

1 THORNTON DAVIDSON #166487
 Thornton Davidson & Associates
 2 2055 San Joaquin Street
 Fresno, CA 93721
 3 Telephone: (559) 256-9800
 Telefax: (559) 256-9791
 4

5 Attorney for Plaintiff, AGIUA HEATH

6 U.S. DISTRICT COURT OF CALIFORNIA, NORTHERN DISTRICT
 7 (SAN FRANCISCO DIVISION)
 8

9 AGIUA HEATH,)	Case No.: 04 4725 BZ
10 Plaintiff,)	FIRST AMENDED COMPLAINT FOR
11 vs.)	DECLARATORY RELIEF
12 THE PERMANENTE MEDICAL GROUP,)	
13 INC. GROUP LONG TERM DISABILITY)	
14 PLAN)	
15 Defendant.)	

16 Plaintiff AGIUA HEATH ("PLAINTIFF") alleges as follows:

17 **JURISDICTION**

18 1. PLAINTIFF's claim for relief arises under the Employee Retirement Income
 19 Security Act of 1974, as amended ("ERISA"), 29 U.S.C. section 1132(a)(1) and (3). Pursuant to
 20 29 U.S.C. section 1331, this court has jurisdiction over this action because this action arises
 21 under the laws of the United States of America. 29 U.S.C. section 1132(e)(1) provides for
 22 federal district court jurisdiction of this action.
 23

24 **VENUE/INTRADISTRICT ASSIGNMENT**

25 2. Venue is proper in the Northern District of California because the acts and
 26 occurrences giving rise to PLAINTIFF's claim for relief took place in Oakland, California in that
 27 PLAINTIFF is and was a resident of Alameda County, California, when DEFENDANT
 28 terminated her long-term disability benefits. Therefore, 29 U.S.C. section 1132(e)(2) provides
 for venue in this court in the San Francisco Division.

1 **PARTIES**

2 3. PLAINTIFF is, and at all times relevant hereto was, a participant, as that term is
3 defined by 29 U.S.C. section 1000(7), of THE PERMANENTE MEDICAL GROUP, INC.
4 GROUP LONG TERM DISABILITY PLAN (“The Plan”) and thereby entitled to receive
5 benefits there from. PLAINTIFF was a beneficiary because she was an employee of The
6 Permanente Medical Group, which established The Plan.

7 4. DEFENDANT The Plan is an employee welfare benefit plan organized and
8 operating under the provisions of ERISA, 29 U.S.C. section 1001 et seq.

9 **CLAIM FOR RELIEF**

10 5. Life Insurance Company of North America insured the Plan and acted on behalf
11 of the Plan in all matters alleged herein.

12 6. The Plan provides long-term disability benefits after an elimination period of six
13 months, which, for a person under the age of 60 at the time the disability occurred, as was
14 PLAINTIFF herein, such benefits potentially could continue until age 65.

15 7. In order to be eligible for benefits under the Plan, an employee must meet The
16 Plan’s definition of total disability. The Plan defines total disability, as follows:

17 “For the purposes of coverage under the Policy, you are Disabled
18 if, because of Injury or Sickness, you are unable to perform all the
19 material duties of your regular occupation, or solely due to Injury
20 or Sickness, you are unable to earn more than 80% of your Indexed
Covered Earnings.

21 After Disability Benefits have been payable for 60 months, you are
22 Disabled if your Injury or Sickness makes you unable to perform
23 all the material duties of any occupation for which you may
24 reasonably become qualified based on education, training or
experience, or solely due to Injury or Sickness, you are unable to
earn more than 80% of your Indexed Covered Earnings.”

25 8. PLAINTIFF was employed by The Permanente Medical Group as a Senior
26 Physician.

27 9. PLAINTIFF became totally disabled and ceased to work on April 1, 2000.

28 10. PLAINTIFF remained disabled through the elimination period of the Plan, which

1 ended October 1, 2000.

2 11. PLAINTIFF applied for and was granted Long Term Disability (“LTD”) benefits
3 from the Plan effective October 1, 2000.

4 12. PLAINTIFF also applied for Social Security Disability benefits on January 30,
5 2001.

6 13. By judicial decision on January 27, 2003, PLAINTIFF was awarded Social
7 Security Disability effective June 15, 2000.

8 14. By letter dated March 11, 2003 The Plan demanded repayment of \$40,339.60 for
9 over-payment of Social Security Disability benefit payment, although a portion of this amount
10 was not due because The Plan claimed COLAs as part of its reductions.

11 15. DEFENDANT is judicially and collaterally estopped to deny that PLAINTIFF is
12 totally disabled under The Plan because:

13 a. DEFENDANT required PLAINTIFF to apply for Social Security Disability
14 benefits.

15 b. PLAINTIFF did so, and was awarded such benefits.

16 c. Pursuant to the terms of The Plan, all such benefits, except COLA’s were paid
17 or used to decrease DEFENDANT’s obligation to PLAINTIFF.

18 16. By letter dated August 28, 2002 The Plan terminated benefits to PLAINTIFF,
19 giving 180 days to appeal the decision.

20 17. By letter dated September 18, 2002 PLAINTIFF timely appealed the Plan’s
21 termination of her LTD benefits.

22 18. By letter dated December 10, 2002 the Plan notified PLAINTIFF that her appeal
23 was denied.

1 19. By letter dated February 28, 2003 PLAINTIFF again asked DEFENDANT to
2 reconsider the termination of her disability benefits.

3 20. On July 1, 2003 Cigna again denied PLAINTIFF's appeal.
4

5 21. At all times mentioned herein PLAINTIFF was, and continues to be totally
6 disabled under the terms of The Plan.

7 22. This Court is required to review the termination of PLAINTIFF's LTD
8 benefits de novo because:

9 A. The Plan unambiguously confers discretion on Plan fiduciaries to
10 determine benefits claims and construe Plan terms; and such discretion is
11 illegal.

12 B. Plan fiduciaries acted under an actual conflict of interest at the time they
13 terminated PLAINTIFF's benefits:

14 i. PLAINTIFF is informed and believes and thereon alleges that
15 claims staff is given financial incentives to deny or terminate
16 claims.

17 ii. PLAINTIFF is informed and believes and thereon alleges that Plan
18 fiduciaries relied upon an internal rule, standard or criterion to
19 terminate her benefits; however, when benefits were terminated
20 her was not advised that a copy of such internal rules, standards or
21 criterion would be provided free of charge to her upon request.

22 iii. The Plan utilized unfair appeal procedures:

23 a. PLAINTIFF was not notified of specific documents that
24 would perfect her claim on appeal.

25 b. PLAINTIFF was not notified that she had the right, free of
26 charge, to get copies of all documents relied upon to
27 terminate her benefits.
28

- c. The Plan failed to consider all new evidence submitted on appeal.
- d. The Plan failed to take timely action on her appeal.

23. PLAINTIFF has exhausted all administrative remedies required to be exhausted under the terms of The Plan.

24. The Plan's denial of PLAINTIFF's long-term disability benefits was arbitrary and capricious, an abuse of discretion, and a violation of the terms of The Plan.

25. An actual controversy has arisen and now exists between PLAINTIFF and The Plan with respect to whether PLAINTIFF is entitled to long-term disability benefits under the terms of The Plan.

26. PLAINTIFF contends, and The Plan disputes, that PLAINTIFF is entitled to benefits under the terms of The Plan for long-term disability because PLAINTIFF contends, and DEFENDANT The Plan disputes, that PLAINTIFF is totally disabled.

27. PLAINTIFF desires a judicial determination of his rights and a declaration as to which party's contention is correct, together with a declaration that The Plan is obligated to pay long-term disability benefits, under the terms of The Plan, retroactive to the first day of his eligibility, until and unless such time that PLAINTIFF is no longer eligible for such benefits under the terms of The Plan.

28. A judicial determination of these issues is necessary and appropriate at this time under the circumstances described herein in order that the parties may ascertain their respective rights and duties, avoid a multiplicity of actions between the parties and their privities, and promote judicial efficiency.

29. As a proximate result of DEFENDANT's wrongful conduct as alleged herein, PLAINTIFF was required to obtain the services of counsel to obtain the benefits to which he is

1 entitled under the terms of the Plan. Pursuant to 29 U.S.C. section 1132(g)(1), PLAINTIFF
2 requests an award of attorney's fees and expenses as compensation for costs and legal fees
3 incurred to pursue PLAINTIFF's rights under the terms of The Plan.
4

5 WHEREFORE, PLAINTIFF prays judgment as follows:

6 1. For declaratory judgment against DEFENDANT The Plan, requiring The Plan to
7 pay long-term disability benefits under the terms of The Plan to PLAINTIFF for the period to
8 which her is entitled to such benefits, with prejudgment interest on all unpaid benefits, until
9 PLAINTIFF attains the age of 65 years or until it is determined that PLAINTIFF is no longer
10 eligible for benefits under the terms of The Plan.
11

12 2. For attorney's fees pursuant to statute.

13 3. For costs of suit incurred.

14 4. For such other and further relief as the Court deems just and proper.
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16

17 Dated: January 24, 2005

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19 THORNTON DAVIDSON
20 Attorney for Plaintiff,
21 AGIUA HEATH
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