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AT&T UMBRELLA BENEFIT PLAN NO. 3

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

14 RUBY CHACKO,

15 Plaintiff,

16 vs.

17 AT&T UMBRELLA BENEFIT PLAN NO. 3,

18 Defendant.

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

**JOINT STATEMENT RE SECOND
DISCOVERY DISAGREEMENT**

Date: August 7, 2020
Time: 10:00 a.m.
Courtroom: 27, 8th Floor
Location: 501 I Street
Sacramento, CA 95814

19
20 Pursuant to Eastern District Local Rule 251, the parties hereby submit the following Joint
21 Statement in connection with Plaintiff’s Second Motion to Compel Discovery Responses from
22 Defendant AT&T Umbrella Benefits Plan No. 3 (“the Plan”) to Plaintiff’s Second Request for
23 Production of Documents and First and Second Sets of Interrogatories, and Plaintiff’s Motion for
24 Sanctions against the Plan for its deficient responses.

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

2 This is Plaintiff’s Second Motion to Compel discovery responses from Defendant
3 pertaining to the conflicts of interests relevant to the disposition of this claim for disability benefits
4 under the Employee Retirement Income Security Act of 1974 (“ERISA”). Plaintiff further
5 requests that the Court award Plaintiff sanctions against the Plan in the amount of attorneys’ fees
6 and costs expended in relation to her Second Motion to Compel, to be determined at a later date.

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

8 This case involves a claim by Plaintiff for benefits under an ERISA-governed employee
9 benefit plan in which she was a participant while employed by AT&T. Plaintiff brought this
10 action for the purpose of recovering long-term disability (“LTD”) benefits under the Plan.

11 This is the parties’ second joint statement related to the disagreement set forth in the first
12 joint statement filed on February 21, 2020 (Dkt. No. 25). The parties refer the Court to Docket
13 No. 25 and will not repeat the statements therein. Your Honor issued a discovery order on March
14 16, 2020 (Dkt. No. 29), and Plaintiff sought reconsideration of that order on March 26, 2020 (Dkt.
15 No. 32). District Judge John A. Mendez granted Plaintiff’s request for reconsideration in part as
16 set forth in the Court’s April 27, 2020 Order (“the Order”).

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

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

19 On April 29, 2020, Plaintiff’s lead attorney, Michelle Roberts, emailed the Plan’s
20 attorneys, Stacey Campbell and Johnathan Koonce to meet and confer about the Order. Ms.
21 Roberts noted that the Order did not specifically identify which discovery requests were approved
22 by the Court, but that of the several requests Plaintiff identified in her request for reconsideration,
23 that she would seek responses for only RFP Nos. 20, 22, 26, and 27, and Interrogatories 9, 10, 11,
24 12, 13. In addition, Plaintiff planned to serve (and did serve) a Second Set of Interrogatories on
25 April 30, 2020. Ms. Roberts proposed that the Plan respond to all outstanding requests by June 1,
26 2020 and the Plan agreed.

27 On May 8, 2020, Ms. Roberts, Mr. Campbell, and Mr. Koonce met and conferred
28 telephonically for one hour about the requests. The Plan’s attorneys are in Colorado which is why

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1 they conferred telephonically (in addition to the COVID-19 shelter-in-place orders). They went
2 through the requests and discussed each one at length. Based on the discussion, Ms. Roberts
3 agreed to withdraw additional requests and to narrow the time frame applicable to the requests to
4 2017 to 2019 (rather than from 2015 to the present). By follow up email to Plan counsel on May
5 8th, Ms. Roberts confirmed that the only discovery requests for which Plaintiff seeks a response
6 are RFP Nos. 20, 22, 27 and Rogs 9, 10, 11, 14, 15, 18 and 19.

7 On June 1, 2020, Mr. Koonce contacted Ms. Roberts for an extension to respond to June 5,
8 2020; Ms. Roberts agreed to this extension. On June 5, 2020, Mr. Koonce emailed Ms. Roberts
9 for another extension to June 10, 2020; Ms. Roberts agreed to this extension. On June 9, 2020, the
10 Plan served its responses to the above requests. On the same day, Ms. Roberts emailed Plan
11 counsel advising them that she intended to move to compel again and seek sanctions and asked for
12 availability for a meet and confer.

13 On June 10, 2020, Ms. Roberts and Mr. Koonce met and conferred by telephone. Ms.
14 Roberts explained that the Plan's objections and wholesale refusal to search for the requested
15 documents and information is contrary to the Order in this case and an attempt to re-litigate issues
16 the Court already decided. Mr. Koonce explained that the Plan's position is that their responses
17 are consistent with the Order.

18 Plaintiff sent the Plan's attorneys a draft of the joint statement on June 23, 2020. The Plan
19 completed its section and sent it to Plaintiff's attorney on July 20, 2020. After completion of this
20 joint statement, Mr. Campbell, Mr. Koonce, and Ms. Roberts met and conferred telephonically on
21 July 27, 2020. They were not able to resolve the dispute or narrow the issues further.

22 **B. The Discovery Requests and Responses at Issue**

23 The discovery requests and responses at issue are:

24 **Plaintiff's Second Request of Production of Documents ("RFP") to Defendant:**

25 **RFP NO. 20:** All DOCUMENTS that describe any relationship between YOU or SEDGWICK
26 and NMR, including, but not limited to, contracts, memoranda of understanding, service
27 agreements, vendor agreements, policy letters, and invoices in effect during the RELEVANT
28 TIME PERIOD.

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1 **RESPONSE:** Defendant objects to this Request to the extent it seeks “all documents, which is
2 facially overbroad, especially where Plaintiff is trying to show a financial conflict with Dr.
3 Howard Grattan because of the medical review he performed as part of the denial of Plaintiff’s
4 LTD appeal. Defendant further objects to this Request to the extent it seeks confidential health
5 information of third parties who are not part of this litigation, and to the extent it seeks
6 information protected by the attorney-client privilege and/or work product doctrine or is otherwise
7 protected by confidential trade secrets. Defendant objects to this Request to the extent it seeks the
8 production of information that is not relevant to the determination of whether a financial conflict
9 of interest exists between the Plan and Sedgwick Claims Management Services, Inc.
10 (“Sedgwick”), *see Santos v. Quebecor World Long Term Disability Plan*, 1:08-CV-565 AWI
11 GSA, 2009 WL 1362696, at *8 (E.D. Cal. May 14, 2009) (finding that it is “unnecessary to
12 produce ‘all agreements,’ rather [the plaintiff] may inquire into the existence of agreements that
13 show financial incentives for denials of LTD claims.”), or whether a financial conflict of interests
14 exists for Dr. Howard Grattan.
15 Subject to and without waiving the foregoing objections, Defendant refers Plaintiff to Exhibit A,
16 Declaration of Jeremy S. Siegel, Exhibit B, Declaration of Charles French, and to the HR Benefit
17 Services Agreement between the Plan Administrator and Sedgwick, Chacko AR 000676-000831,
18 which have been previously produced. Defendant will further move the Court for an Order of
19 protection from the undue burden and expense from responding to the Request and ask the Court
20 to forbid Plaintiff’s Request for Production.

21 **RFP NO. 22:** All DOCUMENTS sent by NMR and received by YOU, AT&T, or SEDGWICK
22 describing, evidencing, constituting, referring, or relating the business services that NMR would
23 provide if engaged by YOU, AT&T, or SEDGWICK, including, but not limited to, any manuals,
24 statements of NMR’s mission, statements of NMR’s philosophy, descriptions of physician
25 procedures, referral guidelines, general descriptions of disability evaluation procedures,
26 descriptions of medical disability management, descriptions of the medical review services
27 provided by NMR, descriptions of the independent medical evaluation services provided by NMR,
28 descriptions of NMR’s medical consultation fee schedules, and descriptions of NMR’s guidelines

1 for reviewing physicians, from 2015 to the present.

2 **RESPONSE:** Defendant objects to this Request to the extent it seeks “all documents, which is
3 facially overbroad. Defendant further objects to the extent this Request seeks information that is
4 not relevant to the determination of whether a financial conflict of interest exists between the Plan
5 and Sedgwick, and therefore not proportional to the needs of the case considering the factors set
6 forth in Fed. R. Civ. P. 26(b)(1). Specifically, NMR’s mission statement, manuals, and statements
7 of philosophy are not relevant to determining whether any conflict of interest exists between
8 AT&T and the Claims Administrator, Sedgwick. *See Dimry v. Bert Bell/Pete Rozelle NFL Player*
9 *Ret. Plan*, 19-CV-05360-JSC, 2020 WL 1865192, at *2 (N.D. Cal. Apr. 14, 2020) (denying
10 plaintiff’s request for training manuals because they are not relevant to a potential financial
11 conflict of interest).

12 Subject to and without waiving the foregoing objections, Defendant states that it does not have
13 any information responsive to this Request.

14 **RFP NO. 27:** All DOCUMENTS IDENTIFIED and/or relied upon in YOUR responses to
15 PLAINTIFF’s Interrogatories to YOU, Set One, served concurrently herewith.

16 **RESPONSE:** Defendant objects to this Request to the extent it is vague, ambiguous and overly
17 broad. Subject to the foregoing objections, Defendant refers Plaintiff to Chacko AR 000676-
18 000831; the Declaration of Jeremy S. Seigel; and the Declaration of Charles French.

19 **Plaintiff’s First Set and Second Set of Interrogatories (“Rog”) to Defendant:**

20 **ROG NO. 9:** State the number of CLAIMS and APPEALS under the PLAN as to which NMR
21 provided medical review services annually from 2015 to the present, indicating separately for each
22 year.

23 **RESPONSE:** Defendant objects to the phrase “medical review services” as it is undefined by
24 Plaintiff, making the Interrogatory vague and ambiguous. Defendant further objects to this
25 Interrogatory on the grounds that it is overly broad to the extent it seeks claims when NMR was
26 not involved in Plaintiff’s claim in this case, but was only involved in Plaintiff’s appeal, and to the
27 extent it seeks the total number of claims and appeals for which NMR provided medical review
28 services over a three-year period from 2017 to 2019, and is not limited to long term disability

1 appeals, which is the subject of Plaintiff's ERISA claim. Defendant objects that the total number
 2 of claims and appeals for which NMR provides medical review services is not relevant to whether
 3 a financial conflict of interest exists between the Plan and the Claims Administrator Sedgwick
 4 Claims Management Services, Inc. ("Sedgwick"), or whether a financial conflict of interests exists
 5 for NMR, making the Interrogatory not proportional to the needs of the case considering the
 6 factors set forth in Fed. R. Civ. P. 26(b)(1), including: 1) the importance of the issues at stake in
 7 the case, given *Day v. AT&T Disability Income Plan*, 698 F.3d 1091 (9th Cir. 2012)(finding no
 8 conflict of interest exists because "[t]he Plan is funded by AT&T and not Sedgwick, and
 9 administered by Sedgwick and not AT&T."); 2) the parties' relative access to relevant
 10 information; and 3) the importance of this discovery in resolving the issues in the case. Plaintiff's
 11 Interrogatory also assumes that such information is readily available.

12 Subject to and without waiving the foregoing objections, Defendant states that AT&T does not
 13 have any affiliation with any of the medical professionals who complete the independent physician
 14 advisor reports or independent medical examinations or reviews, including physicians retained by
 15 NMR. AT&T does not have any role in selecting the medical professionals who complete the
 16 independent physician advisor reports or independent medical examinations or reviews. *See*
 17 Exhibit A, Declaration of Jeremy Seigel; and Exhibit B, Declaration of Charles French. Defendant
 18 will further move the Court for an Order of protection from the undue burden and expense from
 19 responding to the Interrogatory and ask the Court to forbid Plaintiff's Interrogatory.

20 **ROG NO. 10:** State the number of CLAIMS and APPEALS under the PLAN as to which NMR
 21 provided medical review services that resulted in the approval of disability CLAIMS and/or
 22 APPEALS. Please indicate the number separately for each year from 2015 to the present.

23 **RESPONSE:** Defendant objects to the phrase "medical review services" as it is undefined by
 24 Plaintiff, making on the Interrogatory vague and ambiguous. Defendant further objects to this
 25 Interrogatory on the grounds that it is overly broad to the extent it seeks claims when NMR was
 26 not involved in Plaintiff's claim in this case, but was only involved in Plaintiff's appeal, and to the
 27 extent it seeks the total number of claims and appeals for which NMR provided medical review
 28 services over a three-year period from 2017 to 2019, and is not limited to long term disability

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1 appeals, which is the subject of Plaintiff's ERISA claim. Defendant objects that the total number
2 of claims and appeals for which NMR provides medical review services that resulted in the
3 approval of a disability claim and/or appeal is not relevant to whether a financial conflict of
4 interest exists between the Plan and the Claims Administrator Sedgwick, or whether a financial
5 conflict of interests exists for NMR, making the Interrogatory not proportional to the needs of the
6 case considering the factors set forth in Fed. R. Civ. P. 26(b)(1), including: 1) the importance of
7 the issues at stake in the case, given *Day*, 698 F.3d 1091 (finding no conflict of interest exists
8 because "[t]he Plan is funded by AT&T and not Sedgwick, and administered by Sedgwick and not
9 AT&T."); 2) the parties' relative access to relevant information; and 3) the importance of this
10 discovery in resolving the issues in the case. Plaintiff has not shown the propriety of this area of
11 inquiry, and the Interrogatory assumes that such information is readily available.

12 Subject to and without waiving the foregoing objections, Defendant states that AT&T does not
13 have any affiliation with any of the medical professionals who complete the independent physician
14 advisor reports or independent medical examinations or reviews, including physicians retained by
15 NMR. AT&T does not have any role in selecting the medical professionals who complete the
16 independent physician advisor reports or independent medical examinations or reviews. *See*
17 Exhibits A and B. Defendant will further move the Court for an Order of protection from the
18 undue burden and expense from responding to the Interrogatory and ask the Court to forbid
19 Plaintiff's Interrogatory.

20 **ROG NO. 11:** State the number of CLAIMS and APPEALS under the PLAN as to which NMR
21 provided medical review services that resulted in the denial of disability CLAIMS and/or
22 APPEALS. Please indicate the number separately for each year from 2015 to the present.

23 **RESPONSE:** Defendant objects to the phrase "medical review services" as it is undefined by
24 Plaintiff, making the Interrogatory vague and ambiguous. Defendant further objects to this
25 Interrogatory on the grounds that it is overly broad to the extent it seeks claims when NMR was
26 not involved in Plaintiff's claim in this case, but was only involved in Plaintiff's appeal, and to the
27 extent it seeks the total number of claims and appeals for which NMR provided medical review
28 services resulting in denial of disability claims and appeals over a three-year period from 2017 to

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1 2019, and is not limited to long term disability appeals, which is the subject of Plaintiff's ERISA
2 claim. Defendant objects that the total number of claims and appeals for which NMR provides
3 medical review services that resulted in the denial of a disability claim and/or appeal is not
4 relevant to whether a financial conflict of interest exists between the Plan and the Claims
5 Administrator Sedgwick, or whether a financial conflict of interests exists for NMR, making the
6 Interrogatory not proportional to the needs of the case considering the factors set forth in Fed. R.
7 Civ. P. 26(b)(1), including: 1) the importance of the issues at stake in the case, given *Day*, 698
8 F.3d 1091 (finding no conflict of interest exists because "[t]he Plan is funded by AT&T and not
9 Sedgwick, and administered by Sedgwick and not AT&T."); 2) the parties' relative access to
10 relevant information; and 3) the importance of this discovery in resolving the issues in the case.
11 Plaintiff has not shown the propriety of this area of inquiry and the Interrogatory also assumes that
12 such information is readily available.

13 Subject to and without waiving the foregoing objections, Defendant states that AT&T does not
14 have any affiliation with any of the medical professionals who complete the independent physician
15 advisor reports or independent medical examinations or reviews, including physicians retained by
16 NMR. AT&T does not have any role in selecting the medical professionals who complete the
17 independent physician advisor reports or independent medical examinations or reviews. *See*
18 Exhibits A and B. Defendant will further move the Court for an Order of protection from the
19 undue burden and expense from responding to the Interrogatory and ask the Court to forbid
20 Plaintiff's Interrogatory.

21 **ROG NO. 14:** State the number of CLAIMS and APPEALS under the PLAN for which Dr.
22 Howard Grattan provided medical review services annually from 2015 to the present, indicating
23 separately for each year.

24 **RESPONSE:** Defendant objects to the phrase "medical review services" as it is undefined by
25 Plaintiff, making the Interrogatory vague and ambiguous. Defendant further objects on the
26 grounds that this Interrogatory is overly broad and unduly burdensome to the extent it seeks
27 information of the number of "claims," when Dr. Grattan was not involved in Plaintiff's claim in
28 this case, but was only involved in Plaintiff's LTD appeal, and to the extent it seeks the total

1 number of claims and appeals under the Plan for which Dr. Howard Grattan provided medical
2 review services on an annual basis, over a three-year period from 2017 to 2019. Specifically,
3 because Dr. Grattan is retained by NMR, which has no affiliation with either the Plan or Sedgwick
4 (*see* Exhibit B), the burden and expense of requesting NMR to provide information regarding the
5 number of claims and appeals for which Dr. Grattan provided medical review services from 2017
6 to 2019 outweighs its likely benefit in determining whether a financial conflict exists between the
7 Plan and Sedgwick, or whether any financial conflict of interest exists for Dr. Grattan. Plaintiff's
8 Interrogatory also assumes that such information is readily available.

9 Defendant objects to this Interrogatory on the grounds that it is not relevant to the parties' claims
10 or defenses in this case because the request is not limited to appeals concerning long term
11 disability benefits, and therefore not proportional to the needs of the case considering the factors
12 set forth in Fed. R. Civ. P. 26(b)(1), including: 1) the importance of the issues at stake in the case,
13 given *Day v. AT&T Disability Income Plan*, 698 F.3d 1091 (9th Cir. 2012)(finding no conflict of
14 interest exists because "[t]he Plan is funded by AT&T and not Sedgwick, and administered by
15 Sedgwick and not AT&T."); 2) the parties' relative access to relevant information; and 3) the
16 importance of this discovery in resolving the issues in the case . Plaintiff does not allege, and fails
17 to show, the propriety of this area of inquiry. Such information is only possibly relevant if the
18 number of claims and appeals for which Dr. Grattan provided medical review services show a bias
19 in favor of a "no disability" finding, and if the claims personnel who selected Dr. Grattan knew of
20 the skewed findings, *see Santos v. Quebecor World Long Term Disability Plan*, 1:08-CV-565
21 AWI GSA, 2009 WL 1362696, at *9 (E.D. Cal. May 14, 2009) (only permitting plaintiff to
22 inquire whether her employer perceived or was actually aware of any tendency by the doctors or
23 their employing agency to routinely or disproportionately make findings of "no disability" or the
24 like), and that inquiry is more appropriate for NMR, not the Plan.

25 Defendant will further move the Court for an Order of protection from the undue burden and
26 expense from responding to the Interrogatory and ask the Court to forbid Plaintiff's Interrogatory.

27 **ROG NO. 15:** State the total compensation paid to Dr. Howard Grattan on behalf of the PLAN for
28 medical review services each year from 2015 to the present.

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1 **RESPONSE:** Defendant objects to the phrase “medical review services” as it is undefined by
2 Plaintiff, making on the Interrogatory vague and ambiguous. Defendant further objects that
3 information regarding the total compensation paid to Dr. Grattan is not relevant to the parties’
4 claims or defenses in this case because neither the Plan nor Sedgwick compensated Dr. Grattan.
5 Neither the Plan nor Sedgwick have any affiliation with Dr. Grattan, and compensation he
6 received from NMR does not make it less or more likely that his compensation influenced his
7 opinion regarding Plaintiff’s long term disability benefit claim and/or appeal.
8 Moreover, pay records of individual physicians who reviewed Plaintiff’s claim is overly
9 burdensome because its intrusiveness outweighs its likely benefit and is therefore not proportional
10 to the needs of this case considering the factors set forth in Fed. R. Civ. P. 26(b)(1), including: 1)
11 the importance of the issues at stake in the case, given *Day*, 698 F.3d 1091 (finding no conflict of
12 interest exists because “[t]he Plan is funded by AT&T and not Sedgwick, and administered by
13 Sedgwick and not AT&T.”); 2) the parties’ relative access to relevant information; and 3) the
14 importance of this discovery in resolving the issues in the case. *See Myers v. Prudential Ins. Co. of*
15 *Am.*, 581 F. Supp. 2d 904, 915 (E.D. Tenn. 2008) (disallowing discovery of pay records and
16 personnel files of the individual physicians who reviewed plaintiff’s claim, but allowing plaintiff
17 to discover the identity of the physician’s employer (which was an entity other than the defendant)
18 and information regarding the temporal and financial depth of the physician-employer’s
19 relationship to the defendant). Plaintiff’s Interrogatory assumes that information regarding
20 compensation paid to Dr. Grattan for medical services he provided to the Plan, specifically, is
21 available. Plaintiff’s inquiry is more appropriate for NMR, not the Plan.
22 Subject to and without waiving the foregoing objections, Defendant states that neither the Plan nor
23 Sedgwick have any affiliation with any of the medical professionals who complete the
24 independent physician advisor reports or independent medical examinations or reviews, including
25 physicians retained by NMR. Sedgwick also does not have any role in selecting the medical
26 professionals who complete the independent physician advisor reports or independent medical
27 examinations or reviews, except to designate the specialty of the medical professional that is
28 required based upon the nature of the claim and stated medical condition(s). *See Exhibits A and B.*

1 Defendant further refers Plaintiff, pursuant to Fed. R. Civ. P. 33(d), to Chacko AR 000209-
2 000422, in which Dr. Grattan certifies and attests that he does “not accept compensation for
3 review activities that is dependent in any way on the specific outcome of the case,” and does not
4 have any financial conflict of interest regarding the referring entity; the group health plan that is
5 the subject of review; or any group health plan administrator, plan fiduciary, or plan employee.
6 Similarly, NMR attests that it has no conflict of interest with the medical review, the referring
7 entity, benefit plan, or attending provider, and also attests that “its compensation is not dependent
8 on the specific outcome of this review.” Defendant will further move the Court for an Order of
9 protection from the undue burden and expense from responding to the Interrogatory and ask the
10 Court to forbid Plaintiff’s Interrogatory.

11 **ROG NO. 18:** State the number of CLAIMS and APPEALS under the PLAN for which Dr.
12 Howard Grattan provided medical review services where he opined that the claimant did not have
13 the functional capacity for full-time work. Please indicate the number separately for each year
14 from 2015 to the present.

15 **RESPONSE:** Defendant objects to the phrase “medical review services” as it is undefined by
16 Plaintiff, making on the Interrogatory vague and ambiguous. Defendant further objects on the
17 grounds that this Interrogatory is overly broad, unduly burdensome, and not proportional to the
18 needs of this case because it seeks information on the number of “claims,” when Dr. Grattan was
19 not involved in Plaintiff’s claim in this case, but was only involved in Plaintiff’s LTD appeal, and
20 because Plaintiff fails to show how the number of claims and appeals where Dr. Grattan opined
21 that the claimant did not have the functional capacity for full-time work is relevant to establish a
22 financial conflict. Plaintiff’s Interrogatory requires the Court to assume that, or analyze whether,
23 Dr. Grattan’s findings were incorrect, and such information goes more to the merits of Plaintiff’s
24 claim rather than the assessment of whether a financial conflict exists between the Plan and
25 Sedgwick, or whether a financial conflict of interest exists for Dr. Grattan, making the request
26 improper. Defendant also objects because Plaintiff’s Interrogatory assumes the availability of such
27 information. Defendant will further move the Court for an Order of protection from the undue
28 burden and expense from responding to the Interrogatory and ask the Court to forbid Plaintiff’s

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1 Interrogatory.

2 **ROG NO. 19:** State the number of CLAIMS and APPEALS under the PLAN for which Dr.
3 Howard Grattan provided medical review services where he opined that the claimant did have
4 functional capacity for full-time work or where he opined that the medical evidence did not
5 support restrictions from full-time work. Please indicate the number separately for each year from
6 2015 to the present.

7 **RESPONSE:** Defendant objects to the phrase “medical review services” as it is undefined by
8 Plaintiff, making on the Interrogatory vague and ambiguous. Defendant further objects on the
9 grounds that this Interrogatory is overly broad, unduly burdensome, and not proportional to the
10 needs of this case because it seeks information on the number of “claims,” when Dr. Grattan was
11 not involved in Plaintiff’s claim in this case, but was only involved in Plaintiff’s LTD appeal, and
12 because Plaintiff fails to show how the number of claims and appeals where Dr. Grattan opined
13 that the claimant did not have the functional capacity for full-time work or where he opined that
14 the medical evidence did not support restrictions from full-time work is relevant to establish a
15 financial conflict.

16 Plaintiff’s Interrogatory requires the Court to assume that, or analyze whether, Dr. Grattan’s
17 findings were incorrect, and such information goes more to the merits of Plaintiff’s claim rather
18 than the assessment of whether a financial conflict exists between the Plan and Sedgwick, or
19 whether a financial conflict of interest exists for Dr. Grattan, making the request improper.

20 Defendant also objects because Plaintiff’s Interrogatory assumes the availability of such
21 information. Defendant will further move the Court for an Order of protection from the undue
22 burden and expense from responding to the Interrogatory and ask the Court to forbid Plaintiff’s
23 Interrogatory.

24 **IV. PLAINTIFF’S CONTENTIONS**

25 **A. The Plan’s Objections to the Requests Are Foreclosed by the District Court’s Order.**

26 The Plan objects to the Requests on the basis that they are not relevant to the Plan’s conflict
27 of interest, which was an argument already considered and rejected by the district court. The
28 district court made clear that on the issue of the retained expert’s conflict of interest: “[t]hat the

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1 Plan does not have an underlying structural conflict of interest, does not preclude it from having a
2 financial conflict.” *Chacko v. AT&T Umbrella Benefit Plan No. 3*, No. 2:19-CV-01837-JAM -DB,
3 2020 WL 1984171, at *3 (E.D. Cal. Apr. 27, 2020). The court granted Plaintiff’s request for
4 reconsideration on the issue as to discovery of a potential financial conflict of the independent
5 physician consultants. *Id.*

6 In *Demer v. IBM Corp. LTD Plan*, 835 F.3d 893 (9th Cir. 2016), upon which the district
7 court relies, the Ninth Circuit considered the financial conflict of independent physician
8 consultants. *Id.* at 901. That included the number of reviews that the physicians did for MetLife
9 and the compensation that they received from those reviews. In *Demer*, discovery showed that for
10 2009 and 2010, the doctors performed more than 250 medical reviews annually and received more
11 than \$125,000 annually for these reviews. *Id.* The Ninth Circuit found that this was enough
12 evidence to show a financial conflict sufficient to warrant a degree of skepticism that is imputed to
13 MetLife. *Id.* at 901-02. This is precisely the information requested by Interrogatory Nos. 14
14 (requesting number of reviews Dr. Grattan provided for the Plan), and 15 (requesting total
15 compensation paid to Dr. Grattan on behalf of the Plan).

16 In the Order, Judge Mendez also cited to two cases within this circuit that have allowed
17 discovery of potential independent physician consultants’ financial conflicts. *Chacko*, 2020 WL
18 1984171, at *3. The first case, *Wojno v. Cigna Grp. Ins.*, No. CV 10-07238-JAK JEMX, 2011
19 WL 3236025, at *1 (C.D. Cal. July 21, 2011), is a case involving a denied disability claim subject
20 to abuse of discretion review (like the present case), where the court granted the plaintiff’s motion
21 to compel (without the benefit of a protective order) requiring CIGNA to disclose the amount of
22 money it paid to MES Solutions (the third-party vendor who hired the reviewing doctor) for
23 medical examinations and medical reviews over a five-year period. Notably in *Wojno*, CIGNA
24 had previously disclosed the amount of money it paid the reviewing doctor over the last five years.

25 The second case, *Dimry v. Bert Bell/Pete Rozelle NFL Player Ret. Plan*, No. 19-CV-05360-
26 JSC, 2020 WL 1865192 (N.D. Cal. Apr. 14, 2020), another case involving abuse of discretion
27 review and a self-funded disability plan with allegedly no structural conflict of interest, the court
28 ordered “the Plan shall provide Plaintiff with records sufficient to show the total amount of

1 compensation paid to each physician for the year the physician examined Plaintiff or provided a
2 report on him, as well as the amount of money the physician was paid for the examination/report.”
3 *Id.* at *3.

4 Similarly, here, Ms. Chacko seeks information related to the vendor’s conflict of interest:
5 (1) contracts, service agreements, and other documents in effect during a three-year period
6 between the Plan or Sedgwick and NMR (the third-party vendor Sedgwick retained and who hired
7 Dr. Grattan to review Ms. Chacko’s disability claim) (RFP No. 20); and (2) descriptions of
8 services and related documents provided by NMR to the Plan or Sedgwick in effect during a three-
9 year period (RFP No. 22).

10 Moreover, another court in this circuit has found Ms. Chacko’s other requests relevant and
11 discoverable as against the Plan in a matter involving a related AT&T Plan. In *Doe v. AT & T W.*
12 *Disability Benefits Program*, No. C-11-4603 DMR, 2012 WL 1669882, at *4 (N.D. Cal. May 14,
13 2012), Magistrate Judge Donna Ryu found that interrogatories seeking the total numbers of claims
14 and appeals in 2009 and 2010 for which NMR or other entities provided medical review services,
15 as well as the total numbers among these that resulted in NMR approving and denying disability
16 claims and appeals to be relevant information and discoverable under the Contract audit
17 provisions, as those provisions make the information readily obtainable by Defendant. Again, this
18 is precisely the information sought here, except limited to just Dr. Grattan (hired by NMR). *See*
19 Interrogatory Nos. 18 (requesting the number of medical reviews where Dr. Grattan opined that a
20 claimant did not have the functional capacity for full-time work); 19 (requesting the number of
21 medical reviews where Dr. Grattan opined that a claimant did have the capacity for full-time
22 work).

23 In sum, Plaintiff’s requests were approved by the district court and find ample support in
24 the case law. *See Doe*, 2012 WL 1669882; *Zewdu v. Citigroup Long Term Disability Plan*, 264
25 F.R.D. 622 (N.D. Cal. 2010) (finding permissible interrogatories seeking information regarding
26 compensation agreement between administrator that also funded plan and retained physician who
27 reviewed beneficiary’s claim for LTD benefits, and number of disability claims reviewed, granted,
28 and denied by physician); *Lavino v. Metro. Life Ins. Co.*, 2010 WL 234817 (C.D. Cal. Jan. 13,

1 2010) (factoring in Defendant’s financial relationship with NMR); *Walker v. Metro. Life Ins. Co.*,
 2 585 F. Supp. 2d 1167 (N.D. Cal. 2008) (finding warranted discovery of statistical information
 3 regarding number of claims granted and denied following review by company’s physicians);
 4 *Caplan v. CNA Fin. Corp.*, 544 F. Supp. 2d 984, 989-90 (N.D. Cal. 2008) (heightened “skeptical”
 5 standard of review applied where administrator relied on biased provider of review services and
 6 reviewing physician); *Hall v. Life Ins. Co. of N. Am.*, 265 F.R.D. 356, 364 (N.D. Ind. 2010)
 7 (ordering production of compensation information related to medical reviews). The Plan’s
 8 wholesale refusal to even search for the requested information is completely unjustified and
 9 warrant sanctions.

10 **B. The Plan Has Access to the Information Sought; It Has Just Refused to Search for
 and Gather the Information.**

11 The Plan has a legal right to obtain the information sought by Plaintiff and has an obligation
 12 to produce the information under Rule 34. *Riddell Sports Inc. v. Brooks*, 158 F.R.D. 555, 558
 13 (S.D.N.Y. 1994) (“Rule 34(a) of the [F.R.C.P.] Procedure provides that “any party” may request
 14 of “any other party” documents that are “in the possession, custody or control of the party upon
 15 whom the request is served.” If the producing party has the legal right or the practical ability to
 16 obtain the documents, then it is deemed to have “control,” even if the documents are in the
 17 possession of a non-party. *See* 4A J. Moore, *Moore’s Federal Practice* ¶ 34.17, at 34-69-34-72
 18 (1994); 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2210, at 621-24 (1970).”)
 19 The Plan argues that it “has no obligation to compel the administrator, Sedgwick or NMR to
 20 produce documents and information that Plaintiff seeks because the information is not
 21 discoverable.” Not only does this contradict Judge Mendez’s Order, the Plan does not deny that it
 22 has such right to the information Plaintiff seeks, it just refuses to exercise such right based on its
 23 objection that the discovery is not relevant.

24 FRCP 34(b)(2)(C) committee notes require that a responding party state any limitations to
 25 searches for documents. None of the Plan’s responses suggest that the Plan did any search for
 26 responsive documents or information. Any implication that the Plan cannot get the information
 27 that is maintained by its vendors is contradicted by *Doe* and the Plan’s own filings in this case. It
 28 is undisputed that Sedgwick is a Plan fiduciary since it has the discretionary authority to make

1 claim decisions. *See* Dkt. No. 25 at 9. In *Doe*, the court found that the AT&T Plan’s contract with
 2 Sedgwick grants the Plan extensive ownership rights over information and documents created
 3 during the claims administration process. *Doe*, 2012 WL 1669882, at *3. In the Services
 4 Agreement Contract between Sedgwick and AT&T Services, Inc. filed by the Plan in this case,
 5 AT&T has access to Sedgwick’s quality audit plans, performance management program and
 6 satisfaction survey, performance scorecards, etc. Dkt. No. 25-3 at AT&T-Chacko-JS 7. Sedgwick
 7 must also require that its subcontractors provide AT&T access to records. *Id.* The Plan’s
 8 declaration by Charles French, Senior Vice President – Operations of Sedgwick, does not dispute
 9 that Sedgwick has a contractual right to the information. EXHIBIT A. Instead, Mr. French states
 10 that the medical professionals are independent, and AT&T does not have any role in selecting
 11 them. *See id.* As noted above, that is beside the point.

12 **C. Defendant’s Objections that the Interrogatories are Unduly Burdensome Are**
 13 **Conclusory, Invalid, and Now Waived.**

14 The Plan claims that the interrogatories are unduly burdensome but does not state why they
 15 are burdensome beyond the objection that they are not relevant to the issues in this case. In
 16 contravention of the obligations imposed upon a party asserting such objections, Defendant failed
 17 to accompany the objections with explanations as to why each request is unduly burdensome. *See*
 18 *Eureka Financial Corp. v. Hartford Acc. and Indem. Co.*, 136 F.R.D. 179, 185 (E.D. Cal. 1991)
 19 (holding that responding parties must set forth reasons for their objections); *see also Burlington*
 20 *Northern and Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th
 21 Cir. 2005) cert. denied, 546 U.S. 939, 126 S. Ct. 428, 163 L. Ed. 2d 326 (2005); *McLeod,*
 22 *Alexander, Powel & Appfel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990); *A. Farber and*
 23 *Partners, Inc. v. Garber*, 234 F.R.D. 186, 188 (C.D. Cal. 2006) (“As an initial matter, general or
 24 boilerplate objections such as “overly burdensome and harassing” are improper-especially when a
 25 party fails to submit any evidentiary declarations supporting such objections. . . Similarly,
 26 boilerplate relevancy objections, without setting forth any explanation or argument why the
 27 requested documents are not relevant, are improper.”)

28 Because the Plan has refused to state this objection with specificity, the Court should

1 overrule and deem these objections as waived. *Nagele v. Electronic Data Systems Corp.*, 193
 2 F.R.D. 94, 109 (W.D.N.Y. 2000) (“It is settled law that to support an objection based upon
 3 burdensomeness the objecting party must particularize the basis for the objection as generalized
 4 assertions are inadequate. . . .Here, MetLife has failed to comply with this requirement and
 5 accordingly the objection on that ground is overruled.”); *see also Mancia v. Mayflower Textile*
 6 *Servs. Co.*, 253 F.R.D. 354, 364 (D.Md. 2008) (“The failure to particularize these objections as
 7 required leads to one of two conclusions: either the Defendants lacked a factual basis to make the
 8 objections that they did, which would violate Rule 26(g), or they complied with Rule 26(g), made
 9 a reasonable inquiry before answering and discovered facts that would support a legitimate
 10 objection, but they were waived for failure to specify them as required.”).

11 **V. DEFENDANT’S CONTENTIONS**

12 **A. Defendant’s Position**

13 Plaintiff equates the Court’s April 27, 2020 Order to a ruling that the Plan was prevented
 14 from raising objections to overbroad discovery requests, when the Court determined that it did “not
 15 find Plaintiff’s request for reconsideration related to the Magistrate Judge’s ruling denying
 16 Plaintiff’s motion to compel as to the structural conflict-of-interest discovery to be clearly erroneous
 17 or contrary to law.” ECF Doc. No. 37. The Court relied, however, upon *Demer*¹ in finding that “the
 18 Magistrate Judge’s ruling denying Plaintiff’s motion to compel as to discovery of a potential
 19 financial conflict to be contrary to law.” ECF Doc. No. 37. Specifically, the Court cited *Demer* for
 20 the proposition that “the Plan should produce its agreements with the independent physicians (as
 21 well as compensation) as those agreements might reveal a financial incentive to rule in favor of the
 22 plan.” *Id.* In response to Plaintiff’s discovery, the Plan produced “all agreements” it had with Dr.
 23 Grattan, the independent physician in question, including agreements related to compensation.
 24 Nothing else was produced because the Plan has no such documents or information.

25 The Plan complied with both the Court’s Order and *Demer* and Plaintiff has not shown that
 26 additional discovery is necessary regarding the alleged financial conflict after the Plan fully

27
 28 ¹ *Demer v. IBM Corporation LTD Plan*, 835 F.3d 893 (9th Cir. 2016).

1 complied with its discovery obligation. Plaintiff relies upon *Doe*² to try to convince this Court that
2 the Plan has an obligation to go to the Plan Administrator, who in turn must go to Sedgwick, who
3 in turn must go to NMR to obtain information Plaintiff seeks in hopes of showing a financial conflict,
4 but the unpublished *Doe* opinion goes beyond *Demer* because the claim administrator in *Demer*,
5 unlike this case, had a direct contractual relationship with the independent physician.

6 The Plan's objections (and answers) to Plaintiff's discovery are valid, were not waived and
7 because the Plan fully complied with its discovery obligations and the Court's Order, there is no
8 basis for the Court awarding sanctions. Because the Plan responded to Plaintiff's discovery
9 requests, the Plan seeks a protective order from the Court protecting the Plan from the undue burden
10 and expense of having to further respond to Plaintiff's discovery regarding the financial conflict.

11 **B. The Plan properly responded to Plaintiff's Discovery and the Court Did Not
Foreclose the Plan's Objections.**

12 The Court did not foreclose the Plan's objections to Plaintiff's discovery requests. ECF Doc. No.
13 37. The Court permitted limited discovery pertaining to a potential financial conflict-of-interest
14 related to the independent physician consultants. ECF Doc. No. 37. The Plan responded to
15 Plaintiff's discovery and Plaintiff has not shown that the Plan's responses do not comply with the
16 discovery rules and the Court's Order, including *Demer*. See *Shay v. Sun Life Fin. Serv. Co., Inc.*,
17 2:11-CV-804, 2012 WL 3839527, at *3 (S.D. Ohio Sept. 5, 2012) (Where Defendant has
18 voluntarily provided Plaintiff with information explaining the procedures it employs in obtaining,
19 utilizing, and compensating medical reviewers, the Court concluded that Plaintiff has failed to
20 demonstrate that discovery beyond the information Defendant voluntarily provided is warranted).

21 **C. The Plan Properly Objected to and Answered Plaintiff's Discovery Requests.**

22 The Court did not issue Plaintiff a license for a fishing expedition to uncover all documents
23 between the Plan, the Plan Administrator, Sedgwick, and NMR. The scope of Plaintiff's
24 discovery was limited to determine whether a financial conflict exists between the Plan and Dr.
25 Grattan and the Plan produced all discoverable information and documents.

26 After receiving the Plan's answers, which show no financial conflict between the Plan and

27 _____
28 ² *Doe v. AT&T Western Disabilities Benefits Program*, 2012 WL 1669882 (N.D. Cal. May 14, 2012).

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1 Dr. Grattan, Plaintiff now seeks to compel the Plan to produce additional information including
2 the compensation received by Dr. Grattan, the number of reviews he conducted (Interrogatories 14
3 and 15), the number of reviews where Dr. Grattan opined whether an individual had functional
4 capacity for full-time work (Interrogatories 18 and 19), and additional documents related to
5 contracts, services agreements and other documents between the Plan, Plan Administrator,
6 Sedgwick and NMR (RFP No. 20) and descriptions of services and related documents provided by
7 NMR (RFP No. 22). The Plan, through its answers, has already shown that it does not have this
8 type of information and the information is not relevant to whether a financial conflict exist
9 between the Plan and Dr. Grattan. The information is unduly burdensome and not proportional to
10 the needs of this case, as it relates to a determination of a financial conflict-of-interest between Dr.
11 Grattan and the Plan. The Plan already produced sufficient information and documents necessary
12 to determine whether a financial conflict-of-interest exists.

13 Two other Northern District Courts relying on declarations from AT&T employees similar
14 to the declarations submitted by the Plan in response to Plaintiff's discovery, found that (1)
15 Sedgwick had no direct economic interest in whether the claims were approved or denied because
16 it received a flat fee for its services that was unrelated to its approval rate, (2) there were no
17 incentives for Sedgwick or its employees to deny benefits, and (3) claim decisions were made by
18 independent physician advisors who were selected by an independent clearing house unaffiliated
19 with AT&T, the Plan, or Sedgwick. *See Burrows v. AT & T Umbrella Ben. Plan No. 1*, C10-1375
20 BZ, 2011 WL 996748, at *2-3 (N.D. Cal. Mar. 21, 2011) (citing *Edwards v. AT & T Disability*
21 *Income Plan*, C 07-4573 PJH, 2009 WL 650255, at *11 (N.D. Cal. Mar. 11, 2009) (finding no
22 conflict of interest exists).

23 In response to discovery, the Plan produced the Affidavit of Jeremy Seigel and the HR
24 Benefit Services Agreement with Sedgwick and an affidavit from Sedgwick which detailed that
25 even Sedgwick does not have any relationship or provide any guidance with any of the medical
26 professionals who conduct the reviews and examinations and does not select or play any other role
27 in the review process. Declaration of Charles French attached as Exh. A. The Plan fully
28 responded to Plaintiff's discovery and Plaintiff is not entitled to the additional discovery.

1 **D. *Doe* is Inconsistent with *Demer* and The Plan Has No Obligation to Compel the**
 2 **Plan Administrator, Sedgwick or NMR to Produce the Documents and**
 3 **Information that Plaintiff Seeks Because It Is Not Discoverable from the Plan.**

4 The Plan has no obligation to compel the administrator, Sedgwick or NMR to produce
 5 documents and information that Plaintiff seeks because the information is not discoverable from
 6 the Plan. The Plaintiff argues to the contrary and points to *Doe v. AT&T Western Disabilities*
 7 *Benefits Program*, 2012 WL 1669882 (N.D. Cal. May 14, 2012) in support of her position. *Doe*,
 8 is unique, however, because it appears to stand alone for the proposition that a plan must tender
 9 documents and information related to the specific decisions and compensation received by a
 10 reviewing physician who does not have a contract with the Plan, the administrator, or the claims
 11 administrator. In contrast, in *Demer*, the claims administrator, Met Life, directly contracted with
 12 the reviewing physicians and paid them directly. *Demer*, 835 F.3d at 901. The fact that the Plan,
 13 in the present matter and in *Doe*, are not the claims administrators and do not have a contract with
 14 the IPCs or the medical professional company is an important distinction, particularly when
 15 considering the scope of discovery and a potential financial conflict-of-interest. In *Demer*, the
 16 court noted that an IPC may have a potential financial conflict-of-interest because the IPCs
 17 “earned a substantial amount of money from Met Life each year.” *Demer*, 835 F.3d at 902.

18 Here, unlike *Demer*, the Plan has already provided discovery that the IPCs do not receive
 19 any amount of money directly from the Plan or Sedgwick. ECF Doc. No. 25-1 and French
 20 Declaration, Exhibit A. Moreover, Defendant further responded to Plaintiff’s discovery by
 21 referring Plaintiff to portions of the Administrative Record in this case in which Dr. Grattan
 22 certifies and attests that he does “not accept compensation for review activities that is dependent in
 23 any way on the specific outcome of the case,” and does not have any financial conflict of interest
 24 regarding the referring entity; the group health plan that is the subject of review; or any group
 25 health plan administrator, plan fiduciary, or plan employee. Similarly, NMR attests that it has no
 26 conflict of interest with the medical review, the referring entity, benefit plan, or attending
 27 provider, and also attests that “its compensation is not dependent on the specific outcome of this
 28 review.” *See* Ex B, Chacko AR 212.

1 With the exception of *Doe*, in nearly every other case cited by Plaintiff where a court has
 2 determined that the amount of money paid to a reviewing physician is discoverable, there had been
 3 a contract between a named party (the plan, the administrator, or the claims administrator) and
 4 either the reviewing physicians or the medical professional company that refers the physicians.
 5 For instance, in *Dimry v. Bert Bell/Pete Rozelle NFL Player Ret. Plan*, 2020 WL 1865192 (N.D.
 6 Cal. Apr. 14, 2020), the plan directly paid the reviewing physicians. *See also, Lavino v. Metro.*
 7 *Life Ins. Co.*, 2010 WL 234817 (C.D. Cal. Jan. 13, 2010) (administrator was a party and had a
 8 contract directly with the medical professional company); *Wojno v. Cigna Group Insurance, et al*,
 9 2011 WL 3236025 (C.D. Cal. July 21, 2011) (administrator was a party and had a contract directly
 10 with the medical professional company). Accordingly, *Doe* is an outlier with respect to a court
 11 compelling a plan, in the absence of contract, to produce documents and information relating to a
 12 reviewing physician's compensation and particular decisions.

13 **E. Defendant's Objections are Valid.**

14 The Plan's objections were not conclusory, nor were they boilerplate. The Plan explained
 15 the basis of each of those objections. See Section III(B), Interrogatories 14,³ 15,⁴ 18,⁵ and 19.⁶
 16 The Plan's detailed and well-reasoned (and supported) objections do not come close to the
 17 deficiencies in the objections in the cases Plaintiff cites. *Eureka Financial Corp. v. Hartford*
 18 *Acc. and Indem. Co.*, 136 F.R.D. 179, 185 (E.D. Cal. 1991) (defendant objected to discovery on
 19 the grounds of privilege but refused to identify the basis of the privilege and what documents or
 20 information to which it applied); *see also A. Farber and Partners Inc v. Garber*, 234 F.R.D. 186,
 21 188 fn.1 (C.D. Cal. 2006) ("The only basis defendant Garber cited to support his numerous 'overly
 22 burdensome and harassing' objections is that many of plaintiff's document requests seek
 23 information 'relating to' a subject."). The Plan's objections are valid.

24 ³ Unduly burdensome because request sought information about multiple years where Dr. Grattan
 25 was not involved in Plaintiff's claim and that Dr. Grattan was retained by NMR, which has no
 26 affiliation with either the Plan or Sedgwick. See Section III(B), *supra*.

27 ⁴ Unduly burdensome because of its intrusiveness outweighs the proportional needs of the case and
 28 that Dr. Grattan is not an employee or directly paid by the Plan or Sedgwick. See Section III(B),
supra.

⁵ See fn. 1.

⁶ See fn. 1.

F. Request for Protective Order and/or Denial of Plaintiff’s Discovery Requests

The Court should deny Plaintiff’s motion to compel. Alternatively, because the Plan has properly and fully responded to Plaintiff’s discovery, pursuant to Fed.R.Civ.P. 26(c), the Court should issue a protective order protecting the Plan from the undue burden and expense of further responding to Plaintiff’s discovery. Additionally, the information sought, particularly confidential commercial information, such as compensation related to medical reviewing services, is identified in the Federal Rules of Civil Procedure as a proper basis for an entry of a protective order. Fed. R. Civ. P. 26(c)(1)(G).

G. There is no basis for Sanctions and Plaintiff is Not Entitled to Attorneys’ Fees

The Plan properly objected to and answered Plaintiff’s discovery and there is no basis to award Plaintiff attorneys’ fees and costs related to her second motion to compel. In fact, a court must not award payment of fees if the opposing party’s responses or objections were substantially justified. Here, the Plan’s responses and objections were substantially justified (based upon *Demer* -- i.e., the Plan has no contractual relationship with Dr. Grattan). Moreover, the Plan’s responses and objections even cited case law for support. Contrary to Plaintiff’s position, the Court did not evaluate or issue a ruling about each of the discovery requests identified in Plaintiff’s motion for reconsideration. Plaintiff also has no support for her claim of attorneys’ fees and has not cited any case or statutory law showing that such an award is appropriate, given the Plan’s objections and answers.

H. Conclusion

For the foregoing reasons, the Court should deny Plaintiff’s motion.

Dated: July 31, 2020

KANTOR & KANTOR, LLP

CAMPBELL LITIGATION, P.C.

By: /s/ Michelle L. Roberts
Michelle L. Roberts
Attorneys for Plaintiff

By: /s/ Stacey Campbell
Stacey Campbell
Attorneys for Defendant

The filing attorney attests that she has obtained concurrence in the filing of this document from the other signatory.

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12
13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**
15

16 RUBY CHACKO,

17 Plaintiff,

18 vs.

19 AT&T UMBRELLA BENEFIT PLAN NO. 3,

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

EXHIBITS TO JOINT STATEMENT

Date: August 7, 2020
Time: 10:00 a.m.
Courtroom: 27, 8th Floor
Location: 501 I Street
Sacramento, CA 95814

EXHIBIT A

EXHIBIT A

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(*pro hac vice*)
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10 Attorneys for Defendant,
AT&T Umbrella Benefit Plan NO. 3

11
12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 RUBY CHACKO,

15
16 Plaintiff,

17 vs.

18 AT&T UMBRELLA BENEFIT PLAN
19 NO. 3,

20 Defendant.

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

**DECLARATION
OF CHARLES FRENCH**

21 I, Charles French, declare as follows:

22 1. I have personal knowledge of the matters set forth in this Declaration and am
23 submitting this Declaration in support of Defendant AT&T Umbrella Benefit Plan No. 3
24 (the "Plan") in the above-referenced case, and if called as a witness to testify, I could and
25 would do so truthfully and competently.

1 2. I am employed by Sedgwick Claims Management Services, Inc.
2 (“Sedgwick”), as the Senior Vice President (“SVP”) of Operations, and I have worked in
3 Operations, Client Services, and Claims Administration for Sedgwick for over 21 years.

4 3. Sedgwick is an independent third-party administrator for AT&T Services, Inc.
5 (“AT&T”), which manages the AT&T Disability Income Program under the Plan.
6 Sedgwick’s responsibilities as the third-party administrator for the Plan include reviewing,
7 processing, investigating, evaluating, and deciding claims for long term disability benefits
8 (“LTD”) brought by employees covered by the Plan (also referred to as “participants”).

9 4. Sedgwick’s responsibilities as Claims Administrator include making
10 determinations, in its sole discretion, to approve or deny claims for LTD benefits under the
11 Plan, reviewing decisions to deny disability claims on appeal, and making determinations,
12 in its sole discretion, to uphold or reverse the denial of claims on appeal. As the Claims
13 Administrator for the Plan, Sedgwick has complete and sole discretion to determine
14 whether a participant is disabled based upon the medical evidence and other information
15 received and reviewed during investigation.

16 5. Apart from its contractual obligations to AT&T regarding the provision of
17 services to AT&T as the third-party Claims Administrator, Sedgwick does not have any
18 other affiliations or financial associations with AT&T or any of its subsidiary companies.
19 AT&T has no control over Sedgwick’s day-to-day decisions regarding the outcome of
20 employee benefit claims under the Plan or Sedgwick’s determination to reverse or uphold
21 a denial of LTD benefits on appeal.

22 6. Sedgwick notifies the Plan when a participant’s claim for LTD Plan benefits
23 has been approved and for what period of time the LTD Plan benefits has been approved.
24 Sedgwick has never been the source of the funds that are used to pay disability benefits
25 under the Plan. Sedgwick is not, and has never been, required to advance or pay its own
26 funds to pay LTD Plan benefits, losses or expenses under any of the AT&T disability plans,
27 including the Plan.

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1 7. Sedgwick’s employees work exclusively for Sedgwick, not for AT&T or any
2 of its affiliates. Neither AT&T nor Sedgwick establish any target or goal for Sedgwick’s
3 rate of claim approval, rate of claim denial, or how it decides an appeal. Neither Sedgwick
4 nor any of its employees receive any financial or other incentives related to meeting a
5 certain target or goal for the rate of benefits claims approval or claims denial, or for
6 reaching any particular decision on a benefits claim appeal.

7 8. Sedgwick does not have any relationship or provide any guidance with any of
8 the medical professionals who complete the independent physician advisor reports or
9 independent medical examinations or reviews, including physicians retained by Network
10 Medical Review Co. Ltd. (“NMR”) or ExamWorks, LLC (“ExamWorks”). Sedgwick also
11 does not have any role in selecting the medical professionals who complete the independent
12 physician advisor reports or independent medical examinations or reviews, except to
13 designate the specialty of the medical professional that is required based upon the nature
14 of the claim and stated medical condition(s).

15 9. AT&T does not have any affiliation with any of the medical professionals who
16 complete the independent physician advisor reports or independent medical examinations
17 or reviews, including physicians retained by NMR or ExamWorks. AT&T does not have
18 any role in selecting the medical professionals who complete the independent physician
19 advisor reports or independent medical examinations or reviews.
20

21 **I declare under penalty of perjury under the laws of the United States of**
22 **America that the foregoing is true and correct.**

23 Executed on June 5, 2020.

24
25 /s/ Charles French (original signature retained by
26 attorney Stacey A. Campbell)
27 Charles French
28 Senior Vice President – Operations
Sedgwick Claims Management Services, Inc.

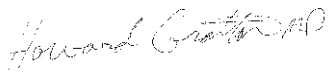
EXHIBIT B

EXHIBIT B

CONFLICT OF INTEREST ATTESTATION:

I certify that I do not accept compensation for review activities that is dependent in any way on the specific outcome of the case. To the best of my knowledge I was not involved with the specific episode of care prior to referral of the case for review. I do not have a material professional, familial, or financial conflict of interest (financial conflict of interest is defined as ownership interest of greater than 5%) regarding any of the following: the referring entity; the insurance issuer or group health plan that is the subject of the review the covered person whose treatment is the subject of the review and the covered person's authorized representative, if applicable; any officer, director or management employee of the insurance issuer that is the subject of the review; any group health plan administrator, plan fiduciary, or plan employee; the health care provider, the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the review; the facility at which the recommended health care service or treatment would be provided; or the developer or manufacturer of the principle drug, device, procedure or other therapy being recommended for the covered person whose treatment is the subject of the review.

This attestation certifies that the peer reviewer named below has the appropriate scope of licensure or certification that typically manages the medical condition, procedure, treatment, or issue under review and has current, relevant experience and/or knowledge to render a determination for the case under review.

PHYSICIAN ADVISOR:


Howard Grattan, M.D.
Board Certified Physical Medicine
And Rehabilitation
Board Certified Pain Medicine
Licensed in State of CA #87423
Licensed in State of OR #MD152830
Licensed in State of WA #MD60178901

NMR CONFLICT OF INTEREST ATTESTATION:

NMR attests to the fact that there is no conflict of interest with this review for referring entity, benefit plan, enrollee/consumer, attending provider, facility, drug, device or procedure. NMR attests that its compensation is not dependent on the specific outcome of this review or has had any involvement with this case prior to this referral.

ADDENDUM 12/3/18

Additional information has been submitted.

RECORDS PROVIDED FOR REVIEW:

Progress Notes	W. K. Hashimoto, M.D.	June 11, 2018
Progress Notes	A. D. Agaiby, M.D.	September 18, 2018

Chacko AR 000212