

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RAY A. DELOACH,  
  
Plaintiff,  
  
vs.  
  
SAN DIEGO GAS & ELECTRIC  
COMPANY, a California Corporation;  
SAN DIEGO GAS & ELECTRIC  
COMPANY PENSION PLAN; SEMPRA  
ENERGY,  
  
Defendants.

CASE NO. 07CV1046-LAB (CAB)  
  
**ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

[Dkt Nos. 16, 17]

This matter is before the court on the parties' cross-motions for summary judgment in this action seeking disability benefits from an employer's plan covered by the Employee Retirement Income Security Act of 1974 ("ERISA"). Defendants San Diego Gas & Electric Company ("SDG&E"), San Diego Gas & Electric Company Pension Plan, and Sempra Energy ("Sempra") (collectively "Defendants") filed a Motion For Summary Judgment ("Motion"). Dkt No. 17. Plaintiff Ray A. DeLoach ("DeLoach" or "Plaintiff") filed a Cross-Motion For Summary Judgment ("Cross-Motion"). Dkt No. 16. Each side filed an Opposition to the other's motion, and each filed a Reply to the other's Opposition. Pursuant to Civil Local Rule 7.1 (d)(1), the court finds the issues presented appropriate for decision on the papers and without oral argument. For the reasons discussed below, Defendants' Motion is **GRANTED**, and Plaintiff's Cross-Motion is **DENIED**.

1 **I. BACKGROUND**

2 DeLoach was an employee performing the duties of a heavy equipment operator for  
3 SDG&E until 1998, at which time he became, and allegedly remains, continuously disabled.  
4 Compl. ¶¶ 6-7. He was at that time a participant in the San Diego Gas & Electric Company  
5 Pension Plan ("Plan"), an employee welfare benefit plan as defined by 29 U.S.C. § 1002(1),  
6 offering, among other things, total disability income ("TDI") benefits. Compl. ¶¶ 7-8. He  
7 attached as Exhibit A to the Complaint, incorporated therein by reference, "a three page  
8 summary of the PLAN" he represented was the only plan document he had received despite  
9 repeated requests for "a copy of the PLAN documents that set forth all of his rights and  
10 obligations under the PLAN." Compl. ¶ 8. DeLoach alleges he experienced chronic neck  
11 and back pain, bilateral knee problems, and the side effects of pain medication persisting  
12 for several years. He applied for Plan TDI benefits when he became eligible in the fall of  
13 2000 after exhausting his sick leave accumulated over his 23 years of SDG&E employment.  
14 Defendants approved the claim, but paid him no benefits because he was receiving Workers'  
15 Compensation Disability benefits at the time, which were scheduled to terminate in June  
16 2006. Compl. ¶ 12.

17 The parties' Joint Statement of Undisputed Facts establishes DeLoach was born  
18 June 29, 1957, is a high school graduate, and was an employee of SDG&E from 1976 until  
19 1998. During his employment period, he participated in the Plan. The Plan's TDI benefit for  
20 qualifying participants defines "Total Disability" as a participant's illness or injury that:  
21 "Prevents him from performing the duties assigned and required of him for the Employer's  
22 job classification or job description as of the date of illness or injury; or after 24 months of  
23 continuous disability, prevents him from engaging in any substantially gainful occupation for  
24 wages or profit for which he is reasonably qualified by education, training, or experience."  
25 Undisputed Fact No. 6. The Plan provides the amount of TDI benefits shall be the equal of  
26 the greater of: "(a) The participant's primary benefit under the Federal Social Security Act,  
27 or (b) Any early retirement benefit payable under the Plan at the time the Total Disability  
28 commences." Undisputed Fact No. 7. The Plan further provides: "The TDI benefit amount

1 is reduced by the amount of any other income from Employer sick leave, Workers'  
2 Compensation, occupational disease laws, or pursuant to the disability income provisions  
3 of any state laws." Undisputed Fact No. 8.

4 The parties agree DeLoach sustained an injury on the job in October 1997. In  
5 October 2000, he submitted a claim for TDI benefits. The Plan administrators approved the  
6 claim under the "own occupation" definition of disability, and referred the file to an outside  
7 vendor to estimate the amount of his TDI benefit. Undisputed Fact Nos. 9-11. The vendor  
8 reported his estimated TDI benefit was \$592.50 per month, an amount less than the  
9 Workers' Compensation benefits DeLoach was then receiving through that program of  
10 \$680.00 per month as Permanent Partial Disability Benefits. Undisputed Fact Nos. 12; see  
11 Def. Mot. P&A 5:14-16 & Exh. E, p. E661. DeLoach's "workers' compensation benefits  
12 exceeded his estimated TDI benefits and the Plan's offset provisions prevented him from  
13 collecting TDI." Def. Mot. P&A 5:16-19 ("Because the TDI was less than Plaintiff's worker's  
14 compensation benefits, the Plan monitored the claim in coordination with the worker's  
15 compensation claim").

16 In April 2005, DeLoach received an award of Social Security disability benefits  
17 retroactive to April 2003. Undisputed Fact No. 13. Defendants notified him the Social  
18 Security award might change the status of his TDI benefits. The Plan had arranged for Dr.  
19 Kane to perform an independent medical examination to determine DeLoach's eligibility for  
20 further benefits, an examination he performed in February 2006, followed by a report of his  
21 findings to the Plan. Undisputed Fact Nos. 14-16. Dr. Kane concluded DeLoach was not  
22 disabled from all occupations. By letter dated April 6, 2006, the Plan informed DeLoach of  
23 its determination he was not entitled to TDI benefits. He appealed that determination by  
24 letter dated May 9, 2006 and thereafter submitted additional documentation and medical  
25 records, including a Functional Capacity Evaluation ("FCE") performed by Barbara  
26 Tourtellott, an occupational therapist. Undisputed Fact Nos. 17-18.

27 In December 2006, the Plan's Benefits Committee ("Committee") met to consider  
28 DeLoach's appeal. The Committee decided to await the results of a December 11, 2006

1 Agreed Medical Examination by Dr. Harvey Wieseltier before making a final determination.  
2 In February 2007, the Committee reviewed Dr. Wieseltier's report and conclusion that  
3 DeLoach was able to perform the duties of a computer repair technician, an occupation  
4 SDG&E had paid to train DeLoach to perform in the aftermath of his disability. By letter  
5 dated March 8, 2007, the Plan informed DeLoach that the benefits denial was upheld on  
6 appeal. DeLoach asked the Committee to reassess its decision in a letter dated  
7 April 10, 2007. Undisputed Fact Nos. 19-22.

8 DeLoach received Long-Term Disability ("LTD") benefits from the Plan for two years  
9 associated with the 1997 work injury to his knees and back under the "own occupation"  
10 definition of LTD. Def. Mot. P&A 1:6-9. It is Defendants' position DeLoach was not eligible  
11 for continued benefits thereafter because he was not disabled from "any occupation" as  
12 required under Plan TDI definitions. Def. Mot. P&A 1:10-13. They contend the Plan  
13 correctly found DeLoach was eligible for no disability benefits after two years -- neither LTD  
14 nor TDI -- because he did not meet the requirement he be "unable to perform the duties of  
15 any gainful occupation for which he was reasonably suited by education, training, or  
16 experience," as confirmed by two independent physicians, because he "was re-trained (at  
17 Defendants' expense) as a computer repair technician," and the two physicians confirmed  
18 his "ability to perform that occupation." Def. Mot. P&A 1:15-19

19 DeLoach's Complaint asserts a single cause of action for payment of benefits  
20 pursuant to 29 U.S.C. § 1132. That statutory provision, in pertinent part, authorizes civil  
21 actions brought by an ERISA plan participant to recover benefits due, to enforce rights  
22 conferred, or to clarify rights to future benefits under the terms of the participant's plan.  
23 29 U.S.C. § 1132(a)(1)(A),(B). DeLoach alleges he "is entitled under the PLAN to disability  
24 benefits, contributions and credits to his pension fund, continued health, dental, vision  
25 benefits, continued life insurance and other benefits pursuant to the terms of the PLAN," as  
26 well as reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g)(1).  
27 Compl. ¶ 15. He seeks the value of his denied benefits and a declaration he is entitled to  
28 ongoing Plan benefits. Compl. 3:27-28.

1 Defendants seek summary judgment in their favor on grounds DeLoach is not entitled  
2 to any of the benefits he seeks in this action, the Plan administrator's decision to deny his  
3 claim was reasonable under the applicable abuse of discretion standard of review, and  
4 defendants SDG&E and Sempra Energy are not proper parties. They move for summary  
5 adjudication of five issues, with judgment in their favor disposing of the entire action: (1) the  
6 standard of judicial review in this action is abuse of discretion; (2) the scope of the court's  
7 review is limited to the Administrative Record; (3) Defendants' decision denying DeLoach's  
8 claim for ERISA benefits was not arbitrary, capricious, or unreasonable; (4) a determination  
9 SDG&E is not a proper party to this action; and (5) a determination Sempra is not a proper  
10 party to this action. Dkt No 17.

11 DeLoach seeks summary judgment awarding him past and future benefits, asserting  
12 entitlement to judgment because the termination of benefits in April 2006 and the denial of  
13 his administrative appeal in March 2007 were improper. Dkt No. 16, 1:5-7. He contends:  
14 the Plan "abused its discretion by relying on clearly erroneous findings of fact . . . and in  
15 relying on a medical report that failed to consider or address all the evidence;" and the Plan  
16 violated his rights to a full and fair review when it performed a "bait and switch" by advising  
17 him it was relying on Dr. Kane's report to terminate his benefits, then relying on new  
18 evidence in denying his appeal. Dkt No. 16, 1:7-13. Alternatively, he asks the court to  
19 summarily adjudicate two "sub-issues:" first, "[t]hough the Plan grants [the Pension  
20 Committee] full discretion to administer and interpret the Plan, the pension committee did  
21 not delegate discretionary authority to the Benefits Committee who actually terminated [his]  
22 benefits" (Dkt No. 16, 1:16-21); second, he seeks a determination of "the proper amount of  
23 past benefits" the Plan should have paid him because he "was granted total disability status  
24 by the Plan from December 2000 through April 2006 [but] was never paid any benefits due  
25 to a gross miscalculation of benefits to which [he] was entitled" (Dkt No. 16, 21:22-25).  
26 DeLoach urges the Court to apply the *de novo* standard of review (Dkt No. 16, 22:7-23:8),  
27 but argues under either the abuse of discretion or the *de novo* standard, the only  
28 "reasonable conclusion" is that he is entitled to TDI benefits because the Plan "unreasonably

1 relied upon the report of Dr. Wieseltier in the face of overwhelming conflicting medical  
2 evidence to deny [his] appeal" and made a clearly erroneous factual finding based on that  
3 incomplete report lacking a complete analysis of all the evidence. Dkt No. 23:11-17.

4 **II. DISCUSSION**

5 **A. ERISA**

6 In enacting ERISA, Congress intended to:

7 "protect . . . participants in employee benefit plans and their  
8 beneficiaries, by requiring disclosure and reporting to  
9 participants and beneficiaries of financial and other information  
10 with respect thereto, by establishing standards of conduct,  
responsibility, and obligations for fiduciaries of employee benefit  
plans, and by providing for appropriate remedies, sanctions, and  
ready access to the Federal courts."

11 Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 44 (1987), *quoting* 29 U.S.C. § 1001(b).

12 "ERISA comprehensively regulates, among other things, employee welfare benefit  
13 plans that, 'through the purchase of insurance or otherwise,' provide medical, surgical, or  
14 hospital care, or benefits in the event of sickness, accident, disability, or death." Pilot Life,  
15 481 U.S. at 44, *citing* 29 U.S.C. § 1002(1) (deciding ERISA pre-empts state common law tort  
16 and contract actions asserting improper processing of a claim for benefits under an insured  
17 employee benefit plan). Pension plan regulation is exclusively a federal concern. Pilot Life,  
18 481 U.S. at 45-46; see Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981).

19 **D. Pertinent Plan Terms**

20 The Plan is provided as part of Exhibit A to the Green Declaration, pages A524  
21 through A639, associated with the cross-motions. Dkt No. 18. In pertinent part, the Plan  
22 provides TDI benefits are available to employees who have attained the age of 35 and have  
23 completed 10 years of service with the company. There is no dispute DeLoach meets those  
24 requirements. There is also no dispute the amount of TDI benefits awardable to qualifying  
25 participants is equal to the greater of:

26 \\  
27 \\  
28 \\  
29 \\  
30 \\  
31 \\  
32 \\  
33 \\  
34 \\  
35 \\  
36 \\  
37 \\  
38 \\  
39 \\  
40 \\  
41 \\  
42 \\  
43 \\  
44 \\  
45 \\  
46 \\  
47 \\  
48 \\  
49 \\  
50 \\  
51 \\  
52 \\  
53 \\  
54 \\  
55 \\  
56 \\  
57 \\  
58 \\  
59 \\  
60 \\  
61 \\  
62 \\  
63 \\  
64 \\  
65 \\  
66 \\  
67 \\  
68 \\  
69 \\  
70 \\  
71 \\  
72 \\  
73 \\  
74 \\  
75 \\  
76 \\  
77 \\  
78 \\  
79 \\  
80 \\  
81 \\  
82 \\  
83 \\  
84 \\  
85 \\  
86 \\  
87 \\  
88 \\  
89 \\  
90 \\  
91 \\  
92 \\  
93 \\  
94 \\  
95 \\  
96 \\  
97 \\  
98 \\  
99 \\  
100 \\  
101 \\  
102 \\  
103 \\  
104 \\  
105 \\  
106 \\  
107 \\  
108 \\  
109 \\  
110 \\  
111 \\  
112 \\  
113 \\  
114 \\  
115 \\  
116 \\  
117 \\  
118 \\  
119 \\  
120 \\  
121 \\  
122 \\  
123 \\  
124 \\  
125 \\  
126 \\  
127 \\  
128 \\  
129 \\  
130 \\  
131 \\  
132 \\  
133 \\  
134 \\  
135 \\  
136 \\  
137 \\  
138 \\  
139 \\  
140 \\  
141 \\  
142 \\  
143 \\  
144 \\  
145 \\  
146 \\  
147 \\  
148 \\  
149 \\  
150 \\  
151 \\  
152 \\  
153 \\  
154 \\  
155 \\  
156 \\  
157 \\  
158 \\  
159 \\  
160 \\  
161 \\  
162 \\  
163 \\  
164 \\  
165 \\  
166 \\  
167 \\  
168 \\  
169 \\  
170 \\  
171 \\  
172 \\  
173 \\  
174 \\  
175 \\  
176 \\  
177 \\  
178 \\  
179 \\  
180 \\  
181 \\  
182 \\  
183 \\  
184 \\  
185 \\  
186 \\  
187 \\  
188 \\  
189 \\  
190 \\  
191 \\  
192 \\  
193 \\  
194 \\  
195 \\  
196 \\  
197 \\  
198 \\  
199 \\  
200 \\  
201 \\  
202 \\  
203 \\  
204 \\  
205 \\  
206 \\  
207 \\  
208 \\  
209 \\  
210 \\  
211 \\  
212 \\  
213 \\  
214 \\  
215 \\  
216 \\  
217 \\  
218 \\  
219 \\  
220 \\  
221 \\  
222 \\  
223 \\  
224 \\  
225 \\  
226 \\  
227 \\  
228 \\  
229 \\  
230 \\  
231 \\  
232 \\  
233 \\  
234 \\  
235 \\  
236 \\  
237 \\  
238 \\  
239 \\  
240 \\  
241 \\  
242 \\  
243 \\  
244 \\  
245 \\  
246 \\  
247 \\  
248 \\  
249 \\  
250 \\  
251 \\  
252 \\  
253 \\  
254 \\  
255 \\  
256 \\  
257 \\  
258 \\  
259 \\  
260 \\  
261 \\  
262 \\  
263 \\  
264 \\  
265 \\  
266 \\  
267 \\  
268 \\  
269 \\  
270 \\  
271 \\  
272 \\  
273 \\  
274 \\  
275 \\  
276 \\  
277 \\  
278 \\  
279 \\  
280 \\  
281 \\  
282 \\  
283 \\  
284 \\  
285 \\  
286 \\  
287 \\  
288 \\  
289 \\  
290 \\  
291 \\  
292 \\  
293 \\  
294 \\  
295 \\  
296 \\  
297 \\  
298 \\  
299 \\  
300 \\  
301 \\  
302 \\  
303 \\  
304 \\  
305 \\  
306 \\  
307 \\  
308 \\  
309 \\  
310 \\  
311 \\  
312 \\  
313 \\  
314 \\  
315 \\  
316 \\  
317 \\  
318 \\  
319 \\  
320 \\  
321 \\  
322 \\  
323 \\  
324 \\  
325 \\  
326 \\  
327 \\  
328 \\  
329 \\  
330 \\  
331 \\  
332 \\  
333 \\  
334 \\  
335 \\  
336 \\  
337 \\  
338 \\  
339 \\  
340 \\  
341 \\  
342 \\  
343 \\  
344 \\  
345 \\  
346 \\  
347 \\  
348 \\  
349 \\  
350 \\  
351 \\  
352 \\  
353 \\  
354 \\  
355 \\  
356 \\  
357 \\  
358 \\  
359 \\  
360 \\  
361 \\  
362 \\  
363 \\  
364 \\  
365 \\  
366 \\  
367 \\  
368 \\  
369 \\  
370 \\  
371 \\  
372 \\  
373 \\  
374 \\  
375 \\  
376 \\  
377 \\  
378 \\  
379 \\  
380 \\  
381 \\  
382 \\  
383 \\  
384 \\  
385 \\  
386 \\  
387 \\  
388 \\  
389 \\  
390 \\  
391 \\  
392 \\  
393 \\  
394 \\  
395 \\  
396 \\  
397 \\  
398 \\  
399 \\  
400 \\  
401 \\  
402 \\  
403 \\  
404 \\  
405 \\  
406 \\  
407 \\  
408 \\  
409 \\  
410 \\  
411 \\  
412 \\  
413 \\  
414 \\  
415 \\  
416 \\  
417 \\  
418 \\  
419 \\  
420 \\  
421 \\  
422 \\  
423 \\  
424 \\  
425 \\  
426 \\  
427 \\  
428 \\  
429 \\  
430 \\  
431 \\  
432 \\  
433 \\  
434 \\  
435 \\  
436 \\  
437 \\  
438 \\  
439 \\  
440 \\  
441 \\  
442 \\  
443 \\  
444 \\  
445 \\  
446 \\  
447 \\  
448 \\  
449 \\  
450 \\  
451 \\  
452 \\  
453 \\  
454 \\  
455 \\  
456 \\  
457 \\  
458 \\  
459 \\  
460 \\  
461 \\  
462 \\  
463 \\  
464 \\  
465 \\  
466 \\  
467 \\  
468 \\  
469 \\  
470 \\  
471 \\  
472 \\  
473 \\  
474 \\  
475 \\  
476 \\  
477 \\  
478 \\  
479 \\  
480 \\  
481 \\  
482 \\  
483 \\  
484 \\  
485 \\  
486 \\  
487 \\  
488 \\  
489 \\  
490 \\  
491 \\  
492 \\  
493 \\  
494 \\  
495 \\  
496 \\  
497 \\  
498 \\  
499 \\  
500 \\  
501 \\  
502 \\  
503 \\  
504 \\  
505 \\  
506 \\  
507 \\  
508 \\  
509 \\  
510 \\  
511 \\  
512 \\  
513 \\  
514 \\  
515 \\  
516 \\  
517 \\  
518 \\  
519 \\  
520 \\  
521 \\  
522 \\  
523 \\  
524 \\  
525 \\  
526 \\  
527 \\  
528 \\  
529 \\  
530 \\  
531 \\  
532 \\  
533 \\  
534 \\  
535 \\  
536 \\  
537 \\  
538 \\  
539 \\  
540 \\  
541 \\  
542 \\  
543 \\  
544 \\  
545 \\  
546 \\  
547 \\  
548 \\  
549 \\  
550 \\  
551 \\  
552 \\  
553 \\  
554 \\  
555 \\  
556 \\  
557 \\  
558 \\  
559 \\  
560 \\  
561 \\  
562 \\  
563 \\  
564 \\  
565 \\  
566 \\  
567 \\  
568 \\  
569 \\  
570 \\  
571 \\  
572 \\  
573 \\  
574 \\  
575 \\  
576 \\  
577 \\  
578 \\  
579 \\  
580 \\  
581 \\  
582 \\  
583 \\  
584 \\  
585 \\  
586 \\  
587 \\  
588 \\  
589 \\  
590 \\  
591 \\  
592 \\  
593 \\  
594 \\  
595 \\  
596 \\  
597 \\  
598 \\  
599 \\  
600 \\  
601 \\  
602 \\  
603 \\  
604 \\  
605 \\  
606 \\  
607 \\  
608 \\  
609 \\  
610 \\  
611 \\  
612 \\  
613 \\  
614 \\  
615 \\  
616 \\  
617 \\  
618 \\  
619 \\  
620 \\  
621 \\  
622 \\  
623 \\  
624 \\  
625 \\  
626 \\  
627 \\  
628 \\  
629 \\  
630 \\  
631 \\  
632 \\  
633 \\  
634 \\  
635 \\  
636 \\  
637 \\  
638 \\  
639 \\  
640 \\  
641 \\  
642 \\  
643 \\  
644 \\  
645 \\  
646 \\  
647 \\  
648 \\  
649 \\  
650 \\  
651 \\  
652 \\  
653 \\  
654 \\  
655 \\  
656 \\  
657 \\  
658 \\  
659 \\  
660 \\  
661 \\  
662 \\  
663 \\  
664 \\  
665 \\  
666 \\  
667 \\  
668 \\  
669 \\  
670 \\  
671 \\  
672 \\  
673 \\  
674 \\  
675 \\  
676 \\  
677 \\  
678 \\  
679 \\  
680 \\  
681 \\  
682 \\  
683 \\  
684 \\  
685 \\  
686 \\  
687 \\  
688 \\  
689 \\  
690 \\  
691 \\  
692 \\  
693 \\  
694 \\  
695 \\  
696 \\  
697 \\  
698 \\  
699 \\  
700 \\  
701 \\  
702 \\  
703 \\  
704 \\  
705 \\  
706 \\  
707 \\  
708 \\  
709 \\  
710 \\  
711 \\  
712 \\  
713 \\  
714 \\  
715 \\  
716 \\  
717 \\  
718 \\  
719 \\  
720 \\  
721 \\  
722 \\  
723 \\  
724 \\  
725 \\  
726 \\  
727 \\  
728 \\  
729 \\  
730 \\  
731 \\  
732 \\  
733 \\  
734 \\  
735 \\  
736 \\  
737 \\  
738 \\  
739 \\  
740 \\  
741 \\  
742 \\  
743 \\  
744 \\  
745 \\  
746 \\  
747 \\  
748 \\  
749 \\  
750 \\  
751 \\  
752 \\  
753 \\  
754 \\  
755 \\  
756 \\  
757 \\  
758 \\  
759 \\  
760 \\  
761 \\  
762 \\  
763 \\  
764 \\  
765 \\  
766 \\  
767 \\  
768 \\  
769 \\  
770 \\  
771 \\  
772 \\  
773 \\  
774 \\  
775 \\  
776 \\  
777 \\  
778 \\  
779 \\  
780 \\  
781 \\  
782 \\  
783 \\  
784 \\  
785 \\  
786 \\  
787 \\  
788 \\  
789 \\  
790 \\  
791 \\  
792 \\  
793 \\  
794 \\  
795 \\  
796 \\  
797 \\  
798 \\  
799 \\  
800 \\  
801 \\  
802 \\  
803 \\  
804 \\  
805 \\  
806 \\  
807 \\  
808 \\  
809 \\  
810 \\  
811 \\  
812 \\  
813 \\  
814 \\  
815 \\  
816 \\  
817 \\  
818 \\  
819 \\  
820 \\  
821 \\  
822 \\  
823 \\  
824 \\  
825 \\  
826 \\  
827 \\  
828 \\  
829 \\  
830 \\  
831 \\  
832 \\  
833 \\  
834 \\  
835 \\  
836 \\  
837 \\  
838 \\  
839 \\  
840 \\  
841 \\  
842 \\  
843 \\  
844 \\  
845 \\  
846 \\  
847 \\  
848 \\  
849 \\  
850 \\  
851 \\  
852 \\  
853 \\  
854 \\  
855 \\  
856 \\  
857 \\  
858 \\  
859 \\  
860 \\  
861 \\  
862 \\  
863 \\  
864 \\  
865 \\  
866 \\  
867 \\  
868 \\  
869 \\  
870 \\  
871 \\  
872 \\  
873 \\  
874 \\  
875 \\  
876 \\  
877 \\  
878 \\  
879 \\  
880 \\  
881 \\  
882 \\  
883 \\  
884 \\  
885 \\  
886 \\  
887 \\  
888 \\  
889 \\  
890 \\  
891 \\  
892 \\  
893 \\  
894 \\  
895 \\  
896 \\  
897 \\  
898 \\  
899 \\  
900 \\  
901 \\  
902 \\  
903 \\  
904 \\  
905 \\  
906 \\  
907 \\  
908 \\  
909 \\  
910 \\  
911 \\  
912 \\  
913 \\  
914 \\  
915 \\  
916 \\  
917 \\  
918 \\  
919 \\  
920 \\  
921 \\  
922 \\  
923 \\  
924 \\  
925 \\  
926 \\  
927 \\  
928 \\  
929 \\  
930 \\  
931 \\  
932 \\  
933 \\  
934 \\  
935 \\  
936 \\  
937 \\  
938 \\  
939 \\  
940 \\  
941 \\  
942 \\  
943 \\  
944 \\  
945 \\  
946 \\  
947 \\  
948 \\  
949 \\  
950 \\  
951 \\  
952 \\  
953 \\  
954 \\  
955 \\  
956 \\  
957 \\  
958 \\  
959 \\  
960 \\  
961 \\  
962 \\  
963 \\  
964 \\  
965 \\  
966 \\  
967 \\  
968 \\  
969 \\  
970 \\  
971 \\  
972 \\  
973 \\  
974 \\  
975 \\  
976 \\  
977 \\  
978 \\  
979 \\  
980 \\  
981 \\  
982 \\  
983 \\  
984 \\  
985 \\  
986 \\  
987 \\  
988 \\  
989 \\  
990 \\  
991 \\  
992 \\  
993 \\  
994 \\  
995 \\  
996 \\  
997 \\  
998 \\  
999 \\  
1000 \\  
1001 \\  
1002 \\  
1003 \\  
1004 \\  
1005 \\  
1006 \\  
1007 \\  
1008 \\  
1009 \\  
1010 \\  
1011 \\  
1012 \\  
1013 \\  
1014 \\  
1015 \\  
1016 \\  
1017 \\  
1018 \\  
1019 \\  
1020 \\  
1021 \\  
1022 \\  
1023 \\  
1024 \\  
1025 \\  
1026 \\  
1027 \\  
1028 \\  
1029 \\  
1030 \\  
1031 \\  
1032 \\  
1033 \\  
1034 \\  
1035 \\  
1036 \\  
1037 \\  
1038 \\  
1039 \\  
1040 \\  
1041 \\  
1042 \\  
1043 \\  
1044 \\  
1045 \\  
1046 \\  
1047 \\  
1048 \\  
1049 \\  
1050 \\  
1051 \\  
1052 \\  
1053 \\  
1054 \\  
1055 \\  
1056 \\  
1057 \\  
1058 \\  
1059 \\  
1060 \\  
1061 \\  
1062 \\  
1063 \\  
1064 \\  
1065 \\  
1066 \\  
1067 \\  
1068 \\  
1069 \\  
1070 \\  
1071 \\  
1072 \\  
1073 \\  
1074 \\  
1075 \\  
1076 \\  
1077 \\  
1078 \\  
1079 \\  
1080 \\  
1081 \\  
1082 \\  
1083 \\  
1084 \\  
1085 \\  
1086 \\  
1087 \\  
1088 \\  
1089 \\  
1090 \\  
1091 \\  
1092 \\  
1093 \\  
1094 \\  
1095 \\  
1096 \\  
1097 \\  
1098 \\  
1099 \\  
1100 \\  
1101 \\  
1102 \\  
1103 \\  
1104 \\  
1105 \\  
1106 \\  
1107 \\  
1108 \\  
1109 \\  
1110 \\  
1111 \\  
1112 \\  
1113 \\  
1114 \\  
1115 \\  
1116 \\  
1117 \\  
1118 \\  
1119 \\  
1120 \\  
1121 \\  
1122 \\  
1123 \\  
1124 \\  
1125 \\  
1126 \\  
1127 \\  
1128 \\  
1129 \\  
1130 \\  
1131 \\  
1132 \\  
1133 \\  
1134 \\  
1135 \\  
1136 \\  
1137 \\  
1138 \\  
1139 \\  
1140 \\  
1141 \\  
1142 \\  
1143 \\  
1144 \\  
1145 \\  
1146 \\  
1147 \\  
1148 \\  
1149 \\  
1150 \\  
1151 \\  
1152 \\  
1153 \\  
1154 \\  
1155 \\  
1156 \\  
1157 \\  
1158 \\  
1159 \\  
1160 \\  
1161 \\  
1162 \\  
1163 \\  
1164 \\  
1165 \\  
1166 \\  
1167 \\  
1168 \\  
1169 \\  
1170 \\  
1171 \\  
1172 \\  
1173 \\  
1174 \\  
1175 \\  
1176 \\  
1177 \\  
1178 \\  
1179 \\  
1180 \\  
1181 \\  
1182 \\  
1183 \\  
1184 \\  
1185 \\  
1186 \\  
1187 \\  
1188 \\  
1189 \\  
1190 \\  
1191 \\  
1192 \\  
1193 \\  
1194 \\  
1195 \\  
1196 \\  
1197 \\  
1198 \\  
1199 \\  
1200 \\  
1201 \\  
1202 \\  
1203 \\  
1204 \\  
1205 \\  
1206 \\  
1207 \\  
1208 \\  
1209 \\  
1210 \\  
1211 \\  
1212 \\  
1213 \\  
1214 \\  
1215 \\  
1216 \\  
1217 \\  
1218 \\  
1219 \\  
1220 \\  
1221 \\  
1222 \\  
1223 \\  
1224 \\  
1225 \\  
1226 \\  
1227 \\  
1228 \\  
1229 \\  
1230 \\  
1231 \\  
1232 \\  
1233 \\  
1234 \\  
1235 \\  
1236 \\  
1237 \\  
1238 \\  
1239 \\  
1240 \\  
1241 \\  
1242 \\  
1243 \\  
1244 \\  
1245 \\  
1246 \\  
1247 \\  
1248 \\  
1249 \\  
1250 \\  
1251 \\  
1252 \\  
1253 \\  
1254 \\  
1255 \\  
1256 \\  
1257 \\  
1258 \\  
1259 \\  
1260 \\  
1261 \\  
1262 \\  
1263 \\  
1264 \\  
1265 \\  
1266 \\  
1267 \\  
1268 \\  
1269 \\  
1270 \\  
1271 \\  
1272 \\  
1273 \\  
1274 \\  
1275 \\  
1276 \\  
1277 \\  
1278 \\  
1279 \\  
1280 \\  
1281 \\  
1282 \\  
1283 \\  
1284 \\  
1285 \\  
1286 \\  
1287 \\  
1288 \\  
1289 \\  
1290 \\  
1291 \\  
1292 \\  
1293 \\  
1294 \\  
1295 \\  
1296 \\  
1297 \\  
1298 \\  
1299 \\  
1300 \\  
1301 \\  
1302 \\  
1303 \\  
1304 \\  
1305 \\  
1306 \\  
1307 \\  
1308 \\  
1309 \\  
1310 \\  
1311 \\  
1312 \\  
1313 \\  
1314 \\  
1315 \\  
1316 \\  
1317 \\  
1318 \\  
1319 \\  
1320 \\  
1321 \\  
1322 \\  
1323 \\  
1324 \\  
1325 \\  
1326 \\  
1327 \\  
1328 \\  
1329 \\  
1330 \\  
1331 \\  
1332 \\  
1333 \\  
1334 \\  
1335 \\  
1336 \\  
1337 \\  
1338 \\  
1339 \\  
1340 \\  
1341 \\  
1342 \\  
1343 \\  
1344 \\  
1345 \\  
1346 \\  
1347 \\  
1348 \\  
1349 \\  
1350 \\  
1351 \\  
1352 \\  
1353 \\  
1354 \\  
1355 \\  
1356 \\  
1357 \\  
1358 \\  
1359 \\  
1360 \\  
1361 \\  
1362 \\  
1363 \\  
1364 \\  
1365 \\  
1366 \\  
1367 \\  
1368 \\  
1369 \\  
1370 \\  
1371 \\  
1372 \\  
1373 \\  
1374 \\  
1375 \\  
1376 \\  
1377 \\  
1378 \\  
1379 \\  
1380 \\  
1381 \\  
1382 \\  
1383 \\  
1384 \\  
1385 \\  
1386 \\  
1387 \\  
1388 \\  
1389 \\  
1390 \\  
1391 \\  
1392 \\  
1393 \\  
1394 \\  
1395 \\  
1396 \\  
1397 \\  
1398 \\  
1399 \\  
1400 \\  
1401 \\  
1402 \\  
1403 \\  
1404 \\  
1405 \\  
1406 \\  
1407 \\  
1408 \\  
1409 \\  
1410 \\  
1411 \\  
1412 \\  
1413 \\  
1414 \\  
1415 \\  
1416 \\  
1417 \\  
1418 \\  
1419 \\  
1420 \\  
1421 \\  
1422 \\  
1423 \\  
1424 \\  
1425 \\  
1426 \\  
1427 \\  
1428 \\  
1429 \\  
1430 \\  
1431 \\  
1432 \\  
1433 \\  
1434 \\  
1435 \\  
1436 \\  
1437 \\  
1438 \\  
1439 \\  
1440 \\  
1441 \\  
1442 \\  
1443 \\  
1444 \\  
1445 \\  
1446 \\  
1447 \\  
1448 \\  
1449 \\  
1450 \\  
1451 \\  
1452 \\  
1453 \\  
1454 \\  
1455 \\  
1456 \\  
1457 \\  
1458 \\  
1459 \\  
1460 \\  
1461 \\  
1462 \\  
1463 \\  
1464 \\  
1465 \\  
1466 \\  
1467 \\  
1468 \\  
1469 \\  
1470 \\  
1471 \\  
1472 \\  
1473 \\  
1474 \\  
1475 \\  
1476 \\  
1477 \\  
1478 \\  
1479 \\  
1480 \\  
1481 \\  
1482 \\  
1483 \\  
1484 \\  
1485 \\  
1486 \\  
1487 \\  
1488 \\  
1489 \\  
1490 \\  
1491 \\  
1492 \\  
1493 \\  
1494 \\  
1495 \\  
1496 \\  
1497 \\  
1498 \\  
1499 \\  
1500 \\  
1501 \\  
1502 \\  
1503 \\  
1504 \\  
1505 \\  
1506 \\  
1507 \\  
1508 \\  
1509 \\  
1510 \\  
1511 \\  
1512 \\  
1513 \\  
1514 \\  
1515 \\  
1516 \\  
1517 \\  
1518 \\  
1519 \\  
1520 \\  
1521 \\  
1522 \\  
1523 \\  
1524 \\  
1525 \\  
1526 \\  
1527 \\  
1528 \\  
1529 \\  
1530 \\  
1531 \\  
1532 \\  
1533 \\  
1534 \\  
1535 \\  
1536 \\  
1537 \\  
1538 \\  
1539 \\  
1540 \\  
1541 \\  
1542 \\  
1543 \\  
1544 \\  
1545 \\  
1546 \\  
1547 \\  
1548 \\  
1549 \\  
1550 \\  
1551 \\  
1552 \\  
1553 \\  
1554 \\  
1555 \\  
1556 \\  
1557 \\  
1558 \\  
1559 \\  
1560 \\  
1561 \\  
1562 \\  
1563 \\  
1564 \\  
1565 \\  
1566 \\  
1567 \\  
1568 \\  
1569 \\  
1570 \\  
1571 \\  
1572 \\  
1573 \\  
1574 \\  
1575 \\  
1576 \\  
1577

1 (a) The Participant's primary benefit under the Federal Social  
2 Security Act, -- or --

3 (b) Any Early Retirement Benefit payable under the Plan at the time Total  
4 Disability commences.

5 Exh. A-00574.

6 The Plan defines "Total Disability" as an injury or illness that:

7 1.9.1 Prevents [the Participant] from performing the duties  
8 assigned and required of him for the Employer's job classification  
9 or job description as of the date of illness or injury [referred to by  
10 the parties as the "**Own Occupation**" period]; or

11 1.9.2 After 24 months of continuous disability, prevents him from  
12 engaging in any substantially gainful occupation for wages or  
13 profit for which he is reasonably qualified by education, training,  
14 or experience [referred to by the parties as the "**Any  
15 Occupation**" period].

16 Ex. A-00536-537.

17 The amount of TDI benefits is to be calculated by comparison to other income:

18 5.5.3 The amount of monthly Total Disability income shall be  
19 equal to the greater of:

20 (a) The Participant's primary benefit under the Federal Social  
21 Security Act, or

22 (b) Any Early Retirement Benefits payable under the Plan at the  
23 time total Disability commences.

24 Such monthly Total Disability income shall be reduced by the  
25 amount of any other income from Employee sick leave, Worker's  
26 Compensation, occupational disease laws, or pursuant to the  
27 disability income provisions of any state laws.

28 Ex. A, p. A574.

The Plan provides for the creation of a Pension Committee to administer the Plan,<sup>1</sup> and  
confers on the Pension Committee the authority to appoint the Plan Administrator,<sup>2</sup> while

---

<sup>1</sup> "9.1.1 The Pension Committee ('Committee') shall be a 'Named Fiduciary' within the meaning of Section 402(a) of [ERISA] with respect to the control and management of the operation and administration of the Plan." Exh. A, pp. A594-595.

<sup>2</sup> "9.1.2 The Committee shall appoint a Plan Administrator who may, but need not be, a member of the Pension Committee, who shall serve at the pleasure of the Pension Committee. The Plan Administrator shall be the 'Plan Administrator' within the meaning of Section 3(16) of ERISA and Section 414(g) of the Internal Revenue Code of 1986, as amended. The Plan Administrator shall

1 retaining for the Pension Committee full discretion to administer and interpret the Plan and  
2 to determine eligibility for benefits under the Plan.<sup>3</sup> The Committee's retained authority  
3 includes the authority to delegate its responsibilities and powers, including its discretionary  
4 authority, to other persons or organizations.<sup>4</sup>

5 Defendants represent, as supported by the Green Declaration exhibits, the Committee  
6 delegated discretionary authority:

7 At a May 1998 Board Meeting, the Directors of SDG&E  
8 voted to appoint the members of the Sempra Energy Pension and  
9 Benefits Committee to serve as the Pension Committee for the  
10 Plan. During the same month, the Sempra Energy Board of  
11 Directors voted to establish the Sempra Pension and Benefits  
12 Committee. The Board delegated to this Committee full  
13 discretionary authority over the Company's benefit plans, and  
14 further stated that the Pension and Benefits Committee would be  
15 deemed a "named fiduciary" under ERISA. In November 1999,  
the Pension and Benefits Committee established a Benefits  
Subcommittee to handle benefit claims. The Benefits  
Subcommittee was, accordingly, the entity which exercised the  
discretion granted to the Pension and Benefits Committee to  
make claims determinations [although the initial claims decision  
on benefits claims is made by Disability Management Services,  
which administers both the worker's compensation program and  
claims for TDI benefits under the Pension Plan].

16 Dkt No. 17, 4:11-24, n. 1 (citations to Exhibits omitted).

17 \ \

18 \ \

19

20 have such powers and duties with respect to the control and administration of the Plan as may be  
21 delegated to it by the Committee." Exh. A, p. A595.

22 <sup>3</sup> "9.3 The Committee shall administer the Plan in accordance with its terms and applicable  
23 law and shall have all necessary and appropriate powers to carry out the provisions of the Plan. The  
24 Committee shall have full discretion to administer and interpret the Plan and to determine eligibility  
25 for benefits under the Plan. Any action or determination of that Committee involving the  
26 administration, application or interpretation of the Plan or eligibility for benefits under the Plan shall  
be final, conclusive and binding on all persons. In particular, but not by way of limitation, the  
Committee shall have the following powers and duties: [¶] 9.3.1 To resolve all questions respecting  
administration, interpretation, and application of the Plan. [¶] To resolve all questions respecting  
eligibility for participation, eligibility for receipt of benefits, and the amount of benefits." Exh. A p.  
A597.

27 <sup>4</sup> "The Committee from time to time may allocate to one or more of its members, and the  
28 Committee and the Plan Administrator and Investments Administrator may delegate to any other  
persons or organizations, any of their respective responsibilities and powers with respect to the  
operation and administration of the Plan." Exh. A, p. A601.

1           **C.     Legal Standards**

2                   **1.     Standards Of Review For ERISA Plan Benefits Determinations**

3           An ERISA-regulated plan must be administered "in accordance with the documents  
4 and instruments governing the plan insofar as such documents and instruments are  
5 consistent with the provisions of [ERISA]." Blau v. Del Monte Corp., 748 F.2d 1348, 1353  
6 (9th Cir. 1984), *cert. denied*, 474 U.S. 865 (1985), *quoting* 29 U.S.C. § 1104(a)(1)(D). If the  
7 Plan gives the administrator or fiduciary the discretionary authority to determine a participant's  
8 eligibility for benefits and to construe the terms of the Plan, the courts review a denial of  
9 benefits for abuse of discretion. Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115  
10 (1989) (deciding issues arising under Section 1132(a)(1)(B) and interpretation of the term  
11 "participant" in Section 1002(7) for a class of laid off workers seeking termination pay they  
12 alleged was owed them under their ERISA plan). ERISA explicitly authorizes suits against  
13 fiduciaries and plan administrators to remedy statutory violations, including breaches of  
14 fiduciary duty and lack of compliance with plans. Id.,

15           In Firestone, the employer maintained for its employees three pension and welfare  
16 benefit plans governed in different ways by ERISA: a termination pay plan, a retirement plan,  
17 and a stock purchase plan. Firestone was itself the sole source of funding for those plans  
18 without establishing separate trust funds from which to pay benefits. That Court concluded  
19 *de novo* review was the appropriate standard to apply to Firestone's denial of benefits,  
20 framing the question presented to be a determination of "the appropriate standard of review  
21 in [29 U.S.C.] § 1132(a)(1)(B) actions challenging denials of benefits *based on plan*  
22 *interpretations*." Id. at 108 (emphasis added). "We express no view as to the appropriate  
23 standard of review for actions under other remedial provisions of ERISA." Id. The Firestone  
24 Court, in consideration of the observation "the validity of a claim to benefits under an ERISA  
25 plan is likely to turn on the interpretation of terms in the plan at issue," held "a denial of  
26 benefits challenged under § 1132(a)(1)(B) is to be reviewed under a *de novo* standard ***unless***  
27 ***the benefit plan gives the administrator or fiduciary discretionary authority to***  
28 ***determine eligibility for benefits or to construe the terms of the plan.***" Id. at 115.

1 DeLoach acknowledges there are "two scopes of review that apply to ERISA cases,"  
2 contending the "default standard is a *de novo* review by the court" unless the Plan "grants  
3 discretionary authority to the administrator," in which case "an *abuse of discretion* standard  
4 will apply." Pl. Mot. P&A 12:8-11, *citing Firestone*, 489 U.S. at 115. To avoid application of  
5 the abuse of discretion standard to his case, DeLoach argues:

6 The Plan grants the Pension Committee "full discretion to  
7 administer and interpret the Plan and to determine eligibility for  
8 benefits under the Plan" (Ex. A-00597, ¶ 9.3). DELOACH  
9 acknowledges this would grant the Pension Committee  
10 discretionary authority that would trigger the abuse of discretion  
11 standard of review. However, the Pension Committee did not  
12 exercise its discretion in terminating DELOACH's benefits. The  
13 Pension Committee delegated the function of determining  
14 eligibility for benefits to the Benefits Committee created in  
15 November 1999. It was the Benefits Committee that terminated  
16 DELOACH's benefits by its letter dated April 16, 2006 and denied  
17 his appeal by letter dated March 8, 2007 (Ex. A-00640).

18 Pl. Mot. P&A 12:12-19.

19 While acknowledging the Plan grants the Pension Committee the authority to delegate  
20 "any of their respective responsibilities and powers with respect to the operation and  
21 administration of the Plan" (Ex. A-00601), DeLoach argues "the Pension Committee did not  
22 delegate its discretionary powers to the Benefits Committee." Pl. Mot. P&A 12:20-23. For  
23 purposes of selecting the proper standard of review, he argues: "The question that is at issue  
24 is whether the Pension Committee properly delegated its discretionary authority to the Benefit  
25 Committee." Pl. Mot. P&A 12:24-25. DeLoach relies on the November 16, 1999 minutes of  
26 the Pension Committee creating the Benefits Committee to argue for *de novo* review on  
27 grounds the new committee was only empowered to "handle benefits claims, [and] have  
28 authority to make ministerial amendments to qualified plans." Pl. Mot. P&A 13:1-4, *quoting*  
Ex. 3-92. He urges rejection of Defendants' broad reading of the delegation of authority to  
the Benefits Committee to "**handle benefits claims.**" He argues: "There is no specific  
delegation of the discretionary authority to determine eligibility for claims and more  
importantly no authority whatsoever to interpret the terms of the Plan," with no other evidence  
presented by the Plan to support a finding that the Benefits Committee was granted full

1 discretionary authority to determine eligibility and to construe the terms of the Plan." Pl. Mot.  
2 P&A 13:4-8, *citing* Stennett Decl. ¶¶ 6-7. He cites Kearney v. Standard Ins. Co., 175 F.3d  
3 1084, 1089 (9th Cir. 1999) (*en banc*) for the proposition that unless ERISA plans grant power  
4 to construe or interpret the terms of the plan, they are insufficient to confer discretionary  
5 authority *on the administrator*, but merely identify the plan administrator's tasks, in which case  
6 *de novo* review applies.

7       The Kearney court reconciled disparate decisions on the standard of review district  
8 courts must apply in ERISA cases, "whether *de novo* or abuse of discretion, of a plan  
9 administrator's decision." Kearney, 175 F.3d at 1086. That court, applying Firestone,  
10 determined the *de novo* review standard applied to the ERISA plan and its administration at  
11 issue there because the conferral of discretion in the plan document was not unambiguous,  
12 but reinforced the distinction "a deferential standard of review for actions by trustees is  
13 "appropriate when the trustee exercises discretionary powers." Id. at 1088, *quoting Firestone*,  
14 489 U.S. at 111. DeLoach also cites Shane v. Albertson's, Inc., 504 F.3d 1166, 1170-71 (9th  
15 Cir. 2007) for the proposition *de novo* review is the proper standard of review after a court  
16 finds "the Plan trustees had failed to properly delegate their discretionary authority to the  
17 Plan's Review Committee who terminated the employee's disability benefits" without  
18 authorization. Pl. Mot. P&A 13:9-25. DeLoach summarily argues: "The Pension Committee  
19 did not grant the Benefits Committee discretionary authority to determine eligibility for benefits  
20 or to construe the terms of the Plan," so "the *de novo* standard of review applies" to these  
21 cross-motions. Pl. Mot. P&A 13:26-28.

22       Defendants observe DeLoach "concedes that where a benefit plan allocates  
23 discretionary authority to the plan administrator, the Court's review is limited to abuse of  
24 discretion on the administrative record," and argue in this case, "there is proper allocation,"  
25 leaving as the "only material issue . . . whether the administrator's decision was reasonable."  
26 Def. Opp. P&A 2:6-9, 3:6-11 ("because the Plan clearly and unambiguously confers discretion

27 \ \

28 \ \

1 upon the Sempra Pension and Benefits Committee<sup>5</sup>], which decided Plaintiff's claim through  
2 its Benefits Subcommittee," they "need not prove the existence of a triable issue of fact to  
3 avoid summary judgment," but rather "need only demonstrate that the Benefits Committee  
4 did not abuse its discretion in denying Plaintiff's claim for additional TDI benefits").

5 The court is persuaded by Defendants' demonstration the Plan language adequately  
6 confers discretion on the then-Pension Committee as a named fiduciary with "full discretion  
7 to administer and interpret the Plan and to determine eligibility for benefits under the Plan,"  
8 and to "delegate to any other person or organization its fiduciary responsibilities and powers  
9 with respect to the operation and administration of the Plan," and that the Pension Committee  
10 properly exercised its discretionary authority by delegating to the Pension and Benefits  
11 Committee authority to "handle benefits claims," an assignment necessarily entailing the  
12 exercise of discretion "to interpret plan terms and to make final benefits determinations." Der.  
13 Mot. P&A 10:17-27, *citing* Exh. A, A-597. See Abatie v. Alta Health & Life Ins. Co., 458 F.3d  
14 955, 963-64 (9th Cir. 2006) (there are no "magic words" necessary in order to confer  
15 discretion, but the case law requires language granting the power to interpret plan terms and  
16 to make final benefits determinations be "unambiguous"). The Plan language establishes the  
17 Plan's authority to -- and undisputed facts substantiate it did -- delegate its discretionary  
18 authority to the Pension and Benefits Committee to interpret Plan terms and to make final  
19 Plan benefits determinations as essential components of claims handling.<sup>6</sup> A grant of  
20 discretion in the Plan document may extend to the fiduciary's employment of an agent to  
21 perform actual claims processing. Madden v. ITT Long Term Disability Plan, 914 F.2d 1279  
22 (9th Cir. 1990). The "arbitrary and capricious" standard of review applies to a claim decision  
23 made by a claims review fiduciary exercising properly delegated authority.

24 \_\_\_\_\_  
25 <sup>5</sup> Defendants explain the Pension Committee "became the Sempra Pension and Benefits  
26 Committee post-merger." Def. Opp. P&A 11:16-17.

27 <sup>6</sup> The Pension Committee (subsequently the Sempra Pension and Benefits Committee) is  
28 a named fiduciary with "full discretion to administer and interpret the Plan and to determine eligibility  
for benefits under the Plan." Green Decl. Exh. A, p. A597. "[A]ny action of the Committee shall be  
final and conclusive and binding on all persons," and the Committee "may delegate to any other  
persons or organizations its fiduciary responsibilities and powers with respect to the operation and  
administration of the Plan." Id. p. A601.

1 In accordance with the logic and reasoning of Firestone,  
 2 we hold that where (1) the ERISA plan expressly gives the  
 3 administrator or fiduciary discretionary authority to determine  
 4 eligibility for benefits or to construe the terms of the plan and (2)  
 5 pursuant to ERISA . . . a named fiduciary properly designates  
 another fiduciary, delegating its discretionary authority, the  
 "arbitrary and capricious" standard of review for ERISA claims  
 brought under § 1132(a)(1)(B) applies to the designated ERISA-  
 fiduciary as well as to the named fiduciary.

6 Maddon, 914 F.2d at 1283-84.

7 As substantiated in the Plan document and other of the Green Declaration exhibits,  
 8 the Pension and Benefits Committee created a sub-committee (the Benefits Committee) for  
 9 the purpose of claims handling pursuant to "its discretionary authority, not only to make final  
 10 claims decisions, but also to create its own mechanism for claims handling, including but not  
 11 limited to, creating the Benefits Sub-Committee for the purpose of exercising that authority."  
 12 Def. Mot. P&A 12:5-22. "Because the Pension and Benefit Committee created the Benefits  
 13 Sub-Committee, in accordance with the Plan provisions, the claims decisions are essentially  
 14 Pension and Benefit Committee decisions made pursuant to the power, and the discretion,  
 15 granted to the Pension and Benefits Committee under the terms of the Plan." Def. Mot. P&A  
 16 12:13-18, *citing* Exh. A, A-597, A-601. Accordingly, the court rejects DeLoach's contention  
 17 the proper standard of review of his benefits denial is *de novo*. Instead, the court finds the  
 18 proper standard to apply in reviewing the denial of his claimed TDI benefits is abuse of  
 19 discretion.<sup>7</sup> See Firestone, 489 U.S. at 111; Abatie, 458 F.3d at 963-64; Taft v. Equitable Life

---

21 <sup>7</sup> As noted by Defendants, the record raises no concern regarding any structural conflict or  
 22 any conflicted fiduciaries because the entity making the initial benefits determination (DMS) is  
 23 different from the entity deciding appeals of those decisions (the Benefits Committee). See Dkt No.  
 24 17, p. 12 n. 5. DeLoach attempts to raise a conflict of interest issue in his Opposition to Defendants'  
 25 motion to "alter[] the court's level of review," in reliance on Abatie, 458 F.3d 955 (9th Cir. 2006),  
 26 which overturned a line of cases placing the burden on the claimant to produce un rebutted evidence  
 27 of a "serious" conflict of interest. Pl. Opp. 3:12-24. While DeLoach is correct about the change in  
 28 the law, he falls short of identifying *what* conflict the administrator purportedly had which purportedly  
 caused a failure of a full and fair review of his claims. No "structural" conflict like that in Abatie is  
 demonstrated, where the insurer was also the claims administrator. "Rather, this case involves a  
 self-funded plan, where the initial determination is made by a completely disinterested entity  
 (Disability Management Services) and an independent review on appeal is conducted by the Benefits  
 Committee. Because the Plan is fully funded, there is no evidence that the Benefits Committee has  
 any financial incentive to deny claims or otherwise limit payment of TDI payments," so the court's  
 review of this case under the abuse of discretion standard is not impacted by any purported conflict  
 of interest. Def. Reply 3:24-4:5.

1 Assurance Soc'y, 9 F.3d 1469, 1471 (9th Cir. 1993), *abrogation of premise a district court errs*  
2 *in hearing additional evidence of disability not presented to Plan administrator recognized in*  
3 Saffron v. Wells Fargo & Co. Long Term Disability Plan, 522 F.3d 863, 873 n.2 (9th Cir.  
4 2008), *citing Abatie*, 458 F.3d at 973.

5 A reviewing court applying the abuse of discretion review standard must uphold the  
6 Trustees' decision to deny benefits unless the decision is shown to have been without any  
7 reasonable basis. Bendixen v. Standard Ins. Co., 185 F.3d 939, 944 (9th Cir. 1999) (the  
8 court need only determine whether the plan administrator construed plan provisions in a way  
9 that conflicts with the plain language of the plan); see Snow v. Standard Ins. Co., 87 F.3d  
10 327, 330 (9th Cir. 1996), *overruled on other grounds Kearney*, 175 F.3d 1084 ("the exercise  
11 of that discretion is reviewed under the arbitrary or capricious standard, or for abuse of  
12 discretion, which comes to the same thing"); see also Horan v. Kaiser Steel Ret. Plan, 947  
13 F.2d 1412, 1417 (9th Cir. 1991) (a decision by an employee benefit plan's fiduciaries "is not  
14 arbitrary unless it is 'not grounded on any reasonable basis'" (citation omitted); see Firestone,  
15 489 U.S. at 115. The touchstone of "arbitrary and capricious" conduct is unreasonableness;  
16 Eley v. Boeing Co., 945 F.2d 276, 279 (9th Cir. 1991) (ERISA plan administrators abuse their  
17 discretion by rendering decisions without any explanation or by construing provisions in a way  
18 that clearly conflicts with the plain language of the plan); see also Taft, 9 F.3d at 1473 ("an  
19 administrator also abuses its discretion if it relies on clearly erroneous findings of fact in  
20 making benefit determinations").

## 21 **2. Summary Judgment**

22 Normally, summary judgment is appropriate if the evidence presented "show[s] that  
23 there is no genuine issue as to any material fact and that the moving party is entitled to  
24 judgment as a matter of law." FED. R. CIV. P. ("Rule") 56(c); see Taylor v. List, 880 F.2d 1040,  
25 1045 (9th Cir. 1989); see also Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919  
26 (9th Cir. 2001). However, in the Ninth Circuit, "[w]here the decision to grant or deny benefits  
27 is reviewed for abuse of discretion, a motion for summary judgment is merely the conduit to  
28 bring the legal question before the district court and the usual tests of summary judgment,

1 such as whether a genuine issue of material fact exists, do not apply." Bendixen, 185 F.3d  
2 at 942.

3 The Abatie court articulated an approach to ERISA benefits denial cases it deemed  
4 reflected the Supreme Court's instructions in Firestone: "We read Firestone to require abuse  
5 of discretion review *whenever* an ERISA plan grants discretion to the plan administrator, but  
6 a review informed by the nature, extent, and effect on the decision-making process of any  
7 [kind of] conflict of interest that may appear in the record." <sup>8</sup> Abatie, 458 F.3d at 967-68  
8 (emphasis added). Nevertheless, the *de novo* standard of review will apply if the benefits  
9 decision was arrived at through an unauthorized delegation procedure not contemplated in  
10 the plan. See, e.g., Shane, 504 F.3d at 1170-71 (although an ERISA self-funded LTD plan  
11 granted its trustees discretionary authority over benefits decisions, the *de novo* standard of  
12 review, rather than the abuse of discretion review standard, applied to a termination of  
13 benefits challenge where the employer's medical review committee ("MRC"), acting as an  
14 appropriate trustee delegate as permitted under the plan, made the ultimate termination  
15 determination, but not before the trustee had first transferred discretionary authority to a  
16 company executive, who in turn purported to transfer such authority to the MRC; that  
17 procedure was not contemplated in the plan, so the body that terminated the claimants LTD  
18 benefits (although falling within the scope of persons or bodies *eligible to receive* the  
19 Trustee's discretionary authority) was not properly vested with the requisite discretionary  
20 authority to review the claim);<sup>9</sup> see also Jebian v. Hewlett-Packard Co. Employee Benefits  
21 Organization Income Protection, 349 F.3d 1098, 1105 (9th Cir. 2003) ("When an

---

22  
23 <sup>8</sup> Defendants contend a court deciding a motion for summary judgment under Plan  
24 provisions conferring on ERISA Plan administrators discretionary authority over benefits decisions  
25 will overturn a benefits decision, applying the abuse of discretion standard, only when presented with  
26 evidence of a serious misconstruction of the Plan documents or an absence of reasoning in the  
27 benefit denial, citing Atwood v. Newmont Gold Co., Inc., 45 F.3d 1317, 1323-24 (9th Cir. 1995)  
28 (articulating a test placing the burden on ERISA plaintiffs to consider the influence of conflicts of  
interest only if the plaintiff brought forth evidence of a "serious conflict of interest," in which case *de*  
*novo* review would supplant abuse of discretion review). However the Atwood test was overruled by  
Abatie, 458 F.3d 955, 966-67 "in its entirety" based on three articulated errors, not on "other grounds"  
as Defendants represent.

<sup>9</sup> A thoughtful dissent in Shane explains why it may be persuasively argued the abuse of  
discretion standard ought to have been applied in the circumstances of that case.

1 unauthorized body that does not have fiduciary discretion to determine benefits eligibility  
2 renders such a decision . . . deferential review is not warranted") (citation omitted); Abatie,  
3 458 F.3d 955, 964-65 (9th Cir. 2006) (*de novo* review is appropriate when administrator acts  
4 in "flagrant disregard of procedural requirements of ERISA," whereas other procedural  
5 irregularities are a matter to be weighed in deciding whether an administrator's decision was  
6 an abuse of discretion, including even administrator conflict of interest allegations).

7       Reviewing courts must defer to the administrative decision, rather than reviewing  
8 benefits denials *de novo*, if the grant of discretionary authority in the Plan terms is  
9 "unambiguous[]." Kearney, 175 F.3d at 1090; see Abatie, 458 F.3d at 964-65 (ERISA plan  
10 that gives administrator full and final authority to interpret the terms of the plan and to  
11 determine benefits eligibility, vesting that authority exclusively in the administrator, is subject  
12 to abuse of discretion review).

### 13       **E.     Evidentiary Record**

#### 14           **1.     Defendants' Evidentiary Objections**

15       Defendants object to portions of the DeLoach Declaration (Dkt No. 22) and the  
16 Stennett Declaration (Dkt No. 23) provided in support of his Cross-Motion. The DeLoach  
17 Declaration reviews the payments he received as Social Security disability benefits for the  
18 period December 2002 to November 2008. He also traces his experience in computer repair  
19 training, his exhaustion in June 2006 of Workers' Compensation permanent disability  
20 benefits, his decisions about medical payments and surgery, his experience in December  
21 2006 when he saw Dr. Wieseltier, and his correspondence after the Plan notified him in  
22 March 2007 his appeal for TDI benefits was denied, and his attempt to have Workers'  
23 Compensation counsel instruct Dr. Wieseltier to review the FCE he had declined to review  
24 before as beyond the scope of what he was asked to do. Defendants object on grounds the  
25 entire DeLoach Declaration is irrelevant and not probative of any issue before the Court  
26 reviewing administrative fact finding for abuse of discretion. They further object his  
27 Declaration contains hearsay, is objectionable based on the best Evidence Rule, lacks  
28 foundation for certain representations, and its probative value is outweighed by prejudicial

1 impact and confusion of issues. The Court need not rule on the specific objections because  
2 the administrative record and Defendants' undisputed course of conduct provide the  
3 appropriate foundation for a ruling on the cross-motions. Defendants also object to the  
4 Sennett Declaration in its entirety on relevancy, lack of probative value, and misstatement of  
5 the record grounds, among other things. Again, the Court does not rely on its contents in  
6 ruling on these cross-motions.

## 7 **2. Administrative Record**

8 The Abatie court reviewed the variation of approach among the circuits on the question  
9 of the evidence a court may consider when a participant sues a plan administrator to  
10 challenge its decision to deny benefits. Abatie, 458 F.3d at 969-70. Citing cases from the  
11 2nd, 4th, 5th, 7th, 10th, and 11th Circuits, Abatie observes: "Many circuits limit a district court  
12 to the administrative record when the court is reviewing a case on the merits for an abuse of  
13 discretion; consideration of new evidence is permitted only in conjunction with de novo review  
14 of a denial of benefits." Id. The Ninth Circuit has "adhered to a similar rule." Abatie, 458  
15 F.3d at 970, *citing* Jebian, 349 F.3d at 1110), Kearney, 1757 F.3d at 190-91, Mongeluzo v.  
16 Baxter Travenol Long Term Disability Benefit Plan, 46 F.3d 938, 944 (9th Cir. 1995). In  
17 observing "a subtler question arises when a court must decide how much weight to give a  
18 conflict of interest under the abuse of discretion standard," the Abatie court found the court  
19 may consider evidence outside the record in making that determination. Id. at 970. That  
20 court nevertheless reiterated the general rule: "we continue to recognize that, ***in general, a***  
21 ***district court may review only the administrative record when considering whether the***  
22 ***plan administrator abused its discretion***, but may admit additional evidence on de novo  
23 review." Id. at 970 (emphasis added). District courts may take additional evidence whenever  
24 "[procedural] irregularities have prevented a full development of the administrative record."  
25 Abatie, 458 F.3d at 973. However, no *procedural* irregularity was responsible for the absence  
26 of particular evidence DeLoach now argues the reviewing entity ought to have considered

27 \ \

28 \ \

1 to "complete" the medical record.<sup>10</sup> He articulates no conflict of interest. This Court will apply  
2 the abuse of discretion standard of review rather than the *de novo* standard.

3 The Administrative Record includes documents from the Workers' Compensation file  
4 created by Disability Management Services ("DMS"), "the SDG&E entity that performed the  
5 first level of claims review [as well as] DeLoach's claim for worker's compensation benefits."  
6 Green Decl. ¶ 6. Exhibits attached to the Green Declaration include a "list of the Temporary  
7 Disability, Temporary Total Disability, Permanent Partial Disability, and Vocational  
8 Rehabilitation payments that SDG&E and Sempra made to DeLoach." Green Decl. 3:16-18,  
9 Exh. E pp. E657-663. That record reflects DeLoach's Temporary Total Disability payments  
10 ended in March 2004, his Temporary Total Disability payments ended the same month, and  
11 his Permanent Disability payments re-commenced at the rate of \$680 per month. *Id.* 3:18-20,  
12 Exh. E p. E664. The record also notes Hartford, the insurance company for SDG&E's LTD  
13 plan, determined DeLoach did not qualify for benefits under the LTD plan after June 2002.  
14 *Id.* 3:20-23, Exh. E p. E665. The record also included evidence SDG&E paid for DeLoach  
15 to be retrained to work as a computer repair technician as he could not return to heavy  
16 equipment operation. The Benefits Committee also considered evidence DeLoach provided,  
17 including an FCE report generated in association with his Social Security proceedings through  
18 which he was awarded disability benefits.

19 The reasons for the denial of Plan benefits are material to the analysis and affect the  
20 degree of deference appropriate to the denial decision, as is the course of dealing between  
21 the claimant and the Plan. *Saffron*, 522 F.3d at 873 n. 2. Similarly, the cause of any alleged  
22 failure to develop the administrative record and the new evidence itself may be considered.  
23 *Id.* The record here does not permit the construction that the administrative proceedings

---

24  
25 <sup>10</sup> The Court notes two cases Defendants rely on to support their proposition that "only  
26 evidence that was presented to the plan trustee or administrator" may be reviewed by a court  
27 conducting a review of an administrator's factual findings for an abuse of discretion (*Taft*, 9 F.3d1469  
28 (9th Cir. 1993) and *McKenzie v. General Tel. Co. of California*, 41 F.3d 1310 (9th Cir. 1994)) were  
abrogated by *Saffron v. Wells Fargo & Co. Long Term Disability Plan*, 522 F.3d 863, 865 (9th Cir.  
2008) on that point (deciding the question whether an ERISA plan administrator properly terminated  
benefits because of its beneficiary's failure to produce evidence of her disability) in consideration of  
the *Abatie* holding the district court may hear additional evidence when "procedural irregularities have  
prevented full development of the record." *Id.*, *citing Abatie*, 458 F.3d at 973.

1 failed to have "a meaningful dialogue" with the claimant in the course of obtaining a complete  
2 medical record or otherwise to develop the administrative record. Cf. Saffron, 522 F. 3d at  
3 873 n. 2.

4 DeLoach's appeal asserted the Plan had "mis-read Dr. Kane's report by omitting his  
5 requirement that DELOACH be weaned off his medications before returning to the job  
6 market," and he provided "additional medical records from Dr. Yoon, Dr. Thigpen and Dr.  
7 Harris substantiating his disability and necessity of pain medications." Pl. Mot. P&A 10:21-24.  
8 He also "pointed out the differences of the physical capacity evaluations of Dr. Kane and Dr.  
9 Harris and provided objective verification of his physical limitations." Pl. Mot. P&A 10:25-27.  
10 The Committee drew its own conclusions from its "careful review" of the record which  
11 included a body of evidence dating back to 1998, with stated reasons for its determination the  
12 evidentiary record as a whole supported a finding DeLoach would be able to work in the new  
13 occupation as a computer hardware technician for which he was trained in his vocational  
14 rehabilitation. See Green Decl. Exh. A, p. A348 (Dr. Kane's February 14, 2006 Report was  
15 based on a complete history of DeLoach's injuries, not merely the left knee injury, and a  
16 thorough physical examination); see *also* Id. at p. A336 (DeLoach's treating physician, Dr.  
17 Harris, stated in a notation on April 6, 2006, after his review of Dr. Kane's February report:  
18 "It is my opinion that the patient should be able to perform the job he was trained for under  
19 these medications"). Moreover, DeLoach's objections to Dr. Wieseltier's report on grounds  
20 his examination was "limited" because he did not review certain Kaiser records or the FCE  
21 are blunted by the Committee itself having considered those documents. Green Exh. A, pp.  
22 A640-642. In addition, the FCE is not a medical record, was not prepared by a health care  
23 professional, and by its own terms "should not be construed to establish any specific level of  
24 permanent disability." Id., p. A262.

25 DeLoach substantiates the Benefits Committee advised him by letter dated  
26 December 26, 2006 that it was tabling his appeal until it received a report from Dr. Wieseltier  
27 who saw him in December 2006 under the Workers' Compensation system. Ex. A-00121.  
28 DeLoach represents he brought with him to Dr. Wieseltier's office at the time of that

1 examination the FCE report, but Dr. Wieseltier refused to review it because it was not part  
2 of the records SDG&E had requested he review. PI. Mot. P&A 11:4-9. In early February  
3 2007, DeLoach's counsel asked the Benefits Committee to make a decision on his appeal.  
4 While acknowledging the Committee advised DeLoach it was awaiting Dr. Wieseltier's report,  
5 he represents "Dr. Wieseltier's evaluation was limited to the issue of whether the Workers'  
6 Compensation should continue to pay for ongoing chiropractic care." PI. Mot. 11:11-14, *citing*  
7 Ex. A-00072-73. By letter dated March 8, 2007, the Benefits Committee advised him it was  
8 denying his appeal based on the December 2006 report of Dr. Wieseltier, which restated the  
9 disability rating he had given DeLoach in 2004. Exh. A-00640, Exh. A-00518.

10 By letter dated April 10, 2007, DeLoach requested the Benefits Committee reassess  
11 its position in light of the limited scope of Dr. Wieseltier's review, contending his  
12 December 2006 report "was not based on a current view of all the medical records,  
13 (specifically the Functional Capacity Evaluation) and was limited to merely those injuries that  
14 were related to his Workers' Compensation claim (excluding the hip lesion, neck, and  
15 cognitive issues)" forming part of his then-current medical condition. PI. Mot. P&A 11:20-24.  
16 DeLoach pointed out his counsel had contacted Dr. Wieseltier's office to request he perform  
17 a full evaluation in consideration of all injuries and all the medical evidence, but Dr. Wieseltier  
18 had refused, "indicating that he limits his practice to performing agreed medical evaluations  
19 under the Workers' Compensation field and will not review any documentation or issues  
20 unless presented by the Workers' Compensation attorney." PI. Mot. P&A 11:24-12:1.  
21 DeLoach told the committee SDG&E's Workers' Compensation attorney, Jeffrey Jones,  
22 refused to ask Dr. Wieseltier to expand his review of DeLoach's condition. PI. Mot P&A  
23 12:1-4, citing Exh. A-00051. DeLoach represents the Plan did not respond to his request the  
24 review be more comprehensive.

25 **F. Cross-Motions Merits**

26 The cross-motions call upon the Court to consider whether the Benefits Committee  
27 abused its discretion when it denied DeLoach's appeal of the DMS determination he was not  
28 entitled to TDI benefits because of its findings he was not precluded from "any occupation" --

1 in particular, repairing computers, an occupation SDG&E paid to train him to perform after his  
2 work injuries precluded him from returning to his prior occupation -- and all Plan benefits  
3 accordingly ceased at the conclusion of the two-year period during which he received LTD  
4 benefits, despite the Plan's earlier TDI finding and despite a subsequent Social Security  
5 Administration disability award. That award was predicated on a non-physician's opinion  
6 DeLoach's residual functional capacity limitations would not permit him to perform even the  
7 tasks required of a computer repair person.

8 DeLoach challenges the manner in which the Plan interpreted the record rather than  
9 any ambiguity in a Plan provision affecting entitlement to TDI benefits. He argues for  
10 summary judgment on grounds: the Plan improperly calculated his benefits; the Plan abused  
11 its discretion in denying him the right to on-going disability benefits (in particular by  
12 terminating his TDI benefits, by denying the administrative appeal in unreasonable reliance  
13 on a medical opinion purportedly based on an incomplete analysis of all the record, and by  
14 failing to provide him a full and fair review); and he is entitled to benefits under a *de novo*  
15 standard of review. The Court rejected the latter argument for the reasons recited above.

16 Defendants argue for summary judgment in their favor on grounds: the Benefits  
17 Committee's decision should be reviewed for abuse of discretion, with the scope of the court's  
18 review limited to the administrative record; and the Plan Administrator did not abuse its  
19 discretion because it reasonably concluded, based on the administrative record, DeLoach  
20 was not disabled from "any occupation."

21 SDG&E paid for Plaintiff to be re-trained to work as a computer  
22 repair technician. Two Board certified physicians concluded that  
23 Plaintiff had the ability to perform that occupation on a full time  
24 basis. The Benefits Committee considered all of the evidence  
25 that Plaintiff submitted (including the FCE report), and found the  
26 opinions of Dr[s]. Kane and Wieseltier (an agreed upon medical  
27 examiner who evaluated Plaintiff repeatedly over a period of  
28 several years) more persuasive than the FCE report and the  
Social Security award. Several opinions in this Circuit, published  
and unpublished, hold that even where a decision is solely based  
on the opinion of an independent medical expert there is not  
abuse of discretion. [Citations omitted]. . . . **Simply put, the Plan  
administrator's decision is more than adequately supported  
by the independent medical evaluations, and therefore  
Plaintiff cannot sustain his burden of demonstrating  
entitlement to TDI benefits under the Plan.**

1 Def. Mot. P&A 15:1-17 (emphasis added).

2 Defendants argue "the question before the Court is **not** which side's interpretation is  
3 more persuasive, but rather, whether the Plan's determination is 'reasonable,' *i.e.*, not based  
4 on clearly erroneous findings of fact or a construction that conflicts with the plain language  
5 of the Plan." Def. Mot. P&A 15:22-25, *citing* McDaniel v. Chevron Corp., 203 F.3d 1099, 1113  
6 (9th Cir. 2000), *citing* Canseco v. Construction Laborer's Pension Trust, 93 F.3d 600, 606 (9th  
7 Cir. 1996).

8 An ERISA administrator abuses its discretion only if it (1) renders  
9 a decision without explanation, (2) construes provisions of the  
10 plan in a way that conflicts with the plain language of the plan, or  
11 (3) relies on clearly erroneous findings of fact. . . . [¶] "A finding  
12 is 'clearly erroneous' when although there is evidence to support  
13 it, the reviewing [body] on the entire evidence is left with the  
14 definite and firm conviction that a mistake has been committed."  
15 Concrete Pipe and Products of California, Inc. v. Construction  
Laborers Pension Trust for Southern California, 508 U.S. 602,  
622 . . . (1993) [citation omitted]. We will uphold the decision of  
an ERISA plan administrator "if it is based upon a reasonable  
interpretation of the plan's terms and was made in good faith."  
Estate of Shockley v. Alyeska Pipeline Serv. Co., 130 F.3d 403,  
405 (9th Cir. 1997).

16 Boyd v. Bert Bell/Pete Rozelle NFL Players Retirement Plan, 410 F.3d 1173, 1178 (2005).

17 DeLoach opposes Defendants' motion on grounds the Benefits Committee purportedly  
18 was never granted discretionary authority by the Pension Committee. Pl. Opp. 1:1-2. He  
19 suggests a procedural deficiency in reliance on Plan paragraph 9.7. That paragraph  
20 addresses "Allocation and Delegation of Fiduciary Responsibilities" and imposes an obligation  
21 to "review[] periodically" the delegated powers and duties. DeLoach argues unpersuasively  
22 that review obligation is a condition of an effective delegation. Absent proof of periodic  
23 review, he unpersuasively contends an otherwise proper delegation of fiduciary responsibility  
24 can be negated as a purported failure to comply with Plan procedures.<sup>11</sup> The Court found  
25 above the delegation was proper, and finds here "periodic review" of the expressly delegated

26 \ \

---

27  
28 <sup>11</sup> "Defendants have made no showing that there has been any review of the powers and  
duties delegated to the Benefit Committee in conformance with the terms of the Plan since the  
Benefit Committee was formed in 1999." Pl. Opp. 3:2-4.

1 powers and duties is immaterial to whether the powers and duties were properly delegated  
2 in the first instance.

3 In reaching its decision to deny DeLoach TDI benefits, the Benefits Committee found  
4 the independent medical examiners' opinions of *both* Dr. Kane and Dr. Wieseltier (an agreed  
5 medical examiner who had examined DeLoach repeatedly over a period of several years  
6 beginning in 1999) to be more persuasive on the "any occupation" issue than the Social  
7 Security proceeding's FCE evaluation, although they expressly considered the entire record.  
8 The February 23, 2007 Benefits Committee meeting minutes reflect the considerations and  
9 evidence relied on to deny DeLoach's appeal, after continuances for the purpose of full  
10 development of the record as is also substantiated in the administrative record beginning with  
11 a Benefits Committee meeting on June 28, 2006. See Green Decl. Exh. A, A1-A12.

12 The February 23, 2007 minutes recite the procedural history of DeLoach's appeal to  
13 the Committee from December 18, 2006, at which time: "the Committee had significant  
14 discussions, consulted with Norma Tsutsui of [DMS], reviewed the opinion of Norman Kane  
15 dated February 7, 2006 which indicated that Mr. DeLoach was not totally disabled, . . .  
16 reviewed the Social Security Disability Insurance Award, as well as, medical opinions and  
17 other material provided by Mr. DeLoach's attorney." Green Exh. A, p. A10. By that time, the  
18 DMS representative informed the Committee DeLoach had seen the Agreed Medical  
19 Examiner, Dr. Wieseltier. "Given the potential value of a report by a neutral physician agreed  
20 to by the parties through the workers' compensation process, and further, who had previously  
21 examined Mr. DeLoach and reported on his condition, the matter was tabled pending receipt  
22 of the Agreed Medical Examiner report." Id.

23 Despite DeLoach's attorney's opinion regarding the relevance of the Agreed Medical  
24 Examiner's report based on its purported narrow scope, the Committee resumed the appeal  
25 proceedings on February 23, 2007 and considered that and other augmentations to the  
26 evidentiary record:

27 However, the Agreed Medical Examiner report analyzed  
28 and re-evaluated Mr. DeLoach's condition. In addition to  
reviewing the AME report, the Committee reviewed all additional  
materials provided by Mr. DeLoach's counsel. This included

1 reports by Thomas W. Harris, his treating physician at Pain Care,  
2 as well as the Functional Capacity Evaluation Report prepared by  
3 Barbara Tourtellott at Fit to Work, Inc. at the request of Mr.  
4 DeLoach's attorney. Ms. Tourtellott is a registered Occupational  
5 Therapist, Licensed Occupational Therapist and Certified  
6 Evaluation Specialist. She concluded that Mr. DeLoach does not  
7 currently demonstrate the ability to perform work at a level  
8 required in the competitive labor market on either a full or part-  
9 time basis. She specifically indicates that he is unable to perform  
10 the Certified Computer Support Technician position for which he  
11 has received vocational training paid for by the San Diego Gas  
12 & Electric Company. . . through the worker's compensation  
13 process.

14 Dr. Wieseltier, the Agreed Medical Examiner, reiterated  
15 and confirmed his prior opinion that Mr. DeLoach would be able  
16 to perform the physical demands of the job of Certified Computer  
17 Support Technician.

18 The Committee further notes that there is no indication  
19 provided by Mr. DeLoach or his counsel that his disability rating  
20 under workers' compensation has been modified in light of any  
21 medical reports developed by Mr. DeLoach's counsel.

22 Ms. Tsutsui also informed the Committee that Mr.  
23 DeLoach was continuing to take computer courses relating to the  
24 Computer Support Technician position. The Committee engaged  
25 in lengthy discussion. Because of the high standards imposed,  
26 the Committee carefully considers an award of Social Security  
27 Disability Insurance Benefits in evaluating entitlement in making  
28 its determination. However, after careful consideration **the  
Committee determined that even higher priority should be  
given to a neutral physician agreed to by the parties in the  
course of an adversarial (workers' compensation)  
proceeding.**

19 Green Decl. Exh. A, pp.; A10-A11 (emphasis added).

20 The February 23, 2007 Minutes conclude with the unanimous determination to deny  
21 DeLoach's appeal. Green Decl. Exh. A, p. A11. The March 8, 2007 letter informing him of  
22 that result described in considerably greater detail the medical records and opinions the  
23 Committee relied on, including but not limited to quoted passages from medical records, in  
24 particular orthopedic surgeon Dr. Kane's February 7, 2007 report, and orthopedic surgeon  
25 Dr. Wieseltier's December 11, 2006 report regarding DeLoach's limitations, confirming his  
26 May 24, 2004 results of DeLoach's physical capabilities. Green Decl. Exh. A, pp. A640-641.

27 Applying the significantly deferential standard of review to the Plan's exercise of its  
28 discretionary authority to approve or deny TDI disability benefits under the express provisions

1 in the controlling Plan, the Court finds no abuse of discretion. The administrative record  
2 reveals the Committee carefully considered the material medical and vocational evaluations,  
3 then reasonably exercised its discretion, with express justifications for the weight and  
4 significance it attributed to the various records, in reaching its decision. In particular, as  
5 DeLoach argues the Committee unduly considered Dr. Wieseltier's most recent report without  
6 further input from DeLoach, the Court finds eminently reasonable the persuasive weight the  
7 Committee assigned to that physician's opinions predicated on his long-term familiarity with  
8 DeLoach's condition. The Committee similarly had and found persuasive Dr. Kane's  
9 February 7, 2006 opinion indicating DeLoach was not totally disabled, despite the  
10 considerable weight it also states it gave to the Social Security Administration's determination  
11 DeLoach was entitled to disability insurance benefits.<sup>12</sup>

12 With respect to DeLoach's additional contention he is entitled to corrected and  
13 additional "back pay" benefits, in reliance on the May 2005 Social Security Administration's  
14 determination he was totally disabled from any employment, the evidence he was receiving  
15 over \$1,500.00 per month was before the Committee. Leaving aside the amount "offset"  
16 challenges, the Plan approved disability payments to DeLoach under the "own occupation"  
17 definition of disability for two years based on his October 2000 claim. Undisputed Fact Nos.  
18 10, 11. Any benefits payment after December 2002 would only be appropriate under the "any  
19 occupation" definition, as the Plan defines "total disability" as a circumstance which expressly  
20 does not arise until after 24 months of continuous disability passes, with the claimant at that  
21 point required, for benefits eligibility, to be unable to engage in "any substantially gainful

22 \_\_\_\_\_  
23 <sup>12</sup> Defendants' summary of certain highly material and undisputed evidence in the  
24 administrative record compel a finding the Committee did not abuse its discretion: "• Plaintiff alleged  
25 that he was totally disabled from any occupation due to his orthopedic injuries (and, on appeal, due  
26 to his pain medication). • Two different orthopedic surgeons, including an agreed upon medical  
27 evaluator, concluded that Plaintiff was able to perform an occupation for which he was qualified. •  
28 No orthopedist (including Plaintiff's own treating physician, Dr. Harris) has ever opined that Plaintiff  
is totally disabled from any occupation. • Plaintiff's current pain management physician has not  
reported any symptoms from Plaintiff's pain medication that would prevent him from working, and at  
least two physicians (Dr. Kane and Dr. Harris) have stated the contrary." Def. Reply 7:7-16. From  
that summary, Defendants argue: "the decision that DeLoach is not entitled to additional TDI  
benefits was not unreasonable and does not constitute an abuse of the discretion conferred to the  
Committee under the terms of the Plan," *citing, inter alia, Jordan v. Northrup Grumman Corp.  
Welfare Benefit Plan*, 370 F.3d 869, 879 (9th Cir. 2004), *McDaniel*, 203 F.3d at 1113. Def. Reply  
7:17-23.

1 occupation for wages or profit for which he is reasonably qualified by education, training, or  
2 experience." Undisputed Fact No. 6. Defendants trace, with citations to the record,  
3 DeLoach's failure to cooperate in DMS's attempts to augment the record as the 24-months  
4 of disability payments deadline approached. Without proof of total disability from any  
5 occupation, he could not continue under the Plan terms to receive any more disability  
6 benefits, as set out in both the Plan document and the summary plan description. Undisputed  
7 Fact No. 6. In November 2002, he did not keep a medical evaluation appointment DMS  
8 scheduled for him. In 2005, he notified DMS he had received the social security award  
9 retroactive to 2003, with an offset for his workers' compensation benefits. DMS notified  
10 DeLoach at that time it needed to investigate further, including with a medical evaluation,  
11 whether he met the Plan's "any occupation" definition. Def. Reply 8:2-23. DMS stated at that  
12 time his eligibility for TDI Plan benefits had not been determined, and could not be  
13 determined without the medical examination. All those communications occurred concurrently  
14 with DeLoach's ongoing workers' compensation claim, and included repeated references in  
15 the record to "2 yr TDI eval" alerting him to the approaching expiration of the approved  
16 benefits period unless he submitted to the additional medical evaluation pertinent to the "any  
17 occupation" determination, undermining his suggestion he did not know about the additional  
18 requirements for continued benefits beyond two years. The record thus reflects "meaningful  
19 dialogue" and communications occurred during the period 1998 through 2007, including  
20 submission and exchange of medical and benefits information, vocational rehabilitation which  
21 Dr. Harris approved in 1999, and Dr. Wieseltier's reports in 2004 and 2006 opining DeLoach  
22 was able to perform gainful work. Def. Reply 9:1-17.

23 All DeLoach's arguments directed to calculation errors associated with the amount of  
24 TDI benefits he seeks are mooted by the finding the Plan reasonably found he failed to show  
25 he is totally disabled from "any occupation." The Court is unable to find the Benefits  
26 Committee's decision constituted an abuse of discretion, as it was not unreasonable nor  
27 clearly erroneous nor in conflict with Plan language. The administrative record contains

28 \ \

1 ample support for the Benefit Committee's finding DeLoach was ineligible for Plan benefits  
2 beyond the two year "own occupation" period.

3 **C. Proper Parties**

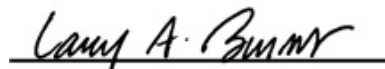
4 Defendants argue Sempra and SDG&E are not proper parties to this action. The court  
5 finds it need not decide the issue, in consideration of its conclusion Defendants are entitled  
6 to summary judgment on the Plan benefits claim, disposing of this action in its entirety.

7 **III. CONCLUSION AND ORDER**

8 For all the foregoing reasons, **IT IS HEREBY ORDERED** Plaintiff's Cross-Motion For  
9 Summary Judgment is **DENIED**, and Defendants' Motion For Summary Judgment is  
10 **GRANTED**, disposing of all claims and all parties and terminating the case.

11 **IT IS SO ORDERED.**

12 DATED: September 24, 2008

13 

14 **HONORABLE LARRY ALAN BURNS**  
15 United States District Judge

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28