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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRENDA CULBERTSON-CHAVIRA,

Plaintiff,

v.

LIFE INSURANCE COMPANY OF
NORTH AMERICA, et al.

Defendants.

No. 2:17-cv-01702-JAM-AC

**ORDER DENYING PLAINTIFF'S MOTION
FOR ATTORNEYS' FEES AND COSTS**

Plaintiff Brenda Culbertson-Chavira ("Plaintiff") sued Defendant Life Insurance Company of North America ("Defendant") for improperly denying her requests for long term disability benefits under the Employee Retirement Income Security Act of 1974 ("ERISA"). Compl., ECF No. 1. Shortly after Plaintiff filed suit, the parties requested a stay so Plaintiff could file an administrative appeal that Defendant could review. After the Court entered the stay, Defendant reversed its denial of Plaintiff's long term disability benefits. Plaintiff then filed this motion for attorney fees and costs of \$58,314.41. Mem., ECF No. 17. Defendant opposes. Opp., ECF No. 18. For the reasons

1 set forth below, the Court denies Plaintiff's motion.¹

2
3 I. FACTUAL AND PROCEDURAL BACKGROUND

4 Plaintiff worked as a hospital certified Pharmacy Technician
5 for Community Memorial Health before her debilitating chronic
6 spine and nerve pain rendered her unable to continue working in
7 2015. Compl., ¶¶ 11-12. Community Memorial Health System
8 operates an employee welfare benefit plan insured by Defendant
9 under Group Policy No. LK0980212 (the "Policy"). Id., ¶ 8.

10 On August 16, 2017, Plaintiff filed her complaint in this
11 action against Defendant, Community Memorial Health System
12 Employee Benefit Plan, and unnamed individuals, for allegedly
13 violating 28 U.S.C. §§ 1331, 1337 and 29 U.S.C. § 1132(a), (e),
14 (f) and (g) of ERISA by unreasonably denying her long-term
15 disability benefits. Id., ¶ 1. The parties shortly thereafter
16 stipulated to dismiss Community Memorial Health System Employee
17 Benefit Plan as a defendant without prejudice, which the Court
18 approved. ECF Nos. 6-7. Next, the parties stipulated to staying
19 this case to allow Plaintiff to submit an administrative appeal
20 for Defendant's review and consideration. ECF No. 11. The Court
21 approved this stipulation and entered the stay. ECF No. 12.

22 On April 11, 2018, the parties notified the Court that
23 Defendant had completed its review of Plaintiff's administrative
24 appeal and decided to overturn its prior decision denying long
25 term disability benefits to Plaintiff. The parties further

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for June 19, 2018.

1 informed the Court that Plaintiff would be filing this motion for
2 attorney fees and costs and a briefing schedule was set. ECF
3 Nos. 14, 15. Other than this motion and the complaint, the
4 parties have not submitted any substantive pleadings to the Court
5 and the Court has not ruled on any substantive motions in this
6 case. See Docket.

8 II. OPINION

9 A. Analysis

10 Plaintiff contends she is entitled to an award of attorney
11 fees under ERISA because she has achieved success on the merits
12 through this litigation by obtaining her previously denied
13 benefits. Mem. at 2. Defendant counters that Plaintiff's
14 victory in an administrative appeal during the litigation does
15 not qualify as a success in an "action" under ERISA's attorney's
16 fee provision. Opp. at 1. Defendant argues that, as a result,
17 Plaintiff is not entitled to attorney fees or costs and that the
18 motion should be denied. Id. The Court agrees.

19 Under ERISA's attorney fee provision, "[i]n any action
20 under this subchapter... the court in its discretion may allow a
21 reasonable attorney's fee and costs of action to either party."
22 29 U.S.C. § 1132(g)(1). The Ninth Circuit has held that an
23 administrative phase of a claims process occurring prior to the
24 lawsuit does not constitute an "action" under Section
25 1132(g)(1). Cann v. Carpenters' Pension Trust Fund for Northern
26 California, 989 F.2d 313, 314 (9th Cir. 1993) (affirming the
27 denial of attorney fees incurred during administrative
28 proceedings prior to suit).

1 To obtain attorney fees under Section 1132(g)(1) a
2 plaintiff must show "some degree of success on the merits."
3 Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 245
4 (2010). If the plaintiff meets this threshold inquiry, then the
5 Court must determine whether five factors from Hummell v. S.E.
6 Rykoff & Co., 634 F.2d 446 (9th Cir. 1985) weigh in favor of
7 awarding the plaintiff's attorney fees. Simonia v. Glendale
8 Nissan/Infiniti Disability Plan, 608 F.3d 1118, 1121 (9th Cir.
9 2010). The five factors are: (1) the degree of the opposing
10 parties' culpability or bad faith; (2) the ability of the
11 opposing parties to satisfy an award of fees; (3) whether an
12 award of fees against the opposing parties would deter others
13 from acting under similar circumstances; (4) whether the parties
14 requesting fees sought to benefit all participants and
15 beneficiaries of an ERISA plan or to resolve a significant legal
16 question regarding ERISA; and (5) the relative merits of the
17 parties' positions. Id.

18 Section 1132(g)(1) should be read broadly so that a
19 plaintiff who "prevails in his [or her] suit under § 1132"
20 "should ordinarily recover an attorney's fee unless special
21 circumstances would render an award unjust." Smith v. CMTA-IAM
22 Pension Trust, 746 F.2d 587, 589 (9th Cir. 1984) (internal
23 citation omitted). In the absence of special circumstances
24 making an award unjust, it is an abuse of discretion for a
25 district court to refuse to award fees. McConnell v. MEBA
26 Medical and Benefits Plan, 778 F.2d 521, 525-26 (9th Cir. 1985);
27 see also, Carpenters Health & Welfare Trust for S. California v.
28 Vonderharr, 384 F.3d 667, 674 (9th Cir. 2004).

1 To support its argument that Plaintiff's victory in the
2 administrative appeal is not a "success" in an "action" under
3 ERISA's attorney fee provision, Defendant relies on Cann and
4 Ponce de Leon v. Int'l Longshoremen's & Warehousemen's Union-
5 Pac. Maritime Ass'n Welfare Plan, 704 Fed. Appx. 700 (9th Cir.
6 Nov. 27, 2017). In Cann, the Ninth Circuit held that
7 administrative proceedings prior to a lawsuit did not constitute
8 an "action" under ERISA's attorney fee provision. 989 F.2d at
9 314. Here, however, the administrative appeal proceedings
10 occurred after the lawsuit was filed. ECF No. 11. Neither
11 party cites binding precedent defining "action" where the
12 administrative proceedings occur after the lawsuit is filed.
13 While the unpublished Ponce de Leon opinion is not binding
14 precedent (U.S. Ct. of App. 9th Cir. Rule 36-3), it provides
15 guidance as persuasive authority since it shares many of the
16 unique procedural facts of this case.

17 In Ponce de Leon, the plaintiff voluntarily agreed to stay
18 his litigation soon after filing his complaint and before the
19 defendant filed a responsive pleading. 704 Fed. Appx. at 701.
20 The district court "played largely a passive role" by staying
21 the action under the parties' stipulation pending resolution of
22 the administrative claims process (which the Ninth Circuit also
23 referred to as an arbitration process). Id. at 701-02. The
24 same is true here. ECF No. 12. The district court in Ponce de
25 Leon stated that, as a result, "Ponce de Leon's litigation
26 efforts were not responsible for his success, but were instead
27 'trivial' and 'purely' procedural." 704 Fed. Appx. at 701
28 (citing Hardt, 560 U.S. 242, 255 (2010)). The district court

1 held that there was no ERISA "action" in front of it and thus,
2 "no pending litigation onto which Ponce de Leon could tack his
3 administrative proceedings." Id. The Ninth Circuit affirmed
4 the district court's decision and clarified that fees expended
5 on administrative proceedings after a court-ordered remand may
6 be recoverable, but not where the district court does not compel
7 the parties to go to arbitration and merely enters the parties'
8 stipulation to do so. Id.

9 Like Plaintiff here, Ponce de Leon also argued that the
10 post-lawsuit arbitration proceedings in that case should be
11 considered an "action" for the purposes of ERISA attorney fee
12 recovery. 704 Fed. Appx. at 701. The Ninth Circuit rejected
13 this argument, stating that "[s]uch an interpretation is
14 inconsistent with our holding in Cann, which limits attorneys'
15 fees to litigation proceedings. Plaintiffs may not circumvent
16 Cann by filing suit before exhausting administrative remedies,
17 in order to get the benefit of fee recovery." Id.

18 Here, the parties disagree over whether Plaintiff exhausted
19 her administrative remedies. Mem. at 8; Opp. at 2. But it is
20 undisputed that after Plaintiff filed suit, the parties
21 stipulated to a stay that the Court entered, the parties entered
22 into an alternative dispute process, Plaintiff obtained a
23 reversal of her benefits denial in that process, and the Court
24 has not ruled on one issue on the merits in this case. The
25 Court has not even formally confirmed the award that Plaintiff
26 obtained, unlike the court in Ponce de Leon. 704 Fed. Appx. at
27 701.

28 In her reply, Plaintiff responds that a judicial action is

1 not required for fees to be available for an "action" under
2 ERISA's attorney fee provision. See Reply, ECF No. 23, at 3².
3 To support this argument, Plaintiff cites Smith, 746 F.2d at
4 589-91; McElwaine v. US West, Inc., 176 F.3d 1167 (9th Cir.
5 1999); Templin v. Indep. Blue Cross, 785 F.3d 861, 867 (3d Cir.
6 2015); Harrison v. Metro Life Ins. Co., No. 13-cv-05585, 2016 WL
7 4414851 (N.D. Cal. Jun. 21, 2016); Barnes v. AT & T Pension
8 Benefit Plan-Nonbargained Program, 963 F. Supp. 2d 950, 962
9 (N.D. Cal. 2013); and Broadbent v. Citigroup Long Term
10 Disability Plan, No. CIV 13-4081, 2015 WL 1189565 (D.S.D. Mar.
11 16, 2015). Reply at 3-4. Of these cases, only Smith and
12 McElwaine are binding precedent. 746 F.2d at 58; 176 F.3d 1167.
13 But they are inapposite. Unlike here, neither case involved a
14 stay so the parties could engage in an alternative dispute
15 resolution process and the district courts in those cases also
16 made merits-based rulings. McElwaine, 176 F.3d at 1169, 1174
17 (district court granted summary judgment motion to employer
18 while employer had, unknown to plaintiff at the time, decided to
19 correct an error that resulted in lower pension benefits than
20 required); Smith, 746 F.2d at 589 (district court's initial
21 dismissal was reversed before the parties settled on remand).

22 The nonbinding cases that Plaintiff cites also are
23 distinguishable from this case because the district courts in
24 those cases made rulings on the merits before granting the
25 plaintiff's attorney fees. In Templin, the Third Circuit ruled

26 ² Plaintiff filed two reply briefs - one on June 12, 2018, when
27 the reply was due and one on June 13, 2018, after the reply was
28 due. The Court has only considered the reply brief filed on June
12, 2018.

1 that the district court incorrectly defined "some success" under
2 Hardt to require judicial action. 785 F.3d 861, 863. But in
3 that case, unlike here, the district court denied a motion to
4 dismiss and ordered the defendants to review the plaintiff's
5 claims. Id. at 863, 867. In Barnes, before finding the
6 plaintiff showed "some success" on the merits, the Northern
7 District of California made rulings on the merits by granting
8 the plaintiff summary judgment on one of his claims and granting
9 the defendant summary judgment on two claims. 963 F. Supp. 2d
10 at 954-55.

11 In Harrison, the Northern District of California awarded
12 attorney fees to a plaintiff for fees incurred during a
13 litigation in achieving a settlement and rejected the
14 plaintiff's request for attorney fees incurred in post-
15 litigation administrative proceedings. 2016 WL 4414851, *1-2.
16 In Broadbent, the District of South Dakota awarded partial
17 attorney fees to a plaintiff for fees incurred in bringing a
18 lawsuit that led to the defendant reversing its denial of
19 benefits. 2015 WL 1189565, at *3-4. These unpublished cases
20 are of limited use here, however, because they do not actually
21 mention or define what is or is not an "action" under ERISA's
22 attorney fee provision.

23 Plaintiff also argues that fees incurred for administrative
24 proceedings are allowed under ERISA's attorney fee provision,
25 relying on Peterson v. Cont'l Cas. Co., 282 F.3d 112, 119 (2d
26 Cir. 2002) and Benson v. Cont'l Cas. Co., 592 F. Supp. 2d 1274,
27 1281 (C.D. Cal. 2009). Reply at 5. In Peterson, before
28 awarding the plaintiff attorney fees and costs, the district

1 court denied full summary judgment to either party but found
2 that the defendant erred in how it denied the plaintiff
3 benefits, remanded the claim back to the claim administrator,
4 and ultimately granted the plaintiff's motion for summary
5 judgment. 282 F.3d at 115-16. In Benson, the Central District
6 of California awarded the plaintiff attorney fees after it heard
7 cross motions for summary judgment, remanded the case back to
8 the defendant's employee welfare benefit plan, and then found
9 that the plaintiff was entitled to benefits. 592 F. Supp. 2d at
10 1277. Like some of the cases above, and unlike this one, these
11 cases reflect district courts making rulings on the merits
12 before the plaintiff obtained an attorney fee award under
13 ERISA's attorney fee provision.

14 As the moving party here, Plaintiff must show she is
15 entitled to attorney fees under ERISA's attorney fee provision
16 for an "action" where the Court has not ruled on any substantive
17 motions on the merits, the parties have not filed any
18 substantive motions on the merits, and Plaintiff obtained her
19 award in an administrative proceeding that the parties
20 voluntarily entered during the pendency of the litigation.
21 There is, however, no binding or persuasive authority that
22 supports an award of attorney fees and costs to Plaintiff under
23 these circumstances. Cann and Ponce de Leon also guide against
24 making such a finding. Because Plaintiff has failed to show
25 that she achieved some success on the merits in an "action"
26 under ERISA's attorney fee provision, the Court denies
27 Plaintiff's request for attorney fees and costs.

28 ///

1 B. Evidentiary Objections

2 Defendant objected to portions of the Declaration of
3 Michael B. Horrow (ECF No. 17-1), arguing that some of his
4 statements were argumentative, were improper legal conclusions,
5 lacked foundation, lacked personal knowledge, were speculative,
6 were cumulative of documentary evidence, mischaracterized
7 evidence, were improper opinion testimony, mischaracterized the
8 meet and confer process in litigation, were hearsay,
9 mischaracterized the Defendant's position, and mischaracterized
10 the facts, relevant legal authority, and procedural posture of
11 the litigation. ECF No. 19. The Court did not rely on any of
12 the statements to which objections were raised. So, the Court
13 need not, and does not, address these objections. See Wilson v.
14 Haria and Gogri Corp., No. CIV.S-05-1239, 2007 WL 1795737, at
15 n.3 (E.D. Cal. Jun. 20, 2007).

16

17 III. ORDER

18 For the reasons set forth above, the Court DENIES
19 Plaintiff's motion for attorney fees and costs. The parties are
20 directed to file a stipulation dismissing this action or, in the
21 alternative, a joint status report informing the Court as to how
22 they wish to proceed with this case within ten days of the date
23 of this Order.

24 IT IS SO ORDERED.

25 Dated: July 23, 2018

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE