

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

WENDY COLLIER,)	Case No. 11-1760 SC
)	
Plaintiff,)	ORDER DENYING DEFENDANT'S
)	RENEWED MOTION FOR JUDGMENT AS
v.)	A MATTER OF LAW AND
)	PLAINTIFF'S MOTION TO AMEND
)	<u>THE JUDGMENT</u>
RELIASTAR LIFE INSURANCE)	
COMPANY,)	
)	
Defendant.)	
)	
)	

I. INTRODUCTION

Plaintiff Wendy Collier ("Collier" or "Plaintiff") filed this action against Defendant ReliaStar Life Insurance Company ("ReliaStar" or "Defendant") for failure to pay long-term disability benefits, asserting claims for breach of contract, bad faith, and intentional infliction of emotional distress ("IIED"). ECF No. 1 ("Compl."). On February 3, 2012, ReliaStar moved for summary judgment, arguing that Collier's entire action was barred by collateral estoppel due to a prior decision by the Marin County Employee's Retirement Association ("MCERA") and that the undisputed facts showed that Collier could not prevail on her claims for bad faith and IIED. ECF No. 31 ("Def.'s MSJ"). The motion was granted

1 in part and denied in part. ECF No. 54 ("SJ Order").¹ The Court
2 dismissed Collier's bad faith and IIED claims, but rejected
3 ReliaStar's collateral estoppel arguments and allowed Collier's
4 breach of contract claim to proceed to trial. Id. On April 12,
5 2012, the jury returned a verdict in favor of Collier. ECF No. 105
6 ("Verdict"). Soon thereafter, the Court entered a judgment of
7 \$106,947.68 in favor of Collier. ECF No. 109.

8 Neither party is satisfied with this outcome. ReliaStar has
9 filed a renewed motion for judgment as a matter of law pursuant to
10 Federal Rule of Civil Procedure 50, asking the Court to reconsider
11 its collateral estoppel determination based on the record developed
12 since the Court's Summary Judgment Order. ECF No. 112 ("Def.'s
13 Mot."). Collier moves to alter the judgment pursuant to Rule 59.
14 ECF No. 124 ("Pl.'s Mot."). Collier requests that the Court
15 revisit its decision to dismiss her claims for bad faith and IIED
16 and allow those claims to be adjudicated by a jury. Id. Both
17 motions are fully briefed. ECF Nos. 128 ("Opp'n to Def.'s Mot."),
18 133 ("Opp'n to Pl.'s Mot."), 134 ("Reply ISO Def.'s Mot."), 140
19 ("Reply ISO Pl.'s Mot."). Pursuant to Civil Local Rule 7-1(b), the
20 Court finds this matter appropriate for determination without oral
21 argument. As detailed below, the Court finds that it reached the
22 correct outcome in its Summary Judgment Order and DENIES both
23 ReliaStar and Collier's motions.

24

25 **II. BACKGROUND**

26 Collier began working for Marin County in 1991 as an
27 Eligibility Worker II, administering social welfare programs.

28 ¹ Collier v. ReliaStar Life Ins. Co., 11-1760 SC, 2012 WL 850742,
2012 U.S. Dist. LEXIS 33577 (N.D. Cal. Mar. 13, 2012)

1 RS000418.² As a benefit of her employment, Collier was insured by
2 a group disability income insurance policy issued by ReliaStar.
3 RS000018. Under the ReliaStar policy, Collier is entitled to
4 disability benefits if she is "totally disabled," which is defined
5 as:

6 [S]ickness or accidental injury which has caused the
7 following:

- 8 • During the benefit waiting period and the first 24 months
9 of disability benefits, the inability to perform with
10 reasonable continuity all of the essential duties of your
11 regular occupation and as a result you are not working at
12 all.
13 • After you have qualified for monthly income benefits for 24
14 months, the inability to perform with reasonable continuity
15 all of the essential duties of any gainful occupation and
16 as a result you are not working at all.

14 RS000035. Thus, in order to qualify for disability benefits for
15 the first twenty-four months of disability, Collier must be unable
16 to perform her "own occupation." After the first twenty-four
17 months, the standard changes from "own occupation" to "any
18 occupation," whereby Collier may only continue receiving benefits
19 if she is unable to perform any "gainful occupation." The policy
20 defines "gainful occupation" as "any occupation that [the insured]
21 could reasonably be expected to perform satisfactorily in light of
22 [the insured's] age, education, training, experience, station in
23 life, and physical and mental capacity." RS000036.

24 Collier ended her active employment with Marin County on June
25 14, 2006 due to disability. RS0000418. Collier had sustained an
26 ankle injury in 2001 and, in the intervening years, had developed a

27 ² The administrative record for this matter is attached to the
28 Affidavit of Mary Kay Racette ("Racette"), ECF No. 32, and has been
bates-labeled as RS000xxxx. Citations to the record follow this
format.

1 number of other symptoms, including chronic pain, joint pain,
2 fatigue, and dizziness. See ECF No. 39 ("Collier Decl.") ¶ 4.
3 Collier's doctors ultimately diagnosed her with Ehlers-Danlos
4 syndrome ("EDS")³ Type III, autonomic dysfunction, and Postural
5 Orthostatic Tachycardia Syndrome ("POTS").⁴ Id. ¶¶ 7-8. Collier
6 sought treatment through her medical insurance and on her own, but
7 her medical problems persisted. Id. Collier claims that while
8 rest improves her pain, there is no treatment for her fatigue. Id.
9 ¶ 8. Collier claims that the pain and fatigue significantly
10 affected her ability to perform her regular duties with Marin
11 County. Id. ¶ 5.

12 In February 2007, Collier submitted a claim to ReliaStar for
13 disability benefits that was subsequently approved, effective
14 September 12, 2006. RS000850, RS000181. ReliaStar began to re-

16 ³ According to National Institute of Health ("NIH"):

17 Ehlers-Danlos syndrome (EDS) is a group of inherited
18 disorders that weaken connective tissues. Connective
19 tissues are proteins that support skin, bones, blood
vessels and other organs.

20 ECF No. 33 ("Bromen Aff.") Ex. B.

21 ⁴ According to the NIH:

22 Postural orthostatic tachycardia syndrome (POTS) is one
23 of a group of disorders that have orthostatic intolerance
24 (OI) as their primary symptom. OI describes a condition
25 in which an excessively reduced volume of blood returns
26 to the heart after an individual stands up from a lying
27 down position. The primary symptom of OI is
lightheadedness or fainting. In POTS, the lightheadedness
or fainting is also accompanied by a rapid increase in
heart rate that exceeds 120 beats per minute, within 10 minutes
of rising. The faintness or lightheadedness of POTS are
relieved by lying down again.

28 Bromen Aff. Ex. A.

1 evaluate Collier's claim in 2008, when the standard for receiving
2 benefits under the policy changed from "own occupation" to "any
3 occupation." See AR RS000179. On April 8, 2009, ReliaStar
4 informed Collier that she did not meet the policy's definition of
5 being "totally disabled" as of September 13, 2008, under the "any
6 occupation" standard, and that her benefits were being terminated.
7 RS0000146. Collier filed an administrative appeal on April 17,
8 2009, but ReliaStar upheld the denial decision on February 5, 2010.
9 RS000134, RS000471.

10 On June 15, 2010, a hearing concerning Collier's application
11 for disability retirement benefits from Marin County was held
12 before an Administrative Law Judge ("ALJ") at the State of
13 California's Office of Administrative Hearings on behalf of MCERA.
14 Broman Aff. Ex. F ("ALJ Decision"). By the hearing date, Collier
15 had been without benefits for almost a year. MCERA bylaws allowed
16 Collier to be represented by counsel at the hearing, Broman Aff.
17 Ex. G § 1007, but Collier claims she "could not afford to pay for
18 representation on an hourly basis, and for financial and other
19 reasons, [she] was refused representation by a number of
20 attorneys," Collier Decl. ¶ 18.⁵ Collier represented herself at
21 the hearing, but claims that she was unable to follow all of the
22 proceedings due to pain and fatigue. Id. ¶¶ 18, 20. Dr. James
23 Soong ("Dr. Soong"), the County's expert and the only physician at
24 the hearing, testified that Collier was able to perform the duties

25
26 _____
27 ⁵ At the time, Collier was represented by David Linden ("Linden")
28 in connection with ReliaStar's denial of benefits, but Linden
claimed that the administrative hearing was outside of his field.
Collier Decl. ¶ 18. Linden unsuccessfully attempted to continue
the hearing so that Collier could find representation. Id.

1 of her previous position with Marin County. Broman Aff. Ex. H at
2 83-143.

3 The ALJ was tasked with determining whether Collier was
4 "permanently incapacitated" from performing the duties of an
5 Eligibility Worker II.⁶ Cal. Gov't Code § 31724. He concluded
6 that she was not. ALJ Decision at 6. The ALJ's findings were
7 clearly influenced by the fact that the County's expert, Dr. Soong,
8 was the only physician to testify at the hearing. Specifically,
9 the ALJ concluded:

10 [Collier]'s medical records are voluminous. She relies
11 on various documents from [her treating physicians] to
12 assert that she has [EDS] and POTS and that she is
13 incapacitated from her job duties. While [Collier's]
14 medical records are extensive, and although [she] saw
15 many physicians, . . . [t]here was no opportunity to
16 examine or cross-examine her physicians. Notably, her
17 physicians did not appear to be familiar with the duties
18 of an Eligibility Worker II. Id. at 5.

15 Dr. Soong [the County's expert] was the only physician to
16 testify at hearing [sic]. He was subject to direct and
17 cross-examination. He was unequivocal in his conclusion
18 that [Collier] did not have [EDS] and that she was not
19 incapacitated from performance of the duties of the
20 Eligibility Worker II position.

19 Id. at 5-6. On January 12, 2011, MCERA's Board of Retirement
20 unanimously approved the ALJ's findings and denied Collier's
21 request for disability retirement benefits. Broman Aff. Ex. J.
22 Collier did not seek judicial review of the decision in California
23 state court.

24 Collier filed the instant action against ReliaStar on April
25 11, 2011, asserting claims for breach of contract, bad faith, and

26 ⁶ Under section 31724 of the California Government Code, "[i]f the
27 proof received, including any medical examination, shows to the
28 satisfaction of the board that the member is permanently
incapacitated physically or mentally for the performance of his
duties in the service, it shall retire him"

1 IIED. ReliaStar moved for summary judgment on February 3, 2012,
2 and the motion was granted in part and denied in part on March 13,
3 2012. The Court rejected ReliaStar's argument that Collier was
4 collaterally estopped from bringing the instant action due to the
5 outcome of the MCERA hearing. SJ Order at 2. The Court reasoned
6 that Collier did not have an adequate opportunity to litigate her
7 claims before MCERA because she represented herself pro se and
8 because she claimed she was distracted by fatigue and pain
9 throughout the proceedings. Id. at 11. The court dismissed
10 Collier's bad faith claim, finding that the undisputed evidence
11 showed that ReliaStar met its duty to investigate Collier's claim.
12 Id. at 14. The Court reasoned that ReliaStar consulted a number of
13 physicians, reviewed the records of Collier's own physicians, and
14 repeatedly asked Collier to submit additional documents that might
15 support her claim. Id. at 14-15. The Court also dismissed
16 Collier's claims for IIED, reasoning that the standard for IIED "is
17 at least as difficult to meet as that for insurance bad faith, if
18 not more so." Id. at 20-21 (quoting Ayers v. Std. Ins. Co., 51
19 Fed. Appx. 222, 224 (9th Cir. 2002)).

20 On April 9, 2012, the case proceeded to trial. This time,
21 Collier was represented by counsel. The jury heard testimony from
22 not only Dr. Soong but also Collier's treating physicians, Dr.
23 Karen Friday ("Dr. Friday"), Dr. Kamer Tezcan ("Dr. Tezcan"), Dr.
24 Kathreen Johnston ("Dr. Johnston"), Dr. Edward Pinner ("Dr.
25 Pinner"), and Dr. Michael Mason ("Dr. Mason"). ECF Nos. 101-104.
26 ReliaStar's expert, Dr. Asim Khan ("Dr. Khan"), also testified.
27 ECF No. 104. Before the close of evidence, ReliaStar moved for
28 judgment as a matter of law on the basis of collateral estoppel for

1 the reasons stated in its summary judgment motion as supplemented
2 by the testimony at trial. ECF No. 106 at 4. The motion was
3 denied. Id. On the afternoon of April 12, 2012, the case was
4 given to the jury, which was asked to determine whether Collier was
5 "totally disabled" as of April 9, 2009.⁷ ECF No. 107 ("Jury
6 Instructions") at 3. The jury returned a verdict in favor of
7 Collier later that day.

8

9 **III. DISCUSSION**

10 **A. ReliaStar's Motion for Judgment as a Matter of Law**

11 ReliaStar now renews its motion for judgment as a matter of
12 law pursuant to Federal Rule of Civil Procedure 50. Rule 50
13 requires a court to render a judgment as a matter of law where "a
14 party has been fully heard on an issue during a jury trial and the
15 court finds that a reasonable jury would not have a legally
16 sufficient evidentiary basis to find for the party on that issue .
17 . . ." Fed. R. Civ. P. 50(a)(1). "The standard for judgment as a
18 matter of law under Rule 50 mirrors the standard for summary
19 judgment under Rule 56." Reeves v. Sanderson Plumbing Prods.,
20 Inc., 530 U.S. 133, 135 (2000). "Thus, the court must review all
21 of the evidence in the record, drawing all reasonable inferences in
22 favor of the nonmoving party, but making no credibility

23

24 ⁷ The jury was further instructed that, under the terms of
25 Collier's ReliaStar insurance policy, Collier was totally disabled
26 "if she had a disability that rendered her unable to perform with
27 reasonable continuity the substantial and material acts necessary
28 to pursue her usual occupation in the usual or customary way or to
engage with reasonable continuity in another occupation in which
she could reasonably be expected to perform satisfactorily in light
of her age, education, training, experience, station in life, and
physical and mental capacity." Jury Instructions at 3.

1 determinations or weighing any evidence." Id. (internal citations
2 omitted).

3 ReliaStar argues that it is entitled to judgment as a matter
4 of law because Collier was collaterally estopped from bringing the
5 instant action due to MCERA's prior determination on Collier's
6 claim for disability retirement benefits. Def.'s Mot. at 6.
7 Collateral estoppel, also known as issue preclusion, applies where:
8 (1) the issue to be precluded is identical to that decided in a
9 prior proceeding; (2) the issue was actually litigated in the prior
10 proceeding; (3) the issue was necessarily decided; (4) the decision
11 in the prior proceeding was "final and on the merits"; and (5) the
12 party against whom preclusion is sought is identical to or in
13 privity with the party to the former proceeding. People v. Garcia,
14 39 Cal. 4th 1070, 1077 (Cal. 2006). "Collateral estoppel may be
15 applied to decisions made by administrative agencies when an
16 administrative agency is acting in a judicial capacity and resolves
17 disputed issues of fact properly before it which the parties have
18 had an adequate opportunity to litigate." People v. Sims, 32 Cal.
19 3d 468, 479 (Cal. 1982) (internal quotations omitted).

20 In its Summary Judgment Order, the Court found that collateral
21 estoppel did not bar Collier's claims because she did not have an
22 adequate opportunity to litigate her claims before MCERA. SJ Order
23 at 11. In making this determination, the Court relied on the facts
24 set forth in Collier's declaration. Id. at 11-12. Collier
25 declared that she was forced to represent herself pro se because,
26 "for financial and other reasons, [she] was refused representation
27 by a number of attorneys." Collier Decl. ¶ 18. Collier also
28 declared that she was unable to follow the administrative

1 proceedings due to pain and fatigue, that one of her physicians
2 declined to testify at the hearing, and that she did not know the
3 procedure to arrange for his testimony. Id. ¶¶ 18-20. ReliaStar
4 disputed some of these facts, but, because this issue came on a
5 motion for a summary judgment, the Court viewed the facts in the
6 light most favorable to Collier, the non-moving party. See SJ
7 Order at 13 n.5.

8 ReliaStar now argues that Collier had a full and fair
9 opportunity to litigate before MCERA because: (1) Collier could
10 have sought judicial review of the ALJ's decision with the help of
11 counsel, (2) case law shows that pro se status alone does not
12 shield a party from collateral estoppel, (3) Collier was competent
13 to represent herself at the MCERA hearing despite her alleged pain
14 and fatigue, (4) Collier received some assistance from counsel in
15 preparing for the MCERA hearing, and (5) Dr. Mason, Collier's
16 primary care physician, testified at trial that he would have
17 testified before MCERA had Collier asked. Def.'s Mot. at 8-11.

18 The Court is not persuaded. As an initial matter, ReliaStar's
19 first four arguments should have been raised in its summary
20 judgment briefing. These new arguments do not depend on any new
21 evidence raised at trial. Rather, they merely offer new legal
22 theories and new authority which were not raised before. Compare
23 Def.'s Mot. 8-11 with ECF No. 41 ("Def.'s MSJ Reply") at 5-6, ECF
24 No. 51 ("Def.'s Response to MSJ Surreply"). ReliaStar previously
25 had a full and fair opportunity to present its arguments on this
26 issue. The Court declines to give it a second bite at the apple
27 post-judgment.⁸ Only ReliaStar's fifth argument -- that Dr. Mason

28 ⁸ Further, these four arguments would not alter the Court's
analysis. As to ReliaStar's first argument, an appeal of MCERA's

1 indicated that he would have testified at the MCERA hearing had he
2 been asked -- is predicated on new information that came to light
3 at trial. This argument is unavailing. The fact that Dr. Mason, a
4 physician at Kaiser Permanente ("Kaiser"), was willing to testify
5 does not mean that Collier could have secured his appearance at the
6 hearing. Collier would have had to negotiate with a separate
7 medical-legal unit at Kaiser to arrange for Dr. Mason's appearance.
8 ECF No. 129 ("Phillips Decl.") ¶ 3; ECF No. 130 ("Padway Decl.") ¶
9 8. This unit frequently requires the personal service of subpoenas
10 and the pre-payment of physician fees. Phillips Decl. ¶ 3. It is
11 unclear that Collier could have negotiated the Kaiser system on her
12 own. Further, ReliaStar's focus on Dr. Mason distorts the scope of
13 this case. At trial, Collier's counsel presented the testimony of
14 five physicians -- four from Kaiser and one from Stanford
15 University. ECF Nos. 101-104.

18 decision through a writ of mandate to a California state court
19 would likely have been futile. The state court would not have
20 reviewed Collier's case de novo. See Cal. Civ. Proc. Code §
21 1094.5. Accordingly, Collier would not have had an opportunity to
22 introduce testimony from her treating physicians on appeal. With
23 respect to ReliaStar's second argument, the MCERA proceedings were
24 not unfair merely because Collier represented herself pro se. As
25 explained in the Court's Summary Judgment Order, Collier was
26 incapable of adequately representing herself because of her chronic
27 pain and fatigue. See SJ Order at 11. In its third argument,
28 ReliaStar contends that Collier could not have been suffering from
disabling pain and fatigue through the MCERA hearing because MCERA
found her disability claim was meritless. Def.'s Mot. at 12. This
argument is circular. If Collier's condition rendered her unable
to present a competent case at the hearing, then the MCERA's
determination as to Collier's condition is far from reliable.
ReliaStar's fourth argument is predicated on the fact that Linden
assisted Collier in attempting to obtain a continuance of the
administrative hearing and entered an appearance after the hearing
was concluded. Id. at 8. However, ReliaStar does not dispute that
Collier was unrepresented during the substantive portion of the
hearing.

1 Even if Collier did have a full and fair opportunity to
2 litigate her case before MCERA, she is not collaterally estopped
3 from bringing the instant action because the MCERA hearing involved
4 different issues. First, Collier's burden of proof was different
5 at the MCERA hearing. At trial, Collier needed to prove her claim
6 by the preponderance of the evidence. Jury Instructions at 6. In
7 contrast, at the MCERA hearing, Collier needed to submit proof to
8 "the satisfaction of the [MCERA] board." Cal. Gov't Code § 31724.
9 Thus, the board had the discretion to reject Collier's claim, even
10 if she proved her case by the preponderance of the evidence.

11 Further, at the MCERA hearing, Collier needed to show that she
12 was "permanently incapacitated." Cal. Gov't Code § 31724. At
13 trial, the jury was not concerned with the duration of Collier's
14 disability. They only needed to decide whether she was "totally
15 disabled" under the terms of the ReliaStar policy on April 9, 2009.
16 ReliaStar argues that MCERA's decision did not turn on a finding of
17 permanence. Def.'s Reply at 7. Specifically, Reliastar argues
18 that MCERA "concluded that Collier was in fact able to perform the
19 duties of her county position" Id. The Court disagrees.
20 The ALJ at the MCERA hearing merely found that Collier did not meet
21 her burden. He gave little weight to the documents authored by
22 Collier's physicians since there was no opportunity to examine or
23 cross-examine those physicians and because they "did not appear to
24 be familiar with the duties of an Eligibility Worker II." ALJ
25 Decision at 5. On the other hand, the ALJ found the testimony of
26 Dr. Soong, Marin County's expert, to be "credible and persuasive."
27 Id. Based on this evidence, the ALJ reached the legal conclusion
28 that: "[Collier] did not establish that she is substantially unable

1 to perform the usual duties of the Eligibility Worker II position."
2 ALJ Decision at 6. The MCERA Board merely adopted the ALJ's
3 Decision and made no factual findings of its own. See Broman Aff.
4 Ex. J.

5 For these reasons, the Court finds that Collier is not
6 collaterally estopped from bringing the instant action and
7 therefore DENIES ReliaStar's renewed motion for judgment as a
8 matter of law.

9 **B. Collier's Motion to Amend the Judgment**

10 Pursuant to Federal Rule of Civil Procedure 59, Collier moves
11 for an order vacating the portion of the Court's Summary Judgment
12 Order which dismissed her claims for bad faith and IIED. Rule
13 59(e), which permits a court to alter or amend a previous order,
14 "offers an extraordinary remedy, to be used sparingly in the
15 interests of finality and conservation of judicial resources."
16 Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir.
17 2000) (internal quotations omitted). "[A] motion for
18 reconsideration should not be granted, absent highly unusual
19 circumstances, unless the district court is presented with newly
20 discovered evidence, committed clear error, or if there is an
21 intervening change in the controlling law." 389 Orange St.
22 Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999). Evidence is
23 not newly discovered within the meaning of Rule 59 if it was in the
24 moving party's possession at the time of the prior hearing date or
25 could have been discovered with reasonable diligence. Engelhard
26 Indus., Inc. v. Research Instrumental Corp., 324 F.2d 347, 352 (9th
27 Cir. 1963).

28

1 In opposition to ReliaStar's prior motion for summary
2 judgment, Collier asserted at least fifteen arguments as to why her
3 bad faith claim should not be dismissed. See ECF No. 37 ("Pl.'s
4 MSJ Opp'n") at 8-16. The Court addressed and rejected each of
5 these arguments. See SJ Order at 15-20. Collier's motion to alter
6 the judgment raises many of these same arguments, as well as
7 arguments that could have been made before. Collier does not
8 suggest that there has been an intervening change in controlling
9 law. Further, the newly discovered evidence cited in Collier's
10 motion does not indicate that the Court reached the wrong
11 conclusion in dismissing Collier's bad faith and IIED claims in its
12 Summary Judgment Order. As such, the extraordinary remedy of
13 amending the judgment is inappropriate here.

14 Collier first argues that ReliaStar ignored its continuing
15 duty to evaluate her claim, a duty which Collier claims extended
16 beyond ReliaStar's decision to terminate her benefits through the
17 trial on her breach of contract claim. Id. at 4. Collier suggests
18 that ReliaStar breached this duty because, at trial, no one ever
19 testified that ReliaStar ever looked at any "new information" to
20 decide whether to reevaluate ReliaStar's position on the case. Id.
21 at 4-5. This argument lacks merit. Even if Collier's
22 interpretation of an insurer's continuing duty to investigate is
23 correct, ReliaStar was not required to present any evidence
24 concerning its evaluation of Collier's claim at trial. By that
25 time, Collier's bad faith claim had already been dismissed.
26 ReliaStar cannot be faulted for failing to present evidence on an
27 issue which was irrelevant to its case.

28

1 Next, Collier challenges the manner in which ReliaStar decided
2 to terminate her claim in April 2009. Pl.'s Mot. at 5-10. Missing
3 from this discussion is any reference to new evidence that could
4 not have been discovered through reasonable diligence prior to
5 summary judgment. Collier's arguments are predicated on notes from
6 the claims administrator who approved Collier's claim in 2007,
7 ReliaStar's April 2009 letter to Collier informing her that her
8 benefits were being terminated, and ReliaStar's purported failure
9 to produce Karla Wagner ("Wagner"), the author of that termination
10 letter. This is not new evidence. Further, the Court previously
11 addressed Collier's arguments regarding Wagner when it ruled on her
12 motions in limine. See ECF Nos. 83, 99.

13 Collier also takes issue with ReliaStar's decision to
14 dismiss the medical opinions of Dr. Higiurio Ortega, one of
15 Collier's treating physicians. Pl.'s Mot. at 11-13. Once again,
16 this argument does not rest on any new evidence. These facts and
17 arguments were addressed in the Court's prior Summary Judgment
18 Order, see SJ Order at 4-6, 16-17, 19-20, and the Court will not
19 revisit them here. Likewise, the Court declines to revisit the
20 issue of how ReliaStar weighed the statements of its experts, Drs.
21 Soong, Kahn, and Anderson, against the statements of Collier's
22 treating physicians, Drs. Mason, Pinner, and Johnson. Compare
23 Pl.'s Mot. at 13-17 with Pl.'s MSJ Opp'n at 10-13; see SJ Order at
24 14-15, 17-18.

25 Accordingly, the Court DENIES Collier's motion to amend the
26 judgment.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

For the reasons set forth above, the Court DENIES Defendant ReliaStar Life Insurance Company's renewed motion for judgment as a matter of law and Plaintiff Wendy Collier's motion to amend the judgment. The Court's Summary Judgment Order and the jury's Verdict shall remain undisturbed.

IT IS SO ORDERED.

Dated: July 24, 2012


UNITED STATES DISTRICT JUDGE