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

MILISSA ANN SARGENT,

Plaintiff,

v.

SOUTHERN CALIFORNIA EDISON
401(k) SAVINGS PLAN, et al.,

Defendants.

Case No. 20-cv-1296-MMA (RBB)

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

[Doc. No. 8]

Milissa Ann Sargent (“Plaintiff”) alleges three causes of action: (1) an Employee Retirement Income Security Act of 1974 (“ERISA”) claim for benefits pursuant to 29 U.S.C. § 1132(a)(1)(B); (2) an ERISA breach of fiduciary duty claim pursuant to 29 U.S.C. §§ 1104, 1132(a)(3); and (3) declaratory relief. Doc. No. 1 (“Compl.”).¹ Defendants Edison 401(k) Savings Plan (“Plan”), Southern California Edison Company Benefits Committee (“Committee”), Plan Administrator of the Edison 401(k) Savings Plan (“Plan Administrator”), and Southern California Edison Company (“Company” or

¹ All citations to electronically filed documents refer to the pagination assigned by the CM/ECF system.

1 “SEC”) (collectively, “Defendants”)² move to dismiss all claims pursuant to Federal Rule
 2 of Civil Procedure 12(b)(6). *See* Doc. No. 8. Plaintiff filed an opposition to Defendants’
 3 motion, and Defendants replied.³ *See* Doc. Nos. 11, 12. The Court found the matter
 4 suitable for determination on the papers and without oral argument pursuant to Federal
 5 Rule of Civil Procedure 78(b) and Civil Local Rule 7.1.d.1. *See* Doc. No. 14. For the
 6 reasons set forth below, the Court **GRANTS IN PART and DENIES IN PART**
 7 Defendants’ motion.

8 **I. BACKGROUND**⁴

9 Plaintiff’s action arises from “the wrongful denial of benefits due and owing to her
 10 under the Plan.” Compl. ¶ 5.

11 When Plaintiff and Greg Sargent’s (“Mr. Sargent”) marriage dissolved in 2008,
 12 they entered into a marital settlement agreement (“MSA”). *Id.* ¶ 12; *see also id.* ¶ 2.
 13 Pursuant to the MSA, “Plaintiff was awarded and is entitled to a portion of Mr. Sargent’s
 14 benefits under the Plan.” *Id.* ¶ 13. In March 2008, Mr. Sargent provided a copy of the
 15 MSA to the Plan Administrator, who accepted the MSA as a “valid qualified domestic
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 19 ² Plaintiff refers to several of these Defendant-entities using slightly different names. *See* Compl. In
 20 their motion to dismiss, Defendants note that several of the entities were incorrectly named. *See* Doc.
 21 No. 8 at 2. In her opposition to Defendants’ motion, Plaintiff refers to Defendants using their preferred
 names. *See* Doc. No. 11 at 6. Accordingly, the Court adopts Defendants’ entity names preferred by
 Defendants and subsequently used by Plaintiff.

22 ³ Plaintiff filed an objection to Defendants’ untimely reply brief, and Defendants responded. *See* Doc.
 23 Nos. 13, 15; *see also* CivLR 7.1.e.3. The Court has discretion to consider an untimely brief in the
 24 interest of justice. *See* CivLR 1.1.d; *see also City of San Diego v. Indian Harbor Ins. Co.*, No. 12-cv-
 25 2604-W (WVG), 2013 WL 3873139, at *1 n.1 (S.D. Cal. July 25, 2013); *Bailey v. Hollister*, No. 07-cv-
 26 1143-JM (NLS), 2008 WL 4820992, at *1 (S.D. Cal. Nov. 3, 2008); *Aerus LLC v. ProTeam, Inc.*, No.
 05-cv-1065-B (WMC), 2007 WL 2405666, at *2 (S.D. Cal. Aug. 13, 2007). Here, Defendants’ untimely
 reply brief has not prejudiced Plaintiff. Accordingly, the Court **OVERRULES** Plaintiff’s objection.

27 ⁴ Because this matter is before the Court on a motion to dismiss, the Court must accept as true the
 28 allegations set forth in the complaint. *See Hosp. Bldg. Co. v. Trs. Of Rex Hosp.*, 425 U.S. 738, 740
 (1976).

1 relations order (‘QDRO’).” *Id.* ¶ 14.⁵ Defendants did not notify Plaintiff that the MSA
 2 was accepted as a QDRO or that “a purported ‘domestic relations order’ had been
 3 submitted to them for division of Mr. Sargent’s benefits under the Plan dictating that a
 4 portion thereof to be assigned to Plaintiff.” *Id.* ¶ 15. Further, Defendants did not notify
 5 Plaintiff of the Plan’s “written procedures for determining the ‘qualified’ status of a
 6 domestic relations order” or notify Plaintiff “how she would like to elect her awarded
 7 portion of the benefits under the Plan to be paid and/or distributed to her.” *Id.* ¶¶ 16, 17.

8 Based on the MSA, Plaintiff filed a claim for benefits under the Plan on March 20,
 9 2019. *Id.* ¶ 19; Doc. No. 8-1 at 26 (claim request). Committee denied Plaintiff’s claim
 10 on June 17, 2019. Compl. ¶ 20; Doc. No. 8-2 at 44–53 (claim denial). Plaintiff
 11 subsequently appealed the Committee’s denial, and Committee denied the appeal on
 12 December 3, 2019. Compl. ¶¶ 21–22; Doc. No. 8-2 at 72–76 (appeal denial). In issuing
 13 its denial of Plaintiff’s claim and appeal, Committee asserted that “the benefits awarded
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 16 ⁵ Defendants argue that the Court may consider “the MSA, QDRO, the Plan document, and other
 17 materials cited herein in the Complaint” in ruling on the instant motion under the incorporation-by-
 18 reference doctrine despite Plaintiff not attaching them to the Complaint. Doc. No. 8 at 4–5 n.2.
 19 Defendants further assert that the Court may similarly consider “the claims correspondence to and from
 20 Plaintiff (and/or her then-counsel) . . . because her claims necessarily rely on them.” *Id.* at 5 n.3.
 Plaintiff does not appear to object to the Court’s consideration or the authenticity of these documents.

21 The Court finds that it may consider the documents under the incorporation-by-reference
 22 doctrine because these claim-related documents are extensively relied upon by Plaintiff in her Complaint
 23 or otherwise form the basis of her ERISA claims and she does not challenge the documents’
 24 authenticity. *See Loomis v. Slendertone Distribution, Inc.*, 420 F. Supp. 3d 1046, 1063 (S.D. Cal. 2019)
 25 (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)); *see also id.* (quoting *Parrino v.*
 26 *FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998), *superseded by statute on other grounds as recognized in*
 27 *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 681–82 (9th Cir. 2006)) (“The Ninth Circuit has noted
 28 that there is a ‘policy concern underlying the rule: Preventing plaintiffs from surviving a Rule 12(b)(6)
 motion by deliberately omitting references to documents upon which their claims are based.’”); *Parrino*,
 146 F.3d at 706 (“[A] district court ruling on a motion to dismiss may consider a document the
 authenticity of which is not contested, and upon which the plaintiff’s complaint necessarily relies.”);
Koblentz v. UPS Flexible Employee Ben. Plan, No. 12-cv-0107-LAB, 2013 WL 4525432, at *2 (S.D.
 Cal. Aug. 23, 2013) (considering plan provisions, correspondence with the plaintiff, and claim
 documents in an ERISA action where the documents were not attached to the complaint, the plaintiff
 relied on the documents in her complaint, and the defendant did not challenge their authenticity).

1 Plaintiff have already been paid and/or distributed in some manner to Plaintiff.” Compl.
 2 ¶ 23. However, Plaintiff alleges that Committee failed to provide any proof that the
 3 benefits were paid or distributed to Plaintiff, and none of the benefits awarded to Plaintiff
 4 under the Plan have been paid or distributed to Plaintiff. *Id.* ¶¶ 23–34.

5 Plaintiff filed this action on July 10, 2020. *See generally id.* Plaintiff brings three
 6 causes of action against Defendants to receive the sought Plan benefits and equitable
 7 relief for breach of fiduciary duty pursuant to ERISA. *See id.* ¶¶ 27–56. Defendants
 8 move to dismiss each cause of action pursuant to Federal Rule of Civil Procedure
 9 12(b)(6), arguing that Plaintiff’s “claims are barred by contractual or statutory limitations
 10 periods” under ERISA. Doc. No. 8 at 2.

11 **II. LEGAL STANDARD**

12 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint. *Navarro*
 13 *v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain “a short and plain
 14 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
 15 8(a)(2). However, plaintiffs must also plead “enough facts to state a claim to relief that is
 16 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also*
 17 Fed. R. Civ. P. 12(b)(6). The plausibility standard demands more than a “formulaic
 18 recitation of the elements of a cause of action,” or “‘naked assertions’ devoid of ‘further
 19 factual enhancement.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*,
 20 550 U.S. at 555, 557). Instead, the complaint “must contain sufficient allegations of
 21 underlying facts to give fair notice and to enable the opposing party to defend itself
 22 effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

23 In reviewing a motion to dismiss under Rule 12(b)(6), courts must assume the truth
 24 of all factual allegations and must construe them in the light most favorable to the
 25 nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996)
 26 (citing *Nat’l Wildlife Fed’n v. Espy*, 45 F.3d 1337, 1340 (9th Cir. 1995)). The court need
 27 not take legal conclusions as true merely because they are cast in the form of factual
 28 allegations. *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987) (quoting *W. Min.*

1 *Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)). Similarly, “conclusory allegations
 2 of law and unwarranted inferences are not sufficient to defeat a motion to dismiss.”
 3 *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998).

4 In determining the propriety of a Rule 12(b)(6) dismissal, courts generally may not
 5 look beyond the complaint for additional facts. *See Ritchie*, 342 F.3d at 907–08. “A
 6 court may, however, consider certain materials—documents attached to the complaint,
 7 documents incorporated by reference in the complaint, or matters of judicial notice—
 8 without converting the motion to dismiss into a motion for summary judgment.” *Id.*; *see*
 9 *also Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001), *overruled on other*
 10 *grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1125–26 (9th Cir. 2002).
 11 “However, [courts] are not required to accept as true conclusory allegations which are
 12 contradicted by documents referred to in the complaint.” *Steckman v. Hart Brewing, Inc.*,
 13 143 F.3d 1293, 1295–96 (9th Cir. 1998) (citing *In re Stac Electronics Securities*
 14 *Litigation*, 89 F.3d 1399, 1403 (9th Cir. 1996)).

15 Where dismissal is appropriate, a court should grant leave to amend unless the
 16 plaintiff could not possibly cure the defects in the pleading. *Knappenberger v. City of*
 17 *Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009) (quoting *Lopez v. Smith*, 203 F.3d 1122, 1127
 18 (9th Cir. 2000)).

19 **III. DISCUSSION**

20 Plaintiff alleges three causes of action: (1) an ERISA benefits claim; (2) an ERISA
 21 breach of fiduciary duty claim; and (3) declaratory relief. Compl. ¶¶ 27–50. Defendants
 22 argue that Plaintiff’s three claims are time-barred and, thus, request the Court to dismiss
 23 the entire action with prejudice. *See* Doc. No. 8 at 8–9. The Court considers each claim
 24 in turn.

25 **A. ERISA Claim for Benefits Pursuant to 29 U.S.C. § 1132(a)(1)(B)**

26 Plaintiff’s first cause of action is an ERISA claim for benefits pursuant to 29
 27 U.S.C. § 1132(a)(1)(B). Compl. ¶¶ 27–37. Defendants argue that Plaintiff’s claim is
 28 time barred because of the Plan’s contractual 180-day limitations period. *See* Doc. No. 8

1 at 10–12; *see also* Doc. No. 12 at 2–5. Defendants note that the Committee denied
2 Plaintiff’s appeal on December 3, 2019 and that Plaintiff responded that she received the
3 appeal denial letter on December 18, 2019, the very latest date when the limitations
4 period began. *See* Doc. No. 8 at 11 (first citing Doc. No. 8-2 at 72–76 (Committee’s
5 appeal denial letter); and then citing Doc. No. 8-2 at 78 (Plaintiff’s letter of receipt)).
6 Given that Plaintiff filed her Complaint on July 10, 2020, *see* Compl., Defendants assert
7 that the 205 days between Plaintiff receiving the appeal denial letter and Plaintiff filing
8 suit exceeds the Plan’s 180-day limitations period. *See* Doc. No. 8 at 11–12.

9 Plaintiff responds that Defendants’ calculation of the 205 days is correct but asserts
10 that Defendants fail to consider the COVID-19 global pandemic prevented Plaintiff from
11 filing suit within the contractual 180-day limitations period. *See* Doc. No. 11 at 9.
12 Plaintiff argues that the “doctrine of equitable tolling” tolled the contractual limitations
13 period. *See id.* at 9–10. Plaintiff relies upon the March 19, 2020 California Stay-at-
14 Home Order, which limited movement outside of one’s residence and was not relaxed
15 until May 8, 2020 “and even then most businesses were required to remain closed.” *Id.* at
16 11; *see also* Doc. No. 11-2 at 2–3 (Executive Order N-33-20, Executive Department,
17 State of California, March 19, 2020); 11-3 at 2–4 (Order of the State Public Health
18 Officer, California Department of Public Health, May 7, 2020).⁶ Plaintiff further points
19 to several Orders of the Chief Judge of this district, which declared a state of judicial
20 emergency and provided modifications to civil cases. *See* Doc. No. 11 at 12; *see also*
21 Doc. No. 11-4 at 2–4 (Order of the Chief Judge No. 18, March 17, 2020); Doc. No. 11-5
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25 ⁶ The Court *sua sponte* takes judicial notice of California’s public health orders and Orders of the Chief
26 Judge of the United States District Court for the Southern District of California that address the COVID-
27 19 pandemic. *See* Fed. R. Evid. 201(b); *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746
28 n.6 (9th Cir. 2006) (“We may take judicial notice of court filings and other matters of public record.”);
Cross Culture Christian Ctr. v. Newsom, 445 F. Supp. 3d 758, 765 (E.D. Cal. 2020) (granting request of
judicial notice of various court filings and government documents—including Executive Order N-33-
20—addressing the COVID-19 pandemic).

1 at 2–3 (Order of the Chief Judge No. 18-A, March 23, 2020); Doc. No. 11-6 at 2–3
2 (Order of the Chief Judge No. 34, August 14, 2020).

3 Plaintiff asserts that she has “diligently pursued her rights.” Doc. No. 11 at 13; *see*
4 *also* Sargent Decl. ¶¶ 8–11, Doc. No. 11-7. After receiving the appeal denial, Plaintiff
5 informed Committee that she would pursue legal action if it did not supply the desired
6 documentation, and she claims that she began to investigate options to recover the
7 benefits within the 180-day limitations period. *See* Doc. No. 11 at 13; *see also* Doc. No.
8 8-2 at 79; Sargent Decl. ¶ 8, Doc. No. 11-7. Despite these efforts, Plaintiff states that the
9 COVID-19 pandemic thwarted her effort to find counsel and file her action. *See* Doc.
10 No. 11 at 13; *see also* Sargent Decl. ¶ 10, Doc. No. 11-7. Plaintiff claims that “the
11 courthouse doors [were] essentially closed to the public by [Order of the Chief Judge]
12 No. 18-A” and the Stay-at-Home Orders prevented her from leaving her home. Doc. No.
13 11 at 13; *see also* Sargent Decl. ¶ 2, Doc. No. 11-7. She further adds that “nearly all
14 businesses were closed, including most law firms,” which made it “all but impossible” to
15 find counsel. Doc. No. 11 at 13; *see also* Sargent Decl. ¶ 2, Doc. No. 11-7.⁷ Plaintiff
16 notes that she “attempted to go to the courthouse herself on multiple occasions in April
17 and May 2020 in an effort to determine what the next steps in the process would be and
18 to ultimately file her lawsuit.” Doc. No. 11 at 14; *see also* Sargent Decl. ¶¶ 3, 4, 8, Doc.
19 No. 11-7. However, despite these attempts, “the court was closed to Plaintiff, making
20 obtaining answers to her inquiries and filing the instant action impossible.” Doc. No. 11
21 at 14; *see also* Sargent Decl. ¶¶ 4, 8, Doc. No. 11-7. Plaintiff claims she was not able to
22 connect with competent ERISA counsel until June 2020. *See* Doc. No. 11 at 14; *see also*
23 Sargent Decl. ¶ 11, Doc. No. 11-7. Plaintiff argues that, despite her diligent and
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26 ⁷ Plaintiff further notes that both she and an elderly family member, with whom Plaintiff lives, “are both
27 at high risk of serious complications or death if they were to contract COVID-19.” Doc. No. 11 at 14;
28 *see also* Sargent Decl. ¶¶ 5, 6, Doc. No. 11-7. Plaintiff adds that she also had necessary frequent contact
with a different high-risk family member. *See* Doc. No. 11 at 14; *see also* Sargent Decl. ¶ 7, Doc. No.
11-7.

1 reasonable efforts to pursue her rights, the circumstances surrounding the COVID-19
2 pandemic prevented her from filing suit and “ma[de] it impossible for her to file the
3 instant action within the 180-day contractual limitation period described in the Plan.”
4 Doc. No. 11 at 15.

5 Therefore, Plaintiff requests the Court to apply equitable tolling. In doing so,
6 Plaintiff offers a tolling period of fifty days—from March 19, 2020 through May 8, 2020.
7 *See id.* at 15. Plaintiff argues this tolling would make her action timely filed: 155 days
8 following the Committee’s appeal denial and, thus, within the contractual 180-day
9 limitations period. *See id.* In reply, Defendants contend that Plaintiff cannot meet the
10 equitable tolling standard because the circumstances did not make filing her action
11 impossible and she could have done so before the Plan deadline. *See* Doc. No. 12 at 2–5.

12 Section 1132(a)(1)(B) “authorizes a plan participant to bring suit ‘to recover
13 benefits due to him under the terms of his plan, to enforce his rights under the terms of
14 the plan, or to clarify his rights to future benefits under the terms of the plan.’”
15 *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 571 U.S. 99, 108 (2013) (emphasis omitted)
16 (quoting 29 U.S.C. § 1132(a)(1)(B)). “Time requirements in lawsuits between private
17 litigants are customarily subject to ‘equitable tolling.’” *Irwin v. Dep’t of Veterans*
18 *Affairs*, 498 U.S. 89, 95 (1990) (citing *Hallstrom v. Tillamook County*, 493 U.S. 20, 27
19 (1989)); *see also United States v. Kwai Fun Wong*, 575 U.S. 402, 408 (2015). Equitable
20 tolling “may apply” where a plaintiff is diligent in seeking judicial review but is
21 prevented from bringing a § 1132(a)(1)(B) action “by extraordinary circumstances”
22 within the contractual period. *Heimeshoff*, 571 U.S. at 114 (citing *Irwin*, 498 U.S. at 95).
23 Equitable tolling involves a court pausing the running of a statute of limitations “when a
24 party ‘has pursued his rights diligently but some extraordinary circumstance’ prevents
25 him from meeting a deadline.” *Kwai Fun Wong*, 575 U.S. at 408 (quoting *Lozano v.*
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1 *Montoya Alvarez*, 572 U.S. 1, 10 (2014)).⁸ “In applying equitable tolling, courts ‘follow
2 a tradition in which courts of equity have sought to “relieve hardships which, from time
3 to time, arise from a hard and fast adherence” to more absolute legal rules, which, if
4 strictly applied, threaten the “evils of archaic rigidity.”” *Kwai Fun Wong*, 732 F.3d at
5 1052 (brackets omitted) (quoting *Holland v. Florida*, 560 U.S. 631, 650 (2010)).

6 “Generally, a litigant seeking equitable tolling bears the burden of establishing two
7 elements: (1) that he has been pursuing his rights diligently, and (2) that some
8 extraordinary circumstance stood in his way.” *Credit Suisse Sec. (USA) LLC v.*
9 *Simmonds*, 566 U.S. 221, 227 (2012) (emphasis omitted) (quoting *Pace v. DiGuglielmo*,
10 544 U.S. 408, 418 (2005)); *see also Heimeshoff*, 571 U.S. at 114. Regarding the first
11 element, “[t]he standard for reasonable diligence does not require an overzealous or
12 extreme pursuit of any and every avenue of relief. It requires the effort that a reasonable
13 person might be expected to deliver under his or her particular circumstances.” *Kwai*
14 *Fun Wong*, 732 F.3d at 1052 (quoting *Doe v. Busby*, 661 F.3d 1001, 1015 (9th Cir.
15 2011)). “Central to the analysis is whether the plaintiff was ‘without any fault’ in
16 pursuing his claim.” *Id.* (quoting *Fed. Election Comm’n v. Williams*, 104 F.3d 237, 240
17 (9th Cir. 1996)). Regarding the second element, “a garden variety claim of excusable
18 neglect, such as a simple miscalculation that leads a lawyer to miss a filing deadline, does
19 not warrant equitable tolling.” *Id.* (quoting *Holland*, 560 U.S. at 651–52). The
20 extraordinary circumstances must have caused the untimeliness and made it “impossible”
21 to file a timely action. *Ramirez v. Yates*, 571 F.3d 993, 997 (9th Cir. 2009) (first quoting
22 *Bryant v. Arizona Atty. Gen.*, 499 F.3d 1056, 1061 (9th Cir. 2007); and then quoting *Roy*
23 *v. Lampert*, 465 F.3d 964, 969 (9th Cir. 2006)). The party seeking equitable tolling bears
24 the burden to show that it is appropriate. *See Gaston v. Palmer*, 417 F.3d 1030, 1034 (9th
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27 ⁸ However, “a statute of repose is not subject to equitable tolling.” *Kwai Fun Wong v. Beebe*, 732 F.3d
28 1030, 1048 (9th Cir. 2013), *aff’d and remanded sub nom. United States v. Kwai Fun Wong*, 575 U.S.
402 (2015) (quoting *Albillo-De Leon v. Gonzales*, 410 F.3d 1090, 1097 n.5 (9th Cir. 2005)).

1 Cir. 2005), *reh'g granted, opinion modified*, 447 F.3d 1165 (9th Cir. 2006) (citing
2 *Miranda v. Castro*, 292 F.3d 1063, 1065 (9th Cir. 2002)).

3 However, “[f]ederal courts have typically extended equitable relief only
4 sparingly.” *Irwin*, 498 U.S. at 96; *see also Scholar v. Pac. Bell*, 963 F.2d 264, 267 (9th
5 Cir. 1992) (“[R]elief from strict construction of a statute of limitations is readily available
6 in extreme cases and gives the court latitude in a case-by-case analysis.”). Indeed, the
7 Supreme Court has outlined some of the rare situations: “where the claimant has actively
8 pursued his judicial remedies by filing a defective pleading during the statutory period”
9 or “where the complainant has been induced or tricked by his adversary’s misconduct
10 into allowing the filing deadline to pass.” *Irwin*, 498 U.S. at 96 (footnotes omitted). The
11 Court has “generally been much less forgiving in receiving late filings where the claimant
12 failed to exercise due diligence in preserving his legal rights.” *Id.* (citing *Baldwin County*
13 *Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984)).

14 Here, the Court finds that the COVID-19 global pandemic and the surrounding
15 circumstances did not sufficiently prevent Plaintiff from filing her action. Plaintiff
16 overstates the impact the pandemic had on her failure to file a timely action.

17 In contrast to the characterization presented by Plaintiff, the courthouse was
18 operational, staffed, and open to the public. The Chief Judge did issue an order declaring
19 a judicial emergency. *See* Doc. No. 11-4 at 2–4 (Order of the Chief Judge No. 18, March
20 17, 2020); *see also* Order of the Chief Judge No. 17, March 13, 2020. However, the
21 same order stated that the Court “will remain open for business,” subject to limitations.
22 Doc. No. 11-4 at 2. Except for jury trials, each district judge retained discretion to
23 schedule civil proceedings in person or virtually. *See id.* at 3. Further, the Clerk’s Office
24 was ordered to “remain open.” *Id.* at 4. In an amended Order, judges still retained
25 discretion to schedule and hold proceedings. *See* Doc. No. 11-5 at 2 (Order of the Chief
26 Judge No. 18-A, March 23, 2020). The Order instructed that documents not be filed in
27 person when the documents could be “mailed or filed electronically.” *Id.* For filings that
28 could not be filed “except in person,” the Order required counsel or parties to “deposit

1 documents to be filed in the Clerk’s office’s after-hours drop-off box.” *Id.* Therefore, as
2 seen by explicit language in the Orders by the Chief Judge, the courthouse was not closed
3 to the public. The courthouse and the Clerk’s Office remained operational despite some
4 adjustments. Civil cases continued to be filed, both by parties with counsel and by
5 parties proceeding pro se. Plaintiff could have called the Clerk’s Office to ask questions
6 and could have filed her action via mail, just as many other litigants have done
7 throughout the pandemic. The operational changes of the courthouse did not make it
8 impossible for Plaintiff to file her action.

9 Moreover, California’s Stay-at-Home Order did not sufficiently make it impossible
10 for Plaintiff to file her action. The Stay-at-Home Order did not prevent her from asking
11 questions to the Clerk’s Office over telephone or filing her action through the mail.
12 Plaintiff’s difficulty in attaining counsel is further unpersuasive because an individual
13 party does not require an attorney to file an action. Plaintiff could have proceeded pro se.
14 Even if the Court delved further into Plaintiff’s difficulty in retaining counsel, many law
15 firms continued to operate even if their physical offices were closed. Plaintiff did not
16 need to physically contact an attorney; many law firms could be contacted through e-mail
17 or other virtual means.

18 In sum, Plaintiff has not carried her burden to apply the rare and extreme equitable
19 tolling relief she seeks to toll the Plan’s contractual 180-day limitations period. Plaintiff
20 had clear notice of the 180-day limitations period. *See* Doc. No. 8-2 at 72–76
21 (Committee’s appeal denial letter); Doc. No. 8-2 at 78–79 (Plaintiff’s letter of receipt).
22 Despite the circumstances surrounding the COVID-19 pandemic, the courthouse
23 remained open, and Plaintiff could have filed her action without physically entering the
24 courthouse. Many other plaintiffs—both with counsel and those proceeding pro se—
25 successfully filed actions during Plaintiff’s sought tolling period. The Court finds that
26 Plaintiff failed to demonstrate “the effort that a reasonable person might be expected to
27 deliver” under her circumstances. *Kwai Fun Wong*, 732 F.3d at 1052 (quoting *Busby*,
28 661 F.3d at 1015). Additionally, the Court finds that Plaintiff fails to show how the

1 circumstances made it “impossible” to file a timely action. *Ramirez*, 571 F.3d at 997
 2 (quoting *Roy v. Lampert*, 465 F.3d at 969).

3 Thus, the Court is left with the uncontested fact that Plaintiff filed her Complaint
 4 on July 10, 2020—205 days after she indicated receipt of Committee’s appeal denial
 5 letter. *See* Compl.; Doc. No. 8 at 11–12 (providing Defendants’ calculation of 205 days);
 6 Doc. No. 8-2 at 72–76 (Committee’s appeal denial letter); Doc. No. 8-2 at 78–79
 7 (Plaintiff’s letter of receipt); Doc. No. 11 at 9 (providing Plaintiff’s acknowledgment that
 8 the calculation of the 205 days is correct). The Supreme Court has held that courts “must
 9 give effect to the Plan’s limitations provision unless we determine either [1] that the
 10 period is unreasonably short, or [2] that a ‘controlling statute’ prevents the limitations
 11 provision from taking effect.” *Heimeshoff*, 571 U.S. at 109 (citing *Order of United*
 12 *Commercial Travelers of Am. v. Wolfe*, 331 U.S. 586, 608 (1947)). Plaintiff does not
 13 argue that the 180-day period is unreasonable. Even if she did, the Court finds that the
 14 180-day contractual limitation period is reasonable. *See Koblentz*, 2013 WL 4525432, at
 15 *3 (noting that Plaintiff did not argue that a six-month contractual limitations period was
 16 unreasonable, “nor could she” given similarly upheld limitations); *see also Northlake*
 17 *Reg’l Med. Ctr. v. Waffle House Sys. Employee Benefit Plan*, 160 F.3d 1301, 1304 (11th
 18 Cir. 1998) (holding a 90-day contractual limitations period was reasonable and
 19 enforceable). Therefore, Plaintiff’s § 1132(a)(1)(B) claim is timed-barred.

20 Accordingly, the Court **GRANTS** Defendants’ motion and **DISMISSES** Plaintiff’s
 21 § 1132(a)(1)(B) ERISA benefits claim **without leave to amend**. *See Koblentz*, 2013 WL
 22 4525432, at *4.

23 **B. ERISA Breach of Fiduciary Duty Pursuant to 29 U.S.C. §§ 1104, 1132(a)(3)**

24 Plaintiff’s second cause of action is an ERISA breach of fiduciary duty pursuant to
 25 29 U.S.C. §§ 1104, 1132(a)(3). Compl. ¶¶ 38–48. The parties disagree on the applicable
 26 limitations provision.

27 **1. Whether the Contractual Limitations Period Bars Plaintiff’s Breach of** 28 **Fiduciary Duty Claim**

1 Defendants argue that Plaintiff’s fiduciary claim here fails because it also is time-
2 barred by the Plan’s 180-day limitations period. *See* Doc. No. 8 at 13; *see also* Doc. No.
3 12 at 5. Defendants note a split of authority regarding whether a § 1132(a)(3) claim is
4 covered by *Heimeshoff*, which approved of a contractual limitations period for a
5 § 1132(a)(1)(B) benefits claim. *See* Doc. No. 8 at 13; *see also* Doc. No. 12 at 5–7.
6 Despite this division in authority, Defendants contend that “the better-reasoned decisions
7 have concluded that fiduciary breach claims are subject to a contractual limitations
8 period.” Doc. No. 8 at 13. Plaintiff responds that the Plan’s contractual 180-day
9 limitations period does not apply to her breach of fiduciary duty claim because ERISA
10 provides an applicable statute of limitations in § 1113. *See* Doc. No. 11 at 16.
11 Alternatively, Plaintiff argues that equitable tolling would save her claim if the Court
12 finds the contractual limitation period applies. *See id.*

13 In deciding whether a contractual limitations provision is enforceable for an action
14 to recover benefits under an ERISA plan pursuant to § 1132(a)(1)(B), the Supreme Court
15 held that “[w]e must give effect to the Plan’s limitations provision unless we determine
16 either [1] that the period is unreasonably short, or [2] that a ‘controlling statute’ prevents
17 the limitations provision from taking effect.” *Heimeshoff*, 571 U.S. at 109 (quoting
18 *Wolfe*, 331 U.S. at 608). *Heimeshoff* did not address the situation here where a plaintiff
19 brings a breach of fiduciary duty claim pursuant to § 1132(a)(3) and whether the plan’s
20 limitations provision can supersede the limitations provision found in § 1113. Section
21 1113 provides the following:

22
23 No action may be commenced under this subchapter with respect to a
24 fiduciary’s breach of any responsibility, duty, or obligation under this part,
25 or with respect to a violation of this part, after the earlier of--

26 (1) six years after (A) the date of the last action which constituted a
27 part of the breach or violation, or (B) in the case of an omission the
28 latest date on which the fiduciary could have cured the breach or
violation, or

1
2 (2) three years after the earliest date on which the plaintiff had actual
3 knowledge of the breach or violation;

4 except that in the case of fraud or concealment, such action may be
5 commenced not later than six years after the date of discovery of such
6 breach or violation.

7 29 U.S.C. § 1113. The *Heimeshoff* Court did not directly rely upon or apply § 1113.
8 However, the Court did mention § 1113 briefly. The Court noted the plaintiff-petitioner
9 and the United States “contend[ed] that even if the Plan’s limitations provision is
10 reasonable, ERISA is a ‘controlling statute to the contrary.’” *Heimeshoff*, 571 U.S. at
11 109 (quoting *Wolfe*, 331 U.S. at 608). Citing to § 1113 in the next sentence, the Court
12 further noted that “[b]ut they do not contend that ERISA’s statute of limitations for
13 claims of breach of fiduciary duty controls this action to recover benefits. See 29 U.S.C.
14 § 1113.” *Id.* Instead, the plaintiff in *Heimeshoff* argued that the limitations provision
15 would “‘undermine’ ERISA’s two-tiered remedial scheme.” *Id.* Thus, *Heimeshoff*’s
16 holding is not conclusive or binding on the issue before this Court. Moreover, there is
17 conflicting, unbinding authority on whether a plan’s limitations provision can supersede
18 § 1113’s limitations provision when a plaintiff brings a § 1132(a)(3) claim.⁹ The Court

19
20 ⁹ Compare *Hewitt v. W. & S. Fin. Grp. Flexible Benefits Plan*, No. 17-5862, 2018 WL 3064564, at *2
21 (6th Cir. Apr. 18, 2018) (holding the plaintiff’s fiduciary duty claim as time-barred after finding that a
22 contractual provision may specify a shorter limitations period—as long as there is no “controlling statute
23 to the contrary” and it is reasonable—and § 1113 was not a “controlling statute to the contrary” because
24 it is merely a default rule), and *Tawater v. Health Care Serv. Corp.*, No. CV 18-47-GF-BMM, 2018 WL
25 6310280, at *4 (D. Mont. Dec. 3, 2018) (finding that the plaintiff’s benefits and fiduciary claims were
26 not time-barred after finding that parties can contract around any applicable statute of limitations and
27 accrual provisions and, thus, the plan’s three-year limitation period controlled over “any statutory six-
28 year or three-year statute of limitations period” to bring a fiduciary duty ERISA claim), with *Falberg v.*
Goldman Sachs Grp., Inc., No. 19 Civ. 9910 (ER), 2020 WL 3893285, at *5–6 (S.D.N.Y. July 9, 2020)
(denying the defendants’ motion to dismiss where the parties disagreed whether § 1113 or the plan’s
limitation period controlled because the court found no controlling authority showing a contract can set
a shorter period than under ERISA and, furthermore, declined to bar the plaintiff’s claim on this basis),
and *Zelhofer v. Metro. Life Ins. Co.*, No. 2:16-cv-00773 TLN AC, 2017 WL 1166134, at *3 (E.D. Cal.
Mar. 29, 2017), *report and recommendation adopted*, 2017 WL 3282860 (E.D. Cal. Aug. 2, 2017)

1 finds that this question is necessarily entangled with the question of whether § 1113 is a
2 “controlling statute” that would prevent the plan’s contractual limitations period from
3 taking effect.

4 As in *Heimeshoff*, this Court looks to “precedent confronting whether to enforce
5 the terms of a contractual limitations provision.” *Heimeshoff*, 571 U.S. at 106. Thus, the
6 Court must look to the “well-established framework” for addressing the issue:

7
8 In the absence of a controlling statute to the contrary, a provision in a
9 contract may validly limit, between the parties, the time for bringing an
10 action on such contract to a period less than that prescribed in the general
11 statute of limitations, provided that the shorter period itself shall be a
reasonable period.

12 *Id.* 106–07 (brackets omitted) (quoting *Wolfe*, 331 U.S. at 608). On the other hand, some
13 statutes of limitation do not allow parties to contract for a shorter limitations period. *Id.*
14 at 107 (citing *Louisiana & W.R. Co. v. Gardiner*, 273 U.S. 280, 284 (1927) (invalidating
15 a contractual provision requiring suits for loss to be brought to “two years and one day
16 after delivery of the property” when the Transportation Act stated that “it shall be
17 unlawful” to contract for a “any limitation shorter than two years from the time notice is
18 given of the disallowance of the claim’’)). However, “[t]he rule set forth in *Wolfe*
19 recognizes . . . that other statutes of limitations provide only a default rule that permits
20 parties to choose a shorter limitations period.” *Id.*

21 Here, the Court finds that § 1113 is a controlling statute that supersedes the Plan’s
22 limitations period. Although *Heimeshoff* did not explicitly address § 1113 or an ERISA
23 claim for breach of a fiduciary duty, its brief citation to § 1113 at minimum suggests

24
25
26 (finding the plaintiff’s fiduciary duty claim time barred under § 1113 where the parties assumed the
27 claim arose under ERISA and thus was governed under § 1113), and *Winburn v. Progress Energy*
28 *Carolinas, Inc.*, No. 4:11-cv-03527-RBH, 2015 WL 505551, at *11, *12 (D.S.C. Feb. 6, 2015) (granting
summary judgment on a fiduciary duty claim because the action was not timely filed under § 1113 after
interpreting that *Heimeshoff* distinguished § 1113 from its holding).

1 dicta that the Court is inclined to see § 1113 as a controlling statute. *See Heimeshoff*, 571
2 U.S. at 110; *Winburn*, 2015 WL 505551, at *11. The Court finds further persuasive
3 authority in the Supreme Court’s recent § 1132(a)(2) fiduciary duty ERISA case
4 addressing “whether a plaintiff necessarily has ‘actual knowledge’ of the information
5 contained in disclosures that he receives but does not read or cannot recall reading.” *Intel*
6 *Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 773 (2020). The Supreme Court did
7 not address the connection between a breach of fiduciary duty and a contractual
8 limitations period. Nevertheless, the Court finds persuasive value in the Supreme Court’s
9 description and framing of § 1113’s operation. For example, the Supreme Court noted
10 that suits alleging breach of a fiduciary duty “must be filed within one of three time
11 periods, each with different triggering events.” *Id.* at 774. The Supreme Court’s
12 language in interpreting the statute of limitations appears to foreclose limitations periods
13 outside of the statute. Examining *Heimeshoff* and *Intel Corp.* together reveals the
14 Supreme Court’s inclination to view § 1113 as the controlling limitations period for
15 fiduciary duty claims. Additionally, the Court also finds the Plan’s limitations provision
16 could potentially disrupt the congressional intent behind including three distinct time
17 periods with distinct triggering events in § 1113. The comprehensive statute of
18 limitations suggests that § 1113 was designed to be controlling and not merely a default
19 rule. Accordingly, the Court finds that § 1113 controls Plaintiff’s fiduciary claim, and
20 the Plan’s 180-day limitations period does not bar Plaintiff’s claim. *See Falberg*, 2020
21 WL 3893285, at *6.

22 **2. Whether § 1113 Bars Plaintiff’s Breach of Fiduciary Duty Claim**

23 In the alternative—in the event the contractual limitations period is inapplicable to
24 the fiduciary claim—Defendants argue that the claim is still time barred under 29 U.S.C.
25 § 1113. *See* Doc. No. 8 at 16. Defendants assert that Plaintiff’s claim fails under both
26 subsections of § 1113(1) because the last action of the breach under § 1113(1)(A) and the
27 last opportunity to cure the breach under § 1113(1)(B) were both in 2008. *See* Doc. No. 8
28 at 17–22; *see also* Doc. No. 12 at 7–10. Plaintiff responds that her claim fiduciary duty

1 claim is timely under § 1113. *See* Doc No. 11 at 18–29. Plaintiff asserts that her claim is
2 timely under any ERISA limitations period because her “breach of fiduciary duty claim
3 arises out of the arbitrary and capricious denial of Plaintiff’s claim for benefits and the
4 subsequent arbitrary and capricious denial of Plaintiff’s appeal of that decision *in 2019*.”
5 *Id.* at 19. Accordingly, Plaintiff argues her claim is timely under both § 1113(2) and
6 § 1113(1)(A) but contends that § 1113(1)(B) does not apply. *See* Doc. No. 20–30.

7 As noted above, actions for breach of a fiduciary duty under ERISA “must be filed
8 within one of three time periods, each with different triggering events.” *Intel Corp. Inv.*
9 *Policy Comm.*, 140 S. Ct. at 774. “The first begins when the breach occurs.” *Id.*; *see* 29
10 U.S.C. § 1113(1). The plaintiff must file the action “within six years of ‘the date of the
11 last action which constituted a part of the breach or violation’ or, in cases of breach by
12 omission, ‘the latest date on which the fiduciary could have cured the breach or
13 violation.’” *Intel Corp. Inv. Policy Comm.*, 140 S. Ct. at 774 (quoting 29 U.S.C.
14 § 1113(1)). Section § 1113(1) is a statute of repose, which “effects a legislative judgment
15 that a defendant should be free from liability after the legislatively determined period of
16 time.” *Id.* (brackets omitted) (quoting *California Pub. Employees’ Ret. Sys. v. ANZ Sec.,*
17 *Inc.*, 137 S. Ct. 2042, 2049 (2017)). “The second period, which accelerates the filing
18 deadline, begins when the plaintiff gains ‘actual knowledge’ of the breach.” *Id.*; *see* 29
19 U.S.C. § 1113(2). The plaintiff must file the action “within three years of ‘the earliest
20 date on which the plaintiff had actual knowledge of the breach or violation.’” *Intel Corp.*
21 *Inv. Policy Comm.*, 140 S. Ct. at 774 (quoting 29 U.S.C. § 1113(2)). Section § 1113(2) is
22 a statute of limitations, which “encourage[s] plaintiffs to pursue diligent prosecution of
23 known claims.” *Id.* (quoting *California Pub. Employees’ Ret. Sys.*, 137 S. Ct. at 2049).
24 The third period “applies ‘in the case of fraud or concealment.’” *Id.* (quoting 29 U.S.C.
25 § 1113). The period “begins when the plaintiff discovers the alleged breach,” and
26 Plaintiff must file the action within six years of “the date of discovery.” *Id.* (quoting 29
27 U.S.C. § 1113).

28

1 “[T]o apply the limitations period, we must first isolate and define the underlying
 2 violation upon which . . . [plaintiff’s] claim is founded.” *Ziegler v. Connecticut Gen. Life*
 3 *Ins. Co.*, 916 F.2d 548, 550–51 (9th Cir. 1990) (quoting *Meagher v. Int’l Ass’n of*
 4 *Machinists & Aerospace Workers Pension Plan*, 856 F.2d 1418, 1422 (9th Cir. 1988)).
 5 Here, Plaintiff alleges several actions that breached Defendants’ fiduciary duties, some of
 6 which appear to involve breaches occurring in or around 2008. *See* Compl. ¶¶ 42–45.
 7 However, in her opposition brief, Plaintiff clarifies and emphasizes that the alleged
 8 breach “arises out of the arbitrary and capricious denial of Plaintiff’s claim for benefits
 9 and . . . denial of Plaintiff’s appeal of that decision *in 2019*.” Doc. No. 11 at 19. Thus,
 10 the Court narrows its analysis to the allegations surrounding Plaintiff’s claim and appeal
 11 denial.¹⁰

12 Plaintiff claims that Committee failed to act in her interest “for the exclusive
 13 purpose of providing her Plan benefits,” “to discharge its duties with the care, skill,
 14 prudence, and diligence required of it under the circumstances,” and “to act in accordance
 15 with documents and instruments governing the Plan.” Compl. ¶ 47; *see also* 29 U.S.C. §
 16 _____

17 ¹⁰ Even if the Court were to examine Plaintiff’s allegations pertaining to the events in 2008, these claims
 18 appear to be time-barred even under § 1113(1)(A)’s 6-year statute of repose. The events surrounding
 19 2008 involve Defendants’ failure to “notify Plaintiff that the MSA had been accepted as a valid QDRO
 20 under applicable laws, or that the QDRO . . . had been submitted to them for division of Mr. Sargent’s
 21 benefits under the Plan with a portion thereof to be assigned to Plaintiff”; “send Plaintiff a copy, or
 22 otherwise notify Plaintiff, of the Plan’s written procedures for determining the ‘qualified’ status of a
 23 domestic relations order as required by law”; “send Plaintiff any sort of request or notification
 24 concerning how she would like to elect her awarded portion of the benefits under the Plan to be paid
 25 and/or distributed to her”; or, otherwise before 2019, provide Plaintiff with information “concerning the
 division of Mr. Sargent’s benefits under the Plan and Plaintiff’s award to a portion of such benefits, and
 the alleged assignment and payment and/or distribution of such awarded portion of the benefits
 thereunder . . . or that such awarded portion of such benefits had been paid and/or distributed to her.”
 Compl. ¶¶ 42, 43, 44, 45. Based on Plaintiff’s allegations, the last actions appear to have occurred
 around 2008 and are, thus, time-barred by § 1113(1)(A).

26 Additionally, § 1113(1)(B)’s last opportunity to cure an omission does not save these claims.
 27 *See Moyle v. Liberty Mut. Ret. Benefit Plan*, 263 F. Supp. 3d 999, 1021 (S.D. Cal. 2017) (citing *Olivo v.*
 28 *Elky*, 646 F. Supp. 2d 95, 102 (D.D.C. 2009)) (“Defining ‘cure’ in the sense ‘to find a remedy’ would
 extend a fiduciary’s liability indefinitely as it is always possible to remedy a breach.”). Plaintiff argues
 that § 1113(1)(B) “does not apply” to her claim. Doc. No. 11 at 29.

1 1104(a)(1). Because Plaintiff’s allegations center on the fiduciaries’ breaches
2 surrounding the 2019 claim and appeal denials, Plaintiff’s fiduciary breach claim is not
3 time-barred under § 1113’s six-year or three-year limitations periods. *Cf. Wit v. United*
4 *Behavioral Health*, No. 14-cv-02346-JCS, 2017 WL 3478775, at *13 (N.D. Cal. Aug. 14,
5 2017) (discussing whether the plaintiffs can establish causation of her § 1132(a)(3)
6 claims in a motion for summary judgment and finding that the plaintiffs can seek to
7 secure the fiduciary obligations owed to them and that such a claim is a separate “primary
8 harm” than denied benefits). Despite Plaintiff being time-barred from bringing her
9 § 1132(a)(1)(b) claim to recoup her alleged owed benefits to be made whole, she is not
10 time-barred from bringing her § 1132(a)(3) fiduciary claim to secure the fiduciary rights
11 owed to her.

12 However, the parties have not argued whether Plaintiff has pleaded sufficient facts
13 to sustain a plausible claim under § 1132(a)(3) that would show more than a mere failure
14 to provide benefits, so the Court refrains from such analysis. *See United States v.*
15 *Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) (quoting *Greenlaw v. United States*, 554
16 U.S. 237, 243 (2008)) (“[I]n both civil and criminal cases, in the first instance and on
17 appeal . . . , we rely on the parties to frame the issues for decision and assign to courts the
18 role of neutral arbiter of matters the parties present.”). The Court merely finds that
19 Plaintiff has shown her § 1132(a)(3) claim is not time-barred and may possibly be
20 pleaded. Moreover, and if Plaintiff does allege sufficient facts, whether Plaintiff can
21 prove her fiduciary claim is not an issue appropriate for a Rule 12(b)(6) motion.

22 Accordingly, the Court **DENIES** Defendants’ motion to dismiss Plaintiff’s
23 § 1132(a)(3) ERISA breach of fiduciary duty claim.

24 **C. Declaratory Relief**

25 Plaintiff’s third cause of action is declaratory relief. Compl. ¶¶ 49–50. Defendants
26 argue that Plaintiff’s claim fails because it is derivative of her two failed ERISA claims.
27 *See* Doc. No. 8 at 22. Plaintiff responds that the claim survives because of her timely
28 ERISA claims. *See* Doc. No. 11 at 30.

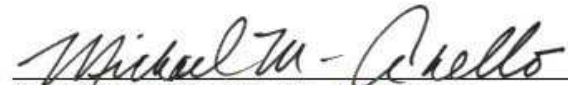
1 Plaintiff's declaratory relief claim is premised on her ERISA claims. *See* Compl.
2 ¶ 50. Because Plaintiff's § 1132(a)(3) claim is not time-barred, her declaratory relief
3 claim is not time-barred. Accordingly, the Court **DENIES** Defendants' motion to
4 dismiss Plaintiff's declaratory relief claim.

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court **GRANTS IN PART and DENIES IN PART**
7 Defendants' motion to dismiss. The Court **GRANTS** Defendants' motion and
8 **DISMISSES** Plaintiff's § 1132(a)(1)(B) benefits claim **without leave to amend**. The
9 Court **DENIES** Defendants' motion to dismiss Plaintiff's § 1132(a)(3) breach of
10 fiduciary duty and declaratory relief claims.

11 **IT IS SO ORDERED.**

12
13 Dated: October 14, 2020

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16 HON. MICHAEL M. ANELLO
17 United States District Judge
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