**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TENNESSEE**
**WESTERN DIVISION**

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LISA MORRIS,

Plaintiff,

v. No. 2:18-cv-02129-MSN-tmp

WRIGHT MEDICAL TECHNOLOGY, INC.,

Defendant.

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**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

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Before the Court is Defendant Wright Medical Technology, Inc.'s Motion to Dismiss Plaintiff's Complaint, filed March 5, 2018. (ECF No. 6.) The Court has reviewed Defendant's Motion to Dismiss Plaintiff's Complaint (*Id.*), Memorandum of Law in Support of Defendant's Motion to Dismiss Plaintiff's Complaint (*Id.*), Plaintiff's Response in Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint (ECF No. 13), and Defendant's Reply Brief in Support of its Motion to Dismiss (ECF No. 20). For the reasons shown, Defendant's motion to dismiss is **GRANTED**.

## BACKGROUND

Plaintiff filed her Complaint in the Chancery Court of Shelby County on January 18, 2018. (*See* ECF No. 1 at PageID 15–24.) Defendant removed this action to this Court pursuant to 28 U.S.C. §§ 1441 and 1446 based on federal question jurisdiction arising from ERISA's preemption.[1] (ECF No. 6 at PageID 80; *see* ECF No. 1.)

[1] "If a plaintiff files a state-law complaint that should have been brought as an ERISA enforcement action, a defendant can remove the case because the statute 'converts an ordinary state common

Plaintiff worked for Defendant for eleven years as a customer service representative. (ECF No. 13 at PageID 232; ECF No. 1 at PageID 16.) Defendant had several employee benefit plans for full-time employees while Plaintiff was employed. (ECF No. 6 at PageID 81.) While employed by Defendant, Plaintiff was diagnosed with Postural Orthostatic Tachycardia, severe autonomic dysfunction, and Dercum's Disease. (ECF No. 1 at PageID 16–17.) Dercum's Disease causes severe pain and physical disability for which there is no known treatment. (*Id.*) Due to her illness, Plaintiff filed a claim for benefits under Defendant's Long Term Disability policy. (ECF No. 13 at PageID 232.) Her claim was rejected; however, she was offered $17,000.00 to settle the claim for long term disability benefits. (ECF No. 1 at PageID 17.)

Plaintiff alleges that her decision to accept the $17,000.00 settlement offer was based on assurances that she would continue to be covered under Defendant's health insurance policy (the "Plan") until she was approved for social security disability. (*Id.*; ECF No. 13 at PageID 232–33.) Plaintiff received benefits from 2014 to 2016. (ECF No. 1 at PageID 17.) Then, in a letter dated November 22, 2016, Plaintiff was advised by Defendant that her medical benefits would be terminated on June 30, 2018. (*Id.*) Plaintiff then filed her Complaint seeking a declaratory judgment and claiming breach of settlement agreement, breach of contract, and fraud/misrepresentation. (*See Id.*)

On March 5, 2018, Defendant filed a motion to dismiss Plaintiff's Complaint (ECF No. 6) and Plaintiff filed a motion to remand this action back to the Shelby County Chancery Court. (ECF No. 7.) The motion to remand was denied because this Court determined that it had subject matter jurisdiction over Plaintiff's Declaratory Judgment claim, breach of contract claims, and

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law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.'" *Doran v. Joy Global, Inc.*, 183 F. Supp. 3d 891, 894 n.1 (E.D. Tenn. 2016) (citing *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209 (2004)).

fraud/misrepresentation claim, pursuant to 29 U.S.C. § 1132(a)(1)(B). (ECF No. 50.) In its motion to dismiss, Defendant argues that Plaintiff's state law claims must be dismissed because they are preempted by federal law, because Plaintiff is not entitled to the relief requested under the plan documents, and because she has not exhausted her administrative remedies before suing Defendant.[2] (ECF No. 6 at PageID 83–94.)

## STANDARD OF REVIEW

Defendant has moved to dismiss the claims in Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

## ANALYSIS

The issue at hand is whether Plaintiff's claims present a federal question that is completely preempted under § 502(a) of the Employee Retirement Income Security Act ("ERISA") and should be dismissed.[3] State law claims that "relate to" employee benefit plans are preempted by ERISA.

[2] This Order addresses whether the claims are preempted. During a status conference before this Court, the Court inquired into whether Plaintiff exhausted her administrative remedies before suing Defendant. There is no question that Plaintiff has not exhausted her administrative remedies. (*See* ECF No. 30 at PageID 290, Response to ¶ 2.)

[3] ERISA applies, with some exceptions, to an employee benefit plan that is established or maintained by an employer or an employee organization engaged in commerce or in an industry or activity affecting commerce. 29 U.S.C. § 1003(a). An "employee welfare benefit plan" under ERISA is any plan that was established or maintained by an employer or an employee organization to provide medical or other benefits for its participants through the purchase of insurance or otherwise. 29 U.S.C. § 1002(1). Defendant's Health and Welfare Benefits Plan states that ERISA governs the plan. (ECF No. 6 at PageID 166–67, 188.) Plaintiff's Complaint states that her former employer provided the benefits plan at issue in this matter. (ECF No. 1 at PageID 16.)

*Cromwell v. Equicor-Equitable HCA Corp.*, 944 F.2d 1272, 1275 (6th Cir. 1991). "ERISA preempts state law and state law claims that 'relate to' any employee benefit plan as that term is defined therein." *Cromwell*, 944 F.2d at 1275 (citing 29 U.S.C. § 1144(a) and *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987)). "The phrase 'relate to' is given broad meaning such that a state law cause of action is preempted if "it has connection with or reference to that plan.'" *Id.* at 1276 (citing *Metropolitan Life Ins. Co. v. Mass.*, 471 U.S. 724, 730, 732–33 (1985)). "[State law] claims are preempted if they 'relate to' an ERISA plan whether or not they were so designed or intended." *Id.* (citing *Daniel v. Eaton Corp.*, 839 F.2d 263 (6th Cir. 1988), *cert. denied*, 488 U.S. 826 (1988)). "[V]irtually all state law claims relating to an employee benefit plan are preempted by ERISA." *Id.* "It is not the label placed on a state law claim that determines whether it is preempted, but whether in essence such a claim is for the recovery of an ERISA plan benefit." *Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 469 (6th Cir. 2002) (citing *Cromwell*, 944 F.2d at 1275).

"It is well-settled that ERISA preempts state law claims that 'relate to' an ERISA employee benefit plan." *Shackelford v. Continental Cas. Comp.*, 96 F. Supp. 2d 738, 741 (W.D. Tenn. 2000). *Shackelford* is a case similar to the case at bar. Plaintiff asserted claims for breach of contract; violation of Tenn. Code Ann. § 56-7-105 for bad faith refusal to pay benefits due; violation of the Tennessee Consumer Protection Act pursuant to Tenn. Code Ann. § 47-18-101, *et seq.*; negligent, grossly negligent, reckless, willful, outrageous, and malicious conduct; estoppel and intentional/negligent misrepresentation; conspiracy and breach of common law fiduciary duty; and violation of ERISA for denial of benefits and statutory breach of fiduciary duty. *Id.* at 740. As in this matter, plaintiff in *Shackelford* became totally and permanently disabled while employed. *Id.* Plaintiff was promised that he would receive short-term and long-term disability benefits under

the employer's ERISA plan as a result of his disability. *Id.* He was also promised that he would be retained by his employer as a consultant. *Id.*

Defendants sought dismissal under Rule 12(b)(6) of plaintiff's state law claims arguing that ERISA preempts such claims. *Id.* at 741. Plaintiff argued that his state claims were not "related to" the Plan, but rather were based on his supervisors' promises that he would receive long-term disability benefits under the Plan and would be retained by his former employer as a consultant. *Id.* The court in *Shackelford* dismissed the state law claims that were based upon the promise that plaintiff would receive long-term disability benefits because they were preempted by ERISA. *Id.* The court did not dismiss the state claims that were based upon defendant's alleged promise that plaintiff would be retained by his former employer as a consultant because those claims did not seek the recovery of the ERISA plan's benefits. *Id.* at 742.

Plaintiff's Complaint in this matter seeks a declaratory judgment in Count I; alleges breach of settlement agreement in Count II, breach of contract, including breach of contract, breach of implied-in-fact contract, and breach of implied-in-law contract, in Count III, and fraud/misrepresentation in Count IV. This Court will address each count separately.

*1. Declaratory Judgment Claim*

In her Complaint, Plaintiff seeks a declaratory judgment pursuant to Tenn. Code Ann. §§ 29-14-101 *et seq.*, and "sues the Defendant for a declaration that she is entitled to benefits under the defendant's Group Medical Plan, a declaration of her benefits under the Plan, and, further, that Wright Medical by its action is prevented from denying benefits under that plan to Plaintiff." (ECF No. 1 at PageID 19.) This declaration falls within the purview of 29 U.S.C. § 1132(a)(1)(B) which states that a "civil action may be brought by a participant or beneficiary 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." ERISA preempts this claim because it directly falls within the scope of Section 1132(a)(1)(B) and is, therefore, preempted pursuant to Section 1144(a).[4] Because Plaintiff clearly seeks an entitlement to an ERISA plan's benefits through a declaratory judgment, the claim is preempted and **DISMISSED**.

*2. Breach of Settlement Agreement Claim*

> Plaintiff's Complaint also seeks damages for a breach of settlement agreement:
>
> Plaintiff and Defendant entered into a settlement agreement whereby: in consideration of Plaintiff agreeing to settle her claim under Defendant's Long Term Disability Plan, Defendant agreed to ***continue to provide Plaintiff benefits under its Group Medical Plan***. Plaintiff settled her disability claim in exchange for and in reliance upon Defendant's promise to ***continue to provide benefits under the Group Medical Plan***. Defendant has acknowledged in writing the existence of the agreement between the parties and is bound by the terms thereof.

(ECF No. 1 at PageID 19–20 (emphasis added).) "The Sixth Circuit has held that state claims based upon an employer's promise of coverage under an ERISA plan are preempted by ERISA." *Shackelford*, 96 F. Supp. 2d at 741 (citing *Fisher v. Combustion Eng'g, Inc.*, 976 F.2d 293, 296–97 (6th Cir. 1992)); *Cromwell*, 944 F.2d at 1276. Unlike plaintiff in *Shackelford* whose Complaint contained claims seeking enforcement of an oral agreement separate from the continuation of benefits claims, Plaintiff's claim for breach of settlement agreement in this matter clearly seeks the continuation of the Plan's benefits. Therefore, this claim relates to benefits under the Plan and is preempted. In other words, this claim is a state law claim based upon a settlement agreement, or promise, made by Defendant employer, regarding continuation of benefits under an ERISA plan, and is, therefore, preempted and **DISMISSED**.

[4] "[T]he provisions of this subchapter . . . shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . ." 29 U.S.C. § 1144(a).

*3. Breach of Contract Claims*

Plaintiff asserts three breach of contract claims: breach of contract, breach of implied-in-fact contract, and breach of implied-in-law contract. (ECF No. 1 at PageID 20–21.) Plaintiff claims:

> [She] settled her disability claim in exchange for and in reliance upon Defendant's promise ***to continue to provide benefits under the Group Medical Plan*** . . . ; [and] the defendant agreed to provide to Plaintiff ***continuing benefits under its Group Medical Plan*** if the Plaintiff settled her long term disability claim . . . ; [and the] defendant has been unjustly enriched . . . [through the] ***subsequent termination of benefits under both the Group Medical Plan and the Long Term Disability Plan***.

(*Id.* at PageID 20–21 (emphasis added).) Clearly, these breach of contract claims relate to benefits under the Plan based upon the very language within each claim in the Complaint. Like the claims in *Shackelford* that related to the Plan, these breach of contract claims all reference an "employer's promise of coverage under an ERISA plan," and must be preempted. *Shackelford*, 96 F. Supp. 2d at 741; *see Fisher*, 976 F.2d at 296–97. The claims are, therefore, preempted and **DISMISSED**.[5]

*4. Fraud/Misrepresentation Claim*

Plaintiff states in her fraud/misrepresentation claim that she "has been ***deprived of medical benefits*** by the following series of wrongful acts committed by Wright Medical . . . [by] ***cancelling her medical coverage*** on the grounds that she had become totally disabled. . . . Whether actual or constructive, the fraudulent ***denial of medical and disability benefits cannot be enforced to Ms. Morris' detriment***." (ECF No. 1 at PageID 22–23 (emphasis added).) Plaintiff's fraud claim also "relates to" the Plan through the language contained in the Complaint. "The phrase 'relate to' is

[5] Plaintiff did not seek leave to amend the Complaint after Defendant filed its motion to dismiss to clarify which claims are seeking benefits under the plan and which claims address the alleged settlement agreement. Plaintiff argues in her response that all her claims, as written, do not relate to ERISA, but rather to the alleged settlement agreement; however, the claims, as written, clearly seek the continuation of benefits under the Plan and are, therefore, preempted under ERISA.

given broad meaning such that a state law cause of action is preempted if 'it has connection with or reference to that plan.'" *Cromwell*, 944 F.2d at 1275 (quoting *Metropolitan Life Ins. Co.*, 471 U.S. at 730, 732–33). Although plaintiff in *Shackelford* had an intentional/negligent misrepresentation claim that was not dismissed by that court because the claim was rooted in the defendants' alleged promise to retain the plaintiff as a consultant, Plaintiff's Complaint in this matter expressly connects the fraud claim to the medical benefits under the Plan. *Compare Shackelford*, 96 F. Supp. 2d at 742 *with* ECF No. 1 at PageID 22–23. This claim is intricately connected to and references the employee benefit plan and is therefore preempted by ERISA. This claim is **DISMISSED**.

*5. Prayer for Relief*

Plaintiff's Prayer for Relief following the aforementioned claims in the Complaint expressly seeks continuation of benefits under the employee benefit plans.:

> "Plaintiff prays that . . . [t]he Court enter judgment declaring that Plaintiff shall have all the benefits due her as a member of Defendant's Group Medical Plan . . .; [t]he Court enter an order requiring Defendant to maintain coverage for Plaintiff under the Group Medical Plan . . .; [t]he Court enter an order permanently enjoining the Defendant from terminating, by any means whatsoever, benefits due Plaintiff under that plan . . . ."

(ECF No. 1 at PageID 23.) The Sixth Circuit has determined that "[i]t is not the label placed on the state law claim that determines whether it is preempted, but whether in essence such a claim is for the recovery of an ERISA plan benefit." *Cromwell*, 944 F.2d at 1276. If the express language beneath each claim in the Complaint is not enough to show the claims' relation to the ERISA plans, this language in the Prayer for Relief also shows that the claims are seeking benefits under the Plan. Although Plaintiff labeled such claims as a breach of settlement or as a breach of contract or as fraud/misrepresentation, the essence of each claim and Plaintiff's requested relief is for the

continuation or recovery of benefits under the Plan and, therefore, the claims are preempted and must be **DISMISSED**.

## CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss Plaintiff's Complaint is **GRANTED** and all of Plaintiff's claims shall be **DISMISSED WITH PREJUDICE**.

**IT IS SO ORDERED** this 3rd day of April, 2019.

*s/ Mark S. Norris*
MARK S. NORRIS
UNITED STATES DISTRICT JUDGE