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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK STEPHAN,

No. C 08-01935 MHP

Plaintiff,

ORDER

v.

Re: Supplemental Briefing

THOMAS WEISEL PARTNERS, LLC (Long
Term Disability Plan) and UNUM LIFE
INSURANCE COMPANY OF AMERICA,

Defendants.

On November 17, 2008, the court ordered the parties to submit briefing on the appropriate standard of review for this long term disability insurance dispute, brought under the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. §1132(a)(1)(B), in light of the recent Supreme Court decision of Metropolitan Life Insurance Co. v. Glenn, 554 U.S. ___, 128 S.Ct. 2343 (2008). On January 5, 2008, the parties submitted simultaneous ten-page briefs addressing the standard of review and plaintiff's associated discovery request for one withheld claim file document and three proposed depositions. These motions are currently scheduled for a hearing on March 2, 2009.

In light of the arguments presented with respect to the effect of discretionary language in the insurance policy at issue, the court hereby orders additional briefing. The parties are ordered to brief how the Commissioner of Insurance's March 13, 2006 designation of the Proposed Decision of March 2005 as precedential, pursuant to California Government Code section 11425.60 (See Hartford Life Ins. v. State of California, Case No. CPF 05-505218, Statement of Decision Denying

1 Writ of Mandate (June 8, 2006)), applies to the insurance policy at issue as it existed on January 1,
2 2007. Specifically, the parties must address:


3 1) Whether the amendment to the policy (Docket No. 29, DeBofsky Dec., Exh. A) or the
4 policy's yearly renewal created a new contract for purposes of incorporating newly established state
5 law; and

6 2) Whether there is a conflict in application between defendant Unum Life Insurance
7 Company of America and the State of California's agreement (California Settlement Agreement,
8 Docket No. 29, DeBofsky Dec., Exh. E) and the state law prohibiting discretionary clauses, and how
9 that would be resolved.

10 The supplemental briefs are limited to ten-pages and to be submitted simultaneously on
11 **March 9, 2009**. A postponed hearing date for the standard of review will be scheduled at the
12 existing March 2, 2009 motion hearing, at which time the court will address the discovery matters.

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14 IT IS SO ORDERED.

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16 Dated: 2/23/09

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19 MARILYN HALL PATEL
20 United States District Court Judge
21 Northern District of California
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