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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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Spinedex Physical Therapy USA Incorporated, et al., Plaintiffs, v. United Healthcare of Arizona Incorporated, et al., Defendants.	No. CV-08-00457-PHX-ROS **ORDER**

16 Despite the parties' voluminous briefing, the questions presented in the pending
17 motion for summary judgment are straightforward. Those questions are: 1) Does
18 Plaintiff Claude Aragon have standing to pursue his breach of fiduciary duty claim or his
19 prohibited transaction claim? 2) Which statute of limitations applies to Plaintiff
20 Spinedex's claims for benefits? and 3) Are the anti-assignment clauses in five plans
21 enforceable? As set forth below, Aragon has standing, a one-year limitations period
22 applies, and the anti-assignment clauses are enforceable.

23 **I. Aragon Has Standing Regarding His Claims for Fiduciary Breach and**
24 **Prohibited Transactions**

25 Throughout the history of this case, the parties and the Court have been uncertain
26 about the nature of Aragon's claims for breach of fiduciary duty and conducting a
27 prohibited transaction. The confusion began with the complaint, continued with the first
28 motion to dismiss, and was not resolved by the order denying the motion to dismiss.

Subsequent developments, including the Ninth Circuit's opinion, did not eliminate the confusion. To understand the present dispute, a brief history of these claims is necessary.

As alleged in the Second Amended Complaint, Aragon is "a participant and/or beneficiary of the [IBM] group health plan." (Doc. 38 at 7). Defendant United Healthcare of Arizona, Inc. ("United") is responsible for "benefit determinations and process[ing] claims submitted under the [IBM plan]." (Doc. 38 at 9). Prior to filing suit, Aragon received physical therapy treatment from Spinedex and he assigned his claims for benefits under the IBM plan to Spinedex. After Aragon received treatment, Spinedex submitted claims to United as Aragon's assignee. (Doc. 38 at 22). Because the Second Amended Complaint originally involved claims for many individuals treated by Spinedex, the allegations regarding submissions to United were general and did not address the handling of Aragon's claims in particular. But construing the general allegations as applying to Aragon, United "failed to pay" the claims submitted by Spinedex for treatment provided to Aragon. (Doc. 38 at 22).

In connection with its general allegations regarding the payment of claims, the Second Amended Complaint also made vague allegations regarding how United handled claims. Thus, United allegedly issued explanations of benefits that did not properly explain why it was refusing to pay for the treatments provided by Spinedex, failed to timely process claims, and failed to review all information submitted by Spinedex. (Doc. 38 at 23-24). United denied some claims entirely and for others United only paid a partial amount allegedly based on "the usual, customary, and reasonable, or 'allowable' (collectively 'UCR') charges for covered services." (Doc. 38 at 26). The UCR charges were alleged to have been calculated by using the "Ingenix Database." That database, operated by United subsidiary Ingenix, Inc., was "flawed" and "inappropriate for use in calculating the UCR rates for Physical Therapy." The flaws allegedly led United to pay physical therapy providers less than "the actual UCR rates for [physical therapy] in the localities where" those therapy providers were located. (Doc. 38 at 27). There were no allegations identifying which, if any, of these practices applied to the handling of

Aragon's claims.

Based on the way United handled claims, Aragon and other plaintiffs asserted claims against United for breach of fiduciary duty and for engaging in prohibited transactions.[1] The claim for breach of fiduciary duty was based on: 1) United's repeated failure to comply with the regulations regarding processing and consideration of claims; 2) United's failure to preserve administrative records; 3) United's inappropriate reliance on a policy requiring denial of claims involving vertebral axial decompression ("VAX-D treatments"); 4) United's practice of issuing pretextual denials of claims and delaying payment of valid claims; and 5) United's decision to select Ingenix to make UCR determinations. (Doc. 38 at 40-41) (Doc. 726 at 11). United allegedly pursued these actions "to increase unlawfully [United's] profits at the expense of [Aragon and others]" in violation of United's fiduciary duties. (Doc. 38 at 42).

The claim for "prohibited transaction and self-dealing violations" was based on United "delaying payments for covered benefits." The delays allegedly allowed United to "retain[] the use of funds that were payable . . . for covered health services." (Doc. 38 at 43). In other words, United conducted a prohibited transaction by retaining funds that should have been paid to healthcare providers. The prohibited transaction claim was also based on United's decision to select "Ingenix to provide the Ingenix Database." That selection allegedly increased United's "profits at the expense of [Aragon and others]." (Doc. 38 at 43).

In describing the relief sought on the fiduciary breach and prohibited transaction claims, the Second Amended Complaint focused on monetary damages in the form of "disgorgement of all profits and ill-gotten gains realized by" United as a result of its practices. But the Second Amended Complaint also sought declaratory and injunctive relief. In particular, it sought a declaration "that the Ingenix Database is flawed," the

[1] Because the Second Amended Complaint originally had multiple plaintiffs bringing these claims, it is impossible to determine the precise factual basis on which Aragon was basing his claims versus the factual basis on which the other plaintiffs were basing their claims.

UCR rates United used were "improper," and that United had "improperly failed to pay claims." And it sought injunctive relief to "[e]njoin [United] from any further violations of ERISA" and to "[e]njoin [United] from serving in any fiduciary capacity . . . to any and all . . . ERISA welfare benefit plans." (Doc. 38 at 48). United moved to dismiss both the breach of fiduciary duty and prohibited transaction claims.

Most of the arguments presented in the motion to dismiss briefing are not relevant here but the parties' primary focus in that briefing was the viability of the claims for breach of fiduciary duty and prohibited transaction as claims seeking monetary relief. However, the opposition to the motion to dismiss pointed out the claim for breach of fiduciary duty was not only seeking monetary relief. Instead, that claim also sought "injunctive relief relating to" the prevention of future "systematic violations" of the claims processing regulation. (Doc. 112 at 30). The opposition also argued the claim for breach of fiduciary duty sought "equitable relief" such as "the removal of the fiduciary."

On April 29, 2009, the Court resolved the motion to dismiss and allowed the claims for breach of fiduciary duty and prohibited transaction to proceed. In allowing the breach of fiduciary duty claim to proceed, the Court noted the plaintiffs had requested "injunctive relief to prevent [United and affiliated companies] from serving as Plan administrators and fiduciaries." (Doc. 132 at 22). As for the prohibited transaction claim, the Court expressed some doubt whether Aragon had a viable legal theory because if the underlying plans were self-funded, the alleged prohibited transaction would not have resulted in United reaping any monetary benefit. The Court decided, however, to let the prohibited transaction claim proceed beyond the motion to dismiss stage.

After a limited amount of discovery, United sought summary judgment on both of these claims. As relevant to Aragon, the claims were dismissed based on his failure to exhaust administrative remedies. (Doc. 568 at 7). Aragon appealed that decision and the Ninth Circuit reversed.

As best as the Court can tell, the Ninth Circuit grouped Aragon's fiduciary breach and prohibited transaction claims as a single "claim[] for breach of fiduciary duty."

Spinedex Physical Therapy USA Inc. v. United Healthcare of Arizona, Inc., 770 F.3d 1282, 1294 (9th Cir. 2014). According to the Ninth Circuit, a claim for breach of fiduciary duty must be administratively exhausted when it is a disguised benefits claim. Aragon's claim, however, was not a disguised benefits claim because he was not seeking payment of benefits. Instead, he was seeking "injunctive relief that clearly will benefit the Plans." *Id.* Thus, Aragon was not required to exhaust his administrative remedies. After reaching this conclusion, the Ninth Circuit went on to make a puzzling observation.

After holding Aragon was not required to administratively exhaust his claim for breach of fiduciary duty, the Ninth Circuit noted it was unclear whether Aragon had Article III standing to pursue this claim. The Ninth Circuit's reasoning, consisting of a single paragraph, indicated Aragon's decision to assign to Spinedex his underlying claim for benefits might impact his standing. The relevant paragraph provided:

> The district court did not consider whether, in the case's current procedural posture, Aragon has Article III standing. That is, it did not consider whether Aragon would have standing to bring a claim for breach of fiduciary duty if he cannot pursue his claim for denial of benefits because he has assigned it to Spinedex. *Cf. Glanton ex rel. ALCOA Prescription Drug Plan v. AdvancePCS Inc.*, 465 F.3d 1123, 1125 (9th Cir.2006) ("There is no redressability, and thus no standing, where (as is the case here) any prospective benefits depend on an independent actor who retains 'broad and legitimate discretion the courts cannot presume either to control or to predict.' " (quoting *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 615, 109 S.Ct. 2037, 104 L.Ed.2d 696 (1989))). We therefore remand Aragon's case to the district court to consider that question in the first instance.

Id. Unfortunately, the Ninth Circuit did not explain why it believed Aragon's assignment of his claim for benefits might impact his standing to pursue a fiduciary breach claim. Having just noted Aragon was seeking injunctive relief to benefit the plan, the fact that he might not be entitled to recover benefits seemed irrelevant.

After remand, the parties engaged in additional discovery and eventually United filed the now-pending motion for summary judgment. That motion argues Aragon "lacks Article III standing to pursue" the fiduciary breach and prohibited transaction claims ("statutory claims"). (Doc. 634 at 10). United assumes Aragon's statutory claims are

aimed solely at monetary relief and it presents standing arguments regarding such relief. Aragon's opposition begins by conceding he is no longer seeking any form of monetary relief. Instead, Aragon argues he has standing to seek declaratory and injunctive relief in the form of requiring changes to United's claims-handling practices as well as its selection of Ingenix to provide UCR rates. (Doc. 726 at 11-12).

In its reply, United argues that Aragon's concession of any claim for monetary damages dooms the statutory claims. According to United, the Court's 2009 Order resolving the motion to dismiss construed the statutory claims as seeking monetary relief and only allowed them to proceed because of the request for such damages. In other words, the Court's 2009 Order held that, should it turn out that Aragon was not entitled to monetary relief, his claims would fail.

United is correct that the statutory claims started out as focused on monetary relief. But Aragon has, from the beginning, included requests for declaratory and injunctive relief. And the Court's 2009 Order noted Aragon was seeking injunctive relief "to prevent [United] from serving as Plan administrators and fiduciaries." (Doc. 132 at 22). At oral argument, United insisted the 2009 Order must be read as allowing the statutory claims to proceed only because they were seeking monetary relief. But the 2009 Order did not say that. The focus of the briefing and ruling in 2009 was the monetary relief aspect of the statutory claims but there was never an intention to limit the statutory claims to such relief. Accordingly, Aragon's abandonment of any request for monetary relief does not require his statutory claims be dismissed. Accepting that Aragon has always requested more than monetary relief, the only remaining question is whether he has constitutional standing to seek such relief.

To have standing under the usual framework, Aragon would have to show he has suffered, or is about to suffer, an injury in fact, the injury (or imminent injury) is "fairly traceable to the challenged conduct of [United]," and the injury (or imminent injury) is redressable "by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). United attacks the first element and argues Aragon was not subject to the

harms he has identified in the past and there is no sufficient indication he will be subjected to such harms in the future. That argument, however, overlooks the unique standing rule for breach of fiduciary duty claims under ERISA.

In *Shaver v. Operating Engineers Local 428 Pension Trust Fund*, the plaintiffs asserted an ERISA claim for breach of fiduciary duty based on the fiduciaries of a pension plan failing to "keep adequate records" as required by ERISA. 332 F.3d 1198, 1202 (9th Cir. 2003). Based on that failure, the plaintiffs sought "injunctive relief in the form of either an order requiring that the [fiduciaries] keep more thorough records in the future or that the [fiduciaries] be removed." *Id.* The district court dismissed this claim because the plaintiffs had not alleged they suffered "any loss" as a result of the inadequate recordkeeping. *Id.* at 1203. The Ninth Circuit reversed, concluding "[t]he question of whether a fiduciary violated his fiduciary duty is independent from the question of loss." *Id.* Because the plaintiffs were seeking "purely equitable relief, either to enjoin future misconduct, or to have the [fiduciaries] removed," there was no requirement the plaintiffs establish an actual loss. In the Ninth Circuit's view, imposing a loss requirement is ill-suited to the ERISA context: "Requiring a showing of loss . . . would be to say that the fiduciaries are free to ignore their duties so long as they do no tangible harm, and that the beneficiaries are powerless to rein in the fiduciaries' imprudent behavior until some actual damage has been done. This result is not supported by the language of ERISA, the common law, or common sense." *Id.*

The Ninth Circuit has not overruled *Shaver* and district courts have concluded its approach still dictates the proper standing analysis for breach of fiduciary duty claims under ERISA.[2] As described by one district court, "when plan participants seek

[2] The closest the Ninth Circuit has come to overruling *Shaver* was in 2006. In *Glanton ex rel. ALCOA Prescription Drug Plan v. AdvancePCS Inc.*, the plaintiffs were suing their ERISA plans' fiduciaries for breaching their duties and causing monetary losses to their plans. 465 F.3d 1123, 1124 (9th Cir. 2006). The Ninth Circuit concluded the plaintiffs lacked standing because there was "no redressability" given that any monetary damages would be given to the plans and the plaintiffs themselves would not necessarily reap any benefit from those damages. *Id.* at 1125. The best interpretation of this decision, however, is that it was addressing only monetary damages, not equitable relief. *Glanton* does not cite *Shaver* nor does it provide any indication why *Shaver* would

injunctive relief for violations of ERISA's disclosure or fiduciary requirements, they can demonstrate Article III standing by showing a violation of ERISA and need not prove actual injury." *Wells v. California Physicians' Serv.*, No. C05-01229 CRB, 2007 WL 926490, at *3 (N.D. Cal. Mar. 26, 2007). Thus, in the Ninth Circuit, a plan participant alleging a claim for breach of fiduciary duty need not prove he suffered a "loss." If the plan participant can prove the fiduciary is not abiding by all of its obligations under ERISA, the plan participant can pursue declaratory or injunctive relief.

Applying the approach of *Shaver* to the present dispute makes short work of United's standing argument. Aragon's statutory claims are seeking "purely equitable relief," and he has evidence that United violated its fiduciary duties in a variety of ways. Those violations harmed the IBM Plan in that, assuming they occurred, they were failures to abide by the requirements of ERISA. (Doc. 755 at 389-395) (examples of United's failures involving IBM Plan). The fact that Aragon, personally, did not suffer a loss as a result of those failures does not prevent him from pursuing his statutory claims. In the language of standing, United's breaches of fiduciary duty are a sufficient "injury in fact" even though Aragon did not suffer a more particularized "loss." *See Perelman v. Perelman*, 793 F.3d 368, 373 (3d Cir. 2015) ("With respect to claims for injunctive relief, [injury-in-fact] may exist simply by virtue of the defendant's violation of an ERISA statutory duty, such as failure to comply with disclosure requirements.").

With the "injury in fact" requirement met, the other two standing requirements are satisfied quite easily. The "injury in fact" is traceable to United's conduct in that it is undisputed that United is the fiduciary responsible for the actions Aragon has identified as contrary to ERISA. And a decision in Aragon's favor would redress the relevant injury, either by preventing continued breaches or by removal of United as the fiduciary

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no longer be binding. Thus, "*Glanton* refers only to claims of monetary loss, and does not broaden or overrule the pre-existing case law," such as *Shaver*. *Wells v. California Physicians' Serv.*, No. C05-01229 CRB, 2007 WL 926490, at *5 (N.D. Cal. Mar. 26, 2007).

of the IBM plan. Therefore, Aragon has standing to pursue his statutory claims.[3]

II. Arizona's One-Year Statute of Limitations Applies

United believes a one-year statute of limitations applies to Spinedex's claims for benefits while Spinedex believes a six-year statute of limitations applies. In 2013, the Court determined Arizona's one-year limitations period should apply to claims for ERISA benefits. Spinedex has not offered a convincing basis to depart from that decision.

As set forth in *Blood Systems, Inc. v. Roesler*, 972 F. Supp. 2d 1150, 1154 (D. Ariz. 2013), an ERISA claim for benefits requires borrowing "the most analogous state statute of limitations." When more than one limitations period might apply, the task is not to determine which period is the "perfect fit," but which period is the "closest fit." *Id.* In Arizona, this requires choosing between the one-year limitations period applicable to causes of action based on "employment contracts" and the general six-year limitations period applicable to causes of action based on written contracts. In *Blood Systems*, the Court looked to Arizona's interpretation of the one-year limitations period and concluded that period was the closest fit for purposes of an ERISA claim for benefits. Spinedex offers a variety of arguments against that conclusion but none of those arguments are convincing.

Spinedex's most straightforward argument is that *Blood Systems* is wrong because "Ninth Circuit authority mandates" application of Arizona's six-year statute of limitations. (Doc. 726 at 27-28). This assertion is based on *McElwaine v. US West, Inc.*, a 1999 decision by the Ninth Circuit. 176 F.3d 1167 (9th Cir. 1999). In that decision, the plaintiff believed her pension benefit had been miscalculated and she filed suit asserting

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[3] This analysis applies to both statutory claims. *Cf. Innis v. Bankers Tr. Co. of S. Dakota*, No. 416CV00650RGESBJ, 2017 WL 4876240, at *6 (S.D. Iowa Oct. 13, 2017) (recognizing a plaintiff can pursue "injunctive or equitable relief" to prevent future prohibited transactions). It is undisputed United entered into an agreement of some sort with Ingenix. Aragon describes that agreement as qualifying as a transaction prohibited by 29 U.S.C. § 1106. At present, the Court does not have sufficient briefing from the parties to determine whether the relevant transaction qualifies as one prohibited by ERISA. Thus, Aragon is entitled to pursue his prohibited transaction claim as well.

an ERISA claim for benefits on April 4, 1996. *Id.* at 1170. Summary judgment was later granted against the plaintiff because, while her suit was pending, her employer recalculated and paid her the pension benefit she was seeking. The sole issue on appeal was whether the plaintiff was entitled to an award of attorneys' fees given that she had not prevailed in her lawsuit. In describing the background facts relevant to that inquiry, the Ninth Circuit noted the statute of limitations for the plaintiff's claim expired in May 1996. *Id.* The panel explained its calculation of the limitations period in a footnote, stating "[t]he statute of limitations for an ERISA benefits action is based on the applicable statute of limitations for a contract claim in the forum state. Arizona, the forum state, has a six year statute of limitations." *Id.* at 1170 n.4. According to Spinedex, that description of the applicable statute of limitations must be applied in this case. Spinedex's analysis, however, does not take into account the changes to Arizona law around the time *McElwaine* was decided.

The complaint in *McElwaine* was filed on April 4, 1996. As of that date, Arizona did not have a one-year limitations period that might apply. The one-year limitations period regarding employment contracts did not go into effect until sometime after April 9, 1996.[4] Thus, at the time the plaintiff in *McElwaine* filed suit, application of the one-year limitations period was not even theoretically possible. Spinedex's claim that *McElwaine* is binding on this Court is incorrect.

Spinedex's next attack on *Blood Systems* is to point to a very small subset of ERISA plans that do not involve a true employment relationship. According to Spinedex,

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[4] Determining the effective date of a statute under Arizona law can be complicated. In general, "no act passed by the legislature shall be operative for ninety days after the close of the session of the legislature enacting such measure." Ariz. Const. art. IV, Pt. 1 § 1. The act containing the one-year limitations period was approved by the Arizona Governor on April 9, 1996, meaning it would have gone into effect 90 days after the 1996 legislative session expired. The parties have not identified when the 1996 legislative session ended but the law could not have taken effect before governor approval. In addition, there is no dispute that changes in a state statute of limitations may impact the limitations period for federal claims, even when prior federal decisions have borrowed the earlier statute. *See, e.g.*, *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004) (noting federal courts "clearly" would apply new California limitations period in future suits).

"[a]pprenticeship and other training programs" may operate ERISA plans and participants under those plans will not qualify as "employees." (Doc. 726 at 28). Thus, Spinedex believes it is inappropriate to analogize an ERISA claim for benefits to a dispute arising out of an employment contract. This argument loses sight of the general rule regarding borrowing a state limitations period. When borrowing a limitations period, a court's task is to choose the most analogous limitations period. The fact that a particular limitations period is not a perfect fit is not dispositive. There is no dispute that ERISA, in general, is aimed at relationships involving employment. For example, ERISA states it is meant to apply to benefits provided by "*employee* welfare benefit plan[s]." 29 U.S.C. § 1002(1) (emphasis added). And ERISA itself is the *Employee* Retirement Income Security Act. While a tiny minority of individuals able to make ERISA-based claims might not qualify as "employees" in a technical sense, that does not make it improper to borrow a statute addressed to "employment contracts" to resolve the vast majority of claims arising from ERISA plans.

Spinedex next argues ERISA claims for benefits do not involve "employment contracts" based on language in some of the benefits plans explicitly disavowing any intent to create employment contracts. In context, however, that language was not aimed at defining the relevant statute of limitations for application in future disputes. Instead, the language was meant to ensure participants did not believe their participation in the plans altered the general at-will presumption regarding their employment. The language was not meant to imply disputes about the provision of benefits would not qualify as disputes involving "employment contracts" under Arizona's special limitations period for such disputes.

Moreover, Spinedex's insistence that the relationship between participants and the plans are not "employment contracts" comes close to arguing the relationship between participant and their plans is not contractual at all. But Spinedex concedes the relationship is contractual in nature by arguing the statute of limitations for written contracts should apply. Thus, there is no question a contract is at issue. The only

question is whether that is closer to an "employment contract" or some other unidentified written contract. Because the provision of benefits arises directly out of the employment relationship, disputes involving benefits are closer to disputes involving "employment contracts" than disputes involving generic written contracts.

Spinedex next claims application of the one-year limitations period would be inconsistent with federal policy. In support of this, Spinedex cites a statement by the Ninth Circuit that "[w]hen choosing between multiple potentially-applicable statutes, as a matter of federal policy the longer statute of limitations should apply." *Wise v. Verizon Commc'ns, Inc.*, 600 F.3d 1180, 1187 (9th Cir. 2010). The Ninth Circuit did not explain how this policy-driven inquiry should take place. At first blush, if the most analogous limitations period is one-year, but a longer less analogous limitations period exists, the Ninth Circuit's statement would seem to require application of the less analogous period. That approach, however, would be counter to the basic requirement of choosing the most analogous period. The Ninth Circuit's statement regarding federal policy, therefore, might be meant as a tie-breaking device when multiple statutes are equally analogous. Here, the one-year limitations period is more analogous to a claim for benefits and federal policy pointing towards application of a longer period cannot change that conclusion.

At oral argument, Spinedex argued the preference for longer limitations period is not meant as a tie-breaking device but as a factor that must be considered when determining which limitations period is most analogous. It is unclear how this type of analysis would work in practice given that the length of a limitations period does not seem to assist in determining what type of claim an ERISA claim for benefits resembles under state law. The fact that Arizona law provides a six-year limitations period for general contracts, and a one-year limitations period for employment contracts, does not change the underlying nature of the claim. That is, an ERISA claim for benefits is either more similar to an employment contract or more similar to a non-employment written contract. It is difficult to think of an ERISA claim for benefits as more similar to a non-

employment written contract *because* such a claim is subject to a longer limitations period. But regardless of the difficulty, and accepting Spinedex's position that federal policy supports application of the longer period, that policy-driven preference is not sufficient to change the outcome here. An ERISA claim for benefits remains substantially more analogous to a claim involving an employment contract and the policy favoring selection of a longer limitations period is not sufficient to override that conclusion.

Spinedex offers another policy-based argument by claiming application of a one-year limitations period is too short and would frustrate the purposes of ERISA. After the Supreme Court's decision in *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 134 S. Ct. 604, 608 (2013), this is a very difficult argument to make. At issue in *Heimeshoff* was a contractual three-year limitations period that began to run before a plan participant could file suit. Under the facts of that case, the limitations period started to run approximately two years before the plaintiff could file suit, meaning she "was left with approximately one year in which to file suit." *Id.* at 612. In approving of the contractual limitations period in that case, the Supreme Court stated a contractual limitations period "should be enforced unless [it] is unreasonably short." *Id.* at 616. And in that particular case, the limitations period was "reasonable." *Id.* at 613.

While not squarely decided by *Heimeshoff*, Spinedex's contention that a one-year limitations period violates federal policy is effectively foreclosed by that decision. The result in *Heimeshoff* cannot be explained if, in fact, a one-year limitations period is per se contrary to federal policy. While limitations periods must be reasonable, a one-year limitations period qualifies as such.

Finally, Spinedex argues that even if the one-year limitations period applies, it does not bar any of its claims because United did not "comply with its duties of proper notification and review under ERISA." (Doc. 726 at 30). Spinedex claims United engaged in "egregious violations of ERISA's notification requirements" and those violations mean the statute of limitations never began to run. (Doc. 726 at 31). In other

words, Spinedex was never notified its claims had been denied and, therefore, the statute of limitations never started running. While Spinedex is correct that limitations period may not begin to run immediately upon denial of a claim, the undisputed facts show Spinedex was aware of the denial of its claims.

"An ERISA cause of action accrues either at the time benefits are actually denied, or when the insured has reason to know that the claim has been denied." *Withrow v. Halsey*, 655 F.3d 1032, 1036 (9th Cir. 2011). Here, Spinedex was aware United had denied its claims long before it filed suit. As pointed out by United, Spinedex's litigation counsel participated in the administrative claims process. That counsel knew or should have known the claims had been denied, notwithstanding any minor issue regarding proper notification. Moreover, the Ninth Circuit's decision in this case concluded another plaintiff knew as of "December 2004, at the latest, of the facts giving rise to his" statutory claims. Given that those statutory claims were intertwined with the alleged wrongful denial of benefits, that individual—as well as Spinedex—had "reason to know" the claims for benefits had also been denied. *Id.* In short, Spinedex's professed ignorance that its claims had been denied is not convincing.

Spinedex's arguments against applying the one-year limitations period are not convincing but there is one final argument accepted by another district judge that should be addressed. In *JDA Software Inc. v. Berumen*, No. CV-14-01565-PHX-DLR, 2015 WL 12941860 (D. Ariz. Jan. 8, 2015), the court discussed but rejected the conclusion of *Blood Systems*. According to *Berumen*, Arizona's "employment contract" limitations period does not apply to ERISA claims for benefits because an ERISA plan document "is not a contract between an employer and an employee." Instead, plan participants contract directly with a plan and an employer merely serves as a sponsor, administrator, and fiduciary. *Id.* This means a participant is contracting with a distinct entity from its employer and that contract does not address an individual's "job duties, compensation for her job performance, or other terms or conditions of her employment." *Id.* This conclusion is based on an unduly restrictive view of what Arizona deems part of the

employment relationship.

Under Arizona law, all disputes "integrally related" to one's employment are disputes arising from an "employment contract." *Redhair v. Kinerk, Beal, Schmidt, Dyer & Sethi, P.C.*, 183 P.3d 544, 549 (Ariz. Ct. App. 2008). Under this reading, any dispute involving "the nature, conditions, or duration" of employment is subject to the one-year limitations period. *Id.* As explained in *Blood Systems*, employer-provided medical coverage is "integrally related" to one's employment status. In brief, individuals are only eligible to participate in ERISA plans because of their employment status. In addition, employers often pay a portion of the premiums on behalf of their employees and those payments are additional compensation to employees for their services. As for the terms of the ERISA plans, employers set those terms and often directly control whether benefits will be paid. Thus, even accepting the premise in *Berumen* that the relevant contractual relationship is between an employee and an ERISA plan, the employer is intimately involved in that relationship such that it would be unreasonable to deem employers true strangers to the relationship. Given the realities of how ERISA plans operate, they are "integrally related" to the employment relationship such that disputes involving those plans should be deemed as arising out of "employment contracts."

Because the rule of *Blood Systems* applies, claims for benefits that were not filed within one year of when Spinedex knew or had reason to know the claims had been administratively denied are untimely. This one-year limitations period, however, does not apply to those plans that imposed a longer limitations period.

III. The Anti-Assignment Clauses are Enforceable

United believes five plans still involved in this suit contain enforceable anti-assignment clauses. While Spinedex disagrees, the Ninth Circuit's conclusion on another plan requires granting summary judgment in United's favor.

The Court previously concluded an anti-assignment provision in the Discount Tire Plan prevented Spinedex's patients from assigning claims under that plan. Spinedex contested this issue on appeal. In affirming this Court's ruling, the Ninth Circuit began

by noting "[a]nti-assignment clauses in ERISA plans are valid and enforceable." *Spinedex*, 770 F.3d at 1296. An anti-assignment clause may be waived, however, if it is not raised during administrative proceedings and the administrator either knew or should have known that a claimant was pursuing a claim as an assignee. *Id.* at 1297. In the context of the Discount Tire Plan, the Ninth Circuit concluded the administrative record contained "no evidence that United was aware, or should have been aware, . . . that Spinedex was acting as its patients' assignee." *Id.* Thus, the Ninth Circuit concluded the anti-assignment clause was enforceable and barred Spinedex's pursuit of claims against the Discount Tire Plan.

United now claims the Adobe, SUMCO, Temcon, Watson Williams, and Southwest plans contain enforceable anti-assignment clauses effectively identical to the Discount Tire Plan's clause. Spinedex disagrees and claims there are material differences between the Discount Tire Plan and these four other plans. But those alleged material differences do not exist. In particular, Spinedex does not point to any evidence that the entities with authority to consent to assignments granted such consent. And while Spinedex claims United waived the anti-assignment clauses, the evidence allegedly supporting waiver is the same evidence for the Discount Tire Plan that the Ninth Circuit deemed insufficient.[5] That is, the submissions Spinedex identifies that were submitted during the administrative process are the same submissions that were made in connection with the Discount Tire Company. The Ninth Circuit implicitly concluded those submissions were inadequate and this Court will not contradict the Ninth Circuit on functionally identical facts.

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[5] At oral argument, Spinedex's counsel argued neither party highlighted the relevant documents to the Ninth Circuit and, therefore, the Ninth Circuit was not aware of the evidence in the record establishing the Discount Tire Plan's anti-assignment clause was waived. But that is contrary to the Ninth Circuit's explicit statement. The Ninth Circuit stated "there [was] no evidence that United was aware, or should have been aware, during the administrative process that Spinedex was acting as its patients' assignee." 770 F.3d at 1297. This Court is not free to ascribe that statement to a factual error and reach a different conclusion based on essentially identical evidence. *See United States v. Garcia-Beltran*, 443 F.3d 1126, 1129 (9th Cir. 2006) ("[O]n remand a lower court is bound to follow the appellate court's decision as to issues decided explicitly or by necessary implication.").

Finally, Spinedex presents a variety of brief arguments against enforcement of the anti-assignment clauses. Those arguments include the assertions that anti-assignment clauses are only enforceable upon a showing that the SPDs containing the clauses were distributed to participants, that the relevant anti-assignment clauses were "not located in close conjunction with the description or summary of benefits," and that the anti-assignment clauses were "located only in SPDs rather than plan documents." (Doc. 726 at 36). None of these arguments have merit.[6] The five anti-assignment clauses are enforceable.

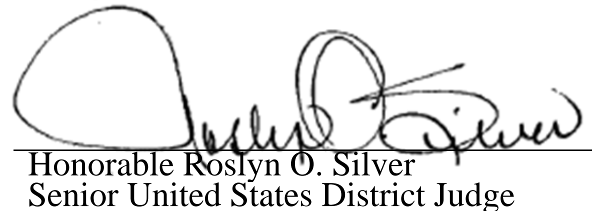
Accordingly,

IT IS ORDERED the Motion for Summary Judgment (Doc. 663) is **GRANTED IN PART and DENIED IN PART**. This Order shall not be sealed.

IT IS FURTHER ORDERED the Motion to Strike (Doc. 760) is **DENIED**.

IT IS FURTHER ORDERED no later than **December 29, 2017**, the parties shall submit a joint statement outlining all proposed dates for completion of this litigation.

Dated this 15th day of December, 2017.



Honorable Roslyn O. Silver
Senior United States District Judge

[6] There is no requirement that a plan provide evidence regarding distribution of SPDs; Spinedex has never claimed the relevant participants were not provided the SPDs; there is no basis to conclude an anti-assignment clause must be located in a particular portion of SPDs; and Spinedex does not point to these five plans as having plan documents distinct from the SPDs.