

Mar 02, 2026

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

OREGON POTATO COMPANY, a
Washington State Corporation; and the
OREGON POTATO COMPANY
GROUP BENEFITS PLAN,

Plaintiffs,

v.

DARRELL STRONG, individually, and
his marital community; MARSH &
McLENNAN AGENCY LLC, a
Washington Limited Liability
Company; and DWS Holdings LLC, a
Washington Limited Liability
Company, d/b/a PINNACLE PEAK
ADMINISTRATORS and
DEDUCTIBLE REIMBURSEMENT
COMPANY,

Defendants.

No. 4:25-cv-05139-MKD

ORDER DENYING DEFENDANT
MARSH & McLENNAN AGENCY
LLC'S MOTION TO DISMISS

ECF No. 15

Before the Court is Defendant Marsh & McLennan Agency LLC's Motion to Dismiss. ECF No. 15. Christine Hawkins and Richard Birmingham represent Plaintiffs. Jessica R. Maziarz and Eliot T. Burriss represent Defendant. The Court

1 has considered the briefing and the record and is fully informed. For the below
2 reasons, the Court denies the motion.

3 **BACKGROUND**

4 The following facts are alleged in Plaintiffs' First Amended Complaint.
5 ECF No. 9. Plaintiff Oregon Potato Company ("OPC") is the sponsor and plan
6 administrator of the Oregon Potato Company Benefits Plan ("the Plan"), an ERISA
7 Medical Plan including medical and prescription drug benefits, minimum essential
8 coverage, and health reimbursement. ECF No. 9 at 3-4, 8. Defendant Marsh &
9 McLennan Agency ("MMA") provided brokerage and consulting services to the
10 plan. *Id.* at 8. DWS Holdings provided services and exercised control over assets
11 of the Plan directly and through its d/b/a Pinnacle Peak Consultants ("Pinnacle
12 Peak") and Deductible Reimbursement Company ("DRC"). *Id.* Darrell Strong
13 advised and provided services for the Plan. *Id.*

14 In 2023, Defendants MMA and Strong proposed that OPC change the Plan
15 from a fully insured plan to a guaranteed level funded premium plan. *Id.* at 8.
16 Under the proposal, OPC would commit to paying a level amount towards benefits
17 for two years and MMA and Strong guaranteed the payments would be sufficient
18 to pay claims under the employer-paid plan. *Id.* The funding would be sourced
19 from a level employer-paid premium, an HRA employer-paid premium, stop loss
20 insurance, and a banking management fee paid to Strong and Pinnacle Peak to

1 manage the stop loss and manage claims. *Id.* at 9. OPC agreed to the proposal,
2 which was set to begin October 1, 2023, and end September 30, 2025. *Id.*

3 MMA's role in this transaction was to manage the brokerage relationships
4 and assist Pinnacle Peak in maintaining a guaranteed level premium for the Plan.
5 *Id.* At the end of the first year of the Plan, MMA and Strong reported that both the
6 ERISA Medical Plan and ERISA HRA funding balances were positive. *Id.* at 11.

7 In April 2025, OPC began to receive fee disclosures for the Plan Year 2023
8 IRS Form 5500 filing, which showed the full extent of compensation being paid to
9 Strong and Pinnacle Peak. *Id.* at 12. The management fees in total amounted to
10 \$1,921,217 for the first year and an additional \$800,000 for the second year. *Id.*
11 On May 22, 2025, after reviewing the Form 5500 disclosures, OPC formally
12 notified Strong that OPC was terminating the relationship and a new broker was
13 appointed. *Id.*

14 On May 30, 2025, MMA notified OPC that there was a problem with the
15 ERISA Medical Plan funding, but quickly reported the issue was cured. *Id.* at 12-
16 13. Despite a request, OPC did not receive a cash flow report from Strong,
17 Pinnacle Peak, or MMA, or any other communications for three months. *Id.*

18 On September 3, 2025, OPC disbursed funds to the monthly medical and
19 HRA claims. *Id.* On September 12, 2025, OPC received an email from Strong
20 indicating the Plan had a deficit balance of around \$600,000 and Premera, a third-

1 party administrator and adjudicator of medical claims, was instructed to redirect all
2 medical claims to OPC and no longer pay the claims. *Id.* 13.

3 The ERISA HRA account statements indicate that Strong had transferred
4 \$207,790 from the ERISA HRA account into the general OPC medical account.
5 *Id.* at 13. After the transfer, the HRA account had a balance of \$871,397.53, but
6 Strong stopped the processing of all claims. *Id.* Before the transfer, the ERISA
7 HRA had a positive account balance of \$1,079,187. *Id.*

8 Plaintiffs assert this was the utilization of assets of one client to satisfy the
9 obligation of another, in violation of ERISA fiduciary duty, state insurance law, and
10 federal law. *Id.* at 14.

11 On November 25, 2025, Plaintiffs OPC and the Plan filed a First Amended
12 Complaint. ECF No. 9. Plaintiffs bring four causes of action against Defendants
13 Darrell Strong, MMA, DWS Holdings LLC d/b/a Pinnacle Peak Consultants, and
14 Deductible Reimbursement Company, as follows: (1) Equitable Relief under
15 ERISA Section 502(a)(3) against Strong and DWS, (2) Violation of Fiduciary
16 Duties under ERISA Sections 404 and 405 against all defendants, (3) Failure to
17 Disclose and Misrepresentation against Strong and DWS, (4) Engaging in
18 Transactions Prohibited under ERISA Section 406 against all defendants.

19 Defendant MMA now moves to dismiss based on a failure to state a claim
20 under Federal Rule of Civil Procedure 12(b)(6).

1 **LEGAL STANDARD**

2 To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain
3 sufficient factual matter, accepted as true, to “state a claim to relief that is plausible
4 on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
5 *Twombly*, 550 U.S. 544, 547 (2007)). In considering a motion to dismiss for
6 failure to state a claim, the Court must accept as true the well-pleaded factual
7 allegations and any reasonable inference to be drawn from them, but legal
8 conclusions are not entitled to the same assumption of truth. *Id.* “Threadbare
9 recitals of the elements of a cause of action, supported by mere conclusory
10 statements, do not suffice.” *Id.* (citing *Twombly*, 550 U.S. at 555). “[O]nly a
11 complaint that states a plausible claim for relief survives a motion to dismiss.” *Id.*
12 at 679 (citing *Twombly*, 550 U.S. at 556). A complaint must contain either direct
13 or inferential allegations respecting all the material elements necessary to sustain
14 recovery under some viable legal theory. *Twombly*, 550 U.S. at 562. “Factual
15 allegations must be enough to raise a right to relief above the speculative level[.]”
16 *Twombly*, 550 U.S. at 555.

17 **DISCUSSION**

18 Defendant MMA contends that Plaintiffs have failed to state a claim
19 because: (1) the complaint fails to allege MMA is a fiduciary or performed
20

1 fiduciary acts, (2) the complaint fails to allege MMA breached a fiduciary duty,
2 and (3) the complaint fails to allege a prohibited transaction claim. ECF No. 15.

3 As a preliminary matter, MMA requests the Court consider the Service
4 Agreement that OPC and MMA entered into on or about October 1, 2023. ECF
5 No. 15 at 11, 15. MMA argues that “[t]he Service Agreement entered into between
6 MMA and OPC expressly provides that MMA is not a fiduciary, and that OPC
7 retained the ultimate decision-making authority with respect to all decisions
8 concerning the Plan.” *Id.* MMA asserts that the Court may consider the Service
9 Agreement “under the incorporation by reference doctrine because the document
10 controls the relationship between MMA and Plaintiffs. . .” *Id.* at 11. Plaintiffs
11 argue that considering the Service Agreement would be improper because “the
12 liability caused by the relationship between MMA and Pinnacle is simply not the
13 subject matter of the Service Agreement between OPC and MMA and, therefore, is
14 subject to independent claims of fiduciary breach and prohibited transactions.”
15 ECF No. 17 at 21.

16 “Generally, district courts may not consider material outside the pleadings
17 when assessing the sufficiency of a complaint under Rule 12(b)(6) of the Federal
18 Rules of Civil Procedure.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988,
19 998 (9th Cir. 2018). “[I]f a district court considers evidence outside the pleadings,
20 it must normally convert the 12(b)(6) motion into a Rule 56 motion for summary

1 judgment, and it must give the nonmoving party an opportunity to respond.” *U.S.*
2 *v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003). A document may be “incorporated
3 by reference into a complaint if the plaintiff refers extensively to the document or
4 the document forms the basis of plaintiff’s claim.” *Id.*

5 The First Amended Complaint does not reference the Service Agreement
6 between OPC and MMA. ECF No. 9. Plaintiffs allege that “[t]he Plan has no
7 contractual relationship with either Strong or Pinnacle Peak, other than an HRA
8 contract with DRC. Marsh & McLennan exercised discretionary control over the
9 Plan administration by retaining Pinnacle Peak. . .” ECF No. 9 at 10. The basis of
10 the claims involves MMA’s relationship with Pinnacle Peak.

11 Further, even if the Court considered the Service Agreement and the Service
12 Agreement states that MMA is not a fiduciary, “[i]f an ERISA fiduciary writes
13 words in an instrument exonerating itself of fiduciary responsibility, the words,
14 even if agreed upon, are generally without effect.” *IT Corp. v. General American*
15 *Life Ins. Co.*, 107 F.3d 1415, 1419 (9th Cir. 1997). “ERISA defines fiduciary not
16 in terms of formal trusteeship, but in *functional* terms of control and authority over
17 the plan, thus expanding the universe of persons subject to fiduciary duties – and to
18 damages – under § 409(a).” *Id.* (emphasis in original). Therefore, the Service
19 Agreement’s terms are not dispositive as to whether MMA is a fiduciary.

1 **A. Fiduciary Status**

2 Defendant MMA first argues that Plaintiffs fail to “plausibly allege that
3 MMA is a fiduciary or performed any fiduciary acts.” ECF No. 15 at 13.
4 Plaintiffs argue that they have adequately alleged that MMA is a functional
5 fiduciary. ECF No. 17 at 14.

6 ERISA fiduciary status is construed “liberally, consistent with ERISA’s
7 policies and objectives.” *Johnson v. Couturier*, 572 F.3d 1067, 1076 (9th Cir.
8 2009). “There are two general categories of fiduciaries under ERISA – named (or
9 statutory) and functional.” *Acosta v. Brian*, 910 F.3d 502, 516 (9th Cir. 2018). “A
10 party not named in the plan instrument can become a functional fiduciary.” *Id.*

11 For example,

12 [A] person is a fiduciary with respect to a plan to the extent (i)
13 he exercises any discretionary authority or discretionary control
14 respecting management of such plan or exercises any authority
15 or control respecting management or disposition of its assets,
16 (ii) he renders investment advice for a fee or other
17 compensation, direct or indirect, with respect to any moneys or
18 other property of such plan, or has any authority or
19 responsibility to do so, or (iii) he has any discretionary

1 authority or discretionary responsibility in the administration of
2 such plan.

3 *Id.*; 29 U.S.C. § 1002(21)(A).

4 It is undisputed that MMA is not a named fiduciary. In the First Amended
5 Complaint, however, Plaintiffs allege that MMA is a fiduciary because it
6 “exercised management control by granting Pinnacle Peak control over banking
7 relationships for the Plan.” ECF No. 9 at 10. Plaintiffs also allege “Marsh &
8 McLennan further exercised discretion over management and over the assets of the
9 Plan by guaranteeing a level premium.” Although MMA disputes whether it had
10 discretionary authority or discretionary control regarding management, the First
11 Amended Complaint sufficiently alleges that MMA is a fiduciary.

12 **B. Breach of Fiduciary Duty**

13 Defendant MMA next contends, even if Plaintiffs sufficiently alleged
14 MMA’s fiduciary status, that Plaintiffs fail to allege that MMA breached its
15 fiduciary duty. ECF No. 15 at 21.

16 “[A] fiduciary shall discharge his duties with respect to a plan solely in the
17 interest of the participants and beneficiaries and . . . for the exclusive purpose of (i)

1 providing benefits to participants and their beneficiaries; and (ii) defraying
2 reasonable expenses of administering the plan.” 29 U.S.C. § 1104(a)(1).

3 Plaintiffs allege MMA breached this duty when it and other defendants,
4 “misrepresented the nature and purpose of the fee . . . causing excessive fees to be
5 paid, breaching a fiduciary duty, and causing the Plan to enter into transaction
6 prohibited by ERISA.” ECF No. 9 at 15. Accordingly, Plaintiffs have sufficiently
7 alleged that Defendant MMA breached its fiduciary duty.

8 **C. Prohibited Transaction Claim**

9 Defendant MMA argues that Plaintiffs fail to allege a prohibited transaction
10 claim. ECF No. 15 at 24. Plaintiffs argue that they have sufficiently pleaded a
11 prohibited transaction claim against MMA pursuant to 29 U.S.C. § 1106(a).

12 Under 29 U.S.C. § 1106(a), “a fiduciary shall not cause the plan to engage in a
13 transaction, if he knows or should know that such transaction constitutes a direct or
14 indirect . . . furnishing of goods, services, or facilities between the plan and a party
15 in interest.” *Bugielski v. AT&T Services, Inc.*, 76 F.4th 894, 900 (9th Cir. 2023).

16 “At the pleading stage . . . it suffices for a plaintiff plausibly to allege the three
17 elements set forth in § 1106(a)(1)(C).” *Cunningham v. Cornell University*, 604
18 U.S. 693, 702 (2025).

19 Plaintiffs allege that “Defendants have used their status as a service provider
20 and their status as a fiduciary to cause the Plan to enter into the following

1 prohibited transaction: (1) the payment of excessive fees for services performed,
2 (2) the transfer of Plan assets for the use or benefit of a party-in-interest, and (3)
3 the receipt of assets on their own account for a transaction involving the assets of
4 the Plan.” ECF No. 9 at 20. Accordingly, Plaintiffs have sufficiently alleged the
5 elements required for a claim under 29 U.S.C. § 1106 (a)(1).

6 **CONCLUSION**

7 For the reasons stated above, the Court denies Defendant MMA’s Motion to
8 Dismiss.

9 Accordingly, **IT IS HEREBY ORDERED:**

- 10 1. Defendant MMA’s Motion to Dismiss, **ECF No. 15**, is **DENIED**.

11 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order
12 and provide copies to counsel.

13 DATED March 2, 2026

14 *s/Mary K. Dimke*
15 MARY K. DIMKE
16 UNITED STATES DISTRICT JUDGE
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