

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHARLES YIP; SILVIA QUINTERO;
AGUSTIN SOTO; ANA IBARRA;
GILBERTO GALLARDO; JOSE; SANCHEZ;
MARCO IBARRA; NANCY BROWNING;
RICARDO QUINTERO; VALENTE
GODINA; and the class they seek to represent,

Plaintiffs,

v.

BOARD OF TRUSTEES OF THE SAN
DIEGO UNITEHERE PENSION FUND;
ALLIED ADMINISTRATORS; JEFF
EACHTEL; and DOES 1 to 50,

Defendants.

Civil No. 08cv1453-MMA (BGS)

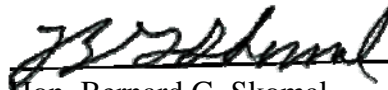
**ORDER ON JOINT MOTION;
ALLOWING DISCOVERY TO
COMMENCE**

[Doc. No. 90.]

Following the Case Management Conference the Court entertained further briefing from the parties regarding their respective positions on the permissible scope of discovery outside of the Administrative Record. Although the parties agree that an abuse of discretion standard should apply in this case, they do not agree on whether any extra-record discovery or evidence will be permitted. Because Plaintiffs allege that the plan administrators failed to adhere to the procedural dictates of ERISA as well as the plan, Plaintiffs are essentially alleging that the administrators failed to exercise discretion. In such situations, the court may determine that evidence beyond that contained in the administrative record is necessary to determine whether "procedural irregularities are so substantial as to alter the standard of review." *See Abatie v. Alta*

1 *Health & Life Ins. Co.*, 458 F.3d 955, 971 (9th Cir. 2006). Furthermore, if the district court
2 ultimately determines that procedural irregularities affected the administrative review, the court
3 may decide to take additional evidence. Accordingly, Plaintiffs must be permitted to propound
4 narrowly tailored discovery so that the court can ultimately decide what, if any, additional
5 evidence will be considered. However, "such discovery must be narrowly tailored and cannot be a
6 fishing expedition." *Groom v. Standard Ins. Co.*, 492 F. Supp.2d 1202, 1205 (C.D. Cal. 2007).
7 Defendants will be allowed to object to the requests at the appropriate time.

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9 DATED: December 3, 2010

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11 Hon. Bernard G. Skomal
12 U.S. Magistrate Judge
13 United States District Court
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