

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Andi Cox v. WSP USA Inc. Group Insurance Plan, Inc.

Cox · No. 24-cv-08812-HSG · Decided January 16, 2026

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
ANDI COX, Case No. 24-cv-08812-HSG 8 Plaintiff, ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO 9 v. DISMISS, GRANTING IN PART AND DENYING IN
PART MOTION TO 10 WSP USA INC GROUP INSURANCE TAKE JUDICIAL NOTICE AND
PLAN, INCORPORATE BY REFERENCE, 11 AND GRANTING MOTION TO SEAL
Defendant.

12 Re: Dkt. No. 21, 22, 22-1, 34-1 13 Before the Court is Defendant WSP USA Inc. Group
Insurance Plan’s motion to seal, Dkt. 14 No. 21; motion for the Court to take judicial notice and to
incorporate exhibits into the complaint, 15 Dkt. Nos. 22-1, 34-1; and motion to dismiss, Dkt. No.
22.

For the reasons detailed below, the 16 Court GRANTS the motion to seal; GRANTS IN PART and
DENIES IN PART the motion to 17 take judicial notice and incorporate by reference; and
GRANTS IN PART and DENIES IN 18 PART the motion to dismiss. 19 I. BACKGROUND 20
Plaintiff Andi Cox is an employee group health benefit plan member of Defendant WSP 21 USA
Inc. Group’s Insurance Plan.

Dkt. No. 9 ¶¶ 3–4. Non-party Aetna Life Insurance Company 22 administers the health benefits
under the plan and acts on WSP’s behalf. Id. ¶ 5. Cox is a 23 transgender woman with a diagnosis
of gender dysphoria, which causes psychological distress 24 from experiencing a discrepancy
between her assigned gender and gender identity. Id. ¶ 8. 25 The Plan provides coverage for
“medically necessary” care, which Aetna determines by 26 evaluating whether the treatment is “in
accordance with generally accepted standards of medical 27 practice.” Dkt.

No. 39 at 87, 105. Generally accepted standards of medical practice are defined in 1 reviewed
medical literature generally recognized by the relevant medical community” and 2 “[f]ollow[] the
standards set forth in our clinical policies and applying clinical judgment.” Id. at 3 105. Aetna
separately provides clinical policy bulletins that define what procedures are medically 4 necessary
to treat certain conditions, including gender affirming surgery.

See Dkt. No. 39 at 119– 5 67. That document reads, in relevant part: Aetna considers the
following procedures that may be performed as a 6 component of gender transition as not

medically necessary and cosmetic (not an all-inclusive list)... 7 ▪ Facial Gender Affirming Procedures, including: • Brow (reduction, augmentation, lift) 8 • Hair line advancement and/or hair transplant 9 • Facelift/mid-face lift (following alteration of the underlying skeletal structures) (platysmaplasty) 10 • Blepharoplasty (lipofilling) • Rhinoplasty (+/- fillers) 11 • Cheek (implant, lipofilling) 12 • Lip (upper lip shortening, lip augmentation) • Lower jaw (reduction of mandibular angle, augmentation) 13 • Chin reshaping (osteoplastic, alloplastic (implant-based)) 14 • Chondrolaryngoplasty (also known as Adam's apple reduction, thyroid cartilage reduction, or tracheal shave) 15 • Vocal cord surgery 16 Id. at 123.

17 Cox previously sued WSP for denying her claim for facial hair removal services as part of 18 her treatment for gender dysphoria. Dkt. No. 9 ¶ 38. After litigating before Judge Chhabria, the 19 parties entered a settlement agreement on June 27, 2024, Dkt. No. 39 at 169–73. Cox released 20 “any and all claims” related to the Disputed Claims (“for health benefits related to a facial hair 21 removal”) and any claims that Cox asserted “or could have asserted” in that case.

Dkt. No. 39 at 22 169, 171. 23 In March 2024, Aetna denied Cox’s request for coverage for facial feminization surgery. 24 Dkt. No. 9 ¶ 10. Plaintiff alleges that in its denial, Aetna contended that the procedure is not 25 considered medically necessary under the clinical policy bulletin. Id. In May, Cox appealed the 26 denial, arguing that the procedure was medically necessary to treat gender dysphoria and 27 providing medical studies that supported a medical necessity finding.

Id. ¶¶ 11–14. Aetna denied 1 necessary by our [Clinical Policy Bulletin] and your plan,” but did not address the clinical studies 2 Cox provided. Id. ¶¶ 15–17. 3 In June 2024, Cox submitted her second appeal, arguing that the surgery was considered 4 medically necessary by the World Professional Association for Transgender Health, the 5 Transgender Law Center, and the American Psychological Association, and that other health 6 insurance companies cover this care.

Id. ¶ 18. She argued that the Clinical Policy Bulletin was 7 wrong in its assessment of medical necessity. Id. In August, she resubmitted the appeal with a 8 corrected reference number, studies regarding the chin surgery she sought, and a letter of support 9 from her therapist. Id. ¶ 22. Aetna denied Cox’s second appeal, indicating again that the plan 10 excludes those services.

Id. ¶¶ 26–27. 11 Cox now sues WSP for denying her benefits in violation of ERISA and for a declaration 12 that the Cox I settlement does not bar the current claims. Dkt. No. 9 ¶ 6–8, 29, 36. Cox alleges 13 that the facial feminization surgery she seeks in this lawsuit is substantively different from the 14 facial hair removal procedure because they have separate CPT codes, providers, places of service, 15 denials, and appeals.

Id. ¶ 41(a). She further alleges that she could not have asserted the facial 16 feminization claim until September 2024 because she had not exhausted the Plan’s internal appeal 17 process before then. Id. ¶ 41(b). 18 II. MOTION TO SEAL 19 A. Legal Standard 20 Courts generally apply a

“compelling reasons” standard when considering motions to seal 21 documents attached to dispositive motions.

Pintos v. Pac. Creditors Ass’n, 605 F.3d 665, 678 (9th Cir. 2010). “This standard derives from the common law right ‘to inspect and copy public records and documents, including judicial records and documents.’” *Id.* (quoting *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). “[A] strong presumption in favor of access is the starting point.” *Kamakana*, 447 F.3d at 1178 (quotations omitted).

To overcome this strong presumption, the party seeking to seal a document attached to a dispositive motion must “articulate compelling reasons supported by specific factual findings that outweigh the general understanding the judicial process” and “significant public events.” *Id.* at 1178–79 (quotations omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

The Court must “balance[] the competing interests of the public and the party who seeks to keep certain judicial records secret. After considering these interests, if the court decides to seal certain judicial records, it must base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture.” *Id.* Civil Local Rule 79-5 supplements the compelling reasons standard set forth in *Kamakana*: the party seeking to file a document or portions of it under seal “must explore all reasonable alternatives to filing documents under seal, minimize the number of documents filed under seal, and avoid wherever possible sealing entire documents....” Civil L.R.

79-5(a). The party must further explain the interests that warrant sealing, the injury that will result if sealing is declined, and why a less restrictive alternative to sealing is not sufficient. See Civil L.R. 79-5(c). B. Discussion WSP filed portions of its settlement agreement with Cox under seal. It sought to seal Cox’s personally identifiable information, including her birth date, social security number, and bank account numbers, as well as the settlement amount.

Dkt. No. 21 at 2. WSP argues that sealing Cox’s personal information is supported by the Federal Rules, and that sealing the settlement agreement’s financial terms is a common practice in this district that encourages future settlements. *Id.* at 2–3. Cox does not oppose WSP’s motion. The Court finds good cause to seal this information.

The public release of Cox’s birth date, social security number, and bank account numbers could expose her to risk of loss, and the Federal Rules of Civil Procedure explicitly endorse sealing

these sorts of materials. See Fed. R. 27 Civ. P. 5.2(a). There is further good cause to seal the settlement amount.

The parties included a 1 not necessary for the public to understand the nature of this separate case. Dkt. No. 39 ¶ 9. 2 WSP's request is narrowly tailored to seal only the materials necessary to protect the interests of 3 the parties and the public. Dkt. No. 21 at 3. 4 The Court therefore GRANTS the motion to seal the identified portions of the settlement 5 agreement attached to the motion to dismiss.

6 III. MOTION TO INCORPORATE DOCUMENTS BY REFERENCE OR TAKE JUDICIAL NOTICE 7 8 A. Legal Standard 9 As a general matter, district courts may not consider material outside the pleadings when 10 assessing the sufficiency of a complaint under Rule 12(b)(6). *Lee v. City of Los Angeles*, 250 F.3d 11 668, 688 (9th Cir. 2001).

However, there are two exceptions to this rule: the incorporation-by- 12 reference doctrine and judicial notice under Federal Rule of Evidence 201. See *Khoja v. Orexigen 13 Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). Both procedures permit district courts to 14 consider materials outside a complaint without converting a motion to dismiss into a summary 15 judgment.

Id.; see *Lee*, 250 F.3d at 688–89. 16 The incorporation by reference doctrine is a judicially created doctrine that allows a court 17 to consider certain documents as though they were part of the complaint itself. *Khoja*, 899 F.3d at 18 1002. This is to prevent a plaintiff from cherry-picking certain portions of documents that support 19 her claims, while omitting portions that weaken her claims.

Id. Incorporation by reference is 20 appropriate “if the plaintiff refers extensively to the document or the document forms the basis of 21 plaintiff's claim.” *Id.* However, “the mere mention of the existence of a document is insufficient 22 to incorporate the contents” of a document. *Id.* Under the incorporation-by-reference doctrine, a 23 court may consider evidence on which the complaint “necessarily relies” if: (1) the complaint 24 refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party 25 questions the authenticity of the copy attached to the 12(b)(6) motion.

Marder v. Lopez, 450 F.3d 26 445, 448 (9th Cir. 2006). If these conditions are met, the court may treat such a document as part 27 of the complaint and may assume the truth of the document's contents for purposes of a motion to 1 However, while a court “may assume [an incorporated document's] contents are true for purposes 2 of a motion to dismiss... it is improper to assume the truth of an incorporated document if such 3 assumptions only serve to dispute facts stated in a well-pleaded complaint.” *Khoja*, 899 F.3d at 4 1002.

5 Federal Rule of Evidence 201(b) permits a court to notice an adjudicative fact if it is “not 6 subject to reasonable dispute because it: (1) is generally known within the trial court's territorial 7

jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot 8 reasonably be questioned.” Fed. R. Evid. 201(b).

In *Khoja*, the Ninth Circuit discussed the 9 judicial notice rule and incorporation by reference doctrine, noting that a court may take “judicial 10 notice of matters of public record,” but “cannot take judicial notice of disputed facts contained in 11 such public records.” 899 F.3d at 999 (citation and quotations omitted).

The Ninth Circuit has 12 held that if a court takes judicial notice of a document, it must specify what facts it judicially 13 notices from the document. *Id.* Further, “[j]ust because the document itself is susceptible to 14 judicial notice does not mean that every assertion of fact within that document is judicially 15 noticeable for its truth.” *Id.* As an example, the Ninth Circuit held that for a transcript of a 16 conference call, the court may take judicial notice of the fact that there was a conference call on 17 the specified date, but may not take judicial notice of a fact mentioned in the transcript, because 18 the substance “is subject to varying interpretations, and there is a reasonable dispute as to what the 19 [document] establishes.” *Id.* at 999–1000.

20 B. Discussion 21 WSP attached the Master Services Agreement, the Choice POS II Enhanced HDHP Plan 22 (“Benefit Booklet”), the Aetna Clinical Policy Bulletin for Gender Affirming Surgery (“Policy 23 Bulletin”), and the Settlement Agreement to its motion to dismiss.

In reply, Defendant further 24 attached the Wrap Plan document and a Summary Plan Description, arguing for the first time that 25 Cox’s claims are “based upon these [new] documents, the documents’ contents are referenced in 26 the Amended Complaint, and their authenticity is not disputed.” Dkt. No. 34-1 at 2 n.3. WSP also 27 seeks judicial notice of the public docket in *Cox v. WSP USA Inc. Grp.*

Ins. Plan, 4:24-cv-01312- 1 i. Benefit Booklet, Settlement Agreement and Cox I Docket 2 The parties agree that the Benefit Booklet was incorporated by reference, Dkt. No. 41 at 3 12:6–24, and Cox did not oppose incorporating by reference the Settlement Agreement or taking 4 judicial notice of the prior case docket. See Dkt. No. 33-1; Dkt. No. 34-1 at 2 n.1.

So the Court 5 grants these unopposed requests. 6 ii. Master Services Agreement 7 The Master Services Agreement is a copy of an agreement between WSP and Aetna, which 8 is alleged to administer Cox’s health benefit plan. Dkt. No. 9 ¶ 5. WSP claims that the Master 9 Services Agreement is the controlling document for the employee group health benefit plan and 10 that Cox necessarily refers to this document whenever she mentions the Plan.

Dkt. No. 22-1 at 3– 11 4. Cox disagrees that this is a plan document because it is a private agreement between WSP and 12 Aetna. Dkt. No. 33-1 at 3. The Court does not need to resolve the incorporation by reference 13 dispute as to this document because it is not relevant to resolving the motion to dismiss. 14 iii. Policy Bulletin 15 WSP seeks to incorporate the Policy Bulletin by

reference because the complaint refers to 16 plan documents and Cox alleges WSP used the bulletin to justify denying her claims.

The 17 Complaint alleges WSP and Aetna violated the terms of the Plan in denying her benefits. See, 18 e.g., Dkt. No. 9 ¶ 9 (“The Plan provides benefits”), ¶ 31 (“Following the denial of the request for 19 benefits under the Plan”), ¶ 29(a) (“Failure to authorize and pay for health benefits as required... 20 under the terms of the Plan”). Governing plan documents “are those documents that provide 21 individual participants with information about the plan and benefits.” *Hughes Salaried Retirees 22 Action Committee v. Administrator of the Hughes Non-Bargaining Retirement Plan*, 72 F.3d 686, 23 690 (9th Cir.

1995) (interpreting *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 84 (1995)). 24 These documents “allow ‘the individual participant [to] know[] exactly where he stands with 25 respect to the plan—what benefits he may be entitled to, [and] what circumstances may preclude 26 him from obtaining benefits....’” *Hughes*, 72 F.3d at 690 (quoting S.Rep. No. 127, 93d Cong., 27 2d Sess.

(1974), reprinted in 1974 U.S.C.C.A.N. 4838, 4863). More recently, the Ninth Circuit 1 plan or when it “neither adds to nor contradicts the terms of existing Plan documents.” *Mull for 2 Mull v. Motion Picture Indust. Health Plan*, 865 F.3d 1207, 1210 (9th Cir. 2017). 3 The Benefit Booklet (which the parties agree is incorporated) references policy bulletins in 4 its definition of “medical necessity,” drawing it into the “terms of the plan.” See Dkt.

No. 39 at 5 87, 105, 119–67. Cox alleges that the Policy Bulletin served as Aetna’s basis for denying her 6 benefits. Dkt. No. 9 ¶ 10, 12, 18. Then Plaintiff alleges that her internal appeals challenged the 7 Policy Bulletin. Dkt. No. 9 ¶¶ 10, 12, 15–16. Plaintiff claims that the denial of her facial 8 feminization treatment violated the terms of the plan, and the Policy Bulletin contains some of the 9 Plan’s terms.

The Policy Bulletin, therefore, forms the basis of Plaintiff’s claim and is 10 incorporated by reference. *Khoja*, 899 F.3d at 1002.1 11 iv. Wrap Plan and Summary Plan Description 12 At the motion hearing, Cox correctly noted that she did not have the opportunity to 13 respond to the documents attached for the first time on reply. Dkt. No. 41 at 3:21–25. WSP stated 14 that the documents were only provided in response to claims made in Cox’s opposition about the 15 standard of review, and said that only the documents filed with the motion to dismiss were 16 necessary to decide the motion.

Dkt. No. 41 at 10:7–19. The Court thus declines to incorporate 17 these documents by reference or take judicial notice of them because they are not relevant to 18 deciding the motion to dismiss. 19 *** 20 The Court GRANTS the motion to incorporate the Benefit Booklet, the Policy Bulletin, 21

and the Settlement Agreement, but DENIES the motion to incorporate the Master Service 22 Agreement, the Wrap Plan, and the Summary Plan Description.

The Court GRANTS the 23 1 Cox contends that the Master Services Agreement and Policy Bulletin should not be incorporated 24 because WSP did not “authenticate” them, and further suggests that the documents are inauthentic because she did not receive them. Neither argument constitutes a genuine challenge to the 25 documents’ authenticity, and Plaintiff’s position is not persuasive.

See *Stewart v. Kodiak Cakes, LLC*, 537 F. Supp. 3d 1103, 1119 (S.D. Cal. 2021) (granting motion for judicial notice where 26 plaintiffs did not detail how the documents at issue were “inauthentic, inaccurate, or disputed,” and instead only questioned “the manner in which they are presented before the Court,” which did 27 not “genuinely question the authenticity”); *Davis v. HSBC Bank*, 691 F.3d 1152, 1161 (9th Cir.

1 unopposed motion to take judicial notice of the docket in Cox I. 2 IV. MOTION TO DISMISS 3 A. 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 v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Nevertheless, 17 courts do not “accept as true allegations that are merely conclusory, unwarranted deductions of 18 fact, or unreasonable inferences.” *In re Gilead Scis.*

Secs. Litig., 536 F.3d 1049, 1055 (9th Cir. 19 2008) (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)). 20 B. The Settlement Agreement Does Not Preclude Plaintiff’s Current Denial of Benefits Claim 21 Settlement agreements are interpreted like any other contract, *Knudsen v. C.I.R.*, 793 F.3d 22 1030, 1035 (9th Cir. 2015), giving the usual and ordinary meaning of the words to effectuate the 23 parties’ intent.

Cal. Civ. Code § 1636 (“A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting.”); Cal. Civ. Code § 1638 (“The language of a contract is to govern its interpretation, if the language is clear and explicit.”); Cal. Civ. Code § 1639 (“When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible.”).

The parties entered a settlement agreement resolving Cox’s facial hair removal claims in June 2024. Dkt. No. 39 at 173. That settlement defines the “Disputed Claims” as Cox’s “claims for health benefits related to a facial hair removal.” Dkt. No. 39 at 169 ¶ 1(E). Cox agreed to release all claims against WSP “of any kind connected with the matters of [Cox I] and the Disputed Claims” including those that Cox “could have asserted” against WSP.

Id. at 169 ¶¶ 2–3. Defendant argues that the settlement agreement bars Cox’s new claims since the facial feminization surgery is related to the facial hair removal procedure. Dkt. No. 22 at 16–18. Plaintiff contends that the procedures are different, noting the lack of overlap in CPT codes, providers, places of service, denials, and appeals, Dkt. No. 9 ¶ 41(a), and argues that she could not have asserted the new claims at the time of the settlement.

Id. ¶ 41(b). The Court agrees with Cox. The released claims related to facial hair removal treatments. Dkt. No. 39 at 169 ¶ 1(E). Although facial hair removal may be a type of facial feminization, the claims at issue in this case relate to chin surgery. Dkt. No. 9 ¶ 22. And the facts and dates as alleged in the complaint support Cox’s argument that her claims regarding facial feminization surgery had not ripened when Cox I was being litigated, such that she could not have asserted them there.

Dkt. No. 9 ¶ 41(b). Cox did not receive the denial of her second internal appeal until September 2024,² id. ¶¶ 10–11, 22–24, but settled her prior claims in June 2024. Dkt. No. 39 at 18 173. Accordingly, the record reflects that Cox had not completed the internal appeal process necessary to make her current claim one that she “could have asserted” against WSP in the original lawsuit.

The settlement agreement thus does not bar this action, and the Court DENIES WSP’s motion to dismiss the declaratory relief count. C. Plaintiff Fails to State a Claim for Denial of Benefits Generally, ERISA does not mandate what benefits employers must provide if they choose to have a plan. *Lockheed Corp v. Spink*, 517 U.S. 882, 887 (1996). Instead, ERISA ensures that when employers offer plans, employees receive the benefits promised.

Id. The plain terms of the plan, which the Court analyzes *de novo* unless the Defendant establishes otherwise, defines the scope of benefits due. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989) (“[A] denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary

discretionary authority to determine 4 eligibility for benefits or to construe the terms of the plan.”).³ 5 WSP contends that Cox has not identified a term of the plan that it allegedly violated and 6 that the treatment Cox sought was expressly excluded by the plan’s terms.

Dkt. No. 22 at 12. Cox 7 alleges that WSP denied her medically necessary treatment for her gender dysphoria, which she 8 alleges violates the terms of the plan. Dkt. No. 9 ¶¶ 10–14, 18–23. She further argues that the 9 exclusion Defendant cites is an affirmative defense, which the Court may not consider on a motion 10 to dismiss. *Id.* at 11. 11 For purposes of this motion, the Court accepts the well-pled facts as true, including the 12 claims that the facial feminization procedure has been shown through studies to improve gender 13 dysphoria, independent of any cosmetic benefit, and that Cox would benefit from such a 14 procedure.

Dkt. No. 9 ¶¶ 9–23. 15 But those facts are ultimately beside the point given the nature of the inquiry here. Aetna, 16 on behalf of WSP, approves and denies claims based on what WSP agreed to cover, as explained 17 in the plan documents.

The relevant clinical policy document reads, in relevant part, Aetna considers the following procedures that may be performed 18 as a component of gender transition as not medically necessary and cosmetic (not an all-inclusive list)... 19 ▪ Facial Gender Affirming Procedures, including: • Brow (reduction, augmentation, lift) 20 • Hair line advancement and/or hair transplant 21 • Facelift/mid-face lift (following alteration of the underlying skeletal structures) (platysmaplasty) 22 • Blepharoplasty (lipofilling) • Rhinoplasty (+/- fillers) 23 • Cheek (implant, lipofilling) 24 • Lip (upper lip shortening, lip augmentation) • Lower jaw (reduction of mandibular angle, augmentation) 25 • Chin reshaping (osteoplastic, alloplastic (implant-based)) 26 3 The parties dispute whether *de novo* or abuse of discretion is the correct standard here.

27 Compare Dkt. No. 33 at 21 with Dkt. No. 34 at 13–15. The Court does not need to resolve this • Chondrolaryngoplasty (also known as Adam's apple reduction, thyroid 1 cartilage reduction, or tracheal shave) 2 • Vocal cord surgery Dkt. No. 39 at 123 (emphasis added). 3 The Court may only review Aetna’s denial under the plain terms of the plan. See 4 *Firestone*, 489 U.S. at 112–13, 115; 28 U.S.C. § 1132(a)(1)(B) (providing right of action for plan 5 participants “to recover benefits due... under the terms of [a] plan, to enforce [] rights under the 6 terms of the plan, or to clarify [] rights to future benefits under the terms of the plan.”).

And to 7 succeed on her denial of benefits claim, Cox must allege that the denial of her claims violated 8 those plan terms. *Doe v. CVS Pharm., Inc.*, 982 F.3d 1204, 1213 (9th Cir. 2020). In other words, 9 the relevant question here is not whether WSP should cover certain procedures, but only whether it 10 actually did agree to cover them. 11 Cox’s amended complaint alleges that she sought “facial feminization surgery” regarding 12 her chin (or lower jaw).

See, e.g., Dkt. No. 9 ¶ 22. Cox alleges that the “generally accepted 13 standards of medical practice” establish the medical necessity of her facial feminization procedure. 14 But she has not plausibly pled that WSP’s denial of coverage for that procedure violated the terms 15 of the plan.

The Benefit Booklet explicitly incorporates clinical policy bulletins as controlling. 16 Dkt. No. 39 at 105; see *Mull*, 865 F.3d at 1210. The Policy Bulletin defines the type of facial 17 feminization surgery that Cox seeks as “cosmetic” and “not medically necessary.” Dkt. No. 39 at 18 123. Cox clearly disagrees with the Policy Bulletin, and some medical evidence appears to 19 support her view that facial feminization surgery is medically necessary for people with gender 20 dysphoria.

But under the terms of the plan—which are the starting and ending point of the Court’s 21 analysis under ERISA—Cox fails to state a claim because those procedures are expressly 22 excluded. 23 Cox argues that the Policy Bulletin creates an exclusion, which she characterizes as an 24 affirmative defense, and contends that she is not required to plead around affirmative defenses.

25 Dkt. No. 33 at 17 (citing *U.S. Commodity Futures Trading Comm’n v. Monex Credit Co.*, 931 26 F.3d 966, 972 (9th Cir. 2019)). But WSP correctly points out that exclusions laid out in plan 27 1 a motion to dismiss. See, e.g., *A.H. v. Anthem Blue Cross*, No. 22-cv-07660-HSG, 2023 WL 2 3819367 (N.D. Cal. June 5, 2023) (granting motion to dismiss where plan exclusion prevented 3 claims).

To successfully state a claim, Cox must identify a specific service that was covered by 4 the plan terms and establish the denial of those benefits. See 28 U.S.C. § 1132(a)(1)(B). But here, 5 the plan unambiguously excludes the denied benefit.

Therefore, the amended complaint fails to 6 state a claim. The Court GRANTS WSP’s motion to dismiss the denial of benefits count. Dkt. 7 No. 22. 8 Plaintiff seeks leave to amend any factual deficiencies in the complaint, Dkt. No. 33 at 30, 9 which the Defendant opposes. Dkt. No. 34 at 19.

As discussed, Plaintiff’s claim is directly 10 inconsistent with the plain and unambiguous language of the plan. Consequently, Plaintiffs cannot 11 cure the deficiencies in the pleading of their claim, and granting leave to amend would be futile. 12 See *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (district court should grant leave to 13 amend unless pleading could not possibly be cured by the allegation of other facts); *Regional Med.*

14 *Ctr. of San Jose v. WH Administrators, Inc.*, No. 17-cv-3357-EJD, 2021 WL 4481667, at *4–*7 15 (N.D. Cal. Sept. 30, 2021) (granting motion to dismiss without leave because ERISA plan terms 16 did not entitle plaintiff to additional coverage); *Pacini v. Nationstar Mortg., LLC*, No. C-12-4606- 17 SI, 2013 WL 2924441, at *7 (N.D. Cal. June 13, 2013) (denying motion for leave when claims 18 contradicted express terms of contract).

The Court accordingly dismisses Count 1 without leave to amend. 20 V. CONCLUSION 21 The Court GRANTS the motion to seal, Dkt. No. 21; GRANTS IN PART and DENIES 22 IN PART the motion to incorporate and take judicial notice, Dkt. Nos. 22-1, Dkt. No. 34-1; and 23 GRANTS IN PART and DENIES IN PART the motion to dismiss, Dkt. No. 22. 24 Given that the Court has found that the settlement agreement does not bar this suit, it 25 appears there is nothing left to decide with respect to Plaintiff's declaratory relief claim.

The 26 Court SETS a case management conference for February 10, 2026 at 2:00 p.m. to discuss the next 27 steps in the case if any. The hearing will be held by Public Zoom Webinar. All counsel, members 1 <https://www.cand.uscourts.gov/hsg>. All attorneys and pro se litigants appearing for the case 2 || management conference are required to join at least 15 minutes before the hearing to check in with 3 the courtroom deputy and test internet, video, and audio capabilities.

The Court further 4 || DIRECTS the parties to submit a joint case management statement by February 3, 2026. 5 IT IS SO ORDERED. 6 Dated: January 16, 2026 ' HAYWOOD S. GILLIAM, JR. 8 United States District Judge 9 10 11 12 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28