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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAN ELLEN REIN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE STANDARD INSURANCE COMPANY; )  
 UNIVERSITY OF THE PACIFIC LONG TERM )  
 DISABILITY BENEFITS PLAN, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

2:09-cv-02348-GEB-EFB  
ORDER DENYING PLAINTIFF'S  
MOTION FOR DISCOVERY\*

Plaintiff filed a "Motion for Discovery," requesting that the court "order defendants be confined to its [sic] initial disclosures or to produce all documents they contend support a deferential standard of review." (Mot. 4:17-19.) Plaintiff also requests that if the court later determines that "an abuse of discretion standard of review applies, . . . [P]laintiff . . . be permitted certain discovery relating to conflict of interest." (Id. 4:19-23.) Defendants Standard Insurance Company ("Standard") and University of the Pacific Long Term Disability Benefits Plan ("the Plan") (collectively, "Defendants") oppose Plaintiff's motion, arguing an abuse of discretion standard of review applies and narrowly limits the permissible scope of discovery.

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\* This matter is deemed to be suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 **I. BACKGROUND**

2 Plaintiff was a law professor, employed by the University of  
3 the Pacific, McGeorge School of Law, until May 31, 2007. (Compl. ¶  
4 9.) Plaintiff had a history of back problems, and on November 28,  
5 2006, she submitted a claim for long term disability benefits to  
6 Standard. (Id. ¶ 10.) Standard, however, denied Plaintiff's claim on  
7 February 22, 2007. (Id. ¶ 11.) Through this lawsuit, Plaintiff  
8 challenges Standard's denial of her claim for disability benefits.

9 While the parties agree that this case is governed by the  
10 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 10010, *et*  
11 *seq.*, ("ERISA"), they dispute the applicable standard of review and  
12 the permissible scope of discovery. (Joint Status Report 2:26-4:6.)  
13 In their Joint Status Report, Defendants argue that "[b]ecause the  
14 Plan unambiguously grants discretionary authority to the plan  
15 administrator, . . . the abuse of discretion standard applies" and  
16 they "object to any discovery in this case." (Id. 3:17-21.)  
17 Plaintiff contends she "can conduct discovery relating to the standard  
18 of review." (Id. 3:3-6.) Therefore, in the pre-trial scheduling  
19 order issued on February 11, 2010, the court stated that "Plaintiff  
20 may file a motion for discovery relating to the standard of review by  
21 March 15, 2010, since the parties dispute whether such discovery  
22 should be authorized in this case." (Pretrial Scheduling Order 1:22-  
23 26.) On March 15, 2010, Plaintiff filed her now pending motion.

24 **II. DISCUSSION**

25 While Plaintiff and Defendants dispute the standard of  
26 review the court should employ to review Standard's denial of  
27 Plaintiff's claim for disability benefits and the permissible scope of  
28 discovery, Plaintiff's motion does not request that the Court decide

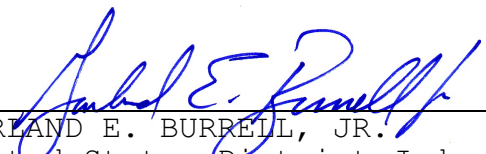
1 the appropriate standard at this time, nor does Plaintiff request to  
2 undertake specific discovery related to determining the appropriate  
3 standard of review. Rather, Plaintiff "proposes the following":

4 (1) That this court order defendants be confined to its  
5 initial disclosures or to produce all documents they contend  
6 support a deferential standard of review, and (2) that this  
7 court provisionally decide that, *if* Judge Burrell  
8 subsequently determines in response to a motion for summary  
9 judgment or adjudication - based on defendants' already  
10 produced documents and any documents defendants produce in  
11 response to (1) - that an abuse of discretion standard of  
12 review applies, that plaintiff be permitted certain  
13 discovery relating to conflict of interest.

14 (Mot. 4:17-23.) Plaintiff also lists eight categories of discovery  
15 she seeks should the court ultimately decide that an abuse of  
16 discretion standard of review applies.

17 Plaintiff, however, has provided no legal authority  
18 supporting her first "proposal" to limit the evidence considered when  
19 determining the applicable standard of review in a case governed by  
20 ERISA. Plaintiff also has not shown that her second "proposal" - that  
21 certain discovery be allowed if it is later determined that an abuse  
22 of discretion standard of review is applicable - is ripe for judicial  
23 review. Plaintiff's request for a provisional order appears to seek  
24 an advisory opinion. Since Plaintiff has not shown that the relief  
25 she requests is proper, her motion is DENIED.

26 Dated: May 10, 2010

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GARLAND E. BURRELL, JR.  
United States District Judge