

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

)	Case No. CV 13-2554 SC
)	
ELIZABETH L., JAMES L., and)	ORDER GRANTING MOTION TO
OLIVIA L., individually and as)	<u>DISMISS</u>
representatives of the class of)	
similarly situated individuals;)	
and L.M. and N.M. as guardians)	
of M.M., and as representatives)	
of the class of similarly)	
situated individuals;)	
)	
Plaintiffs,)	
)	
v.)	
)	
AETNA LIFE INSURANCE CO.,)	
)	
Defendant.)	
)	
)	

I. INTRODUCTION

Now before the Court is Defendant Aetna Life Insurance Co.'s ("Defendant") motion to dismiss the above-captioned Plaintiffs' first amended complaint. ECF Nos. 39 ("FAC"), 41 ("MTD"). The motion is fully briefed. ECF Nos. 46 ("Opp'n"), 47 ("Reply"). The Court finds it appropriate for decision without oral argument. Civ. L.R. 7-1(b). For the reasons explained below, the Court GRANTS Defendant's motion to dismiss, with leave to amend on two narrow points.

///

1 **II. BACKGROUND**

2 Plaintiffs challenge Defendant's denials of coverage under two
3 employer-sponsored health benefits plans. Plaintiffs Olivia L. and
4 M.M., both minors, obtained mental health treatment at two
5 different residential treatment facilities located in Utah. FAC ¶¶
6 1-4. At the times they were treated, Olivia L. and M.M. were
7 covered by health plans or health insurance policies provided
8 through their parents' employers and governed by the Employee
9 Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, et seq.
10 Id. ¶¶ 4-9. Defendant, which administrated or insured those plans,
11 denied Olivia L. and M.M.'s families coverage for those residential
12 stays. It based its denial on its determination that the
13 residential treatment facilities did not satisfy the plans'
14 requirement that covered facilities be staffed 24/7 with licensed
15 mental health professionals, though the parties appear to agree
16 that the facilities met the plan's other relevant requirements.
17 Id. ¶¶ 1-4, 26-27, 30, 32, 34, 42-47.

18 The basis of Defendant's denial is the central issue of this
19 case: do the plans demand such 24/7 staffing in addition to the
20 other requirements? Defendant maintains that they do. Plaintiffs
21 assert that Defendant's position is unsupported by the plans' plain
22 language. Plaintiffs also contend, alternatively, that the plans
23 are ambiguous, and that Defendant's inconsistent treatment of
24 similarly situated claimants violates ERISA's fiduciary duty or
25 claims processing requirements.¹

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27 _____
28 ¹ The plans are distinct, but the disputed language is the same in
each. Following the parties' convention, the Court addresses the
plans singularly for the remainder of this Order.

1 Based on this dispute, Plaintiffs assert two causes of action
2 against Defendant. The first is a claim for benefits under ERISA.
3 The second is a claim for declaratory and injunctive relief. Both
4 claims depend on resolution of the central issue described above.
5 Defendant now moves to dismiss.

6
7 **III. LEGAL STANDARD**

8 A motion to dismiss under Federal Rule of Civil Procedure
9 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.
10 Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based
11 on the lack of a cognizable legal theory or the absence of
12 sufficient facts alleged under a cognizable legal theory."
13 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
14 1988). "When there are well-pleaded factual allegations, a court
15 should assume their veracity and then determine whether they
16 plausibly give rise to an entitlement to relief." Ashcroft v.
17 Iqbal, 556 U.S. 662, 679 (2009). However, "the tenet that a court
18 must accept as true all of the allegations contained in a complaint
19 is inapplicable to legal conclusions. Threadbare recitals of the
20 elements of a cause of action, supported by mere conclusory
21 statements, do not suffice." Id. (citing Bell Atl. Corp. v.
22 Twombly, 550 U.S. 544, 555 (2007)). The allegations made in a
23 complaint must be both "sufficiently detailed to give fair notice
24 to the opposing party of the nature of the claim so that the party
25 may effectively defend against it" and "sufficiently plausible"
26 such that "it is not unfair to require the opposing party to be
27 subjected to the expense of discovery." Starr v. Baca, 652 F.3d

1 1202, 1216 (9th Cir. 2011).²

2

3 **IV. DISCUSSION**

4 The disputed language at issue in this case -- the plan's
5 definitions of "Residential Treatment Facility" and "Behavioral
6 Health Provider/Practitioner" ("BHP") -- reads:

7 Residential Treatment Facility (Mental Disorders)

8 This is an institution that meets all of the
9 following requirements:

- 10 • On-site licensed Behavioral Health Provider 24
11 hours per day/7 days a week.³
- 11
- 12 • Meets any and all applicable licensing
13 standards established by the jurisdiction in
14 which it is located.

14 Behavioral Health Provider/Practitioner

- 15 • A licensed organization or professional
16 providing diagnostic, therapeutic or
17 psychological services for behavioral health
conditions.

18 MTD at 3; ECF No. 24-1 ("Sparks Decl.") Ex. A ("Elizabeth L. Plan")
19 at 94 (Residential Treatment Facility definition), Ex. B ("M.M.
20 Plan") at 93 (same); Elizabeth L. Plan at 80 (BHP definition), M.M.
21 Plan at 80 (same).

22 To state a claim for benefits under ERISA, plan participants
23 and beneficiaries have to plead facts making it plausible that a

24 ² The Court declines to address the parties' dispute over which
25 ERISA standard of review -- de novo or abuse of discretion --
26 should apply in this case. Even on a de novo standard, the Court
concludes (as explained below) that the plan is unambiguous, and
Defendant's interpretation of its terms is correct.

27 ³ In reference to this bullet point's being the basis of
28 Plaintiffs' exclusion for coverage, the parties and the Court call
it the "24/7 exclusion" or the "24/7 requirement."

1 provider owes benefits under the plan. See 29 U.S.C. §
2 1132(a)(1)(B); Iqbal, 556 U.S. at 677. In interpreting an ERISA
3 plan, the Court must apply contract principles derived from state
4 law, guided by policies expressed in ERISA and other federal labor
5 law. Richardson v. Pension Plan of Bethlehem Steel Corp., 112 F.3d
6 982, 985 (9th Cir. 1997). In doing so, the Court must interpret
7 the plan's terms in an ordinary and popular sense, as would a
8 person of average intelligence and experience. Id. (citing Evans
9 v. Safeco Life Ins. Co., 916 F.2d 1437, 1441 (9th Cir. 1990)).

10 In resolving disputes over ERISA plans, the Court must look
11 first to the agreement's specific language and determine the
12 parties' clear intent, relative to the context giving rise to the
13 language's inclusion. Id. (citing Armistead v. Vernitron Corp.,
14 944 F.2d 1287, 1293 (6th Cir. 1991)). Finally, the Court must
15 construe each provision consistently with the entire document such
16 that no provision is rendered nugatory. Gilliam v. Nev. Power Co.,
17 488 F.3d 1189, 1194 (9th Cir. 2007) (citing Richardson, 112 F.3d at
18 985).

19 **A. Plain Language and Interpretation Under ERISA**

20 Plaintiffs argue first that the Court should apply the
21 interpretation they supplied in the first round of briefing on
22 Plaintiffs' original complaint: essentially, that the plan does not
23 require a BHP to be on-site 24/7 if the facility is properly
24 licensed under state law, since the facility itself could be an
25 "organization" under the plan's definition of a "BHP." ECF Nos. 24
26 ("MTD I"), 27 ("Opp'n I"); see supra at 4 (providing the definition
27 of "BHP"). The Court rejected that interpretation in its December
28 17, 2013 Order Granting Defendant's Motion to Dismiss. ECF No. 36

1 ("Dec. 17 Order").

2 The Court reiterates that its rejection was based on
3 principles of contract interpretation. If the licensed residential
4 treatment facility is itself the on-site licensed organization per
5 the definition of BHP, as Plaintiffs submit, then there would be no
6 reason for the plan to include the 24/7 requirement, because
7 satisfaction of the plan's licensing requirement would always
8 satisfy the 24/7 BHP requirement. Dec. 17 Order at 7. Adopting
9 Plaintiffs' interpretation of the plan would render the 24/7
10 exclusion nugatory and incomprehensible, because the plan clearly
11 establishes two distinct requirements. If satisfaction of the
12 licensure requirement alone would meet the 24/7 BHP requirement,
13 the 24/7 exclusion would be meaningless. Dec. 17 Order at 7
14 (citing Gilliam, 488 F.3d at 1194; Richardson, 112 F.3d at 985).
15 Plaintiffs' argument on this point still fails.

16 Plaintiffs' second argument is that satisfaction of the
17 licensure requirement would not necessarily satisfy the 24/7
18 requirement. Opp'n at 6-7. On this point, Plaintiffs seem to
19 contend that the Court's December 17 Order held that compliance
20 with Utah licensure laws alone could satisfy the plan's
21 requirements. Apparently seeking to find some contradiction in
22 that Order, Plaintiffs proceed from this premise to discuss Utah
23 licensing law, concluding that under Utah law, the residential
24 treatment program -- as opposed to an organization, facility, or
25 professional -- is what obtains licensure to operate a residential
26 mental health treatment facility. And under Utah law, as
27 Plaintiffs explain, a licensed program may or may not be an
28 organization or professional who provides diagnostic, therapeutic,

1 or psychological services for behavioral health conditions. Id. at
2 10. Therefore, Plaintiffs conclude, a covered residential
3 treatment facility's satisfaction of "any and all" licensure
4 standards only requires the facility to be run by a licensed
5 "program." Reading the December 17 Order as having made that
6 improper conclusion, Plaintiffs contend that the Court was wrong.
7 As explained below, the Court disagrees.

8 The Court finds, as a preliminary matter, that Plaintiffs
9 appear to have misread the Order. As explained above, the Court's
10 statement that a licensed residential treatment facility would
11 itself always satisfy the 24/7 requirement was an explanation,
12 provided through a hypothetical statement, of why Plaintiffs'
13 argument was incorrect under principles of contract interpretation.

14 Substantively, the Court does not find Plaintiffs' argument
15 convincing, especially since their logical conclusion is that the
16 plan's licensure requirement and 24/7 exclusion must both be
17 distinct. Opp'n at 8 ("Will a program that is properly licensed
18 under Utah law to provide residential treatment necessarily be a
19 licensed organization or professional providing diagnostic,
20 therapeutic or psychological services for behavioral health
21 problems as the [December 17 Order] postulates? No."). Under these
22 circumstances, the Court finds that Plaintiffs fail to address
23 either "any and all" applicable licensing standards, or the 24/7
24 requirement that remains the subject of this dispute.

25 A covered "Residential Treatment Facility" for mental health
26 treatment must comply with all relevant Utah licensure laws,
27 including those for the provision of mental health services -- not
28 just the bare minimum licensure requirements for a "residential

1 treatment program." Mental health services have their own
2 additional licensure requirements under Utah law,⁴ and engaging in
3 the practice of mental health therapy without a license is a felony
4 in Utah, per Utah Code sections 58-60-109(1)(a) and 58-60-111(1).
5 The plan requires all covered residential treatment facilities to
6 satisfy all of these licensure standards, meaning those for
7 programs and mental-health-specific treatment facilities alike.
8 Moreover, such compliance remains separate from the 24/7
9 requirement per the plan's terms. Since Plaintiffs fail to plead
10 that the facilities where they were treated satisfied the 24/7
11 requirement, in addition to the licensure requirements, the Court
12 finds that Plaintiffs fail to state an ERISA claim for benefits
13 under the plan.

14 Plaintiffs' ERISA claim is therefore DISMISSED. If Plaintiffs
15 can plead facts indicating that the 24/7 requirement was satisfied,
16 they may do so, but any attempts to re-plead failed arguments
17 without new supporting facts may be dismissed with prejudice.

18 **B. Ambiguity**

19 The Court also finds, again, that the plan's terms are
20 unambiguous. Ambiguity exists only when an ERISA plan's provisions
21 are subject to two reasonable competing definitions. Deegan v.
22 Cont'l Cas. Co., 167 F.3d 502, 507 (9th Cir. 2007). Plaintiffs
23 claim that an average person of ordinary intelligence and
24 experience could reasonably believe their interpretation of the
25 plan's language, described above. See supra at 5-8. The Court is
26 not convinced. Plaintiffs' alternative interpretations of the plan
27 remains convoluted and unreasonable, and the Court cannot find that

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⁴ See, e.g., Utah Code §§ 58-60-102(7), -103(1)(a)-(b), -109(1)(a).

1 a reasonable person of average intelligence and experience would
2 adopt Plaintiffs' interpretations. The Court also declines to
3 import extrinsic evidence, such as the opposition brief's
4 referenced, but unattached and unquoted, Utah District Court
5 documents, to find ambiguity here. Cinelli v. Sec. Pac. Corp., 61
6 F.3d 1437, 1444 (9th Cir. 1995) (holding that consideration of
7 extrinsic evidence is precluded unless a plan's terms are
8 ambiguous).

9 As one change from their prior pleadings, Plaintiffs' FAC now
10 makes the argument, previously raised improperly, that Defendant
11 treated other similarly situated claimants differently under the
12 same plan language. Plaintiffs now allege, per the experience of a
13 claim-denial expert who assists Defendant's insureds with appeals
14 for denials of coverage, that Defendant has previously paid claims
15 for residential mental health treatment even if the treatment was
16 not provided at a facility with 24/7 BHP staffing. Opp'n at 11
17 (citing FAC ¶¶ 24-25, 27, 45, 56). Additionally, Plaintiffs
18 contend that Defendant treated in-network residential treatment
19 facilities differently from non-network facilities. Id. & FAC ¶
20 28. None of this supports a finding of ambiguity based on the plan
21 language, which, as noted in this Order and the December 17 Order,
22 the Court finds clear. See Bergt v. Retirement Plan for Pilots
23 Employed by MarkAir, Inc., 293 F.3d 1139, 1143 (9th Cir. 2002)
24 (citing Richardson, 112 F.3d at 985) (holding that consideration of
25 extrinsic evidence to interpret plan terms is inappropriate if the
26 plan is unambiguous). Since the plan is not ambiguous, the Court
27 rejects Plaintiffs' effort to interpret the language through
28 Defendant's alleged actions in other cases.

1 Plaintiffs also revisit their contention that the plan is
2 ambiguous because other sections of Defendant's plans regarding
3 treatment in other types of facilities -- "hospitals," "psychiatric
4 hospitals," and "skilled nursing facilities" -- state specifically
5 that certain other types of 24/7 staffing are required. Opp'n at
6 14. For example, Defendant's definition of "hospital" includes the
7 clause that a "hospital" must provide "twenty-four (24) hour-a-day
8 R.N. [registered nurse] service." Elizabeth L. Plan at 85-86. The
9 Court is not convinced that this argument proves the plan's
10 ambiguity. Those definitions relate to different provisions that
11 are not incorporated into or referenced by the provisions under
12 which Plaintiffs seek coverage. They therefore do not alter the
13 fact that, as addressed above, the definition of "Residential
14 Treatment Facility" has two distinct requirements for coverage: the
15 licensure requirement and the 24/7 requirement.

16 Plaintiffs' arguments do not merit reading out one requirement
17 or the other, and they do not prove to the Court that the plan is
18 ambiguous. The Court therefore rejects Plaintiffs' claims based on
19 these contentions.

20 **C. Unpled Claims**

21 Plaintiffs' opposition brief also raises the possibility that
22 Defendant's allegedly inconsistent treatment of claimants with
23 identical plan language constitutes violations of both Defendant's
24 statutory fiduciary duty under ERISA, as well as regulations
25 concerning ERISA claim processing. Opp'n at 12-13 (citing 29
26 U.S.C. § 1104(a)(1)(D); 29 C.F.R. § 2560.503-1(b)(5)). These are
27 separate allegations from Plaintiffs' claims concerning their
28 denial of benefits under Defendants' plan, and they do not support

1 Plaintiffs' claims based on 29 U.S.C. § 1132(a)(1)(B) (providing
2 that plan participants may recover "benefits due under the terms of
3 [their] plan"). Plaintiffs have leave to amend their complaint to
4 plead these theories properly, but they are instructed to avoid
5 raising new factual and legal allegations in their opposition
6 briefs in future disputes (should they arise).

7 **D. Declaratory Relief**

8 The Court DISMISSES Plaintiffs' declaratory relief claim
9 because it is based on the same theories as Plaintiffs' dismissed
10 ERISA claim.

11

12 **V. CONCLUSION**

13 As explained above, Defendant Aetna Life Insurance Co.'s
14 motion to dismiss the above-captioned Plaintiffs' complaint is
15 GRANTED, and the complaint is DISMISSED with leave to amend.
16 Plaintiffs have thirty (30) days to file an amended complaint
17 addressing (1) the fiduciary duty claim they described in their
18 opposition but did not plead, or (2) more narrowly, facts showing
19 that the 24/7 requirement was met, as discussed above.

20 If Plaintiffs fail to file an amended complaint within the
21 allotted time, the Court may dismiss this action with prejudice.

22

23 IT IS SO ORDERED.

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25 Dated: June 12, 2014

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UNITED STATES DISTRICT JUDGE