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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KERILEI R. OLDOERP,  
Plaintiff,

No. C 08-05278 RS

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

v.

WELLS FARGO & COMPANY LONG  
TERM DISABILITY PLAN;  
METROPOLITAN LIFE INSURANCE  
COMPANY,  
Defendants.

Plaintiff Kerilei Oldoerp filed suit against defendants Wells Fargo & Company Long Term Disability Plan and Metropolitan Life Insurance Company (MetLife) challenging the denial of her claim for long term disability (LTD) benefits. Based on the administrative record (AR), the parties written submissions, and oral argument, the Court issues the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

A. The Wells Fargo LTD Plan

1. Wells Fargo & Company is the plan sponsor of the LTD Plan and MetLife is the service provider and insurer of the Plan. AR 109; AR 118.
2. A document entitled "Your Benefit Plan" includes the Certificate of Insurance for Well Fargo's LTD Plan. AR 34-37. The certificate includes a paragraph stating that the benefit is

1 provided “under a contract of group insurance with the Policyholder.” The “entire contract”  
 2 is described as consisting of: (1) the Group Policy and its Exhibits, which include the  
 3 certificate(s); (2) the Policyholder’s application; and (3) any amendments and/or  
 4 endorsements to the Group Policy. AR 85.

- 5 3. The certificate is followed by a page stating that it represents the end of the certificate and  
 6 that “the following is additional information.” AR 87. After several pages describing  
 7 “special services,” there follows a section break in the form of a page stating that the  
 8 following is also additional information. AR 92. The next section begins under the heading  
 9 “ERISA Information.” AR 93. It includes a paragraph titled “Discretionary Authority of  
 10 Plan Administrator and Other Plan Fiduciaries,” which states:

11 In carrying out their respective responsibilities under the Plan, the Plan administrator  
 12 and other Plan fiduciaries shall have discretionary authority to interpret the terms of  
 13 the Plan and to determine eligibility for and entitlement to Plan benefits in  
 14 accordance with the terms of the Plan. Any interpretation or determination made  
 pursuant to such discretionary authority shall be given full force and effect, unless it  
 can be shown that the interpretation or determination was arbitrary and capricious.  
 AR 96.

- 15 4. The “ERISA Information,” including the paragraph directed to discretionary authority of the  
 16 Plan administrator, is not part of the certificate of insurance. While Oldoerp suggests that  
 17 the “additional information” perhaps was not even attached to the certificate of insurance,  
 18 based on the section breaks referring to the “following” information and the fact that the  
 19 ERISA information is presented in the same typeface and format, it is part of the Your  
 20 Benefit Plan document.
- 21 5. A number of Wells Fargo & Company employee benefits are described in the Benefits Book.  
 22 AR 98-506. Chapter 1 covers Administrative Information and states that the Benefits Book  
 23 includes Summary Plan Descriptions (SPDs) for most of the benefit plans offered by Wells  
 24 Fargo. AR 105-06. According to Wells Fargo, SPDs explain benefits and rights under the  
 25 corresponding Plans, but are not themselves “the Plan documents.” AR 106. In the event of  
 26 any differences between the SPDs and the Plan documents, “the Plan documents govern  
 27 [employees’] rights to benefits in all cases.” *Id.*
- 28

- 1 6. Chapter 1 of the Benefits Book states that each insured plan, including the LTD Plan, has  
2 “discretionary authority to administer and interpret benefits” under that plan. AR 109. A  
3 chart at the end of chapter 1 lists administrative information for each plan and indicates that  
4 MetLife is the “service provider/insurer” of the LTD Plan. AR 118.
- 5 7. Chapter 14 of the Benefits Book is devoted to the LTD Plan. AR 358-75. The first page of  
6 that chapter states that, along with the Administrative Information from chapter 1 and the  
7 glossary, it constitutes the Summary Plan Description (SPD) for the Wells Fargo &  
8 Company Long Term Disability Plan. AR 358. The following sentence, found in chapter  
9 14, is part of the SPD: “MetLife has the discretionary authority to administer and interpret  
10 benefits under the LTD Plan.” AR 359.
- 11 8. According to the SPD, a claimant is “disabled” or has a “disability” when “due to sickness  
12 (including a mental or nervous condition), pregnancy or accidental injury, you are receiving  
13 appropriate care and treatment from a doctor on a continuing basis . . . and you are unable to  
14 earn more than 80 percent of your predisability covered pay or indexed covered pay at your  
15 own occupation for any employer in your local economy.” AR 361. After two years, the  
16 continuation of LTD benefits depends on the claimant being able to earn more than 60  
17 percent of prior income in “any gainful occupation.” *Id.*
- 18 B. Oldoerp’s Medical Condition
- 19 9. In August 2007, Oldoerp was employed by Wells Fargo as an Operations Manager. Based  
20 on information provided to MetLife by Wells Fargo, her position required approximately  
21 five to six hours of sitting, one to two hours of standing, one to two hours of walking, three  
22 to four hours of repetitive hand use, and occasional lifting of up to 20 pounds. AR 776.
- 23 10. Oldoerp sought treatment from Michelle Onacki, a psychiatric nurse practitioner, who  
24 observed in August 2007 that Oldoerp suffered from extreme exhaustion. AR 857.
- 25 11. On October 1, 2007, Onacki provided information to MetLife. AR 866-69. She indicated  
26 that the reason Oldoerp could not return to work was that she suffered from extremely low  
27 energy and depression. AR 867. Onacki estimated that Oldoerp could return to work part  
28 time, for four hours per day for two weeks, on November 1, 2007. *Id.* In terms of

- 1 improvement in the area of depression, Onacki rated Oldoerp an “eight” on a ten-point scale,  
2 where higher numbers corresponded to higher levels of functionality. *Id.* Attached to  
3 Onacki’s evaluation was a “mental status examination” from August 30, 2007, where  
4 Oldoerp was rated as having a well-groomed appearance, an alert level of consciousness,  
5 cooperative behavior, good eye contact, normal speech, coherent thought process, and  
6 relevant thought content. AR 869. Oldoerp’s mood/affect was depressed. *Id.* Onacki  
7 reported that Oldoerp’s cognitive functions were intact, her intelligence was above average,  
8 and her abstract thought, capacity to form good judgment, and insight were all fair. *Id.*
- 9 12. On October 9, 2007, in responses on a questionnaire from MetLife, Onacki reported that  
10 Oldoerp was unable to perform work duties due to her exhaustion and inability to maintain  
11 personal hygiene without assistance. AR 857. She stated that it was unknown, at that time,  
12 when Oldoerp would be able to return to work. *Id.* On an “initial functional assessment  
13 form,” Onacki indicated that the primary psychiatric symptoms observed by her were  
14 depression and fatigue. AR 859. She rated Oldoerp’s functional capabilities at the lowest  
15 level on the form, indicating “extreme inability to function in most areas due to continuous  
16 impairment.” AR 860. On the “mental status examination” form, Onacki remarked that  
17 Oldoerp “appears very tired,” but her general appearance was rated as well-groomed. AR  
18 863. She assessed all other categories the same as she had in her August report, including  
19 behavior, thought process and content, and cognitive functions. AR 863; AR 869.
- 20 13. On October 20, 2007, Dana Rosdahl, Ph.D., a nurse practitioner specializing in internal  
21 medicine, provided information to MetLife about an office visit with Oldoerp. AR 848-49.  
22 Rosdahl indicated that extreme fatigue was the functional limitation that prevented Oldoerp  
23 from working. AR 848. In describing Oldoerp’s mental status, Rosdahl stated that she had a  
24 pleasant affect, was able to answer appropriately, and showed logical thought content and  
25 flow. *Id.* At that time, she estimated that Oldoerp could return to work in January 2008. *Id.*
- 26 14. Dr. Rosdahl again met with Oldoerp on December 28, 2007 and completed an Attending  
27 Physician Statement (APS). AR 801-04. The APS is a form provided by MetLife to the  
28 treating physician requesting information for its use in making disability determinations. *Id.*

1 It includes questions on the patient's diagnosis and treatment, functional and physical  
2 capabilities, and prognosis for returning to work that require either a short answer or a  
3 selection among provided responses. *Id.*

4 15. On the December APS, Rosdahl indicated that Oldoerp's primary diagnosis was chronic  
5 fatigue and her secondary diagnosis was depression. AR 801. Under psychological  
6 functions, Rosdahl rated Oldoerp as "class four" out of five, where class five represents the  
7 lowest level of functioning. AR 802. As class four, Oldoerp was judged unable to engage in  
8 stress situations or in interpersonal relations. *Id.* With respect to Oldoerp's ability to sit,  
9 stand, or walk, Rosdahl reported that she could engage in each of those activities for one  
10 hour intermittently. *Id.* She could lift up to ten pounds occasionally, but would be unable to  
11 engage in repetitive hand motions. *Id.* For prognosis, Rosdahl wrote that Oldoerp was  
12 unable to perform activities of daily living, "let alone work responsibilities." *Id.* She gave  
13 exhaustion as the reason Oldoerp was unable to perform job duties and concluded that she  
14 could work "zero" hours per day. *Id.*

15 16. On January 29, 2008, Dr. Stephen Fry provided information to MetLife reporting that  
16 functional limitations related to strength, concentration, and pain were the issues interfering  
17 with Oldoerp's ability to work. AR 786-88. He indicated that she was presently  
18 incapacitated and did not estimate a future date on which she could resume working. AR  
19 788.

20 17. On January 31, 2008, Onacki reported that Oldoerp was presently incapacitated and declined  
21 to specify a return to work date. AR 781-85. Medical facts relevant to her inability to work  
22 included extreme exhaustion, feeling need for more sleep, disinterest in daily activities,  
23 panic attacks, difficulty concentrating, generalized anxiety, and depression. AR 784.

24 18. Based on office visits in February 2008, Rosdahl continued to report that Oldoerp suffered  
25 from extreme fatigue, lack of stamina, and an inability to complete activities of daily living.  
26 AR 765-66; AR 773-74. She estimated that Oldoerp could return to work in April 2008. *Id.*

27 19. On March 21, 2008, Dr. Simonelic, a psychologist whom Oldoerp had seen since June 2006,  
28 reported that Oldoerp appeared unusually fatigued since August 2007. AR 756-57. She

1 stated that Oldoerp's fibromyalgia and physical chronic fatigue "make it impossible for her  
2 to even be in the workplace." AR 756 (emphasis in original).

3 20. MetLife initiated an independent physician consultant (IPC) review of Oldoerp's medical  
4 records from Dr. Elyssa Del Valle, Board certified in internal medicine, who submitted a  
5 report to MetLife on March 24, 2008. AR 750-53. As part of the review, Del Valle spoke  
6 with Dr. Rosdahl. AR 752. Rosdahl mentioned that Dr. Fry had found a parasitic infection,  
7 Bartonella, in Oldoerp's blood. *Id.* She further stated that Oldoerp seemed improved in  
8 clinical appearance and affect at her last office visit. *Id.* Rosdahl indicated that Oldoerp  
9 should be capable of returning to work on a part time basis. *Id.* Del Valle was unable to  
10 speak with Dr. Fry prior to her report, but indicated she would prepare an addendum if she  
11 obtained additional information from him that would alter her conclusions. AR 753. Dr.  
12 Del Valle concluded that Oldoerp suffered functional limitations from chronic fatigue  
13 syndrome and Bartonella infection through February 13, 2008. *Id.* She opined that Oldoerp  
14 had been treated for Bartonella "with reasonable time given to allow beneficial results." *Id.*  
15 She further determined that there were no clinical findings or data that supported a  
16 conclusion that Oldoerp could not return to full time job duties. *Id.*

17 21. In order to review Oldoerp's psychiatric functionality, MetLife obtained an IPC from Dr.  
18 Marcus Goldman, Board certified in psychiatry, on March 27, 2008. AR 737-40. Goldman  
19 spoke with Onacki, but was unable to speak with Drs. Rosdahl or Fry. AR 739. He opined  
20 that the mental status examinations did not contain data consistent with "severe  
21 psychopathology." AR 740. He stated that loss of global functionality and cognitive loss  
22 were not objectively corroborated. *Id.* From a psychiatric perspective, Goldman concluded  
23 that the medical information did support functional limitations after November 30, 2007. *Id.*

24 22. Dr. Rosdahl submitted an APS, office notes, and lab reports to MetLife on March 28, 2008.  
25 AR 717-29. The APS evaluated Oldoerp's condition as of her office visit on that same day.  
26 AR 718-21. Oldoerp's diagnoses remained chronic fatigue and depression. AR 718. In  
27 response to form questions, Rosdahl made entries indicating that Oldoerp could sit  
28 continuously for six hours, stand intermittently for two hours, and walk intermittently for

1 three. AR 719. She could lift weight occasionally up to 50 pounds. *Id.* She would be able  
2 to perform repetitive hand motions. *Id.* Rosdahl further reported that Oldoerp's  
3 psychological functions showed slight limitations, as she could function in most stress  
4 situations and engage in interpersonal relations. *Id.* On a scale of one to five, Oldoerp was  
5 rated class two out of five, where class one represented no limitations of psychological  
6 functions. *Id.* Rosdahl indicated that she had advised Oldoerp to return to work  
7 "immediately," to her regular occupation on a part time basis. *Id.* Although Rosdahl stated  
8 that Oldoerp could work for 20 weeks at five hours per day, she did not provide any  
9 response to the question on why Oldoerp would be unable to perform job duties. *Id.*  
10 Altogether, in comparison to the APS submitted by Rosdahl on December 28, 2007, the  
11 updated report indicated that Oldoerp's condition had improved. AR 718-19; AR 801-02.  
12 23. On April 3, 2008, Dr. Fry wrote a letter stating that he believed Oldoerp suffered from  
13 myalgia, arthralgia, and fatigue best categorized as chronic fatigue syndrome. AR 691. He  
14 believed that her chronic fatigue syndrome was "most probably" caused by a pathogen of the  
15 Bartonella species. *Id.* He also indicated that, due to Oldoerp's insurance, he was unable to  
16 conduct "specialized laboratory testing." *Id.* Oldoerp was responding to the medication  
17 Azithromycin "with improvement," but Dr. Fry noted that Oldoerp would probably continue  
18 to relapse and then improve over a period of time. *Id.* Dr. Fry had last seen Oldoerp on  
19 February 11, 2008. *Id.* He did not offer any statement on her ability or inability to return to  
20 work. *Id.*  
21 24. In May 2008, MetLife submitted Oldoerp's medical records for additional IPC reviews. Dr.  
22 Tracey Schmidt, Board certified in internal medicine and rheumatology, submitted her report  
23 on May 5, 2008. AR 637-38. In her report, Schmidt did not offer an opinion as to whether  
24 the medical information supported functional limitations. *Id.* On May 21, 2008, after  
25 reviewing Dr. Bono's report (discussed below), she submitted an addendum concluding that  
26 the records did not support physical impairment preventing full time sedentary to light  
27 occupation. AR 639.

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1 25. MetLife obtained an IPC report from psychologist Kevin Murphy, who completed his review  
2 on May 7, 2008. AR 673-79. Murphy spoke with Dr. Simonelic, Oldoerp's treating  
3 psychologist. AR 674. She stated that she had known Oldoerp for almost two years and that  
4 "she is completely different." *Id.* She used to be efficient and organized, but now had a  
5 short concentration level and was forgetful. *Id.* Simonelic had not done a formal mental  
6 status exam, but found her "oriented." *Id.* She felt Oldoerp's depression was due to physical  
7 illness and that her improvement had been slight since August. *Id.* After review of the  
8 medical file, Murphy described the evidence for functional limitations due to depression as a  
9 primary condition as "not compelling." AR 679. He stated that most treatment providers  
10 considered Oldoerp's fatigue as due to a physical condition and he therefore deferred to Dr.  
11 Schmidt on that question. *Id.*

12 26. Dr. Bartholomew Bono, Board certified in infectious diseases, submitted an IPC review on  
13 May 15, 2008. AR 642-45. He attempted to speak with Drs. Rosdahl and Fry. AR 643.  
14 After Fry requested written authorization from Oldoerp and confirmation that the  
15 conversation would not be recorded, MetLife instructed Bono to make no further attempts to  
16 discuss the case with Fry. *Id.* Based on review of the medical records, Bono opined that the  
17 available medical records did not support the diagnosis of any infectious disease, including  
18 Bartonella. AR 644. In particular, the records did not include antibody testing for  
19 Bartonella. *Id.* He stated that Oldoerp may have depression, chronic fatigue syndrome,  
20 and/or fibromyalgia, but that there was no evidence of infectious disease. *Id.* Therefore,  
21 from an infectious disease perspective, he concluded that the medical information did not  
22 support functional limitations. *Id.*

23 C. MetLife's Handling of the Claim

24 27. Disability coverage was initiated on August 13, 2007 and Oldoerp received short term  
25 disability benefits from MetLife through January 13, 2008. AR 518-19; AR 692.

26 28. On November 27, 2007, Deborah Lawrence, a MetLife claim specialist, sent Oldoerp a letter  
27 requesting additional information if she intended to apply for LTD. AR 838-39. She stated  
28 that, if MetLife did not receive the forms by December 27, 2007, it would assume that



1 Oldoerp was no longer interested in pursuing her claim for disability benefits and would  
2 close her file. AR 839. On December 28, 2007, Lawrence informed Oldoerp that it had not  
3 received the information requested in its prior letter and was therefore closing her file. AR  
4 805-06. It informed her that she had 180 days to appeal the decision. AR 805.

5 29. Subsequently, Oldoerp submitted the APS completed by Dr. Rosdahl on December 28, 2007  
6 to MetLife in support of her LTD claim. AR 801-04.

7 30. On January 14, 2008, C. Griffis, a nurse consultant for MetLife, conducted an initial review  
8 of Oldoerp's medical records and concluded that they did not support her claim for benefits.  
9 AR 544-47. As the rationale for her decision, Griffis stated that most of the mental status  
10 examination findings by Onacki in October 2007 were within normal limits. AR 546.

11 Although Rosdahl diagnosed Oldoerp with chronic fatigue and depression, MetLife received  
12 no office visit notes or lab test results. *Id.* It also had not received office visit notes of  
13 diagnostic test results from Fry. *Id.* Thus, Griffis concluded that Oldoerp's file lacked  
14 clinical documentation to support functional impairments that would prevent her from  
15 working as an operations manager. *Id.*

16 31. Lawrence, the MetLife claim specialist, sent Oldoerp a letter on January 18, 2008 stating that  
17 her claim for LTD benefits was denied. AR 791-94. The contents of the letter are based on  
18 the summary of Oldoerp's medical records and the rationale for finding an absence of  
19 impairments provided by Griffis. In the event that Oldoerp wished to file an appeal of the  
20 decision, MetLife stated that Oldoerp should provide diagnostic test results and all actual  
21 office visit notes from Onacki, Rosdahl, and Fry supporting an inability to perform her  
22 occupational duties. AR 793.

23 32. After Oldoerp appealed, MetLife obtained the IPC reviews from Drs. Del Valle and  
24 Goldman. MetLife provided these reports to Drs. Fry and Rosdahl for their comments. AR  
25 507-08. If either disagreed with the IPC reports, they were directed to provide clinical  
26 evidence to support their conclusions. *Id.* In response, Fry provided the April 3, 2008 letter  
27 in which he indicated that he believed Oldoerp's chronic fatigue was caused "most  
28

1 probably” by Bartonella. AR 691. MetLife informed Oldoerp that it had provided the IPC  
2 reports to Drs. Rosdahl and Fry and requested their comments. AR 568.

3 33. Between April 7 and April 11, 2008, Karen Van Aernam, a MetLife appeals specialist,  
4 prepared an appeal summary of Oldoerp’s case. AR 571-74. She concluded that the clinical  
5 findings did not support functional impairment precluding sedentary or light work beyond  
6 February 13, 2008. AR 574. Van Aernam left a voice mail for Oldoerp with the appeal  
7 decision on the same day. *Id.*

8 34. On April 18, 2008, MetLife sent Oldoerp a letter from Lawrence explaining its decision to  
9 approve LTD benefits through February 13, 2008, but denied their continuation after that  
10 date. AR 692-96. The letter summarized in detail the IPC reviews by Drs. Del Valle and  
11 Goldman. AR 693-95. It included Del Valle’s conclusion that Oldoerp had been adequately  
12 treated for Bartonella “with reasonable time given to allow beneficial results.” AR 695.  
13 Oldoerp was again instructed that she could appeal the decision and informed that she should  
14 submit additional medical information including office visits from Fry after February 13.  
15 AR 695-96.

16 35. On April 22, 2008, MetLife acknowledged Oldoerp’s appeal of this decision and stated that  
17 it was conducting an independent review. AR 689. Sharon O’Connor, MetLife procedural  
18 analyst, handled the second appeal. AR 578; AR 630. In response, MetLife obtained the  
19 IPC reviews from Drs. Schmidt, Murphy, and Bono. After receiving their reports, MetLife  
20 forwarded them to nurse Onacki and Drs. Rosdahl, Simonelic, and Fry for their comments.  
21 AR 630-33.

22 36. On June 5, 2008, O’Connor prepared a summary upholding the appeal decision. AR 587-90.  
23 She sent Oldoerp a letter detailing the results of the three IPC reviews. AR 613-16. In the  
24 letter, O’Connor includes Dr. Bono’s conclusion that the medical records did not support a  
25 diagnosis of infectious disease, including Bartonella. AR 615. MetLife informed Oldoerp  
26 that she had exhausted her administrative remedies and that no further appeal would be  
27 considered. AR 616.

28

1 37. On August 27, 2008, Oldoerp forwarded additional medical records and informed MetLife  
2 that her claim for disability benefits had been approved by the Social Security  
3 Administration (SSA). AR 601-07. MetLife declined to reopen Oldoerp's case and  
4 reiterated that no further administrative reviews were available. AR 608.

## 5 II. CONCLUSIONS OF LAW

- 6 1. The Wells Fargo LTD Plan is governed by the Employee Retirement Income Security Act of  
7 1974 (ERISA). 29 U.S.C. § 1001 et seq.
- 8 2. A participant in an ERISA plan may bring a civil action to recover benefits, to enforce  
9 rights, or to clarify future rights under the terms of the plan. *See* 29 U.S.C. § 1132(a)(1)(B).
- 10 3. The court reviews a decision to deny benefits “under a de novo standard unless the benefit  
11 plan gives the administrator or fiduciary discretionary authority to determine eligibility for  
12 benefits or to construe the terms of the plan.” *Firestone Tire & Rubber Co. v. Bruch*, 489  
13 U.S. 101, 115 (1989); *see also Burke v. Pitney Bowes Inc. Long-Term Disability Plan*, 544  
14 F.3d 1016, 1023 (9th Cir. 2008). If a plan unambiguously grants such discretionary  
15 authority, then the standard of review is abuse of discretion. *See Kearney v. Standard Ins.*  
16 *Co.*, 175 F.3d 1084, 1090 (9th Cir. 1999).
- 17 4. In this Circuit, the SPD constitutes a plan document that “should be considered when  
18 interpreting an ERISA plan.” *Bergt v. Ret. Plan for Pilots Employed by Mark Air, Inc.*, 293  
19 F.3d 1139, 1143 (9th Cir. 2002). The Ninth Circuit grounded this conclusion in the statutory  
20 requirement that employers provide plan participants with a copy of an SPD and not the plan  
21 “master documents.” *Id.* (citing 29 U.S.C. § 1022(a)-(b)). Thus, the SPD serves as the  
22 “primary source of information” regarding the terms of the plan and its benefits. *Id.*
- 23 5. Where a conflict among plan documents exists, language in a policy purporting to define it  
24 as the “the entire contract” may prevent the insurer from later relying on a grant of  
25 discretionary authority in a benefit summary. *See Grosz-Salomon v. Paul Revere Life Ins.*  
26 *Co.*, 237 F.3d 1154, 1161 (9th Cir. 2001) (holding that a provision unilaterally inserted by  
27 insurer conferring discretion in an amended benefit summary was not valid where the  
28 original benefit summary and the policy itself did not contain such a grant).

- 1 6. Despite language in the Wells Fargo Benefits Book distinguishing the SPDs therein from  
2 “plan documents,” the SPD may be considered for purposes of interpreting the LTD Plan. In  
3 chapter 14 of the Benefits Book, the SPD communicated to employees in clear terms that  
4 MetLife possessed discretionary authority to administer and interpret benefits. Moreover, in  
5 the Administrative Information in chapter 1, Wells Fargo acknowledges that it does not  
6 possess discretion with respect to “insured plans” and states instead that the LTD Plan has  
7 discretionary authority to administer and interpret benefits. In light of the unambiguous  
8 grant of discretionary authority to MetLife, as a starting point, the standard of review in this  
9 case is abuse of discretion.
- 10 7. As MetLife acts as both the claim fiduciary and as the insurer of the LTD Plan, it operates  
11 under a conflict of interest. In such cases, the court utilizes a modified abuse of discretion  
12 standard by weighing the conflict as one factor in a case-by-case balance. *See Abatie v. Alta*  
13 *Health & Life Ins. Co.*, 458 F.3d 955, 968 (9th Cir. 2006). Additional relevant factors  
14 include, but are not limited to, the quality and quantity of medical evidence; whether the  
15 administrator utilized in-person medical examinations or merely complete “paper” reviews;  
16 whether the administrator’s independent reviewers were provided with all relevant evidence;  
17 and whether any contrary SSA decision was considered. *See Montour v. Hartford Life &*  
18 *Accident Ins. Co.*, 588 F.3d 623, 630 (9th Cir. 2009).
- 19 8. Additionally, procedural irregularities may be weighed in determining whether a plan  
20 administrator engaged in an abuse of discretion. *See Abatie*, 458 F.3d at 972. Under  
21 ERISA, a plan participant is entitled to adequate notice of the reasons for denial of his or her  
22 claim. *See* 29 U.S.C. § 1133(1). Thus, if an administrator changes the reason for its denial,  
23 or adds a new one, then the claimant must be given an opportunity to present evidence to the  
24 contrary. *See* 458 F.3d at 974.
- 25 9. In this case, the evidence that Oldoerp contends demonstrates MetLife’s conflict of interest  
26 includes its reliance on paper reviews of her medical records and its refusal to consider the  
27 contrary SSA determination. She also contends that MetLife committed significant  
28 procedural violations when Deborah Lawrence handled her claim more than once, when it

- 1 relied on nurse Griffis to review her claim, and when, for the first time in its final decision,  
 2 MetLife indicated that it believed she never suffered a Bartonella infection. Based on the  
 3 entire record, these factors do not support a conclusion that MetLife engaged in an abuse of  
 4 discretion. MetLife obtained five IPC reviews. In addition to reviewing medical records,  
 5 the physicians attempted to contact Oldoerp's providers and, at times, were able to speak  
 6 with them. Their conclusions were forwarded to Oldoerp's doctors to obtain their comments  
 7 and she was informed such that she could encourage them to reply. The SSA determination  
 8 occurred after MetLife had made its final decision on Oldoerp's second appeal. While  
 9 Griffis conducted the initial claim review, MetLife thereafter relied on several Board  
 10 certified specialists. Moreover, although Lawrence was the author on letters sent to Oldoerp,  
 11 the appeals were handled by two additional MetLife employees, Van Aernam and O'Connor.
- 12 10. The fact that Dr. Bono concluded that Oldoerp did not suffer from Bartonella does not  
 13 represent such a significant, new basis for MetLife's denial that it necessitates a further  
 14 appeal. In essence, Bono concluded that there was no clinical evidence of impairment from  
 15 infectious disease. As Oldoerp was provided with a previous opportunity to address the lack  
 16 of clinical data demonstrating physical limitations resulting from infection, the record need  
 17 not be reopened and Oldoerp's alternative request for relief, remand, is not warranted.
- 18 11. In sum, MetLife's decision to deny LTD benefits is supported under an abuse of discretion  
 19 review.

### III. DISPOSITION

21 Based on the foregoing, MetLife's denial of LTD benefits was not an abuse of discretion.  
 22 Judgment shall be entered in favor of MetLife and against Oldoerp.

24 Dated: 4/29/11




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RICHARD SEEBORG  
 UNITED STATES DISTRICT JUDGE