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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN DEL GALLEGOS,
Plaintiff,

v.

WELLS FARGO & COMPANY LONG
TERM DISABILITY PLAN, et al.,
Defendants.

Case No. [13-cv-04518-VC](#)

ORDER

The parties should consider the following questions in advance of the upcoming hearing on the cross-motions for judgment:

Assume the Court concludes, in light of the language at the bottom of page 604 of the administrative record as well as the list of sources of "other income benefits" that follows, that "other income benefits" within the meaning of the plan are limited to benefits for lost income. Assume further that the loss of future earning capacity falls within the definition of lost income. Was it a violation of the plan for the defendants to offset the entire amount of the plaintiffs' weekly permanent partial disability benefits, as opposed to a mere portion of them, in light of the California Supreme Court's conclusion that permanent partial disability benefits compensate both for loss of future earning capacity and harm to bodily integrity? *See Milpitas Unified Sch. Dist. v. Workers' Comp. Appeals Bd.*, 115 Cal. Rptr. 3d 112, 119–120 (Ct. App. 2010). Should the Court remand to the claims administrator for a determination of what portion of the plaintiff's weekly workers' compensation benefits were in fact a benefit for lost income?

IT IS SO ORDERED.

Dated: December 16, 2014

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VINCE CHHABRIA
United States District Judge