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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

STANLEY HOFFMAN, Individually, and on  
behalf of the Estate of PHYLLIS  
HOFFMAN,  
  
Plaintiff,  
  
vs.  
  
AMERICAN SOCIETY FOR TECHNION-  
ISRAEL INSTITUTE OF TECHNOLOGY,  
INC.; et al.,  
  
Defendants.

CASE NO. 09-CV-2482 BEN (KSC)  
  
**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS IN PART THE FIRST  
AMENDED COMPLAINT**  
  
[Doc. No. 34]

Presently before the Court is a Motion to Dismiss in Part the First Amended Complaint filed by Defendants American Society for Technion-Israel Institute of Technology, Inc., aka American Technion Society aka American Society for Technion-Israel Institute of Technology, Inc. Group Life Insurance Benefit Plan. (Doc. No. 34.) For the reasons stated below, the Motion is **GRANTED**.

**BACKGROUND**

Plaintiff Stanley Hoffman alleges that American Society for Technion-Israel Institute of Technology, Inc. ("ATS") had employed Plaintiff's late wife, Mrs. Phyllis Hoffman, from May 1, 1993 until November 17, 2007. (FAC ¶ 5.) Plaintiff alleges that on November 17, 2007, Mrs. Hoffman became seriously ill and was placed on disability leave. (FAC ¶ 15.) According to the First Amended Complaint, ATS enrolled Mrs. Hoffman in the First Reliance Standard Life Insurance Company group insurance policy number GL02464 in November 2007, and the Metropolitan Life Insurance Company group insurance policy number TS05457475-G in January 2008, during which time Mrs. Hoffman was

1 out on disability. (FAC ¶¶ 16, 17.)

2 On November 5, 2009, Plaintiff filed a lawsuit individually and on behalf of the estate of Mrs.  
3 Hoffman, against ATS, Metropolitan Life, First Reliance, and Ronnie Pallay. (Doc. No. 1.) On March  
4 22, 2010, ATS and Ronnie Pallay filed a motion to dismiss the complaint in part, which was granted.  
5 (Doc. Nos. 13, 26.) After the dismissal of third, fourth, fifth and sixth claims of the complaint,  
6 Plaintiff filed a First Amended Complaint. (Doc. No. 27.) The First Amended Complaint alleges four  
7 claims: (1) life insurance benefits under 29 U.S.C. § 1132(a)(1)(B); (2) denial of severance benefits  
8 under 29 U.S.C. § 1132(a)(1)(B); (3) life insurance benefits under 29 U.S.C. § 1132(a)(3) (equitable  
9 estoppel); (4) life insurance benefits under 29 U.S.C. § 1132(a)(3) (surcharge).

10 Presently before the Court is Defendants' motion to dismiss the third and fourth claims in the  
11 First Amended Complaint. Being fully briefed, the Court finds the motion suitable for determination  
12 on the papers without oral argument, pursuant to Civil Local Rule 7.1.d.1.

### 13 DISCUSSION

14 Under Federal Rule of Civil Procedure 12(b)(6), dismissal is appropriate if, taking all factual  
15 allegations as true, the complaint fails to state a plausible claim for relief on its face. FED. R. CIV. P.  
16 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007); *see also Ashcroft v. Iqbal*, 556 U.S.  
17 662, 678 (2009) (requiring plaintiff to plead factual content that provides "more than a sheer  
18 possibility that a defendant has acted unlawfully"). Under this standard, dismissal is appropriate if the  
19 complaint fails to state enough facts to raise a reasonable expectation that discovery will reveal  
20 evidence of the matter complained of, or if the complaint lacks a cognizable legal theory under which  
21 relief may be granted. *Twombly*, 550 U.S. at 556.

22 Defendants seek dismissal of Plaintiff's claims for life insurance benefits pled in the alternative  
23 under § 1132(a)(3), where Plaintiff already has a claim for benefits under § 1132(a)(1)(B). The  
24 Supreme Court in *Varity Corp. v. Howe* held that "where Congress elsewhere provided adequate relief  
25 for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such  
26 relief normally would not be appropriate." 516 U.S. 489, 515 (1996) (internal quotation marks  
27 omitted).

28 Here, Plaintiff inappropriately seeks equitable relief under § 1132(a)(3), where Congress

1 provided adequate relief for Plaintiff's alleged injury under § 1132(a)(1)(B). Specifically, Plaintiff  
2 brings a first claim for life insurance benefits under § 1132(a)(1)(B), as well as a third and fourth  
3 claim, in the alternative, for the same life insurance benefits based on theories of equitable estoppel  
4 and surcharge under § 1132(a)(3). The third and fourth claims, therefore, are barred by *Varity*.

5 First, Plaintiff argues that in *CIGNA Corp. v. Amara*, 131 S. Ct. 1866 (2011), the Supreme  
6 Court allowed the plaintiff to plead in the alternative under both § 1132(a)(1)(B) and § 1132(1)(3)(B).  
7 According to Plaintiff, if *Amara* had been brought to the Court's attention before it ruled on  
8 Defendants' Motion to Dismiss the Original Complaint, the Court would have allowed Plaintiff to  
9 bring claims under § 1132(a)(2) and § 1132(a)(3), as well as § 1132(a)(1)(B). In *Amara*, however, the  
10 plaintiffs were allowed to seek relief under § 1132(a)(3) only because they had no cognizable claim  
11 under § 1132(a)(1)(B). *Id.* at 1880-82; *see also Biglands v. Raytheon Emp. Sav. & Inv. Plan*, 801 F.  
12 Supp. 2d 781, 786 (N.D. Ind. 2011) (“[T]he plaintiffs in *Amara* were allowed to proceed with their  
13 claim under § 1132(a)(3) because they had no claim for relief under § 1132(a)(1)(B).”).

14 Second, Plaintiff argues that the holding in *Varity* does not apply here because it is “unknown”  
15 whether § 1132(a)(1)(B) provides adequate relief for Plaintiff's injury, because there is no  
16 administrative record and no confirmed plan documents. (Opp. at 7.) However, Plaintiff has  
17 possession of all documents that contain the terms of the plan at issue—the American Society for  
18 Technion-Israel Institute of Technology, Inc.'s “Personnel Practices Code,” First Reliance's group life  
19 insurance policy number GL024764, the Certificate of Insurance for the First Reliance life insurance  
20 policy, and the certificate of insurance for Metropolitan Life group life insurance policy TS05457475-  
21 G. (FAC ¶ 4.) These documents taken together contain the terms of the ERISA plan at issue. As  
22 Plaintiff acknowledges, “Plaintiff's allegations set forth [in the First Amended Complaint] regarding  
23 the terms of the Plan are premised on the assumption that these three documents accurately reflect the  
24 Plan terms.” (*Id.* ¶ 7.) There is no written document entitled “Plan” or “Summary Plan Description.”  
25 Accordingly, Plaintiff's third and fourth claims are **DISMISSED**.

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**CONCLUSION**

For the reasons stated above, Defendants' Motion to Dismiss in Part the First Amended Complaint is **GRANTED**. The third and fourth claims are **DISMISSED**.

**IT IS SO ORDERED.**

DATED: August 21, 2012

  
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HON. ROGER T. BENITEZ  
United States District Judge