

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>KATHLEEN DAVIS,</b>	)	
	)	
<i>Plaintiff</i>	)	
	)	
v.	)	<i>Docket No. 04-07-P-S</i>
	)	
<b>VERIZON NEW ENGLAND INC., et al.,</b>	)	
	)	
<i>Defendants</i>	)	

***RECOMMENDED DECISION ON MOTIONS OF DEFENDANTS METROPOLITAN LIFE INSURANCE COMPANY AND VERIZON NEW ENGLAND, INC. TO DISMISS***

Two of the four named defendants in this action, Metropolitan Life Insurance Company (“MetLife”) and Verizon New England, Inc. (“Verizon”) move to dismiss all claims asserted against them in this action. I recommend that the court grant the motion in part.

**I. Applicable Legal Standard**

Both motions invoke Fed. R. Civ. P. 12(b)(6). Defendant Metropolitan Life Insurance Company’s Motion to Dismiss, etc. (“MetLife Motion”) (Docket No. 16) at 1; Defendant Verizon New England Inc.’s Motion to Dismiss, etc. (“Verizon Motion”) (Docket No. 18) at 1. “In ruling on a motion to dismiss [under Rule 12(b)(6)], a court must accept as true all the factual allegations in the complaint and construe all reasonable inferences in favor of the plaintiff[.]” *Alternative Energy, Inc. v. St. Paul Fire & Marine Ins. Co.*, 267 F.3d 30, 33 (1st Cir. 2001). The defendant is entitled to dismissal for failure to state a claim only if “it appears to a certainty that the plaintiff would be unable to recover under any set of facts.” *State St.*

*Bank & Trust Co. v. Denman Tire Corp.*, 240 F.3d 83, 87 (1st Cir. 2001); *see also Wall v. Dion*, 257 F. Supp.2d 316, 318 (D. Me. 2003).

## **II. Factual Background**

The following relevant factual allegations are included in the complaint.

The plaintiff is the surviving spouse of the late Lawrence W. Davis, Jr., who died in the course of his employment with Verizon on November 27, 2002. Complaint (Docket No. 1) ¶¶ 7-8. Mr. Davis participated in certain employee benefits pursuant to a plan that is covered by the Employee Retirement Income Security Act (“ERISA”) and summarized in a summary plan description (“SPD”) that is attached to the complaint. *Id.* ¶¶ 13-14. Mr. Davis was a participant in the plan and the plaintiff is a beneficiary of the plan for purposes of 29 U.S.C. § 1132(a)(1)(B). *Id.* ¶ 15. The specific benefits in which Mr. Davis participated included basic life insurance, supplemental life insurance, accidental death and dismemberment insurance and special accident insurance. *Id.* ¶ 16.

The plaintiff is entitled to a special accident insurance benefit of approximately \$124,000. *Id.* ¶ 19. On or about January 8, 2003, before the plaintiff had submitted a written claim for benefits under the plan, Verizon advised her that she was not the designated beneficiary with respect to Mr. Davis’s death benefits and accordingly Verizon would not pay her the proceeds of the basic life insurance, supplemental life insurance and accidental death policies. *Id.* ¶ 22. Verizon further indicated that it intended to distribute the proceeds of the policies to Mr. Davis’s former wife, Sharon Larpenter. *Id.* On or about January 14, 2003 counsel for the plaintiff wrote to Verizon and MetLife indicating her intention to assert her rights as beneficiary of Mr. Davis’s benefits under the plan. *Id.* ¶ 23. The plaintiff was never informed by Verizon or MetLife that Mr. Davis was covered by special accident insurance or helped in any way in making a claim

for benefits under that policy. *Id.* ¶ 24. The SPD identifies the chairperson of the Verizon Employee Benefits Center as the plan administrator and MetLife as the benefits administrator. *Id.* ¶ 21.

On or about January 22, 2003 the plaintiff brought suit in state court against Verizon and MetLife alleging that their failure to pay her the benefits under the plan was a breach of the terms of the plan. *Id.* ¶ 25. That action was removed to this court and given the docket number 03-47-P-C. *Id.* Beginning on February 11, 2003 the plaintiff made repeated requests of Verizon and MetLife for all documents related to the employee benefits provided to Mr. Davis, including a copy of the plan and the contents of his personnel file. *Id.* ¶ 26. Such documents, including the SPD, were produced on May 12, 2003. *Id.* ¶ 27.

The plaintiff submitted a written claim for benefits under the plan under cover of a letter dated May 29, 2003, to local counsel for Verizon and MetLife. *Id.* ¶ 29. By letter dated June 5, 2003 counsel for Verizon and MetLife acknowledged timely receipt of the claim. *Id.* ¶ 31. On or about June 9, 2003, after the plaintiff, Larpenter, Verizon and MetLife had reached an agreement with respect to payment of the disputed benefits, the plaintiff agreed to dismiss the pending litigation voluntarily. *Id.* ¶ 32.

By letter dated June 26, 2003 counsel for the plaintiff amended her earlier claim to make specific reference to the special accident insurance. *Id.* ¶ 33. Counsel for Verizon and MetLife subsequently indicated that, contrary to the language of the SPD, MetLife did not administer the special accident insurance and that “Zurich” was the administrator of that benefit. *Id.* ¶ 34. After a lengthy and difficult investigation, the plaintiff was able to contact a representative of defendant Zurich North America (“Zurich NA”). *Id.* ¶ 36. The plaintiff submitted a written request for special accident insurance benefits to Zurich NA under cover of a letter dated July 31, 2002. *Id.* ¶ 37. By letter dated August 1, 2003 Zurich NA acknowledged receipt of the request. *Id.* ¶ 39.

By letter dated September 19, 2003 Zurich NA informed the plaintiff that it was not aware of any special accident insurance policy or benefit and that the SPD included in the plaintiff's request was "not part of the underwriter's policy folder." *Id.* ¶40. By letter dated September 30, 2003 Zurich NA construed the plaintiff's claim as one for accidental death benefits and denied the claim primarily on the basis of an exclusion related to alcohol. *Id.* ¶41.

On or about July 31, 2003 the plaintiff wrote to Verizon, as administrator of the plan, seeking information related to the plan and the special accident insurance coverage described in the SPD. *Id.* ¶38.

By letter dated October 10, 2003 the plaintiff requested documents from Zurich NA, including the SPD describing the policy under which Zurich NA denied the plaintiff's claim, what Zurich NA claimed to be the "current SPD" and any documents identifying Zurich NA as an administrator of benefits under the plan. *Id.* ¶42. On or about November 20, 2003 and again on December 1, 2003 the plaintiff was contacted by a representative of MetLife who indicated that MetLife would provide the documents and information requested by the plaintiff. *Id.* ¶44. The defendants have not produced the requested materials. *Id.* ¶45.

After clarifying her claim for benefits, the plaintiff entered into a settlement agreement with Larpenner, Verizon and MetLife whereby MetLife agreed to make payments to the plaintiff and for the benefit of Larpenner's minor children under the basic and supplemental life insurance policies. *Id.* ¶46. The plaintiff entered into the agreement in reliance on and in anticipation of receiving the special accident insurance benefits described in the SPD. *Id.* ¶47. While Verizon and MetLife have represented that Zurich NA is the administrator of the special accident insurance benefits described in the SPD, there is no apparent administrator of this benefit. *Id.* ¶¶50-51. There is no summary plan description describing the Zurich death benefit. *Id.* ¶52.

### **III. Discussion**

#### **A. Count I**

Count I alleges that all of the defendants failed to produce documents “of the type described in 29 U.S.C. § 1024(b)(4)” and that this failure constitutes a violation of 29 U.S.C. §§ 1024(a)(1)(A) and 1132(c)(1). Complaint ¶¶ 56-57. Both Verizon and MetLife contend that they are not alleged to be, and are not, plan administrators or fiduciaries with respect to the plan upon which the complaint is based and therefore may not be sued for this alleged violation. Verizon Motion at 4-5; MetLife Motion at 7-9.

The first statute cited in the complaint provides, in relevant part, that “[t]he administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary[] plan description.” 29 U.S.C. § 1024(b)(4). Section 1024(a)(1)(A) no longer exists; section 1024(a)(1) requires the administrator of any employee benefit plan to file with the Secretary of Labor the annual report for a plan year within 210 days after the close of such year. Section 1132(c)(1) provides that any administrator who fails or refuses to comply with a request for any information which the administrator is required to furnish to a participant or beneficiary within 30 days after the request “may in the court’s discretion be personally liable to such participant or beneficiary in the amount of up to \$100 a day from the date of such failure or refusal.”

For purposes of these statutes, the term “administrator” is defined as follows:

The term “administrator” means —

- (i) the person specifically so designated by the terms of the instrument under which the plan is operated;
- (ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulations prescribe.

29 U.S.C. § 1002(16)(A). The term “plan sponsor” is defined as “the employer in the case of an employee benefit plan established or maintained by a single employer” or “in the case of a plan established or maintained by two or more employers . . . the . . . committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.” 29 U.S.C. § 1002(16)(B). The complaint suggests that the plan at issue in this case was established solely by Verizon, but the SPD attached to the complaint states that five companies participate in the plan. Complaint ¶¶ 13-14, 21 & Exh. A at 43. The SPD identifies the plan sponsor as Verizon Communications Inc. Complaint, Exh. A at 40. It identifies the plan administrator as “Chairperson of the VEBC,” the Verizon Employees Benefit Center. *Id.*; Complaint ¶ 21. The SPD also identifies MetLife as the “benefits administrator for the Plans.” Complaint, Exh. A at 41.

MetLife contends that it was not the plan administrator or plan sponsor with respect to the plan or plans which form the basis of the plaintiff’s complaint. MetLife Motion at 7-8. The plaintiff argues in response that the SPD gives MetLife a scope of authority sufficiently broad that, in conjunction with MetLife’s representations that it would provide the documents sought by the plaintiff, it “compels the conclusion that MetLife is responsible under ERISA for production of at least some of the documents sought by Plaintiff.” Memorandum of Law in Support of Plaintiff’s Responses to Defendant [sic] Verizon’s and MetLife’s Motions to Dismiss (“Opposition”) (Docket No. 25) at 9. The only case cited by the plaintiff in support of her argument, *Law v. Ernst & Young*, 956 F.2d 364 (1st Cir. 1992), provides little or no authority for her position. The First Circuit held in that case that an employer may be held to be the plan administrator for purposes of ERISA when it is clear that the employer controlled administration of the plan.

956 F.2d at 372. Even if the opinion may be interpreted to apply when the employer only acts “as the plan administrator in respect to dissemination of information concerning plan beneficiaries,” *id.* at 373, the complaint in this case fails to allege facts that would allow the drawing of a reasonable inference to the effect that MetLife so acted in this case. *See Davis v. Liberty Mut. Ins. Co.*, 871 F.2d 1134, 1138 (D.C.Cir. 1989) (fact that defendant nowhere designated in plan as administrator requires dismissal of claim under sections 1024(b)(1) and 1132(c)); *Kobold v. Aetna U.S. Healthcare, Inc.*, 258 F.Supp.2d 1317, 1324 (M.D. Fla. 2003). The fact that the plaintiff directed her initial requests to MetLife, Complaint ¶¶ 26-27, 44, does not establish that MetLife, which was not the employer, acted as the plan administrator in this respect. In fact, the complaint does not allege that the plaintiff requested documents from MetLife after she received the SPD. It does allege that a representative of MetLife “indicated” six months after the plaintiff had received the SPD that MetLife would make documents and requested information available to the plaintiff, *id.* ¶ 44, but this is not enough to allow the drawing of a reasonable inference that MetLife was thereby acting as the plan administrator with respect to dissemination of information about the plan. *See, e.g., Seacoast Mental Health Ctr. v. Sheakley Pension Admin., Inc.*, 2001 WL 274816 (D.N.H. Jan. 5, 2001), at \*2. It means no more than this: that MetLife, having already been sued by the plaintiff and having established a relationship with her counsel, having been engaged in the discovery process, promised to provide the plaintiffs with documents in its possession.

With respect to Count I, Verizon also contends that it is not the plan administrator and thus may not be sued for failure to produce requested documents. Verizon Motion at 5. The plaintiff responds that Verizon participated in the prior, state-court action without giving “any indication that there was a distinction between the [sic] Verizon and the V[erizon] E[mployee] B[enefits] C[enter];” that it has “recently . . . produced plan related documents by letter;” and that it has “discussed the existence and production of Plan

further related [sic] documents.” Opposition at 10- 11. The plaintiff contends that these facts, none of which I note are alleged in the complaint, establish that “to the extent that there is a distinction between Defendant Verizon and the VEBC,” Verizon has “waived any claims that it is the wrong party by holding itself out as the administrator responsible for producing documents.” *Id.* at 11.<sup>1</sup> The only allegation in the complaint that could be read to support the plaintiff’s argument on this point is the assertion that the plaintiff wrote to Verizon “as administrator of the Plan, seeking information related to the Plan.” Complaint ¶ 38. The fact that the plaintiff characterized Verizon as the administrator of the plan does not make it so; indeed, the complaint also alleges that the SPD identifies the plan administrator as the chairperson of the VEBC. *Id.* ¶ 21. The SPD is attached to the complaint as Exhibit A and incorporated therein by reference. *Id.* ¶ 14. Significantly, the complaint does not allege that Verizon and the VEBC are the same entity or that Verizon controls the VEBC. The complaint itself simply cannot be construed to allege that Verizon is the administrator of the plan at issue. The plaintiff cites only *Law* in support of her position, but in that case the First Circuit held in reviewing a judgment entered after trial that the employer “acted as the plan administrator in respect to dissemination of information concerning plan benefits.” 956 F.2d at 367, 373. Here, the plaintiff has made no allegation that Verizon so acted. To infer from the allegations of the complaint that Verizon so acted would go well beyond a reasonable inference. For the reasons discussed in connection with MetLife, the fact that the complaint may be read to allege that Verizon did produce some

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<sup>1</sup> The plaintiff filed on April 13, 2004 a document entitled “Supplement to Plaintiff’s Memorandum of Law in Support of Plaintiff’s Response in Opposition to Motions to Dismiss Filed by Defendants Verizon and MetLife, Relating to Newly Delivered Material Supplied by Martha Dye, Attorney-at-Law, Counsel for Defendant Verizon.” Docket No. 27. A document identified as “Metropolitan Life Insurance Company Group Policy 26527-G” is attached to that filing. The “supplement” was filed without a request for leave of court to do so, and must be disregarded for that reason alone. I note, however, that counsel for the plaintiff asserts in the supplement that the attached document “appears to be the policy providing ‘Special Accident Insurance’ benefits that was requested by the Plaintiff,” *id.* at 2, and that MetLife has attached an affidavit to its reply memorandum which states, *inter alia*, that the policy at issue was not in effect at the time of the death of the plaintiff’s husband. Defendant Metropolitan Life Insurance Company’s Reply Memorandum in (continued on next page)

relevant documents, Complaint ¶ 27, is not enough to allow the drawing of a reasonable inference that it was the plan administrator for this purpose. Verizon is entitled to dismissal of Count I. *Beegan v. Associated Press*, 43 F.Supp.2d 70, 73-74 (D. Me. 1999).<sup>2</sup>

## **B. Count II**

Count II alleges that all of the defendants have wrongfully denied the plaintiff's claim for special accident insurance benefits. Complaint ¶¶ 60-61 & at 10. MetLife contends that it is entitled to dismissal of this count because defendant Zurich American Insurance Company ("Zurich AIC") underwrites the policy, citing paragraph 48 of the complaint, and Zurich NA "has at all times relevant acted as an administrator with apparent authority to accept, consider, pay and deny claims for certain benefits made under the Plan." MetLife Motion at 9-10. However, paragraph 48 of the complaint does not allege that Zurich AIC underwrites the special accident insurance; it merely asserts that it does so "[t]o the extent that Special Accident Insurance or some such similar death benefits coverage is provided by 'Zurich' under the Plan." Complaint ¶ 48. The complaint does allege that Zurich NA has acted at all relevant times as an administrator with apparent authority. *Id.* ¶ 49.

The plaintiff responds that "[i]t is not clear who administers" the special accident insurance benefits and that she "has reason to believe that the benefit may have been administered by MetLife at the time of her late husband's death." Opposition at 12. These facts, she contends, mean that she should be allowed to proceed against MetLife on this claim for benefits. *Id.* She cites no authority in support of her position.

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Support of Its Motion to Dismiss ("MetLife Reply") (Docket No. 30) at 6; Declaration of Jairaj Sawh (Docket No. 31).

<sup>2</sup> If this recommended decision is adopted, the court's attention is directed to the plaintiff's request that she be allowed to amend her complaint, Opposition at 11, and the response of Verizon, Reply Brief in Support of Defendant Verizon New England Inc.'s Motion to Dismiss (Docket No. 32) at 4-5.

As MetLife points out, MetLife Motion at 10, the proper defendant in an action to recover benefits due under an ERISA plan is the party that controls administration of the plan, *Terry v. Bayer Corp.*, 145 F.3d 28, 36 (1st Cir. 1998) (quoting *Garren v. John Hancock Mut. Life Ins. Co.*, 114 F.3d 186, 187 (11th Cir. 1997)). An entity that “merely processes claims” is not liable, but it may be liable if it was the final decision-maker with respect to the claim at issue. *Id.* at 35-36. While the plaintiff’s “reason to believe,” if not alleged in the complaint, will not save her claim against MetLife for special accident benefits, *see, e.g., Washington Legal Found. v. Massachusetts Bar Found.*, 993 F.2d 962, 971 (1st Cir. 1993) (in dealing with motion to dismiss, court will not accept complainant’s unsupported conclusions), she does allege facts sufficient to allow the drawing of a reasonable inference that MetLife was the “administrator” of the special accident insurance benefit, in that it did more than merely process claims for that benefit. Complaint ¶¶ 21 (MetLife identified in SPD as “benefits administrator”); 34 (counsel for MetLife indicated that, in spite of clear language to contrary in SPD, “Zurich” was administrator of special accident insurance benefit), 35 (SPD contains no reference to “Zurich” or any related entity and makes no provision for submitting separate claim for such benefits); 40 (Zurich NA stated it was “not aware of” any special accident insurance policy or benefit and that SPD given to plaintiff was “not part of the underwriter’s policy folder”); 41 (Zurich NA construed claim as one for accidental death benefits rather than special accident insurance benefits described in SPD); 46 (MetLife entered into agreement to make payments under all applicable benefit programs other than special accident insurance); 50 (MetLife and Verizon have represented that Zurich NA is administrator of special accident insurance benefits described in SPD); 51 (there is no apparent administrator of special accident insurance benefits described in SPD); & 52 (no summary plan description of the Zurich death benefit and its exclusions from coverage). Contrary to MetLife’s contention, MetLife Reply at 6, the plaintiff does not have to produce “evidence” at this time that MetLife was involved in the

denial of special accident insurance benefits in order to successfully oppose the motion to dismiss this count against MetLife. The complaint alleges that Zurich's denial of the claim for benefits included a denial that it had issued any policy of special accident insurance and that MetLife was identified in the SPD as the administrator of all benefit programs. Under the factual circumstances alleged, MetLife is not entitled to dismissal of Count II on the showing made.

Verizon asserts that it is entitled to dismissal of Count II because the plaintiff has not exhausted her administrative remedies with respect to the special accident insurance benefits. Verizon Motion at 6-8. The plaintiff responds that she has "actually and constructively" exhausted her administrative remedies. Opposition at 11-12. Specifically, Verizon contends that the plaintiff must allege either that she appealed Zurich NA's denial of her claim for benefits or that she awaited a final administrative determination on that claim before filing suit. Verizon Motion at 6. This argument assumes that Zurich NA was acting on a claim for benefits under the special accident insurance policy, a fact apparently denied by Zurich NA, according to the complaint.

The complaint does allege that all of the defendants "fail[ed] to make a timely determination of the Plaintiff's benefits, including the Special Accident Insurance benefits" and that she is entitled to bring this action "forthwith, and without further pursuit of administrative remedies" as a result. Complaint ¶¶ 53-54. Neither Verizon nor the plaintiff provides the court with any authority on the question whether exhaustion of remedies is excused when a denial of an initial application for benefits is untimely, but *Rodolff v. Provident Life & Accident Ins. Co.*, 256 F.Supp.2d 1137, 1141, 1143-44 (S.D.Cal. 2003), supports the plaintiff's position. A plaintiff will survive a motion to dismiss so long as she does not allege facts from which it is clear that she has failed to exhaust administrative remedies. *Medical Alliances, LLC v. American Med. Sec.*, 144 F.Supp.2d 979, 982-83 (N.D.Ill. 2001). Given *Rodolff*, it cannot be said that the complaint alleges

facts from which it is clear that the plaintiff has failed to exhaust administrative remedies. The question whether the denial was in fact untimely is not one appropriate for resolution in connection with a motion to dismiss. Accordingly, Verizon is not entitled to dismissal of Count II on this basis.

### C. Count III

Count III alleges that all of the defendants violated an unspecified term of ERISA by failing “to maintain an [sic] summary plan description describing the benefits of the Plan.” Complaint ¶ 63. In her memorandum, the plaintiff asserts that she is entitled to relief under 29 U.S.C. § 1132(a)(3) because she was harmed by her reliance on an inaccurate and incomplete SPD. Opposition at 12-13. She cites no authority in support of her position.

MetLife contends that it had no duty or authority to maintain the SPD. MetLife Motion at 11. It also contends that no cause of action for failure to maintain an SPD is provided under ERISA. *Id.* Verizon joins in the latter argument. Verizon Motion at 8-9.

The section of ERISA invoked by the plaintiff provides that a civil action may be brought

by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan . . . .

29 U.S.C. § 1132(a)(3). The plaintiff does not seek to enjoin any act or practice. She asks the court “to order such equitable relief as is necessary to redress the harm done to Plaintiff, including payment of the Special Accident Insurance benefits described in the SPD.” Complaint at 11. The only specific equitable relief sought by the plaintiff is an order duplicating the monetary relief sought in Count II. Complaint at 10. While such relief might “redress [the] violations” of ERISA alleged by the plaintiff, it is compensatory damages clothed in equitable garb. Equitable relief available under ERISA does not include compensatory

damages. *LaRocca v. Borden, Inc.*, 276 F.3d 22, 28 (1st Cir. 2002) (finding that request for \$2.8 million characterized as restitution was not request for “appropriate equitable relief” under section 1132(a)(3)). In addition, a remedy is not available under section 1132(a)(3) where ERISA provides an adequate remedy elsewhere. *Id.* Here, where the plaintiff can pursue payment of the special accident insurance benefits under section 1132(a)(1) through Count II, there is an adequate remedy that bars a further remedy under section 1132(a)(3). *Id.* The plaintiff does not offer any other explanation of the nature of the equitable relief that she seeks in Count III, and none is apparent.

In addition, the claim that the defendants failed to “maintain” the SPD, without any citation to a statutory or regulatory provision that might require them to do so, cannot be construed as anything other than a claim of failure to provide the plaintiff with adequate notice of the benefits to which she was entitled or some other technical violation of ERISA requirements. In those circumstances, remedies are not available under ERISA in the absence of “exceptional circumstances, such as bad faith, active concealment, or fraud.” *Watson v. Deaconess Waltham Hosp.*, 298 F.3d 102, 113 (1st Cir. 2002). No such circumstances have been alleged in the complaint in this case.

#### **IV. Conclusion**

For the foregoing reasons, I recommend (i) that the motion to dismiss of defendant MetLife (Docket No. 16) be **GRANTED** as to Counts I and III and otherwise denied; and (ii) that the motion of defendant Verizon (Docket No. 18) be **GRANTED** as to Counts I and III and otherwise denied.

#### **NOTICE**

***A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.***

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

Dated this 5th day of May, 2004.

/s/ David M. Cohen  
David M. Cohen  
United States Magistrate Judge

**Plaintiff**

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