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United States District Court
For the Northern District of California

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

PENNY BENDER,

No. C 09-1163 MMC

Plaintiff,

ORDER GRANTING MOTION TO RE-OPEN DISCOVERY; DEFERRING RULING ON PARTIES' MOTIONS FOR JUDGMENT; SETTING SUPPLEMENTAL BRIEFING SCHEDULE; CONTINUING HEARING

v.

HARTFORD LIFE INSURANCE COMPANY,
as Administrator and Fiduciary of the
Bertelsmann, Inc. Employee Protection Plan
Number 503; BERTELSMANN, INC.
EMPLOYEE PROTECTION PLAN NUMBER
503,

Defendants.

Before the Court are the parties' motions for judgment, filed, respectively, on February 26, 2010 and March 26, 2010; the motions have been fully briefed. Also before the Court is plaintiff's administrative motion to re-open discovery, filed April 8, 2010, to which defendants have filed opposition. As set forth below, the Court will grant plaintiff's motion to re-open discovery and will defer ruling on the parties' motions for judgment.

Contrary to defendants' argument, the Court finds plaintiff is entitled to conduct limited additional discovery based on defendants' submission of evidence in support of their motion, specifically, the declaration of Bruce Luddy ("Luddy"), Director of Litigation and Appeals for Hartford Life and Accident Insurance Company. See, e.g., Golden v. Sun Life Fin., Inc., 2008 WL 2782736, *3 (M.D. Ala. 2008) ("Because the case [although brought

1 under ERISA] involves more than the administrative record and because the parties will be
2 engaging in discovery, they are required to provide initial disclosures in accordance with
3 Rule 26(a).”); Hamma v. Intel Corp., 2008 WL 648482, *3 (E.D. Cal. 2008) (holding initial
4 disclosures required where “parties [had] agreed that discovery outside the administrative
5 record, authorized under the rationale of Abatie, [was] permitted”).


6 In particular, plaintiff is entitled to depose Luddy, such deposition being limited to
7 Luddy’s knowledge of the active steps taken by Hartford to reduce potential bias and to
8 promote accuracy in Hartford’s claims administration, as described in Luddy’s declaration.
9 See Metropolitan Life Ins. Co. v. Glenn, 128 S.Ct. 2343, 2351 (2008) (holding claims
10 administrator’s “active steps to reduce potential bias and to promote accuracy” relevant to
11 court’s determination as to conflict); see, e.g., PI’s Mot. to Re-Open Ex. B (Civil Minutes in
12 Reese v. Hartford Life and Accident Ins. Co., CV 08-8604 VBF (C.D. Cal. 2009)) (requiring
13 ERISA defendant to produce Luddy for deposition or “commit to not using him as a
14 witness”); cf. Kroll v. Kaiser Found. Health Plan Long Term Disability Plan, 2010 WL
15 1233871, *1 (N.D. Cal. 2010) (denying motion to compel depositions in ERISA case where
16 plaintiff subsequently limited request to written discovery).

17 Accordingly, the Court hereby GRANTS plaintiff’s motion to re-open discovery,
18 DEFERS ruling on the parties’ motions for judgment, and SETS the following supplemental
19 briefing schedule:

- 20 1. Plaintiff’s Supplemental Opposition and Reply shall be filed no later than June 11,
21 2010, and shall not exceed five pages in length, exclusive of declarations and/or exhibits;
- 22 2. Defendants’ Supplemental Sur-Reply shall be filed no later than June 25, 2010,
23 and shall not exceed five pages in length, exclusive of declarations and/or exhibits.
- 24 3. The hearing on the parties’ motions for judgment is hereby CONTINUED to July
25 16, 2010.

26 **IT IS SO ORDERED.**

27 Dated: April 27, 2010

28 
MAXINE M. CHESNEY
United States District Judge