

1 Robert J. McKennon (SBN 123176) *rm@mckennonlawgroup.com*
2 Erik C. Fritz (SBN 337341) *ef@mckennonlawgroup.com*
3 **McKENNON LAW GROUP PC**
4 20321 SW Birch Street, Suite 200
5 Newport Beach, California 92660
6 Phone: 949-387-9595 | Fax: 949-385-5165

7
8 Attorneys for Plaintiff Roxanne Hazel

9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11 ROXANNE HAZEL,
12 Plaintiff,
13 vs.
14 METROPOLITAN LIFE
15 INSURANCE COMPANY; and
16 DOES 1 through 10, inclusive,
17 Defendants.

Case No.:
Action Filed:
Trial Date:

**COMPLAINT FOR BREACH OF
FIDUCIARY DUTY UNDER ERISA,
FOR EQUITABLE RELIEF,
INCLUDING DECLARATORY
RELIEF AND INJUNCTIVE RELIEF;
ATTORNEYS' FEES AND COSTS**

[Filed Concurrently With:
- Civil Case Cover Sheet]



1 **JURISDICTION AND VENUE**

2 1. Plaintiff Roxanne Hazel (“Plaintiff”) brings this action to enjoin
3 unlawful conduct by a plan fiduciary pursuant to Sections 502(a)(3)(A) and
4 502(a)(3)(B) of the Employee Retirement Income Security Act of 1974
5 (“ERISA”), 29 U.S.C. Sections 1132(a)(3)(A) and (a)(3)(B). This Court has
6 subject-matter jurisdiction over Plaintiff’s claim pursuant to ERISA Section
7 502(e) and (f), 29 U.S.C. Section 1132(e) and (f), and 28 U.S.C. Section 1331.

8 2. Venue lies in the Eastern District of California, pursuant to 28
9 U.S.C. Section 1391, because Plaintiff resides in the Eastern District, and
10 because Defendant, Metropolitan Life Insurance Company, a New York
11 Corporation (“MetLife”), does business in this District as a licensed insurance
12 company.

13 **THE PARTIES**

14 3. Plaintiff is an individual who, at all times relevant to this action,
15 was a participant, as defined by ERISA Section 3(7), 29 U.S.C. Section
16 1002(7), in the employee welfare benefit plan (the “Plan” or “Policy”)
17 established by her employer, Crawford & Company (“Crawford”). Plaintiff’s
18 rights under the Plan are at issue in this action.

19 4. MetLife is a life insurance company that insures and administers
20 the short-term disability Plan, including claims decisions and payment of
21 disability benefits to Plan participants such as Plaintiff. MetLife insures the
22 Plan under a group disability policy issued to Crawford (“Group Disability
23 Policy”).

24 5. The true names and capacities, whether individual, corporate,
25 associate or otherwise, of the defendants named herein as DOES 1 through 10,
26 inclusive, are unknown to Plaintiff at this time, who therefore sues DOES 1
27 through 10 by fictitious names and will ask leave of the Court to amend this
28 Complaint to show the true names and capacities of DOES 1 through 10 when



1 the same are ascertained; DOES 1 through 10 are sued as principals and/or
2 agents, servants, attorneys, or employees of said principals, and all of the acts
3 performed by them were within the course and scope of their authority and
4 employment. Plaintiff is informed and believes and thereupon alleges that each
5 of DOES 1 through 10 is legally responsible in some manner for the events
6 referred to herein, and directly and proximately caused the damages and
7 injuries to Plaintiff as alleged below.

8 **FACTUAL BACKGROUND**

9 **MetLife's Unlawful Claim for Reimbursement**

10 **and Collection Threat**

11 6. Plaintiff became disabled and was approved for short-term disability
12 ("STD") benefits under the Plan in 2022. MetLife paid her STD benefits each
13 month from May 2022 through October 2022. As a result of MetLife's termination
14 of her STD benefits, Plaintiff will not be receiving any additional STD benefits in
15 the future.

16 7. From May 6, 2022 through October 20, 2022, Plaintiff was paid
17 California State Disability ("State Disability") benefits in the amount of \$1,263.00
18 per week. MetLife contends that these State Disability payments resulted in
19 overpayment of STD benefits from May 6, 2022 through July 10, 2022, totaling
20 \$8,849.76. MetLife contends that it has a legal right to seek reimbursement of
21 such alleged overpayments from Plaintiff under "the Plan or applicable law."
22 While MetLife fails to cite the specific provision allegedly allowing it to pursue
23 collection remedies against Plaintiff, it appears that the relevant provision in the
24 Group Disability Policy is entitled "How We Recover Overpayments," which
25 provides as follows:

26 We may recover the overpayment from You by:
27
28



- 1 • stopping or reducing any future Disability benefits, including the
- 2 Minimum Benefit, payable to You or any other payee under the
- 3 Disability sections of this certificate;
- 4 • demanding an immediate refund of the overpayment from You;
- 5 and
- 6 • taking legal action.

7 8. MetLife never invoked this provision of the Group Disability
8 Policy and has therefore waived enforcement of it. Months after the
9 termination of Plaintiff's STD benefits, MetLife sent two letters to Plaintiff
10 informing her of the alleged \$8,849.76 overpayment and representing that she
11 allegedly owes a duty to repay that amount to MetLife.

12 9. MetLife's first letter to Plaintiff demanding reimbursement of
13 alleged overpayments was dated January 9, 2023. In that letter, MetLife stated:
14 Benefits paid to you from May 6, 2022 through July 10, 2022, were not
15 reduced by the amount of other income listed above [State Disability].
16 This has resulted in an overpayment on your claim in the gross amount
17 of \$9,582.86. The current net balance due to MetLife is \$8,849.76.

18 The January 9, 2023 letter informed Plaintiff that she was required to reimburse
19 MetLife for the alleged overpayments and enclosed a request for a check or
20 money order to enable MetLife to take payment of the overpayment out of
21 Plaintiff's personal bank account. MetLife was seeking reimbursement for the
22 alleged overpayments from Plaintiff's general funds in her personal bank
23 account.

24 10. MetLife immediately engaged a collection agency, Brown &
25 Joseph LLC, to collect the alleged overpayments from Plaintiff.

26 11. On January 13, 2023, just four days after MetLife mailed the first
27 letter demanding reimbursement, Brown & Joseph LLC sent Plaintiff a
28 threatening collection notice on behalf of MetLife, warning her that she only



1 had until February 24, 2023 to dispute the debt, or she would face further
2 collection action. The January 13, 2023 letter requested that Plaintiff make a
3 “check payable to METLIFE DISABILITY OFFSET,” and was clearly seeking
4 reimbursement from Plaintiff’s general funds in her personal bank account.

5 12. As a result of MetLife’s threats and collection action against
6 Plaintiff regarding the alleged overpayment, Plaintiff was reasonably forced to
7 retain McKennon Law Group PC (“McKennon Law Group”) as his attorneys to
8 respond to this alleged debt.

9 13. As of the time of filing of this action, MetLife still had not
10 disavowed its claimed right of reimbursement, and still had not agreed to stop
11 its collection threats and efforts against Plaintiff.

12 14. Plaintiff disputes that any overpayments of STD benefits were
13 made to her. In any event, Plaintiff no longer has control or possession of any
14 of those STD benefit payments, or any of the State Disability payments, as they
15 have all been spent. And when Plaintiff still had the STD benefits and State
16 Disability payments, they were co-mingled with her other funds in her bank
17 account.

18 15. For the reasons discussed below, ERISA bars MetLife from
19 seeking or obtaining reimbursement of \$8,849.76, or any other amount by
20 Plaintiff. Nonetheless, Plaintiff alleges on information and belief that in the
21 absence of injunctive relief or other appropriate equitable relief from this court,
22 MetLife will continue to seek to collect reimbursement of this amount from
23 Plaintiff, including subjecting her to unlawful and threatening communications
24 from MetLife’s collection agency.

25 **FIRST CLAIM FOR RELIEF**

26 For Equitable Relief to Enjoin Acts Contrary to Law, for Declaratory

27 Relief, for Breach of Fiduciary Duty, and for Attorneys’ Fees

28 29 U.S.C. Sections 1132(a)(3)(A), (a)(3)(B), (g)(1)



(Plaintiff against MetLife and Does 1 through 10)

1
2
3 16. Plaintiff incorporates the previous paragraphs as though fully set
4 forth herein.

5 17. ERISA Sections 502(a)(3)(A) and 502(a)(3)(B), 29 U.S.C.
6 Sections 1132(a)(3)(A) and 1132(a)(3)(B), permit a plan participant like
7 Plaintiff to bring a civil action to obtain “other appropriate equitable relief,”
8 including to enjoin any act or practice which violates any provision of this
9 subchapter, to enforce the terms of the plan, for declaratory relief or to obtain
10 other appropriate equitable relief to redress such violations. *Bilyeu v. Morgan*
11 *Stanley Long Term Disability Plan*, 683 F.3d 1083 (9th Cir. 2012); *Wong v.*
12 *Aetna Life Ins. Co.*, 51 F.Supp.3d 951 (S.D. Cal. 2014) (relying upon *Bilyeu*).

13 18. The Plan under which Plaintiff received benefits was an employee
14 welfare plan governed by ERISA. Among the subjects governed by ERISA is
15 the extent of an insurer’s right to seek reimbursement for overpayment of
16 benefits from an employee participant. *Bilyeu, supra*; *Wong v. Aetna Life Ins.*
17 *Co., supra*.

18 19. Pursuant to 29 USC Section 1132(a)(3), a civil action may be
19 brought by a participant, beneficiary, or fiduciary (A) to enjoin any act or
20 practice which violates any provision of this subchapter or the terms of the
21 plan, or (B) to obtain other appropriate equitable relief (i) to redress such
22 violations or (ii) to enforce any provisions of this subchapter or the terms of the
23 plan. *Id.*

24 20. In *Bilyeu*, the Ninth Circuit explained that, under ERISA, an
25 insurer can only obtain reimbursement of an overpayment of plan benefits if the
26 insurer proves three elements: “First, there must be a promise by the
27 beneficiary to reimburse the fiduciary for benefits paid under the plan in the
28 event of a recovery from a third party. Second, the reimbursement agreement



1 must ‘specifically identif[y] a particular fund, distinct from the [beneficiary’s]
2 general assets,’ from which the fiduciary will be reimbursed. [Citation
3 omitted.] Third, the funds specifically identified by the fiduciary must be
4 “within the possession and control of the [beneficiary].” *Bilyeu, supra*, 683
5 F.3d at 1092-1093; *Wong, supra*, 51 F.Supp.3d at 968-969. In *Bilyeu*, as here,
6 the insurer sought reimbursement of overpaid long-term disability benefits
7 resulting from SSDI benefits received by the insured. The Court held that the
8 insurer failed the first part of the test, because the Social Security Act prohibits
9 an insured from assigning SSDI benefits and prohibits an insurer from
10 attaching social security benefits. See 42 U.S.C. § 407(a). *Id.* In *Bilyeu*, the
11 insurer also failed the third part of the test, as it failed to prove that the SSDI
12 benefits that caused the overpayments were still in the insured’s possession and
13 control and had not been commingled with the insured’s general funds. *Id.*

14 21. Even if an insurer has an alleged contractual reimbursement
15 provision like MetLife is asserting, an equitable lien is the only claim for relief
16 an ERISA insurer may assert to recoup such an overpayment of disability
17 benefits to its insured. The equitable lien may only be placed on the specific
18 fund agreed upon in the insurer’s reimbursement agreement with its insured.
19 *Id.* In this action, MetLife cannot even meet the first and second prongs of the
20 test in *Bilyeu* and *Wong*, since MetLife did not require Plaintiff to sign a
21 reimbursement agreement as contemplated by the policy, thus waiving any
22 contractual promise by Plaintiff to reimburse alleged overpayments (first
23 prong), and a contractual right for MetLife to seek reimbursement (second
24 prong).

25 22. Even assuming, arguendo, that MetLife can prove that the Group
26 Disability Policy provides a basis for MetLife to satisfy the first and second
27 prongs – for instance, by producing a reimbursement agreement signed by
28 Plaintiff – MetLife will still be unable to satisfy the third prong of the test.



1 STD benefits previously paid to Plaintiff are the only possible fund identified in
2 the alleged MetLife reimbursement clause, because it is undisputed that
3 Plaintiff will not be receiving any STD benefits in the future. But the past STD
4 benefits paid to Plaintiff by MetLife do not satisfy the third prong of the test,
5 because all of those benefit payments have already been spent by Plaintiff or
6 commingled with her other funds. Since MetLife cannot meet the third prong
7 of the test, it is not entitled to seek recovery of the alleged overpayments based
8 on an equitable lien (even if it can prove the first and second prongs, which is
9 also questionable).

10 23. Under ERISA, illegally pursuing efforts to collect this
11 overpayment debt is a breach of MetLife's fiduciary duties, pursuant to ERISA
12 Section 1132(a)(3)(B). *Bilyeu, supra*, 683 F.3d at 1091.

13 24. MetLife's past and expected future efforts to coerce Plaintiff into
14 paying the \$8,849.76 allegedly overpaid violate MetLife's fiduciary duties
15 owed under ERISA in two ways. MetLife is seeking to coerce Plaintiff into
16 paying reimbursement from her general funds, in violation of ERISA. In this
17 regard, MetLife has represented to Plaintiff that its Group Disability Policy
18 purportedly gives MetLife a legal right to recover such overpayments from
19 Plaintiff. Such a provision in MetLife's Group Disability Policy is unlawful
20 and unenforceable under ERISA, since it would grant MetLife a right to seek
21 reimbursement from Plaintiff's funds other than the STD benefit payments to
22 Plaintiff that allegedly contained overpayments.

23 25. ERISA preempts any state law claims MetLife could otherwise
24 pursue, including a breach of contract or similar claim against Plaintiff. *Bui v.*
25 *American Telephone & Telegraph Co. Inc.* (9th Cir. 2002) 310 F.3d 1143, 1152
26 ("ERISA preempts Bui's contract claims. These claims do not merely reference
27 the ERISA plan, they require its construction because the contract allegedly
28



1 breached is the ERISA plan itself. Accordingly, ERISA preempts the contract
2 claims.”)

3 26. ERISA also bars MetLife from using any state law collection
4 remedy to enforce its alleged reimbursement right, and the absence of any other
5 legal remedy is insufficient to overcome ERISA preemption. *See Bast v.*
6 *Prudential Ins. Co. of America* (9th Cir. 1998) 150 F.3d 1003, 1010, as
7 amended (Aug. 3, 1998) (“ERISA preempts state law claims, even if the result
8 is that a claimant, relegated to asserting a claim only under ERISA, is left
9 without a remedy. The focus is on ERISA. If it does not provide a remedy,
10 none exists.”)

11 27. A controversy now exists between the parties regarding whether
12 MetLife has a right to pursue any legal action or collection effort to recover the
13 alleged overpayment of past disability benefits from Plaintiff. MetLife alleges
14 that it has the right to seek reimbursement under the Group Disability Policy.
15 Plaintiff alleges that ERISA forbids MetLife from enforcing this alleged Policy
16 right and also forbids MetLife from taking any action to seek reimbursement of
17 any amount of the alleged overpayments from Plaintiff, including but not
18 limited to sending collection demand letters, utilizing an outside collection
19 agency, or threatening, filing, or prosecuting a lawsuit.

20 28. Plaintiff will suffer irreparable harm unless this Court exercises its
21 equitable power to resolve this controversy in his favor, and to enjoin MetLife
22 from any further effort to collect any amount of the \$8,849.76, or any other
23 amount from Plaintiff.

24 29. As a direct and proximate result of MetLife’s unlawful efforts to
25 collect the \$8,849.76 from Plaintiff, in breach of its duties as an ERISA
26 fiduciary, Plaintiff has been forced to incur attorneys’ fees and costs to pursue
27 this action and is entitled to reimbursement of these fees pursuant to 29 U.S.C.
28 Section 1132(g)(1).



PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against all Defendants:

1. That this Court issue a declaratory judgment holding that the provision which MetLife relies for its alleged right to seek reimbursement from Plaintiff, the provision in the Group Disability Policy entitled “How We Recover Overpayments”, and any other provision, term, or condition in the Group Disability Policy that purports to grant such a right of reimbursement, are unlawful and unenforceable under ERISA to the extent MetLife seeks to obtain reimbursement of alleged overpayment of past disability benefits – resulting from State Disability benefits paid to Plaintiff – from any funds or source other than the past disability benefits that included an overpayment, and to the extent the funds from those past disability benefits are still in Plaintiff’s possession and are not commingled with other funds;

2. That this Court issue a permanent injunction enjoining MetLife and any person, agent, employee, or outside collection agency or other person or entity working on behalf of MetLife from taking any action to collect or seek reimbursement of any amount from Plaintiff, including, by way of example, but without limitation, sending any written communication or correspondence by any media, making any telephone calls to Plaintiff (or to anyone else in relation to trying to collect from Plaintiff), making any in-person demand, placing any lien on any personal or real property of Plaintiff, filing any lawsuit against Plaintiff seeking collection or reimbursement, and reporting Plaintiff’s alleged reimbursement obligation to any credit reporting agency;

3. For an award of costs and reasonable attorneys’ fees pursuant to 29 U.S.C. Section 1132(g); and



1 4. For such other and further relief as this Court deems just and
2 proper.

3
4 Dated: February 23, 2023

McKENNON LAW GROUP PC

5
6 By:



ROBERT J. McKENNON
ERIK C. FRITZ
Attorneys for Plaintiff,
Roxanne Hazel



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

