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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

AMY F.,

Plaintiff,

vs.

**CALIFORNIA PHYSICIANS' SERVICE DBA
BLUE SHIELD OF CALIFORNIA; TRINET
GROUP, INC.,**

Defendants.

Case No.: 19-CV-6078 YGR

**ORDER DENYING MOTION TO DISMISS
SECOND AMENDED COMPLAINT; SETTING
CASE MANAGEMENT CONFERENCE**

DKT. NO. 43

On June 2, 2020, this Court entered its Order Granting In Part the motion of defendant California Physicians' Service dba Blue Shield of California ("Blue Shield") to dismiss plaintiff Amy F.'s second cause of action for breach of fiduciary duty under ERISA, 29 U.S.C. § 1132. (Dkt. No. 39.) In that Order, the Court found that plaintiff failed to allege a basis for injunctive relief or relief pursuant to section 1132(a)(2) but had alleged sufficiently a basis for appropriate equitable relief for breach of a fiduciary duty pursuant to section 1132(a)(3). Plaintiff was granted leave to amend to allege standing to pursue injunctive relief on behalf of third parties, as well as a "basis for seeking forward-looking relief for herself." (*Id.* at 2.) As to her claim for other equitable relief under section 1132(a)(3), the Court denied the motion to dismiss, finding that her prayer for "appropriate equitable relief," including an order requiring "each fiduciary found liable for breaching his/her/its duties to disgorge any profits made through the denial of medically necessary claims through the use of inconsistent care guidelines" was supported by sufficient factual allegations, and that the precise "form and nature of any appropriate equitable relief need not be specified at this stage in the litigation." (*Id.* at 4.)

1 Plaintiff filed her Second Amended Complaint (“SAC”) on June 23, 2020. (Dkt. No. 40.)
2 She amended the SAC to clarify that she is a current plan participant and the plan continues to be
3 administered by defendant Blue Shield. (SAC ¶ 8.)

4 Blue Shield again moves to dismiss the second cause of action raising largely the same
5 arguments as before. (Dkt. No. 43.)¹ Blue Shield contends that plaintiff lacks standing to seek
6 forward-looking equitable relief in the form of an injunction, as well as retrospective equitable
7 relief such as disgorgement of profits, and has not alleged causation.

8 As to retrospective relief (for example, disgorgement or surcharge), the Court’s prior Order
9 addressed and denied defendant’s motion to dismiss plaintiff’s claim for these forms of equitable
10 relief. (Dkt. No. 39 at 4.) Consequently, defendants’ motion here—essentially one for
11 reconsideration—is **DENIED**.

12 With respect to injunctive relief, plaintiff argues that she has established standing for the
13 forward-looking relief she seeks because she is a current Plan participant and seeks equitable relief
14 to ensure fair treatment in future claims for health benefits. Because health insurance, by
15 definition, is coverage for future health care needs, plaintiff contends that a demand for more
16 particularized allegations of imminent injury would be inconsistent with the nature and purpose of
17 insurance. Further, she alleges that Blue Shield’s failure to apply Plan provisions fairly and
18 consistently resulted in denial of benefits, causing her injury. (SAC ¶ 48.)²

19 Plaintiff’s allegations of defendants’ past wrongful conduct and her continued status as a
20 Plan beneficiary are sufficient to establish Article III standing. Standing under Article III requires,
21 among other things, that the plaintiff has suffered an “injury in fact” that is concrete and
22

23 ¹ Defendant also argues that E.F., plaintiff’s child, is incorrectly alleged to be a Plan
24 beneficiary, submitting evidence to show that E.F. is no longer a covered dependent under
25 plaintiff’s plan, or otherwise covered under a Blue Shield plan, as of August 31, 2019. Given that
26 Blue Shield does not dispute that *plaintiff* remains a Plan participant, this argument and the
27 proffered evidence is irrelevant to the matters at issue in this motion. If true, the issue is more
28 appropriately addressed by a substantive motion upon which the Court may consider evidence
outside the record. To do so here would be procedurally improper.

² To the extent defendant attempted articulate a distinct argument that plaintiff failed to
allege a sufficient “causal connection between the injury and the conduct complaint of,” *Lujan v.*
Def. of Wildlife, 504 U.S. 555, 560 (1992), the Court finds that argument without merit.

1 particularized, as well as actual or imminent. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*
2 (*TOC*), *Inc.*, 528 U.S. 167, 180–81 (2000). “A plaintiff must demonstrate constitutional standing
3 separately for each form of relief requested.” *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956,
4 967 (9th Cir.), *cert. denied*, 139 S. Ct. 640 (2018) (citing *Friends of the Earth*, 528 U.S. at 185). If
5 a plaintiff faces “a credible threat of harm” and that harm is “both real and immediate, not
6 conjectural or hypothetical,” the plaintiff has met the injury-in-fact requirement for standing under
7 Article III. *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1143 (9th Cir. 2010) (internal citations
8 omitted) (allegation that plaintiffs faced a credible threat of real and immediate harm stemming
9 from theft of laptop containing unencrypted personal data sufficient to establish standing); *see also*
10 *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 947 (9th Cir. 2002) (“the possibility of
11 future injury may be sufficient to confer standing on plaintiffs; threatened injury constitutes ‘injury
12 in fact.’”) “Past wrongs, though insufficient by themselves to grant standing, are ‘evidence bearing
13 on whether there is a real and immediate threat of repeated injury.’ *Davidson*, 889 F.3d at 967.
14 (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)). “Where standing is premised
15 entirely on the threat of repeated injury, a plaintiff must show ‘a sufficient likelihood that he will
16 again be wronged in a similar way.’” *Id.* In determining whether a threatened injury is similar, the
17 Ninth Circuit has cautioned that courts should not adopt too narrow or technical an approach, but
18 instead consider the context of the inquiry. *Id.*

19 Here, plaintiff alleges that Blue Shield breached its fiduciary duties by failing to act in
20 accord with Plan documents and denying coverage for medically necessary treatment. (SAC ¶¶ 48,
21 49, 60.) Plaintiff alleges that she is a current Plan beneficiary who may, at any moment, seek
22 coverage for health care and therefore faces an imminent threat that she will be wronged in a
23 similar way. No less than the consumer in *Davidson* who alleged she intended to purchase
24 defendant’s product in the future and faced an imminent threat that she would again be deceived by
25 its false advertising, plaintiff’s allegations here are sufficient to state an imminent threat of injury
26 that supports her Article III standing to seek injunctive relief. *See Davidson*, 889 F.3d at 970 (“the
27 threat of future harm may be the consumer’s plausible allegations that she might purchase the
28 product in the future, despite the fact it was once marred by false advertising or labeling, as she

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may reasonably, but incorrectly, assume the product was improved”).³ The motion to dismiss plaintiff’s claim for injunctive relief in connection with her cause of action pursuant to section 1132(a)(3) is therefore **DENIED**.

III. CONCLUSION

For the foregoing reasons, the motion to dismiss is **DENIED**. Blue Shield shall file its answer within 21 days of issuance of this Order.

The Court **SETS** a case management conference for **October 26, 2020**, at 1:00 p.m. A Zoom link will be posted on the docket prior to the day of the hearing and may also be accessed via the Court’s webpage, www.cand.uscourts.gov/judges/gonzalez-rogers-yvonne-ygr/ .

This terminates Docket No. 43.

IT IS SO ORDERED.

Date: September 11, 2020


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

³ Defendant’s citation to *Thole*, a case concerning a defined-benefit pension plan, in which plaintiffs would be entitled to, and had received, the same vested benefit payments regardless of the allegations of their claims, is inapposite to the claims here concerning a health plan’s failure to cover and pay claims fairly. *Thole v. U. S. Bank N.A.*, 140 S. Ct. 1615, 1622 (2020) (finding lack of Article III standing where “[w]inning or losing this suit would not change the plaintiffs’ monthly pension benefits” and had no “concrete stake” in the alleged dispute).