

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

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J. William Smoak, III, and Smoak's Air)
Conditioning Co., Inc.,)
)
 Plaintiffs,)
)
 v.)
)
 Elizabeth Cangialosi; ADP TotalSource,)
 Inc.; Automatic Data Processing, Inc.;)
 Automatic Data Processing Insurance)
 Agency, Inc.; and Aetna Life Insurance)
 Company,)
)
 Defendants.)

Civil Action No. 2:17-1709-RMG

DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON, SC

ORDER AND OPINION

This matter is before the Court on Defendants Elizabeth Cangialosi, ADP Totalsource, Inc., Automatic Data Processing, Inc., and Automatic Data Processing Insurance Agency, Inc.'s (collectively, the "ADP Defendants") motion to dismiss and to strike (Dkt. No. 5) and Defendant Aetna Life Insurance Company's motion to dismiss and to strike (Dkt. No. 6). For the reasons set forth below, the Court grants the ADP Defendant's motion, grants in part and denies as moot in part Aetna's motion to dismiss, dismisses claims against Aetna without prejudice, and grants leave to amend the complaint within 21 days.

I. Background

Plaintiffs allege Defendants failed to pay death benefits for decedent Helen B. Smoak, who was an employee of ADP Totalsource,¹ as agreed under a group life policy Aetna issued to ADP Totalsource. They filed suit in the Charleston County Court of Common Pleas on May 22, 2015.

¹ Plaintiffs assert they are unsure what entity employed the decedent. (Dkt. No. 9.)

Defendants were served between May 30, 2017 and June 4, 2017, and this action was timely removed on June 29, 2017.

II. Legal Standard

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits the dismissal of an action if the complaint fails “to state a claim upon which relief can be granted.” Such a motion tests the legal sufficiency of the complaint and “does not resolve contests surrounding the facts, the merits of the claim, or the applicability of defenses. . . . Our inquiry then is limited to whether the allegations constitute ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’” *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (quotation marks and citation omitted). In a Rule 12(b)(6) motion, the Court is obligated to “assume the truth of all facts alleged in the complaint and the existence of any fact that can be proved, consistent with the complaint’s allegations.” *E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P’ship*, 213 F.3d 175, 180 (4th Cir. 2000). However, while the Court must accept the facts in a light most favorable to the non-moving party, it “need not accept as true unwarranted inferences, unreasonable conclusions, or arguments.” *Id.*

To survive a motion to dismiss, the complaint must state “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although the requirement of plausibility does not impose a probability requirement at this stage, the complaint must show more than a “sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint has “facial plausibility” where the pleading “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

III. Discussion

Defendants move for dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure because the Employment Retirement Income Security Act of 1974 (“ERISA”) preempts all Plaintiffs’ state law claims and that 29 U.S.C. § 1132 provides the exclusive remedy available to Plaintiffs. In response, Plaintiffs concede their claims are preempted and ask for leave to amend the complaint to proceed under 29 U.S.C. § 1132. (Dkt. No. 9.) Leave to amend the complaint should be freely given when no reason to the contrary is apparent. *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Court therefore dismisses the complaint without prejudice and grants leave to file an amended complaint within 21 days of the date of this order.

Because the complaint is dismissed, the Court cannot reach Defendants’ arguments about striking demands from the complaint. Defendants may reassert those arguments if they remain germane after amendment of the complaint.

The only ripe dispute before the Court at present is whether the ADP Defendants are proper defendants in an ERISA action. According to the ADP Defendants, “ERISA allows a plan participant to bring an action to recover benefits that were allegedly wrongfully denied only against the benefit plan itself and any fiduciary that controls the administration of the plan.” (Dkt. No. 5-1 at 15 (citing several unpublished cases).) Defendants argue the ADP Defendants cannot be fiduciaries controlling administration of the plan because the plan documents explicitly provide Aetna makes all claim determinations. (See Dkt. No. 1-3 at 115.) Plaintiffs respond that the ADP Defendants are proper parties because they were Aetna’s agents and because 29 U.S.C. § 1132(a)(3)² does not limit claims to the plan or those who make benefit determinations. Because

² Subsection 1132(a) merely lists the persons who may bring civil action; it does not address who is a proper defendant.

Plaintiffs effectively assert the ADP Defendants will be named in an amended complaint asserting claims under ERISA, this issue is ripe.

There is no controlling authority in this Circuit on this issue, but this District has consistently held that a party with no control over claims administration is not a proper defendant in an ERISA action. *See, e.g., Winburn v. Progress Energy Carolinas, Inc.*, Civ. No. 4:11-3527-RBH, 2015 WL 505551, at *13 (D.S.C. Feb. 6, 2015); *Fryer v. Accutrex Prod., Inc.*, Civ. No. 0:10-2811-JFA-PJG, 2011 WL 4008126, at *3 (D.S.C. Aug. 2, 2011), *report and recommendation adopted*, Civ. No. 0:10-2811-JFA-PJG, 2011 WL 4102099 (D.S.C. Sept. 8, 2011). Unpublished Fourth Circuit precedent accords with that view. *See Gluth v. Wal-Mart Stores, Inc.*, 117 F.3d 1413 (4th Cir. 1997) (unpublished table decision). Here, the plan documents unambiguously identify Aetna, not any ADP Defendant, as the plan's ERISA fiduciary. (Dkt. No. 1-3 at 115.) Even if they are in some sense Aetna's marketing agents, that could not make them plan fiduciaries under ERISA because they have no control over benefit determinations. (*Id.*) Although there is a circuit split on the issue of whether a plan fiduciary can be a defendant in an ERISA action for benefits or whether only the plan administrator may be a defendant, *Anselmo v. W. Paces Hotel Grp., LLC*, Civ. No. 9:09-2466-MBS, 2011 WL 1049195, at *12 (D.S.C. Mar. 18, 2011) (collecting cases), there is no authority for the proposition that a party that is not even a plan fiduciary can be a defendant in an ERISA action. The Court therefore holds the ADP Defendants are improper defendants under ERISA action and they are dismissed with prejudice from this action.

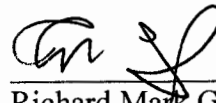
Finally, Plaintiffs present a preemptive argument that Defendants are estopped from asserting that Plaintiffs failed to exhaust administrative remedies. (*See* Dkt. No. 9 at 3 n.1.) The Court cannot address that argument because Defendants did not present any exhaustion argument,

presumably because they were moving to dismiss state law causes of action having no exhaustion requirements. If Defendants argue failure to exhaust administrative remedies in response to an amended complaint proceeding under § 1132, the Court will address the argument at that time.

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** Defendants' motion to dismiss (Dkt. No. 5). Defendants Elizabeth Cangialosi, ADP Totalsource, Inc., Automatic Data Processing, Inc., and Automatic Data Processing Insurance Agency, Inc., are **DISMISSED WITH PREJUDICE**. The Court **GRANTS IN PART AND DENIES AS MOOT IN PART** Defendant Aetna Life Insurance Company's motion to dismiss and to strike. The complaint is **DISMISSED WITHOUT PREJUDICE** as to Defendant Aetna; the motion is otherwise **DENIED AS MOOT**. The Court further **ORDERS** that Plaintiffs may file an amended complaint asserting claims under 29 U.S.C. § 1132 within 21 days of the date of this order.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

July 27, 2017
Charleston, South Carolina