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HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANDRIA C. HOUGHTON,

Plaintiff,

CASE NO. 2:16-cv-01186-RAJ

vs.

ORDER

THE HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY;

Defendant.

This matter comes before the Court on Plaintiff’s Motion to Withdraw the Motion to Reinstate Plaintiff’s case without prejudice for plaintiff filing a motion for attorney’s fees under ERISA, 29 U.S. C. §1132(g)(1). Dkt. # 32. Defendant does not oppose the withdrawing of the motion to reinstate Plaintiff’s case but does oppose Plaintiff’s request for attorney’s fees. Dkt. # 34.

The Court agrees with both parties that Plaintiff’s motion should be granted with

1 regard to withdrawing the motion to reinstate Plaintiff’s case. Therefore, the remaining
2 issue is whether Plaintiff may collect attorney’s fees.

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4 In cases such as this, ERISA grants Courts discretion to award attorney’s fees to
5 parties who prevail on the merits. 29 U.S.C. § 1132(g). The parties disagree on this
6 initial point—whether Plaintiff has prevailed on the merits. Dkt. ## 34 at 2-3, 36.
7 However, even if Plaintiff is considered to have prevailed, Defendant argues that the
8 *Hummell* factors suggest that an award of fees is not appropriate. Dkt. # 34 at 3.

9
10 In *Hummell*, the Ninth Circuit instituted guidelines for courts to apply when
11 exercising discretion under section 1132(g). *Hummell v. S. E. Rykoff & Co.*, 634 F.2d
12 446, 453 (9th Cir. 1980). The Ninth Circuit determined that courts should consider,
13 among other factors, “(1) the degree of the opposing parties’ culpability or bad faith; (2)
14 the ability 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 participants
17 and beneficiaries of an ERISA plan or to resolve a significant legal question regarding
18 ERISA; and (5) the relative merits of the parties’ positions.” *Id.* Though the Court
19 agrees that Plaintiff should not have had to resort to filing a motion in federal court
20 before receiving Defendant’s determination, the Court finds that the *Hummell* factors in
21 this case weigh in favor of Defendant. Accordingly, the Court **DENIES** Plaintiff’s
22 request for leave to seek attorney’s fees.
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26 Therefore, the Court **GRANTS** the motion to withdraw and **DENIES** the request
for attorney’s fees. Dkt. # 32. The motion to reopen this case is withdrawn. Dkt. # 26.

1 The Court further **GRANTS** Plaintiff's motion to file an amended exhibit. Dkt. # 31.

2 Dated this 30th day of May, 2018.

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5 The Honorable Richard A. Jones
6 United States District Judge
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