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

MELINDA MAYHEW,)	Case No. 11-2908 SC
)	
Plaintiff,)	ORDER DENYING MAYHEW'S
)	MOTION TO DISMISS
v.)	<u>COUNTERCLAIM</u>
)	
HARTFORD LIFE AND ACCIDENT)	
INSURANCE COMPANY; FORMFACTOR,)	
INC. GROUP WELFARE BENEFIT PLAN,)	
)	
Defendants.)	
)	

I. INTRODUCTION

Plaintiff Melinda Mayhew ("Mayhew") commenced this action for declaratory, injunctive, and monetary relief pursuant to § 502(a)(1) of the Employee Retirement Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1), against Defendants Hartford Life and Accident Insurance Company ("Hartford") and Formfactor, Inc. Group Welfare Benefit Plan (collectively, "Defendants"). ECF No. 1 ("Compl.") ¶ 1. In answering the Complaint, Hartford asserted a Counterclaim for restitution. ECF No. 16 ("Counterclaim") ¶¶ 67-72. Now before the Court is Mayhew's Motion to Dismiss the Counterclaim, which is fully briefed. ECF Nos. 18 ("Mot."), 22 ("Opp'n"), 23 ("Reply"). For the reasons set forth below, Mayhew's Motion is DENIED.

1 **II. BACKGROUND**

2 As it must on a motion to dismiss Hartford's Counterclaim
3 pursuant to Rule 12(b)(6), the Court assumes the veracity of
4 Hartford's well-pleaded factual allegations. Mayhew alleges that
5 Formfactor, Inc. ("Formfactor") employed her as a technical writer
6 between January 15, 2001 and December 15, 2006. Compl. ¶ 9. At
7 all relevant times, Mayhew was a participant in Formfactor's Group
8 Welfare Benefit Plan ("the Plan"), which was funded by Hartford
9 through a group insurance policy. Id. ¶¶ 4-5. Mayhew alleges that
10 she has been diagnosed with Graves Disease, an autoimmune disorder
11 that leads to overactivity of the thyroid gland. Id. ¶ 10. Mayhew
12 further alleges that her condition significantly worsened in
13 November 2006 and, as a result, she ceased working altogether on
14 December 15, 2006. Id. ¶¶ 10, 16. Hartford alleges that it
15 commenced paying Mayhew monthly benefits under the Plan in March
16 2007. Counterclaim ¶ 68. In June 2010, Hartford terminated
17 Mayhew's Long Term Disability ("LTD") and Waiver of Premium claim.
18 Id. ¶ 30; Compl. ¶ 30.

19 In addition to receiving benefits under the Plan, Hartford
20 alleges that Mayhew was also awarded lump sum Social Security
21 Disability ("SSDI") benefit in the amount of \$65,342.50 and
22 Dependent Social Security Disability ("DSSD")¹ benefits in the
23 amount of \$910,000. Counterclaim ¶¶ 61, 65. Hartford learned of
24 the SSDI and DSSD payments after it had terminated Mayhew's claims.
25 Id. Hartford alleges that, due to the SSDI and DSSD awards,

26 _____
27 ¹ While it is not pled in the Complaint or Counterclaim, the
28 parties' papers indicate that Mayhew's child qualified for the DSSD
benefits.

1 Mayhew's claim under the Plan was overpaid by \$79,393.51 and that
2 Mayhew has yet to reimburse Hartford for the overpayments. Id. ¶
3 65. Hartford further alleges that in a September 30, 2010 letter
4 to Hartford, Mayhew stated, "I am willing to pay Hartford all that
5 I owe [with respect to the SSDI benefits] but I am requesting an
6 extension to pay the overpayment." Id. ¶ 63.

7 Mayhew filed this action on June 13, 2011, alleging that
8 Defendants violated ERISA by terminating her claim for LTD and her
9 Life Insurance Waiver of Premium benefit under the Plan. Compl. ¶¶
10 40, 43. Hartford filed the Counterclaim on August 8, 2011, seeking
11 restitution of the alleged LTD overpayments resulting from Mayhew's
12 receipt of SSDI and DSSD benefits. Counterclaim at ¶¶ 19-20.

13 Mayhew now moves to dismiss Hartford's Counterclaim on the
14 grounds that: (1) it is preempted and otherwise prohibited by
15 ERISA, and (2) the Plan does not permit offsets for DSSD benefits.

16

17 **III. LEGAL STANDARD**

18 A motion to dismiss under Federal Rule of Civil Procedure
19 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.
20 Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based
21 on the lack of a cognizable legal theory or the absence of
22 sufficient facts alleged under a cognizable legal theory."
23 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
24 1988). "When there are well-pleaded factual allegations, a court
25 should assume their veracity and then determine whether they
26 plausibly give rise to an entitlement to relief." Ashcroft v.
27 Iqbal, 129 S. Ct. 1937, 1950 (2009). However, "the tenet that a
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1 court must accept as true all of the allegations contained in a
2 [claim] is inapplicable to legal conclusions. Threadbare recitals
3 of the elements of a cause of action, supported by mere conclusory
4 statements, do not suffice." Id. (citing Bell Atl. Corp. v.
5 Twombly, 550 U.S. 544, 555 (2007)). The allegations made in a
6 complaint or counterclaim must be both "sufficiently detailed to
7 give fair notice to the opposing party of the nature of the claim
8 so that the party may effectively defend against it" and
9 "sufficiently plausible" such that "it is not unfair to require the
10 opposing party to be subjected to the expense of discovery." Starr
11 v. Baca, 633 F.3d 1191, 1204 (9th Cir. 2011).

12

13 **IV. DISCUSSION**

14 **A. ERISA § 502(a)(3)**

15 Under § 502(a)(3) of ERISA, a fiduciary may bring a civil
16 action "(A) to enjoin any act or practice which violates any
17 provision of this title or the terms of the plan, or (B) to obtain
18 other appropriate equitable relief (i) to redress such violations
19 or (ii) to enforce any provisions of this title or the terms of the
20 plan." 29 U.S.C. § 1132(a)(3). This provision authorizes only
21 "those categories of relief that were typically available in equity
22 (such as injunction, mandamus, and restitution, but not
23 compensatory damages)." Mertens v. Hewitt Assocs., 508 U.S. 248,
24 256 (1993).

25 Mayhew contends that, in spite of its label, Hartford's
26 Counterclaim for restitution constitutes a claim for legal or money
27 damages, which is barred by ERISA. Mot. at 5. Hartford responds
28

1 that the Counterclaim is equitable in nature and thus permissible.
2 Opp'n at 6-7. The parties' dispute turns on the Supreme Court's
3 decisions in Great-West Life & Annuity Insurance Company v.
4 Knudson, 534 U.S. 204 (2002) and Sereboff v. Mid Atlantic Medical
5 Services, Inc., 547 U.S. 356 (2006).

6 Knudson dealt with the reimbursement provision of an insurance
7 plan that gave the insurer, Great-West, the "right to recover from
8 the [beneficiary] any payment for benefits" paid by Great-West
9 which was later recovered from a third party. 534 U.S. at 207.
10 After Great-West paid a portion of the Knudsons' medical expenses
11 resulting from a car accident, the Knudsons entered into a
12 settlement agreement with a car manufacturer which established a
13 special needs trust to provide for the Knudsons' medical care. Id.
14 at 207-08. The Supreme Court rejected Great-West's § 502(a)(3)
15 reimbursement claim because the settlement funds sought were in a
16 special needs trust rather than the Knudsons' possession. Id. at
17 214. The Court concluded that Great-West was not seeking equitable
18 relief but "the imposition of personal liability for the benefits
19 that they conferred upon [the Knudsons]." Id. at 214.

20 In Sereboff, the Supreme Court allowed an insurer's claim for
21 reimbursement under similar facts. The Sereboffs were injured in a
22 car accident, received insurance benefits for medical expenses
23 incurred, and later settled against third parties involved in the
24 accident. Sereboff, 547 U.S. at 360. Pursuant to § 502(a)(3), the
25 insurer, Mid Atlantic, sought to enforce a plan provision which
26 required "a beneficiary who receives benefits under the plan . . .
27 to reimburse [Mid Atlantic] for those benefits from [a]ll
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1 recoveries from a third party." Id. at 359 (internal quotation
2 marks omitted). The Supreme Court distinguished Sereboff from
3 Knudson on the grounds that the Sereboffs' settlement funds were
4 not held by a trust and, as such, Mid Atlantic was seeking
5 particular funds in the Sereboffs' possession, not the imposition
6 of personal liability. Id. at 362-63. The Court concluded that
7 Mid Atlantic's claim was permissible under ERISA. Id. at 369.

8 The Supreme Court found that the reimbursement provision in
9 the Sereboffs' insurance plan gave rise to an equitable lien by
10 agreement. Id. at 363-365. The Court explained:

11 [T]he Sereboffs' plan specifically identified a
12 particular fund, distinct from the Sereboffs' general
13 assets--"[a]ll recoveries from a third party (whether by
14 lawsuit, settlement, or otherwise)"--and a particular
15 share of that fund to which Mid Atlantic was entitled--
"that portion of the total recovery which is due [Mid
Atlantic] for benefits paid."

16 Id. at 364. Under "a familiar rule of equity," the insurer could
17 "follow[] a portion of the recovery 'into the [Sereboffs'] hands'
18 'as soon as [the settlement fund] was identified,' and impos[e] on
19 that portion a constructive trust or equitable lien." Id.
20 (quoting Barnes v. Alexander, 232 U.S. 117, 123 (1914)). The
21 Supreme Court noted that "the fund over which a lien is asserted
22 need not be in existence when the contract containing the lien
23 provision is executed." Id. at 366. Further, no "strict tracing
24 rules" apply to an equitable lien by agreement. Id. at 365.
25 Accordingly, the property to which the lien attached could be
26 converted to other property without destroying the lien. See id.
27 at 364-65.

28

1 Mayhew argues that Hartford's counterclaim is barred under
2 Knudson since Hartford "seeks to impose personal liability on
3 [Mayhew] for her alleged breach of the plan." Mot. at 8. Hartford
4 responds that it seeks permissible equitable relief under Sereboff
5 because the Plan created an equitable lien by agreement. Opp'n at
6 6.

7 The Court agrees with Hartford. The Plan created an equitable
8 lien as it "specifically identified a particular fund, distinct
9 from [Mayhew's] general assets. . . and a particular share of that
10 fund to which [Hartford] was entitled." Seberoff, 547 U.S. at 364.
11 The particular fund is identified by the Plan as the "benefit for
12 loss of income, provided to you or to your family, as a result of
13 the Period of Disability . . . includ[ing] . . . disability
14 benefits under the United States Social Security Act." Roberts
15 Decl.² Ex. 1 ("Plan") at 30. The particular share of that fund is
16 identified as "any amount that is an overpayment of benefits under
17 this plan." Id. at 28.

18 Mayhew argues that the Plan, unlike the reimbursement
19 provision in Sereboff, did not purport to create a lien of any
20 kind. Reply at 3. The Court finds that the following language
21 from the Plan is sufficient to create an equitable lien: "We have
22 the right to recover from you any amount that is an overpayment of
23 benefits under this plan. You must refund to us the overpaid
24 amount."³ Plan at 28.

25 _____
26 ² Michelle L. Roberts ("Roberts"), Mayhew's attorney, submitted a
27 declaration in support of the Motion. ECF No. 19 ("Roberts
28 Decl.").

³ The First and Third Circuits as well as district courts in the
Ninth Circuit have found similar provisions sufficient to create an

1 The Court also rejects Mayhew's contention that Hartford must
2 identify a fund containing the overpayments that is directly
3 traceable to Mayhew's custody, control, or possession. See Reply
4 at 9. In Sereboff, the Supreme Court found that the Sereboffs'
5 possession of the settlement funds was sufficient to distinguish
6 the case from Knudson, where the settlement funds at issue had been
7 held in a special needs trust. Specifically the Supreme Court
8 stated:

9 The impediment to characterizing relief in Knudson as
10 equitable is not present here. . . . [I]n this case Mid
11 Atlantic sought specifically identifiable funds that were
12 within the possession and control of the Sereboffs--that
13 portion of the tort settlement due Mid Atlantic under the
14 terms of the ERISA plan, set aside and preserved [in the
15 Sereboffs'] investment accounts.

14 547 U.S. at 362-63. However, the Supreme Court ultimately rejected
15 the Sereboffs' contention that Mid Atlantic was required to trace
16 its property to a particular fund or asset held by the Sereboffs to
17 state a claim for equitable relief. Id. at 365. The Court noted
18 "the familiar rul[e] of equity that a contract to convey a specific
19 object even before it is acquired will make the contractor a

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21 equitable claim for Social Security benefits enforceable under §
22 502(a)(3). See Funk v. CIGNA Group Ins., 648 F.3d 182, 193-195
23 (3rd Cir. 2011) (permitting counterclaim for overpaid LTD benefits
24 where the plan provided that a Social Security offset "shall be . .
25 . . payable . . . by the recipient"); Cusson v. Liberty Life
26 Assurance Co. of Boston, 592 F.3d 215, 230-31 (1st Cir. 2010)
27 (counterclaim for LTD benefits constituted an equitable claim
28 allowable under § 502(a)(3)); Pollok v. Northrop Grumman Health
Plan, CV09-7006 JST, 2011 U.S. Dist. LEXIS 41716, at *7, 13-14
(N.D. Cal. Apr. 12, 2011) (permitting counterclaim for overpaid LTD
benefits where plan provided "the payments you receive under the .
. . LTD plans are offset dollar for dollar by other disability
income benefits that you receive"); DeBenedictis v. Hartford Life &
Accident Ins. Co., 701 F. Supp. 2d 1113, 1134 (D. Ariz. 2010)
(Defendant entitled to recover overpaid LTD benefits, even though
benefits were not specifically traceable).

1 trustee as soon as he gets a title to the thing." Id. at 363-64
2 (quotation marks and citations omitted). Unlike in Knudson, in the
3 instant action, there is no indication that Mayhew's benefits were
4 distributed to a trust outside of her possession. Further, as
5 Hartford's equitable lien attached when Mayhew came into possession
6 of the overpayments, Hartford may state a claim under § 503(a)(3)
7 without directly tracing the overpayments to particular property
8 within Mayhew's possession.

9 Mayhew points to two Ninth Circuit decisions where the court
10 found that ERISA claims for restitution were not equitable and were
11 thus barred under § 502(a)(3): Honolulu Joint Apprenticeship &
12 Training Committee of United Association Local Union No. 675 v.
13 Foster, 332 F.3d 1234 (9th Cir. 2003), and Carpenters Health and
14 Welfare Trust for Southern California v. Vonderharr, 384 F.3d 667
15 (9th Cir. 2004). However, these cases pre-date the Supreme Court's
16 decision in Sereboff, which clarified the types of equitable claims
17 available under ERISA.⁴ See Mairena v. Enter. Rent-A-Car Hosp.
18 Ins. Plan, C 09-4420 MEJ, 2010 U.S. Dist. LEXIS 110292, at *25
19 (N.D. Cal. Sep. 30, 2010).⁵

20 Mayhew argues that, even if the Counterclaim states a claim
21 for equitable relief, the Social Security Act expressly prohibits
22

23 ⁴ Additionally, Foster is distinguishable since, in that case, "no
24 funds were actually transferred to [defendant] -- [plaintiff]
merely seeks reimbursement for the costs it incurred for his
training." 332 F.3d at 1238.

25 ⁵ Plaintiff also relies on Martorello v. Sun Life Company of
26 Canada, C 09-0912 PJH, 2009 U.S. Dist. LEXIS 41465 (N.D. Cal. May
27 1, 2009), where the district court dismissed an insurance company's
counterclaim for restitution of overpaid disability benefits on the
grounds that the insurance company's claim was not equitable.
28 However, that case did not cite to or address Sereboff.

1 the attachment of Social Security benefits. Reply at 4. The
2 Social Security Act states:

3 The right of any person to any future payment under this
4 title shall not be transferable or assignable, at law or
5 in equity, and none of the moneys paid or payable or
6 rights existing under this title shall be subject to
7 execution, levy, attachment, garnishment, or other legal
8 process, or to the operation of any bankruptcy or
9 insolvency law.

10 42 U.S.C. § 407(a). The Court finds that § 407(a) does not bar the
11 Counterclaim because Hartford "is not attempting to recover
12 [Mayhew's] SSDI benefits. Rather, [Hartford] seeks to recover in
13 equity from funds [Hartford] itself already paid under the LTD
14 plan." Cusson, 592 F.3d at 232. The authority cited by Mayhew is
15 in accord. See Epolito v. Prudential Ins. Co. of Am., 737 F. Supp.
16 2d 1364, 1383 n.9 (M.D. Fla. 2010) ("[T]he Court recognizes that 42
17 U.S.C. § 407(a) is not applicable to this matter insofar as
18 Prudential seeks to impose the equitable lien, not on the SSD[I]
19 benefits, but on the overpaid long term disability benefits.").⁶

20 For these reasons, the Court finds that Hartford's
21 Counterclaim for restitution is an equitable claim and permissible
22

23 ⁶ The Court also rejects Mayhew's argument that the Plan's
24 reimbursement provision cannot be applied in good conscience
25 because Hartford terminated Mayhew's claim. Mot. at 8-9. Mayhew
26 reasons that Hartford "effectively recoup[ed]" any moneys owed by
27 withholding benefits, despite a finding of disability by the Social
28 Security Administration. Id. at 9. She argues that she should not
"pay Hartford money for a decision it refused to accept." Id.
Mayhew offers no authority in support. In any event, the Court is
not currently in a position to determine whether Hartford had an
adequate basis for terminating Mayhew's claim.

1 under § 502(a)(3) of ERISA.⁷ Hartford may seek to impose an
2 equitable lien on Mayhew's overpaid LTD benefits.

3 **B. Offset for DSSD Benefits**

4 The parties also dispute whether Hartford may offset the DSSD
5 benefits for Mayhew's child against Mayhew's LTD benefits. The
6 Plan allows Hartford to offset "Other Income Benefits," which are
7 defined as:

8 [T]he amount of any benefit for loss of income, provided
9 to you or to your family, as a result of the period of
10 Disability for which you are claiming benefits under this
11 plan. This includes any such benefits for which you or
your family are eligible or that are paid to you, or to a
third party on your behalf, pursuant to any: . . .

12 5. disability benefits under the United States
13 Social Security Act . . . or similar plan or act
14 that, your spouse and children are eligible to
receive because of your Disability.

15 Plan at 30.

16 Mayhew contends that offsetting DSSD benefits is inappropriate
17 because they constitute support payments, not benefits for "loss of
18 income." Mot. at 10. Hartford responds that DSSD benefits are
19 intended to replace income lost due to a wage earner's inability to
20 work. Opp'n. at 18. Hartford also argues that the Plan expressly
21 requires DSSD offsets because "Other Income Benefits" include
22 payments provided to family members, including Social Security
23 benefits paid to children. Opp'n at 14-15.

24 The Court finds that the express terms of the Plan support
25 offsetting the DSSD benefits. "[A] court must give effect to every
26

27 ⁷ As Hartford can state a claim for restitution under ERISA, the
28 Court need not determine whether it has a valid claim under state
law.

1 word or term employed by the parties and reject none as meaningless
2 or surplusage in arriving at the intention of the contracting
3 parties." Cree v. Waterbury, 78 F.3d 1400, 1405 (9th Cir. 1996)
4 (quoting United States v. Hathaway, 242 F.2d 897, 900 (9th Cir.
5 1957)). The plan provides for the offset of "any benefit for loss
6 of income, provided to you or to your family," including
7 "disability benefits under the Social Security Act . . . your
8 spouse and children are eligible to receive." Plan at 30. To hold
9 that Mayhew's DSSD benefits do not constitute a benefit for loss of
10 income would render this language entirely superfluous.

11 Neither party cites, nor is the Court aware of, a Ninth
12 Circuit decision directly on point. Mayhew relies on cases holding
13 that plan offset provisions did not apply to DSSD benefits. Mot.
14 at 10-16 (citing In re Unisys Corp. Long-Term Disability Plan ERISA
15 Litig., 97 F.3d 710 (3rd Cir. 1996); Carstens v. U.S. Shoe Corp.
16 Long-Term Benefits Disability Plan, 520 F. Supp. 2d 1165 (N.D. Cal.
17 2007); Meeks v. Mutual of Omaha Ins. Co., 70 Ill. App. 3d 800 (Ill.
18 App. Ct. 1979)). None of these cases are controlling.

19 Unisys is distinguishable since the plan provision at issue in
20 that case stated that offsets would only apply to benefits received
21 by the claimant.⁸ 97 F.3d at 712. Similarly, in Meeks, the plan
22 provided that the offsets would apply to benefits received "(1) by
23 the protected person or (2) by any other person on his behalf." 70
24 Ill. App. 3d at 802. The court concluded that checks made payable
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26 ⁸ Specifically, the plan provided that "The LTD you receive may be
27 adjusted if you receive pension benefits from Unisys and/or
28 disability income from other sources, such as Social Security." Carstens, 97 F.3d at 712 (emphasis in the original).

1 to the insured on the dependent's behalf did not constitute
2 payments to a protected person. Id. In contrast, in the instant
3 action, the Plan's offset provision expressly applies to benefits
4 paid to Mayhew, her spouse, or her children.

5 Carstens involved a plan providing offsets for "[p]eriodic
6 benefits, for loss of time . . . by reason of . . . the United
7 States Social Security Act . . . , exclusive of benefits paid . . .
8 . to a child of the Employee." 520 F. Supp. 2d at 1166-67. The
9 court reasoned that loss of time referred to the loss of income
10 resulting from disability. Id. at 1167. Citing Unysis and Meeks,
11 the court found that DSSD benefits constituted support payments
12 rather than payments for income replacement under the plan. Id. at
13 1168. A number of courts have reached a contrary conclusion,
14 holding that similar offset provisions applied to DSSD payments.⁹
15 In light of the weight of authority and the express terms of the
16 Plan, the Court respectfully disagrees with the holding in Carstens
17 to the extent that it is inconsistent with the Court's order in the
18 instant action.

19 Further, the Court rejects Mayhew's contention that the Plan's
20 offset provision does not apply to DSSD benefits because, under the
21 Social Security Act, DSSD benefits belong to the dependent as
22 opposed to the disabled adult. Mot. at 11-13. Mayhew points to

23 _____
24 ⁹ See Schultz v. Aviall, Inc., 09 C 2387, 2011 U.S. Dist. LEXIS
25 37125, at *11-12 (N.D. Ill. Apr. 4, 2011); Potop v. Aetna Life Ins.
26 Co., CV 09-02949 DMG, 2010 U.S. Dist. LEXIS 141667, at *4, 12 (C.D.
27 Cal. Sep. 30, 2010); Pennell v. Hartford Life & Accident Ins. Co.,
28 09 CV 485, 2010 U.S. Dist. LEXIS 4695, at *13-21 (N.D. Ohio Jan.
20, 2010); Fortune v. Group Long Term Disability Plan, 637 F. Supp.
2d 132, 145-46 (E.D.N.Y. 2009), aff'd 391 Fed. Appx. 74, 79-80 (2d
Cir. 2010); Spinella v. Unum Life Ins. Co., 94-411-JD, 1995 U.S.
Dist. LEXIS 11156, at *10-11 (D.N.H. July 14, 1995).

1 sections of the Social Security Act that provide: a dependent may
2 continue to receive DSSD benefits after her disabled parent dies, a
3 dependent must apply for DSSD benefits, and a dependent is
4 responsible for paying taxes on DSSD benefits. Id. (citing 42
5 U.S.C. § 402(d)). Mayhew also points to regulations requiring
6 adults to use DSSD payments for the benefit of the dependent. Id.
7 at 14-15. This argument fails for at least two reasons. First,
8 and most importantly, these provisions have no bearing on the terms
9 of the Plan, which expressly provide that Hartford may offset
10 Social Security benefits received by Mayhew's children. Indeed,
11 Mayhew cites no statute or other authority which would prohibit
12 Hartford from offsetting her child's DSSD payments. Second,
13 regardless of who the benefits belong to, the purpose of the
14 benefits is to replace income lost due to the disabled parent's
15 inability to work.¹⁰

16 Finally, Mayhew argues that, because she must use the DSSD
17 benefits to pay for her child's specific needs, a DSSD offset would
18 result in her receiving a total income of less than 66 2/3 percent
19 of her pre-disability earnings. Mot. at 16-17. Mayhew reasons
20 that allowing such an offset would be contrary to the terms of the
21 Plan, which provide that she is entitled to receive 66 2/3 percent
22 of monthly income loss. Id. This argument is unpersuasive. The
23 Plan contemplates offsets for other disability benefits, including

24 _____
25 ¹⁰ See Califano v. Goldfarb, 430 U.S. 199, 213-14 (1977) (the
26 Social Security Act's Old-Age, Survivors, and Disability Insurance
27 scheme "is intended to insure covered wage earners and their
28 families against the economic and social impact on the family
normally entailed by loss of the wage earner's income"); Fortune,
391 Fed. Appx. at 80 ("the purpose of social security disability
benefits is to replace income lost due to the wage earner's
inability to work").

1 disability benefits for which Mayhew's spouse or child are
2 eligible. Yet Mayhew can point to no language in the Plan which
3 would reduce the amount offset for these particular disability
4 benefits. Mayhew is effectively asking the Court to read new terms
5 into the Plan which were not agreed to by the parties. The Court
6 declines to do so.

7 For these reasons, the Court finds that the Plan permits
8 offsets for DSSD benefits.

9

10 **V. CONCLUSION**

11 The Court DENIES Plaintiff Melinda Mayhew's Motion to Dismiss
12 Hartford Life and Accident Insurance Company's Counterclaim.

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14 IT IS SO ORDERED.

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16 Dated: October 21, 2011


UNITED STATES DISTRICT JUDGE

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