

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Owens v. Blue Shield of California

No. 24-cv-00400-HSG (N.D. Cal. Mar. 20, 2025) · No. 24-cv-00400-HSG · Decided March 20, 2025

SUMMARY

The United States District Court for the Northern District of California partially granted and partially denied motions to dismiss claims arising from the retroactive termination of Plaintiff Stephanie Owens’s Cal-COBRA health coverage. The court held that the continuation coverage remained subject to ERISA and allowed the denial-of-benefits and federal COBRA notice claims to proceed, while dismissing claims under ERISA §§ 1132(a)(2), 1132(a)(3), and 1105. The court also dismissed the § 1132(a)(1)(A) penalties claim against Blue Shield but allowed that claim to proceed against Frederickson and Gallagher.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Haywood S. Gilliam, Jr.
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 20, 2025
DOCKET	24-cv-00400-HSG
DISPOSITION	other
PROCEDURAL POSTURE	Three defendants moved to dismiss Plaintiff’s ERISA-related claims under Federal Rule of Civil Procedure 12(b)(6). The court considered the motions without oral argument and granted them in part and denied them in part.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, dismissal is appropriate only when the complaint lacks a cognizable legal theory or sufficient facts to support one. The court accepts well-pleaded factual allegations as true and construes the pleadings in the nonmoving party’s favor, but does not accept conclusory allegations, unwarranted factual deductions, or unreasonable inferences.
PRECEDENTIAL VALUE	Unknown; federal district court order with no reported citation in the source.

TOPICS

motions to dismiss

employee benefits

insurance

health law

civil procedure

PRACTICE AREAS

civil procedure

employee benefits

insurance

health law

employment law

QUESTIONS PRESENTED

1. Whether Owens's Cal-COBRA continuation coverage remained subject to ERISA.
2. Whether Owens adequately pleaded an ERISA claim for denial of benefits under 29 U.S.C. § 1132(a)(1)(B) against Blue Shield, Frederickson, and Gallagher.
3. Whether Owens adequately pleaded a plan-wide injury supporting relief under 29 U.S.C. § 1132(a)(2).
4. Whether Owens adequately pleaded a claim for equitable relief and breach of fiduciary duty under 29 U.S.C. § 1132(a)(3).
5. Whether Owens adequately pleaded claims for statutory penalties for failure to provide plan documents under 29 U.S.C. §§ 1132(a)(1)(A) and 1132(c), and claims based on inadequate COBRA notice under 29 U.S.C. § 1166.

HOLDINGS

1. A Cal-COBRA continuation policy that allows an employee to continue coverage under an employer's ERISA-governed plan by paying the premiums herself remains subject to ERISA.
2. The complaint adequately stated a claim for benefits under § 1132(a)(1)(B) against Blue Shield, Frederickson, and Gallagher at the motion-to-dismiss stage.
3. The § 1132(a)(2) claim was dismissed because the complaint alleged individual participant injuries rather than injury to the ERISA plan as a whole.
4. The § 1132(a)(3) claim was dismissed because the complaint did not clearly identify the equitable theory or relief sought and did not distinguish the claim from the denial-of-benefits claim.
5. The statutory-penalties claim was dismissed as to Blue Shield but survived as to Frederickson and Gallagher.
6. The court denied dismissal of the § 1166 notice claim because defendants provided no authority establishing that federal COBRA notice requirements cannot apply after a plaintiff elects Cal-COBRA coverage.
7. The court dismissed the claim under § 1105 as to all three defendants.

KEY QUOTATIONS

“Under a “continuation” policy, an individual employee elects to continue receiving health coverage under an employer’s ERISA-governed plan after her employment ends by paying the premiums herself.” (Section III.A)

“If the policy was governed by ERISA when [the plaintiff] was at [his employer], it continued to be governed by ERISA once he left.” (Section III.A)

“This Section, therefore, “gives a remedy for injuries to the ERISA plan as a whole, but not for injuries suffered by individual participants as a result of a fiduciary breach.”” (Section III.B.ii.a)

“The Court GRANTS IN PART and DENIES IN PART the motions to dismiss.” (Section IV)

FACTUAL BACKGROUND

Owens's employment with Frederickson ended on March 12, 2020, after which she elected Cal-COBRA continuation coverage under the Frederickson employer health plan and paid premiums directly to Blue Shield. After Frederickson was acquired by Gallagher, Frederickson advised Blue Shield to cancel the group coverage effective July 1, 2022, but Blue Shield did not terminate it until December 2022 and made the termination retroactive. Owens alleged that she received no advance notice, that Blue Shield had preapproved her cancer radiation treatment and continued accepting premiums, and that she incurred unpaid medical bills after coverage was retroactively cancelled.

PROCEDURAL HISTORY

Stephanie Owens filed a complaint against Blue Shield of California, Frederickson, and Gallagher arising from the retroactive termination of her Cal-COBRA continuation health coverage and the resulting unpaid medical expenses. Defendants separately moved to dismiss. The court denied dismissal of the ERISA applicability issue and several claims, but dismissed claims under 29 U.S.C. §§ 1132(a)(2), 1132(a)(3), and 1105 against all defendants, and dismissed the § 1132(a)(1)(A) claim against Blue Shield. The court granted leave to amend within 21 days, without adding new parties or claims.

DISPOSITION

other

CASES CITED

- *Mendiondo v. Centinela Hospital Medical Center*, 521 F.3d 1097, 1104 (9th Cir. 2008)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Manzarek*, 519 F.3d at 1031
- *In re Gilead Sciences Securities Litigation*, 536 F.3d 1049, 1055 (9th Cir. 2008)
- *Charnaux v. Health Net*, No. C 03-05875 SI, 2004 WL 2645976, at *4 (N.D. Cal. Nov. 16, 2004)
- *Scott v. Gulf Oil Corp.*, 754 F.2d 1499, 1501-1502 (9th Cir. 1985)
- *Waks v. Empire Blue Cross/Blue Shield*, 263 F.3d 872, 874-877 (9th Cir. 2001)
- *Qualls By & Through Qualls v. Blue Cross of California, Inc.*, 22 F.3d 839, 842-844 & nn.1, 4 (9th Cir. 1994)
- *Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204, 1213 (9th Cir. 2020)
- *Wise v. Verizon Communications, Inc.*, 600 F.3d 1180, 1189 (9th Cir. 2010)

- *LaRue v. DeWolff, Boberg & Associates, Inc.*, 552 U.S. 248, 256 (2008)
- *Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134, 142 (1985)
- *Mathews v. Chevron Corp.*, 362 F.3d 1172, 1178 (9th Cir. 2004)
- *Waller v. Blue Cross of California*, 32 F.3d 1337, 1342 (9th Cir. 1994)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
STEPHANIE OWENS, Case No. 24-cv-00400-HSG 8 Plaintiff, ORDER GRANTING IN PART
AND DENYING IN PART MOTIONS TO 9 v. DISMISS 10 BLUE SHIELD OF CALIFORNIA,
et al., Re: Dkt. Nos. 15, 19, 22 11 Defendants. 12 13 Pending before the Court are three motions to
dismiss filed by Defendants. Dkt.

Nos. 15, 14 19, 22. The Court finds these matters appropriate for disposition without oral
argument and the 15 matters are deemed submitted. See Civil L.R. 7-1(b). For the reasons detailed
below, the Court 16 GRANTS IN PART and DENIES IN PART the motions to dismiss. 17 I.
BACKGROUND 18 Plaintiff Stephanie Owens alleges that she was employed by Defendant
Valerie 19 Fredrickson and Company (“Frederickson”) until her termination on March 12, 2020.

See Dkt. 20 No. 1 (“Compl.”) at ¶¶ 1, 4, 25. While employed by Frederickson, Plaintiff received
health 21 insurance benefits through The Frederickson Partners Group Health Plan (the
“Frederickson 22 Plan”), which was insured by Blue Shield of California. See *id.* at ¶¶ 2, 28.
Plaintiff’s health 23 insurance benefits “ceased” on March 31, 2020. See *id.* at ¶ 4.

However, Defendant California 24 Physicians’ Service dba Blue Shield of California (“Blue
Shield”) sent letters to Plaintiff, 25 notifying her that she may be entitled to continued coverage
under the California Continuation of 26 Benefits Replacement Act (“Cal-COBRA”). See *id.* at ¶ 5;
Dkt. No. 1-1, Ex. 1.

The letter stated 27 that “[u]nless otherwise indicated, the benefits available under this Cal-
COBRA extension of 1 See Dkt. No. 1-1, Ex. 1 at 7. The letters further noted that “Cal-COBRA
coverage will terminate 2 should the contract between the above employer group and Blue Shield
terminate[.]” See *id.* at 9. 3 Plaintiff submitted her Cal-COBRA election form to Blue Shield on
April 27, 2020.

See Compl. 4 at ¶ 6; see also Dkt. No. 1-1, Ex. 1 at 13. The form states that “I hereby elect Blue
Shield of 5 California subscriber coverage,” and “Blue Shield benefits, dues, and contract
modifications will 6 be in accordance with the group service contract and as allowed under Cal-
COBRA.” *Id.* For the 7 next two and a half years, Plaintiff paid monthly premiums and received
her Cal-COBRA benefits.

8 See Compl. at ¶ 7. 9 In 2022, Plaintiff was diagnosed with throat cancer and underwent treatment. See id. at 10 ¶¶ 8–9. She was prescribed a radiation treatment program, which Blue Shield preapproved by 11 letter dated December 9, 2022. See id. at ¶ 9; Dkt. No. 1-2, Ex. 2. Plaintiff’s final radiation 12 treatment was in January 2023. See Compl. at ¶ 10. 13 During this time and unbeknownst to Plaintiff, Frederickson was acquired by Defendant 14 Gallagher & Co. (“Gallagher”) in May 2022.

See id. at ¶ 11. Gallagher offered its own health 15 insurance program. See id. at ¶¶ 11–12, 29. Accordingly, in June 2022, Frederickson advised 16 Blue Shield to cancel its insurance coverage effective July 1, 2022. Id. at ¶ 12.

The cancellation, 17 however, did not happen right away and took until December 2022. See id. at ¶ 14. On December 18 15, 2022, Blue Shield finally terminated Frederickson’s health insurance coverage retroactive to 19 July. See id. Blue Shield notified Plaintiff via letter dated December 15, 2022, that Plaintiff’s 20 coverage had been terminated retroactively.

See id. at ¶ 15. The letter stated that Plaintiff’s 21 “coverage has been cancelled effective 10/01/22.” Id.; see also Dkt. No. 1-3, Ex. 3. Plaintiff did 22 not receive any advance notice of the cancellation. See id. at ¶¶ 13, 18, 33, 41. Plaintiff further 23 alleges that although Blue Shield ceased making any payments for covered claims as of October 1, 24 Blue Shield had continued to receive and deposit her premium payments.

See id. at ¶ 34. Plaintiff 25 alleges that as a result, she was without coverage from December 2022 to February 2023, and 26 incurred medical bills for her cancer treatment during that time. Id. at ¶¶ 19–20, 35, 37. 27 Based on these allegations, Plaintiff brings several causes of action against Frederickson, 1 (“ERISA”). See id. at ¶¶ 43–65. Defendants have each moved to dismiss the complaint.

See Dkt. 2 Nos. 15, 19, 22. 3 II. LEGAL STANDARD 4 Federal Rule of Civil Procedure 8(a) requires that a complaint contain “a short and plain 5 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A 6 defendant may move to dismiss a complaint for failing to state a claim upon which relief can be 7 granted under Rule 12(b)(6). “Dismissal under Rule 12(b)(6) is appropriate only where the 8 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” 9 *Mendiondo v. Centinela Hosp.*

Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 10 12(b)(6) motion, a plaintiff need only plead “enough facts to state a claim to relief that is plausible 11 on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible 12 when a plaintiff pleads “factual content that allows the court to draw the reasonable inference that 13 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

14 In reviewing the plausibility of a complaint, courts “accept factual allegations in the 15 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” 16 *Manzarek*, 519 F.3d at 1031. Nevertheless, courts do not “accept as true allegations that are 17 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead* 18 Scis.

Secs. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (quoting *Sprewell v. Golden State Warriors*, 19 266 F.3d 979, 988 (9th Cir. 2001)). 20 III. DISCUSSION 21 Each Defendant attempts to shift responsibility, arguing that the others are ultimately 22 responsible for the lack of notice and Plaintiff’s lost coverage. This is the same tactic that 23 Defendants allegedly employed before Plaintiff filed this case.

See Compl. at ¶¶ 16, 17. In any 24 event, Defendants’ legal arguments overlap considerably. First, Defendants urge that California 25 law—and not ERISA—governs this case. Second, they argue that even if ERISA does apply, 26 Plaintiff has failed to state a claim for relief against them under the cited provisions. 27 A. Application of ERISA 1 ERISA claims therefore fail, because this case involves the termination of a Cal-COBRA plan.

2 See Dkt. No. 15 at 4–5; Dkt. No. 19 at 4–7; Dkt. No. 22 at 5–6. The Court notes that the parties 3 provide only a cursory analysis of this issue, which alone is reason to deny the motions. 4 Critically, Defendants offer no discussion about the nature of Cal-COBRA or the scope of ERISA. 5 Rather, Defendants’ briefs are nearly identical and cite a single, non-binding district court case: 6 *Charnaux v. Health Net*, No. C 03-05875 SI, 2004 WL 2645976, at *4 (N.D.

Cal. Nov. 16, 2004). 7 Defendants’ reliance on *Charnaux* is misplaced. 8 In *Charnaux*, the plaintiff alleged that he had enrolled in a health insurance plan offered 9 through his employer. See *Charnaux*, 2004 WL 2645976, at *1. When his employment ended, 10 the plaintiff continued his health insurance plan with the defendant Health Net through a Cal- 11 COBRA continuation plan, paying his premiums directly to Health Net.

Id. The plaintiff alleged 12 that Health Net had improperly terminated his policy for failing to timely pay his premiums. See 13 *id.* at *1–2. The plaintiff had initially filed state law claims against Health Net in state court. *Id.* 14 Health Net removed the case to federal court, arguing that the state law claims were preempted 15 under ERISA. *Id.* at *2.

The court denied the plaintiff’s motion to remand, explaining in detail 16 that the “continuation” policy under Cal-COBRA was subject to ERISA. See *Charnaux v. Health* 17 *Net*, Case No. 03-cv-05875-SI (N.D. Cal.), Dkt. No. 19 at 4–5.

The plaintiff then amended his 18 complaint to allege a single cause of action to recover benefits under ERISA § 502(a)(1)(B), 28 19 U.S.C. § 1132(a)(1)(B). See *id.*, Dkt. No. 25. It is this ERISA claim that the court addressed in 20 the summary judgment order cited by Defendants. See

Charnaux, 2004 WL 2645976, at *1; cf. 21 id. at *3 (discussing which standard of review to apply under ERISA).

Defendants fail to contend 22 with, or even acknowledge, this plainly relevant case history.¹ 23 Despite Defendants' urging, when placed in proper context, the Charnaux summary 24 judgment order does not compel dismissal of Plaintiff's ERISA claims here. When addressing the 25 plaintiff's claim for benefits under ERISA, the court simply agreed with the defendant that it 26 should look to California contract law to determine whether Health Net had acted within its 27 1 authority to terminate plaintiff's Cal-COBRA plan for nonpayment.

See Charnaux, 2004 WL 2 2645976, at *4. Quoting a Ninth Circuit case, the Charnaux court pointed out that "ERISA does 3 not contain a body of contract law to govern the interpretation and enforcement of employee 4 benefit plans." Id. (quoting *Scott v. Gulf Oil Corp.*, 754 F.2d 1499, 1501–02 (9th Cir. 1985)). 5 "Instead, Congress intended for the courts, borrowing from state law where appropriate, and 6 guided by the policies expressed in ERISA and other federal labor laws, to fashion a body of 7 federal common law to govern ERISA suits." Id. (quoting *Scott*, 754 F.2d at 1501–02).

Neither 8 the Charnaux court nor the Ninth Circuit in *Scott* held that California law somehow displaces 9 ERISA. The Court may, however, look to California law as appropriate when interpreting the 10 terms of a health insurance plan under ERISA. But this narrow holding does not appear 11 dispositive—or even relevant—to the pending motions to dismiss. 12 In short, Defendants offer no authority for their contention that ERISA does not apply to 13 the Cal-COBRA continuation plan at issue here.

Nor could they. The Ninth Circuit has 14 distinguished between a "continuation" policy and a "conversion" policy, explaining that a 15 continuation policy remains subject to ERISA. See *Waks v. Empire Blue Cross/Blue Shield*, 263 16 F.3d 872, 875–76 (9th Cir. 2001) (citing *Qualls By & Through Qualls v. Blue Cross of California, 17 Inc.*, 22 F.3d 839, 843, n.4 (9th Cir.

1994)). Under a "continuation" policy, an individual 18 employee elects to continue receiving health coverage under an employer's ERISA-governed plan 19 after her employment ends by paying the premiums herself. See id. at 876–77; see also *Qualls*, 22 20 F.3d at 842, n.1.

Under a "conversion" policy, however, an individual employee exercises 21 "conversion rights" under an ERISA-governed plan to "leave[] the plan and obtain[] a new, 22 separate, individual policy" that "is independent of the ERISA plan and does not place any 23 burdens on the plan administrator or the plan." See *Waks*, 263 F.3d at 874–76. 24 In *Qualls*, as here, the plaintiff left his employment and opted for continuation coverage 25 under his employer's ERISA health insurance plan by paying the premiums himself.

22 F.3d at 26 842, & n.1. The parties disputed whether this “continuation” plan was subject to ERISA. See 27 id. at 842–44. The Court first held that the continuation coverage still constituted a “plan” under 1 that required constant administrative attention by the insurer.” Id. at 843.

The Court also rejected 2 the suggestion that the continuation plan constituted a new “private policy” because it “was based 3 solely on his previous employment.” Id. at 843, n.4. The Court thus concluded that “[i]f the 4 policy was governed by ERISA when [the plaintiff] was at [his employer], it continued to be 5 governed by ERISA once he left.” Id. 6 Here, Plaintiff alleges that she elected to continue receiving health insurance coverage 7 under the Frederickson Plan when her employment ended and paid premiums directly to Blue 8 Shield.

See Compl. at ¶¶ 2, 4–7, 28. There appears to be no question that the Frederickson Plan 9 was an ERISA plan governed by ERISA. See id. at ¶ 28. Therefore, Plaintiff’s continuation plan 10 was likewise governed by ERISA. See Qualls, 22 F.3d at 843, n.4.

The Court DENIES the 11 motions on this basis.² 12 B. ERISA Claims 13 Defendants next argue, in the alternative, that even if ERISA applies, Plaintiff has failed to 14 state an ERISA claim against them. 15 i. Denial of Benefits (Section 1132(a)(1)(B)) 16 All three Defendants challenge the sufficiency of Plaintiff’s allegations that she is entitled 17 to benefits under the Frederickson Plan under § 1132(a)(1)(B).

Section 1132(a)(1)(B) provides 18 that a plan participant may bring a civil action “to recover benefits due to [her] under the terms of 19 [her] plan; to enforce [her] rights under the terms of the plan, or to clarify [her] rights to future 20 benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B).

To state a claim for denial of 21 benefits under the relevant plan, the plaintiff must allege “the existence of an ERISA plan, and 22 identify the provisions of the plan that entitle [her] to benefits.” *Doe v. CVS Pharmacy, Inc.*, 982 23 F.3d 1204, 1213 (9th Cir. 2020) (quotation omitted).

Here, Defendants’ arguments sidestep the 24 allegations in the complaint. 25 26 • Blue Shield. Defendant Blue Shield argues that under the Frederickson Plan, and 27 1 its continuation under Cal-COBRA, Defendant Frederickson had the authority to 2 cancel the plan, which it did. See Dkt. No. 19 at 7–9. Defendant Blue Shield 3 further argues that Frederickson—and not Blue Shield—had the responsibility to 4 inform Plaintiff of the cancellation.

Id. But accepting Plaintiff’s allegations as 5 true, as the Court must at this stage, Plaintiff contends that the plan was not 6 properly terminated, with the consequence that Blue Shield is responsible at least in 7 part for failing to pay for her ongoing medical treatment. Plaintiff alleges that she 8 did not receive any advance notice, Blue Shield had pre-approved her treatment, 9 and Blue Shield had accepted her premium payments even during the period of 10 time the plan was purportedly cancelled.

See Compl. at ¶¶ 7, 14–16, 21, 34, 37. 11 Even if the Court were to consider the language of the plan, which Blue Shield 12 attaches to its motion to dismiss, it says nothing about permitting retroactive 13 cancellation or the continued receipt of premiums following such a cancellation. 14 15 • Frederickson. Defendant Frederickson urges that it had no responsibility for 16 Plaintiff’s benefits since her employment had previously terminated.

See Dkt. No. 17 22 at 6–8. However, Plaintiff alleges that Defendant Frederickson was responsible 18 for advising Blue Shield to cancel the Frederickson Plan. See Compl. at ¶ 12. 19 Plaintiff further alleges that Defendant Frederickson failed to provide her proper 20 notice of this cancellation. See *id.* at ¶¶ 13, 33. Defendant does not cite any 21 authority that would absolve it of responsibility, particularly at the motion to 22 dismiss stage.

To the contrary, Cal-COBRA appears to require employers “to 23 notify qualified beneficiaries currently receiving continuation coverage, whose 24 continuation coverage will terminate under one group benefit plan... of the 25 qualified beneficiary’s ability to continue coverage under a new group benefit plan 26 for the balance of the period the qualified beneficiary would have remained covered 27 under the prior group benefit plan.” See Cal. Health & Safety Code § 1366.25(b).

1 had elected continuation coverage, Cal-COBRA provides a mechanism by which 2 an employer may request such information. *Id.* 3 4 • Gallagher. Defendant Gallagher argues that because Plaintiff was never a 5 Gallagher employee or enrolled in a Gallagher ERISA plan, Plaintiff has no 6 standing to sue it. See Dkt. No. 15 at 6–7.

However, Plaintiff alleges that 7 Defendant Frederickson was acquired by Defendant Gallagher in May 2022— 8 months before her coverage was cancelled. See Compl. at ¶¶ 1, 11. At least as 9 alleged, therefore, Defendant Gallagher may be directly responsible for (1) the 10 cancellation of the Frederickson Plan and (2) the lack of notice given to Plaintiff 11 about the cancellation and her rights to opt into a Gallagher-sponsored plan for the 12 duration of her Cal-COBRA coverage.³ 13 14 The Court DENIES the motions to dismiss Plaintiff’s § 1132(a)(1)(B) claim as to any Defendant.

15 i. Breach of Fiduciary Duties 16 a. Section 1132(a)(2) 17 Defendants argue that Plaintiff’s claim for breach of fiduciary under § 1132(a)(2) should 18 be dismissed. Section 1132(a)(2) provides that “[a] civil action may be brought... by a 19 participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title.” 20 U.S.C. § 1132(a)(2).

Section 1109(a), in turn, states that a fiduciary that breaches its duties under 21 ERISA “shall be personally liable to make good to such plan any losses to the plan resulting from 22 each such breach, and to restore to such plan any profits of such fiduciary which have been made 23 through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or 24 remedial relief as the court may deem appropriate.” 29 U.S.C. § 1109 (emphasis added).

This 25 Section, therefore, “gives a remedy for injuries to the ERISA plan as a whole, but not for injuries 26 27 3 Plaintiff suggests in her opposition brief that Defendant Gallagher could also be liable under a 1 suffered by individual participants as a result of a fiduciary breach.” *Wise v. Verizon Commc’ns, 2 Inc.*, 600 F.3d 1180, 1189 (9th Cir. 2010) (citing *LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 3 U.S. 248, 256 (2008)); *Massachusetts Mut.*

Life Ins. Co. v. Russell, 473 U.S. 134, 142 (1985) (“A 4 fair contextual reading of the statute makes it abundantly clear that its draftsmen were primarily 5 concerned with the possible misuse of plan assets, and with remedies that would protect the entire 6 plan, rather than with the rights of an individual beneficiary.”).

Accordingly, “[t]o allege a 7 fiduciary breach under § 1132(a)(2), [a plaintiff] must allege that the fiduciary injured the benefit 8 plan or otherwise jeopardized the entire plan or put at risk plan assets.” *Wise*, 600 F.3d at 1189 9 (quotation omitted). 10 Here, Defendants argue that Plaintiff is seeking to redress individual injuries and is not 11 seeking benefits that inure to the Plan as a whole.

See Dkt. No. 15 at 9; Dkt. No. 19 at 9–11; Dkt. 12 No. 22 at 8–9. Plaintiff responds that she alleges that other, unidentified Plan participants suffered 13 in the same way that she did. See, e.g., Dkt. No. 27 at 11–12. Critically, however, the complaint 14 does not allege “that the plan as a whole incurred an injury as a result” of Defendants’ conduct. 15 See *Wise*, 600 F.3d at 1189.

The complaint vaguely states that “Defendants’ failure to pay 16 covered claims is ongoing, and thus the harm to Plaintiff and other Plan participants is continuing 17 and increasing by the day.” See Compl. at ¶ 37. But the complaint provides no factual detail to 18 support the assertion that other Plan participants were treated similarly, or that even if they were, 19 such mishandling caused Plan-wide injury rather than injury to individual Plan participants.

The 20 Court therefore GRANTS the motions to dismiss this claim. 21 b. Section 1132(a)(3) 22 Defendants next argue that Plaintiff’s claim for breach of fiduciary duty and request for 23 equitable relief under § 1132(a)(3) should be dismissed as well. Section 1132(a)(3) provides that 24 “[a] civil action may be brought... by a participant, beneficiary, or fiduciary (A) to enjoin any act 25 or practice which violates any provision of this subchapter or the terms of the plan, or (B) to 26 obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any 27 provisions of this subchapter or the terms of the plan.” To establish an action for equitable relief 1 and must violate [] ERISA–imposed fiduciary obligations.” See *Mathews v. Chevron Corp.*, 362 2 F.3d 1172, 1178 (9th Cir.

2004) (quotation omitted) (original brackets). 3 Defendants largely take issue with the accuracy of Plaintiff’s allegations, which is 4 improper at the motion to dismiss stage. See Dkt. No. 15 at 7–8; Dkt. No. 19 at 11–12; Dkt. No. 5 22 at 10–11. Plaintiff alleges that Defendant Frederickson, as the

sponsor of the Frederickson 6 Plan, was the Plan Administrator and therefore a fiduciary for purposes of ERISA.

See Compl. at 7 ¶¶ 26, 47. Likewise, however inartfully pled, Plaintiff alleges that Defendant Gallagher became a 8 Plan Administrator and fiduciary after it acquired Defendant Frederickson in May 2022. See *id.* at 9 ¶¶ 1, 11, 27, 47. And Plaintiff alleges that Defendant Blue Shield was a fiduciary because it was 10 “responsible for making and did make discretionary decisions regarding, among other things, Plan 11 administration, and the disbursement of Plan benefits and Plan assets... and exercised control 12 over Plan assets.” *Id.* at ¶ 47.

As discussed in Section III.B.i above, Plaintiff has also alleged that 13 they each breached their fiduciary duties by retroactively terminating her coverage and failing to 14 provide prior notice. Contrary to Defendants’ suggestion, Plaintiff is not challenging “the decision 15 to terminate, but rather the implementation of the decision” to terminate the Plan.

See *Waller v. 16 Blue Cross of California*, 32 F.3d 1337, 1342 (9th Cir. 1994) (emphasis in original). 17 Still, part of the difficulty in parsing this claim is that Plaintiff gestures to the rest of her 18 complaint for support and only alludes to the equitable relief that she is seeking.

In the complaint, 19 she generically states that she “is entitled to appropriate equitable relief to ensure the protection of 20 her rights going forward and prevent unjust enrichment of Defendants...” See Compl. at ¶ 55. 21 But it is not clear how this is distinct from her claim under § 1132(a)(1)(B) for unpaid medical 22 bills.

In her opposition briefs, Plaintiff suggests that she may be seeking “surcharge damages” or 23 some other alternative relief based on prohibited transactions under 29 U.S.C. § 1106(a). See, e.g., 24 Dkt. No. 27 at 12–14; Compl. at ¶¶ 49, 56. But she does not explain those theories either. Neither 25 the Court nor Defendants should have to guess as to the nature of her claim or the relief sought.

26 The Court therefore GRANTS the motions to dismiss on this basis.⁴ 27 1 ii. Penalties (29 U.S.C. §§ 1132(a)(1)(A), 1132(c)) 2 Next, Defendants urge that the Court must dismiss Plaintiff’s claim for penalties under 3 § 1132(a)(1)(A) for failing to provide the requested Plan documents.

The parties appear to agree 4 that only a plan administrator may be held liable for failing to comply with reporting and 5 disclosure requirements. Compare Dkt. No. 19 at 12, with Dkt. No. 27 at 14–15. 6 7 • Blue Shield. Defendant Blue Shield argues that Defendant Frederickson is the plan 8 administrator, so Blue Shield cannot be held liable. Dkt. No. 19 at 12.

Plaintiff 9 appears to concede that she does not know whether Blue Shield is a plan 10 administrator, but suggests that Defendants cannot “benefit” from intentionally 11 keeping her in the dark. See Dkt. No. 27 at 14–15. Plaintiff, however, fails to offer 12 any support for her bare

conclusion that Defendant Blue Shield is a plan administrator under these circumstances, and doing so is counsel's Rule 11 obligation when filing a complaint.

The Court therefore GRANTS the motion as to this claim against Defendant Blue Shield. • Frederickson. Defendant Frederickson again argues that ERISA does not apply here. See Dkt. No. 22 at 12. The Court has already rejected this argument in Section III.A above, and accordingly DENIES the motion on this basis. • Gallagher. Defendant Gallagher argues that there is no support for the contention that it is affiliated with the Frederickson Plan or otherwise acted as a plan administrator.

See Dkt. No. 15 at 9. Defendant Gallagher asserts that any "coverage is exclusively the responsibility of Frederickson and provided under the Fredrickson Plan." See Dkt. No. 29 at 11. However, this ignores Plaintiff's allegations that Defendant Gallagher acquired Defendant Frederickson in May 2022 before the Plan was terminated. See Compl. at ¶ 11.

Defendant Gallagher may of course challenge Plaintiff's allegations—and this claim—on summary judgment. At this stage, however, the Court does not address any of the many factual disputes raised by the parties. The Court therefore GRANTS the motion to dismiss Plaintiff's claim under § 1132(a)(1)(A) as to Defendant Blue Shield but DENIES the motions as to Defendants Frederickson and Gallagher.

8 iii. Notice of Federal COBRA (29 U.S.C. § 1166) 9 Lastly, Defendants argue that Plaintiff's claim that they failed to provide adequate notice fails under § 1166 because Plaintiff has alleged that she elected Cal-COBRA coverage and 11 California law applies. See, e.g., Dkt. No. 19 at 12–13; Compl. at ¶¶ 6–7. But the Court has 12 already explained that ERISA still applies to the Cal-COBRA continuation plan.

See Section III.A 13 above. To the extent Defendants suggest that any notice requirements under federal COBRA 14 cannot apply once a plaintiff elects Cal-COBRA coverage, they have not provided any authority 15 for this argument.

The Court therefore DENIES the motions on this basis. 16 IV. CONCLUSION 17 The Court GRANTS IN PART and DENIES IN PART the motions to dismiss. Dkt. Nos. 15, 19, 22. The Court GRANTS the motion to dismiss as to Plaintiff's claims under 19 §§ 1132(a)(2), (a)(3), and 1105 as to all three Defendants; GRANTS the motion to dismiss the 20 claim under § 1132(a)(1)(A) as to Defendant Blue Shield; but otherwise DENIES the motions to 21 dismiss.

22 At this stage in the litigation, the Court cannot say that amendment would be futile. 23 Plaintiff may therefore file an amended complaint within 21 days of the date of this order provided 24 counsel can do so consistent with their Rule 11 obligations. Any amended complaint may not add 25 any new parties or claims.

The Court further SETS case a case management conference on May 26 13, 2025, at 2:00 p.m. The hearing will be held by Public Zoom Webinar. All counsel, members 27 of the public, and media may access the webinar information at 1 management statement by May 6, 2025. 2 IT IS SO ORDERED. 3 Dated: 3/20/2025 (J }, ff f 4 HAYWOOD S. GILLIAM, JR. 5 United States District Judge 6 7 8 9 10 11 12 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28