

United States District Court
For the Northern District of California

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

WENDY COLLIER,)	Case No. 11-1760 SC
)	
Plaintiff,)	ORDER GRANTING IN PART AND
)	DENYING IN PART DEFENDANT'S
v.)	<u>MOTION FOR SUMMARY JUDGMENT</u>
)	
RELIASTAR LIFE INSURANCE)	
COMPANY,)	
)	
Defendant.)	
)	
)	

I. INTRODUCTION

Plaintiff Wendy Collier ("Collier") brings this action for breach of contract, bad faith, and intentional infliction of emotional distress against Defendant ReliaStar Life Insurance Company ("ReliaStar") for failure to pay long-term disability ("LTD") benefits. Collier claims that she has been rendered disabled by a combination of diseases, including Ehlers-Danlos Syndrome ("EDS") and Postural Orthostatic Tachycardic Syndrome ("POTS"), which cause her constant fatigue and extreme pain. Collier applied for LTD benefits from her former employer, Marin County, and from ReliaStar, under Marin County's group plan. Marin County denied Collier's claim based on an evidentiary hearing before an Administrative Law Judge ("ALJ"). Collier represented

1 herself pro se before the ALJ because she could not afford an
2 attorney. ReliaStar denied Collier's claim under Marin County's
3 group plan based on medical evaluations performed by a number of
4 physicians. Collier did not seek review of the ALJ decision but
5 did bring the instant action against ReliaStar.

6 Now before the Court is ReliaStar's motion for summary
7 judgment. ECF No. 31 ("MSJ"). The motion is fully briefed. ECF
8 Nos. 37 ("Opp'n"), 41 ("Reply"). Pursuant to Civil Local Rule 7-
9 1(b), the Court finds the motion suitable for determination without
10 oral argument. ReliaStar argues that Collier is collaterally
11 estopped from pursuing this lawsuit because an ALJ previously
12 determined that she is not disabled. ReliaStar also argues that
13 Collier's tort claims for bad faith and intentional infliction of
14 emotional distress fail because ReliaStar thoroughly investigated
15 her claim. The Court finds that collateral estoppel should not
16 preclude Collier from litigating the issue of her disability in the
17 instant action because Collier lacked the financial means and
18 physical stamina to plead her case before the ALJ. The Court also
19 finds that the undisputed facts show that Collier cannot succeed on
20 her claims for bad faith and intentional infliction of emotional
21 distress. Accordingly, the Court GRANTS in part and DENIES in part
22 ReliaStar's motion for summary judgment.

23

24 **II. BACKGROUND**

25 Collier worked as an "Eligibility Worker" for Marin County
26 from November 1991 until June 2006. ECF No. 39 ("Collier Decl.") ¶
27 3. During much of this time, Collier was the primary wage earner
28 in her family and had three children to support. Id. Collier

1 claims that she was unable to continue working in 2006 due to the
2 onset of extreme fatigue and pain. Id. ¶ 4. In October 2006,
3 Collier's cardiologist, Dr. Karen Friday ("Friday"), diagnosed
4 Collier with POTS.¹ Id. ¶ 7. Collier was subsequently diagnosed
5 with EDS² by a geneticist, Kathleen Johnson ("Johnson"). Johnson
6 told Collier that symptoms, including sprains, dislocations, and
7 joint degeneration, could be treated as needed but would get worse
8 over time. Id. ¶ 8. Collier claims that rest improves her pain
9 but there is no treatment for her fatigue. Id.

10 In February 2007, Collier submitted a claim to ReliaStar for
11 LTD benefits. AR RS000848.³ Under Collier's ReliaStar policy, she
12 is entitled to benefits if she is totally disabled, which is
13

14 ¹ According to the National Institute of Health ("NIH"):

15 Postural orthostatic tachycardia syndrome (POTS) is one
16 of a group of disorders that have orthostatic intolerance
17 (OI) as their primary symptom. OI describes a condition
18 in which an excessively reduced volume of blood returns
19 to the heart after an individual stands up from a lying
20 down position. The primary symptom of OI is
21 lightheadedness or fainting. In POTS, the lightheadedness
22 or fainting is also accompanied by a rapid increase in
23 heartbeat of more than 30 beats per minute, or a heart
24 rate that exceeds 120 beats per minute, within 10 minutes
25 of rising. The faintness or lightheadedness of POTS are
26 relieved by lying down again.

27 ECF No. 33 ("Bromen Aff.") Ex. A.

28 ² According to NIH:

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

33 Bromen Aff. Ex. B.

34 ³ ReliaStar's Administrative Record ("AR") is attached to the
35 Affidavit of Mary Kay Racette, ECF No. 32, and has been bates
36 labeled as RS00xxxx. Citations to the AR in this Order follow this
37 format.

1 defined as: "the inability to perform with reasonable continuity
2 all of the essential duties of any gainful occupation and as a
3 result [the insured is] not working at all." AR RS000035. A
4 "gainful occupation" is "any occupation that [the insured] could
5 reasonably be expected to perform satisfactorily in light of [the
6 insured's] age, education, training, experience, station in life,
7 and physical and mental capacity." AR RS000036. After obtaining
8 records from Friday and a number of Collier's other physicians,
9 ReliaStar approved Collier's claim under the policy and awarded her
10 benefits retroactively to September 12, 2006. AR RS000180.

11 On July 15, 2008, Collier informed ReliaStar that she had
12 relocated to Puerto Armuelles, Panama, located approximately 330
13 miles west of Panama City. AR RS000178. About two weeks later,
14 ReliaStar requested that Collier submit an updated statement from
15 her physician concerning her condition. AR RS000179. In response,
16 Collier submitted a statement from her primary physician, Dr.
17 Michael Mason ("Mason"), reporting a primary diagnosis of EDS with
18 chronic pain and an additional diagnosis of "autonomic
19 dysfunction." AR RS001395. Mason indicated that he had not seen
20 Collier since September 5, 2007, more than a year earlier. AR
21 RS001395.

22 Due to the length of time since Mason had seen Collier,
23 ReliaStar requested that she provide a more recent statement from
24 her current treating physician. AR RS000176. In November 2008,
25 ReliaStar received documentation from a Dr. Higiuiio Ortega
26 ("Ortega"), Collier's Panamanian physician, indicating that Collier
27 had EDS, autonomic dysfunction, degenerative disease, and heart
28 dysfunction. AR RS001397. Ortega concluded that Collier could not

1 work, but reported that she could lift up to fifty pounds,
2 "balance," "stoop" and "reach"; that she had abilities to use her
3 hands and right foot for at least some repetitive tasks; and that
4 she had only a slight cardiac limitation. AR RS001398. ReliaStar
5 subsequently requested Ortega's records, but Collier indicated that
6 Ortega did not keep any, explaining: "It is very old school here,
7 family doctor, small town." AR RS000005, 171, 175.

8 On February 7, 2009, ReliaStar received a report of an
9 independent medical examination performed by Dr. James Soong
10 ("Soong") on behalf of Marin County in connection with Collier's
11 application for disability retirement benefits. AR RS000274.
12 Soong concluded that Collier could perform her prior job duties for
13 Marin County if minor modifications were offered, that she did not
14 qualify for a diagnosis of EDS, and that there was no evidence of
15 any disease in her joints or abnormalities in her autonomic nervous
16 system. AR RS0000287-88. ReliaStar also commissioned a Labor
17 Market Study indicating that seven positions existed near Collier's
18 former residence in California that paid a gainful wage and that
19 Collier could perform given her capabilities, as documented by
20 Soong. AR RS000153, 166. Collier claims she never saw the Labor
21 Market Study and complains that it contained jobs all over the Bay
22 Area, without respect to the commute from her former home. Collier
23 Decl. ¶ 15.

24 On April 8, 2009, ReliaStar informed Collier that, based on
25 the information in Soong's independent medical examination,
26 Ortega's reports, and the Labor Market Study, her benefits were
27 being terminated since she did not meet the policy's definition of
28

1 being "totally disabled" under the "any occupation standard." AR
2 RS000146.

3 Collier appealed ReliaStar's decision in April 2009. AR
4 RS000134. Beginning in May 2009, ReliaStar made numerous
5 unsuccessful attempts to obtain additional medical records from
6 Ortega so that it could better evaluate Collier's appeal. See AR
7 RS000130-133. Finally, on August 6, 2009, Collier faxed to
8 ReliaStar what she claimed to be Ortega's medical records. AR
9 RS0000086-98. ReliaStar doubted the authenticity of the records
10 because, among other things, Collier had previously indicated that
11 such records did not exist. AR RS000616-17. The records indicated
12 that Ortega first saw Collier in July 2008 for a "skin lesion
13 secondary to heat and friction" and an infection. AR RS000584. It
14 was not until January 12, 2009 that Collier was seen for any
15 condition that might be related to EDS, when she complained of
16 lower back pain. AR RS000586. Ortega also saw Collier for pain or
17 joint conditions in February, March, and April 2009. AR RS000588-
18 91.

19 Subsequently, ReliaStar attempted to arrange for an
20 independent medical examination in Miami, and was willing to pay
21 Collier's expenses to attend. AR RS000576, 581. When scheduling
22 and travel proved infeasible, ReliaStar commissioned an independent
23 medical review of Collier's file by Dr. Asim Khan ("Khan"), a
24 rheumatologist familiar with EDS. AR RS000549, 573. Khan opined
25 that Collier likely did not have EDS, but that she may have a "mild
26 form of hypermobility syndrome" related to EDS. AR RS000553-54.
27 Khan concluded that Collier might have a "fibromyalgia-like
28 syndrome," anxiety, fatigue, and depression, and that she had been

1 subjectively diagnosed with POTS. Id. Khan believed that Collier
2 could "certainly" work a light or sedentary job with limited
3 restrictions. AR RS000554-55. ReliaStar requested any records of
4 genetic testing in Collier's file so that Khan could better
5 evaluate Collier's EDS diagnosis. AR RS0000553, 558. Collier
6 provided a note from Johnson diagnosing Collier with EDS, but Khan
7 continued to believe that Collier could work a light or sedentary
8 job. AR RS000498-99. Kahn recommended further evaluation in
9 Panama or in the United States, if Collier chose to return. Id.

10 In December 2009, Collier's attorney, David Linden ("Linden"),
11 informed ReliaStar that Collier had returned to the United States
12 and was living in Napa. AR RS0000558. Subsequently, ReliaStar
13 commissioned Dr. Scott Anderson ("Anderson") to conduct an
14 independent medical examination of Collier and review her medical
15 records. Like Soong and Kahn, Anderson rejected Collier's EDS
16 diagnosis. AR RS000491-92. Instead, Anderson diagnosed Collier
17 with obesity and concluded that she could work "8 hours a day, five
18 days a week or something comparable to that," so long as it
19 involved light or sedentary work. Id.

20 Sometime after Collier returned to the United States,
21 ReliaStar hired a private investigator to conduct sub rosa
22 surveillance. See AR RS000869. The investigator surveilled
23 Collier's parent's home in Napa -- where Collier was believed to be
24 living -- on January 8 and January 15, 2010, but did not observe
25 Collier on either date. AR RS000871-74. The investigator did
26 observe a "white female," believed to be Collier's mother, talking
27 with the mailperson and running an errand on January 8. AR
28 RS000872. For obvious reasons, this surveillance was not

1 incorporated into ReliaStar's final decision on Collier's LTD
2 claim.

3 On February 5, 2010, ReliaStar denied Collier's appeal. AR
4 RS000471. The denial was based on the independent medical
5 examinations performed by Soong and Anderson, as well as Khan's
6 review of Collier's file. AR RS000480, 82. ReliaStar also noted
7 that Collier's own physician, Mason, had "outlined physical
8 abilities that would fall within the light category" and stated
9 that Collier was working part-time. AR RS000480-81. ReliaStar
10 accorded little weight to Ortega's opinion since he had not treated
11 Collier for EDS until she had determined that she needed more
12 frequent treatment for insurance purposes. AR RS000481-82.
13 Further, ReliaStar doubted the authenticity of many of Ortega's
14 records, concluding that some were actually authored by Collier and
15 others were "recreated" by Ortega. Id. Collier subsequently
16 requested that ReliaStar reconsider its decision, submitting
17 additional medical records from Drs. Mason, Scott E. Pinner
18 ("Pinner"), and Kamer Tezcan ("Tezcan"), dated October 30, 2009 or
19 later. AR RS000889-90, 929. ReliaStar denied Collier's request
20 for a second appeal, noting that the newly submitted treatment
21 records did not address the relevant period of time. AR RS000889-
22 90.

23 On June 15, 2010, a contested hearing was held before an ALJ
24 on behalf of the Marin County Employees' Retirement Association
25 ("MCERA") concerning Collier's application for disability
26 retirement benefits from Marin County. Broman Aff. Ex. H. By the
27 hearing date, Collier had been without benefits for almost a year
28 and was living with her parents in Napa because she "could not

1 afford to do anything else." Collier Decl. ¶ 17. MCERA bylaws
2 allowed Collier to be represented by counsel at the hearing, Broman
3 Aff. Ex. G § 1007, but Collier "could not afford to pay for
4 representation on an hourly basis, and for financial and other
5 reasons, [she] was refused representation by a number of
6 attorneys," Collier Decl. ¶ 18.⁴ Collier represented herself at
7 the hearing, but claims that she was unable to follow all of the
8 proceedings due to pain and fatigue. Id. ¶¶ 18, 20. Soong, the
9 only physician at the hearing, testified that Collier was able to
10 perform the duties of her previous position with Marin County.
11 Broman Aff. Ex. H 83-143. Collier claims her own physician
12 declined to testify at the hearing. Collier Decl. ¶ 19.

13 The ALJ concluded that Collier did not establish that she had
14 EDS or POTS or "that she is substantially unable to perform the
15 usual duties" of her previous position with Marin County. Broman
16 Aff. Ex. F at 4-6. On January 12, 2011, MCERA unanimously approved
17 the ALJ's findings and denied Collier's request for disability
18 benefits. Broman Aff. Ex. J at 4. Collier declined to appeal.

19 Collier filed the instant action against ReliaStar on April
20 11, 2011, alleging claims for bad faith, intentional infliction of
21 emotional distress, and breach of contract. ECF No. 1 ("Compl.").
22 ReliaStar now moves for summary judgment on the grounds that (1)
23 Collier is collaterally estopped from bringing this action because
24 the underlying issues have already been litigated before an ALJ;
25 (2) ReliaStar did not act in bad faith because there was a genuine

26 _____
27 ⁴ At the time, Collier was represented by Linden in connection with
28 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 dispute regarding Collier's claim for benefits; and (3) ReliaStar
2 is not liable for intentional infliction of emotional distress
3 because its conduct was not extreme or outrageous. MSJ at 12-25.
4

5 **III. LEGAL STANDARD**

6 Entry of summary judgment is proper "if the movant shows that
7 there is no genuine dispute as to any material fact and the movant
8 is entitled to judgment as a matter of law." Fed. R. Civ. P.
9 56(a). Summary judgment should be granted if the evidence would
10 require a directed verdict for the moving party. Anderson v.
11 Liberty Lobby, Inc., 477 U.S. 242, 251 (1986). Thus, "Rule 56[]
12 mandates the entry of summary judgment . . . against a party who
13 fails to make a showing sufficient to establish the existence of an
14 element essential to that party's case, and on which that party
15 will bear the burden of proof at trial." Celotex Corp. v. Catrett,
16 477 U.S. 317, 322 (1986). "The evidence of the nonmovant is to be
17 believed, and all justifiable inferences are to be drawn in his
18 favor." Anderson, 477 U.S. at 255. However, "[t]he mere existence
19 of a scintilla of evidence in support of the plaintiff's position
20 will be insufficient; there must be evidence on which the jury
21 could reasonably find for the plaintiff." Id. at 252. "When
22 opposing parties tell two different stories, one of which is
23 blatantly contradicted by the record, so that no reasonable jury
24 could believe it, a court should not adopt that version of the
25 facts for purposes of ruling on a motion for summary judgment."
26 Scott v. Harris, 550 U.S. 372, 380 (2007).

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28 ///

1 **IV. DISCUSSION**

2 **A. Collateral Estoppel**

3 ReliaStar argues that Collier is collaterally estopped from
4 bringing the instant action because an ALJ has already determined
5 that she is not disabled. MSJ at 12. Collateral estoppel, also
6 known as issue preclusion, applies where: (1) the issue to be
7 precluded is identical to that decided in a prior proceeding; (2)
8 the issue was actually litigated in the prior proceeding; (3) the
9 issue was necessarily decided; (4) the decision in the prior
10 proceeding was "final and on the merits"; and (5) the party against
11 whom preclusion is sought is identical to or in privity with the
12 party to the former proceeding. People v. Garcia, 39 Cal. 4th
13 1070, 1077 (Cal. 2006). "Collateral estoppel may be applied to
14 decisions made by administrative agencies [w]hen an administrative
15 agency is acting in a judicial capacity and resolves disputed
16 issues of fact properly before it which the parties have had an
17 adequate opportunity to litigate." People v. Sims, 32 Cal. 3d 468,
18 479 (Cal. 1982) (internal quotations omitted).

19 The Court finds that Collier is not collaterally estopped from
20 bringing the instant action because she did not have an adequate
21 opportunity to litigate her claims before the ALJ. At the
22 administrative hearing, Collier was forced to represent herself pro
23 se and she claims she was distracted by fatigue and pain throughout
24 the proceedings. Collier Decl. ¶¶ 18-20. Further, the only
25 physician to testify at the administrative hearing was Soong, who
26 had been hired by Marin County. Broman Aff Ex. F at 4. Collier
27 claims she asked one of her physicians to testify on her behalf,
28 but he declined. Collier Decl. ¶ 19. Collier did not know the

1 procedure to arrange for his testimony and lacked the money to pay
2 expert fees. Id. Accordingly, the Court declines to give the
3 ALJ's decision a preclusive effect in the instant action. See West
4 v. Ruff, 961 F.2d 1064, 1065 (2d Cir. 1992) (plaintiff "lacked a
5 full and fair opportunity to litigate his claim" in parallel state
6 litigation because his claims "could not be adequately presented
7 pro se"); Davis v. Charleston, 827 F.2d 317 n.3 (8th Cir. 1987)
8 ("[A]s a pro se litigant before the state court, we do not believe
9 that [plaintiff] had a full and fair opportunity to litigate the
10 issue in the prior suit." (internal quotations and citations
11 omitted)).

12 ReliaStar argues that Collier's pro se status is irrelevant
13 since, under Sims, collateral estoppel is justified so long as a
14 party "had notice of the hearing as well as the opportunity and
15 incentive to present its case." Reply at 5 (citing Sims, 32 Cal.
16 3d at 481). Sims is inapposite. In that case, the Supreme Court
17 gave preclusive effect to an administrative hearing before the
18 California Department of Social Services, even though Sonoma
19 County, the party against whom collateral estoppel was asserted,
20 had declined to present any evidence or otherwise participate at
21 the hearing. Sims, 32 Cal. 3d at 481. The court reasoned that the
22 County had an opportunity and incentive to present its case at the
23 hearing, even if it declined to do so. Id. However, there is no
24 indication that Sonoma County, like Collier, lacked the means to
25 hire an attorney or acquire pertinent evidence.

26 ReliaStar also argues that Collier must have had a full and
27 fair hearing since she testified, cross-examined Soong, and entered
28 evidence into the record. Reply at 5. The Court disagrees. The

1 fact that Collier acted as her own attorney does not mean that she
2 performed adequately. For example, Collier's entire opening
3 statement consisted of the following: "I guess I would, you know,
4 just like to say, you know, I am hoping that the medical evidence
5 is sufficient to support what I am saying is making me unable to
6 work. And that's about it." Broman Ex. H at 5. Even a brief
7 perusal of the rest of the hearing transcript shows that Collier
8 would have greatly benefited from competent legal representation.⁵

9 For these reasons, the Court finds that Collier is not
10 collaterally estopped from bringing the instant action.

11 **B. Collier's Bad Faith Claim**

12 Collier's claim for bad faith, i.e., violation of the covenant
13 of good faith and fair dealing, is predicated on ReliaStar's
14 alleged failure to thoroughly investigate her disability claim.
15 See Compl. ¶¶ 6-7, Opp'n at 6-7. The undisputed facts do not
16 support such a claim.

17 In the insurance context, the implied covenant of good faith
18 and fair dealing requires an insurer to refrain from injuring its
19 insured's right to receive the benefits of the insurance agreement.
20 Egan v. Mut. of Omaha Ins. Cos., 24 Cal. 3d 809, 818 (Cal. 1979).
21 The implied covenant imposes an obligation on insurers to "give at
22 least as much consideration to the welfare of its insured as it

23 _____
24 ⁵ ReliaStar also challenges the credibility of Collier's assertion
25 that she could not afford an attorney. Reply at 5 n.1. This
26 argument lacks merit. As an initial matter, the Court cannot make
27 credibility determinations on a summary judgment motion. Even if
28 it could, it is entirely plausible that Collier, who had been
without disability benefits for over a year and was living with her
parents at the time, lacked the means to pay an attorney out-of-
pocket. It is also plausible that Collier was unable to find an
attorney to represent her at an administrative hearing on a
contingency fee basis.

1 gives to its own interests" and, consequently, to "fully inquire
2 into possible bases that might support the insured's claim." Id.
3 at 818-19. There is no "general rule as to how much or what type
4 of investigation is needed to meet the insurer's obligations."
5 Wilson v. 21st Century Ins. Co., 42 Cal. 4th 713, 723 (Cal. 2007).
6 Instead, claims of bad faith "must be evaluated in light of the
7 totality of the circumstances." Id. For example, in some cases,
8 "review of the insured's submitted medical records might reveal an
9 indisputably reasonable basis to deny the claim without further
10 investigation."⁶ Id.

11 The Court finds that ReliaStar met its duty to investigate
12 Collier's claim. As detailed in Section II above, ReliaStar
13 consulted a number of physicians, including Soong, Kahn, and
14 Anderson, before reaching a final determination on Collier's claim.
15 Additionally, ReliaStar reviewed the records of Collier's own
16 physicians, including Mason and Ortega, and exerted significant
17 efforts to obtain, translate, and verify the records of Ortega. At
18 one point, in an attempt to better assess her claim, ReliaStar
19 offered to fly Collier from Panama to Miami so that it could
20 commission an independent medical examination. Additionally,
21 ReliaStar repeatedly asked Collier to submit additional documents

23 ⁶ ReliaStar contends an insurer has no further duty to investigate
24 a claim once it has determined that there is a genuine dispute over
25 coverage. Reply at 9. The Ninth Circuit has held as much.
26 Brinderson-Newberg Joint Venture v. Pac. Erectors, Inc., 971 F.2d
27 272, 282-283 (9th Cir. 1992). However, a genuine dispute only
28 exists "where the insurer's position is maintained in good faith
and on reasonable grounds." Wilson, 42 Cal. 4th at 723.
Presumably, where, as here, a factual dispute arises between the
parties, some reasonable investigation is required before an
insurer can maintain its position "in good faith and on reasonable
grounds." An insurer may not manufacture a "genuine dispute" over
a factual issue by conducting a biased or incomplete investigation.

1 that might support her claim. In light of the totality of the
2 circumstances, these efforts are sufficient to satisfy ReliaStar's
3 duty to investigate.

4 Collier cites fifteen purported deficiencies in ReliaStar's
5 handling of her claim. The Court finds that these purported
6 deficiencies, either considered independently or taken together,
7 are insufficient to support a claim for bad faith.

8 First, Collier argues that ReliaStar ignored the subjective
9 evidence of her condition, such as chronic pain and fatigue. Opp'n
10 at 8-9. This claim is contradicted by the record. Each of the
11 independent physicians who either examined Collier or reviewed her
12 records noted and considered her subjective complaints. See AR
13 RS000275-76, 485-86, 552-54. Collier heavily relies on the Ninth
14 Circuit's decision in Salomaa v. Honda Long Term Disability Plan,
15 642 F.3d 666 (9th Cir. 2011). In that case, the plaintiff's
16 physicians diagnosed him with chronic fatigue syndrome, a condition
17 without objective symptoms, and every physician who examined the
18 plaintiff concurred that he was disabled. Salomaa, 642 F.3d at
19 669, 676. Such is not the case here. There is a disagreement
20 among various physicians about the extent and existence of
21 Collier's disability and no doctor has diagnosed her with chronic
22 fatigue syndrome. Further, in Salomaa, the Ninth Circuit
23 considered whether the plan had wrongfully denied benefits, not
24 whether that denial was made in bad faith.

25 Second, Collier complains that ReliaStar "failed to tell [her]
26 what evidence it would accept to prove that she had too much pain
27 or fatigue to work." Opp'n at 9. This argument is unavailing. As
28 an initial matter, Collier cites no authority which would impose

1 such an obligation on insurers in this context. Further, ReliaStar
2 asked Collier to submit additional evidence which might support her
3 claim on numerous occasions. See, e.g., AR RS000175, 558.

4 Third, Collier argues that ReliaStar acted in bad faith
5 because "when it terminated Ms. Collier's benefits and told her she
6 could appeal, it failed to tell her that she was not required to go
7 through an appeal, and could instead immediately file suit." Opp'n
8 at 9. Once again, Collier cites no authority to support her
9 position. Further, ReliaStar never indicated that Collier was
10 required to appeal. See AR RS000148.

11 Fourth, Collier asserts that ReliaStar consistently failed to
12 give her the opportunity to respond to medical reports before
13 ReliaStar relied upon them to make a decision. Opp'n at 9-10.
14 This argument has been rejected in the ERISA context since
15 requiring an insurer to obtain a response to an expert report
16 before a decision "would create an endless loop of opinions,
17 characterized by an unnecessary cycle of submission, review, re-
18 submission, and re-review." Winz-Byone v. Metro. Life Ins. Co.,
19 No. EDCV 07-238-VAP (OPx), 2008 U.S. Dist. LEXIS 109824, at *21
20 (C.D. Cal. Mar. 26, 2008) (internal quotations and citations
21 omitted).

22 Fifth, Collier argues that, in making its initial termination
23 decision, ReliaStar improperly relied on Soong's medical report and
24 disregarded Ortega's. Opp'n at 10. But ReliaStar's decision to
25 accord more weight to Soong's diagnosis than to Ortega's cannot
26 support a claim for bad faith because it was not unreasonable.
27 Soong had conducted an independent medical examination of Collier,
28 reviewed her medical files, and had provided ReliaStar with

1 supporting documentation. On the other hand, at the time of the
2 initial termination decision, Ortega had not provided ReliaStar
3 with medical records supporting his diagnosis. Further, as noted
4 in ReliaStar's termination letter, Ortega had "outline[d]
5 [Collier's] physical capacities in the light-medium category,"
6 indicating that she was capable of performing some work. AR
7 RS000147.

8 Sixth, Collier argues that ReliaStar committed bad faith
9 because Soong "did not measure joint laxity -- instead he measured
10 range of motion of some of the larger joints." Opp'n at 10. Even
11 if Soong's examination was flawed in some way -- and based on the
12 record before the Court it is not altogether clear that it was --
13 ReliaStar cannot be held liable for bad faith for relying on it.
14 Missing from Collier's opposition is any indication that ReliaStar
15 acted unreasonably in basing its benefits decision on Soong's
16 independent medical examination.

17 Seventh, Collier faults ReliaStar for failing to consider
18 whether Soong was biased. Opp'n at 11. Soong has testified that
19 90 percent of his medical legal work has been for defendants and
20 that his opinions are generally based on "objective diseases and
21 findings" rather than subjective symptoms. Id. But the fact Soong
22 frequently testifies on behalf of defendants does not mean that it
23 was unreasonable for ReliaStar to rely on his opinion. Further, as
24 noted above, Soong did assess Collier's subjective symptoms in
25 rendering his diagnosis.

26 Eighth, Collier argues that ReliaStar did not timely inform
27 her that it was reexamining her claim because her policy's
28 definition of disability had changed. Opp'n at 11. This claim is

1 contradicted by the record. In April 2007, ReliaStar informed
2 Collier that her initial claim for disability benefits had been
3 approved, that the policy's definition of disability would change
4 in September 2008, and that ReliaStar would be reviewing her claim
5 periodically. AR RS000180-81.

6 Ninth, Collier contends that "ReliaStar does not believe it
7 has an obligation to investigate." Opp'n at 11-12. Collier relies
8 on this excerpt from the deposition testimony of ReliaStar claim
9 analyst Steve Cayford ("Cayford"): "It's not a duty to seek out
10 information. There is a proof of loss provision in the policy that
11 would require that the claimant provide this information." Id.
12 This argument is unconvincing. Cayford's statement is taken
13 completely out of context. See ECF No. 40 ("Padway Decl.") Ex. 2
14 ("Cayford Dep.") at 6-7. Additionally, regardless of Cayford's
15 interpretation of ReliaStar's legal duties, the undisputed facts
16 show that ReliaStar adequately investigated Collier's claim.

17 Tenth, Collier takes issue with Kahn's medical evaluation,
18 speculating that he might have reached a different conclusion had
19 ReliaStar gathered a better history from Collier. Opp'n at 12.
20 Such speculation cannot support a claim for bad faith. As
21 ReliaStar argues, the issue is not what Khan might have concluded
22 had the facts been different, but what he did conclude.
23 Ultimately, there was nothing unreasonable about ReliaStar's
24 reliance on Khan's opinion.

25 Eleventh, Collier questions the impartiality of Anderson and
26 MES Medical Solutions, the company that contracted Anderson for
27 Collier's independent medical examination. Id. at 12-13. These
28

1 charges of bad faith are substantially similar to those made
2 concerning Soong and Kahn, and they fail for the same reasons.

3 Collier's twelfth argument is predicated on an apparent
4 misunderstanding of ReliaStar's attempted surveillance of Collier.
5 See id. at 13. The surveillance was not incorporated into
6 ReliaStar's benefits decision because Collier was never actually
7 observed by ReliaStar's private investigator. AR RS000869-872.
8 Collier appears to argue that the surveillance should have been
9 incorporated into ReliaStar's decision because it somehow supported
10 her disability claim. Opp'n at 13. Specifically, Collier argues
11 that the January 8, 2010 surveillance only showed that she "ran an
12 errand and talked to her mailman. The surveillance results are
13 consistent with the reported pain and fatigue." Id. at 13. This
14 argument borders on the frivolous. As the surveillance report
15 indicates, it was Collier's mother, not Collier, that was observed
16 talking to the mailman and running an errand. AR RS000872-74.

17 Thirteenth, Collier contends that ReliaStar failed to properly
18 evaluate Collier's claim that she had too much fatigue and pain to
19 work when it denied her appeal in February 2010. Opp'n. at 13.
20 This appears to be nothing more than a repetition of a number of
21 arguments already addressed and rejected above.

22 Fourteenth, Collier contends that ReliaStar somehow committed
23 bad faith when it questioned the authenticity of Ortega's records.
24 Opp'n at 14. The Court disagrees. In light of the circumstances,
25 it was not unreasonable for ReliaStar to doubt Ortega's records.
26 For example, Collier, not Ortega, initially sent ReliaStar the
27 records, and Collier had initially represented that such records
28 did not exist. Further, the records that were obtained directly

1 from Ortega indicate that Collier was not treated for joint pain
2 and chronic fatigue until after ReliaStar began to question her
3 diagnosis.

4 Finally, Collier accuses ReliaStar of picking and choosing
5 which evidence it would gather and consider. Opp'n at 14-15.
6 Collier specifically targets ReliaStar's decision to disregard her
7 treatment records from October 30, 2009 and beyond since
8 ReliaStar's decision was based on Collier's condition as of April
9 9, 2009. Id. Collier points out that ReliaStar conducted
10 surveillance in January and April 2010 and ordered Anderson to
11 conduct an examination in January 2010. Id. This argument is
12 unavailing. Presumably, ReliaStar waited to commission an
13 independent medical examination and surveillance until 2010 because
14 it believed that Collier was living in Panama through 2009.

15 Accordingly, the Court GRANTS ReliaStar's motion for summary
16 judgment with respect to Collier's claim for bad faith.⁷

17 **C. Intentional Infliction for Emotional Distress**

18 To prevail on her claim for intentional infliction of emotion
19 distress, Collier must show "extreme" and "outrageous" conduct on
20 the part of ReliaStar. See Cervantez v. J. C. Penney Co., 24 Cal.
21 3d 579, 593 (Cal. 1979). "This standard is at least as difficult

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23 ⁷ With the Court's approval, ECF No. 46 ("Mar. 5, 2012 Order"),
24 Collier filed a Surreply, alleging a number of additional
25 deficiencies in the medical evaluations of Khan, Soong, and
26 Anderson, ECF No. 48 ("Surreply"). Collier's Surreply suffers from
27 the same defects as her opposition: it does not show why it was
28 unreasonable for ReliaStar to rely on the independent evaluations
of these medical professionals and, therefore, why ReliaStar should
be held liable for bad faith. Further, with respect to Collier's
bad faith claim, ReliaStar's actions must be measured on the facts
it possessed at the time it rendered its benefits decision. The
new information on which Collier relies, deposition testimony of
Khan and Anderson, was not available to ReliaStar at the time it
terminated Collier's benefits.

1 to meet as that for insurance bad faith, if not more so." Ayers v.
2 Std. Ins. Co., 51 Fed. Appx. 222, 224 (9th Cir. 2002). As the
3 undisputed facts show that Collier cannot state a claim for bad
4 faith, her claim for intentional infliction of emotional distress
5 must also fail.

6

7 **V. CONCLUSION**

8 For the foregoing reasons, the Court GRANTS in part and DENIES
9 in part Defendant ReliaStar Life Insurance Company's motion for
10 summary judgment. Plaintiff Wendy Collier's claims for bad faith
11 and intentional infliction of emotional distress are DISMISSED.
12 Collier's claim for breach of contract may proceed to trial.

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14 IT IS SO ORDERED.

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16 Dated: March 13, 2012

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UNITED STATES DISTRICT JUDGE

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