IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KIMBERLY LASH	:	CIVIL ACTION
v.	:	
RELIANCE STANDARD LIFE INSURANCE CO., et al.	:	NO. 16-235

MEMORANDUM

Padova, J. **April 4, 2017**

Plaintiff Kimberly Lash brought this action against Temple University Health System ("Temple"), her former employer, Reliance Standard Life Insurance Company ("Reliance"), the insurer of Temple's Group Long-Term Disability Insurance Plan (the "Plan"), and Matrix Absence Management, Inc. ("Matrix"), the Third-Party Administrator ("TPA") for the Plan. Matrix and Reliance now move to dismiss the First Amended Complaint. For the reasons that follow, the Motion to Dismiss is granted in part and denied in part.

I. BACKGROUND

The First Amended Complaint ("FAC") and its attachments allege the following facts. Temple provides benefits to its employees under the Plan, which is governed by the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.* (FAC ¶¶ 12-13, Ex. 2 at 13.) Reliance was appointed under the terms of the Plan "as the claims review fiduciary with respect to the insurance policy and the Plan." (Id. ¶ 24.) However, "Reliance did not exercise its authority to determine claims and interpret policy provisions; instead, Reliance retained Matrix to act as a Plan Administrator." (Id. ¶ 25.) Matrix performed claims administration duties "pursuant to an administrative services agreement with Reliance," which stated that Matrix had the authority to "grant and deny claims, authorize disbursement of

benefits, and investigate and maintain claims files in accordance with industry standards." (Id. ¶¶ 6-7.) Matrix was not required to "follow instructions or guidelines established by" Reliance. (Id. ¶ 8.) However, pursuant to the administrative services agreement between Matrix and Reliance (the "TPA Agreement"), Matrix was "responsible for fully adjudicating claims consistent with the terms and provisions of said policies and procedures of [Reliance] which may be modified from time to time." (Pl.'s Supp. Mem. Ex. A.)[1] Although Matrix made initial decisions to grant or deny claims (FAC ¶ 89), it did not have final authority to decide disputed claims. Rather, the letter from Reliance denying Lash's appeal shows that such final authority was granted to Reliance. (Id. Ex. 5.)

Lash worked as a payroll supervisor for Temple and was "insured for long-term disability benefits" under the Plan "at all material times." (Id. ¶¶ 14, 18, 40.) An MRI performed in May, 2012 revealed that she had a tumor in her lower back. (Id. ¶ 35.) Lash had surgery to remove the tumor on May 24, 2012, which caused her to become totally paralyzed in her lower extremities. (Id. ¶¶ 35-36.) On December 11, 2012, Matrix initially approved Lash's claim for long-term disability benefits. (Id. ¶ 43.) At that time, Matrix informed her that "in order to be eligible for benefits beyond 24 months she had to be disabled from performing the material duties of any occupation beginning August 3, 2014." (Id. ¶ 44.) To determine Lash's continued eligibility, Matrix collected documentation from her medical providers and had its Nurse Case Manager review her claim on April 10, 2014. (Id. ¶¶ 50-53, 55.)

[1]Although Lash did not submit the TPA Agreement as an Exhibit to the First Amended Complaint, she did submit the TPA Agreement in the "Supplemental Memorandum of Law in Support of Her Answer to the Motion to Dismiss" the original Complaint. (See ECF Docket No. 16.) Because Lash's claims are based on this "undisputedly authentic" document, we may consider it in deciding the Motion to Dismiss the First Amended Complaint. Mayer v. Belichick, 605 F.3d 223, 230 (3d Cir. 2010) (citing Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993)).

On August 24, 2014, Lash learned that the Social Security Disability Administration had found her to be totally disabled as of January 17, 2012, and awarded her benefits retroactive to August 2012. (Id. ¶ 70.) On October 21, 2014, Lash was informed that her long-term disability benefits under the Plan were being recalculated "to take into account her entitlement to Social Security Benefits" and was also asked to refund an amount Defendant believed she had been overpaid. (Id. ¶ 71.) Defendant further advised her that "the group policy requires that we withhold any future benefits payable to you until we receive the overpayment balance." (Id. ¶ 72.) In December 2014, after receiving benefits from the Social Security Administration, Lash refunded the overpaid plan benefits to Reliance. (Id. ¶ 85.) On February 6, 2015, Matrix informed Lash that her claim for long-term disability benefits was denied, as Matrix determined that she could perform other occupations despite her disability. (Id. ¶¶ 89, 96, Ex. 4.) Lash appealed that decision on February 22, 2015, after which Reliance required her to submit to an Independent Medical Examination. (Id. ¶¶ 103, 110, 120.) On May 22, 2015, Reliance notified Lash that it had conducted an independent review and was upholding the decision to deny benefits. (Id. ¶ 117, Ex. 5.)

Lash commenced the instant action by filing a Complaint in January of 2016 (the "original Complaint"). Thereafter, Matrix filed a Motion to Dismiss the claims against it, which we granted, but also gave Lash leave to file an amended complaint. Lash v. Reliance Standard Life Ins. Co., et al., Civ. A. No. 16-235, 2016 WL 3362060, at *4 (E.D. Pa. June 17, 2016).

The First Amended Complaint contains four Counts. Counts I and II assert claims against Reliance and Matrix to recover benefits due to Lash pursuant to ERISA, 29 U.S.C. § 1132(a)(1)(B). (FAC ¶¶ 131-140.) Count III asserts a claim against Temple for breach of fiduciary duty. (Id. ¶¶ 141-47.) Count IV asserts an alternative ERISA claim pursuant to 29

U.S.C. § 1132(a)(3) against all Defendants for equitable relief in the form of remand to the administrative proceeding. (Id. ¶¶ 148-156.) Matrix and Reliance ("the moving Defendants") have filed a Motion to Dismiss the First Amended Complaint for the following reasons: (1) Counts I and II fail to state a claim against Matrix, because the First Amended Complaint fails to allege that Matrix exercised authority or control over the administration of benefits under the Plan; (2) Count IV fails to state a claim against Matrix because the First Amended Complaint does not adequately allege that Matrix is a fiduciary of the Plan; (3) Count IV also fails to state a claim because it is redundant and unnecessary; and (4) the First Amended Complaint is unnecessarily lengthy. The moving Defendants also contend that Matrix is entitled to an award of attorneys' fees.

II. LEGAL STANDARD

When considering a motion to dismiss pursuant to Rule 12(b)(6), we "consider only the complaint, exhibits attached to the complaint, [and] matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents." Mayer v. Belichick, 605 F.3d 223, 230 (3d Cir. 2010) (citing Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993)). We take the factual allegations of the complaint as true and "construe the complaint in the light most favorable to the plaintiff." DelRio-Mocci v. Connolly Props., Inc., 672 F.3d 241, 245 (3d Cir. 2012) (citing Warren Gen. Hosp. v. Amgen, Inc., 643 F.3d 77, 84 (3d Cir. 2011)). Legal conclusions, however, receive no deference, as the court is "'not bound to accept as true a legal conclusion couched as a factual allegation.'" Wood v. Moss, 134 S. Ct. 2056, 2065 n.5 (2014) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)).

A plaintiff's pleading obligation is to set forth "'a short and plain statement of the claim,'" which gives the defendant "'fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (alteration in original) (quoting Fed. R. Civ. P. 8(a)(2) and Conley v. Gibson, 355 U.S. 41, 47 (1957)). The complaint must contain "'sufficient factual matter to show that the claim is facially plausible,' thus enabling 'the court to draw the reasonable inference that the defendant is liable for [the] misconduct alleged.'" Warren Gen. Hosp., 643 F.3d at 84 (quoting Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009)). "The plausibility standard is not akin to a 'probability requirement'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 556), but it "'requires showing more than a sheer possibility that a defendant has acted unlawfully.'" Shahid v. Borough of Darby, 666 F. App'x 221, 222 n.1 (3d Cir. 2016) (quoting Burtch v. Milberg Factors, Inc., 662 F.3d 212, 221 (3d Cir. 2011)). In the end, we will grant a motion to dismiss brought pursuant to Rule 12(b)(6) if the factual allegations in the complaint are not sufficient "'to raise a right to relief above the speculative level.'" W. Run Student Hous. Assocs., LLC v. Huntington Nat'l Bank, 712 F.3d 165, 169 (3d Cir. 2013) (quoting Twombly, 550 U.S. at 555).

III. DISCUSSION

A. Whether Matrix is a Proper Defendant

1. Claims Pursuant to 29 U.S.C. § 1132(a)(1)(B)

The moving Defendants seek to dismiss Counts I and II as against Matrix, contending that Matrix is an improper Defendant in Lash's claims asserted under 29 U.S.C. § 1132(a)(1)(B). Under ERISA, an insurance plan participant may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). A proper

defendant in such an action is "the plan itself or a person who controls the administration of benefits under the plan." Evans v. Emp. Benefit Plan, Camp Dresser & McKee, Inc., 311 F. App'x 556, 558 (3d Cir. 2009) (citing 29 U.S.C. § 1132(a)(1)(B)); see also Graden v. Conexant Sys. Inc., 496 F.3d 291, 301 (3d Cir. 2007) (same (citing Chapman v. ChoiceCare Long Island Term Disability Plan, 288 F.3d 506, 509-10 (2d Cir. 2002))). The United States Court of Appeals for the Third Circuit has explained that "[e]xercising control over the administration of benefits is the defining feature of the proper defendant under 29 U.S.C. § 1132(a)(1)(B)." Evans, 311 F. App'x at 558. Consequently, in order to allege a cognizable claim against Matrix with respect to Counts I and II, the First Amended Complaint must allege facts that, if true, would support a conclusion that Matrix had control over the administration of benefits under the Plan. See id.

In the original Complaint, Lash asserted a § 1132(a)(1)(B) claim against Matrix that is very similar to the one included in the First Amended Complaint. Upon Matrix's Motion to Dismiss the § 1132(a)(1)(B) claim in the original Complaint, we dismissed the claim, in part because the original Complaint failed to allege that Matrix had final authority over disputed claims, an allegation that we concluded was required to sufficiently allege authority or control over the administration of benefits pursuant to § 1132(a)(1)(B). See Lash, 2016 WL 3362060, at *2-3.

The moving Defendants now argue that the First Amended Complaint has failed to cure the deficiencies that we identified in the original Complaint. They argue that, like the original Complaint and exhibits, the First Amended Complaint and its exhibits do not allege that Matrix had final authority over disputed claims but, rather, support only the conclusion that Reliance exercised authority to make final eligibility determinations. Thus, they argue that the allegations

of the First Amended Complaint do not support the conclusion that Matrix exercised the measure of control that is required for a defendant to be held liable under § 1132(a)(1)(B). Lash has not disputed that the First Amended Complaint and its exhibits demonstrate that Reliance was responsible for final eligibility decisions, but contends that the First Amended Complaint need not allege that Matrix had final control over disputed claims in order to state a cognizable claim pursuant to § 1132(a)(1)(B).

However, as explained in our prior Memorandum, "[w]here a plan administrator retains the discretion to decide disputes, a [TPA] . . . will not be subject to a suit under § 1132(a)(1)(B)." Van Doren v. Capital Research & Mgmt. Co., Civ. A. No. 10-1425, 2010 WL 5466839 (D.N.J. Dec. 30, 2010) (citing Terry v. Bayer Corp., 145 F.3d 28, 35 (1st Cir. 1998)). As such, when a TPA lacks final authority over claims disputes, the TPA cannot be liable under § 1132(a)(1)(B). Terry, 145 F.3d at 25 ("Courts have determined that when the plan administrator retains discretion to decide disputes, a third party service provider . . . is . . . not amenable to a suit under § 1132(a)(1)(B)." (citations omitted)); Oliver v. Coca Cola Co., 497 F.3d 1181, 1186, 1195 (11th Cir.) (holding that a TPA was not a "*de facto* plan administrator" since it did not have final authority to determine second level appeals of disputed claims) reh'g granted, opinion vacated in part on other grounds, 506 F.3d 1316 (11th Cir. 2007), and adhered to in part on reh'g sub nom. 546 F.3d 1353 (11th Cir. 2008); see also Waldoch v. Medtronic, Inc., 757 F.3d 822, 827, 832 (8th Cir. 2014), as corrected (July 15, 2014) (observing that a claims administrator lacked "authority to interpret and administer" a plan where it processed claims, rendered initial claims decisions, and submitted recommended decisions to the plan administrator when claims were appealed).

Lash nonetheless argues that a claims administrator can be a proper defendant in an action asserting a § 1132(a)(1)(B) claim even if it lacks ultimate responsibility to resolve claims, citing our prior decision in McGarrigle v. Liberty Life Assurance Company, Civ. A. No. 13-206, 2013 WL 2291768 (E.D. Pa. May 22, 2013). In McGarrigle, however, the claims administrator was alleged to have exercised final authority by handling both the plaintiff's initial claim and her appeal. 2013 WL 2291768, at *3. Thus, our decision in that case that the claims administrator was a proper defendant under 29 U.S.C. § 1132(a)(1)(B) is in no way inconsistent with our contrary conclusion in the instant case, given that Matrix is not alleged to have exercised such final authority. Lash also contends that any reliance on Oliver and Medtronic is misplaced, because the employers in those cases had final authority as plan administrators, whereas, in the instant case, Temple did not retain the authority to decide disputed claims. See Oliver, 497 F.3d 1181; Medtronic, 757 F.3d 822. Lash's argument, however, misses the mark. The critical inquiry in our case is whether Matrix is alleged to have exercised final authority over disputed claims. It is of no moment that Reliance, rather than Temple, is alleged to have handled the appeals of claims initially adjudicated by Matrix.

For the aforementioned reasons, we conclude that the First Amended Complaint, like the original Complaint, fails to allege that Matrix is a proper Defendant to Lash's claim for benefits asserted under § 1132(a)(1)(B). Rather, because the First Amended Complaint alleges that Reliance made the final decision to deny Lash's claim for long-term disability benefits, it does not plausibly allege that Matrix exercised the requisite control over the administration of benefits to support a claim against Matrix pursuant to § 1132(a)(1)(B). Accordingly, the Motion to Dismiss Counts I and II for failure to state a claim against Matrix is granted.

2. Claim Pursuant to 29 U.S.C. § 1132(a)(3)

Lash also asserts a claim against Matrix for injunctive relief under 29 U.S.C. § 1132(a)(3) on the ground that Matrix breached its fiduciary duties to her. (FAC ¶ 150.) ERISA allows a plan participant to sue "to obtain other appropriate equitable relief." 29 U.S.C. § 1132(a)(3)(B). However, "29 U.S.C. § 1132(a)(3) does not authorize suit against 'nonfiduciaries charged solely with participating in a fiduciary breach.'" Renfro v. Unisys Corp., 671 F.3d 314, 325 (3d Cir. 2011) (quoting Reich v. Compton, 57 F.3d 270, 284 (3d Cir. 1995)). Thus, Lash cannot assert a claim against Matrix pursuant to § 1132(a)(3) unless Matrix acted as a fiduciary. See Pegram v. Herdrich, 530 U.S. 211, 226 (2000) (holding that to be held liable as a fiduciary, the defendant must have been "performing a fiduciary function . . . when taking the action subject to complaint").

Under ERISA, a person is a "fiduciary with respect to a plan to the extent . . . he has any discretionary authority or discretionary responsibility in the administration of such plan." 29 U.S.C. § 1002(21)(A)(iii). "[T]he linchpin of fiduciary status under ERISA is discretion." Curcio v. John Hancock Mut. Life Ins. Co., 33 F.3d 226, 233 (3d Cir. 1994). Consequently, "persons who perform purely ministerial tasks, such as claims processing and calculation, cannot be fiduciaries because they do not have discretionary roles." Confer v. Custom Eng'g Co., 952 F.2d 34, 39 (3d Cir. 1991) (citing 29 C.F.R. § 2509.75-8). Furthermore, "fiduciary status does not simply attach to any administrative activity, but rather, only to the person (or entity) who has *final authority* to authorize or disallow a claim for benefits under the plan." Miller v. Mellon Long Term Disability Plan, 721 F. Supp. 2d 415, 426 (W.D. Pa. 2010) (citing Varity Corp. v. Howe, 516 U.S. 489, 512 (1996)).

In the original Complaint, Lash asserted a § 1132(a)(3) claim against Matrix that was similar to the one she asserts now. On Matrix's Motion, we dismissed that claim for failing to adequately allege that Matrix was a fiduciary of the Plan. See Lash, 2016 WL 3362060, at *3-4. Our decision in that regard was premised on two facts: (1) the original Complaint explicitly alleged that Matrix did not have discretion to decide claims and interpret policy provisions; and (2) the original Complaint and its attachments made clear that Reliance, not Matrix, had the authority to make final binding appeals decisions. Id. at *4. The moving Defendants now argue that the First Amended Complaint suffers from the same essential deficiencies that we identified in connection with the original Complaint and, thus, does not plausibly allege that Matrix is a fiduciary of the Plan.

The First Amended Complaint, unlike the original Complaint, omits the allegation that Matrix did not have discretion to decide claims and interpret policy provisions, and adds the allegation that "Matrix exercised fiduciary control respecting the management of a plan." (FAC ¶ 10.); (see also Compl. ¶ 22.) It also adds an allegation that Matrix was not required to "follow instructions or guidance established by [Reliance]." (FAC ¶ 8). In spite of these changes, we conclude that the First Amended Complaint, like the original Complaint, does not plausibly allege that Matrix was a fiduciary of the Plan. We reach this conclusion not only because the First Amended Complaint does not include "sufficient factual matter to show that the [assertion that Matrix exercised fiduciary control] is facially plausible," Warren Gen. Hosp., 643 F.3d at 84 (quotation omitted), but also because the allegation that Matrix was not required to follow instructions or guidance from Reliance is flatly contradicted by the TPA Agreement between Matrix and Reliance. (Pl.'s Supp. Mem. Ex. A.) That Agreement explicitly states that Matrix must adjudicate claims "consistent with the terms and provisions" of the Plan, which sets forth

specific guidelines and instructions regarding the processing of claims. (Id.; FAC Ex. 1, 2.) Indeed, the Plan dictates which employees are covered by the Plan and the method of calculating long-term disability benefits based on factors such as salary, age, and duration of employment. (FAC Ex. 1 at 1.0-1.3.) Furthermore, the Summary Plan Description contains detailed standards and procedures for the claims processor to adhere to when processing claims. (Id. Ex. 2.) In light of these guidelines and instructions, it is plain that Matrix's responsibilities were strictly limited to "processing . . . claims," and "appl[ying] . . . rules determining eligibility for participation or benefits," which are tasks that the Department of Labor has deemed "ministerial," and thus not discretionary in nature. 29 C.F.R. § 2509.75-8 (D-2);[2] see also Confer, 952 F.3d at 39 ("persons who perform purely ministerial tasks, such as claims processing and calculation, cannot be fiduciaries because they do not have discretionary roles").

We further observe that the First Amended Complaint and its exhibits still make clear that Reliance, not Matrix, exercised final authority over disputed claims, which is yet another basis on which to conclude that Matrix is not a fiduciary. Miller, 721 F. Supp. 2d at 426 ("fiduciary status . . . attach[es] . . . only to the person (or entity) who has *final authority* to authorize or disallow a claim for benefits under the plan" (citing Varity, 516 U.S. at 512)); see also Chi. Dist. Council of Carpenters Welfare Fund v. Caremark, Inc., 474 F.3d 463, 476-77 (7th Cir. 2007) (stating that a TPA does not act as "a fiduciary in making claims decisions [where it does] not have the authority to make a final decision" (citation omitted)). While Lash disputes

[2]The Department of Labor is the agency charged with overseeing the enforcement of ERISA. "[A]gency interpretive guidelines 'do not rise to the level of a regulation and do not have the effect of law.'" Mercy Catholic Med. Ctr. v. Thompson, 380 F.3d 142, 155 (3d Cir. 2004) (quoting Madison v. Res. for Human Dev., Inc., 233 F.3d 175, 186 (3d Cir. 2000)). However, the Third Circuit has "explained that '[i]nterpretations such as those in opinion letters' are entitled to 'respect' pursuant to the Supreme Court's decision in Skidmore v. Swift, 323 U.S. 134 (1944)." Hagans v. Comm'r of Soc. Sec., 694 F.3d 287, 298 (3d Cir. 2012) (first quoting Christensen v. Harris Cty., 529 U.S. 576, 587 (2000), then quoting Skidmore, 323 U.S at 140).

that a fiduciary must have such final authority, she cites no authority to support her position. Accordingly, she has provided us with no basis on which to reach a contrary conclusion to that which we have previously reached in this regard.

In sum, we conclude that the factual allegations in the First Amended Complaint do not plausibly allege that Matrix had discretionary authority or control over the administration of benefits as is required to be a fiduciary. See 29 U.S.C. § 1002(21)(A)(iii). We therefore conclude that Lash has failed to overcome the pleading deficiencies noted in our previous Memorandum regarding Matrix's fiduciary status. Accordingly, because the First Amended Complaint fails to sufficiently allege that Matrix is a fiduciary of the Plan, the Motion to Dismiss Count IV is granted as against Matrix for failure to state a claim upon which relief can be granted.

B. Whether the Claim against Reliance is Redundant and Unnecessary

The moving Defendants also move to dismiss the breach of fiduciary duty claim in Count IV, asserting that the equitable relief requested under 29 U.S.C § 1132(a)(3) is "redundant and unnecessary." (Defs.' Br. at 5.) Specifically, they contend that if Lash has an adequate remedy available to her in connection with her 29 U.S.C. § 1132(a)(1)(B) recovery of benefits claims in Counts I and II, she may not simultaneously bring a claim for equitable relief under § 1132(a)(3).[3] Lash argues, however, that she can assert both her claims for monetary relief pursuant to § 1132(a)(1)(B) and her claim for equitable relief pursuant to § 1132(a)(3) because she seeks equitable relief solely in the alternative and only to the extent that she has no "adequate remedy at law." (FAC ¶ 149.)

[3]As we have already dismissed the claims against Matrix in Counts I, II, and IV, which are the only claims asserted against Matrix, we address this argument solely as it relates to Reliance.

As a general matter, the Federal Rules of Civil Procedure permit a plaintiff to "set out 2 or more statements of a claim . . . alternatively or hypothetically." Fed. R. Civ. P. 8(d)(2). In addressing whether an ERISA plaintiff may assert a claim under § 1132(a)(3), the Supreme Court has stated that "there will likely be no need for equitable relief [pursuant to § 1132(a)(3)]" under circumstances in which "Congress elsewhere provided adequate relief for a beneficiary's injury." Varity, 516 U.S. at 515. Most courts have concluded that Varity in no way prohibits plaintiffs from simultaneously asserting claims pursuant to both § 1132(a)(1)(B) and § 1132(a)(3) in their complaints. See, e.g., Moyle v. Liberty Mut. Retirement. Benefit Plan, 823 F.3d 948, 961 (9th Cir. 2016) (en banc); Silva v. Metro. Life Ins. Co., 762 F.3d 711, 725-28, 728 n.12 (8th Cir. 2014); Terry v. Northrop Grumman Health Plan, 989 F. Supp. 2d 401, 407-408 (M.D. Pa. 2013); Parente v. Bell Atl. Pa., Civ. A. No. 99-5478, 2000 WL 419981, at *3 (E.D. Pa. Apr. 18, 2000). Like those cases, we read the above-mentioned statement in Varity to stand for little more than the unremarkable proposition that a plaintiff cannot recover equitable relief under § 1132(a)(3) if she is fully compensated for her loss under § 1132(a)(1). See Parente, 2000 WL 419981, at *3 ("[U]nder Varity, a plaintiff is only precluded from seeking equitable relief under § 1132(a)(3) when a court determines that plaintiff *will certainly receive* or *actually receives* adequate relief for her injuries under § 1132(a)(1)(B) . . . ."). Under that interpretation, the mere fact that a plaintiff might have an adequate remedy at law under § 1132(a)(1)(B) is no bar to the simultaneous assertion of a claim under § 1132(a)(3). Rather, a plaintiff can assert claims under both provisions and will only be prohibited from ultimately recovering under § 1132(a)(3) if the remedy under § 1132(a)(1)(B) proves adequate. Accord id. at *3 ("[A] determination as to whether § 1132(a)(1)(B) provides plaintiff with adequate relief is premature at this early stage of the proceeding.").

The moving Defendants nevertheless argue that we should dismiss Lash's § 1132(a)(3) claim in light of her simultaneous assertion of a claim under § 1132(a)(1)(B). In support of this argument, they cite two cases in which courts have read Varity to restrict the ERISA claims a plaintiff may assert in her complaint. See, e.g., Greene v. Hartford Life & Acc. Ins. Co., Civ. A. No. 13-6033, 2014 WL 4473725, at *4 (E.D. Pa. Sept. 10, 2014); Miller, 721 F. Supp. 2d at 423. However, even assuming arguendo that these cases correctly interpreted Varity, they would not support the dismissal of Lash's § 1132(a)(3) claim here as they merely concluded that the plaintiffs could not bring simultaneous claims under § 1132(a)(1)(B) and § 1132(a)(3) when the two claims asserted identical claims for relief. See Greene, 2014 WL 4473725, at *4 (dismissing plaintiff's § 1132(a)(3) claim where it sought "precisely the same remedy" as plaintiff's claim under § 1132(a)(1)(B)); Miller, 721 F. Supp. 2d at 423 (dismissing § 1132(a)(3) claim seeking an injunction directing the defendants to pay benefits under the plan, as it was "clear that the equitable relief requested by plaintiff is essentially 'a claim for benefits expressed in equitable language'" (quoting Clark v. Feder Semo & Bard, P.C., 527 F. Supp. 2d 112, 117 n.1 (D.D.C. 2007))). In the instant case, Lash seeks different remedies in her two types of claims, requesting $150,000 in benefits, interest, and attorneys' fees in her § 1132(a)(1)(B) claims in Counts I and II (FAC ¶¶ 131-140), and requesting equitable relief in the form of remand to the administrative proceeding and reconsideration of her § 1132(a)(3) claim in Count IV. (Id. ¶¶ 148-156.) Accordingly, the cases the moving Defendants rely upon are distinguishable on their facts and do not support a different conclusion than we reach here.

Under all of these circumstances, we reject the moving Defendants' argument that Lash cannot assert claims under both § 1132(a)(1)(B) and § 1132(a)(3) at this stage of the proceedings. We therefore decline to dismiss Lash's claim for equitable relief against Reliance

in Count IV of the Complaint, and we deny the moving Defendants' Motion insofar as it seeks dismissal of that claim.

C. Dismissal of the Amended Complaint in its Entirety

The moving Defendants seek to dismiss the First Amended Complaint in its entirety, with prejudice, for going "well beyond what is needed" in a complaint. (Defs.' Br. at 6 (citing Fed. R. Civ. P. 8(a)(2).) However, other than Rule 8, they cite no authority for such a request. Moreover, in spite of the length of the First Amended Complaint, we do not find it to be so excessive as to demand such an extreme and unusual sanction. Accordingly, we deny the Motion insofar as it requests dismissal of the First Amended Complaint in its entirety.

D. Request for Attorneys' Fees

The moving Defendants have requested an award of attorneys' fees if Matrix is dismissed as a Defendant in this action. ERISA provides that "[i]n any action under this subchapter . . . by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." 29 U.S.C. § 1132(g)(1). We employ a two-step process in assessing a request for attorneys' fees. Templin v. Indep. Blue Cross, 785 F.3d 861, 864 (3d Cir. 2015). First, we determine "whether the moving party is eligible for such an award." Id. "[E]ligibility for an award . . . depends on whether the moving party has shown some degree of success on the merits, not on whether the moving party is the prevailing party in the litigation." Id. (citing Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 254 (2010)). If we determine that the movant is eligible to submit a fee request, we next consider five specific factors in determining whether to exercise our discretion to grant that request. Id. (citing Ursic v. Bethlehem Mines, 719 F.2d 670, 673 (3d Cir. 1983)). The five factors, commonly referred to as the Ursic factors, are as follows: (1) the degree of the opposing party's culpability or bad faith;

(2) the opposing party's ability to satisfy an award of attorneys' fees; (3) whether an award of attorneys' fees against the opposing party would deter others under similar circumstances; (4) whether the party requesting attorneys' fees seeks to benefit all participants and beneficiaries of an ERISA plan; and (5) the relative merits of the parties' positions. Id. at 867 (citing Ursic, 719 F.2d at 673); Fields v. Thompson Printing Co., 363 F.3d 259, 275 (3d Cir. 2004). "[N]o one of these factors is decisive, and some may not be apropos in a given case, but together they are the nuclei of concerns that a court should address in applying § 1132(g)(1)." Veira v. Life Ins. Co. of No. Am., Civ. A. No. 09-3574, 2013 WL 3199091, at *2 (E.D. Pa. June 25, 2013).

Here, we conclude that the moving Defendants are eligible to apply for an award of fees because we are granting their Motion to Dismiss Matrix from the action and, thus, they have "shown some degree of success on the merits." Templin, 785 F.3d at 864. We therefore proceed to consider the five Ursic factors, which guide our discretion in deciding whether to award the requested fees.

(i) Lash's culpability or bad faith

The moving Defendants argue that Lash acted in bad faith by filing an amended Complaint that did not correct the pleading deficiencies of the original Complaint and by offering to forego the filing of the First Amended Complaint if the moving Defendants agreed to appear for deposition. However, while the First Amended Complaint, like the original Complaint, fails to state claims against Matrix upon which relief can be granted, Lash plainly attempted to address the pleading deficiencies that we identified in the original Complaint. We therefore cannot conclude that Lash acted with culpability or in bad faith in filing the First Amended Complaint. Moreover, we will not hinge a bad faith finding on Defendant's recitation of off-the record discussions that occurred between counsel prior to the filing of the First

Amended Complaint. Accordingly, we conclude that this first factor weighs against an award of attorneys' fees.

(ii) Lash's ability to satisfy an award of attorneys' fees

The moving Defendants state that they do not have "sufficient information to comment on [Lash's] ability to satisfy an award of fees." (Defs.' Br. at 7.) We know from the pleadings, however, that Lash is receiving Social Security Disability, and, given that she filed this action, we also know that Lash is not receiving long-term disability benefits. Consequently, we feel comfortable concluding that Lash has very little, if any, ability to satisfy an award of attorneys' fees and, thus, the second factor weighs against an award of attorneys' fees.

(iii) Deterrence to others

The moving Defendants argue that an award of attorneys' fees in this case would deter future plaintiffs from bringing meritless claims such as Lash brought against Matrix here. Because we agree that an award of fees here would have a potential deterrent effect, we conclude that this factor weighs slightly in favor of awarding attorneys' fees.

(iv) Whether Matrix seeks to benefit all participants and beneficiaries

The moving Defendants argue that their action in moving to dismiss Lash's claims against Matrix conferred a benefit on all participants because it helped to minimize Plan costs. See McPherson v. Emps.' Pension Plan of Am. Re-Ins. Co., 33 F.3d 253, 256 (3d Cir. 1994) ("The fourth factor requires consideration of the benefit, if any, that is conferred on others by the court's judgment."). However, this argument, at best, identifies only an indirect benefit that may be conferred on Plan participants, and courts have rejected the theory that such an indirect benefit can satisfy the fourth Ursic factor. See Estate of Schwing v. Lilly Health Plan, 898 F. Supp. 2d 759, 771 (E.D. Pa. 2012) (finding fourth Ursic factor to weigh against attorneys' fees

where defendant did not demonstrate that the plan would receive a "significant direct benefit"); Toy v. Plumbers & Pipefitters Local Union No. 74 Pension Plan, 642 F. Supp. 2d 317, 321 (D. Del. 2009) (rejecting "indirect benefit" theory which posits that deterrence would benefit the members of a plan by limiting the plan's exposure to litigation costs and resource depletion). Accordingly, we conclude that this factor does not favor an award of attorneys' fees.

(v) Relative merits of the parties' positions

The moving Defendants argue that there is "no merit whatsoever in [Lash's] positions against Matrix," stating that Lash's "claims against Matrix are contrary to the language in the ERISA statute, the plan documents and binding precedent." (Defs.' Br. at 8.) Notably, "the fact that the [plaintiff's] positions have not been sustained does not alone put the fifth factor in the column favoring an award." McPherson, 33 F.3d at 258. Here, in spite of the moving Defendants' arguments, we have not dismissed Lash's claims lightly. Thus, we conclude that this factor weighs against an award of attorneys' fees, or, at most, is neutral.

For the foregoing reasons, we conclude that the Ursic factors, on balance, weigh against an award of attorneys' fees. Accordingly, the moving Defendants' request for attorneys' fees is denied.

IV. CONCLUSION

For the reasons stated above, the Motion to Dismiss is granted in part and denied in part. The Motion is granted insofar as it requests dismissal of the claims against Matrix in Counts I, II, and IV and we therefore dismiss Matrix as a Defendant to this action. In all other respects, the Motion to Dismiss is denied. An appropriate Order follows.

BY THE COURT:

/s/ John R. Padova, J.
John R. Padova, J.