

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANDREW J. NALBANDIAN, JR., an individual)
and GREGORY M. NALBANDIAN, an)
individual,)

Plaintiffs,)

vs.)

LOCKHEED MARTIN CORPORATION, a)
Maryland corporation, as administrator and)
fiduciary of the Lockheed Martin Corporation)
Salaried Employee Retirement Program;)
LOCKHEED MARTIN CORPORATION)
SALARIED EMPLOYEE RETIREMENT)
PROGRAM, an Employee Pension Plan within)
the meaning of 29 U.S.C. §§ 1002(2)(a) and)
1002(35); and DOES 1 through 50, inclusive,)

Defendants.)

Case No.: 10-CV-1242-LHK

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS CLAIMS TWO
AND FOUR OF THE FIRST AMENDED
COMPLAINT WITH PREJUDICE

(re: docket #36)

Plaintiffs Andrew Nalbandian, Jr. and Gregory Nalbandian seek payment of survivor benefits in relation to the denial of retirement benefits to their now-deceased father, Andrew Nalbandian, Sr. Defendants Lockheed Martin Corporation (“Lockheed”) and Lockheed Martin Corporation Salaried Employment Retirement Program (“Plan”) assert that denial of pension benefits is proper because Nalbandian, Sr. died before the commencement date of his pension plan, and thus Plaintiffs are entitled only to life insurance benefits and not survivor benefits. On

1 September 2, 2010, the Court granted a previous motion to dismiss with leave to amend. *See* Dkt.
2 # 30. Now pending before the Court is Defendants’ motion to dismiss claims two (breach of
3 fiduciary duty) and four (failure to produce documents) of the First Amended Complaint (“FAC”).
4 Pursuant to Civil Local Rule 7-1(b), the Court finds the motion appropriate for resolution without
5 oral argument. Plaintiffs have voluntarily withdrawn their fourth claim. *See* Pls.’ Opp’n to Defs.’
6 Mot. to Dismiss at 2 [dkt. #45]. Thus, that claim is DISMISSED WITH PREJUDICE. For the
7 reasons explained below, Plaintiffs’ second claim (breach of fiduciary duty) is also DISMISSED
8 WITH PREJUDICE. The February 3, 2011 motion hearing is vacated. The Case Management
9 Conference, however, remains as set on February 3, 2011 at 1:30 p.m.

10 I. BACKGROUND

11 A. Relevant Factual Allegations

12 As the September 2, 2010 Order set forth the relevant factual background in detail, and the
13 underlying factual allegations have not changed, the Court will only briefly summarize those
14 allegations here. Andrew Nalbandian, Sr. worked at Lockheed for more than 40 years. FAC ¶ 11.
15 He retired on February 9, 2009, and died on February 22, 2009 -- Nalbandian, Sr.’s pensions
16 benefits were set to be distributed six days later starting March 1, 2009. *Id.* at ¶¶ 21-26. Plaintiffs
17 are Nalbandian, Sr.’s two sons: Andrew Nalbandian, Jr. and Gregory Nalbandian. Plaintiffs allege
18 they are beneficiaries of Nalbandian, Sr.’s pension plan and are each owed about \$3,700 a month
19 from April 1, 2009 to February 28, 2014. *Id.* at ¶ 28.

20 On March 11, 2009, Defendants sent Plaintiffs Andrew, Jr. and Gregory Nalbandian a
21 “Benefit Summary” detailing the pension benefits (e.g., \$3,728.10 a month for five years) payable
22 to them as beneficiaries of their father’s plan. *Id.* at ¶ 26. However, on April 7, 2009, Defendants
23 sent Plaintiffs an “Updated Benefits Summary,” indicating that, in fact, no pension benefits were
24 owed, and that instead, Plaintiffs would equally split a \$50,000 life insurance benefit. *Id.* at ¶ 30.
25 In an April 20, 2009 letter from Defendants to Plaintiffs, Defendants indicated that Nalbandian, Sr.
26 was not considered “retired” under the pension plan because he passed away prior to the Benefit
27 Commencement Date of March 1, 2009. *Id.* at ¶ 32.

1 664 (9th Cir. 2010) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). In considering
2 whether the complaint is sufficient to state a claim, the court must accept as true all of the factual
3 allegations contained in the complaint. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). However,
4 the court need not accept as true “allegations that contradict matters properly subject to judicial
5 notice or by exhibit” or “allegations that are merely conclusory, unwarranted deductions of fact, or
6 unreasonable inferences.” *St. Clare v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d
7 1049, 1055 (9th Cir. 2008). While a complaint need not allege detailed factual allegations, it “must
8 contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its
9 face.” *Iqbal*, 129 S.Ct. at 1949 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
10 (2007)). If the Court concludes that the complaint should be dismissed, it must then decide
11 whether to grant leave to amend. “[A] district court should grant leave to amend even if no request
12 to amend the pleading was made, unless it determines that the pleading could not possibly be cured
13 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (quoting *Doe*
14 *v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)).

15 III. DISCUSSION

16 Defendants do not challenge claims one (recovery of plan benefits) or claim three
17 (equitable estoppel). Thus, the inquiry below focuses on Plaintiffs’ second claim for breach of
18 fiduciary duty. However, the Court’s analysis begins with a brief exposition of Plaintiffs’ first
19 claim because in order to establish their second claim for breach of fiduciary duty, Plaintiffs must
20 show that the first claim for recovery of plan benefits is not an adequate remedy.

21 A. First Claim: Recovery of Plan Benefits, ERISA, 29 U.S.C. § 1132(a)(1)(B)

22 29 U.S.C. § 1132(a)(1)(B) provides:

23 (a) Persons empowered to bring a civil action. A civil action may be brought--

24 (1) by a participant or beneficiary--

25 * * *

26 (B) to recover benefits due to him under the terms of his plan, to enforce his rights
27 under the terms of the plan, or to clarify his rights to future benefits under the terms
28 of the plan.

1 Plaintiffs seek payment of benefits and prejudgment interest under this first claim. Specifically,
2 Plaintiffs allege they are beneficiaries of Nalbandian, Sr.'s pension plan and are each owed about
3 \$3,700 a month from April 1, 2009 to February 28, 2014. Defendants do not contest that Plaintiffs
4 have stated a claim for relief for this first claim. If Plaintiffs succeed on this first claim, they will
5 be entitled to recovery of benefits due *and* clarification of their rights as to future benefits under the
6 terms of the Plan.

7 **B. Second Claim: Breach of Fiduciary Duty, ERISA, § 1132(a)(3)**

8 Plaintiff's second claim is under 28 U.S.C. §1132(a)(3), which provides:

9 (a) Persons empowered to bring a civil action. A civil action may be brought--

10 ***

11 (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which
12 violates any provision of this title or the terms of the plan, or (B) to obtain other
13 appropriate equitable relief (i) to redress such violations or (ii) to enforce any
14 provisions of this title or the terms of the plan;

15 The U.S. Supreme Court has characterized §1132(a)(3) as a "catchall provision" and as a "safety
16 net, offering appropriate equitable relief for injuries caused by violations that [29 U.S.C. § 1132]
17 does not elsewhere provide adequate remedy." *Varity Corp. v. Howe*, 516 U.S. 489, 512 (1996).

18 Plaintiffs' FAC alleges that Defendants "repeatedly, substantially, systematically and
19 willfully violated their fiduciary responsibilities, and have lawfully administered THE PLAN and
20 unlawfully interpreted PLAN provisions." FAC ¶ 55. Defendants argue that Plaintiffs' FAC,
21 similar to their original Complaint, fails to remedy the flaws identified in the Court's September
22 12, 2010 Order because Plaintiffs still have not shown: (1) why relief on their first claim for
23 recovery of plan benefits is not an adequate remedy; and (2) how their individual benefit claim is
24 part of a larger systematic breach of fiduciary duty obligations. Defendants have the better of the
25 argument on both grounds.

26 **1. Failure to Sufficiently Allege No Alternative Adequate Remedy**

27 Plaintiffs still have not shown why relief on their first claim (recovery of plan benefits) is
28 not an adequate remedy. *See Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004) ("when
relief is available under 29 U.S.C. § 1132(a)(1), courts will not allow relief under § 1132(a)(3)'s

1 ‘catch-all provision.’”). This deficiency is all the more striking because the Court, in its September
2 12, 2010 Order, expressly informed Plaintiffs that leave to amend was granted in order for
3 Plaintiffs to establish why recovery of plan benefits would not be an adequate remedy. *See*
4 September 12, 2010 Order at 6. The allegations in the FAC that Defendants “unlawfully
5 administered THE PLAN” and “unlawfully interpreted PLAN provisions” are based solely on the
6 denial of Plaintiffs’ benefit claim. As noted above and as noted in the Court’s September 12, 2010
7 Order, Plaintiffs have an actionable claim for recovery of benefits, the remedy for which may
8 include monetary relief and clarification of rights under the terms of the Plan -- in other words, a
9 parallel remedy Plaintiffs seek in their breach of fiduciary duty claim. Moreover, Defendants have
10 not challenged Plaintiffs’ renewed equitable estoppel claim, which also provides another avenue of
11 relief for Plaintiffs’ allegations that Defendants are “unlawfully administering” and “unlawfully
12 interpreting” the Plan’s terms.

13 Finally, Plaintiffs argue, in their Opposition to the Motion to Dismiss, that it is too early in
14 the litigation to consider whether a breach of fiduciary duty claim may proceed alongside a
15 recovery of benefits claim under ERISA. *See* Pls.’ Opp’n to Defs.’ Mot. to Dismiss at 5. The
16 Court is not persuaded. As Defendants note, the Court has *already* considered, and dismissed with
17 leave to amend, Plaintiffs’ breach of fiduciary duty claim. Plaintiffs were on notice that their
18 breach of fiduciary duty claim is at issue, and that failure to plead sufficient allegations to support
19 their breach of fiduciary duty claim would risk dismissal of that claim with prejudice.¹

20 **2. Failure to Sufficiently Allege a Systematic Breach of Fiduciary Obligations**

21 Moreover, as explained in the Court’s September 12, 2010 Order, to find a breach of
22 fiduciary duty based on a denial of individual benefits, a plaintiff must allege that the denial is part
23 of a “larger systematic breach of fiduciary obligations.” *See* September 12, 2010 Order at 6; *see*
24 *also Reynolds v. Fortis Benefits Ins. Co.*, 2007 U.S. Dist. LEXIS 13138 (N.D. Cal. Feb. 9, 2007).

25 _____
26 ¹ The Court notes that, although Plaintiffs filed their initial Complaint on March 24, 2010,
27 Plaintiffs have not made their initial disclosures as of the date of this Order or, apparently, initiated
28 any discovery. Moreover, Plaintiffs have previously stipulated (twice) to continue the Case
Management Conference and related case management and discovery deadlines. Under these
circumstances, Plaintiffs’ contention that their breach of fiduciary claim should not be reviewed “at
this early stage of the litigation” is unpersuasive.

1 The rationale behind this rule is, in part, to prevent individual benefits claims from being
2 unnecessarily repackaged as breach of fiduciary obligation claims. Plaintiffs' original Complaint
3 was focused entirely on denial of individual benefits. Plaintiffs' FAC merely adds conclusory
4 language that Defendants "repeatedly, substantially, *systematically* and willfully violated their
5 fiduciary responsibilities" (emphasis added) and "consciously, arbitrarily, and intentionally"
6 violated Plan provisions. *See* FAC ¶ 56. Other than the specific allegations in connection with
7 their denial of individual benefits claim (claim one of the FAC), Plaintiffs make no specific
8 allegations as to what fiduciary obligations Defendants violated or how Defendants violated those
9 obligations. These conclusory allegations are insufficient to support Plaintiffs' breach of fiduciary
10 duty claim. *See In re Gilead Scis. Sec. Litig.*, 536 F.3d at 1055 (the court need not accept as true
11 "allegations that are merely conclusory.").

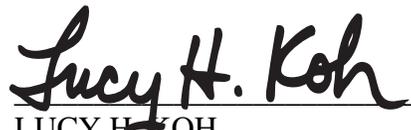
12 In sum, Plaintiffs, after having been granted the opportunity to do so, have failed to
13 establish a claim for breach of fiduciary duty under ERISA. Accordingly, their breach of fiduciary
14 duty claim is **DISMISSED WITH PREJUDICE**.

15 **IV. CONCLUSION**

16 For the foregoing reasons, Plaintiffs' breach of fiduciary duty claim (claim two of the FAC)
17 and failure to produce documents claim (claim four of the FAC) are **DISMISSED WITH**
18 **PREJUDICE**. Plaintiffs may proceed with their claims for recovery of plan benefits (claim one of
19 the FAC) and equitable estoppel (claim three of the FAC). The February 3, 2011 motion hearing is
20 vacated. The February 3, 2011 Case Management Conference remains as set.

21 **IT IS SO ORDERED.**

22
23 Dated: February 1, 2011

24 
25 LUCY H. KOH
26 United States District Judge