

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 DISMISSING CASE WITH
OLIVIA L., individually and as	)	<u>PREJUDICE</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.	)	
	)	
	)	

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In February, the Court granted a third motion to dismiss in this ERISA case. ECF No. 63 ("Third Dismissal Order"); see also ECF Nos. 36 ("First Dismissal Order"); 49 ("Second Dismissal Order"). The relevant facts are summarized in each of the Court's prior dismissal orders, and are not repeated at length here. Nevertheless, the nub of Plaintiffs' allegations is that Aetna, which administers a health insurance plan of which Plaintiffs were beneficiaries, erroneously rejected their claims for mental health benefits based on a flawed reading of the plan's language. In light of Plaintiffs' counsel's repeated disregard for the Court's orders, the case is DISMISSED WITH PREJUDICE.

1           The Court has dismissed Plaintiffs' first cause of action,  
2 which seeks benefits pursuant to 29 U.S.C. Section 1132(a)(1)(B),  
3 on three occasions, most recently with prejudice. As the Court has  
4 explained each time, Plaintiffs' claim for benefits rests on a  
5 flawed interpretation of the insurance plan's language. See, e.g.,  
6 Third Dismissal Order at 6. Each time, the Court's rejection of  
7 this theory has been unambiguous. For example, in first motion to  
8 dismiss, the Court found that Plaintiffs' interpretation rendered  
9 plan language "nugatory and incomprehensible" and concluding  
10 "Defendant's interpretation of the terms is correct." First  
11 Dismissal Order at 7. Nonetheless, the Court granted leave to  
12 amend to "plead facts concerning" the plan language at issue "or  
13 otherwise amend their pleadings to render their claims plausible."  
14 Id. at 10.

15           Undaunted, Plaintiffs asserted these claims once again in  
16 their amended complaint and opposition to a second motion to  
17 dismiss, which the Court also granted. In doing so, the Court  
18 granted leave to amend on a single distinct cause of action, and  
19 warned that "any attempts to re-plead failed arguments without new  
20 supporting facts may be dismissed with prejudice." Second  
21 Dismissal Order at 8. Nevertheless, when Plaintiffs filed their  
22 second amended complaint, not only did they "re-plead [their]  
23 failed argument without new supporting facts," but (with the  
24 exception of a single statutory citation) did so verbatim. Compare  
25 ECF No. 39 ("First Am. Compl.") ¶¶ 79-82, with ECF No. 50 ("Second  
26 Am. Compl.") ¶¶ 79-82.

27           The Court dismissed these allegations as well, this time with  
28 prejudice. Third Dismissal Order at 9 ("Because Plaintiffs

1 have . . . opt[ed] to simply 're-plead failed arguments without new  
2 supporting facts,' these claims are DISMISSED WITH PREJUDICE.")  
3 (quoting Second Dismissal order at 8) (emphasis in original).  
4 Again, however, the Court granted leave to amend on a narrow,  
5 distinct cause of action. Id. at 11 ("[T]he Court GRANTS leave to  
6 amend on that theory and that theory alone.") (emphasis in  
7 original). Recognizing that Plaintiffs had repeatedly disregarded  
8 the Court's instructions, the Court also warned Plaintiffs that  
9 "[a]ny attempts to replead the first cause of action or further  
10 reliance on the now-thrice-rejected interpretation of the [plan  
11 language] will be dismissed with prejudice." Id.

12 Nevertheless, when Plaintiffs filed their third amended  
13 complaint on March 25, 2015, Plaintiffs directly contravened the  
14 Court's prior order, and once again repleaded their first cause of  
15 action. ECF No. 67 ("Third Am. Compl.") ¶¶ 79-82. Given the  
16 Court's repeated, unambiguous rejection of this legal theory, prior  
17 dismissal of these allegations with prejudice, and repeated  
18 instructions not to do exactly what Plaintiffs have done, it is  
19 difficult to imagine why Plaintiffs have chosen to repeatedly defy  
20 the Court's orders. More incredible still is that Plaintiffs'  
21 Third Amended Complaint again repeats the first cause of action  
22 verbatim. Compare First Am. Compl. ¶¶ 79-82, and Second Am. Compl.  
23 ¶¶ 79-82, with, Third Am. Compl. ¶¶ 79-82.

24 In deciding whether dismissals for violation of pretrial  
25 orders are appropriate, courts in the Ninth Circuit consider five  
26 unweighted, and individually non-dispositive factors. Valley  
27 Eng'rs Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1057 (9th Cir.  
28 1998). These factors are: "(1) the public's interest in

1 expeditious resolution of litigation; (2) the court's need to  
2 manage its docket; (3) the risk of prejudice to the defendants; (4)  
3 the public policy favoring disposition of cases on their merits;  
4 and (5) the availability of less drastic sanctions." In re  
5 Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226  
6 (9th Cir. 2006) (quoting Malone v. U.S. Postal Serv., 833 F.2d 128,  
7 130 (9th Cir. 1987)).

8         These factors weigh in favor of dismissal. First, the Court  
9 finds that Plaintiffs' repeated repleading of rejected legal  
10 theories has resulted in unreasonable delays both in the  
11 expeditious resolution of this action, and in the Court's ability  
12 to address other important matters. The proper response to  
13 Plaintiffs' obvious disagreements with the Court's decision is to  
14 seek to appeal, not repeatedly reassert arguments the Court has  
15 already rejected despite express directions to the contrary.  
16 Second, while Defendant cannot be prejudiced by "the mere pendency  
17 of the lawsuit itself," Pagtalunan v. Galaza, 291 F.3d 639, 642  
18 (9th Cir. 2002), the costs and burdens of litigation can be a  
19 relevant prejudice. Defendant should not have to bear the cost and  
20 burden of responding to these recycled allegations for a fourth  
21 time. Third, the fact that these claims have already been disposed  
22 of on the merits, see Third Dismissal Order at 9, and that "this  
23 factor 'lends little support' to a party [like Plaintiffs] whose  
24 responsibility it is to move a case toward disposition on the  
25 merits but whose conduct impedes progress in that direction," means  
26 that the disposition on the merits factor does not weigh in  
27 Plaintiffs' favor either. See In re PPA, 460 F.3d at 1228 (quoting  
28 In re the Exxon Valdez, 102 F.3d 429, 433 (9th Cir. 1996)).

1           Finally, the Court must consider whether less drastic  
2 alternative sanctions may be appropriate. Id. Here, the Court has  
3 repeatedly warned Plaintiffs that failure to obey the Court's  
4 orders will result in dismissal. This alone can satisfy the  
5 consideration of the alternatives requirement. See id. at 1229  
6 (collecting cases). Furthermore, "'providing plaintiff with a  
7 second or third chance following a procedural default is a 'lenient  
8 sanction,' which, when met with further default, may justify  
9 imposition of the ultimate sanction of dismissal with prejudice.'" Malone v. U.S. Postal Serv., 833 F.2d 128, 132 n.1 (9th Cir. 1987)  
10 (quoting Callip v. Harris Cnty. Welfare Dep't, 757 F.2d 1513, 1521  
11 (5th Cir. 1985)). That is precisely what happened here: the Court  
12 repeatedly instructed Plaintiffs not to replead failed legal  
13 theories, but nevertheless granted leave to amend on distinct  
14 issues in the hopes that Plaintiffs would either plead an  
15 actionable legal theory or dismiss their case. Instead, that  
16 leniency was met with further disregard for the Court's orders. At  
17 this point, the Court finds dismissal with prejudice is the most  
18 appropriate sanction.

20           Accordingly, Plaintiffs' Third Amended Complaint, ECF No. 67,  
21 is DISMISSED WITH PREJUDICE, and judgment will be entered in favor  
22 of Defendant. In closing, the Court reminds Plaintiffs' counsel,  
23 Brian S. King, who signed the Third Amended Complaint, that in  
24 future cases, his pattern of repeatedly refiled rejected claims  
25 contrary to court orders may result in Rule 11 sanctions. See Fed.  
26 R. Civ. P. 11(b)(1)-(2) & (c)(3); Glaser v. City of San Diego, 163  
27 F.3d 606 (9th Cir. 1998) (unpublished table decision) (affirming  
28 monetary sanctions and dismissal of a complaint for filing a "near-

1 identical" amended complaint following a dismissal with leave to  
2 amend).

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IT IS SO ORDERED.

Dated: March 27, 2015



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UNITED STATES DISTRICT JUDGE