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12  
13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF CALIFORNIA**

15 RUBY CHACKO,

16 Plaintiff,

17 vs.

18 AT&T UMBRELLA BENEFIT PLAN NO. 3,

19 Defendant.

CASE NO.: 2:19-cv-01837-JAM-DB

**JOINT STATEMENT RE DISCOVERY  
DISAGREEMENT**

Date: February 14, 2020  
Time: 10:00 a.m.  
Courtroom: 27, 8<sup>th</sup> Floor  
Location: 501 I Street  
Sacramento, CA 95814

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1 Pursuant to Eastern District Local Rule 251, the parties hereby submit the following Joint  
2 Statement in connection with Plaintiff’s Motion to Compel Discovery Responses from Defendant  
3 AT&T Umbrella Benefits Plan No. 3 (“the Plan”) to Plaintiff’s First Request for Production of  
4 Documents, Plaintiff’s Second Request for Production of Documents, and Plaintiff’s First Set of  
5 Interrogatories.

6 **I. JOINT STATEMENT OF THE MOTION**

7 In her motion, Plaintiff seeks discovery responses from Defendant pertaining to the  
8 “Administrative Record” and relating to the Plan’s alleged conflicts of interest. Defendant  
9 opposes all discovery in this case and asserts discovery in this Employee Retirement Income  
10 Security Act of 1974 (hereinafter “ERISA”) denial-of-disabilities case is not permitted, as a matter  
11 of law.

12 **II. PARTIES’ STATEMENT OF THE CASE**

13 This case involves a claim by Plaintiff for employee benefits under an employee benefit  
14 plan regulated and governed under 29 U.S.C. § 1132 of ERISA. Plaintiff brought this action for  
15 the purpose of recovering long-term disability (“LTD”) and life insurance coverage benefits under  
16 the terms of the Plan, enforcing Plaintiff’s rights under the terms the Plan, and to clarify Plaintiff’s  
17 rights to future benefits under the Plan. Plaintiff seeks relief, including but not limited to, payment  
18 of the correct amount of benefits due her under her plan, prejudgment and postjudgment interest,  
19 instatement to the benefit plan at issue herein, and attorneys’ fees and costs.

20 Defendant denies Plaintiff’s claims and denies that Plaintiff is entitled to any relief.  
21 Defendant further states the decisions of third-party Claims Administrator Sedgwick Claims  
22 Management Services, Inc. (“Sedgwick”) were not arbitrary or capricious or an abuse of  
23 discretion, and accordingly Sedgwick’s decision must be upheld under governing law.

24 Plaintiff was employed by AT&T and was a covered participant under the terms and  
25 conditions of the Plan. During Plaintiff’s employment, Plaintiff became entitled to benefits under  
26 the terms and conditions of the Plan. Plaintiff claims that, while Plaintiff was covered under the  
27 Plan, Plaintiff became disabled as defined under the terms of the Plan as of October 30, 2017. Her  
28 last date worked was October 29, 2017. Pursuant to the terms of the Plan, Plaintiff made a claim

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1 to the AT&T Integrated Disability Service Center (“IDSC”) for benefits. By letters dated May 24,  
2 2018, AT&T IDSC informed Plaintiff that her LTD and Supplemental LTD claims were approved  
3 with a payment commencement date of June 1, 2018.

4 By letter dated September 12, 2018, AT&T IDSC informed Plaintiff that it was terminating  
5 her LTD benefits starting from September 16, 2018 because, among other things, it found that she  
6 could perform other gainful occupations. Plaintiff timely appealed the termination of her benefits  
7 and provided medical and other evidence in support of her claim that she met the Plan’s definition  
8 of disability. The AT&T IDSC Quality Review Unit (“QRU”) considered Plaintiff’s appeal and  
9 by letter dated May 13, 2019, the IDSC QRU informed Plaintiff that it was upholding the decision  
10 to deny benefits. It also informed Plaintiff that she has exhausted all mandatory appeal procedures  
11 under the Plan. Plaintiff alleges that she has been continuously disabled due to a medical  
12 condition under the terms of the Plan since she stopped working on October 29, 2017.

13 **III. JOINT STATEMENT OF THE DISCOVERY IN DISPUTE**

14 **A. The Parties’ Effort to Meet and Confer**

15 On October 21, 2019, Plaintiff served on Defendant her First Request for Production of  
16 Documents. Counsel for Defendant, Daniel Combs,<sup>1</sup> sent an email to Plaintiff’s counsel, Michelle  
17 Roberts, that same day and contended that discovery is not appropriate in this ERISA denial-of-  
18 benefits case. Mr. Combs and Ms. Roberts had several email exchanges concerning discovery and  
19 relevant case law and had a telephonic meet and confer on October 28, 2019. On November 26,  
20 2019, Defendant produced its Initial Disclosures and what it represents is the Administrative  
21 Record, although Defendant states that it is exempt from initial disclosures pursuant to Fed. R.  
22 Civ. P. 26(a)(1)(B). On December 6, 2019, Plaintiff served her Second Request for Production of  
23 Documents and First Set of Interrogatories.

24 Because the parties dispute the propriety of discovery, Mr. Combs and Ms. Roberts agreed  
25 that the Plan would not need to respond to the outstanding requests until the Court resolved the  
26

27 <sup>1</sup> On December 27, 2019, Stacey A. Campbell has substituted Daniel Combs as lead counsel in  
28 this case.



1 present motion. Mr. Combs and Ms. Roberts, who reside in different states, had another  
2 telephonic meet and confer on December 13, 2019. While they were not able to resolve their  
3 differences on the issue and scope of discovery, Plaintiff reconsidered her position on some of the  
4 discovery requests and agreed to retract three requests for production of documents (Nos. 6, 8, and  
5 18), and two interrogatories (Nos. 7 and 8).

6 **B. The Discovery Requests at Issue**

7 The discovery requests at issue are:

8 **Plaintiff's First Request of Production of Documents to Defendant:**

9 **REQUEST FOR PRODUCTION NO. 1:**

10 Produce a complete copy of the Administrative Record.

11 **REQUEST FOR PRODUCTION NO. 2:**

12 Produce all the communications pertaining to Plaintiff's LTD Claim that were generated or  
13 received by You prior to May 13, 2019.

14 **REQUEST FOR PRODUCTION NO. 3:**

15 Produce all documents constituting legal advice or a legal evaluation of Plaintiff's LTD  
16 Claim that were generated prior to May 13, 2019.

17 **REQUEST FOR PRODUCTION NO. 4:**

18 Produce all Summary Plan Descriptions, as defined in ERISA § 102, of the AT&T  
19 Umbrella Benefit Plan No. 3 that were in your possession at the time You decided Plaintiff's LTD  
20 Claim.

21 **REQUEST FOR PRODUCTION NO. 5:**

22 Produce all written instruments providing for the establishment and maintenance of the  
23 AT&T Umbrella Benefit Plan No. 3, as defined in ERISA § 402, that were in your possession at  
24 the time You decided Plaintiff's LTD Claim.

25 **Plaintiff's Second Request of Production of Documents to Defendant:**

26 **REQUEST FOR PRODUCTION NO. 7:**

27 All DOCUMENTS describing, evidencing, constituting, or RELATING TO YOUR or  
28 SEDGWICK's communications with NMR regarding PLAINTIFF's CLAIM or APPEAL.

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1 **REQUEST FOR PRODUCTION NO. 9:**

2 All DOCUMENTS that constitute or describe YOUR internal rules, guidelines, protocols,  
3 or other criteria in effect during the RELEVANT TIME PERIOD for evaluating long-term  
4 disability CLAIMS and/or APPEALS.

5 **REQUEST FOR PRODUCTION NO. 10:**

6 All DOCUMENTS that constitute or describe SEDGWICK's internal rules, guidelines,  
7 protocols, or other criteria in effect during the RELEVANT TIME PERIOD for evaluating  
8 disability CLAIMS and/or APPEALS.

9 **REQUEST FOR PRODUCTION NO. 11:**

10 All DOCUMENTS that describe any relationship between YOU or AT&T and  
11 SEDGWICK, including, but not limited to, contracts, memoranda of understanding, service  
12 agreements, vendor agreements, policy letters, and invoices in effect during the RELEVANT  
13 TIME PERIOD.

14 **REQUEST FOR PRODUCTION NO. 12:**

15 All DOCUMENTS sent by SEDGWICK and received by YOU or AT&T describing,  
16 evidencing, constituting, referring, or relating to advertising, marketing materials, solicitations,  
17 proposals, or promotional materials for claims administration services during the RELEVANT  
18 TIME PERIOD.

19 **REQUEST FOR PRODUCTION NO. 13:**

20 All records of payments made by YOU, AT&T, or SEDGWICK in consideration of  
21 services rendered or expenses incurred with respect to PLAINTIFF's CLAIM and APPEAL.

22 **REQUEST FOR PRODUCTION NO. 14:**

23 All invoices for administration of CLAIMS and/or APPEALS under THE PLAN sent by  
24 SEDGWICK to YOU or AT&T from 2015 to the present.

25 **REQUEST FOR PRODUCTION NO. 15:**

26 All DOCUMENTS describing or analyzing the plan administration services provided by  
27 SEDGWICK to THE PLAN and/or AT&T from 2015 to the present.

28 **REQUEST FOR PRODUCTION NO. 16:**

1 All DOCUMENTS RELATING TO financial or any other incentives for YOUR employees  
2 and/or employees of SEDGWICK involved in reviewing and deciding disability CLAIMS and  
3 APPEALS, including, but not limited, to portions of policy and procedure manuals containing or  
4 describing incentives, employee evaluations, and bonus programs from 2015 to the present.

5 **REQUEST FOR PRODUCTION NO. 17:**

6 All DOCUMENTS RELATING TO financial bonuses, incentives, stock options or any  
7 other type of compensation program (beyond regular salary or wages) in effect for any individual  
8 handling, managing, overseeing or investigating PLAINTIFF's CLAIM and APPEAL for long-  
9 term disability benefits, including for all PERSONS IDENTIFIED in response to Interrogatory  
10 No. 6.

11 **REQUEST FOR PRODUCTION NO. 19:**

12 All resumes and/or curricula vitae of all PERSONS IDENTIFIED in response to  
13 Interrogatory No. 6.

14 **REQUEST FOR PRODUCTION NO. 20:**

15 All DOCUMENTS that describe any relationship between YOU or SEDGWICK and NMR,  
16 including, but not limited to, contracts, memoranda of understanding, service agreements, vendor  
17 agreements, policy letters, and invoices in effect during the RELEVANT TIME PERIOD.

18 **REQUEST FOR PRODUCTION NO. 21:**

19 All DOCUMENTS that constitute or describe policies and procedures for selecting medical  
20 reviewers for disability CLAIMS and/or APPEALS during the RELEVANT TIME PERIOD.

21 **REQUEST FOR PRODUCTION NO. 22:**

22 All DOCUMENTS sent by NMR and received by YOU, AT&T, or SEDGWICK  
23 describing, evidencing, constituting, referring, or relating the business services that NMR would  
24 provide if engaged by YOU, AT&T, or SEDGWICK, including, but not limited to, any manuals,  
25 statements of NMR's mission, statements of NMR's philosophy, descriptions of physician  
26 procedures, referral guidelines, general descriptions of disability evaluation procedures,  
27 descriptions of medical disability management, descriptions of the medical review services  
28 provided by NMR, descriptions of the independent medical evaluation services provided by NMR,

1 descriptions of NMR's medical consultation fee schedules, and descriptions of NMR's guidelines  
2 for reviewing physicians, from 2015 to the present.

3 **REQUEST FOR PRODUCTION NO. 23:**

4 All DOCUMENTS that YOU claim support YOUR contention, if any, that YOU or  
5 SEDGWICK used a neutral, independent review process in the administration of PLAINTIFF'S  
6 CLAIM or APPEAL.

7 **REQUEST FOR PRODUCTION NO. 24:**

8 All DOCUMENTS that YOU claim support YOUR contention, if any, that YOU have  
9 structured plan administration in order to minimize any potential financial gain by YOU or  
10 SEDGWICK for denying or terminating CLAIMS or denying APPEALS.

11 **REQUEST FOR PRODUCTION NO. 25:**

12 All DOCUMENTS that YOU claim support YOUR contention, if any, that a conflict of  
13 interest did not influence YOUR or SEDGWICK's decision-making process of PLAINTIFF's  
14 CLAIM or APPEAL.

15 **REQUEST FOR PRODUCTION NO. 26:**

16 All DOCUMENTS RELATING TO total compensation paid to Dr. Howard Grattan by  
17 YOU, SEDGWICK or NMR from 2015 to the present.

18 **REQUEST FOR PRODUCTION NO. 27:**

19 All DOCUMENTS IDENTIFIED and/or relied upon in YOUR responses to PLAINTIFF's  
20 Interrogatories to YOU, Set One, served concurrently herewith.

21 **Plaintiff's First Set of Interrogatories to Defendant:**

22 **INTERROGATORY NO. 1:**

23 If YOU contend that YOU or SEDGWICK used a neutral, independent review process in  
24 the administration of PLAINTIFF'S CLAIM or APPEAL, state the basis of this contention,  
25 including, but not limited to, by IDENTIFYING all PERSONS with knowledge of the basis of this  
26 contention and all DOCUMENTS that YOU contend support this contention.

27 **INTERROGATORY NO. 2:**

28 If YOU contend that YOU have structured plan administration in order to minimize any

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1 potential financial gain by YOU or SEDGWICK for denying or terminating CLAIMS or denying  
2 APPEALS, state the basis of this contention, including but not limited to, by IDENTIFYING all  
3 PERSONS with knowledge of the basis of this contention and all DOCUMENTS that YOU  
4 contend support this contention.

5 **INTERROGATORY NO. 3:**

6 If YOU contend that YOU or SEDGWICK retained independent medical examiners in the  
7 administration of PLAINTIFF'S CLAIM or APPEAL, state the basis of this contention, including,  
8 but not limited to, by IDENTIFYING all PERSONS with knowledge of the basis of this  
9 contention and all DOCUMENTS that YOU contend support this contention.

10 **INTERROGATORY NO. 4:**

11 IDENTIFY all DOCUMENTS that you contend constitute affirmative evidence that a  
12 conflict of interest did not influence YOUR or SEDGWICK's decision-making process of  
13 PLAINTIFF's CLAIM or APPEAL.

14 **INTERROGATORY NO. 5:**

15 IDENTIFY all PERSONS with information that you contend constitutes affirmative  
16 evidence that a conflict of interest did not influence YOUR or SEDGWICK's decision-making  
17 process of PLAINTIFF's CLAIM or APPEAL.

18 **INTERROGATORY NO. 6:**

19 IDENTIFY each and every PERSON who reviewed, evaluated, made, or participated in any  
20 determination regarding PLAINTIFF's CLAIM or APPEAL.

21 **INTERROGATORY NO. 9:**

22 State the number of CLAIMS and APPEALS under the PLAN as to which NMR provided  
23 medical review services annually from 2015 to the present, indicating separately for each year.

24 **INTERROGATORY NO. 10:**

25 State the number of CLAIMS and APPEALS under the PLAN as to which NMR provided  
26 medical review services that resulted in the approval of disability CLAIMS and/or APPEALS.  
27 Please indicate the number separately for each year from 2015 to the present.

28 **INTERROGATORY NO. 11:**

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1 State the number of CLAIMS and APPEALS under the PLAN as to which NMR provided  
 2 medical review services that resulted in the denial of disability CLAIMS and/or APPEALS. Please  
 3 indicate the number separately for each year from 2015 to the present.

4 **INTERROGATORY NO. 12:**

5 State the total compensation paid to Dr. Howard Grattan by YOU, SEDGWICK, and/or  
 6 NMR from 2015 to the present.

7 **INTERROGATORY NO. 13:**

8 Describe the compensation arrangement between YOU, SEDGWICK, and/or NMR and Dr.  
 9 Howard Grattan, including the basis of his compensation and how any bonuses are determined.

10 **IV. PLAINTIFF’S CONTENTIONS**

11 **A. Plaintiff’s Discovery Requests.**

12 Plaintiff has propounded discovery limited to the completeness of the Administrative  
 13 Record and to topics relevant to the nature, extent, and effect on the decision-making process  
 14 of any conflict of interest. The requests fall into the following general categories below.  
 15 Plaintiff has also included citations to cases that have awarded similar discovery in ERISA  
 16 cases or have considered such discovery as relevant.

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Nature of Request	Request or Interrogatory	Supporting case law
Evidence supporting the completeness of the Administrative Record	Request for Prod. Nos. 1-5	<i>Gonda v. Permanente Med. Grp., Inc.</i> , 300 F.R.D. 609, 614 (N.D. Cal. 2014); <i>Stephan v. Unum Life Ins. Co. of Am.</i> , 697 F.3d 917, 932-33 (9th Cir. 2012); <i>Doe v. AT&amp;T Western Disability Benefits Program</i> , 2012 WL 1669882 (N.D. Cal May 14, 2012)
Evidence supporting Defendant’s contentions that it does not possess a conflict of interest or that a conflict did not affect its decision on Plaintiff’s claim for benefits	Interrog Nos. 1-5; Request for Prod. Nos. 23-25	<i>Abatie v. Alta Health &amp; Life Ins. Co.</i> , 458 F.3d 955, 969 (9th Cir. 2006)
Financial incentives	Interrog Nos.	29 C.F.R. § 2560.503-1; <i>Demer v.</i>

1 2 3 4	related to claims for disability benefits under the Plan	12, 13; Request for Prod. Nos. 16-17, 26	<i>IBM Corp. LTD Plan</i> , 835 F.3d 893 (9th Cir. 2016); <i>Zewdu v. Citigroup Long Term Disability Plan</i> , 264 F.R.D. 622, 629 (N.D. Cal. 2010); <i>Melech v. Life Ins. Co. of N. Am.</i> , 857 F. Supp. 2d 1281, 1285 (S.D. Ala. 2012)
5 6 7 8	The Plan's relationship with Sedgwick	Request for Prod. No. 11, 12, 15	<i>Peterson v. AT&amp;T Umbrella Benefit Plan No. 1</i> , No. C-10-03097 JCS, 2011 WL 5882877 (N.D. Cal. Nov. 23, 2011); <i>Doe v. AT&amp;T Western Disability Benefits Program</i> , 2012 WL 1669882 (N.D. Cal May 14, 2012)
9 10 11	Sedgwick's compensation for services rendered to the Plan	Request for Prod. Nos. 11, 14	<i>Doe v. AT&amp;T Western Disability Benefits Program</i> , 2012 WL 1669882 (N.D. Cal May 14, 2012)
12 13 14 15	The Plan's administrative claim process and results	Interrog No. 6; Request for Prod. Nos. 9, 10, 15	<i>Zewdu v. Citigroup Long Term Disability Plan</i> , 264 F.R.D. 622 (N.D. Cal. 2010); <i>Conrad v. Reliance Standard Life Ins. Co.</i> , No. CV 4:10CV-00127-JHM, 2015 WL 4464103 (W.D. Ky. July 21, 2015)
16 17 18 19 20 21	The Plan's administration of Plaintiff's LTD claim and request for review	Interrog Nos. 1-3, 6; Request for Prod. Nos. 1-5, 7, 13, 19	<i>Doe v. AT&amp;T Western Disability Benefits Program</i> , 2012 WL 1669882 (N.D. Cal May 14, 2012); <i>Metro Life Ins. Co. v. Glenn</i> , 554 U.S. 105 (1989); <i>Abatie v. Alta Health &amp; Life Ins. Co.</i> , 458 F.3d 955 (9th Cir. 2006); <i>Zewdu v. Citigroup Long Term Disability Plan</i> , 264 F.R.D. 622 (N.D. Cal. 2010)
22 23 24 25	The Plan and Sedgwick's Relationship with Network Medical Review ("NMR")	Interrog No. 9; Request for Prod. No. 20	<i>Doe v. AT&amp;T Western Disability Benefits Program</i> , 2012 WL 1669882 (N.D. Cal May 14, 2012); <i>Metro Life Ins. Co. v. Glenn</i> , 554 U.S. 105 (1989); <i>Frost v. Metro. Life Ins. Co.</i> , 414 F. Supp. 2d 961, (C.D. Cal. 2006)
26 27 28	Compensation paid for NMR's medical review services	Request for Prod. Nos. 13, 22	<i>Doe v. AT&amp;T Western Disability Benefits Program</i> , 2012 WL 1669882 (N.D. Cal May 14, 2012); <i>Burrows v. AT&amp;T Umbrella Benefit Plan No. 1</i> , 2011 WL 996748 (N.D. Cal. Mar.21,

1		2011); <i>Lavino v. Metro. Life Ins. Co.</i> , 2010 WL 234817 (C.D. Cal. Jan. 13, 2010); <i>Walker v. Metro. Life Ins. Co.</i> , 585 F. Supp. 2d 1167 (N.D. Cal. 2008)	
2			
3			
4	Compensation paid to NMR's physician reviewers	Interrog Nos. 12, 13; Request for Prod. Nos. 13, 17, 22	<i>Nolan v. Heald Coll.</i> , 551 F.3d 1148 (9th Cir. 2009); <i>Walker v. Metro. Life Ins. Co.</i> , 585 F. Supp. 2d 1167 (N.D. Cal. 2008); <i>Demer v. IBM Corp. LTD Plan</i> , 835 F.3d 893 (9th Cir. 2016); <i>Caplan v. CNA Fin. Corp.</i> , 544 F. Supp. 2d 984, 989-90 (N.D. Cal. 2008); <i>Hall v. Life Ins. Co. of N. Am.</i> , 265 F.R.D. 356, 364 (N.D. Ind. 2010)
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10	NMR's medical review process and results	Interrog Nos. 9-11; Request for Prod. Nos. 21, 22	<i>Doe v. AT&amp;T Western Disability Benefits Program</i> , 2012 WL 1669882 (N.D. Cal May 14, 2012); <i>Metro Life Ins. Co. v. Glenn</i> , 554 U.S. 105 (1989); <i>Wilson v. Pharmmerica Corp. Long Term Disability Plan</i> , 102 F.Supp.3d 373 (D. Mass. 2015)
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15	NMR's medical review of Ms. Chacko's request for review	Interrog Nos. 3, 6; Request for Prod. Nos. 7, 13, 19	<i>Doe v. AT&amp;T Western Disability Benefits Program</i> , 2012 WL 1669882 (N.D. Cal May 14, 2012); <i>Metro Life Ins. Co. v. Glenn</i> , 554 U.S. 105 (1989); <i>Abatie v. Alta Health &amp; Life Ins. Co.</i> , 458 F.3d 955 (9th Cir. 2006); <i>Zewdu v. Citigroup Long Term Disability Plan</i> , 264 F.R.D. 622 (N.D. Cal. 2010)
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**B. Plaintiff is Entitled to Discovery Concerning the Completeness of the Administrative Record**

“In the ERISA context, the ‘administrative record’ consists of ‘the papers the insurer had when it denied the claim.’” *Montour v. Hartford Life & Acc. Ins. Co.*, 588 F.3d 623, 632, n.4 (9th Cir. 2009). ERISA defines the administrative record as those documents described in 29 C.F.R. § 2560.503-1(h)(2)(iii), (m)(8), and (b)(5). *Andrew C. v. Oracle Am. Inc. Flexible Benefit Plan*, No. 17-CV-02072-YGR, 2019 WL 1931974, at \*3 (N.D. Cal. May 1, 2019). These are precisely the documents requested by Plaintiff.

Irrespective of the standard of review, discovery as to the completeness of the



1 Administrative Record is permissible in ERISA cases. *See Gonda v. Permanente Med. Grp., Inc.*,  
 2 300 F.R.D. 609, 614 (N.D. Cal. 2014) (agreeing with the plaintiff that he should have the right to  
 3 determine whether the administrative record is complete); *Crosby v. Louisiana Health Serv. &*  
 4 *Indem. Co.*, 647 F.3d 258, 263 (5th Cir. 2011) (“For example, in an ERISA action under 29 U.S.C.  
 5 § 1132(a)(1)(B), a claimant may question the completeness of the administrative record ...”);  
 6 *Dubrovin v. Ball Corp. Consol. Welfare Ben. Plan for Employees*, 626 F. Supp. 2d 1099, 1104-05  
 7 (D. Colo. 2008) (permitting discovery related to the procedures and criteria used by defendant to  
 8 create the administrative record filed in this case). The Plan cannot simply pick and choose which  
 9 documents it deems appropriate to include in the record. RFP Nos. 1-5 seek documents which  
 10 should be included in the Administrative Record as set forth in the ERISA Regulations. RFP No.  
 11 3, which seeks documents constituting legal advice or a legal evaluation of Plaintiff’s LTD claim  
 12 before the Plan made a final decision, are discoverable under the fiduciary exception to the  
 13 attorney-client privilege and are part of the administrative record. *See Stephan v. Unum Life Ins.*  
 14 *Co. of Am.*, 697 F.3d 917, 932-33 (9th Cir. 2012).

15 **C. Plaintiff Is Entitled to Conflict-of-Interest Discovery Which Will Inform the Level**  
 16 **of Skepticism the Court Will Apply to Its Review of the Plan’s Claim Decision.**

17 **1. The Existence of a Conflict of Interest Entitles Plaintiff to Discovery.**

18 In *Firestone Tire & Rubber Co. v. Bruch*, the Supreme Court held, “[I]f a benefit plan  
 19 gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that  
 20 conflict must be weighed as a ‘facto[r]’ in determining whether there is an abuse of discretion.”  
 21 489 U.S. 101, 115 (1989) (quoting Restatement (Second) of Trusts § 187, Comment *d* (1959)).  
 22 In *Metropolitan Life Insurance Co. v. Glenn*, the Court subsequently determined that a conflict  
 23 exists where a single entity funds the plan, administers the plan, and pays for benefits. 554 U.S.  
 24 105, 112 (2008) (citing *Firestone*, 489 U.S. at 105, 115).

25 Documents produced to date demonstrate the existence of a conflict of interest on the part  
 26 of Defendant. The Summary Plan Description (“SPD”) for the AT&T Disability Benefits  
 27 Program (“Program”), a component of the Plan, describes the administration of the Plan as  
 28 follows:

1 “The Plan Administrator determines eligibility for coverage under the Program, that is,  
2 whether any individual is included in a group of employees that is covered by the  
3 Program.

4 The Claims Administrator has been delegated the complete discretionary fiduciary  
5 responsibility **for all disability determinations by the Plan Administrator** to determine  
6 whether a particular Eligible Employee who has filed a claim for benefits is entitled to  
7 benefits under the Program, to determine whether a claim was properly decided, and to  
8 conclusively interpret the terms and provisions of the Program. Such determinations and  
9 interpretations shall be final and conclusive.

10 The Plan Administrator (or, in matters delegated to third parties, the third-party that has  
11 been so delegated) will have sole discretion to interpret the Program, including, but not  
12 limited to, interpretation of the terms of the Program, determinations of coverage and  
13 eligibility for benefits, and determination of all relevant factual matters. Any  
14 determination made by the Plan Administrator or any delegated third party will not be  
15 overturned unless it is determined to be arbitrary and capricious.”

16 *See* Plan Excerpts, attached as Exhibit A-1, at AR 650 (emphasis added). The SPD identifies  
17 AT&T Inc. as Plan Sponsor and AT&T Services, Inc. as Plan Administrator. Ex. A-1, AR 650.  
18 It also identifies Sedgwick as a Claims Administrator. The Plan defines Claims Administrator as  
19 “[t]he individual or entity delegated by the Plan Administrator to determine all claims and  
20 appeals under the Program.” Ex. A-1, AR 647. Because of their discretionary authority with  
21 respect to the management of the Plan and the disposition of its assets, AT&T Services, Inc. and  
22 Sedgwick are plan fiduciaries. *Bruch*, 489 U.S. 101 at 113.

23 The SPD provides that “[T]he Program is funded by a Trust. . . which is established  
24 exclusively for approved Plan purposes.” The Trust itself is funded by periodic, non-reversionary  
25 Company contributions. Ex. A-1, AR 651. Thus, AT&T simultaneously funds the Program and  
26 decides claims and appeals for disability benefits under the Program. While Sedgwick has been  
27 tasked with making determinations on claims and appeals, the Plan provides that Sedgwick, a  
28 plan fiduciary, only has the discretionary and fiduciary responsibility for disability  
determinations made by the Plan Administrator, AT&T. In essence, Sedgwick acts as the agent  
for the Plan Administrator, and as such, it is not a separate entity fully removed from AT&T’s  
financial conflict of interest. The plain reading of these provisions is not susceptible to a  
different interpretation. These facts, viewed as a whole, create a conflict of interest that warrants

1 limited discovery. *See Peterson v. AT&T Umbrella Benefit Plan No. 1*, 2011 WL 5882877, at \*1  
2 (N.D. Cal. Nov. 23, 2011) (permitting limited discovery regarding the relationship between the  
3 plan and its claim administrator).

4 Contrary to the Plan’s contention that there is absolutely no conflict of interest due to  
5 AT&T’s delegation to Sedgwick, courts that have considered the structure of the Plan have found  
6 it to contain a conflict of interest. In *Mantooth v. AT&T Umbrella Benefit Plan Number 1*, the  
7 court held that “AT & T Services, Inc. serves as an ERISA fiduciary and is ultimately responsible  
8 for paying claims, and an inherent conflict of interest exists” because “[t]he plain language of the  
9 Plan gives the Plan administrator, AT & T Services, Inc., discretionary authority to interpret the  
10 Plan and requires AT & T Services, Inc. to pay benefits under the Plan.” 804 F. Supp. 2d 1171,  
11 1179 (N.D. Okla. 2011). *See also Mazur v. Pacific Telesis Group Comprehensive Disability*  
12 *Benefits Plan*, No. C 07-01904 JSW, 2008 WL 564796, at \*2 (N.D. Cal. Feb. 28, 2008)  
13 (“Defendants’ delegation of administration responsibilities is insufficient to completely negate  
14 the existence of a structural conflict”).

15 The Supreme Court in *Glenn* further explained that “the employer’s own conflict may  
16 extend to its selection of an insurance company to administer its plan.” *Id.* at 114. The same  
17 analysis applies to AT&T’s selection of Sedgwick to administer the claims, where AT&T both  
18 funds and administers the Plan. Following *Glenn*, discovery into third-party administrator bias  
19 has been allowed. *See Rude v. Intel Corp. Long Term Disability Plan*, 2012 WL 4120490, at \*1  
20 (D. Ariz. Sept. 19, 2012); *see also Leu v. Cox Long-Term Disability Plan*, 2009 WL 2219288 \*3-  
21 4 (D. Ariz. 2009); *Mazur*, 2008 WL 564796 at \*2. In other words, because the Plan is  
22 administered by a third-party does not *ipso facto* mean there is no conflict of interest. *Rude*, 2012  
23 WL 4120490, at \*1 (“A structural conflict of interest is not necessarily negated by contractually  
24 delegating authority to a third-party administrator where, for example, the employer exerts  
25 influence over the administrator’s decision making.”).

26 Lastly, Defendant’s reliance on *Day v. AT&T Disability Income Plan*, 698 F.3d 1091 (9th  
27 Cir. 2012) does not support its contention that no discovery is appropriate in this case. In *Day*,  
28 the court found that the district court did not err in finding no inherent or structural conflict of

1 interest, but it recognized that any bias or misconduct could warrant less deference. *Id.* at 1096.  
 2 In other words, the Plan does not automatically get abuse of discretion review without  
 3 skepticism. It also does not appear that *Day* pursued any discovery or fully investigated the  
 4 relationship between the Plan and Sedgwick. *See id.* For the reasons articulated further below,  
 5 self-funded plans such as the one in this case are subject to conflicts that must be considered in  
 6 the standard of review analysis.

7  
 8 **2. Plaintiff’s Discovery Requests Are Narrowly Tailored to Ascertain  
 Information Directly Related to the Plan’s Conflict of Interest.**

9 Following *Glenn*’s mandate that a court weigh a fiduciary’s conflict of interest, courts  
 10 regularly approve limited discovery into the existence of a conflict of interest. In *Abatie v. Alta*  
 11 *Health & Life Insurance Co.*, the Ninth Circuit reiterated prior holdings “that the court may  
 12 consider evidence beyond that contained in the administrative record that was before the plan  
 13 administrator, to determine whether a conflict of interest exists that would affect the appropriate  
 14 level of judicial scrutiny.” 458 F.3d 955, 970 (9th Cir. 2006) (en banc) (citing *Tremain v. Bell*  
 15 *Indus., Inc.*, 196 F.3d 970, 976–77 (9th Cir. 1999)). It continued, “[T]he district court may, in its  
 16 discretion, consider evidence outside the administrative record to decide the nature, extent, and  
 17 effect on the decision-making process of any conflict of interest. . .” *Id.*; *see also Welch v. Metro.*  
 18 *Life Ins. Co.*, 480 F.3d 942, 949-50 (9th Cir. 2007) (“Because an ERISA plaintiff may be  
 19 permitted to supplement the administrative record with evidence of a conflict of interest on the  
 20 part of the defendant, some discovery aimed at demonstrating a conflict of interest may have been  
 21 appropriate”); *Mazur*, 2008 WL 564796, at \*2 (granting “discovery into the existence and scope of  
 22 the conflict, as well as discovery regarding the nature, extent, and effect of the conflict on the  
 23 decision making process in accordance with *Abatie*”).

24 A finding of a structural conflict of interest is not necessary for a plaintiff to conduct  
 25 discovery. *Meguerditchian v. Fed. Express Corp. Long Term Disability Plan*, 2018 WL 5794477,  
 26 at \*2 (C.D. Cal. Nov. 5, 2018). Further, Ninth Circuit precedent requires consideration of  
 27 procedural irregularities in the claims process since those impact the standard of review. *See, e.g.*,  
 28 *Glenn*, 554 U.S. at 118 (evidence of procedural irregularities justifies giving more weight to a

1 conflict); *Burke v. Pitney Bowes Inc. Long-Term Disability Plan*, 544 F.3d 1016, 1028 (9th Cir.  
 2 2008) (“[T]he district court may consider evidence outside the administrative record if it  
 3 determines that procedural irregularities prevented the full development of the administrative  
 4 record.”); *Abatie*, 458 F.3d at 972-73 (“[W]hen a plan administrator has failed to follow a  
 5 procedural requirement of ERISA, the court may have to consider evidence outside the  
 6 administrative record.”); *Lavino v. Metro. Life Ins. Co.*, 779 F. Supp. 2d 1095, 1107 (C.D. Cal.  
 7 2011) (“[I]n conducting reviews, courts can consider additional evidence outside the  
 8 administrative record where appropriate, such as in cases involving procedural irregularities, as  
 9 here.”). Moreover, courts have chastised plaintiffs for alleging conflicts of interest but not doing  
 10 the discovery necessary to prove it. *Wolberg v. AT & T Broadband Pension Plan*, 123 Fed.Appx.  
 11 840, 843 n. 2 (10th Cir. 2005) (criticizing a plaintiff for simply mentioning the existence of a  
 12 conflict of interest, but failing to pursue the matter and to seek discovery); *Demer v. IBM Corp.*  
 13 *LTD Plan*, 835 F.3d 893, 901 (9th Cir. 2016) (“MetLife did not explain its failure to identify  
 14 witnesses in its mandatory initial disclosures; on the other hand, Mr. Demer did not explain his  
 15 failure to take a 30(b)(6) deposition on the structural conflict issue.”)

16  
 17 **a. AT&T and Sedgwick Have a Duty to Ensure They Do Not Retain  
 Conflicted Third Parties.**

18 The new ERISA Regulations that took effect January 1, 2018 require impartiality and  
 19 support the discovery Plaintiff seeks herein. The Regulation states, in pertinent part:

20  
 21 In the case of a plan providing disability benefits, the plan must ensure that all claims and  
 22 appeals for disability benefits are adjudicated in a manner designed to ensure the  
 23 independence and impartiality of the persons involved in making the decision.  
 24 Accordingly, decisions regarding hiring, compensation, termination, promotion, or other  
 similar matters with respect to any individual (such as a claims adjudicator or medical or  
 vocational expert) must not be made based upon the likelihood that the individual will  
 support the denial of benefits.

25 29 C.F.R. § 2560.503-1. Here, AT&T and Sedgwick retained the medical review services of  
 26 Network Medical Review (“NMR”) and its medical reviewer, Dr. Howard Grattan, in its analysis  
 27 of Ms. Chacko’s request for review of the termination of her LTD benefits under the Plan. AT&T  
 28 and Sedgwick have a fiduciary responsibility to ensure that its reviewers are not biased or

1 otherwise financially conflicted. ERISA requires that the claims administrator exercise its  
 2 discretion solely in the interests of the participants and beneficiaries of the plan by providing a full  
 3 and fair review of claim denials. *Glenn*, 554 U.S. at 115. What AT&T and Sedgwick did or did  
 4 not do to ensure its reviewer’s impartiality is relevant to the standard of review.

5 The case law and the regulations support discovery into NMR’s and Dr. Grattan’s financial  
 6 conflict of interest. Courts have recognized that a conflict of interest also may affect the selection  
 7 of service providers, including medical review companies, such as NMR. As such, courts have  
 8 considered evidence indicating biases of third parties involved in benefit claim decisions. *See*  
 9 *Chart, supra*.

10 **b. Third-Party Conflicts of Interest May Be Imputed to the Plan.**

11 The purported lack of any structural conflict of interest on the part of AT&T does not  
 12 preclude AT&T from having a conflict of interest based on a peer reviewer’s financial interests.  
 13 The Ninth Circuit has made clear: “Even if [AT&T] operated with no structural conflict, reliance  
 14 on the reports of its retained experts who have a financial incentive to make findings favorable to  
 15 [AT&T] may warrant skepticism.” *Demer v. IBM Corp. LTD Plan*, 835 F.3d 893, 901–02 (9th Cir.  
 16 2016). Defendant may invite the court to disregard *Demer’s* holding because it involved an  
 17 insurance company that made the claims decision and paid the benefits. The court should reject  
 18 this invitation. The rationale in *Demer* was not limited to self-insured plans. As the court  
 19 explained, “[t]he lack of any structural conflict of interest on the part of MetLife does not preclude  
 20 MetLife from having a conflict of interest based on an IPC’s financial interests; the factors that  
 21 raise the possibility of a structural conflict relate to the incentives applicable to MetLife’s *claims*  
 22 *department*, whereas the factors that raise the possibility of a financial conflict relate to the  
 23 incentives applicable to MetLife’s *retained experts*.” *Id.*

24 What Plaintiff seeks here is not novel. Plaintiff’s requested discovery involving AT&T,  
 25 Sedgwick, and NMR has been allowed in this Circuit. *See, e.g., Doe*, 2012 WL 1669882. Courts  
 26 recognize that self-insured plans are susceptible to conflicts of interest, both structural and  
 27 financial. As the cases cited above demonstrate, AT&T has been subject to conflict of interest  
 28 inquiries where discovery has been allowed to ascertain the structural and financial irregularities

1 in claim administration. The same result should follow here. Plaintiff is not seeking a different  
2 standard of review, but only information that the Court must consider to properly weigh any  
3 conflict that may have influenced the decision to terminate Plaintiff's claim and deny her appeal.  
4 This cannot be accomplished without the discovery Plaintiff is seeking.

5 **V. DEFENDANT'S CONTENTIONS**

6 Plaintiff is not entitled to limited discovery in this case, let alone the expansive discovery  
7 Plaintiff seeks.

8 **A. Discovery Is Inappropriate Where, as Here, No Structural Conflict of Interest  
9 Exists.**

10 **1. Courts Permit Limited Discovery in ERISA Denial-of-Benefits Cases  
11 Involving an Abuse of Discretion Standard of Review Only Where a  
12 "Dual-Role" or "Structural" Conflict of Interest Exists.**

13 Plaintiff challenges the denial of her LTD benefits under the Plan. It is undisputed that the  
14 Plan confers discretion on a Plan Administrator to decide benefits, therefore this Court must  
15 review the Plan Administrator's decision under an abuse of discretion standard. *See Abatie v. Alta*  
16 *Health & Life Ins. Co.*, 458 F.3d 955, 963 (9th Cir. 2006) (citing *Firestone Tire & Rubber Co. v.*  
17 *Bruch*, 489 U.S. 101, 115 (1989)). Courts applying the abuse of discretion standard generally  
18 "may review only the administrative record when considering whether the plan administrator  
19 abused its discretion". *Id.* at 970. Accordingly, discovery regarding evidence outside the record in  
20 ERISA denial-of-benefits cases applying the abuse of discretion standard is not relevant or  
21 necessary. *See Castillo v. Cigna Healthcare*, 11 F. App'x 945, 950 (9th Cir. 2001) (affirming  
22 decision to disallow discovery). Unpublished.

23 The focus on the administrative record and general prohibition on discovery in ERISA  
24 denial-of-benefits cases serves two purposes: (1) first, "a primary goal of ERISA [is] to provide a  
25 method for workers and beneficiaries to resolve disputes over benefits inexpensively and  
26 expeditiously" *Boyd v. Bert Bell/Pete Rozelle NFL Players Ret. Plan*, 410 F.3d 1173, 1178 (9th  
27 Cir. 2005) (internal quotation omitted); and (2) second, "[p]ermitting a district court to examine  
28 evidence outside the administrative record would open the door to the anomalous conclusion that a  
plan administrator abused its discretion by failing to consider evidence not before it." *Taft v.*

1 *Equitable Life Assur. Soc.*, 9 F.3d 1469, 1472 (9th Cir. 1993), overruled on other grounds by  
 2 *Saffon v. Wells Fargo & Co. Long Term Disability Plan*, 522 F.3d 863 (9th Cir. 2008).

3 Where a “dual-role” or “structural” conflict of interest exists—*i.e.*, where the same entity  
 4 both funds and decides benefit claims—a court may consider the conflict as a factor in  
 5 determining whether the administrator abused its discretion in denying benefits, *see Metropolitan*  
 6 *Life Ins. Co. v. Glenn*, 554 U.S. 105, 108 (2008), and a claimant may engage in limited discovery  
 7 into the effects of conflict on the denial of benefits. *See Abatie*, 458 F.3d at 970 (where a conflict  
 8 exists, “the court may, in its discretion, consider evidence outside the administrative record to  
 9 decide the nature, extent, and effect on the decision-making process of any conflict of interest”);  
 10 *Villanueva v. Life Ins. Co. of N. Am.*, No. 1:12-CV-1263, 2013 WL 398878, at \*2 (E.D. Cal. Jan.  
 11 31, 2013) (“[I]t is within the Court's discretion to permit discovery regarding a structural conflict  
 12 of interest of an ERISA plan administrator and its affect, if any, on its decision in the case.”)  
 13 (citing *Burke v. Pitney Bowes Inc. Long-Term Disability Plan*, 544 F.3d 1016, 1028 n .15 (9th Cir.  
 14 2008))

15 The Supreme Court permits discovery where an ERISA plan administrator “both funds the  
 16 plan and evaluates the claims”, *Glenn*, 554 U.S. at 112, because in that situation, “[a]pplication of  
 17 the abuse of discretion standard . . . requires a more complex analysis. . . . Simply construing the  
 18 terms of the underlying plan and scanning the record for medical evidence supporting the plan  
 19 administrator’s decision is not enough, because a reviewing court must take into account the  
 20 administrator’s conflict of interest . . . .” *Montour v. Hartford Life & Acc. Ins. Co.*, 588 F.3d 623,  
 21 630 (9th Cir. 2009). Put differently, discovery is permitted where a structural conflict of interest  
 22 exists to assess whether the “structural conflict has morphed into an actual conflict.” *Denmark v.*  
 23 *Liberty Life Assur. Co. of Boston*, 566 F.3d 1, 10 (1st Cir. 2009).<sup>2</sup>

24 **2. No Dual-Role or Structural Conflict of Interest Exists in the Instant**  
 25 **Case.**

26 \_\_\_\_\_  
 27 <sup>2</sup> The court in *Denmark* added that “any such discovery must be allowed sparingly and, if allowed  
 28 at all, must be narrowly tailored so as to leave the substantive record essentially undisturbed.”  
*Denmark*, 566 F.3d at 10.



1 A dual-role or structural conflict of interest does not exist here. AT&T funds the Plan  
 2 through a trust and delegates its decision-making authority to a separate entity, Plan Administrator  
 3 AT&T Services, Inc., which in turn delegates all of its decision-making authority to third-party  
 4 Claims Administrator, Sedgwick, which operates the IDSC. (*See* Declaration of Jeremy Siegel,  
 5 attached as Exhibit A; *see also* Plan Excerpts, attached as Exhibit A-1, at AR 21, 22, 625, 647; and  
 6 HR Benefit Services Agreement, attached as Exhibit A-2) The Ninth Circuit has considered this  
 7 very administrative structure and upheld a finding that no conflict of interest exists because “[t]he  
 8 Plan is funded by AT&T and not Sedgwick, and administered by Sedgwick and not AT&T.” *Day*  
 9 *v. AT&T Disability Income Plan*, 698 F.3d 1091, 1096 (9th Cir. 2012). District courts that have  
 10 considered the claims administration structure at issue in this case have similarly held no conflict  
 11 of interest exists. *See, e.g., Edwards v. AT&T Disability Income Plan*, No. C 07-4573, 2009 WL  
 12 650255, at \*11 (N.D. Cal. Mar. 11, 2009) (finding no conflict of interest where Sedgwick was  
 13 solely responsible for administering claims, “AT&T is solely responsible for paying the approved  
 14 claims and does not assert any power in claims determination. Specifically, the service agreement  
 15 between Sedgwick and AT&T indicates a separation of the Plan Administrator from the Claims  
 16 Administrator to such an extent that there is no apparent structural conflict of interest.”); *Burrows*  
 17 *v. AT&T Umbrella Benefit Plan No. 1*, No. C10-1375, 2011 WL 996748, at \*3 (N.D. Cal. Mar. 21,  
 18 2011) (same); *May v. AT&T Umbrella Ben. Plan No. 1*, No. C-11-02204, 2012 WL 1997810, at  
 19 \*14 (N.D. Cal. Jun. 4, 2012) (same); *Huerta v. AT&T Umbrella Benefit Plan No. 1*, No. 3:11-cv-  
 20 01673, 2012 WL 4935548, at \*8 (N.D. Cal. Oct. 17, 2012) (same); *Strickland v. AT&T Pension*  
 21 *Benefit Plan*, No. C 17-01393, 2018 WL 774046, at \*3 (N.D. Cal. Feb. 7, 2018) (same); *Clay v.*  
 22 *AT&T Umbrella Benefit Plan No. 3*, No. 2017-cv-00749, 2019 WL 5682825, at \*3 (E.D. Cal.  
 23 Nov. 1, 2019) (same).<sup>3</sup>

24 <sup>3</sup> Plaintiff’s assertion that “courts that have considered the structure of the Plan have found it to  
 25 contain a conflict of interest” is misleading, at best, in light of the numerous decisions finding no  
 26 conflict of interest exists. Although a court found a structural conflict of interest in *Mantooth v.*  
 27 *AT&T Umbrella Benefit Plan No. 1*, 804 F. Supp. 2d 1171, 1179 (N.D. Okla. 2011), which  
 28 involved an AT&T benefits Plan administered by third-party Sedgwick, that Northern District of  
 Oklahoma case has no precedential or even persuasive authority here, as the decision pre-dates the  
 Ninth Circuit’s *Day* decision. Contrary to Plaintiff’s assertion, the court in *Mazur v. Pacific*

(Footnote Cont’d on Following Page)

1 Although discovery “may be helpful in establishing the *severity* of a structural conflict of  
 2 interest, . . . there is no Ninth Circuit case establishing [an ERISA plan is] subject to discovery in  
 3 the *absence* of a structural conflict.” *Culver v. NXP USA Inc. Long Term Disability Ins. Plan*, No.  
 4 CV-18-02205, 2019 WL 568927, at \*2 (D. Ariz. Feb. 12, 2019). Indeed, in a similar case  
 5 involving a self-funded AT&T short-term disability plan with a separate payor and decision-  
 6 maker, Cigna, the Ninth Circuit affirmed the district court’s decision to deny discovery into an  
 7 alleged conflict. *Castillo*, 11 F. App’x at 950. *Cf. Culver*, 2019 WL 568927, at \*2 (disallowing  
 8 conflict of interest discovery where a self-funded plan engaged third-party entities to serve as plan  
 9 administrators).

10 The cases to which Plaintiff cites are unavailing and do not compel a different result. The  
 11 overwhelming majority of cases on which Plaintiff relies concerning the propriety of discovery or  
 12 the existence of a conflict of interest involved circumstances where a dual-role conflict existed.  
 13 *See Abatie*, 458 F.3d at 959; *Austin-Conrad v. Reliance Standard Life Ins. Co.*, No. 4:10cv127,  
 14 2015 WL 4464103, at \*4 (W.D. Ky. Jul. 21, 2015); *Burke v. Pitney Bowes Inc. Long-Term*  
 15 *Disability Plan*, 544 F.3d 1016, 1024 (9th Cir. 2008); *Caplan v. CNA Fin. Corp.*, 544 F. Supp. 2d  
 16 984, 991 (N.D. Cal. 2008); *Demer v. IBM Corp. LTD Plan*, 835 F.3d 893, 900 (9th Cir. 2016);  
 17 *Dubrovin v. Ball Corp. Consol. Welfare Ben. Plan for Employees*, 626 F. Supp. 2d 1099, 1104 (D.  
 18 Colo. 2008); *Frost v. Metro. Life Ins. Co.*, 414 F. Supp. 2d 961, 963-964 (C.D. Cal. 2006); *Hall v.*  
 19 *Life Ins. Co. of N. Am.*, 265 F.R.D. 356, 360 (N.D. Ind. 2010); *Lavino v. Metro Life Ins. Co.*, 2010  
 20 WL 234817, at \*8 (C.D. Cal. Jan. 13, 2010); *Melech v. Life Ins. Co. of N. Am.*, 857 F. Supp. 2d  
 21 1281, 1284 (S.D. Ala. 2012); *Glenn*, 554 U.S. at 108; *Montour*, 588 F.3d at 628; *Nolan v. Heald*  
 22 *Coll.*, 551 F.3d 1148, 1153 (9th Cir. 2009); *Stephan v. Unum Life Ins. Co. of Am.*, 697 F.3d 917,  
 23 921 (9th Cir. 2012); *Tremain v. Bell Indus., Inc.*, 196 F.3d 970, 976 (9th Cir. 1999); *Walker v.*

24  
 25 (Footnote Cont’d From Previous Page)

26 *Telesis Group Comprehensive Disability Benefits Plan*, No. C 07-01904, 2008 WL 564796 (N.D.  
 27 Cal. Feb. 28, 2008) (which also pre-dates *Day*), did not decide the issue of a conflict but instead  
 28 granted a motion to conduct discovery based on declaration evidence that the Plan retained  
 oversight and provided financial incentives to encourage Sedgwick to administer the plan to the  
 defendants’ satisfaction. *Id.* at \*2.

1 *Metro. Life Ins. Co.*, 585 F. Supp. 2d 1167, 1168 (N.D. Cal. 2008); *Wilson v. Pharmedica Corp.*  
 2 *Long Term Disability Plan*, 102 F. Supp. 3d 373, 373 (D. Mass. 2015); *Wolberg v. AT&T*  
 3 *Broadband Pension Plan*, 123 F. App'x 840, 845 (10th Cir. 2005); *Zedwu v. Citigroup Long Term*  
 4 *Disability Plan*, 264 F.R.D. 622, 626 (N.D. Cal. 2010).<sup>4</sup> None of these cases apply to the instant  
 5 litigation, where the dual-role conflict is absent. *See Day*, 698 F.3d at 1096.

6 The decisions on which Plaintiff relies that suggest conflict of interest discovery is  
 7 appropriate in the absence of a dual-role conflict of interest—*Doe v. AT&T Western Disability*  
 8 *Benefits Program*, No. C-11-4603, 2012 WL 1669882 (N.D. Cal. May 14, 2012); *Peterson v.*  
 9 *AT&T Umbrella Benefit Plan No. 1*, No. C-10-03097, 2011 WL 5882877 (N.D. Cal. Nov. 23,  
 10 2011); *Rude v. Intel Corp. Long Term Disability Plan*, No. CV-11-1966, 2012 WL 4120490, at \*1  
 11 (D. Ariz. Sep. 19, 2012); *Leu v. Cox Long-Term Disability Plan*, No. 2:08-cv-00889, 2009 WL  
 12 2219288, at \*3-4 (D. Ariz. Jul. 24, 2009); and *Megeurditchian v. Federal Express Corp. Long*  
 13 *Term Disability Plan*, No. 2:18-cv-00913, 2018 WL 5794477 (C.D. Cal. Nov. 5, 2018)<sup>5</sup>—are  
 14 unpublished, not from this District, and have no precedential value. *Doe* and *Peterson* (which  
 15 involved Sedgwick's administration of an AT&T ERISA plan), both pre-date *Day*, 698 F.3d at  
 16 1096, in which the Ninth Circuit upheld a decision finding no conflict of interest involving an  
 17 AT&T plan administered by Sedgwick, and accordingly should be disregarded.

18 **B. Plaintiff's Proposed Discovery Is Overly Broad, Unduly Burdensome, and**  
 19 **Disproportionate to the Needs of the Case.**

20 Even if Plaintiff were permitted limited discovery despite the absence of a dual-role  
 21 conflict, this Court should exercise its discretion to deny Plaintiff's proposed discovery requests  
 22 under Rule 26(b)(1) because the requests are excessive, overly broad, unduly burdensome, and  
 23 disproportionate to the needs of the case. *See Culver*, 2019 WL 568927, at \*3 (alternatively  
 24 denying discovery requests based on lack of proportionality). Where courts have permitted

25 \_\_\_\_\_  
 26 <sup>4</sup> In another case on which Plaintiff relies, the court permitted limited discovery because it was  
 27 applying a *de novo* rather than abuse-of-discretion standard of review. *Gonda v. Permanente Med.*  
 28 *Grp., Inc.*, 300 F.R.D. 609, 612 (N.D. Cal. 2014).

<sup>5</sup> In *Megeurditchian*, the court relied entirely on cases pre-dating *Day* to support its discovery  
 order. *See Megeurditchian*, 2018 WL 5794477, at \*1-2.

1 discovery concerning a structural conflict of interest, they have emphasized that such discovery  
2 “should be narrowly tailored to illuminate the nature, extent, and effect of a conflict of interest on  
3 a decision making process and” should not permit such broad discovery to “constitute a fishing  
4 expedition.” *Villanueva*, 2013 WL 398878, at \*3 (quoting *Groom v. Standard Ins. Co.*, 492 F.  
5 Supp. 2d 1202, 1205-06 (C.D. Cal. 2007)).

6 As a whole, Plaintiff’s proposed discovery requests are far from “narrowly tailored” and  
7 instead are exactly the type of “fishing expedition” that long-standing restrictions on discovery are  
8 designed to prevent. The discovery requests are not focused on the claim at issue, and instead  
9 attempt to capture the minutia about all aspects of the relationship between the Plan Administrator,  
10 Sedgwick, and another third party, Network Medical Review Co., Ltd. (“NMR”), the entity  
11 through which Sedgwick obtained a third-party physician advisor to review Plaintiff’s claim. By  
12 way of example only, Plaintiff seeks “All DOCUMENTS that constitute or describe YOUR  
13 internal rules, guidelines, protocols or other criteria in effect during the RELEVANT TIME  
14 PERIOD [which covers the period of early 2018 through the present] for evaluating long-term  
15 disability CLAIMS or APPEALS,” regardless of the underlying condition involved or status of the  
16 case. (RFP No. 9.) Plaintiff seeks similar information for Sedgwick. (RFP No. 10.) Plaintiff  
17 further seeks all “DOCUMENTS that describe any relationship between YOU or AT&T and  
18 SEDGWICK,” including but not limited to all invoices (regardless of the Program at issue or the  
19 types of invoices) during the RELEVANT TIME PERIOD. (RFP Nos. 11, 14 and 20 (adding “any  
20 relationship between YOU or SEDGWICK and NMR”)).

21 Additionally, Plaintiff demands “All DOCUMENTS describing or analyzing the plan  
22 administration services provided by SEDGWICK to THE PLAN and/or AT&T from 2015 to the  
23 present.” (RFP No. 15). Plaintiff demands “All DOCUMENTS RELATING to financial or any  
24 other incentives for YOUR employees and/or employees of SEDGWICK involved in reviewing  
25 and deciding disability CLAIMS and APPEALS” (RFP No. 16), despite the fact that Defendant  
26 AT&T Umbrella Benefit Plan No. 3 employees do NOT decide claims and appeals and AT&T  
27 Umbrella Plan No. 3 has no access to Sedgwick’s documents – as Sedgwick is a separate business  
28 and third-party to this litigation.

1 Plaintiff expands her overbroad requests by demanding “ALL DOCUMENTS sent by  
 2 NMR and received by YOU, AT&T, or SEDGWICK [despite Defendant’s lack of access to  
 3 Sedgwick’s records] ... relating to the business services that NMR would provide if engaged  
 4 including, but not limited to, any manuals, statements of NMR’s mission, statements of NMR’s  
 5 philosophy, descriptions of physician procedures, referral guidelines, general descriptions of  
 6 disability evaluation procedures, descriptions of medical disability evaluation procedures,  
 7 descriptions of medical disability management, descriptions of the medical review services  
 8 provided by NMR, descriptions of the independent medical evaluation services provided by NMR,  
 9 descriptions of NMR’s medical consultation fee schedules, and description of NMR’s guidelines  
 10 for reviewing physicians, from 2015 to the present.” (RFP No. 22, *see also* RFP No. 12 similar  
 11 request for all documents sent by Sedgwick). *See also*, ROGs No. 7, 8 (“If the compensation any  
 12 PERSONS who ... determin[ed] PLAINTIFF’S CLAIM or APPEAL is, RELATED in any way to  
 13 the approval and/or denial of CLAIMS and/or APPEALS, state the basis or method of calculating  
 14 any such RELATE compensation”. Plaintiff also demands all “DOCUMENTS describing the  
 15 monetary value of the benefits denied or approved under THE PLAN in each year from 2015 to  
 16 the present.” (RFP No. 18), *See also* ROGs Nos. 9, 10, 11 (requesting the number of claims each  
 17 year from 2015 to the present under the PLAN to which NMR provided medical review services  
 18 that resulted in approval and the number that resulted in denial regardless of the type of claim or  
 19 any resemblance to Plaintiff’s case.

20 In an attempt to impose Plaintiff’s burden of proof on Defendant, Plaintiff demands “All  
 21 DOCUMENTS that YOU claim support YOUR contention, if any, that a conflict of interest did  
 22 not influence YOUR or SEDGWICK’s decision-making process of PLAINTIFF’S CLAIM or  
 23 APPEAL.” Similarly, Plaintiff’s Interrogatory No. 4 demands AT&T Umbrella Plan No. 3  
 24 “IDENTIFY all DOCUMENTS that you contend constitute affirmative evidence that a conflict of  
 25 interest did not influence YOUR or SEDGWICK’s decision-making process of PLAINTIFF’S  
 26 CLAIM or APPEAL.” *See also*, ROGs No. 1, 2, 3 and 5. Interrogatory No. 1 states, “If YOU  
 27 contend that YOU or SEDGWICK used a neutral, independent review process in the  
 28 administration of PLAINTIFF’S CLAIM or APPEAL, state the basis of this contention, including,

1 but not limited to, by IDENTIFYING all PERSONS with knowledge of the basis of this  
2 contention and all DOCUMENTS that YOU contend support this contention.”.

3 Plaintiff has failed to provide *any* authority for such expansive discovery where, as here,  
4 there is no structural conflict of interest in the first instance. Notably, as described above, the vast  
5 majority of decisions to which Plaintiff cites as support for her various categories of discovery  
6 involved undisputed structural conflicts of interest. The proposed discovery requests are overly  
7 broad, unduly burdensome, and not necessary to resolve the issues in the case. Moreover, because  
8 this Court will apply the abuse of discretion standard even *if* a conflict of interest were established  
9 (which is not the case), the expansive discovery is disproportionate to the needs of the case. *See*  
10 *Montour*, 588 F.3d at 629. Because discovery is not permitted where, as here, there is no structural  
11 conflict of interest, and because the discovery Plaintiff attempts to propound is highly  
12 disproportionate to the possible needs for discovery even if there were a structural conflict of  
13 interest, Plaintiff’s motion for discovery should be denied in its entirety.

14 DATED: January 31, 2020

KANTOR & KANTOR, LLP

15 By: /s/ Michelle L. Roberts  
16 Michelle L. Roberts  
17 Attorneys for Plaintiff,  
RUBY CHACKO

18 DATED: January 31, 2020

CAMPBELL LITIGATION, P.C.

19 By: /s/ Stacey Campbell  
20 Stacey Campbell  
21 Attorneys for Defendant,  
22 AT&T UMBRELLA BENEFIT  
23 PLAN NO. 3

24 **FILER’S ATTESTATION**

25 The filing attorney attests that she has obtained concurrence regarding the filing of this  
26 document and its content from the signatories to this document.

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