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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAURA A.CYR,)	Case No. CV 06-01585 DDP (RCx)
)	
Plaintiff,)	Order Granting Summary Judgment
)	In Favor of Plaintiff Cyr
v.)	
)	[Motion filed on September 28,
RELIANCE STANDARD LIFE)	2007]
INSURANCE CO., et al.,)	
)	
Defendants.)	
_____)	

This matter comes before the Court on the parties' cross motions for summary adjudication. After reviewing the materials submitted by the parties and considering the arguments therein, the Court grants summary judgment for Plaintiff Cyr.

I. BACKGROUND

Plaintiff Laura Cyr brings this Employee Retirement Income Security Act ("ERISA") suit seeking additional long term disability ("LTD") benefits based on an adjusted salary and declaratory relief clarifying her rights to future benefits against her former employer Channel Technologies, Inc. ("CTI") and CTI's insurer, Reliance Standard Life Insurance Company ("RSL"). Plaintiff also

1 alleges equitable estoppel against RSL and CTI and breach of
2 fiduciary duty against RSL.

3 Plaintiff Cyr asserts that she worked for CTI from February
4 1988 to October 2000. In 2001, Cyr filed a civil suit against her
5 employer alleging gender discrimination for unequal pay. She
6 argued that during the period from September 1998 through October
7 2000 her salary as vice president of administration was
8 approximately \$70,000 less (she was paid \$85,000 when she should
9 have been paid at least \$155,000) than the annual salary of CTI's
10 male employees performing work of equal skill, effort, and
11 responsibility.

12 According to Cyr, in 2004 she and CTI entered into a wage
13 agreement settling her lawsuit in reliance upon RSL's assurance
14 that it would pay LTD benefits based on the increased salary Cyr
15 should have been receiving at the time of her disability. Cyr
16 further contends that RSL assured her that its determination to
17 adjust her LTD benefits both retroactively and prospectively was
18 not dependent on whether its reinsurer contributed to the increased
19 LTD payments. In January 2005, RSL indicated that it would not
20 adjust Cyr's benefits because its reinsurer had refused to accept
21 the terms of the wage agreement. Cyr contends that she has
22 exhausted her administrative remedies. She seeks the difference
23 between the LTD benefits received and the increased LTD benefits
24 that should have been paid based on a higher salary, a
25 clarification of her future rights, and attorneys' fees. On June
26 8, 2007, the Court dismissed RSL as a defendant to Count 1 (the
27 benefits claim) on the ground that it is not a proper defendant
28 under ERISA.

1 On September 28, 2007, pursuant to this Court's order, the
2 parties filed cross motions for summary adjudication. Plaintiff
3 Cyr asks for summary adjudication on Count 1 of her complaint
4 (determination of benefits). She also moves for summary
5 adjudication on all claims on the grounds that RSL waived its
6 defenses by not raising them at the administrative level and
7 because RSL's defenses have no evidentiary support. RSL, for its
8 part, moves for summary adjudication on the basis that the ERISA
9 disability benefits plan ("the plan") terms unambiguously do not
10 allow Cyr the retroactive relief she requests, and opposes Cyr's
11 motions on the grounds that Cyr has "unclean hands" because the
12 wage adjustment was not bona fide, but was entered into solely for
13 the purpose of making RSL pay for CTI's wrongdoing. Finally, upon
14 a subsequent order of the Court, the parties filed cross briefs for
15 summary adjudication on whether the Court should reconsider its
16 previous ruling that RSL is not a proper defendant to the benefits
17 claim.

18

19 **II. LEGAL STANDARD**

20 Summary adjudication of an issue, like summary judgment, is
21 appropriate where "the pleadings, depositions, answers to
22 interrogatories, and admissions on file, together with the
23 affidavits, if any, show that there is no genuine issue as to any
24 material fact and that the moving party is entitled to a judgment
25 as a matter of law" on that issue. Fed. R. Civ. P. 56(c). A
26 genuine issue exists if "the evidence is such that a reasonable
27 jury could return a verdict for the nonmoving party," and material
28 facts are those "that might affect the outcome of the suit under

1 the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S.
2 242, 248 (1986). In adjudicating a motion for summary judgment or
3 summary adjudication, the court must draw all reasonable inferences
4 in favor of the nonmoving party. Id. at 255.

5

6 **III. DISCUSSION**

7 A. Evidentiary Issues

8 In support of its position, RSL has submitted twenty seven
9 evidentiary exhibits. Plaintiff Cyr moves to strike sixteen of
10 them on the grounds that they are protected settlement
11 negotiations, are irrelevant, or were not part of the
12 administrative record. In view of the fact that the burden of
13 demonstrating admissibility is on RSL, the party seeking admission,
14 see Pfingston v. Ronan Engineering Co., 284 F.3d 999, 1004 (9th
15 Cir. 2002), the Court strikes most of these exhibits.

16 1. Settlement Negotiations¹

17 Plaintiff objects to most of the challenged exhibits as
18 inadmissible settlement negotiations under Federal Rule of Evidence
19 408, which provides that

20 **(a) Prohibited uses.**--Evidence of the following is not
21 admissible on behalf of any party, when offered to prove
22 liability for, invalidity of, or amount of a claim that was
disputed as to validity or amount, or to impeach through a
prior inconsistent statement or contradiction:

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25 ¹ The Court rejects RSL's argument that Cyr has waived her
26 right to invoke Rule 408 because her estoppel claim, under which
27 she must show detrimental reliance, places the settlement
28 negotiations "directly at issue." (Opp'n Mot. Strike 10.) RSL
cites no authority for the anomalous proposition that the fact that
evidence may be relevant trumps a different Rule that requires the
exclusion of that evidence.

1 (1) furnishing or offering or promising to furnish--or
2 accepting or offering or promising to accept--a valuable
3 consideration in compromising or attempting to compromise the
4 claim; and

5 (2) conduct or statements made in compromise negotiations
6 regarding the claim, except when offered in a criminal case
7 and the negotiations related to a claim by a public office or
8 agency in the exercise of regulatory, investigative, or
9 enforcement authority.

10 (b) **Permitted uses.**--This rule does not require exclusion if
11 the evidence is offered for purposes not prohibited by
12 subdivision (a). Examples of permissible purposes include
13 proving a witness's bias or prejudice; negating a contention
14 of undue delay; and proving an effort to obstruct a criminal
15 investigation or prosecution.

16 RSL argues that the evidence is "admissible to prove the parties'
17 knowledge and state of mind," which supports its affirmative
18 defense of unclean hands/collusive settlement - a purpose not
19 prohibited by Rule 408.² (Opp'n Mot. Strike 10.)

20 2. Relevance

21 Plaintiff also raises several objections on relevancy grounds.
22 Under the Federal Rules of Evidence, relevant evidence, which
23 "means evidence having any tendency to make the existence of any
24 fact that is of consequence to the determination of the action more
25 probable or less probable than it would be without the evidence,"
26 see Fed. R. Evid. 401, is generally admissible, see Fed. R. Evid.
27 402. However, "[a]lthough relevant, evidence may be excluded if
28 its probative value is substantially outweighed by the danger of
unfair prejudice, confusion of the issues, or misleading the jury,

² Plaintiff is incorrect to the extent she suggests that the only permissible uses are the ones explicitly mentioned by the Rule. See Rhoades v. Avon Prod., Inc., --- F.3d ----, 2007 WL 2983757, at *7 n.9 (9th Cir. Oct. 15, 2007) (noting that the permissible purposes mentioned by Rule 408 "are not an 'exhaustive' list, but [are instead] only illustrative").

1 or by considerations of undue delay, waste of time, or needless
2 presentation of cumulative evidence." Fed. R. Evid. 403.

3 Defendant appears to misperceive the burden of proof, arguing
4 that it is on Cyr "to explain or articulate why the documents are
5 irrelevant." (Opp'n Mot. Strike 10.) On the contrary, the party
6 seeking to introduce the evidence "must carry the burden of showing
7 how [it] is relevant to one or more issues in the case, and must
8 demonstrate that, on balance, its probative value is not
9 substantially outweighed by the danger of unfair prejudice."
10 United States v. Connors, 825 F.2d 1384, 1390 (9th Cir. 1987).
11 RSL must therefore establish the relevance of the evidence it seeks
12 to introduce.

13 3. Scope of Evidence to Review

14 As to Count 1 only, the Plaintiff objects to many of these
15 exhibits because they were not part of the administrative record;
16 and, in general, courts may only consider the administrative record
17 on a claim for ERISA benefits.³ The Court will address this issue
18 infra in its section on Count 1.

19 4. Specific Exhibits

20 The Court will now address the admissibility of each of the
21 challenged exhibits as far as Rules 401-403 and Rule 408 are
22 concerned.
23

24 Exhibit 2 is Cyr's Second Amended Complaint against her
25 employer. Cyr argues that the complaint should be excluded on the
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27
28 ³ This limitation does not apply to Plaintiff's breach of
fiduciary duty and estoppel claims.

1 grounds that it is not relevant. The Court disagrees. The
2 complaint is relevant because it identifies Plaintiff's claims
3 against CTI; the fact, for example, that she sued for wrongful
4 termination as well as a violation of equal pay and discrimination
5 makes it slightly more likely that her settlement with CTI did not
6 reflect a bona fide wage adjustment and was instead reflective of
7 the settlement of Plaintiff's other claims.

8 Exhibit 6 is a letter from Plaintiff's lawyer to CTI's lawyer
9 enclosing the "Material Terms of the Settlement" document which
10 summarized the CTI/Cyr settlement. The letter discusses the
11 details of the settlement and whether the parties were willing to
12 sign the final settlement agreement. The Court finds that Rule 408
13 prohibits the introduction of this exhibit. Defendant argues that
14 this evidence should be admitted because it "provide[s] context to
15 the facts regarding the parties' settlement" which shows that "the
16 parties had a side agreement that the wage adjustment agreement was
17 only entered into for the purposes of the RSL adjustment, and does
18 not stand alone." (Opp'n Mot. Strike 9.) This is just another way
19 of asserting that the settlement provides evidence that the wage
20 agreement is inaccurate because CTI is liable for more than just
21 wage discrimination, and therefore RSL must be liable,
22 correspondingly, for less than the wage agreement reflects.
23 However, information about liability, validity, and amount of
24 claims is precisely what Rule 408 precludes. Indeed, RSL's
25 statement that the evidence should be admitted because "a
26 settlement for a lawsuit which [has] multiple causes of action may
27 constitute payment for allegations other than unequal pay" reveals
28 that RSL does seek to admit the evidence in order to show what in

1 fact the payments were for, and thereby to reduce the amount of its
2 own liability. (Id. 11.)

3 The Court strikes Exhibits 7-10, which consist of
4 correspondence between Cyr's and CTI's lawyers revising the
5 settlement agreement. RSL argues these documents are admissible
6 because they show "the parties' intentions regarding the wage
7 adjustment agreement and their concerns that the Material Terms
8 Agreement may be 'misconstrued' by Richard Walsh," the RSL agent in
9 charge of handling Cyr's claim, and because they show "the wage
10 adjustment was 'not intended [] to be interpreted as enforceable
11 independent of the full settlement agreement." (Id. 8.) The Court
12 finds, however, that these documents are only relevant insofar as
13 they might support RSL's claim that CTI and Cyr colluded to pay Cyr
14 for much more than her wage claim justified because they knew RSL
15 would be the one paying - in other words, the documents are
16 relevant only if they can support RSL's claim that the ultimate
17 payout in the settlement was invalid, exactly what Rule 408
18 prohibits.

19 Exhibit 11, which is a letter from CTI's lawyer to Cyr's
20 lawyer discussing what materials to forward to RSL, will be
21 considered. Because this document is not part of the settlement
22 negotiations, Rule 408 does not prohibit its admission. RSL argues
23 the letter is relevant because it provides context about the
24 settlement. (Id. 9.) The Court agrees that this evidence is
25 relevant because RSL's unclean hands defense is based on its
26 alleged lack of knowledge about the true nature of Cyr's claims,
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1 and the letter is evidence of what RSL did and did not receive from
2 Cyr.⁴

3 Exhibit 12, which is the CTI and Cyr lawyers' letter to
4 Richard Walsh forwarding the Material Terms Agreement, will also be
5 considered. As it is not part of the settlement negotiations, it
6 is not precluded by Rule 408. Defendant has not made a specific
7 argument for its relevancy, but the Court finds it relevant - and
8 therefore admissible - for the same reason Exhibit 11 is relevant.

9 Exhibits 12 and 13 both constitute email correspondence
10 between the CTI and Cyr lawyers concerning what information to send
11 to RSL. Again, as these do not constitute settlement negotiations
12 or settlement agreements Rule 408 is not at issue. The Court finds
13 the information relevant and admissible because it relates to why
14 the parties provided certain information to RSL and how they worded
15 the information they offered.

16 The Court excludes Exhibit 21, lodged under seal, which is a
17 letter from Cyr's lawyer, Bradford Ginder, to the CTI lawyer. This
18 letter attaches a document entitled "Addendum to Material Terms of
19 Settlement Agreement" and discusses changes in the settlement
20 agreement; the document therefore constitutes protected settlement
21 negotiations. RSL does not explain for what specific purpose it
22 offers this exhibit; however, it can be inferred that RSL intends
23

24 ⁴ Plaintiff argues this information is not relevant because
25 Walsh acknowledged Cyr provided everything he asked for and because
26 "RSL has failed to explain how the information it seeks to admit
27 would have impacted its benefit determination." (Reply Mot. Strike
28 7.) Demonstrating relevancy requires only a minimal showing;
although the evidence may have only limited probative value in
proving Cyr's bad faith or collusiveness, it is not so far afield
from the alleged misconduct as to be excludable on the grounds of
irrelevance.

1 its justification for other exhibits - to show that the amount
2 settled on compensated more than just the wage claim, and that
3 therefore RSL owes less than Cyr asserts - to apply here as well.
4 (See Opp'n Mot. Strike 8 ("[E]vidence regarding Cyr's underlying
5 lawsuit is being offered . . . to demonstrate that the wage
6 adjustment agreement was not bona fide.") Accordingly, the
7 evidence is being offered for an inadmissible purpose.

8 Exhibit 22 is a letter from CTI's lawyers to Cyr discussing
9 counteroffers in settlement - information protected under Rule 408.
10 RSL argues it is offered to provide context to the settlement, but
11 the Court finds this "context" could only be information about the
12 relative liability of CTI versus RSL,⁵ and that the exhibit is
13 therefore inadmissible. Exhibit 23, which is Ginder's response, is
14 struck for the same reason.

15 Exhibits 24 and 26, lodged under seal, are the final
16 settlement agreement, release, and waiver, and accompanying
17 exhibits. These exhibits are protected by Rule 408, and the Court
18 will not consider them. RSL claims it offers this evidence as
19 "relevant to the issues of estoppel and breach of fiduciary duty,"
20 without further explanation. (Id. 9.) The Court could understand
21 that relevance, but only if the agreement were used to suggest that
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24 ⁵ For example, the letter explains that a counter-settlement
25 offer by Cyr was rejected because CTI felt she was asking for too
26 much money, because her offer would have retained her employer as a
27 possible defendant in the RSL benefits lawsuit. RSL hopes to use
28 this information to show that the ultimate settlement (wage
agreement) was not accurate (bona fide) in its amount (in that the
amount was inflated) because it incorporated the dealings necessary
to remove CTI as a defendant and place the liability on RSL's
shoulders. Such a claim - that the wage adjustment was inflated -
is a prohibited use under Rule 408.

1 the amount of the claimed wage adjustment did not in fact reflect
2 Plaintiff Cyr's entitlement to back wages - a form of relevance
3 trumped by Rule 408's protections.

4 Finally, the Court strikes Exhibit 25, which is additional
5 email correspondence between Ginder and the CTI lawyers about
6 settling the case. RSL has highlighted a portion of the letter
7 referring to the amount of money Cyr would receive. Accordingly,
8 RSL, it is clear to the Court, is offering this evidence to show
9 the settlement was an inflated estimate of the actual back earnings
10 she was owed - a use forbidden by Rule 408.

11 B. Count 1: Determination of Benefits

12 29 U.S.C. § 1132(a)(1)(B) provides for civil actions "to
13 recover benefits due to [a plaintiff] under the terms of his plan,
14 to enforce his rights under the terms of the plan, or to clarify
15 his rights to future benefits under the terms of the plan." To
16 adjudicate Plaintiff's request for summary adjudication of this
17 claim, the Court must address 1) whether RSL is a proper party; 2)
18 the scope of the record that the Court may review; 3) whether RSL
19 has waived its defenses to this count; and 4) whether the language
20 of the plan allows for the benefits Cyr seeks. The Court grants
21 summary adjudication for Plaintiff Cyr on Count 1.
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23 1. Proper Party

24 While a beneficiary may sue the plan's insurer for a breach of
25 fiduciary duty under 29 U.S.C. §§ 1132(a)(2) and (a)(3), §
26 1132(a)(1)(B) "does not permit suits against a third party insurer
27 to recover benefits when the insurer is not functioning as the plan
28 administrator." Everhart v. Allmerica Fin. Life Ins. Co., 275 F.3d

1 751, 754-56 (9th Cir. 2001) (emphasis added). On June 8, 2007,
2 this Court dismissed RSL as a defendant to the § 1132(a)(1)(B)
3 claim because it concluded that "defendant is not the plan or plan
4 administrator." (Order Granting Dismissal ("Order") 6.) At the
5 settlement conference in this case, the Court ordered the parties
6 to file supplemental briefs on the issue of whether the Court
7 should confirm its prior ruling that RSL is not a proper defendant
8 to the § 1132(a)(1)(B) claim. Upon reconsideration of the issue,
9 the Court finds that RSL is in fact a proper defendant to this
10 cause of action.

11 Cyr argues that because "RSL admits that it performed
12 virtually all, if not all, of the services that a plan
13 administrator performs," it functions as a plan administrator and
14 thus, under Everhart, is a proper defendant. (Cyr Proper Party Mot.
15 9.) The Court agrees. Although the Supreme Court has not squarely
16 addressed this issue, in Harris Trust & Sav. Bank v. Solomon Smith
17 Barney, Inc., 530 U.S. 238, 246 (2000), it interpreted § 1132(a)(3)
18 broadly, eschewing narrow limits on who may constitute a proper
19 defendants. This suggests that when it does address a similar
20 question with respect to § 1132(a)(1)(B), the Court may well hold
21 similarly.

22 Further, the Ninth Circuit's decision in Everhart left room
23 for suits against insurers so long as they are functioning as the
24 plan administrator. See Everhart, 275 F.3d at 756 (holding that §
25 1132(a)(1)(B) does not permit suits against insurers who are not
26 "functioning as the plan administrator" but not explaining how to
27 decide when an insurer is so functioning). Cyr notes that RSL
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1 "provided plan documents to participants, received benefit claims,
2 evaluated them and made benefit determinations, interpreted the
3 terms of the plan, and made and administered benefit payments."
4 (Cyr Proper Party Mot. 9.) RSL does not contest these assertions;
5 indeed, this entire case revolves around the fact that RSL is
6 claiming the right to interpret the plan, and is urging an
7 interpretation of the plan that would preclude Cyr's claims. See
8 Leung v. Skidmore, Owings & Merrill, LLP., 213 F. Supp. 2d 1097
9 (N.D. Cal. 2002)(holding that even though the insurer was not
10 officially the plan administrator, there was "a triable issue of
11 fact as to whether [the insurance company] was [effectively] a plan
12 administrator," in which case it could be sued under §
13 1132(a)(1)(B), and noting that this conclusion was the only "common
14 sense" reading of Everhart).

15 Instead, Defendant argues that Ford v. MCI Commc'ns, 399 F.3d
16 1076 (9th Cir. 2005), forecloses Cyr's argument that RSL is a
17 proper defendant. In Ford, the court considered an ERISA case for
18 benefits in which the benefits plan had designated Hartford
19 Insurance/Hartford Life as the claims administrator but not as the
20 plan administrator. The court rejected the plaintiff's argument
21 that Hartford could be sued under 1132(a)(1)(B) because it "is the
22 plan administrator because it had discretionary authority to
23 determine eligibility for benefits and was functioning as the plan
24 administrator." Id. at 1081-82.

25 Ford is distinguishable. First, any comments the Ninth
26 Circuit made about the propriety of suing insurers under §
27 1132(a)(1)(B) were dicta because the decision is not clear about
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1 whether Hartford was the insurer, as opposed to merely the claims
2 administrator. More importantly, in Ford the plan in fact
3 designated a plan administrator - MCI. Here, the parties agreed at
4 the November 5, 2007 hearing on these motions that as of 2000 - the
5 time of "the facts giving rise to the claim" - all of the plan
6 documents were "silent concerning who the plan administrator
7 [was]." (Mot. Summ. J. Tr. Nov. 5, 2007 ("Tr.") 4:6-18.)⁶ This
8 lack of clarity is confirmed by the fact that during the
9 administrative appeal, Cyr's attorney opined to RSL that he could
10 not "determine from the subject Long Term Disability Policy issued
11 by RSL whether RSL is the plan administrator or whether Channel
12 Technologies, Inc. is the plan administrator." (Opp'n. Ambiguity
13 Mot. Ex. A, LAC-1-00000053.)

14 These distinctions are important. In Ford, even if Hartford
15 had a great deal of control and decision making authority, MCI was
16 the ultimate administrator of the benefit plan. Further, there is
17 no indication that Hartford was responsible for funding any
18 benefits due. The buck stopped, so to speak, with MCI. It
19 therefore made sense to limit liability to MCI because it held
20 ultimate responsibility, and presumably bore the ultimate

21 _____
22 ⁶ The parties also agree that years after the events giving
23 rise to this case, a "summary plan description" was created that
24 named CTI as the plan administrator. (Tr. 1-5.) That document
25 does include a provision designating it as retroactive back to
26 1989. (Tr. 2:24.) This document does not alter the Court's
27 conclusion. A summary plan description "is the statutorily
28 established means of informing participants of the terms of the
plans and its benefits." Pisciotta v. Teledyne Indus., Inc., 91
F.3d 1326, 1329 (9th Cir. 1996) (internal quotation marks omitted).
The document is designed to inform participants of their rights; as
such, it would fly in the face of ERISA to give effect to a
provision in the summary plan description that was not in fact
conveyed to participants, including Ms. Cyr, because it did not yet
exist.

1 responsibility for paying out the benefits. Hartford, for all its
2 responsibility, in the end was in some way subordinate to MCI.

3 In Cyr's case, by contrast, in the absence of a designated
4 plan administrator, RSL has assumed superior status; it engaged in
5 the following exchange with the Court at the hearing:

6 THE COURT: [D]id anyone else have final or ultimate authority
7 to settle the claim here, other than RSL?

8 MR. BERNACCHI [for RSL]: No. It would have been RSL's
9 decision ultimately, your Honor.

10 (Tr. 1:11-15.) Further, RSL is responsible for paying the
11 benefits. Indeed, that RSL conceives of itself in such a
12 fundamental role is also clear from the fact that in this
13 litigation it claims the authority to overrule the plan itself -
14 CTI - in denying Cyr benefits. For example, at the hearing the
15 following exchange occurred:

16 THE COURT: [I]n this case, CTI had, obviously, no objection to
17 paying the plaintiff under the plan, the amount of money that
18 she believed she was entitled to, correct?

19 MR. CREITZ [for Cyr]: Correct, your Honor.

20 THE COURT: And RSL did not go along with that decision,
21 correct?

22 MR. BERNACCHI [for RSL]: That is correct, your Honor.

23 (Tr. 2:11-19.)

24 Ford may have precluded suits against entities who have been
25 delegated "discretionary authority," but it says nothing about
26 cases where the entity in question holds ultimate authority on all
27 matters relating to plan benefits. Reading Ford to prohibit suits
28 against an entity with as broad authority as RSL asserts here,
simply because the plan fails to name any administrator, leads to

1 the anomalous conclusion that even if Cyr is entitled to her
2 benefits, she cannot sue the only entity who is ultimately
3 responsible for providing them.⁷ Such a ruling would allow an end
4 run around ERISA's statutory purpose of protecting employee
5 benefits. See Black & Decker Disability Plan v. Nord, 538 U.S.
6 822, 830 (2003).

7 A recent opinion from the Northern District of California
8 supports this conclusion. In Moody v. Liberty Life Assur. Co.,
9 2007 WL 1174828 (N.D. Cal. Apr. 19, 2007), the court granted the
10 plaintiff leave to amend a § 1132(a)(1)(B) claim against the third
11 party insurer with additional allegations and evidence showing that
12 the insurer was in fact functioning as plan administrator. The
13 court noted that under some "factual circumstances [the insurer]
14 could be considered 'co-plan administrators.'" Id. at *4. In other
15 words, the court did not read Ford as precluding the acknowledgment
16 of de facto plan administrators in every situation.

17 Here, RSL is claiming unparalleled authority in managing and
18 administering this benefits plan. It would be a manifest injustice
19 to ignore this fact and prevent Cyr from suing the one entity that
20 in fact controls her destiny. Accordingly, the Court reconsiders
21 its prior ruling and concludes that, as a matter of law, RSL is
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26 ⁷ This conclusion is buttressed by Federal Rule of Civil
27 Procedure 19's directive that a person or entity should be joined
28 as a party if, inter alia, "in the person's absence complete relief
cannot be accorded among those already parties." Fed. R. Civ. P.
19(a)(1).

1 acting as the plan administrator and is a proper defendant to the §
2 1132(a)(1)(B).⁸

3 2. Scope of Record to Review

4 In adjudicating a claim for benefits under § 1132(a)(1)(B),
5 courts are generally, but not always, restricted to the
6 administrative record. Both parties ask the Court to consider
7 extrinsic evidence. The Court grants Plaintiff's request and
8 denies Defendant's.

9 "When a plan does not confer discretion on the administrator
10 to determine eligibility for benefits or to construe the terms of
11 the plan, a court must review the denial of benefits de novo. . .
12 ." Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th
13 Cir. 2006) (en banc). RSL concedes that the review of the denial
14 in this case should be de novo, rather than for abuse of
15 discretion.

16 "If de novo review applies, no further preliminary analytical
17 steps are required. The court simply proceeds to evaluate whether
18 the plan administrator correctly or incorrectly denied benefits. .
19 . ." Id. Generally, the Court is limited to reviewing evidence
20 from the administrative record; "extrinsic evidence c[an] be
21 considered only under certain limited circumstances." Opeto v. Nw
22 Airlines Pension Plan, 484 F.3d 1211, 1217 (9th Cir. 2007). The
23 Ninth Circuit has emphasized that "a district court should exercise
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26 ⁸ Despite this new conclusion, the Court does not reconsider
27 its ruling denying sanctions against RSL for breaching its
28 agreement only to move for summary judgment on the issue of whether
RSL was a proper party to the § 1132(a)(1)(B) claim. Now that the
Plaintiff has prevailed on this claim, she has not suffered any
prejudice from the breach.

1 its discretion to consider evidence outside of the administrative
2 record 'only when circumstances *clearly establish* that additional
3 evidence is *necessary* to conduct an adequate de novo review of the
4 benefit decision.'" Id. (quoting Quesinberry v. Life Ins. Co. Of
5 N. Am., 987 F.2d 1017, 1025 (4th Cir. 1993) (en banc)).

6 The Ninth Circuit has adopted a non-exhaustive list of
7 circumstances that might justify admitting extrinsic evidence,
8 including:

9 the availability of very limited administrative review
10 procedures with little or no evidentiary record; the necessity
11 of evidence regarding interpretation of the terms of the plan
12 rather than specific historical facts; instances where the
13 payor and the administrator are the same entity and the court
14 is concerned about impartiality; claims which would have been
15 insurance contract claims prior to ERISA; and circumstances in
16 which there is additional evidence that the claimant could not
17 have presented in the administrative process.

18 Id.

19 In this case, the Court is faced with the troubling fact that
20 RSL has admittedly "lost" the entire administrative record. (Pl's.
21 Mot. for Summ. J. on Waived Defenses ("Waived Defenses Mot.") Ex.
22 A, 30-38.) Cyr appears to have been able to recreate some of the
23 record by submitting her administrative appeal package.⁹ (Waived
24 Defenses Mot. Ex. C.) However, both parties seek to rely on
25 evidence that they agree was not part of the administrative record.

26 ⁹ However, she mentions one letter from RSL to GE (RSL's
27 reinsurer) which allegedly "recommend[s] that the corrected benefit
28 be paid." (Waived Defenses Mot. 6.) Cyr has not been able to
review that letter, and argues that as a sanction for RSL's
spoliation of the record the Court should infer that the contents
of the letter are "fatal to RSL's defenses." (Id. 6-7 n.6.)
Because the Court grants summary adjudication for Cyr that she is
entitled to benefits under the plan, the Court need not address
this evidence.

1 Under these circumstances, the Court grants Cyr's request but
2 denies RSL's.

3 Cyr offers as extrinsic evidence the deposition testimony of
4 Richard Walsh, the RSL representative who handled Cyr's claim. The
5 testimony includes his oral interpretation of the meaning of the
6 plan language, including whether retroactive benefits are covered,
7 and details about losing the administrative record and what kind of
8 investigation he (and RSL) did on Cyr's case. (See Waived Defenses
9 Mot. Ex. A.) Cyr also offers a declaration by Walsh stating that
10 RSL "found over 1500 claims where benefits were adjusted during the
11 time frame in question, but it could not specifically identify any
12 claims where the benefits were increased due to a retroactive wage
13 increase." (Id. Ex. C.)

14 The Court finds that many of the Opeta factors for allowing
15 extrinsic evidence are present here, and justify the admission of
16 Plaintiff's evidence. First, there is "little to no evidentiary
17 record" because RSL "lost" it. Second, in the absence of the
18 administrative record, Walsh's deposition and declaration provide
19 important evidence about RSL's interpretation of the plan. Third,
20 RSL is the payor, the claims administrator, and, as discussed, also
21 the functional plan administrator; the Court therefore has serious
22 concerns about impartiality because once RSL's reinsurer denied
23 Cyr's claim, RSL had a major financial incentive to deny it as
24 well. Finally, Plaintiff Cyr could not have presented this
25 evidence in the administrative hearing because she had not yet
26 deposed Walsh. Similarly, Walsh did not submit the declaration
27 until September 12, 2007, and in the declaration acknowledged that
28

1 the evidence of other adjustments was previously undiscovered.

2 (Id. Ex. C.)

3 RSL seeks to submit a significant amount of extrinsic
4 evidence in an attempt to show that Plaintiff's wage increase was
5 not bona fide and that the settlement agreement was collusive.
6 This evidence consists of documents created during the settlement
7 negotiations between Cyr and CTI, as well as Plaintiff's Second
8 Amended Complaint against her employer. (See Def's. Ex. 2, 6-26.)
9 In essence, RSL argues that this evidence reveals Cyr's attempts to
10 conceal material detrimental to her claim, and the Court should
11 thus consider the broader context in order to adjudicate the
12 question of bad faith.

13 First, it is not even clear to the Court that the analysis
14 about whether to allow extrinsic evidence applies where the plans
15 seek to introduce the evidence; all cases cited by Defendant refer
16 to cases where the claimant was able to introduce extrinsic
17 evidence because of the defendant's procedural violations. (See
18 Opp'n Waived Defenses Mot. 20.) After all, "ERISA was enacted to
19 promote the interests of employees and their beneficiaries in
20 employee benefit plans, and to protect contractually defined
21 benefits." Black & Decker, 538 U.S. at 830 (internal quotation
22 marks omitted).

23
24 However, even assuming the evidentiary inquiry applies equally
25 to either party, the Court would not exercise its discretion to
26 consider RSL's extrinsic evidence. Most of it is inadmissible
27 under Rule 408 as settlement documents used for an impermissible
28 purpose. As for the rest, RSL offers it to show unclean hands -

1 that Cyr's wage adjustment is not bona fide. However, none of the
2 proffered evidence in any way challenges the merits of Cyr's wage
3 discrimination claim, nor does it challenge the fact that the
4 appropriate corresponding male salary was \$155,000.

5 Moreover, it is RSL's behavior that reeks of bad faith. It
6 has "lost" the administrative record. It refused to adjust her
7 benefits even though Richard Walsh agreed that Cyr provided all the
8 information RSL requested, and even though Walsh "didn't do any
9 additional investigation [to determine whether the wage adjustment
10 was bona fide] other than reviewing what was contained in our claim
11 file." (Waived Defenses Mot. Ex. A, 99.) Further, RSL's unclean
12 hands defense makes no sense as a justification for the denial of
13 benefits because, as will be discussed, that was not the reason RSL
14 denied her benefits. In determining whether to admit extrinsic
15 evidence, the Court must decide whether that evidence is necessary
16 to review the decision to deny benefits. In light of the evidence
17 of RSL's bad faith and because RSL concededly did not raise unclean
18 hands as a reason for denying the benefits, nor did it request
19 additional information on this issue, the Court does not find this
20 to be one of the unusual circumstances that would justify the
21 admission of RSL's extrinsic evidence.¹⁰

22 ///

25 ¹⁰ RSL and Richard Walsh, apparently, have found themselves
26 in similar situations before. Just recently, in Withrow v. Bache
27 Halsey Stuart Shields, Inc., 2007 WL 1993816, at *3 (S.D. Cal. July
28 5, 2007), the magistrate judge declined RSL's request to present
extrinsic evidence about an affirmative defense because that
defense was not raised during the administrative appeal, noting
that "the belated assertion of this defense is not an exceptional
circumstance." Id.

1 3. Waived Defenses

2 ERISA requires that "every employee benefit plan shall . . .
3 provide adequate notice in writing to any participant or
4 beneficiary whose claim for benefits under the plan has been
5 denied, setting forth the specific reasons for such denial, written
6 in a manner calculated to be understood by the participant." 29
7 U.S.C. § 1133(1). Plaintiff Cyr argues that RSL did not raise the
8 defenses it now asserts when it denied her claim, indeed, that it
9 never in fact clearly denied her claim at all, and that it has
10 therefore waived its right to challenge the claim on those bases.¹¹
11 The Court agrees.

12 The thrust of RSL's argument before this Court is that it is
13 not liable for the benefits Cyr seeks because "(1) The wage
14 adjustment was not allowed under the policy; (2) The wage
15 adjustment was not bona fide; and (3) unclean hands by Plaintiff."
16 (Opp'n Waived Defenses Mot. 13.) RSL concedes in its briefing that
17 it did not raise the unclean hands defense during the
18 administrative process.

19 The Court finds that never during the administrative process
20 did RSL raise the defense that Cyr's wage adjustment was not bona
21 fide. After representing to Cyr that RSL would accept the wage
22 adjustment so long as it was bona fide, for the first time on
23 January 12, 2005, Richard Walsh indicated that RSL had changed its
24

25
26 ¹¹ Cyr appears to argue that RSL has waived defenses to all
27 claims by not raising them during the administrative review
28 process. She cites no authority for this proposition. As RSL
recognizes, this limited waiver framework applies only to the §
1132(a)(1)(B) benefits claim.

1 mind because its own reinsurer had refused Cyr's claim. Walsh
2 told Cyr that the reinsurer had rejected the settlement because

- 3 1) The policy clearly states that covered monthly earnings for
4 the sake of LTD benefit calculation is the "monthly salary
5 received from you [the employer] on the day just before the
6 date of Total Disability . . ."; and
7 2) It is not RSL's (nor our reinsurers) obligation to fund a
8 settlement on behalf of [the employer].

9 In addition to the above, the reinsurer questions whether
10 we should be providing continued benefits to Ms. Cyr at all at
11 this time or whether her claim should have been limited by the
12 Policy's 24 month limitation for disabilities which are due to
13 a mental or nervous disorders [sic].

14 (Def's. Ex. 16.) The next day, on January 13, 2005, Walsh
15 forwarded to Cyr's attorneys a copy of the letter from the
16 reinsurer. (Def's. Ex. 17.) That is the extent of RSL's
17 "explanation" of its denial.

18 The Ninth Circuit has held that the ERISA regulation which
19 requires that claimants be provided the "specific reason or reasons
20 for the denial" with "[s]pecific reference to pertinent plan
21 provisions on which the denial is based, . . . calls for a
22 meaningful dialogue between ERISA plan administrators and their
23 beneficiaries." Booton v. Lockheed Medical Ben. Plan, 110 F.3d
24 1461, 1463 (9th Cir. 1997). This "meaningful dialogue" means that
25 the ERISA plan may only deny benefits with "a rational
26 explanation." Id.

27 In Booton, the court granted summary judgment in favor of a
28 claimant as to the plan administrator's - Aetna's - liability. The
court noted that "[i]f the plan is unable to make a rational
decision on the basis of the materials submitted by the claimant,
it must explain what else it needs." Id. at 1465. Similarly, in

1 this case, as noted, Walsh testified that Cyr provided him with
2 everything RSL asked for; yet, without any additional
3 investigation, the company refused to pay. (Waived Defenses Mot.
4 Ex. A, 99.) Thus, RSL did not "comply with these simple, common-
5 sense requirements embodied in the regulations and our caselaw."
6 Booton, 110 F.3d at 1465. It cannot raise the bona fide issue now,
7 when Cyr had no warning that RSL was dissatisfied with the
8 information she had provided.¹² See Withrow, 2007 WL 1993816, at *3
9 (precluding RSL from raising a defense to benefits that it did not
10 raise during the administrative appeal).¹³

11
12 ¹² RSL argues that the remedy for a procedural violation -
13 here, failure to provide a proper denial - is to alter the standard
14 of review from abuse of discretion to de novo, not to preclude RSL
15 from raising new defenses. This argument does not aid Defendant in
16 light of the Court's decision not to consider the extrinsic
17 evidence Defendant seeks to admit; without that evidence RSL
18 undeniably has no evidence that the wage adjustment is not bona
19 fide. More importantly, that is not an accurate statement of the
20 law. In fact, when "procedural violations rise to the level [where
21 they are egregious, thereby] . . . alter[ing] the substantive
22 relationship between employer and employee," a substantive remedy
23 in the form of the "retroactive reinstatement of benefits" may be
24 appropriate. McKenzie v. Gen. Tel. Co. of Cal., 41 F.3d 1310, 1315
25 & n.4 (9th Cir. 1994) (internal quotation marks omitted). In view
26 of RSL's behavior in this case, the Court finds a substantive
27 remedy is appropriate.

28 ¹³ RSL cites Vizcaino v. Microsoft Corp., 120 F.3d 1006 (9th
Cir. 1997) (en banc), for the proposition that failure to raise a
defense does not render it waived. That case is distinguishable.
In Vizcaino, the plan administrator had denied benefits based on a
legally erroneous rationale, and the Ninth Circuit remanded so that
the administrator could consider in the first instance a new
defense based on construction of the plan's language. Id. at 1013.
In this case, RSL (who is in fact interpreting and administering
the plan, whether or not this is a right it lawfully possesses),
told Cyr during the administrative process that she would have to
have to show that the adjustment was bona fide. Yet, it never
informed her of its dissatisfaction with her response. In other
words, the idea that Cyr's claim must be bona fide is not a new
issue for RSL; RSL had every opportunity to ask for more
information or perform further investigation. The Court refuses to
reward RSL for its tactics of confusion by allowing it to use as a
(continued...)

1 Worse, Defendant RSL never in fact denied Cyr's claim.
2 Instead, in his letter to Brad Ginder, Walsh stated that the
3 reinsurer had rejected the settlement, that "it does not look
4 favorable at this point in time," but that he would "let [Ginder]
5 know as soon as possible regarding a final determination by RSL."
6 (Def's. Ex. 17.) Walsh then forwarded the reinsurer's rejection of
7 the settlement, but never denied the claim. As late as RSL's
8 answer to the First Amended Complaint it was asserting that "there
9 was no 'denial of benefits under the Plan.'" (Answer FAC ¶ 49.) As
10 the Court understood from the parties' representations at the
11 November 5, 2007 hearing, RSL has still never officially denied
12 Cyr's claim. This omission was no mere oversight; during the
13 administrative appeal, RSL attempted to reject Cyr's claim for
14 failure to exhaust administrative remedies because "we believe
15 there has never been an adverse benefit determination on your
16 client's claim." (Opp'n Ambiguity Mot. Ex. D.)

17 In other words, RSL refused to respond to Cyr's claim, arguing
18 she could not even appeal because there had been no denial, and
19 now, having conveniently "lost" the administrative record, claims
20 there was a denial, and urges as its primary defense of this
21 "nondenial denial" a sudden dissatisfaction with evidence it had
22 every earlier opportunity to contest or investigate further. RSL
23 claims the Court should ignore this behavior because Plaintiff
24 appealed nevertheless, and therefore was not prejudiced. The Court
25 commends Cyr and her lawyers for their diligence in the face of at
26

27 ¹³ (...continued)
28 basis for rejecting her claim evidence with which it seemed
perfectly content during the administrative process.

1 best negligent and at worst cruel behavior, but declines RSL's
2 invitation to give it a pass. This Court agrees with the Eighth
3 Circuit that it is inappropriate to "permit ERISA claimants denied
4 the timely and specific explanation to which the law entitles them
5 to be sandbagged by after-the-fact plan interpretations devised for
6 purposes of litigation." Marolt v. Alliant Techsystems, Inc., 146
7 F.3d 617, 620 (8th Cir. 1998); see also McKenzie, 41 F.3d at 1315-
8 16 (noting that a retroactive award of benefits may be appropriate
9 where a plan administrator "intentionally conceal[ed] the terms of
10 the Plan" or where the plan was "administered unfairly" (internal
11 quotation marks omitted)).

12 Although RSL never technically denied Cyr's claim, Walsh did
13 mention the policy language - though not all the provisions
14 currently relied upon - as a rationale for the reinsurer's
15 rejection of Cyr's claim. Arguably, because of this failure to
16 deny the claim at all RSL has waived any defense to the benefits
17 claim. The Court need not reach this issue as to the
18 interpretation of the plan language because, as will be discussed,
19 it finds that the policy supports Cyr as a matter of law. However,
20 given the context of this case, the Court will not consider as a
21 defense RSL's never-before-raised argument that Cyr's adjustment is
22 not bona fide or marred by unclean hands.

23 4. Ambiguity of Plan Language

24 RSL moves for summary adjudication on the interpretation of
25 the language in the benefits plan. Specifically, it argues that
26 the plain language of the plan does not allow for retroactive
27 benefit adjustments, and therefore, as a matter of law, Plaintiff
28

1 Cyr is not entitled to the relief that she seeks. The Court
2 disagrees, and finds instead that, as a matter of law, the plan
3 does allow her to receive retroactive benefits.

4 Under the Plan, an eligible insured is entitled to 66.666% of
5 his "Covered Monthly Earnings" to a maximum benefit of \$13,000,
6 less other income benefits.¹⁴ (Plan 1.0.) "Covered Monthly
7 Earnings" are defined as

8 the insured's monthly salary received from [the employer] on
9 the day just before the date of Total Disability, prior to any
10 deductions to a § 401(k) plan. Covered Monthly Earnings do
11 not include commissions, overtime pay, bonuses or any other
12 special compensation not received as Covered Monthly Earnings.

13 (Plan 2.0.) The plan further explains that

14 Changes in the Monthly Benefit because of a change in age,
15 class or Earnings (if applicable) are effective on the date of
16 the change, provided the insured is actively at work on the
17 date of the change. If an insured is not actively at work
18 when the change should take effect, the change will take
19 effect on the day after the Insured has been actively at work
20 for one full day.

21 (Plan 1.1.) "Actively at Work" is defined as

22 actually performing on a Full-time basis the material duties
23 pertaining to his/her job in the place where and the manner in
24 which the job is normally performed. This includes approved
25 time off such as vacation, jury duty and funeral leave, but
26 does not include time off as a result of an injury or
27 Sickness.

28 (Plan 2.0.)

The issue for the Court to decide is whether the plan is
ambiguous as to whether it covers Cyr's retroactive wage increase.
Applying federal contract law, "courts should first look to

¹⁴ RSL incorrectly cites the percentage in its brief as
62.666%, rather than 66.666%.

1 explicit language of the agreement to determine, if possible, the
2 clear intent of the parties." Gilliam v. Nev. Power Co., 488 F.3d
3 1189, 1194 (9th Cir. 2007) (internal quotation marks omitted).
4 "[T]erms in an ERISA plan should be interpreted in an ordinary and
5 popular sense as would a person of average intelligence and
6 experience." Id. at 1194 (internal quotation marks and alterations
7 omitted). To find a term unambiguous courts must be able to
8 "exclude all other alternative constructions . . . as
9 unreasonable." McDaniel v. Chevron Corp., 203 F.3d 1099, 1112 (9th
10 Cir. 2000).

11 Where a Plan is ambiguous courts that are reviewing benefits
12 denials de novo must apply the canon of contra proferentum, which
13 "holds that if, applying the normal principles of contractual
14 construction, the insurance contract is fairly susceptible to two
15 different interpretations, another rule of construction will be
16 applied: the interpretation that is most favorable to the insured
17 will be adopted." Blankenship v. Liberty Life Ass. Co., 486 F.3d
18 620, 625 (9th Cir. 2007) (internal quotation marks omitted).

19 RSL contends that the plan unambiguously precludes retroactive
20 benefits. It argues that the "Covered Monthly Earnings" provision
21 requires funds to be "received" to trigger benefits, and that "the
22 term 'received' cannot be reasonably interpreted to mean that the
23 salary is not actually paid, but merely that the employer has
24 agreed that the salary is warranted." (Ambiguity Mot. 9.) RSL
25 claims further support in the provision describing changes in
26 benefits. Because the changes take effect only if the insured "is
27 actively at work," and because the provision specifically provides
28

1 that if the insured is not then at work the changes do not take
2 effect until the insured returns to work, RSL argues that the plan
3 evinces a clear intent to preclude retroactive benefits.

4 RSL's argument is not without force. However, ultimately its
5 argument hinges on a particular interpretation of the term
6 "received." According to RSL, "[t]he monthly benefit is based on
7 the salary an employee receives, not the salary an employee is
8 entitled to or the salary an employer has retroactively agreed
9 upon." (Ambiguity Mot. 9.) RSL's interpretation has convinced the
10 Court that more than one interpretation is possible because its
11 juxtaposition of "actually" received as opposed to "constructively"
12 received suggests the term may have multiple meanings. (Id.)

13 The Court finds that the plan is facially ambiguous with
14 regard to whether it allows for retroactive benefits. The term
15 "received" is not defined in the plan, and the Ninth Circuit has
16 held that "the failure of [a] policy to define its terms [can be]
17 fatal to the insurer's attempt to limit payment." Kunin v. Benefit
18 Trust Life Ins. Co., 910 F.2d 534, 541 (9th Cir. 1990); see also
19 Mongeluzo v. Baxter Travenol Long Term Disability Ben. Plan, 46
20 F.3d 938, 942 (9th Cir. 1995) (holding that two terms left
21 undefined by the plan were ambiguous). Retroactivity is a familiar
22 concept both in the law and in common parlance. While it would be
23 reasonable to limit "receives" to actual receipt, the Court cannot
24 say that it would be unreasonable to construe the term as
25 encompassing a retroactive wage increase.¹⁵

27 ¹⁵ RSL notes that in tax law "constructive receipt of income"
28 is taxed (and considered received) "in the taxable year during
(continued...)

1 Indeed, just last year the Ninth Circuit held that the term
2 "received," when not defined in an ERISA plan, was ambiguous.
3 Blankenship, 486 F.3d at 624-25.¹⁶ A layperson who received a
4 retroactive wage increase could reasonably think that he began to
5 "receive" his higher wages on the date to which the adjustment
6 applied retroactively. See In re Gunderson, 670 N.E. 2d 386, 387
7 (Mass. 1996) (holding, in a worker's compensation case, that
8 "average weekly wages" should include retroactive awards because
9 the statute did "not expressly exclude a retroactive pay increase"
10 and because "the right to receive a retroactive pay increase vests
11 when the work is performed not when the increase is ratified");
12 Coffin v. Hannaford Bros. Co., 396 A.2d 1007, 1008-09 (Me. 1979)
13 (holding, where worker's compensation statute computed benefits
14 based on wages "received at the time of the injury," that the term

15
16
17 ¹⁵ (...continued)
18 which it is credited to his account, set apart for him, or
19 otherwise made available so that he may draw upon it at any time,
20 or so that he could have drawn upon it during the taxable year if
21 notice of intention to withdraw had been given." 26 C.F.R. §
22 1.451-2(a). This analogy does not support RSL's position. First,
23 tax law has a separate rubric for dealing with retroactive wages -
24 or "back pay." See 26 C.F.R. § 31.3402(g)-1(a) ("Supplemental Wage
25 Payments"). Therefore, it is not so much that "constructive
26 receipt" in tax law excludes retroactive wages as that the IRS has
27 chosen a different method of dealing with such income. Second, and
28 more importantly, even if RSL is correct that the regulation
supports its position, all that shows is that RSL has identified
one possible interpretation.

24 ¹⁶ While the ambiguity in that case was between possession
25 and control, rather than between active and constructive receipt,
26 the parties there agreed, for the purposes of that litigation, that
27 "receives" meant "to take into possession." Id. Therefore, there
28 is no indication that the term could not have an even broader,
constructive meaning. In fact, "control" is a very different
concept from "possession." If "receives" could reasonably mean
"control," surely it could also reasonably mean "entitled to
receive."

1 "received was ambiguous," and was "susceptible of a 'Common sense
2 meaning' which extends beyond its literal meaning: in proper
3 circumstances, 'Receiving' may in fact require construction as
4 'Entitled to receive'" (emphasis added)).

5 The "Changes in Monthly Benefits" provision could also be
6 interpreted as allowing for retroactive receipt. By this logic,
7 because Plaintiff Cyr was actively working on the date her increase
8 was retroactively effective, the adjustment applies. The Court
9 rejects RSL's argument that the provision is meaningless if applied
10 retroactively; it finds instead that the provision could reasonably
11 be intended to address prospective wages increases, and to ensure
12 that future salary raises do not alter benefits unless and until
13 the insured is actively at work.¹⁷ The Court therefore rejects
14 RSL's argument that the plan is facially unambiguous.

15 Because it is reasonably susceptible to two meanings, the
16 Court must apply contra proferentem and find that the plan allows
17 for retroactive wage increases. In addition, "[w]hen a plan is
18 ambiguous . . . a court typically 'will examine extrinsic evidence
19 to determine the intent of the parties,'" and extrinsic evidence in
20 this case supports the reasonableness of Cyr's interpretation.
21 Gilliam, 488 F.3d at 1194. For example, RSL representative Richard
22 Walsh stated in his deposition that he recalled "two circumstances
23 where we received court orders in employment discrimination cases
24

25 ¹⁷ For this reason, the Court is not convinced by the
26 reasoning in Olsen v. John Hancock Mut. Life Ins. Co., 667 P.2d
27 584, 585 (Utah 1983), a Supreme Court of Utah case interpreting a
28 similar "actively at work" provision, which RSL has relied upon to
argue that the instant policy unambiguously precludes retroactive
benefits. Further, the Court notes that Olsen did not involve
ERISA.

1 [showing an increase in a claimant's wages over the amount
2 previously indicated] where we did adjust a person's wages."
3 (Opp'n Ambiguity Mot. Ex. E, 42; see also id. 82 (Walsh agreeing
4 that "in the past [he] had interpreted similar policy language to
5 permit an augmentation of that that's [sic] in the event of a
6 successful discrimination suit effecting wages").) Walsh also
7 testified that he believed that "the plan language in the instant
8 case creates no impediment to the adjustment of Laura Cyr's benefit
9 in the event of a bona fide settlement." (Id. 45; see also id. 82
10 (Walsh "personally" disagreeing with the contention that granting
11 Cyr the retroactive adjustment would be "interpreting the claim in
12 a way that's contrary to [the Plan's] terms").)¹⁸

13 Accordingly, because the Plan language is ambiguous, and in
14 light of the extrinsic evidence provided by Walsh's deposition, the
15 Court interprets the plan in favor of Cyr, and finds that her claim
16 for increased benefits based upon a retroactive wage increase is
17 permissible. Because RSL's has waived its objection to the bona
18 fide nature of the wage adjustment by not raising it during the
19 administrative process, the Court further finds that RSL
20 incorrectly denied Cyr the benefit adjustment, and grants summary
21 adjudication in favor of Cyr on Count 1 in its entirety.

22 ///
23
24

25 ¹⁸ It is true that Walsh also stated in his deposition that
26 he thought the "policy language on its face" did not allow for
27 Cyr's claims because "the money was not received." (Id. 128.) In
28 the context of the other comments Walsh made at his deposition, the
Court concludes that this comment suggests that Walsh believes that
while a narrow interpretation of the plan would exclude Cyr's
claim, his general understanding of the plan and his application of
it in other similar cases allowed for such claims.

1 C. Counts 2 and 3

2 Cyr appears to have a strong claim for equitable estoppel.
3 However, in light of the Court's ruling in favor of Cyr on the
4 benefits issue, it need not reach her other claims.

5
6
7 **IV. CONCLUSION**

8 Based on the foregoing analysis, the Court grants summary
9 judgment for Plaintiff Cyr. She is entitled to the increased
10 retroactive and future benefits to be calculated based on a salary
11 of \$155,000, in accordance with the wage adjustment agreement.¹⁹

12
13
14 IT IS SO ORDERED.

15
16
17
18 Dated: November 19, 2007

19 _____
20 DEAN D. PREGERSON
21 United States District Judge

22 
23
24
25
26

27 _____
28 ¹⁹ This order does not address any issues regarding
attorneys' fees that may subsequently be requested.