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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MOSES OLADELE ABIOLA,
Plaintiff,
v.
ESA MANAGEMENT, LLC,
Defendant.

Case No. 13-cv-03496-JCS

**ORDER GRANTING IN PART
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT, DENYING IN
PART PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
REMANDING STATE LAW CLAIMS
TO STATE COURT**

Re: Dkt. Nos. 96, 102

I. INTRODUCTION

Plaintiff Moses Oladele Abiola brings this action against his former employer, ESA Management, LLC (“ESA”). The action was initiated in the Superior Court for the County of Santa Clara and removed to federal court on the basis of federal question jurisdiction, pursuant to 28 U.S.C. § 1331. In particular, the action was removed to this court on the grounds that Abiola asserted claims under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §§ 1001 *et seq.* and the United States Trademark Act, 15 U.S.C. §§ 1051 *et seq.* (“the Lanham Act”). See Notice of Removal, Docket No. 1.¹ The Court has dismissed all but three claims, and the only remaining claim asserted under federal law is Plaintiff’s ERISA claim. Because the Court finds that ESA is entitled to summary judgment on that claim, the Court GRANTS in part ESA’s Motion for Summary Judgment (“Defendant’s Motion”), DENIES in part Plaintiff’s Motion for Summary Judgment (“Plaintiff’s Motion”) and remands Plaintiff’s remaining claims to state court. The hearing set for **January 8, 2015** is vacated pursuant to Civil Local Rule 7-1(b).²

¹ The Notice of Removal did not cite diversity as a basis for jurisdiction under 28 U.S.C. § 1332.
² The parties have consented to the jurisdiction of the undersigned magistrate judge pursuant to 28 U.S.C. § 636(c).

1 **II. BACKGROUND**

2 Plaintiff has amended his complaint in this action three times. The Court has issued two
3 substantive orders addressing the sufficiency of Plaintiff’s claims, *see* Docket Nos. 70, 87, and
4 three claims now remain in the case: Claim One (ERISA), Claim Five (Cal. Labor Code Sections
5 203 and 2802), and Claim Six (Cal. Labor Code Section 1198.5). For the purposes of ruling on
6 the parties’ summary judgment motions, the Court need only address the background relating to
7 Abiola’s ERISA claim.

8 Plaintiff’s allegations regarding his ERISA claim are set forth in his Third Amended
9 Complaint.³ There, he asserts that ESA failed to comply with 29 C.F.R. § 2520.104b-2, which
10 requires a “plan administrator of an employee benefit plan . . .[to] furnish a copy of the summary
11 plan description and a statement of ERISA rights . . . to each participant covered under the plan . .
12 . and each beneficiary receiving benefits under a pension plan” within 90 days after the employee
13 becomes a participant in a plan covered by ERISA. Third Amended Complaint ¶¶ 23(1), 29.
14 Although Plaintiff does not include any factual allegations in the ERISA claim itself, he includes
15 the following allegations in the background section of his complaint:

16 On October 17, 2011, Plaintiff’s first day of work, “Sickles”
17 provided me with documents needed for a new employee; and
18 among them was a document titled “Employment Notice” . . . [in
19 which] line 4 itemized as “OTHER COMPENSATION” which was
20 sub-itemized as “BONUS;” “EXPENSES;” “OTHER;” And then,
21 the Plaintiff query “Sickles” of a brochure that might explain
22 corporate policies as well as criteria for earning the bonus. Then,
23 Sickles responded that, “*well, no brochure, but this is what I can
24 promise you, as a hotel manager with Extended Stay Hotels, you can
25 average your bonuses to be very huge, as long as you report for
26 work when scheduled, you’ll be paid your bonuses, the last time I
27 got mine, it was so robust that I almost cry.*”

28 *Id.*, ¶ 20 (emphasis in original).⁴

25 ³ Although Plaintiff filed a Fourth Amended Complaint in response to the Court’s order
26 dismissing certain claims in his Third Amended Complaint, *see* Docket No. 70, he included in the
27 Fourth Amended Complaint only the claims that the Court had expressly permitted him to amend.
28 Although ESA asked the Court to dismiss the ERISA claim on the basis that it was not included in
the Fourth Amended Complaint, the Court declined to do so, citing Plaintiff’s pro se status. *See*
Docket No. 87 at 9-10. Therefore, the Court looks to the allegations in the Third Amended
Complaint to evaluate the ERISA claim.

⁴ In his original complaint, Plaintiff made clear that his ERISA claim was based on ESA’s alleged

1 In its summary judgment motion, ESA asserts Plaintiff's ERISA claim fails because the
2 bonus plans that were in effect during the time Abiola was employed by ESA were not covered by
3 ERISA. Defendant's Motion at 3-4. In particular, ESA presents evidence that during the time
4 Plaintiff worked for ESA, the following bonus plans were in effect: 1) "2nd Half 2011 Operations
5 Pay for Performance Award Plan" ("2011 Bonus Plan"), effective July 1, 2011 through December
6 31, 2011; and 2) "Incentive Plans First Half FY 2012" ("2012 Bonus Plan"), covering the first two
7 quarters of fiscal year 2012. Declaration of Brandalyn Kay Sickles in Support of Defendant ESA
8 Management, LLC's Motion for Summary Judgment ("Sickles Decl."), ¶ 4 & Exs. A- B. These
9 plans offered incentive payments to managers who met certain goals and criteria. *See id.* They
10 did not provide compensation that is deferred until after an employee's termination; nor did they
11 offer welfare benefits. *Id.*⁵ According to ESA, neither plan is an employee welfare benefit plan
12 or an employee pension plan, which are the two types of plans covered by ERISA. Defendant's
13 Motion at 8 (citing 29 U.S.C. § 1002(1); *Albers v. Guardian Life Ins. Co. of Am.*, 1999 U.S. Dist.
14 LEXIS 5410 (S.D.N.Y. April 19, 1999)). First, ESA contends, "payments to employees 'on
15 account of work performed by an employee,' such as an annual bonus, are not welfare benefit
16 plans. *Id.* (quoting 29 C.F.R. § 2510.3-1(b)). Second, "bonuses for work performed are not
17 pension benefit payments unless such payments are systematically deferred to provide retirement
18 income to employees." *Id.* (citing 29 C.F.R. § 2510.3-2(c)).

19 In his Opposition brief and in his summary judgment motion, Plaintiff does not challenge
20 (on either factual or legal grounds) ESA's assertion that the only two bonus plans offered during
21 Abiola's employment with ESA were neither employee welfare benefit plans nor employee
22 pension plans under ERISA. Nor does Abiola present any specific evidence that he was a

23
24 "non-disclosure of information pertaining to employee bonus." Complaint ¶ 46; *see also* First
Amended Complaint, ¶ 46.

25 ⁵ ESA also presents evidence that Abiola did not qualify to receive a bonus under either plan.
26 Motion at 4. As to the 2001 Bonus Plan, Abiola was required to work at least one half of the
27 performance period (13 weeks) in order to be eligible for a bonus, but he worked less than that,
28 having commenced his employment with ESA on October 17, 2011. Sickles Decl., ¶ 4 & Ex. A.
As to the 2012 Bonus Plan, Abiola did not qualify to receive a bonus because he was on a
performance improvement plan and because he was not employed on the date the bonus was
distributed (he was terminated on May 24, 2012) before the end of the second quarter, rendering
him ineligible to receive a bonus. Sickles Decl., ¶ 4 & Ex. B.

1 participant of some other plan offered by ESA that was covered by ERISA. Rather, he cites to an
2 “Employment Notice” he was given when he commenced his employment with ESA. Plaintiff’s
3 Motion at 1; Plaintiff’s Opposition to Defendant’s Motion at 10; *see also* Docket No. 96-1 at 5
4 (“Employment Notice”). That document is a form listing Plaintiff’s name, hours of work and
5 salary. Docket No. 96-1 at 5. Item number 4 on the form is entitled “Other Compensation” and
6 has blanks for “Bonus,” “Expenses” and “Other,” all of which were left blank. Plaintiff seems to
7 suggest that the mere fact that ESA’s form Employment Notice included spaces for these other
8 forms of compensation is an admission that Plaintiff was a participant in an ERISA plan of which
9 he did not receive proper notice.

10 **III. ANALYSIS**

11 **A. Rule 56**

12 Summary judgment on a claim or defense is appropriate “if the movant shows that there is
13 no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
14 law.” Fed. R. Civ. P. 56(a). In order to prevail, a party moving for summary judgment must show
15 the absence of a genuine issue of material fact with respect to an essential element of the non-
16 moving party’s claim, or to a defense on which the non-moving party will bear the burden of
17 persuasion at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has
18 made this showing, the burden then shifts to the party opposing summary judgment to designate
19 “specific facts showing there is a genuine issue for trial.” *Id.* “[T]he inquiry involved in a ruling
20 on a motion for summary judgment . . . implicates the substantive evidentiary standard of proof
21 that would apply at the trial on the merits.” *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 252
22 (1986).

23 **B. Exercise of Supplemental Jurisdiction Over State Law Claims in Removed
24 Federal Question Case Where Federal Claims Have Been Dismissed**

25 “Except as otherwise expressly provided by Act of Congress, any civil action brought in a
26 State court of which the district courts of the United States have original jurisdiction, may be
27 removed by the defendant or the defendants, to the district court of the United States for the
28 district and division embracing the place where such an action is pending.” 28 U.S.C. § 1441(a).

1 Original jurisdiction may be based on diversity or the existence of a federal question, as set forth
 2 in 28 U.S.C. sections 1331 and 1332. If the case was properly removed on the basis of federal
 3 question jurisdiction, the state law claims arising out of a “common nucleus of operative fact” fall
 4 within the federal court’s supplemental jurisdiction. *United Mine Workers of America v. Gibbs*,
 5 383 U.S. 715, 725 (1966). If the federal claims that served as the basis for removal are eliminated,
 6 the district court has discretion to decline to exercise its supplemental jurisdiction and to remand
 7 the remaining state law claims to state court. 28 U.S.C. § 1367(c)(3).

8 To decide whether to exercise jurisdiction over pendent state law claims, a district court
 9 should “consider and weigh in each case, and at every stage of litigation, the values of judicial
 10 economy, convenience, fairness, and comity” *Carnegie-Mellon University v. Cohill*, 484
 11 U.S. 343, 349-350 (1988); *City of Chicago v. Int’l College of Surgeons*, 522 U.S. 156, 172-173
 12 (1997). “[I]n the usual case in which all federal law claims are eliminated before trial, the balance
 13 of the factors to be considered . . . will point toward declining to exercise jurisdiction over the
 14 remaining state-law claims.” *Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087, 1091 (9th Cir.
 15 2008) (quoting *Cohill*, 484 U.S. at 351).

16 **C. Discussion**

17 **1. Whether ESA is entitled to summary judgment on the ERISA claim**

18 “ERISA protects employee pensions and other benefits by providing insurance . . . ,
 19 specifying certain plan characteristics in detail . . . , and by setting forth certain general fiduciary
 20 duties applicable to the management of both pension and nonpension benefit plans.” *Varity Corp.*
 21 *v. Howe*, 516 U.S. 489, 496 (1996)). The basic purpose of ERISA is “to protect . . . the interests
 22 of participants . . . and . . . beneficiaries . . . by establishing standards of conduct, responsibility,
 23 and obligation for fiduciaries . . . and . . . providing for appropriate remedies . . . and ready access
 24 to the Federal courts.” *Id.* at 513 (quoting ERISA § 2(b), 29 U.S.C. § 1001(b)). “ERISA applies
 25 to ‘any employee benefit plan if it is established or maintained . . . by any employer . . . or . . . by
 26 any employee organization . . . or by both.’” *Daniels-Hall v. National Educ. Ass’n*, 629 F.3d 992,
 27 999 (9th Cir. 2010) (quoting 29 U.S.C. § 1003(a)(1)-(3)). In *Daniels*, the Ninth Circuit explained
 28 that “[e]mployee benefit plans’ covered by ERISA come in two types [:] . . . the ‘employee

1 welfare benefit plan,’ . . . [and] the ‘employee pension benefit plan.’” *Id.*

2 An “employee welfare benefit plan” is defined as follows:

3 The terms “employee welfare benefit plan” and “welfare plan” mean
4 any plan, fund, or program which was heretofore or is hereafter
5 established or maintained by an employer or by an employee
6 organization, or by both, to the extent that such plan, fund, or
7 program was established or is maintained for the purpose of
8 providing for its participants or their beneficiaries, through the
9 purchase of insurance or otherwise, (A) medical, surgical, or
hospital care or benefits, or benefits in the event of sickness,
accident, disability, death or unemployment, or vacation benefits,
apprenticeship or other training programs, or day care centers,
scholarship funds, or prepaid legal services, or (B) any benefit
described in section 186(c) of this title (other than pensions on
retirement or death, and insurance to provide such pensions).

10 29 U.S.C. § 1002(1). “The only benefits described in 29 U.S.C. § 186(c) and not listed in the
11 definition given [in § 1002(1)A] are ‘holiday, severance or similar benefits.’” *Hagel v. United*
12 *Land Co.*, 759 F.Supp. 1199, 1203 (E.D.Va.,1991) (citing 29 C.F.R. § 2510.3-1(a)(3) (analyzing
13 the relationship between 29 U.S.C. §§ 186(c) and 1002(1)(A)). Bonus plans that are “designed to
14 reward employees for their service with present benefits” typically are not employee welfare
15 benefit plans and are outside ERISA’s scope. *Id.* (citing *Murphy v. Inexco Oil Co.*, 611 F.2d 570,
16 574 (5th Cir. 1980); *Foltz v. U.S. News & World Report, Inc.*, 627 F.Supp. 1143, 1164-65 (D.D.C.
17 1986)); *see also* 29 C.F.R. § 2510.3-1(b) (providing that payment to employees “on account of
18 work performed by an employee” is not an employee welfare benefit plan). Similarly, the term
19 “employee pension benefit plan” does not include “payments made by an employer to some or all
20 of its employees as bonuses for work performed, unless such payments are systematically deferred
21 to the termination of covered employment or beyond, or so as to provide retirement income to
22 employees.” 29 C.F.R. 2510.3-2(c); *see also* 29 U.S.C. § 1002(2).

23 The only evidence that has been presented of *any* benefit plan in this case is the evidence
24 submitted by ESA that it offered two bonus plans while Plaintiff was employed by ESA. This
25 undisputed evidence shows that the ESA bonus plans were not established for the purpose of
26 paying any of the types of benefits listed in 29 U.S.C. § 1002(1). Rather, the bonuses were paid to
27 employees on account of the work they performed. Nor did the bonus plans pay any deferred
28 compensation. Consequently, the Court finds, as a matter of law, that the ESA bonus plans were

1 neither employee welfare benefit plans nor employee pension benefit plans and therefore are not
2 covered by ERISA.

3 Nor is the fact that the Employment Notice form used by ESA had a blank for “other
4 compensation” sufficient to create a fact question as to whether ESA may have offered some other
5 plan that *was* covered by ERISA of which Plaintiff should have received notice.⁶ No reasonable
6 juror could conclude, on the basis of that form (which is the only evidence offered by Plaintiff in
7 support of his ERISA claim), that Plaintiff became a participant in a covered ERISA plan when he
8 commenced his employment with ESA. Therefore, Plaintiff’s reliance on the Employment Notice
9 is misplaced.

10 Accordingly, the Court GRANTS ESA’s request for summary judgment on the ERISA
11 claim and DENIES Plaintiff’s request for summary judgment on the ERISA claim. The ERISA
12 claim is dismissed with prejudice.

13 **2. Whether the Court should remand the state law claims to state court**

14 Having dismissed Plaintiff’s only federal claim, the Court must decide whether to exercise
15 supplement jurisdiction over the remaining state law claims. The Court concludes that it is in the
16 interest of comity and judicial efficiency to remand those claims to state court, especially in light
17 of the fact that the Santa Clara Superior Court, from which this case was removed, previously
18 conducted a bench trial in which Abiola sought unpaid wages and waiting time penalties based on
19 his employment with ESA. *See* Defendant ESA Management, LLC’s Request for Judicial Notice
20 in Support of Its Motion for Summary Judgment, Exs. 1-4.

21 **IV. CONCLUSION**

22 For the reasons stated above, Defendant’s Motion is GRANTED in part and Plaintiff’s
23 Motion is DENIED in part. Plaintiff’s ERISA claim (Claim One) is dismissed with prejudice.

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28 ⁶ The obligation requiring plan administrators to give participants notice within 90 days of the date when the employee became a participant is set forth in 29 U.S.C. § 1021.

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The remaining state law claims are remanded to the Superior Court for the County of Santa Clara.

IT IS SO ORDERED.

Dated: December 12, 2014



JOSEPH C. SPERO
United States Magistrate Judge