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28**NOT FOR CITATION**

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

ROSE MIRANDA,

No. CV 09-4452 RS (NJV)

Plaintiff,

v.

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION TO COMPEL**

FIRST RELIANCE STANDARD LIFE  
INSURANCE CO.; RELIANCE STANDARD  
LIFE INSURANCE CO.; and OLYMPUS  
AMERICA, INC. LONG TERM DISABILITY  
PLAN,

(Docket No. 46)

Defendants.

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This is an action by Plaintiff Rose Miranda under the Employee Retirement Income Security Act of 1974 (“ERISA”) to recover disability benefits under the terms of an employee benefit plan, to enforce her rights under the plan, and to clarify her rights to future benefits under the plan against Defendants First Reliance Standard Life Insurance Company, Reliance Standard Life Insurance Company, and Olympus America, Inc. Long Term Disability Plan (“Olympus LTD Plan”). The district court has referred all discovery matters to this Court for determination. Doc. No. 39. On February 28, 2011, Defendants filed a motion for a protective order to relieve them from complying with four depositions noticed by Plaintiff. Doc. No. 37. On April 5, 2011, Plaintiff filed a motion to compel responses to her interrogatories and requests for production (“RFP”) of documents. Doc. No. 46. Pursuant to the parties’ stipulation, the Court heard argument on both motions on May 4, 2011 and ordered the parties to meet and confer in a further attempt to resolve and narrow the pending discovery disputes. Doc. Nos. 49, 55. The parties have informed the Court that they were unable to resolve the discovery disputes. In a separate order, the Court recently granted in part and denied in part Defendants’ motion for a protective order. Doc. No. 56. Having carefully considered

1 the arguments of the parties and the papers submitted, and for good cause shown, the Court **grants**  
2 **in part and denies in part** Plaintiff's motion to compel.

### 3 **I. BACKGROUND**

4 Plaintiff was an employee for Olympus America, Inc. and a participant in her employer's  
5 group long term disability plan, Defendant LTD Plan, which is governed by ERISA. The LTD Plan  
6 was insured by Defendants First Reliance and Reliance Standard (collectively referred to as "the  
7 First Reliance Defendants"). The First Reliance Defendants also served as the administrator of the  
8 Olympus LTD Plan. On or about November 25, 2004, Plaintiff stopped working due to various  
9 medical conditions. She submitted a claim for long term disability benefits under the LTD Plan to  
10 the First Reliance Defendants, who approved her claim. Plaintiff began receiving disability benefits.  
11 On or about December 12, 2008, the First Reliance Defendants terminated Plaintiff's disability  
12 benefits due to its determination that Plaintiff was no longer disabled. Plaintiff appealed this  
13 determination and the First Reliance Defendants upheld the termination of Plaintiff's disability  
14 benefits. Plaintiff filed this action on September 22, 2009.

15 On April 5, 2011, after the briefing was completed on this motion, Plaintiff filed a motion to  
16 compel responses to her interrogatories and RFPs. Plaintiff seeks to compel Defendant LTD Plan to  
17 respond to interrogatory Nos. 1 and 2 and RFP Nos. 1, 2, and 4; and to compel Defendants First  
18 Reliance and Reliance Standard to respond to interrogatory Nos. 5 through 11 and RFP Nos. 5  
19 through 14. Defendants oppose the motion and the matter was heard simultaneously with  
20 Defendants' motion for a protective order.

21 The district court approved the parties' stipulation to continue the pretrial and trial dates by  
22 60 days. Doc. No. 51. The discovery cut-off is now July 12, 2011 and trial is set for October 11,  
23 2011. In a separate order, the Court recently granted in part and denied in part Defendants' motion  
24 for a protective order.

### 25 **II. DISCUSSION**

#### 26 **A. Legal Standard**

27 Because the First Reliance Defendants served as both the insurer and the administrator of the  
28 Olympus LTD Plan, there is an inherent conflict of interest. *See Metropolitan Life Insurance Co. v.*

1 *Glenn*, 554 U.S. 105, 114-15 (2008); *Montour v. Hartford Life & Acc. Ins. Co.*, 588 F.3d 623, 630,  
2 632 (9th Cir. 2009); *Burke v. Pitney Bowes Inc. Long-Term Disability Plan*, 544 F.3d 1016, 1027-28  
3 (9th Cir. 2008). When “the same entity that funds an ERISA benefits plan also evaluates claims,”  
4 there is an inherent conflict of interest because this entity “is also the insurer, benefits are paid out of  
5 the administrator’s own pocket, so by denying benefits, the administrator retains money for itself.”  
6 *Montour*, 588 F.3d at 630. When there is a conflict of interest, the Ninth Circuit has held that in  
7 conducting the abuse of discretion review, the district court “must” weigh the conflict “as a factor in  
8 determining whether there is an abuse of discretion.” *Id.* at 631 (quoting *Abatie v. Alta Health &*  
9 *Life Ins. Co.*, 458 F.3d 955, 965 (9th Cir. 2006) (en banc)); see also *Metropolitan Life Ins.*, 554 U.S.  
10 at 115-17 (reviewing judge to weigh conflict as a factor in its abuse of discretion review).

11 Generally, under the abuse of discretion review of the denial of benefits by an ERISA plan,  
12 the district court’s review is limited to the administrative record. *Burke*, 544 F.3d at 1027-28. “In  
13 the ERISA context, the ‘administrative record’ consists of ‘the papers the insurer had when it denied  
14 the claim.’” *Montour*, 588 F.3d at 632 n.4 (quoting *Kearney v. Standard Ins. Co.*, 175 F.3d 1084,  
15 1086 (9th Cir. 1999) (en banc)). When there is a potential conflict of interest, however, the district  
16 court may “consider evidence outside the administrative record to decide the nature, extent, and  
17 effect on the decision-making process of any conflict of interest.” *Burke*, 544 F.3d at 1028 (quoting  
18 *Abatie*, 458 F.3d at 970). The district court has the discretion to permit discovery into the  
19 defendant’s conflict of interest. *Id.* at 1028 n.15.

20 In *Montour*, a post- *Metropolitan Life* decision, the Ninth Circuit held that the defendant  
21 insurer and the administrator of the ERISA plan “abused its discretion because its conflict of interest  
22 too heavily influenced its termination [of long-term disability benefits] decision.” 588 F.3d at 626.  
23 In reaching this decision, the court examined several factors including the defendant’s “failure to  
24 present extrinsic evidence of any effort on its part to ‘assure accurate claims assessment[,]’ such as  
25 utilizing procedures to help ensure a neutral review process”; the insured’s failure to “submit any  
26 extrinsic evidence of bias, such as statistics regarding [the defendant insurer and plan  
27 administrator]’s rate of claims denials or how frequently it contracts with the file reviewers it  
28 employed in this case”; and the defendant’s failure to distinguish the Social Security

1 Administration's ("SSA") determination to award disability benefits and the omission of any  
2 reference to the SSA determination by the defendant's medical experts. *Id.* at 634-35.

3 While conflict of interest discovery is permitted, it "must be narrowly tailored to reveal the  
4 nature and extent of the conflict, and must not be a fishing expedition." *Zewdu v. Citigroup Long*  
5 *Term Disability Plan*, 264 F.R.D. 622, 626 (N.D. Cal. 2010). Permissible conflict of interest  
6 discovery includes discovery into procedures utilized by the First Reliance Defendants to "ensure a  
7 neutral review process"; what Defendants' doctors reviewed in making their disability benefits  
8 determination; the number of disability claims reviewed, granted, and denied; "how frequently  
9 [Defendants'] contract[] with the file reviewers it employed in this case"; compensation agreements  
10 between Defendants and their medical professionals or file reviewers; and performance evaluations  
11 of medical professionals involved in the handling of Plaintiff's claim. *See Montour*, 588 F.3d at  
12 634-35; *Zewdu*, 264 F.R.D. at 628-29.

13 **B. Defendant LTD Plan**

14 Plaintiff seeks to compel Defendant LTD Plan to respond to interrogatory Nos. 1 and 2 and  
15 RFP Nos. 1, 2, and 4.

16 1. Interrogatory No. 1 and RFP No. 1: Plan Documents

17 Interrogatory No. 1 requests Defendant LTD Plan to identify plan documents and RFP No. 1  
18 requests Defendant LTD Plan to produce the plan documents. Defendant LTD Plan does not object  
19 to Interrogatory No. 1 or RFP No. 1 and in its response states that it is reviewing its record and will  
20 produce the documents. Defendant LTD Plan has not yet, however, identified and produced the plan  
21 documents. The Court grants this portion of Plaintiff's motion to compel and orders Defendant LTD  
22 Plan to identify and produce the plan documents within fourteen (14) days of the filing of this order.

23 2. Interrogatory No. 2 and RFP No. 2: All Employee Benefit Plans

24 Interrogatory No. 2 requests Defendant LTD Plan to identify all documents distributed to its  
25 employees during Plaintiff's employment "describing any and all employee benefit plans" and RFP  
26 No. 2 requests Defendant LTD Plan to produce such documents. This request is overly broad and  
27 seeks irrelevant material because it is not limited to long term disability plans or to Defendant LTD  
28 Plan's potential conflict of interest. The Court denies this portion of Plaintiff's motion to compel.

1           3.       RFP No. 4: Documents Identified in Interrogatory Responses

2           Defendant LTD Plan does not oppose Plaintiff’s motion to compel regarding RFP No. 4 to  
3 produce documents identified in its responses to Plaintiff’s First Set of Interrogatories. The Court  
4 therefore grants this portion of Plaintiff’s motion to compel. If Defendant LTD Plan has not yet  
5 produced responsive documents, the Court orders it to do so within fourteen (14) days of the filing  
6 of this order.

7       **C.       Defendants First Reliance and Reliance Standard**

8           Plaintiff also seeks to compel Defendants First Reliance and Reliance Standard to respond to  
9 interrogatory Nos. 5 through 11 and RFP Nos. 5 through 14. Defendants First Reliance and  
10 Reliance Standard have only produced Section C of the claims manual and have not produced any  
11 other documents. Defendants indicate that they will provide verified responses, which moots  
12 Plaintiff’s argument regarding the lack of verification of Defendants’ discovery responses.

13           1.       Defendant Reliance Standard

14           Defendant Reliance Standard generally objects to Plaintiff’s requested discovery on the  
15 grounds that it is not the plan or claims administrator; it is a “completely different corporate entit[y]”  
16 from Defendant First Reliance; and because Defendant First Reliance (not Defendant Reliance  
17 Standard) issued the underlying policy. Defendants do not support their argument, however, with  
18 documentation. On the other hand, Plaintiff submitted documentation in support of her argument  
19 that Defendants First Reliance and Reliance Standard are intertwined subsidiaries and that  
20 Defendant Reliance Standard was involved in handling Plaintiff’s claim. *See* Declaration of Brent  
21 Dorian Brehm, Exs. A, B, and D (Doc. No. 54-1). Plaintiff’s documentation includes  
22 correspondence regarding Plaintiff’s claim from a Reliance Standard employee and from MES  
23 Solutions to Reliance Standard. *Id.* at Exs. B, D. Therefore, the Court rejects Defendants’  
24 unsupported argument that Defendant Reliance Standard was not involved in handling Plaintiff’s  
25 claim.

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1           2. Interrogatory Nos. 5 & 6 and RFP Nos. 5 & 6: Claims Manuals

2           Interrogatory Nos. 5 and 6 respectively request Defendants First Reliance and Reliance  
3 Standard to identify claims manuals regarding administrative processes and safeguards pursuant to  
4 29 C.F.R. § 2560.503-1(b)(5) and claims manuals for long term disability claims at the time  
5 Plaintiff’s claim was handled by Defendants. Pursuant to 29 C.F.R. § 2560.503-1(b)(5), employee  
6 benefit plans are “obligated to establish and maintain reasonable claims procedures” including  
7 ensuring that the

8           claims procedures contain administrative processes and safeguards designed to ensure  
9 and to verify that benefit claim determinations are made in accordance with  
10 governing plan documents and that, where appropriate, the plan provisions have been  
11 applied consistently with respect to similarly situated claimants.

12           RFP Nos. 5 and 6 request Defendants to produce the claims manuals responsive to Interrogatory  
13 Nos. 5 and 6.

14           Defendants do not object to these interrogatories or RFPs, but argue instead that they have  
15 already identified and produced the requested documents and that Plaintiff’s motion to compel is  
16 therefore moot. Defendant First Reliance has only produced Section C of the claims manual, which  
17 Plaintiff argues does not fully respond to the interrogatories or the RFPs. The Court grants this  
18 portion of Plaintiff’s motion to compel to the extent that Defendants First Reliance and Reliance  
19 Standard have not fully responded. *See Zewdu*, 264 F.R.D. at 628 (permitting discovery of claims  
20 manuals used); *see also McCurdy v. Metropolitan Life Ins. Co.*, 2007 WL 915177, \*4 (E.D. Cal.  
21 March 23, 2007) (Discovery permitted as to “all in-house, Metropolitan Life Insurance Company,  
22 documents, including claim and procedural manuals, guidelines, bulletins, and memoranda,  
23 describing or pertaining to the handling of disability claims in general, and disability claims  
24 involving [plaintiff’s particular medical issue]”). If Section C of the claims manual is the only  
25 responsive document to Interrogatory Nos. 5 and 6 and RFP Nos. 5 and 6, as Defendants’ opposition  
26 implies, within fourteen (14) days of the filing of this order, Defendants are ordered to supplement  
27 their responses with verified statements clearly indicating that all responsive documents have been  
28 identified and produced. Otherwise, Defendants First Reliance and Reliance Standard are ordered to  
identify and produce the requested documents within fourteen (14) days of the filing of this order.

1           3.       Interrogatory Nos. 7-9 and RFP Nos. 8-12: MES Solutions

2           Interrogatory Nos. 7, 8, and 9 respectively request identification of the number of times  
3 Defendants used MES solutions to evaluate an insurance claim for the 2004-2010 calendar years;  
4 how much money Defendants paid MES Solutions for medical review and related services for the  
5 2004-2010 calendar years; and the number of times Defendants terminated or denied an insurance  
6 claim within six months following an evaluation by MES Solutions for the 2004-2010 calendar  
7 years. RFP Nos. 10, 11, and 12 request Defendants to produce the documents responsive to  
8 Interrogatory Nos. 7, 8, and 9. RFP No. 8 requests documents regarding Defendants' financial  
9 arrangements with MES Solutions between January 1, 2004 and January 1, 2010. RFP No. 9  
10 requests Defendants' documents that provide instructions to MES Solutions regarding its reports  
11 between January 1, 2004 and January 1, 2010.

12           Defendant First Reliance initially objected to Interrogatory Nos. 7, 8, and 9 without  
13 providing any additional response. Since the filing of Plaintiff's motion to compel, however,  
14 Defendant First Reliance supplemented its interrogatory responses. Without waiving its objections,  
15 Defendant First Reliance responded that it used MES twenty-five (25) times between 2007 and  
16 2009; paid MES \$23,892.20 for the twenty-five (25) claims between 2007 and 2009; and that  
17 between calendar years 2007 and 2009, fourteen (14) claims were denied or terminated within six  
18 months of receiving a review by MES.<sup>1</sup>

19           Defendant First Reliance argues that Plaintiff's request for information regarding MES for  
20 the 2004, 2005, 2006, and 2010 calendar years is overbroad and irrelevant because Plaintiff was not  
21 eligible for benefits until 2005 and because Plaintiff was paid benefits through December 2008.  
22 Plaintiff disagrees and counters that her date of disability occurred in 2004.

23           The Court grants in part and denies in part Plaintiff's motion to compel further responses to  
24 Interrogatory Nos. 7, 8, and 9 and RFP Nos. 8 through 11. The information sought regarding MES  
25 Solutions is permissible conflict of interest discovery. *See Montour*, 588 F.3d at 634-35; *Zewdu*,  
26 264 F.R.D. at 628. Without resolving the parties' arguments regarding eligibility for benefits, date  
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28           <sup>1</sup> At the hearing, Defendants stated that they would serve verified responses clarifying that  
their supplemental responses were for the three calendar years of 2007, 2008, and 2009.

1 of disability, or the definition of “own occupation” or “any occupation,” the Court exercises its  
2 discretion to permit discovery regarding MES Solutions but limits the time period to November 1,  
3 2004 through January 1, 2010. The time period for Plaintiff’s discovery requests are inconsistent.  
4 Some RFPs request documents through January 1, 2010, and other interrogatories and RFPs request  
5 information and documents for the entire calendar year of 2010. At the hearing, Plaintiff agreed to  
6 limit its request for information through January 1, 2010. Defendants First Reliance and Reliance  
7 Standard are ordered to supplement<sup>2</sup> their responses to identify and produce the requested  
8 documents as limited by the Court within fourteen (14) days of the filing of this order.

9 The Court denies Plaintiff’s motion to compel production in response to RFP No. 12 as  
10 overly burdensome. Plaintiff will receive the relevant information from Interrogatory No. 9  
11 regarding the number of times Defendants terminated or denied an insurance claim within six  
12 months following an evaluation by MES Solutions between November 1, 2004 and January 1, 2010.

13 4. Interrogatory Nos. 10 & 11 and RFP Nos. 13 & 14: Employees

14 Interrogatory No. 10 seeks information regarding the education, training, and experience of  
15 Cindy Gysin, Heather DiFalco, Jody Barach, Gene Shaw, Alex Peaker, and any other employee  
16 involved in handling or supervising Plaintiff’s claim. RFP No. 13 requests Defendants to produce  
17 the documents responsive to Interrogatory No. 10. The individuals identified by name include First  
18 Reliance employees who made the initial and appeal claim decisions (Gysin and Shaw, respectively)  
19 and the rehabilitation nurse specialist who reviewed Plaintiff’s medical records for First Reliance  
20 (DiFalco). The Court exercises its discretion to permit the discovery sought in Interrogatory No. 10  
21 and the training documentation sought in RFP No. 13, but finds no basis for Plaintiff’s request for  
22 documentation of an employee’s education or experience. *See Zewdu*, 264 F.R.D. at 628 (permitting  
23 discovery of performance evaluations of medical professionals involved in the handling of the  
24 plaintiff’s claim and the procedures used to evaluate those employees, limited to “a five-year time  
25 period surrounding the administration of Plaintiff’s claim”). Plaintiff will receive the information  
26 sought based on Defendants’ responses to Interrogatory No. 10. The Court orders Defendants First  
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28 <sup>2</sup> Only Defendant First Reliance has responded to the interrogatories and RFPs regarding MES Solutions and its responses were limited to the calendar years 2007, 2008, and 2009.

1 Reliance and Reliance Standard to identify and produce the requested documents within fourteen  
2 (14) days of the filing of this order.

3 Interrogatory No. 11 asks how these same individuals were involved in the handling of  
4 Plaintiff's claim and how "these individuals supervisors" were compensated by Defendants for the  
5 2004 through 2010 calendar years. RFP No. 14 requests Defendants to produce the documents  
6 responsive to Interrogatory No. 11. This interrogatory and its corresponding RFP are compound and  
7 unclear. Plaintiff is instructed to separate its request into two interrogatories and two RFPs.  
8 Plaintiff is also instructed to clarify "these individuals supervisors." It is unclear whether Plaintiff is  
9 requesting the compensation information for the individuals identified; the individuals identified *and*  
10 their supervisors; or the supervisors of the individuals identified. Plaintiff is not entitled to  
11 discovery into compensation information for the supervisors of the individuals identified because  
12 this information is not relevant and outside the scope of permissible conflict discovery. To the  
13 extent that Interrogatory No. 11 and RFP No. 14 request compensation information for the  
14 supervisors of the individuals identified, this portion of Plaintiff's motion to compel is denied.

15 Plaintiff is entitled, however, to discover the compensation information for the individuals  
16 involved in the handling of Plaintiff's claim. *See Montour*, 588 F.3d at 634-35; *Zewdu*, 264 F.R.D.  
17 at 628. Though Defendant First Reliance initially objected to Interrogatory No. 11, its supplemental  
18 response disclosed that the employees received "a salary only and no bonuses." Therefore,  
19 Plaintiff's motion to compel a response to the compensation portion of Interrogatory No. 11 is now  
20 moot as to Defendant First Reliance. Defendant Reliance Standard has not responded with its  
21 compensation information. The Court grants Plaintiff's motion to compel responses to the  
22 remainder of Interrogatory No. 11 and RFP No. 14, but limits the time period in RFP No. 14 to  
23 November 1, 2004 through January 1, 2010, as described in more detail above.

24 Defendants First Reliance and Reliance Standard are ordered to supplement their responses  
25 to identify and produce the requested documents as limited by the Court above within fourteen (14)  
26 days of the service of Plaintiff's revised Interrogatory No. 11 and RFP No. 14 requests.

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1 **B. Defendants First Reliance and Reliance Standard**

- 2 1) The Court grants Plaintiff’s motion to compel responses to Interrogatory Nos. 5 and 6  
3 and RFP Nos. 5 and 6 regarding claims manuals to the extent that Defendants have  
4 not fully responded.
- 5 2) The Court grants in part and denies in part Plaintiff’s motion to compel further  
6 responses to Interrogatory Nos. 7, 8, and 9 and RFP Nos. 8 through 11 regarding  
7 MES Solutions but limits the time period from November 1, 2004 through January 1,  
8 2010. The Court denies Plaintiff’s motion to compel production in response to RFP  
9 No. 12 as overly burdensome.
- 10 3) The Court grants Plaintiff’s motion to compel a response to Interrogatory No. 10  
11 regarding Defendants’ employees. The Court grants Plaintiff’s motion to compel a  
12 response to RFP No. 13 as to training documentation, but denies Plaintiff’s motion to  
13 compel as to education and experience documentation.
- 14 4) The Court grants in part and denies in part Plaintiff’s motion to compel responses to  
15 Interrogatory No. 11 and RFP No. 14 regarding compensation of Defendants’  
16 employees. Plaintiff is instructed to separate its request into two interrogatories and  
17 two RFPs, and to clarify “these individuals supervisors.” Plaintiff’s motion to  
18 compel a response to the compensation portion of Interrogatory No. 11 is now moot  
19 as to Defendant First Reliance. The Court grants Plaintiff’s motion to compel  
20 responses to the remainder of Interrogatory No. 11 and RFP No. 14, but limits the  
21 time period in RFP No. 14 to November 1, 2004 through January 1, 2010, as  
22 described in more detail above.
- 23 5) The Court grants Plaintiff’s motion to compel Defendants to supplement their  
24 responses to RFP No. 7 regarding documents identified in their interrogatory  
25 responses.

26 Unless instructed otherwise above, Defendants First Reliance and Reliance Standard are  
27 ordered to supplement their responses to identify and produce the requested documents as limited by  
28 the Court within fourteen (14) days of the filing of this order.

1 To the extent that disagreements arise about the wording of any modified or new discovery  
2 requests or Defendants' compliance with this order, the parties are instructed to meet and confer in  
3 person or by telephone to efficiently and amicably resolve the issues. If resolution is not possible  
4 after the in person or telephone meet and confer, the parties may raise future discovery issues to the  
5 Court through a succinct letter brief limited to five (5) pages accompanied by a brief declaration  
6 outlining the parties' in person or telephone meet and confer process.

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8 **IT IS SO ORDERED.**

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11 Dated: June 15, 2011

  
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NANDOR J. VADAS  
United States Magistrate Judge

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