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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PROVIDENCE HEALTH &)	
SERVICES-WASHINGTON, a)	CASE NO. C09-1668TSZ
Washington nonprofit corporation; et al.,)	
)	
Plaintiffs,)	ORDER
)	
v.)	
)	
J. DAVID BENSON,)	
)	
Defendant.)	
_____)	

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THIS MATTER comes before the Court on the motion for partial summary judgment, docket no. 26, filed by plaintiffs Providence Health & Services, Washington (“PH&S-W”) and Providence Health Plan (“PHP”) (collectively “PH&S-W”). PH&S-W moves for partial summary judgment on plaintiffs’ Third Cause of Action, which seeks a declaratory judgment that PH&S-W’s May 2009 Employee Retirement Income Security Act (“ERISA”) election was effective and applies ERISA to Benson’s insurance plan (“PN 501”) prospectively from the date

01 of filing. Am. Compl. at ¶¶ 17-19, docket no. 11. Having reviewed the papers filed in support
02 of, and opposition to, plaintiffs’ motion, the Court DENIES the motion.

03 **BACKGROUND**

04 This case arises out of a motor vehicle collision that took place on October 10, 2008,
05 resulting in severe injuries to defendant J. David Benson. See Benson v. Providence Health &
06 Services, C10-941Z (“Benson I”), 2d Am. Compl. ¶ 4.2, docket no. 1-5. Benson recovered
07 \$25,000.00 from the tortfeasor’s insurance company, the full policy limit but well below the
08 amount of Benson’s medical expenses. Id. at ¶¶ 4.4-4.6. To pay the remainder of his medical
09 expenses, Benson submitted a claim to his medical insurance company,¹ which was ultimately
10 denied, resulting in the litigation in the related case, Benson I. See id.

12 In Benson I, which was before the Court on removal from state court, Benson moved for
13 an order of remand, arguing that the Court lacked subject matter jurisdiction because PN 501
14 was a church plan, exempt from ERISA. Defendants disputed Benson’s characterization of PN
15 501 as a church plan, and further argued that the issue was moot because PH&S-W filed an
16 election with the Department of Labor in May 2009 that applied ERISA to PN 501 retroactively,
17 or alternatively, that Benson’s claims were barred because they arose after the May 2009
18 election, which created a valid ERISA plan. After reviewing the extensive briefing of the
19 parties on those issues, the Court ruled that (1) PN 501 was a church plan, exempt from ERISA;

21 ¹ There remains a factual dispute over which company, PH&S-W or its parent company, Providence Health and
22 Services (“PH&S”), is the administrator of PN 501, and there is a genuine unresolved question as to whether the
different Providence entities are operated as a single business in disregard of the corporate form. See, e.g.,
Benson I, Friedman Decl., Exs. 2-3 (Rogers Dep., Exs. 2, 9), Ex. 4 (Young Dep. at 11, 32), docket no. 40.

01 (2) the May 2009 ERISA election did not apply retroactively; and (3) Benson’s claims arose
02 before May 2009. Benson I, Order, docket no. 25. Because ERISA was the sole basis for the
03 Court’s subject matter jurisdiction on removal, the Court remanded Benson I to state court. Id.
04 In ordering remand, the Court relied upon Benson’s representations that he was not challenging
05 the validity of the May 2009 ERISA election, and that he had not sought relief for claims arising
06 after the election. See Benson I, Order at 13 n.6, docket no. 25. In the present case, which was
07 filed after Benson I, PH&S-W seeks declaratory and injunctive relief against Benson, arguing
08 that ERISA applies to PN 501 prospectively. Am. Compl., docket no. 11.

09 **DISCUSSION**

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11 PH&S-W moves for partial summary judgment on plaintiffs’ Third Cause of Action,
12 which seeks a declaratory judgment that PH&S-W’s May 2009 ERISA election was effective
13 and applies ERISA to PN 501 prospectively from the date of filing. As a preliminary matter,
14 however, Benson argues that, in light of this Court’s Order in Benson I that his claims arose prior
15 to the ERISA election, there is no longer an actual controversy between the parties, and as such,
16 the Court lacks the authority to adjudicate plaintiffs’ claims. Therefore, before the Court can
17 address plaintiffs’ motion, it must first determine whether there is an actual controversy between
18 the parties.

19 “The Declaratory Judgment Act provides that “in a case of actual controversy . . . any
20 court of the United States . . . may declare the rights and other legal obligations of any interested
21 party seeking such a declaration.” 28 U.S.C. § 2201. Article III of the United States
22 Constitution similarly limits the authority of courts to the adjudication of “real and substantial

01 controvers[ies] admitting of specific relief through a decree of a conclusive character, as
02 distinguished from an opinion advising what the law would be upon a hypothetical state of
03 facts.” Lewis v. Cont’l Bank Corp., 494 U.S. 472, 477 (1990). Consequently, there must
04 exist, under the facts alleged, a “substantial controversy, between parties having adverse legal
05 interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.”
06 Medimmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127 (2007). The actual controversy must
07 exist at all stages of review, not merely at the time the complaint is filed. SEC v. Med. Comm.
08 for Human Rights, 404 U.S. 403 (1972). “A case becomes moot whenever it loses its character
09 as a present, live controversy of the kind that must exist if courts are to avoid advisory opinions
10 on abstract propositions of law.” Siskiyou Reg’l Educ. Project v. United States Forest Serv.,
11 565 F.3d 545, 559 (9th Cir. 2009).

13 Plaintiffs argue that an actual controversy exists because the amended complaint alleges
14 that the May 2009 election is valid and Benson has denied the allegation. Although Benson
15 may have denied the allegations in the complaint at the initiation of the lawsuit, plaintiffs have
16 failed to show the continuing existence of an actual controversy. To the contrary, this Court
17 ruled in Benson I that Benson’s claims arose prior to May 2009, which necessarily has
18 extinguished the live controversy between the parties about the validity of the May 2009 election
19 in this case.² In addition, consistent with this Court’s prior order, Benson has moved in the state
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21 ² PH&S-W also contends that an actual controversy between the parties continues to exist because Benson argues, in the
22 alternative, that there are genuine issues of material fact that preclude summary judgment on plaintiffs’ Third Cause of
Action. Benson’s alternative argument in response to the present motion does not alter the fact that the underlying litigation,
which is the dispute that gave rise to the actual controversy between the parties in this case, no longer implicates the validity
of the May 2009 election. Consequently, questions regarding the validity of the May 2009 election in this case are moot.

01 court to amend his complaint in Benson I to remove his challenge to the validity of the May 2009
02 election. Friedman Decl., Ex. 1, docket no. 59. PH&S-W does not oppose the amendment,
03 see Friedman Decl., ¶ 3, docket no. 59, which the Court construes as an admission that Benson
04 no longer seeks relief for conduct occurring after the May 2009 election.

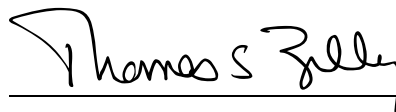
05 Benson no longer has any interest in adjudicating the validity of the May 2009 election,
06 and as such, PH&S-W's claim for declaratory relief has become moot because the parties no
07 longer have adverse legal interests.³ Accordingly, as there no longer exists an actual
08 controversy between Benson and PH&S-W on plaintiffs' Third Cause of Action, the Court
09 DENIES PH&S-W's motion for partial summary judgment on that claim, docket no. 26.⁴

10 **CONCLUSION**

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12 For the foregoing reasons, the Court DENIES plaintiffs' motion for partial summary
13 judgment, docket no. 26.

14 IT IS SO ORDERED.

15 DATED this 23rd day of March, 2011.

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18 Thomas S. Zilly
19 United States District Judge

20 ³ Moreover, the Court rejected PH&S-W's contention that Benson's claims arose after the May 2009 election in Benson I.
21 Benson I, Order, docket no. 25. To establish an actual controversy in this case, however, the Court would necessarily have to
reconsider whether Benson's claims arose after May 2009, which amounts to an inappropriate collateral attack on the Court's
Order for Remand in Benson I.

22 ⁴ The absence of a continuing actual controversy between the parties is likely dispositive of plaintiffs' remaining claims.
However, the Court limits the present Order to plaintiffs' pending motion for partial summary judgment, and will issue a
separate Order to show cause regarding the continued vitality of plaintiffs' claims.