

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MICHAEL W. MATTINGLY, <i>et al.</i> ,	:	Case No. 1:15-cv-781
Plaintiffs,	:	
vs.	:	Judge Timothy S. Black
	:	Magistrate Judge Stephanie K. Bowman
HUMANA HEALTH PLAN, INC., <i>et al.</i> ,	:	
Defendants.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 50)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on February 1, 2017, submitted a Report and Recommendations. (Doc. 50). Defendant The Proctor & Gamble U.S. Business Services Company (“USBS”) filed objections on March 15, 2017. (Doc. 54).¹

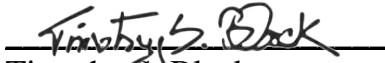
¹ Defendant’s objections are not well taken. After reviewing the filings in this case, the Court agrees with the magistrate judge’s conclusion that Plaintiffs have adequately pled exhaustion of the required administrative remedies associated with the benefit plan at issue for their denial of benefits claim under ERISA to survive a motion to dismiss. The second amended complaint specifically states that “Plaintiffs have completed all steps required prior to the filing of this complaint under the Plan and ERISA[.]” (Doc. 37, at 4). Defendants’ motion to dismiss attempts to introduce evidence outside the complaint to support their assertion that Plaintiffs have not in fact exhausted the required administrative remedies—however, such evidence is not proper in the context of a motion to dismiss, which looks to the complaint to determine whether Plaintiffs have stated facts that, if true, give Plaintiff a claim for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Plaintiffs have met this liberal pleading standard. Following discovery, Defendant USBS may revise its argument related to whether Plaintiffs properly exhausted their administrative remedies in a more appropriate motion.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendations should be and is hereby adopted in its entirety. Accordingly, **IT IS ORDERED** that:

- 1) Defendants' motion to dismiss the second amended complaint (Doc. 44) is **DENIED** with respect to Plaintiffs' claim to recover benefits under § 502 of ERISA against Defendant USBS;
- 2) Defendant's motion to dismiss the second amended complaint (Doc. 44) is **GRANTED** with respect to all other claims;
- 3) Defendants Humana Health Plan of Ohio, Inc., Humana Health Plan, Inc., and the Proctor & Gamble Company are **DISMISSED** from this action.

IT IS SO ORDERED.

Date: 6/5/17



Timothy S. Black
United States District Judge