

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 JENS BOY,

12 Plaintiff,

13 v.

14 ADMINISTRATIVE COMMITTEE FOR
15 ZIMMER BIOMET HOLDINGS, INC. et
16 al.,

17 Defendants.

Case No.: 16-CV-197-CAB-BLM

**ORDER DENYING MOTION FOR
ATTORNEYS' FEES**

[Doc. Nos. 94]

18
19 On June 13, 2017, the Court granted summary judgment in favor of Defendants.
20 Defendants now move for their attorneys' fees under ERISA § 502(g)(1). *See* 29 U.S.C. §
21 1132(g)(1). The motion has been fully briefed and the Court deems it suitable for
22 submission without oral argument. For the reasons set forth below, the motion is denied.

23 Defendants do not seek all of the fees they incurred litigating this case. Instead, they
24 seek only fees that they contend are "attributable to defense obligations for which
25 [Plaintiff] and his lawyers are most culpable, their positions were most egregious, and a
26 fee award is most warranted to deter others from relentlessly pursuing [sic] groundless
27 theories and tactics in complete disregard for the legal context and amount in controversy."
28 [Doc. No. 94-1 at 6.] More specifically, Defendants seek three categories of fees: (1) fees

1 related to their motion to dismiss; (2) fees related to their defense of Plaintiff's discovery
2 demands; and (3) fees related to the filing of the instant fee motion.

3 Section 502(g)(1) states that "[i]n any action under this subchapter . . . by a
4 participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable
5 attorney's fee and costs of action to either party." To obtain an award under this section,
6 the fee claimant must have "achieved some degree of success on the merits." *Hardt v.*
7 *Reliance Standard Life Ins. Co.*, 560 U.S. 242, 245 (2010) (internal quotation marks
8 omitted). Having obtained summary judgment in their favor, there is no question that
9 Defendants succeeded on the merits. Nevertheless, the Court declines to exercise its
10 discretion to award them fees.

11 The Ninth Circuit has identified five factors that district courts must apply in the
12 exercise of their discretion to award fees under this section:

13 (1) the degree of the opposing parties' culpability or bad faith; (2) the ability
14 of the opposing parties to satisfy an award of fees; (3) whether an award of
15 fees against the opposing parties would deter others from acting under similar
16 circumstances; (4) whether the parties requesting fees sought to benefit all
17 participants and beneficiaries of an ERISA plan or to resolve a significant
legal question regarding ERISA; and (5) the relative merits of the parties'
positions.

18 *Hummell v. S. E. Rykoff & Co.*, 634 F.2d 446, 453 (9th Cir. 1980); *see also* *Simonia v.*
19 *Glendale Nissan/Infiniti Disability Plan*, 608 F.3d 1118, 1119 (9th Cir. 2010) ("[D]istrict
20 courts must consider the *Hummell* factors after they have determined that a litigant has
21 achieved some degree of success on the merits."). "[N]o single *Hummell* factor is
22 necessarily decisive." *Simonia*, 608 F.3d at 1122.

23 **1. Culpability or Bad Faith**

24 Defendants argue that Plaintiff and his attorneys are culpable for the fees in
25 connection with the motion to dismiss, which the Court granted. However, the simple fact
26 that several of Plaintiff's claims were dismissed is not evidence of culpability or bad faith.
27 If anything, that Plaintiff did not oppose dismissal of two of the three claims that were
28

1 subject to the motion demonstrates good faith insofar as Plaintiff conceded the merits of
2 Defendants' arguments rather than make specious arguments in opposition.

3 Defendants also argue that Plaintiff and his attorneys are culpable based on what
4 Defendants allege was an "extraordinary amount of discovery that they persisted in
5 pursuing." [Doc. No. 94-1 at 8.] In support, Defendants point to the two motions to compel
6 Plaintiff filed and language from the orders on those motions that Plaintiff's discovery
7 requests were overbroad. However, both of Plaintiff's motions to compel were granted in
8 part. Moreover, the crux of the discovery disputes centered on the standard of review to
9 be applied to the benefits determination at issue. [See Doc. No. 40 at 9 (noting that the
10 briefs in connection with the first motion to compel "focus primarily on the applicable
11 standard of review").] In the end, the Magistrate Judge determined that the undersigned
12 was likely to hold that an abuse of discretion standard applied, but ultimately, that issue
13 was never resolved because the Court granted summary judgment based on a de novo
14 review. That being said, if the Magistrate Judge had determined that de novo review was
15 likely to be applied, it is possible that she would have ordered Defendants to provide even
16 more of the discovery sought in the motions to compel.¹

17 For these reasons, and based on the Court's review of the record and observations of
18 Plaintiff's and his counsel's performance in this case, the Court does not find that they
19 acted culpably or in bad faith in connection with their opposition to the motion to dismiss
20 or in discovery so as to justify an award of attorneys' fees.

21 **2. Ability to Satisfy A Fee Award**

22 Defendants argue that based on Plaintiff's current income and his counsel's fees
23 from this and a separate state court case between these parties, they have the ability to
24

25
26 ¹ Notably, although the undersigned did not determine whether de novo or abuse of discretion review
27 applies, the summary judgment order pointed out that "Plaintiff raise[d] legitimate concerns about the
28 procedures used by the Plan and the Committee to administer Plaintiff's claim, and whether, as a result of
those procedures, the Committee's decision denying Plaintiff severance benefits warrants deference. . . ."
[Doc. No. 92. At 6.]

1 satisfy a fee award. However, it seems implicit that this *Hummell* factor should only come
2 into play if the Court is otherwise inclined to award fees based on the other *Hummell*
3 factors. Because the Court does not find that Plaintiff’s conduct in litigating this lawsuit
4 warrants a fee award, his ability to pay is immaterial.

5 **3. Deterrence**

6 Defendants ask for well over \$200,000 in attorneys’ fees. Such an award would
7 undoubtedly deter other ERISA litigants. However, because the Court does not find that
8 Plaintiff or his counsel acted culpably or in bad faith, such deterrence weighs against a fee
9 award. *See Simonia*, 608 F.3d at 1122 (holding that given the good faith actions of the
10 party from whom attorneys’ fees were sought, “we do not wish to deter others from acting
11 in the same manner.”) Indeed, although he ultimately failed in his claims, Plaintiff made
12 numerous legitimate points about the procedures used by Defendants in administering the
13 Plan as part of his argument that a de novo review applied. If a de novo review applied to
14 Plaintiff’s claims (which the undersigned never decided), Plaintiff possibly would have
15 been entitled to much more of the discovery sought in the motions to compel.² The Court
16 does not want to deter other parties from making good faith arguments that de novo review
17 applies in an ERISA case and from seeking all the discovery to which they would be
18 entitled if such a standard of review applied.

19 **4. Whether Defendants Sought to Benefit All Plan Participants**

20 Defendants argue that they benefitted other participants by defending against
21 “Plaintiff’s baseless claims.” However, while Plaintiff ultimately lost, neither his claims
22 nor his arguments in support of his discovery motions were frivolous. Further, regardless
23 of whether the ultimate result here may have benefitted other Plan participants, the Court
24 is hardly convinced that Defendants’ primary purpose in this litigation was to benefit other
25

26
27 ² Based on Defendants’ position that Plaintiff was entitled to such limited discovery, they could have filed
28 an early motion for summary judgment and possibly avoided these discovery disputes entirely. If
anything, that Defendants waited until the deadline for dispositive motions demonstrates that even they
did not believe Plaintiff’s position that de novo review applies was frivolous.

1 participants as opposed to simply avoiding a severance payment to Plaintiff. In any event,
2 the allegedly culpable conduct about which Defendants complaint primarily involves
3 discovery disputes. The Court is even less convinced that Defendants' actions in
4 connection with those discovery disputes could have benefited other plan participants or
5 were taken with such an intent. Accordingly, this factor does not weigh in favor of
6 awarding attorneys' fees.

7 **5. Relative Merits of the Parties' Positions**

8 As stated above, the allegedly culpable or bad faith conduct at issue primarily
9 concerns two motions to compel filed by Plaintiff. Plaintiff's motions to compel were in
10 fact granted in part. Moreover, the Court never reached the question of which standard of
11 review applies. If, as Plaintiff argued, de novo review was appropriate, then Plaintiff may
12 have had even more success on his motions to compel. Further, the underlying dispute
13 here involves Defendants handling of Plaintiff's claim for severance benefits. Although
14 the Court ultimately affirmed the denial of benefits, Plaintiff raised legitimate issues with
15 the procedures Defendants' utilized to handle his claim. Accordingly, although Plaintiff
16 lost, his positions were not so unmeritorious or frivolous as to justify sanctions.

17 In sum, after consideration of each of the *Hummell* factors, the Court declines to
18 exercise its discretion to award the attorneys' fees sought by Defendants. Defendants'
19 motion for attorneys' fees is therefore **DENIED**. It is **SO ORDERED**.

20 Dated: July 28, 2017



21 _____
22 Hon. Cathy Ann Bencivengo
23 United States District Judge
24
25
26
27
28