NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DAVID R. REED,

Plaintiff,

v.

KRON/IBEW LOCAL 45 PENSION PLAN, et al.,

Defendants.

Case No. 16-cv-04471-JSW

ORDER GRANTING, IN PART, AND DENYING IN PART MOTION TO DISMISS AND CONTINUING CASE MANAGEMENT CONFERENCE

Re: Dkt. No. 20

Now before the Court for consideration is the motion to dismiss filed by Defendants KRON/IBEW Local 45 Pension Plan (the "Plan"), Pension Committee of the KRON/IBEW Local 45 Pension Plan (the "Committee"), and Young Broadcasting of San Francisco, Inc. ("KRON-TV") (collectively "Defendants"). The Court also has received and considered the parties' joint case management statement.

Having considered the parties' papers, relevant legal authority, and the record in this case, the Court finds the motion suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court VACATES the motion hearing and it CONTINUES the case management conference, both of which are scheduled for December 9, 2016. The Court HEREBY GRANTS, IN PART, AND DENIES, IN PART, Defendants' motion, and it sets forth a case management schedule at the conclusion of this Order.

BACKGROUND

Plaintiff, David R. Reed ("Plaintiff"), brings this action pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. sections 1132(a)(1) and 1132(a)(3). (Compl. ¶ 1.) Plaintiff and Donald Lee Gardner, who was a Plan participant, were registered as domestic partners in California in 2004 and were married in California in 2014.

Plaintiff alleges that his relationship with Mr. Gardner was well known at KRON-TV, including within its human resources department. (*Id.* ¶¶ 8-12, 21.) Mr. Gardner retired from KRON-TV in 2009, and Plaintiff alleges that he and Mr. Gardner met with KRON-TV's human resources department to discuss Mr. Gardner's benefit options. According to Plaintiff, KRON-TV's personnel did not mention the availability of a joint-and-survivor form of benefit. (*Id.* ¶ 13.)

Plaintiff alleges that Section 7.06 of the Plan "mandates that a participant who is married at retirement or benefit commencement must be paid his monthly pension benefit in the form of a 50 percent joint-and-survivor annuity unless he elects otherwise after written notice of his right to the joint-and-survivor annuity and with the witness or notarized written consent of his spouse." (*Id.* ¶ 15.) According to Plaintiff, KRON-TV provided Mr. Gardner with a pension election form that stated a joint-and-survivor annuity was only available "if married," and that Mr. Gardner elected a single-life annuity, which was listed on the form as available to participants "if not married." (*Id.*) Plaintiff alleges he did not sign a spousal consent to Mr. Gardner's election. (*Id.* ¶ 20.) Plaintiff also alleges that, under California law, registered domestic partners are entitled to the same benefits as spouses. (*Id.* ¶ 17.) In June 2014, Mr. Gardner passed away, and the Plan ceased paying his pension. (*Id.* ¶ 23.) On March 30, 2016, Plaintiff submitted a claim for a survivor benefit to the Committee, and as of August 9, 2016, Plaintiff had not received a response to his claim. (*Id.* ¶¶ 29-31.)[1]

On August 9, 2016, Plaintiff filed his Complaint, and asserted claims for: (1) benefits under Section 1132(a)(1)(B) against the Plan and the Committee; (2) a penalty under Section 1132(a)(1)(A) against the Committee and KRON-TV; and (3) a violation of Section 1132(a)(3) against KRON TV. In his first claim for relief, Plaintiff alleges that "California registered domestic partners occupy the status of married persons under California law," and that "[b]ecause Mr. Gardner was not provided with a written explanation of his right to a joint-and-survivor annuity and [Plaintiff] did not consent to [Mr. Gardner's] election of a single-life annuity, Mr. Gardner's election of a single-life annuity is invalid." (*Id.* ¶¶ 35-36.) Plaintiff alleges that he is

[1] According to representations in the joint case management statement, Plaintiff's claim was denied on August 16, 2016. (Dkt. No. 31, Joint Case Management Statement at 2:6-7.)

entitled to benefits under the Plan, because he is Mr. Gardner's surviving spouse. (*Id.* ¶ 37.)

In his third claim, Plaintiff alleges KRON-TV breached its fiduciary duties to him: "(a) by failing to investigate whether Mr. Gardner was entitled to elect a joint-and-survivor annuity under the … Plan[;] (b) by failing to advise Mr. Gardner regarding his right to elect a joint-and-survivor annuity[;] and (c) by related acts and omissions." (*Id.* ¶ 46.) As relief, Plaintiff asks for declarations that Defendants are estopped from denying him a survivor benefit under the Plan and that they are estopped from reducing his survivor benefit by "any overpayment occasioned by the payment of a single-life annuity during Mr. Gardner's life. (*Id.*, Prayer for Relief at 7:27-8:2.) Plaintiff also asks the Court to reform the Plan "to provide that the provisions applicable to married participants apply to participants in registered domestic partnerships," and to assess a surcharge "in the amount necessary to place [Plaintiff] in the position he would have occupied but for the breach, including in the amount of the survivor benefit and any claimed overpayment." (*Id.*, Prayer for Relief at 8:4-8.)

ANALYSIS

A. Applicable Legal Standard.

Defendants move to dismiss Plaintiffs' second and third claims for relief, in part, for failure to state a claim.[2] Fed. R. Civ. P. 12(b)(6). Under Rule 12(b)(6), the Court's "inquiry is limited to the allegations in the complaint, which are accepted as true and construed in the light most favorable to the plaintiff." *Lazy Y Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). Even under the liberal pleadings standard of Federal Rule of Civil Procedure 8(a)(2), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a claim for relief will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Pursuant to *Twombly*, a plaintiff must not allege conduct that is conceivable but must allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. "A claim

[2] Defendants initially moved to dismiss the Committee from Plaintiff's first claim for relief. In their reply, Defendants state that they withdraw that portion of their motion. (Reply Br. at 4:20-5:6.)

has facial plausibility when the Plaintiff pleads factual content that allows the court to draw the reasonable inference that the Defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). In general, if the allegations are insufficient to state a claim, a court should grant leave to amend, unless amendment would be futile. *See, e.g. Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

B. The Court Grants the Motion to Dismiss KRON-TV from the Second Claim.

Defendants move to dismiss KRON-TV from the second claim for relief, on the basis that KRON-TV is not a plan administrator. The parties agree that penalties under Section 1132(c) may be assessed only against a plan administrator, as that term is defined under ERISA. *See, e.g.*, *Moran v. Aetna Life Ins. Co.*, 872 F.2d 296, 299-300 (9th Cir. 1989); *accord Younkin v. Prudential Ins. Co. of Am.*, 288 Fed. App'x 344, 346 (9th Cir. 2008). A "plan administrator" includes "the person so designated by the terms of the instrument under which the plan is operated." 29 U.S.C. § 1002(16)(A)(i). If an administrator is not designated, the plan sponsor may be considered a "plan administrator." *Id.* § 1002(16)(A)(ii).

Plaintiff alleges that the Committee "is *the* Plan Administrator of the KRON Plan within the meaning of ERIC § 3(16)(A), 29 U.S.C. § 1002(16)(A)." (Compl. ¶ 6 (emphasis added).) Plaintiff also alleges that he requested and was provided with the Plan's governing instruments, and he has included allegations citing to portions of the Plan. (*See id.* ¶¶14-15, 27-28, 30.) Accepting these allegations as true, the Court concludes that Plaintiff has not alleged facts to support a claim against KRON-TV on the second claim for relief.

Accordingly, the Court GRANTS, IN PART, Defendants' motion to dismiss on this basis, without leave to amend.[3]

C. The Court Denies the Motion to Dismiss the Third Claim for Relief.

KRON-TV moves to dismiss the third claim for relief on the ground that the relief Plaintiff seeks is duplicative of his first claim for relief for benefits. In *CIGNA Corp. v. Amara*, the

[3] In their reply, Defendants "confirm that only the Committee is the plan administrator." (Reply Br. at 5 n.2.)

Supreme Court held that Section 1132(a)(3) permits equitable relief, in a variety of forms, even where a plaintiff seeks relief under Section 1132(a)(1)(B). 563 U.S. 421, 439-442 (2011). The Ninth Circuit has confirmed that a plaintiff may pursue claims under both Sections 1132(a)(1) and 1132(a)(3), "so long as there is no double recovery." *Moyle v. Liberty Mut. Retirement Ben. Plan*, 823 F.3d 948, 960-61 (9th Cir. 2016); *see also id.* at 962 (noting that "[t]his approach … adheres to the Federal Rules of Civil Procedure" which permit "'relief in the alternative or different types of relief'") (quoting Fed. R. Civ. P. 8(a)(3), emphasis omitted).

Under Section 1132(a)(3), a "plaintiff who is a '... beneficiary ...' must prove both (1) that there is a remediable wrong, *i.e.*, that the plaintiff seeks relief to redress a violation of ERISA or the terms of a plan[;] and (2) that the relief sought is 'appropriate equitable relief.'" *Garcia v. Alaska Elec. Pension Fund*, 773 F.3d 945, 954 (9th Cir. 2014) (citations omitted, quoting 29 U.S.C. § 1132(a)(3)(B)). KRON-TV does not argue that Plaintiff has not alleged the first element of this claim, but it does argue that reformation and surcharge are not appropriate remedies in this case. With respect to reformation, KRON-TV argues that Plaintiff has not alleged facts that would support that remedy, because he has not alleged facts to show fraud or mistake. Plaintiff alleges that KRON-TV did not inform Mr. Gardner of his right to elect a joint-and-survivor annuity. At this early stage in the litigation, the Court cannot determine if this claim simply "repackages" his first claim for relief. *Cf. Seekatz v. Metropolitan Life Ins. Co.*, No. 15-cv-00017-RRB, 2016 WL 542647, at *2 (D. Alaska Sept. 26, 2016) (denying motion to dismiss claim under Section 1132(a)(3) and stating that "it is too early to tell if Plaintiffs [*sic*] Section 1132(a)(3) claim is effectively a repackaged Section 1132(a)(1) claim or if the relief available is truly duplicative").

With respect to surcharge, KRON-TV argues Plaintiff seeks relief that would be duplicative of his first claim. In order to obtain relief in the form of surcharge, for a breach of fiduciary duty, "'a plan participant or beneficiary must show that the violation injured him or her,' but 'need only show harm and causation,' not detrimental reliance." *Moyle*, 773 F.3d at 957-58 (quoting *Amara*, 563 U.S. at 444). KRON-TV does not challenge Plaintiffs' allegations regarding

harm and causation.[4] In addition, Plaintiff seeks estoppel as a form of equitable relief. Apart from its argument that this relief would be duplicative of any relief available under Plaintiff's first claim, KRON-TV has not challenged Plaintiff's allegations regarding estoppel. *See, e.g., Garcia*, 773 F.3d at 956.

Accordingly, the Court DENIES the motion to dismiss the third claim for relief. This ruling is without prejudice to KRON-TV renewing its arguments regarding this claim in its anticipated cross-motion for judgment on the pleadings.[5]

CONCLUSION

For the foregoing reasons, the Court GRANTS, IN PART, AND DENIES, IN PART, Defendants' motion to dismiss. Defendants shall answer the Complaint by no later than December 19, 2016. In their joint case management conference statement, the parties state that they intend to file cross-motions for judgment on the pleadings on the claims that remain following the Court's ruling on this motion. The Court adopts the parties' proposed briefing schedules, but it modifies the proposed hearing date.

Accordingly, Plaintiff's motion shall be due on or before January 13, 2017. Defendants' opposition and cross-motion shall be due on or before January 27, 2017. Plaintiff's opposition and reply shall be due on or before February 10, 2017. Defendant's reply shall be due on or before February 24, 2017. The Court sets a hearing date for the cross-motions on March 17, 2017 at 9:00 a.m.

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[4] KRON-TV also does not argue that Plaintiff fails to allege it was acting in a fiduciary capacity rather than as Mr. Gardner's employer. *See Varity Corp. v. Howe*, 516 U.S. 489, 498-505 (1996).

[5] If KRON-TV renews its arguments in its motion for judgment on the pleadings, the Court ORDERS the parties to address the elements of each form of equitable relief requested, as set forth by the Ninth Circuit in the *Garcia* case. 773 F.3d at 955-58.

The Court sets a further case management conference to be held on April 21, 2017 at 11:00 a.m. The parties' updated joint case management statement shall be due on April 14, 2017.

IT IS SO ORDERED.

Dated: December 5, 2016

JEFFREY S. WHITE
United States District Judge