

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

_____)	
SADIE BENNETT and MELISSA)	
MANNINO, Individually and on)	
Behalf of All Others Similarly Situated,)	
)	
<i>Plaintiffs,</i>)	Civil Action No. 3:19-185-SDD-RLB
)	
v.)	
)	
LOUISIANA HEALTH SERVICE &)	
INDEMNITY COMPANY (doing)	
Business as BLUE CROSS AND)	
BLUE SHIELD OF LOUISIANA),)	
)	
<i>Defendant.</i>)	
_____)	

DEFENDANT’S MOTION TO DISMISS ALL CLAIMS IN THE COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Defendant Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana (“BCBSLA”), which moves for dismissal with prejudice, pursuant to Fed. R. Civ. P. 12(b)(6) and 12(b)(1), of all the claims against it brought by Plaintiffs Sadie Bennett and Melissa Mannino, for failure to state a claim upon which relief can be granted and for lack of subject-matter jurisdiction over BCBSLA due to lack of standing, and for all further general and equitable relief.

Count I of the Complaint (ECF No. 1) should be dismissed under Rule 12(b)(6) for failure to exhaust administrative remedies.

To the extent Count II of the Complaint asserts fiduciary conduct, it should be dismissed under Rule 12(b)(6) as impermissibly duplicative of Count I and, alternatively, because (1) Plaintiffs failed to exhaust administrative remedies, and (2) with respect to any allegations of

fiduciary status for BCBSLA other than via application of plan terms, BCBSLA was not an ERISA fiduciary. To the extent Count II asserts party-in-interest conduct, it must be dismissed under Rule 12(b)(6) because of the lack of both available equitable relief and the conditions for injunctive relief and under Rule 12(b)(1) for lack of standing to seek injunctive relief.

Count III of the Complaint should be dismissed under Rule 12(b)(6) as impermissibly duplicative of Count I and, alternatively, because (1) Plaintiffs failed to exhaust administrative remedies, and (2) with respect to any allegations of fiduciary status other than via application of plan terms, BCBSLA was not an ERISA fiduciary.

Count IV should be dismissed under Rule 12(b)(6) as impermissibly duplicative of Count I and, alternatively, because (1) Plaintiffs failed to exhaust administrative remedies, and (2) with respect to any allegations of fiduciary status other than via application of plan terms, BCBSLA was not an ERISA fiduciary.

These grounds for dismissal are set forth in more detail in the accompanying Memorandum in Support.

Wherefore BCBSLA prays that this Motion be granted, dismissing with prejudice all claims against it in this litigation.

June 5, 2019

Respectfully submitted,

/s/ Anthony F. Shelley

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on enrolled counsel of record electronically by filing same through this Court's CM/ECF system.

Washington, DC, this 5th day of June, 2019.

/s/ Anthony F. Shelley
Anthony F. Shelley