



Lin v. Deutsche Bank Securities Incorporated et al

2023 | Cited 0 times | D. Arizona | October 12, 2023

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Gary Lin,

Plaintiff, v. Deutsche Bank Securities Incorporated, et al.,

Defendants.

No. CV-23-00154-TUC-RM ORDER

Plaintiff Gary Lin 1

filed a Verified Complaint alleging that Defendants failed to pay him short-term disability income benefits in violation of A.R.S. § 23-350, et seq. (Doc. 1-1.) Currently pending before the Court is Defendants Motion to Dismiss. (Doc. 11.) The Court warned Plaintiff of his responsibility to respond and extended his response deadline three times (Docs. 14, 16, 17), but Plaintiff did not file a response.

I. Plaintiff alleges that he was employed by Defendants and, as an employee, was eligible for certain employee benefits offered by Defendants, including benefits under -term disability income program. (Doc. 1-1 at 5 ¶¶ 10, 12.) 2 -term disability income program is not an ERISA-based plan. (Id. at 6 ¶ -term disability income program due to mental health conditions, but that Defendants 1 Plaintiff was represented by counsel when he filed the Complaint but is now proceeding pro se. (See Doc. 1-1; Doc. 16.) 2 system. unreasonably denied his claim for benefits under the program. (Id. at 6-7 ¶¶ 15-26.) Plaintiff asserts a claim pursuant to A.R.S. § 23-350 et seq., alleging that short-term § 23-350(7). (Id. at 7 ¶¶ 27-35.) He seeks backpay, including treble damages and interest. (Id. at 8.)

II. Legal Standard

Dismissal of a complaint, or any claim within it, for failure to state a claim under lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116, 1121 22 (9th Cir. 2008)



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(quoting *Balistreri v. Pacifica Police Dep t*, 901 F.2d 696, 699 (9th Cir. 1990)). 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, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) allows the court to draw the reasonable inference that the defendant is liable for the

Id.

III. Discussion

In their Motion to Dismiss, Defendants argue that disability benefits are not § 23-350(7) because they are not compensation due to an employee in return for labor or services rendered by the employee. (Doc. 11 at 4-5.)

due an employee in return for labor or services rendered by an employee for which the

employee has a reasonable expectation to be paid whether determined by a time, task, piece, § 23-350(7). If an employer civil action against the employer. A.R.S. § 23-355(A).

The Arizona Court of Appeals has h under A.R.S. § 23-350 et seq. *Abdulhussain v. MV Pub. Transp.*, No. 1 CA-CV 22-0522, 2023 WL 3843319, at *3 (Ariz. App. June 6, 2023). S Id. Similarly, here, a right to disability benefits under

-term disability income program exists solely by agreement of the parties. D employee in return for labor or services rendered A.R.S. § 23-350(7) (emphasis

added); c , 757 P.2d 1067, 1068 (

their short-term disability income program is actionable under A.R.S. § 23-350 et seq.

rs he may have abandoned this litigation. See

grant De § 23-350 et seq. with prejudice, as the claim cannot be cured by the allegation of other facts. See *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (district court should dismiss with (internal quotation marks omitted)).

IT IS ORDERED granted. The Clerk of Court is directed to enter judgment in favor of Defendants and close this case.

Dated this 11th day of October, 2023.

