

1 authority is the Summary Plan Description (“SPD”). Defendants argue this is sufficient to warrant
2 discretionary review.

3 SPDs “provide communication with beneficiaries *about* the plan, but ... their statements do not
4 themselves constitute the *terms* of the plan” *Cigna Corp. v. Amara*, 563 U.S. ___, 131 S. Ct. 1866,
5 1878 (2011) (emphases in original). Defendants must show the SPD’s grant of discretion is a term
6 of the plan. *See Eugene S. v. Horizon Blue Cross Blue Shield of N.J.*, 663 F.3d 1124, 1131 (10th Cir.
7 2011) (SPD can be a part of the plan); *see also Bergt v. Ret. Plan for Pilots Employed by MarkAir,*
8 *Inc.*, 293 F.3d 1139, 1143 (9th Cir. 2002) (pre-*Amara*). “Courts construe ERISA plans, as they do
9 other contracts, by looking to the terms of the plan as well as to other manifestations of the parties’
10 intent.” *U.S. Airways, Inc. v. McCutchen*, ___ U.S. ___; 133 S. Ct. 1537, 1549 (2013).

11 According to Defendants, the Group Policy and the plan booklet, which includes the certificate
12 of insurance and the SPD, are the relevant plan documents.¹ (Aff. of Praxedes “Ditas” Taylor at 2.)
13 The plan booklet makes clear the governing document is the Group Policy:

14 All benefits are controlled by the terms and conditions of the Group Policy. [¶] ...
15 The certificate summarizes and explains the parts of the group policy which apply to
16 you. This certificate is not an insurance policy. In any case of differences or errors,
the Group Policy rules.

17 (Docket no. 25 (Administrative Record (“AR”)) at RS000636.) Consistently, the Group Policy
18 contains an integration clause:

19 ENTIRE CONTRACT, CHANGES

The Group Policy includes –

20 -- Part A. General Provisions,

-- Part B. The Insured’s Benefits Section and the provisions of the Certificate

21 which are made a part of that section, [¶] ...

22 This Group Policy may be changed at any time by written agreement between
ReliaStar and the Policyholder. No change in this Group Policy is valid unless it is ...
23 approved and signed by one of ReliaStar’s designated corporate officers or an
Assistant Secretary and it is either endorsed on or attached to the Group Policy. ...

24 (Second Aff. of Mary Kay Racette at RS001563.) Defendants do not contend the Group Policy has
25 been amended to confer discretionary authority, but argue the SPD’s grant of authority provision is
26 a part of the Group Policy. Part B of the Group Policy incorporates specified provisions of listed
27 certificates:

28 _____
¹ The Group Policy was submitted for the first time with Defendants’ reply.

1 The provisions listed below, contained in the Certificate(s) issued under this Group
2 Policy for the Class of Employees specified in the Certificate Index, are made part of
this Group Policy.

3 (*Id.* at RS001569.) Included in the list is Certificate No. B-6260 (7-05), referring to Full-Time
4 Employees of Saddleback Memorial Medical Center. (*Id.*) This is the plan booklet referenced by
5 Defendants. (AR at RS000632-61.) Part B also lists the provisions of each certificate which are
6 incorporated into the Group Policy. Those provisions are titled Schedule of Benefits, Employee's
7 Insurance, Disability Income Insurance, Claim Procedures, General Provisions, and Definitions.
8 (Second Aff. of Mary Kay Racette at RS001569.) Although the SPD is included in the plan booklet,
9 it is contained in its own provision, which is not listed among the provisions incorporated into the
10 Group Policy. (*Cf. id.* & AR at RS000633 (plan booklet table of contents).)

11 While it is possible for an ERISA plan to incorporate an SPD and its terms, *see, e.g., Franks*
12 *v. Aetna Life Ins. Co.*, 2012 WL 5372578 *4 (N.D. Cal. Oct. 30, 2012), where the SPD is not
13 incorporated, or the plan is not otherwise amended to include the SPD's terms, the SPD's terms are
14 not binding, *see Grosz-Salomon v. Paul Revere Life Ins. Co.*, 237 F.3d 1154, 1161-62 (9th Cir. 2001);
15 *see also Schwartz v. The Prudential Ins. Co. of Am.*, 450 F.3d 697 (7th Cir. 2006). The only evidence
16 that the SPD is a part of Defendants' ERISA plan is the plan administrator's say so. (Aff. of Praxedes
17 "Ditas" Taylor at 2.) This is insufficient in the absence of a clear statement in the plan documents.
18 *Eugene S.*, 663 F.3d at 1131.

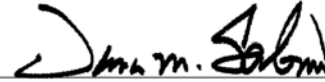
19 Defendants rely on *Langlois v. Metropolitan Life Insurance Company*, 833 F. Supp. 2d 1182
20 (N.D. Cal. 2011), and *Gonzalez v. Unum Life Insurance Company of America*, 861 F. Supp. 2d 1099
21 (S.D. Cal. 2012) (Battaglia, J.), both of which are distinguishable. In *Langlois*, the SPD included a
22 provision that its terms were intended to be legally enforceable. *See* 833 F. Supp. 2d at 1185-86. This
23 is not present in Defendants' SPD. In *Gonzales*, the governing plan document (the policy), contained
24 a provision conferring discretionary authority. 861 F. Supp. 2d at 1108-09. By contrast, in this case,
25 the governing document (the Group Policy) does not include the provision. When the plan does not
26 confer discretion, *de novo* review applies. *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 963
27 (9th Cir. 2006) (*en banc*). Accordingly, Defendants have not met their burden to establish that the
28 applicable standard is abuse of discretion.

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

Because the provision conferring discretionary authority is not incorporated into the ERISA plan, Defendants' motion is denied. Termination of Plaintiff's benefits is reviewed *de novo*.

IT IS SO ORDERED.

DATED: May 14, 2013



HON. DANA M. SABRAW
United States District Judge