&T shall
10 notify the court forthwith, but in no event later than 60 days from the filed date of this Order, of
11 the completion of the administrative appeal, and shall file the final decision regarding the appeal;

12 2. In the event that administrative appeal has not been completed within the 60 day
13 time frame, AT&T shall inform the court in a filing why the appeal has not been completed and
14 its estimated completion date.

15 3. The Clerk shall change the name of the defendant in this case to: AT&T Umbrella
16 Benefit Plan No. 3; all parties shall henceforth use this caption in all pleadings.

17 The Findings and Recommendations, set forth above, are submitted to the United States
18 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
19 **ten** days after being served with these Findings and Recommendations, any party may file written
20 objections with the court and serve a copy on all parties. Such a document should be captioned
21 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
22 shall be served and filed within **five** days after service of the objections. The parties are advised
23 that failure to file objections within the specified time may waive the right to appeal the District
24 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 DATED: December 22, 2017

26 /s/ Gregory G. Hollows
27 GREGORY G. HOLLOWES
28 UNITED STATES MAGISTRATE JUDGE