IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Hollie Starnes, Plaintiff, vs. Universal Fidelity Administrators Company, American Loan Exchange Health Benefits Trust, and American Loan Exchange Employee Benefit Plan, Defendants.	)	C.A. No. 6:17-3073-HMH **OPINION AND ORDER**

This matter is before the court on Universal Fidelity Administrators Company's ("Universal Fidelity") motion for judgment on pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

I. FACTUAL AND PROCEDURAL BACKGROUND

In the complaint, the Plaintiff asserts a cause of action against Universal Fidelity for the denial of health insurance benefits under an Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, governed employee benefits plan ("Plan") pursuant to ERISA's civil enforcement provision, § 502(a), codified at 29 U.S.C. § 1132(a). (Compl., generally, ECF No. 1.) The following facts are not in dispute, the Plaintiff filed a claim for benefits pursuant to the terms of the Plan, which Universal Fidelity denied. The Plaintiff appealed, and on November 11, 2014, Universal Fidelity issued a final denial letter. (Pl. Resp. Opp'n Mot. J. Pleadings 2, ECF No. 22.) The Plaintiff filed this action on November 13, 2017.

Universal Fidelity filed the instant motion on January 3, 2018, alleging that the Plaintiff's claim is time barred by the contractual one-year time limitation set forth in the Plan. (Mot. J. Pleadings, generally, ECF No. 17.) On January 17, 2018, the Plaintiff submitted her response in opposition. (Pl. Resp. Opp'n Mot. J. Pleadings, ECF No. 22.) Universal Fidelity replied on January 24, 2018. (Reply, ECF No. 24.) This matter is now ripe for consideration.

II. DISCUSSION OF THE LAW

Universal Fidelity moves to dismiss the Plaintiff's claim pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. "After the pleadings are closed–but early enough not to delay trial–a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). In considering a motion for judgment on the pleadings, the court applies the same standard as for motions made pursuant to Rule 12(b)(6). Burbach Broad. Co. of Delaware v. Elkins Radio Corp., 278 F.3d 401, 405-06 (4th Cir. 2002). "When a defendant moves for judgment on the pleadings, the fact allegations of the complaint are taken as true, but those of the answer are taken as true only where and to the extent they have not been denied or do not conflict with the complaint." Jadoff v. Gleason, 140 F.R.D. 330, 331 (M.D.N.C. 1991) (internal quotation marks omitted).

When presented with a Rule 12(b)(6) motion to dismiss, the court must restrict its inquiry to the sufficiency of the complaint rather than "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Republican Party of North Carolina v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). To withstand a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). Under this plausibility standard, the court should "assume th[e] veracity" of well-pled factual

allegations "and then determine whether they plausibly give rise to an entitlement to relief." Id. at 679. Although the court must consider all well-pled factual allegations in a complaint as true, the court need not "accept as true a legal conclusion couched as a factual allegation." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

"[A] court deciding a Rule 12(c) motion may consider documents attached to the Answer so long as they are central to the plaintiff's claim and of undisputed authenticity." Alexander v. City of Greensboro, 801 F. Supp. 2d 429, 435 (M.D.N.C. 2011) (internal citations omitted); CACI Int'l, Inc. v. St. Paul Fire & Marine Ins. Co., 566 F.3d 150, 154 (4th Cir. 2009) ("[C]ourts may consider a document that the defendant attaches to its motion to dismiss if the document was integral to and explicitly relied on in the complaint and if the plaintiffs do not challenge its authenticity." (internal quotation marks omitted)).

The Plaintiff alleges that Universal Fidelity is barred from asserting the contractual one-year time limitation for filing suit because it failed to comply with certain requirements set forth in ERISA regulations, 29 C.F.R. § 2560.503-1(g)(1) and (j). (Pl. Resp. Opp'n Mot. J. Pleadings 2, ECF No. 22.) "There is no specific federal statute of limitations governing claims for benefits under an ERISA plan." Wetzel v. Lou Ehlers Cadillac Grp. Long Term Disability Ins. Program, 222 F.3d 643, 646 (9th Cir. 2000) (citation omitted). "The period in which an ERISA claim must be filed hinges on the applicable state statute of limitations and any contractual limitations period." Fontenot v. Intel Corp. Long Term Disability Plan, No. 3:14-CV-00153-AA, 2014 WL 2871371, at *5 (D. Or. June 24, 2014) (unpublished). "[I]n the absence of a controlling statute to the contrary, a provision in a contract may validly limit, between the parties, the time for bringing an action on such contract to a period less than that

prescribed in the general statute of limitations, provided that the shorter period itself shall be a reasonable period." Heimeshoff v. Hartford Life & Acc. Ins. Co., 134 S. Ct. 604, 611, 187 L. Ed. 2d 529 (2013) (internal citations and quotation marks omitted).

The Plan provides as follows: "No action may be brought for benefits provided by the plan or an amendment or modification thereof, or to enforce any right thereunder, until after the claim has been submitted to and determined by the plan, and then action may only be brought within one year after the date of such decision." (Ans. Ex. C (Summary Plan Description 86), ECF No. 10-1.)

> ERISA requires that
>
> every employee benefit plan shall–
>
> (1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and
>
> (2) afford a reasonable opportunity to any participant whose claim for benefits have been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

29 U.S.C. § 1133. Further, there are ERISA regulations that set forth specific requirements applicable to denial letters, 29 C.F.R. § 2560.503-1(g)(1) and (j). Section 2560.503-1(g)(1)(iv) requires that plan administrators "provide a claimant with . . . notification of any adverse benefit determination," which includes "[a] description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action . . . following an adverse benefit determination on review." 29 C.F.R. § 2560.503-1(j) sets forth requirements for denial letters and provides as follows:

(j) Manner and content of notification of benefit determination on review. The plan administrator shall provide a claimant with written or electronic notification of a plan's benefit determination on review. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i), (iii), and (iv). In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant --

(1) The specific reason or reasons for the adverse determination;
(2) Reference to the specific plan provisions on which the benefit determination is based;
(3) **A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;**
(4) **A statement describing any voluntary appeal procedures offered by the plan and the claimant's right to obtain the information about such procedures described in paragraph (c)(3)(iv) of this section, and a statement of the claimant's right to bring an action under section 502(a) of the Act**; and,
(5) In the case of a group health plan or a plan providing disability benefits--

(i) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided free of charge to the claimant upon request;
(ii) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request; and
(iii) **The following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."**

(Emphasis added.)[1] The Plaintiff contends that the denial letter fails to provide "a statement of the claimant's right to bring an action under § 502(a) of the Act," the contractual time limitation, notice of her right to obtain certain information, and a statement regarding alternative dispute resolution in violation of § 2560.503-1(g)(1)(iv) and (j)(3), (4)(i), and (5)(iii). (Pl. Resp. Opp'n Mot. J. Pleadings 5-7, ECF No. 22.) The final denial letter clearly fails to provide this information. (Ans. Ex. B (Final Denial Letter), ECF No. 10-2.) Thus, the issue before the court is whether Universal Fidelity's failure to provide this information in the final denial letter bars enforcement of the one-year contractual time limitation.

The purpose of ERISA's notice requirement is "to provide claimants with enough information to prepare adequately for further administrative review or an appeal to the federal courts." Juliano v. Health Maint. Org. of NJ, Inc., 221 F.3d 279, 287 (2d Cir. 2000) (internal quotation marks omitted).

Research revealed no Fourth Circuit case law addressing whether failure to comply with 29 C.F.R. § 2560.503-1(g)(1)(iv) and (j)(4)(i) bars enforcement of a contractual time limitation. However, other circuits have considered this issue. In Santana-Diaz v. Metropolitan Life Ins. Co., 816 F.3d 172 (1st Cir. 2016), the First Circuit considered whether § 2560.503-1(g)(1)(iv) applied to final denial letters and concluded that

> a denial of benefits letter must include notice of the plan-imposed time limit for filing a civil action. To repeat, the regulation states that the letter must contain a "description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action."

[1] This is the pertinent text of § 2560.503-1(j) in force when the Plaintiff's final denial letter was issued. See Employee Retirement Income Security Act of 1974; Rules and Regulations for Administration and Enforcement; Claims Procedure, 65 FR 70246-01.

Id. at 180. Further, in Mirza v. Insurance Administrator of America, Inc., 800 F.3d 129 (3d Cir. 2015), the Third Circuit concluded that "29 C.F.R. § 2560.503-1(g)(1)(iv) requires that adverse benefit determinations set forth any plan-imposed time limit for seeking judicial review. Without this time limit, a notification is not in substantial compliance with ERISA." Id. at 136. Likewise, in Moyer v. Metropolitan Life Insurance Co., 762 F.3d 503 (6th Cir. 2014), the Sixth Circuit concluded that § 2560.503-1(g)(1)(iv) required that "[t]he claimant's right to bring a civil action is expressly included as a part of those procedures for which applicable time limits must be provided," and thus held that denial letters must include the time limit for judicial review. Id. at 505.

Further, although § 2560.503-1(j)(4) does not specifically require that claimants be informed of a contractual time limitation, reading subsection (j)(4)(i) in conjunction with subsection (g)(1)(iv) requires that plan administrators disclose the voluntary internal appeal procedures and the contractual limitations period in final denial letters. Moreover, this reading is logical because the voluntary internal appeal procedures and the civil action limitations periods are the only remaining options for a claimant seeking to challenge a denial of coverage following the issuance of a final denial letter. See e.g., William v. United Healthcare, No. 1:16-CV-00144-DN, 2017 WL 2414607, at *7 (D. Utah June 2, 2017) (unpublished). Further, in the case at bar, Universal Fidelity did not advise the Plaintiff of her rights under § 502(a), which is plainly required by § 2560.503-1(j)(4). In addition, Universal Fidelity failed to provide notice to Plaintiff regarding her right to obtain records and the option of alternative dispute resolution. § 2560.503-1(j)(3) and (j)(5). Based on the foregoing, Universal Fidelity

was required to inform the Plaintiff of her rights under § 502(a) and specifically, inform her of the contractual one-year time limitation.

Other courts have upheld enforcement of a contractual time limitation in cases where the claimant was not informed of the time limitation by the plan, which the court finds unpersuasive and declines to follow. In Wilson v. Standard Insurance Co., 613 Fed. App'x 841, 844 (11th Cir. 2015) (per curiam), the Eleventh Circuit held that § 2560.503-1(g)(1)(iv) was ambiguous and "assume[d] that the correct interpretation of it is that a claim denial letter must notify the claimant of her time limit for filing a lawsuit under ERISA § 502(a)." However, the court concluded that "even with that assumption in [the plaintiff's] favor . . . it does not follow that [the defendant's] failure to interpret the ambiguous regulation that way renders the contractual limitations period unenforceable." Id. (finding that equitable tolling did not apply and enforcing contractual limitations period). In Scharff v. Raytheon Co. Short Term Disability Plan, 581 F.3d 899, 907 (9th Cir. 2009), the plaintiff alleged in part that the defendant's contractual time limitation was not enforceable based on a California state insurance regulation because she was not informed of the limitations period "in any of its correspondence to her." The Ninth Circuit did not discuss or consider § 2560.503-1(g)(1)(iv), but held that

> [t]o require plan administrators within the Ninth Circuit to inform participants separately of time limits already contained in the [summary plan description], when other circuits have rejected a similar rule, would place the Ninth Circuit out of line with current federal common law and would inject a lack of uniformity into ERISA law.

Id. at 908; see also Fontenot, 2014 WL 2871371, at *6 ("[T]he regulation that plaintiff relies on, 29 C.F.R. § 2560.503-1(g)(1), does not, on its face, require that defendant supply notice of the Policy's two year contractual limitations period in each denial correspondence. Rather, this

regulation requires a plan administrator to provide, in relevant part, '[a] description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review.' 29 C.F.R. § 2560.503-1(g)(1)(iv). All that is needed to satisfy ERISA is notice that a civil action may be filed upon the exhaustion of administrative remedies, which is precisely what transpired here."); Michael C.D. v. United Healthcare, No. 2:15-CV-306-DAK, 2016 WL 2888984, at *5 (D. Utah May 17, 2016) (unpublished) ("The court . . . concludes that 29 C.F.R. § 2560.503-1(j)(4) does not require the plan administrator to include any time limits for review procedures in the final denial letters.").

However, even if the court agreed with the analysis in these cases, Universal Fidelity failed to inform the Plaintiff of her rights to bring a civil action under § 502(a) as is plainly required by § 2560.503-1(j)(4). "[B]oth initial and final denial letters are required to have a statement informing the claimant of his or her right to bring a civil action under the ERISA statute." Michael C.D., 2016 WL 2888984, at *5. Thus, even assuming solely for the sake of argument that Universal Fidelity was not required to specifically inform the Plaintiff of the contractual time limitation as held in Wilson, it was certainly required to advise her of her rights to file a civil action, which it plainly failed to do. The denial letter is devoid of any mention of the Plaintiff's rights to obtain documents, the availability of alternative dispute resolution, and most importantly, her right to file a civil action including informing her of the one-year contractual time limitation. (Ans. Ex. B (Final Denial Letter), ECF No. 10-2.)

Further, any argument of substantial compliance with the regulations fails. See Gagliano v. Reliance Standard Life Ins. Co., 547 F.3d 230, 237 (4th Cir. 2008) (considering substantial

compliance). Universal Fidelity's conduct in this case is "not remotely close to any concept of substantial compliance under the regulations." Id. Moreover, the court agrees with the First Circuit in Santana-Diaz, which held that

> where a plan administrator fails . . . to include the time limit for filing suit in its denial of benefits letter, and it has not otherwise cured the defect by, for example, informing the claimant of the limitations period in a subsequent letter that still leaves the claimant sufficient time to file suit, the plan administrator can never be in substantial compliance with the ERISA regulations, and the violation is *per se* prejudicial to the claimant.

816 F.3d at 183. The court further finds that for the same reasons, the failure to inform a claimant of their right to file suit under § 502(a) is per se prejudicial to the claimant.

Universal Fidelity alleges that because the Plaintiff is married to the owner of the Plan Sponsor, Plan Administrator and Named Fiduciary of the Plan, there is actual or constructive knowledge of the Plan's contractual limitations period, and cites the stop loss insurance coverage application, Plan application, executed Administrative Services agreement, and application for coverage for the Plaintiff and the owner in support of this argument.[2] (Reply 5-6,

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[2] Moreover, this is evidence that cannot be considered in a Rule 12(c) motion for judgment on the pleadings and for the reasons stated herein, the court declines to convert this motion to a motion for summary judgment under Rule 12(d) of the Federal Rules of Civil Procedure.

> When a defendant attaches documents to a motion to dismiss, a court has three options. First, if the documents meet certain requirements, the court may consider them when evaluating the motion to dismiss. If the documents do not qualify for consideration at the motion to dismiss stage, the court has two other alternatives: (1) it can either entirely disregard the attached documents; or (2) under limited circumstances, it may convert the motion into a motion for summary judgment and consider all attached documents.

Fisher v. Md. Dept. of Pub. Safety & Corr. Servs., Civil No. JFM 10-CV-0206, 2010 WL 2732334, at *2 (D. Md. July 8, 2010) (unpublished).

Exs. 2-4, ECF No. 24.) However, Universal Fidelity's argument is without merit. Universal Fidelity cites cases[3] discussing the application of equitable tolling or which are clearly distinguishable from the issues in this case. Universal Fidelity summarily cites Scharff for the proposition that the Plaintiff had constructive knowledge of contents of the Plan, which included the contractual time limit. 581 F.3d at 908. As discussed above, Scharff did not involve an analysis of the regulations at issue in the case at bar. Section 2560.503-1(g)(1)(iv) and (j) requires that plan administrators notify claimants of certain information in denial letters. Further, there is no allegation that a summary plan description was provided to the Plaintiff with the final denial letter and providing the 89-page summary plan description with the denial letter in this case would be insufficient to substantially comply with § 2560.503-1(g)(1) and (j). See e.g., Turner v. Volkswagen Grp. of Am., Inc., No. 2:16-CV-06570, 2017 WL 3037803, at *5 (S.D. W. Va. July 18, 2017) (unpublished) ("Simply put, appending an arcane thirty-six page insurance plan description to a denial letter without once referencing the plan's review procedures in the body of the denial letter fails to sufficiently apprise the claimant of the plan's review procedures."); (Ans. Ex. 1 (Summary Plan Description), ECF No. 10-1.).

In addition, having found that Universal Fidelity was not in substantial compliance with the ERISA regulations, equitable tolling is not at issue in this case. See Santana-Diaz, 816 F.3d at 178 ("[I]n failing to provide such notice [of the contractual time limitation], [the defendant]

[3] Heimeshoff v. Hartford Life & Accident Ins. Co., No. 12-651-CV, 2012 WL 4017133, at *1-2 (2d. Cir. Sept. 13, 2012) (unpublished) (equitable tolling); I.V. Servs. of Am., Inc. v. Inn Dev. & Mgmt., Inc., 182 F.3d 51, 57 (1st Cir. 1999) (equitable tolling); Wilson, 613 F. App'x at 844-45 (equitable tolling). Veltri v. Bldg. Serv. 32B-J Pension Fund, 393 F.3d 318, 326 (2d Cir. 2004) (equitable tolling); Smith v. Westvaco Corp. Voluntary Emps. Beneficiary Ass'n Long Term Disability Plan, 399 F. Supp. 2d 692, 697 (D.S.C. 2005) (equitable tolling).

was not in substantial compliance with the ERISA regulations, and that this rendered the limitations period altogether inapplicable. Because this resolves the question of whether [plaintiff's] claim was time-barred, we need not discuss whether the limitations period would otherwise have been equitably tolled.").

Based on the above, the failure to inform the Plaintiff of the contractual time limitation for filing suit and her rights under § 502(a) in violation of 29 C.F.R. § 2560.503-1(g)(1) and (j)(4)(i) is per se prejudicial. For all the reasons discussed above, the contractual one-year time limitation set forth in the Plan is unenforceable.

It is therefore

ORDERED that Universal Fidelity's motion for judgment on the pleadings, docket number 17, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
February 5, 2018