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United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Richard M. Greenburg,  
Plaintiff,  
v.  
Life Ins. Company of North America, et al.,  
Defendants.

NO. C 08-03240 JW

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO STRIKE**

**I. INTRODUCTION**

Richard M. Greenburg (“Plaintiff”), in *pro se*, brings this action against Life Insurance Company of North America (“LINA”) and Arrow Electronics (“Arrow”) (collectively, “Defendants”), alleging violations of the Employee Retirement Income Security Act of 1974 (“ERISA”). Plaintiff alleges that LINA breached the insurance contract it entered into with Plaintiff, and that Defendants together colluded to terminate Plaintiff’s insurance contract.

Presently before the Court is Defendants’ Motion to Strike Plaintiff’s Damages Claims and Demand for Jury Trial. (hereafter, “Motion,” Docket Item No. 10.) The Court found it appropriate to take the matter under submission without oral argument. See Civ. L.R. 7-1(b). Based on the papers submitted to date, the Court GRANTS in part and DENIES in part Defendants’ Motion to Strike.

1 **II. BACKGROUND**

2 In a Complaint filed on July 3, 2008, Plaintiff alleges as follows:

3 Plaintiff is a disabled individual. (Complaint ¶ 4, Docket Item No. 1.) LINA is  
4 Plaintiff’s provider of disability insurance benefits and Arrow is Plaintiff’s former employer.  
5 (Id. ¶ 5-6.) On October 20, 2004, LINA ceased paying Plaintiff benefits under his insurance  
6 contract. (Id. ¶ 7.) On July 9, 2005, LINA upheld its denial of benefits beginning in October  
7 2004. (Id.) In doing so, LINA breached its contract with Plaintiff. (Id. ¶ 8.1.) Further,  
8 LINA breached its confidential relationship with Plaintiff by sharing information with  
9 Arrow. (Id. ¶ 8.2.) Defendants LINA and Arrow together colluded to terminate Plaintiff’s  
10 contract with LINA. (Id. ¶ 8.3.)

11 On the basis of the allegations outlined above, Plaintiff seeks the following relief: (1)  
12 Payment of the full benefits under Plaintiff’s insurance contract with LINA; (2) Payment of  
13 Plaintiff’s “rehabilitation expenses;” (3) Payment of punitive damages from Arrow for participating  
14 in LINA’s breach of Plaintiff’s insurance contract; and (4) Payment of “all additional relief” to  
15 which Plaintiff is entitled.

16 Presently before the Court is Defendants’ Motion to Strike Plaintiff’s Damages Claims and  
17 Demand for Jury Trial.

18 **III. STANDARDS**

19 Pursuant to Federal Rule of Civil Procedure 12(f), “the court may order stricken from any  
20 pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”  
21 The Ninth Circuit has held that “[t]he function of a 12(f) motion to strike is to avoid the expenditure  
22 of time and money that must arise from litigating spurious issues by dispensing with those issues  
23 prior to trial.” Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993) rev’d on other grounds,  
24 Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994).

25 However, “[m]otions to strike are generally regarded with disfavor because of the limited  
26 importance of pleading in federal practice, and because they are often used as a delaying tactic.”

1 Neilson v. Union Bank of Cal., N.A., 290 F. Supp. 2d 1101, 1152 (C.D. Cal. 2003); See, e.g., Cal.  
2 Dep't of Toxic Substances Control v. Alco Pac., Inc., 217 F. Supp. 1028 (C.D. Cal. 2002).  
3 Accordingly, such motions should be denied unless the matter has no logical connection to the  
4 controversy at issue and may prejudice one or more of the parties to the suit. SEC v. Sands, 902 F.  
5 Supp. 1149, 1166 (C.D. Cal. 1995); LeDuc v. Kentucky Central Life Ins. Co., 814 F. Supp. 820, 820  
6 (N.D. Cal. 1992). When considering a motion to strike, the court “must view the pleading in a light  
7 most favorable to the pleading party.” In re 2TheMart.com, Inc. Securities Litig., 114 F. Supp. 955,  
8 965 (C.D. Cal. 2000).

#### 9 IV. DISCUSSION

10 Defendants move to strike the following portions of Plaintiff’s Complaint: (1) Plaintiff’s  
11 second prayer for relief for “expenses for [P]laintiff’s rehabilitation;” (2) Plaintiff’s third prayer for  
12 relief for “punitive damages;” and (3) Plaintiff’s demand for a jury trial contained in the caption of  
13 Plaintiff’s Complaint. (Motion at 1-2.)

14 As a preliminary matter, the Court must determine which provision of ERISA is the basis of  
15 Plaintiff’s claim. Plaintiff’s Complaint only alleges that his action “arises under the Federal ERISA  
16 laws.” (Complaint ¶ 1.) Since Plaintiff does not request any form of equitable relief pursuant to 29  
17 U.S.C. § 1132(a)(3), the Court construes Plaintiff’s claim as a claim “to recover benefits due to him  
18 under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to  
19 future benefits under the terms of the plan” pursuant to 29 U.S.C. § 1132(a)(1)(B).<sup>1</sup>

20 The Court considers the issues raised by Defendants’ motion in turn.

#### 21 **A. Rehabilitation Expenses and Punitive Damages**

22 Defendants contend that Plaintiff’s second prayer for relief for rehabilitation expenses and  
23 third prayer for relief for punitive damages should be stricken because neither type of recovery is  
24 available under ERISA. (Motion at 2, 5-6.)

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27 <sup>1</sup> Defendants contend that Plaintiff’s claim arise under § 1132(a)(1)(B) and Plaintiff raises  
no objection. (Motion at 2.)

1 Under ERISA, a plan participant may not recover extracontractual compensatory or punitive  
2 damages for the improper or untimely processing of benefit claims. Mass. Mut. Life Ins. Co. v.  
3 Russell, 473 U.S. 134, 148 (1985); Bast v. Prudential Ins. Co. of Am., 150 F.3d 1003, 1009 (9th  
4 Cir. 1998).

5 With respect to Plaintiff’s request for reimbursement of rehabilitation expenses in the amount  
6 of \$43,000, Plaintiff contends that these expenses do not constitute extracontractual compensatory  
7 damages because he is entitled to them under his contract with LINA.<sup>2</sup> In their Reply, Defendants  
8 concede that, to the extent Plaintiff is merely seeking benefits under his contract, their Motion to  
9 Strike Plaintiff’s prayer for rehabilitation expenses is rendered moot.<sup>3</sup> Thus, the Court finds that  
10 Plaintiff’s prayer for rehabilitation expenses concerns permissible contractual damages under  
11 ERISA. Accordingly, the Court DENIES Defendants’ Motion to Strike Plaintiff’s second prayer for  
12 relief for rehabilitation expenses.

13 With respect to Plaintiff’s request for punitive damages from Defendant Arrow,<sup>4</sup> such a  
14 remedy is unavailable under ERISA. See Russell, 473 U.S. at 148. Although punitive damages  
15 might be sought under state law, state law causes of action are generally “preempted [by ERISA]  
16 where [they are] used to remedy exactly the type of illegal activity proscribed by ERISA.” Tingey  
17 v. Pixley-Richards West, Inc., 953 F.2d 1124, 1130 (9th Cir. 1992). On the other hand, “an  
18 otherwise ERISA-preempted claim may survive to the extent that it relies on a theory independent of  
19 the benefit plan.” Id.

20 In this case, Plaintiff expressly brings his Complaint under ERISA, and all of his injury is  
21 alleged to have arisen out of the wrongful denial of insurance benefits. (See Complaint at 1-3.)  
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23 <sup>2</sup> (Memorandum in Opposition re Motion to Strike Plaintiff’s Improper Damages Claims and  
24 Demand for Jury Trial at 1, hereafter, “Opposition,” Docket Item No. 13.)

25 <sup>3</sup> (Reply Memorandum in Support of Motion to Strike Plaintiff’s Damages Claims and  
26 Demand for Jury Trial at 2, hereafter, “Reply,” Docket Item No. 17.)

27 <sup>4</sup> To the extent Plaintiff seeks claims against his employer, “ERISA preemption . . . applies  
28 to claims against employers and insurers alike.” Tingey, 953 F.2d at 1130.

1 Thus, Plaintiff’s pursuit of punitive damages cannot be construed as “independent” of his benefit  
2 plan because the harm that he seeks to vindicate is the withholding of his disability benefits through  
3 the termination of his contract with LINA. See Tingey, 953 F.2d at 1130. This improper denial of  
4 benefits is the type of illegal activity proscribed by ERISA. See id. Any alternative state law  
5 theories upon which punitive damages may otherwise be recoverable are, therefore, preempted by  
6 ERISA. Since the Court finds that punitive damages are unavailable to Plaintiff under any theory,  
7 the Court GRANTS Defendants’ Motion to Strike Plaintiff’s third prayer for relief for punitive  
8 damages.

9 **B. Jury Demand**

10 Defendants contend that Plaintiff’s request for a jury trial should be stricken because there is  
11 no right to a jury trial for claims brought pursuant to ERISA. (Motion at 6.)

12 The Ninth Circuit has held that “the remedies available to a participant or beneficiary under  
13 ERISA are equitable in nature and the Seventh Amendment does not require that a jury trial be  
14 afforded for claims made by participants or beneficiaries.” Thomas v. Oregon Fruit Products Co.,  
15 228 F.3d 991, 997 (9th Cir. 2000).

16 Given that there is no right to a jury trial in cases brought under ERISA,<sup>5</sup> the Court GRANTS  
17 Defendants’ Motion to Strike Plaintiff’s jury demand.

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23 <sup>5</sup> Plaintiff essentially concedes that he is not entitled to a jury trial, despite the demand for  
24 one in his Complaint. In his initial Opposition, Plaintiff states that he “has no response at this time  
25 to defense [sic] motion to strike [P]laintiff’s front page demand for jury [trial].” (Opposition at 2.)  
26 In a second Opposition brief filed by Plaintiff, he states that he “agrees to waive the jury trial, if it  
27 pleases the court.” (Opposition to Motion to Strike Plaintiff’s Damages Claims and Demand for  
28 Jury Trial at 3, Docket Item No. 13.) With respect to this second Opposition, the Court notes that an  
opposing party is only entitled to file a single opposition brief. In light of Plaintiff’s *pro se* status,  
however, and the fact that the two versions of Plaintiff’s Opposition differ only slightly, the Court  
considers both documents in deciding the present motion.

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**V. CONCLUSION**

The Court GRANTS in part and DENIES in part Defendants' Motion to Strike, as follows:

- (1) The Court DENIES Defendants' Motion to Strike Plaintiff's second prayer for relief for "rehabilitation expenses," to the extent that it seeks recovery available under Plaintiff's insurance plan.
- (2) The Court GRANTS Defendants' Motion to Strike Plaintiff's third prayer for relief for punitive damages.
- (3) The Court GRANTS Defendants' Motion to Strike Plaintiff's demand for a jury trial. Plaintiff's prayer for relief for punitive damages and demand for jury trial are ordered stricken from Plaintiff's Complaint.

Dated: December 18, 2008

  
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JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Adrienne Clare Publicover Adrienne.Publicover@WilsonElser.com

3 Richard M. Greenberg  
4 12200 Country Squire Lane  
5 Saratoga, CA 95070

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7 **Dated: December 18, 2008**

**Richard W. Wieking, Clerk**

8

By: /s/ JW Chambers  
**Elizabeth Garcia**  
**Courtroom Deputy**

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