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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RACHEL CONDRY, JANCE HOY, CHRISTINE ENDICOTT, LAURA BISHOP, FELICITY BARBER, and RACHEL CARROLL on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

UnitedHealth Group Inc.; UnitedHealthcare, Inc.; UnitedHealthcare Insurance Company; UnitedHealthcare Services, Inc.; and UMR, Inc.,

Defendants.

Case No.: 3:17-cv-00183-VC

PLAINTIFFS' MOTION TO GRANT REQUEST FOR INTERVENTION AND FOR LEAVE TO FILE THIRD AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: November 21, 2019
Time: 10:00 am
Place: Courtroom 4

Honorable Vince G. Chhabria

PLEASE TAKE NOTICE that on November 21, 2019, at 10:00 am in Courtroom 4 of the above-captioned Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, pursuant to Rules 24(a)(2) and 24(b)(1)(B) of the Federal Rules of Civil Procedure, to intervene in this matter as of right or, in the alternative, by permissive intervention.

Plaintiffs Rachel Condry, Jance Hoy, Christine Endicott, Laura Bishop, Felicity Barber, and Rachel Carroll (collectively, "Plaintiffs"), and putative class member and proposed Intervenor Plaintiff, Teresa Harris, will move this Court to grant Proposed Intervenor's request for intervention, and for leave to file a Third Amended Complaint, pursuant to Fed. R. Civ. P. 15(a)(2), submitted herewith and attached as Ex. A to the Declaration of Kimberly Donaldson-Smith. Plaintiffs and Proposed Intervenor seek to add Proposed Intervenor as a Plaintiff and proposed Class representative in this Action for a Rule 23(b)(2) Class in light of this Court's May 23, 2019 Order Denying Motion for Class Certification without prejudice finding that the existing Plaintiffs lack standing to pursue injunctive relief. *See* Dkt. 213 at 4-5.

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the supporting Declaration of Kimberly Donaldson-Smith and Exhibit thereto, and the arguments of counsel at the hearing on this Motion.

Dated: September 9, 2019

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23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PROCEDURAL HISTORY 1

III. LEGAL STANDARD 3

IV. ARGUMENT 4

A. Proposed Intervenor Satisfies the Requirements for Permitting Intervention as a Matter of Right Under Fed. R. Civ. P. 24(a)(2) 4

1. Proposed Intervenor's Motion is Timely 5

2. Proposed Intervenor has a Significant Legally Protectable Interest 7

3. Absent Intervention, Proposed Intervenor's Substantial Legal Interests will be Impaired 8

4. Proposed Intervenor's Interests are not Adequately Represented by the Existing Plaintiffs 9

B. The Proposed Intervenor Also Satisfies the Requirements for Permissive Intervention Under Under Fed. R. Civ. P. 24(b) 10

C. Leave to File the TAC Is Appropriate Under Fed. R. Civ. P. 15(a)(2)........................11

V. CONCLUSION 12

TABLE OF AUTHORITIES

CASES

Advanced Cardiovascular Sys. v. Scimed Life Sys.,
989 F. Supp. 1237 (N.D. Cal. 1997) 11

Arakaki v. Cayetano,
324 F.3d 1078 (9th Cir. 2003) 3, 9

Citizens for Balanced Use v. Montana Wilderness Ass'n,
647 F.3d 893 (9th Cir. 2011) 9

DCD Programs, Ltd. v. Leighton,
833 F.2d 183 (9th Cir. 1987) 11

Donnelly v. Glickman,
159 F.3d 405 (9th Cir.1998) 4, 10

Eckert v. Equitable Life Assurance Soc'y of the United States,
227 F.R.D. 60 (E.D.N.Y. 2005) 10

Eminence Capital, LLC v. Aspeon, Inc.,
316 F.3d 1048 (9th Cir. 2003) 11

Forest Conservation Council v. United States Forest Serv.,
66 F.3d 1489 (9th Cir. 1995) 3

Home Builders Ass'n v. United States Fish & Wildlife Serv.,
2006 U.S. Dist. LEXIS 37749 (E.D. Cal. May 23, 2006) 6

Johnson v. Hartford Cas. Ins. Co.,
No. 15-cv-04138-WHO, 2017 U.S. Dist. LEXIS 77482 (N.D. Cal. May 22, 2017) 5

Johnson v. Serenity Transp., Inc.,
No. 15-cv-02004-JSC, 2015 U.S. Dist. LEXIS 108227 (N.D. Cal. Aug. 17, 2015) 12

Koike v. Starbucks Corp.,
602 F. Supp. 2d 1158 (N.D. Cal. 2009) 7

Legal Aid Soc. v. Dunlop,
618 F.2d 48 (9th Cir. Cal. 1980) 5

Munoz v. PHH Corp.,
No. 1:08-cv-0759-AWI-BAM, 2013 U.S. Dist. LEXIS 106004 (E.D. Cal. July 26, 2013) 3, 6, 7

Nguyen v. United States,
792 F.2d 1500 (9th Cir. 1986) 12

Perry v. Proposition 8 Official Proponents,
587 F.3d 947 (9th Cir. 2009) 9, 10, 11

Sw. Ctr. for Biological Diversity v. Berg,
268 F.3d 810 (9th Cir. 2001) 3, 5

Trief v. Dun & Bradstreet Corp.,
144 F.R.D. 193 (S.D.N.Y. 1992) 3

United States v. Alisal Water Corp.,
370 F.3d 915 (9th Cir. 2004) 5, 7

United States v. City of Los Angeles,
288 F.3d 391 (9th Cir. 2002) 4, 8

United States v. State of Wash.,
86 F.3d 1499 (9th Cir. 1996) 5

WildEarth Guardians v. U.S. Forest Service,
573 F.3d 992 (10th Cir. 2009) 8

Zurich Am. Ins. Co. v. Ace Am. Ins. Co.,
2012 U.S. Dist. LEXIS 126949 (E.D. Cal. Aug. 31, 2012) 7

STATUTES

28 U.S.C. § 1331 10

OTHER AUTHORITIES

6 C. Wright & A. Miller, Federal Practice and Procedure § 1484 (1971) 12

Fed. R. Civ. P. 15, *et seq.* 11, 12

Fed. R. Civ. P. 24, *et seq* 1, 3, 4, 10

Fed. R. Civ. P. 24(b) 10

I. INTRODUCTION

Teresa Harris ("Proposed Intervenor"), is a current beneficiary of a non-grandfathered, ERISA-governed UHC health benefit plan and a member of the putative ERISA Plan Class as defined in Plaintiffs' renewed motion for class certification, filed contemporaneously with this Motion. Proposed Intervenor is entitled to intervention of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure, because the Motion is timely, she has a direct and substantial interest that may be impaired if she is not permitted to intervene, and the existing Plaintiffs have been found by the Court to not adequately represent Proposed Intervenor's interest in seeking injunctive relief. *See* Dkt. 213, Order Denying Motion for Class Certification, "CC Order" at 4-5. Alternatively, Proposed Intervenor satisfies the requirements for permissive intervention pursuant to Rule 24(b)(1)(B) because the Motion is timely, common questions of fact predominate, this Court has jurisdiction over the claims, and intervention will conserve both judicial and party resources without delaying resolution of this litigation or prejudicing the existing parties. Plaintiffs' counsel conferred with counsel for Defendants.[1] Defendants oppose the relief sought by this Motion.

II. PROCEDURAL HISTORY

On January 13, 2017, Plaintiff Rachel Condry filed this Action against Defendants on behalf of herself and all others similarly situated, alleging that Defendants' health plans and coverage for comprehensive lactation support and counseling services ("CLS") violate the ACA, ERISA and the plan documents. Dkt. No. 1. On March 10, 2017, Plaintiff Condry filed an Amended Complaint adding Jance Hoy, Christine Endicott, Laura Bishop, Felicity Barber, and Rachel Carroll as Plaintiffs (collectively, "Plaintiffs"). Dkt. No. 29.

[1] Defendants are comprised of UnitedHealth Group Incorporated, UnitedHealthcare, Inc., UnitedHealthcare Insurance Company, UnitedHealthcare Services, Inc. and UMR, Inc. (collectively, "UHC" or "Defendants").

On April 14, 2017, Defendants moved to dismiss the Amended Complaint, which Plaintiffs opposed. After a hearing on Defendants' motion, in an August 15, 2017 Order, the Court denied in substantial part the Defendants' Rule 12(b)(6) motion to dismiss. Dkt. 68. On September 5, 2017, in accordance with the Court's Order with respect to the Section 1557 claim, the Anti-Discrimination provision of the ACA, Plaintiffs filed a Second Amended Complaint adding allegations that the Defendants' CLS policy violated ACA-mandated preventive services requirements. Dkt. 78. On September 19, 2017, Defendants filed their Answer to the Second Amended Complaint. Dkt. 82.

In accordance with the Court's May 8, 2017 Scheduling Order, the parties filed cross-motions for summary judgment as to the named Plaintiffs' claims, and a hearing was held on April 26, 2018. On June 27, 2018, the Court entered a Summary Judgment Order granting in part and denying in part the parties' cross-motions for summary judgment. Dkt. 146. Plaintiffs then filed a Motion for Class Certification on February 20, 2019, that Defendants opposed. Following the class certification hearing on April 25, 2019, the Court issued an Order denying class certification without prejudice on May 23, 2019. *See* CC Order at 4-5.

In the Class Certification Order the Court stated that, "[i]t does not appear that the named plaintiffs have standing to seek prospective relief because they are no longer UHC plan participants." CC Order at 4.[2] At the time the complaints were filed, all six named Plaintiffs were members or beneficiaries of health benefit plans sold, underwritten or administered by one of the Defendants; however, due to intervening circumstances over the past two and a half years, none of the existing Plaintiffs is currently insured by UHC. As a result, the Court held that it is "speculative" to assert that Plaintiffs "may someday return to UHC" in order to "confer standing to seek prospective relief." CC Order at 4. Proposed Intervenor, a current UHC plan beneficiary, now seeks

[2] The Court denied the motion for class certification without prejudice by granting "plaintiffs leave to take another shot at class certification." CC Order at 1, 6.

to join this Action in order to satisfy Article III standing to serve as a proposed Class representative in order to seek injunctive relief. As set forth in detail below, the Proposed Intervenor is entitled to intervention because the Motion is timely and will not result in prejudice or delay to any of the parties, and is proper to protect a direct and substantial interest of the Proposed Intervenor and putative members of the Class seeking injunctive relief. The renewed class certification motion seeks injunctive relief on behalf of the ERISA Plan Class.

III. LEGAL STANDARD

Rule 24 authorizes two types of intervention: (1) intervention of right, which requires that a court permit a non-party to intervene, and (2) permissive intervention, which grants a court discretion to permit such intervention. "Rule 24 traditionally receives liberal construction in favor of applicants for intervention." *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003); *see also Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001) (the Ninth Circuit generally "construe[s] Rule 24(a) liberally in favor of potential intervenors," and "review is guided primarily by practical considerations, not technical distinctions" (citation and internal quotation marks omitted)); *see also Forest Conservation Council v. United States Forest Serv.*, 66 F.3d 1489, 1496 (9th Cir. 1995) (the Ninth Circuit has "[a] liberal policy in favor of intervention," which "serves both efficient resolution of issues and broadened access to the courts"). In particular, intervention in class actions "should be liberally allowed in order to ensure" that the objectives of Rules 23 and 24 are met. Charles Alan Wright et al., 7B Federal Practice and Procedure § 1799 (3d ed.).

Generally, "intervention of class representatives to ensure adequate class representation is highly desirable." *Munoz v. PHH Corp.*, No. 1:08-cv-0759-AWI-BAM, 2013 U.S. Dist. LEXIS 106004, at *15 (E.D. Cal. July 26, 2013); *see also Trief v. Dun & Bradstreet Corp.*, 144 F.R.D. 193, 202 (S.D.N.Y. 1992) (citing Manual for Complex Litigation, Second, § 30.15, 216) ([T]o protect class members' interests '[r]eplacement of the class representative sometimes becomes necessary or

desirable. . . . If replacement is needed, the Court may permit intervention by a new representative'")). When the addition or replacement of a class representative is warranted, a "court may permit intervention by a new representative or may simply designate that person as a representative in the order granting class certification." Manual for Complex Litigation, Fourth, § 21.26. As the advisory committee notes to Fed. R. Civ. P. 24 observe, "a member of a class should have the right to intervene in a class action if he can show the inadequacy of the representation of his interest by the representative parties before the court." Fed. R. Civ. P. 24, Advisory Committee Notes (1966).

IV. ARGUMENT

A. Proposed Intervenor Satisfies the Requirements for Permitting Intervention as a Matter of Right Under Fed. R. Civ. P. 24(a)(2)

Rule 24(a)(2) provides that a party may move to intervene as of right when it "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). In evaluating whether the requirements for intervention are met, courts in the Ninth Circuit "are guided primarily by practical and equitable considerations." *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir.1998). "A liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts. By allowing parties with a practical interest in the outcome of a particular case to intervene, we often prevent or simplify future litigation involving related issues; at the same time, we allow an additional interested party to express its views before the court." *United States v. City of Los Angeles*, 288 F.3d 391, 397-98 (9th Cir. 2002) (internal quotations and citation omitted). When analyzing a motion to intervene of right under Rule 24(a)(2), the Ninth Circuit applies a four-part test:

> (1) the application for intervention must be timely; (2) the applicant must have a 'significantly protectable' interest relating to the property or transaction that is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) the applicant's interest must not be adequately represented by the existing parties in the lawsuit.

Berg, 268 F.3d at 817. Here, all four prongs are met for Intervenor to intervene as a right.

1. Proposed Intervenor's Motion is Timely

"Timeliness is a flexible concept; its determination is left to the district court's discretion." *United States v. Alisal Water Corp*., 370 F.3d 915, 921 (9th Cir. 2004) (citation omitted). The Ninth Circuit considers three factors in determining if a motion to intervene is timely: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay. *United States v. State of Wash*., 86 F.3d 1499, 1503 (9th Cir. 1996). However, "[a]ll of the circumstances of a case must be considered in ascertaining whether or not a motion to intervene is timely under Fed. R. Civ. P. 24." *Legal Aid Soc. v. Dunlop*, 618 F.2d 48, 50 (9th Cir. Cal. 1980). The present Motion is timely because it satisfies all of these criteria.

First, prior to the Court's Class Certification Order, Proposed Intervenor could assume that the existing Plaintiffs, irrespective of their status as current or former UHC health benefit plan members or beneficiaries, adequately represented her claim for injunctive relief because in similar circumstances courts have found standing to seek injunction (*see Johnson v. Hartford Cas. Ins. Co.*, No. 15-cv-04138-WHO, 2017 U.S. Dist. LEXIS 77482, at *31-32 (N.D. Cal. May 22, 2017)), a principle that this Court rejected in its Class Certification Order. CC Order at 5. Proposed Intervenor had no need to file the present Motion until the Court's Class Certification Order determining that the existing Plaintiffs lacked standing to seek prospective relief. Proposed Intervenor has timely filed this Motion to protect her interests and those of the putative injunctive relief Class, and within the time limit set by the Court for Plaintiffs to file a renewed motion for class certification. *See Alisal Water*, 370 F.3d at 921 ("a party's interest in a specific phase of a

proceeding may support intervention at that particular stage of the lawsuit."); *see also* Dkt. 220, July 22, 2019 Scheduling Order. Moreover, the fact that the proceedings are in the pre-trial, pre-class certification stage and no trial date has been set further supports allowing intervention.

Second, intervention will not prejudice Defendants. "To determine whether intervention prejudices the other parties to a case, the court compares the harm from allowing intervention at a later stage of the proceedings with what would have occurred no matter when the applicant was allowed to intervene." *Munoz*, 2013 U.S. Dist. LEXIS 106004, at 23-24 (citations omitted). In other words, "prejudice in this context is the harm that arises from late intervention as opposed to early intervention." *Id.* Here, Defendants will not be prejudiced by intervention. Injunctive relief has been an integral goal of this Action since inception. The Proposed Intervenor is asserting the same claims already at issue in this Action and the Third Amended Complaint ("TAC"), attached hereto as Ex. A to the Declaration of Kimberly Donaldson-Smith, does not add any new theories or causes of Action. *See Home Builders Ass'n v. United States Fish & Wildlife Serv*., 2006 U.S. Dist. LEXIS 37749, 19 (E.D. Cal. May 23, 2006) (no prejudice when proposed intervenor has not "raised 'new issues or matters' that are well beyond the scope of claims and defenses raised by the existing parties.").

Additionally, Defendants will be entitled to pursue discovery of Proposed Intervenor, just as they would if Proposed Intervenor was initially put forth as a Class representative at the outset of this litigation. Proposed Intervenor will promptly produce documents – some of which Defendants have access to and have already produced as part of this litigation including call center notes and Proposed Intervenor's CLS claims appeal packet – and be made available for deposition. And, while some minimal additional briefing may be required to determine if Proposed Intervenor may serve as a Class representative, there "will not be a need to conduct a wholesale rebriefing of class

certification," but rather briefing on the discrete issue of whether the new proposed representative may represent an injunctive class. *Munoz*, 2013 U.S. Dist. LEXIS 106004, at *28.

Third, "the mere lapse of time, without more, is not necessarily a bar to intervention," and "a party's interest in a specific phase of a proceeding may support intervention at that particular stage of the lawsuit." *Alisal Water*, 370 F.3d at 921. As discussed, *supra*, Proposed Intervenor relied upon the existing Plaintiffs to pursue all claims, including the claims seeking prospective relief, and it was not until the Court ruled on the motion for class certification that the Proposed Intervenor became aware of the Court's determination that the existing Plaintiffs lacked Article III standing to seek injunctive relief.

2. Proposed Intervenor has a Significant Legally Protectable Interest

Proposed Intervenor has a significantly protectable interest relating to the property or transaction that is the subject matter of this litigation. An interest is significantly protectable if (1) it is protected under some law, and (2) the applicant shows a relationship between the legally protected interest and the claims of the plaintiffs. *See Koike v. Starbucks Corp.*, 602 F. Supp. 2d 1158, 1160 (N.D. Cal. 2009). An "intervenor satisfies the 'relationship' requirement if the resolution of the underlying litigation 'actually will affect the applicant.'" *Zurich Am. Ins. Co. v. Ace Am. Ins. Co.*, 2012 U.S. Dist. LEXIS 126949, 7 (E.D. Cal. Aug. 31, 2012) (quoting *Donnelly*, 159 F.3d at 410).

Here, as set forth in the TAC, Proposed Intervenor is a current beneficiary of a non-grandfathered, ERISA-governed UHC health benefit plan that is subject to the ACA's preventive services requirements, and UHC applied cost-sharing to her two out-of-network CLS claims. As such, Proposed Intervenor is a putative member of the ERISA Plan Class, as defined in Plaintiffs' Renewed Motion for Class Certification. Like the existing ERISA Plan Class representatives, the Proposed Intervenor's interest is statutorily protected and defined by ERISA. Thus, Proposed

Intervenor has a significant legally protectable interest that relates directly to the claims at issue in this Action.

3. Absent Intervention, Proposed Intervenor's Substantial Legal Interests will be Impaired

Intervention is appropriate when the disposition of the pending Action may, as a practical matter, impair or impede a Proposed Intervenor's ability to protect their interest. *See City of Los Angeles*, 288 F.3d at 401. "To satisfy [the impairment] element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied. This burden is minimal." *WildEarth Guardians v. U.S. Forest Service*, 573 F.3d 992, 995 (10th Cir. 2009) (quoting *Utah Ass'n of Counties v. Clinton,* 255 F.3d 1246, 1253 (10th Cir. 2001) ("If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.").

Here, Proposed Intervenor has a direct interest in the resolution of this litigation as a member of the putative ERISA Plan Class that could be impaired if the Court does not grant intervention, and Plaintiffs' renewed motion for class certification will be adversely impacted by not resolving all the issues raised by the Court in its Class Certification Order. Under the Court's current order, absent intervention, there will be no injunction class because the Court has determined that the existing Plaintiffs do not have standing to seek injunctive relief. Therefore, Proposed Intervenor's interest in injunctive relief will be impaired without intervention and the disposition of this litigation will directly affect Intervenor's ability to seek redress for her injunctive relief claim. Although, Proposed Intervenor has the ability to file a new suit and relate it to this Action, doing so would be inefficient, result in delays to these proceedings, and unnecessarily consume additional judicial resources.

4. Proposed Intervenor's Interests are not Adequately Represented by the Existing Plaintiffs

The "most important factor" to determine whether a proposed intervenor is adequately represented by a present party to the action is how the intervenor's interest compares with the interests of existing parties. *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950-51 (9th Cir. 2009) (quotation and citation omitted). For purposes of intervention, the burden of showing inadequate representation is minimal, and any doubts must be resolved in favor of the intervenor. *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 989 (9th Cir. 2011) ("The burden of showing inadequacy of representation is 'minimal' and satisfied if the applicant can demonstrate that representation of its interest 'may be' inadequate").

Courts in the Ninth Circuit consider three factors when determining whether a potential intervenor's interests are adequately represented by the existing parties: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Arakaki*, 324 F.3d at 1086.

As noted, *supra*, the Court has found that the existing Plaintiffs do not "have standing to seek prospective relief because they are no longer UHC plan participants." CC Order at 4. Thus, the Court has explicitly determined that the injunctive relief interests of the Proposed Intervenor, who is a current beneficiary of a UHC health benefit plan and member of the putative ERISA Plan Class, are not adequately represented by the existing Plaintiffs. Therefore, the Proposed Intervenor is necessary to adequately represent the interests of herself and putative Class members seeking injunctive relief. As such, the Proposed Intervenor has met the burden permitting intervention as a matter of right by demonstrating that the existing Plaintiffs, while adequate to represent other proposed Classes, is inadequate to represent the injunctive relief Class.

As all of the elements of mandatory intervention are met here, the Court should grant the motion to intervene in this Action, which is accomplished by virtue of filing the TAC.

B. The Proposed Intervenor Also Satisfies the Requirements for Permissive Intervention Under Under Fed. R. Civ. P. 24(b)

The Proposed Intervenor has satisfied the requirements for intervention as a matter of right, but she also fulfills the requirements for permissive intervention. Rule 24(b) provides for permissive intervention on a timely motion by anyone who "has a claim or defense that shares with the main action a common question of law or fact," and when the intervention "will [not] unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b). A court may grant permissive intervention under Rule 24(b) if the intervenor meets these three threshold requirements: "(1) it shares a common question of law or fact with the main action; (2) its motion is timely; and (3) the court has an independent basis for jurisdiction over the [intervenor's] claims." *Donnelly*, 159 F.3d at 412. All requirements for permissive intervention are met here. "Where a putative intervenor has met these requirements, the court may also consider other factors in the exercise of its discretion, including the nature and extent of the intervenors' interest and whether the intervenors' interests are adequately represented by other parties." *Perry*, 587 F.3d at 955 (citation and internal quotations omitted). Permissive intervention is especially favored in instances where, like here, "no additional issues are presented to the case, when the intervenor's claims are 'virtually identical' to class claims, and when intervention would strengthen the adequacy of class representation." *Eckert v. Equitable Life Assurance Soc'y of the United States*, 227 F.R.D. 60, 64 (E.D.N.Y. 2005) (quoting Herbert Newberg & Alba Conte, Newberg on Class Actions § 16:8 (4th ed. 2002)).

Here, the injunctive relief claims of Proposed Intervenor and those previously asserted by the existing Plaintiffs not only share a common question of law or fact, but the claims are reasonably co-extensive given that the claims are identical. This Motion is timely for the same reasons stated in Section IV.A.1, *supra*, and this Court has jurisdiction pursuant to 28 U.S.C. § 1331 and ERISA §

502(e)(1), 29 U.S.C. § 1132(e)(1) of Proposed Intervenor's claims, as the Court did over the original claims. To the extent the Court would consider additional factors such as "the nature and extent of the intervenors' interest and whether the intervenors' interests are adequately represented by other parties," *Perry*, *supra*, 587 F.3d at 955, the Proposed Intervenor's interests are identical, and the Court has already determined that the existing Plaintiffs do not adequately represent the Proposed Intervenor's interests since they lack standing to seek injunctive relief. Moreover, for the reasons stated above, Proposed Intervenor's claims will neither cause delay nor prejudice Defendants. Accordingly, even if this Court determines Proposed Intervenor may not intervene as of right, this Court should nevertheless grant permissive intervention.

C. Leave to File the TAC Is Appropriate Under Fed. R. Civ. P. 15(a)(2)

Rule 15 of the Federal Rules of Civil Procedure provides that "a party may amend its pleading [with] the court's leave" and that "[t]he Court should freely give leave when justice so requires. Fed. R. Civ. P. 15 (a)(2). This standard should be "applied with extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (leave to amend granted with "extreme liberality"); *see also Advanced Cardiovascular Sys. v. Scimed Life Sys.*, 989 F. Supp. 1237, 1241 (N.D. Cal. 1997) (Rule 15 "reflects an underlying policy that disputes should be determined on their merits, and not on the technicalities of pleading rules.").

In determining whether to grant a motion to amend, the Ninth Circuit considers several factors including "bad faith, undue delay, prejudice to the opposing party, and futility of amendment." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). But not all factors carry equal weight. The Ninth Circuit has held, "it is the consideration of prejudice to the opposing party that carries the greatest weight." *Eminence Capital, LLC*, 316 F.3d at 1052. Absent

prejudice, or a strong showing of bad faith, undue delay, or futility of amendment, there exists a presumption under Rule 15(a) in favor of granting leave to amend. *Id.*

Here, granting Plaintiffs' motion for leave to file the TAC is proper as it is for the sole purpose of including Proposed Intervenor as a named Plaintiff. The proposed amendments do not change the character of Plaintiffs' theories or liability. Nor are any of the limited amendments futile based on the face of the allegations. *See Johnson v. Serenity Transp., Inc.*, No. 15-cv-02004-JSC, 2015 U.S. Dist. LEXIS 108227, at *8 (N.D. Cal. Aug. 17, 2015) ("A proposed amendment is futile only if it would be immediately subject to dismissal."). No bad faith is present, nor is there undue delay or other prejudice to Defendants given that the request is timely for the same reasons stated in Section IV.A.1, *supra*. *See Nguyen v. United States*, 792 F.2d 1500, 1503 (9th Cir. 1986) (amendment may be made at any stage of the litigation, including after summary judgment); 6 C. Wright & A. Miller, Federal Practice and Procedure § 1484 (1971) ("Amendments under the second portion of subdivision (a) [of Rule 15] may be made at any stage of the litigation.").

V. CONCLUSION

For the foregoing reasons, Plaintiffs and the Proposed Intervenor respectfully request that this Court grant the motion for mandatory (or alternatively, permissive) intervention to add the additional proposed Class representative by filing the proposed TAC submitted herewith.

Dated: September 9, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2019, I served the foregoing **PLAINTIFFS' MOTION TO GRANT REQUEST FOR INTERVENTION AND FOR LEAVE TO FILE THIRD AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES** on the following counsel of record via email:

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