

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

KAREN L. MANK as plan administrator for  
the Hannaford Health Plan,

Plaintiff

v.

Civil No. 03-42-P-C

ELLEN GREEN, JACK SIMMONS, and  
BERMAN & SIMMONS, P.A.,

Defendants

Gene Carter, Senior District Judge

**ORDER REJECTING THE RECOMMENDED DECISION OF THE  
MAGISTRATE JUDGE AND DENYING DEFENDANTS' MOTION TO DISMISS**

Plaintiff brought this action pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, (Counts I, II, III), federal common law (Counts IV, V, VI, VII), and state common law (Counts VIII, IX, X, XI). *See* Complaint (Docket Item No. 1). Defendants Ellen Green and her attorneys, Jack H. Simmons and the firm of Berman & Simmons, P.A., move to dismiss all of Plaintiff's claims. Defendants' Motion to Dismiss the Complaint (Docket Item No. 5); Defendants' Memorandum of Law in Support of their Motion to Dismiss the Complaint (Docket Item No.6). The United States Magistrate Judge filed with the court on May 30, 2003, with copies to counsel, his Recommended Decision on Defendants' Motion to Dismiss

concluding that the Court should dismiss all the claims asserted in Plaintiff's Complaint. Recommended Decision on Defendants' Motion to Dismiss (Docket Item No. 15). The Plaintiff filed her objection to the Recommended Decision on June 16, 2003 (Docket Item No. 16), and Defendants filed their response on July 3, 2003 (Docket Item Nos. 17).

The Court has carefully reviewed the Recommended Decision of the Magistrate Judge, Plaintiff's Objections to the Magistrate's Recommended Decision, Defendants' Response to Plaintiff's Objections to the Magistrate's Recommended Decision, together with the entire record, and has made a de novo determination of all matters adjudicated by the Recommended Decision. With respect to Plaintiff's claims asserted pursuant to ERISA, the Court finds that it is premature to dismiss these claims without providing Plaintiff the opportunity to conduct discovery to determine whether there remain identifiable proceeds from the settlement in the possession of Defendants. The resolution of Plaintiff's federal common law claims being related to the resolution of Plaintiff's ERISA claims, the Court will also reject the recommendation of the Magistrate Judge on the federal common law claims and retain supplemental jurisdiction over the state common law claims.

Accordingly, the Court **REJECTS** the Recommended Decision of the Magistrate Judge and **ORDERS** that Defendants' Motion to Dismiss be, and it is hereby, **DENIED**.

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GENE CARTER  
Senior United States District Judge

Dated this 30<sup>th</sup> day of July, 2003.