

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**

MARIANA NELSON, on behalf of  
himself and all others similarly  
situated,

Plaintiff,

vs.

STANDARD INSURANCE  
COMPANY, an Oregon company;  
COUNTRYWIDE FINANCIAL  
CORPORATION GROUP LONG  
TERM DISABILITY PLAN;  
COUNTRYWIDE FINANAICAL  
CORP., and DOES 1-50, inclusive,

Defendants.

CASE NO. 13cv188-WQH-MDD  
ORDER

HAYES, Judge:

The matter before the Court is the Motion to Dismiss Plaintiff’s Complaint (“Motion to Dismiss”), filed by all Defendants. (ECF No. 16).

**I. Background**

On January 23, 2013, Plaintiff Mariana Nelson initiated this action by filing a Complaint in this Court. (ECF No. 1).

**A. Allegations of the Complaint**

Beginning in January 2004, Plaintiff was employed as a loan officer with Defendant Countrywide Financial Corp. *Id.* ¶¶ 1, 5. Plaintiff received long term

1 disability coverage under the Countrywide Financial Corporation Group Long Term  
2 Disability Plan, policy number 643382 (“Group Policy”), issued by Defendant Standard  
3 Insurance Corporation (“Standard”). *Id.* ¶¶ 1, 6. The Group Policy provides:

4           DISABILITIES SUBJECT TO LIMITED PAY PERIODS

5           A. Mental Disorders, Substance Abuse, and Other Limited Conditions.

6                       Payment of [long term disability (‘LTD’)] Benefits is limited to 24  
7 months during your entire lifetime for a Disability caused or contributed  
8 to by any one or more of the following, or medical or surgical treatment  
9 of one or more of the following:

- 10           1. Mental Disorders;  
11           2. Substance Abuse; or  
12           3. Other Limited Conditions. ...

13                       Mental Disorder means any mental, emotional, behavioral,  
14 psychological, personality, cognitive, mood, or stress-related abnormality,  
15 disorder, disturbance, dysfunction or syndrome, regardless of cause  
(including any biological or biochemical disorder or imbalance of the  
16 brain) or the presence of physical symptoms. Mental Disorder includes,  
17 but is not limited to, bipolar affective disorder, organic brain syndrome,  
18 schizophrenia, psychotic illness, manic depressive illness, depression and  
depressive disorders, anxiety and anxiety disorders. ...

19                       Other Limited Conditions means chronic fatigue conditions..., any  
20 allergy or sensitivity to chemicals or the environment..., chronic pain  
21 conditions..., carpal tunnel or repetitive motion syndrome,  
22 temporomandibular joint disorder, or craniomandibular joint disorder.

23 *Id.* ¶ 8.

24           In April 2007, Plaintiff ceased working due to disability. *Id.* ¶ 9. Standard does  
25 not dispute Plaintiff’s disability under the Group Policy. *Id.* On May 30, 2008,  
26 Plaintiff submitted a claim seeking long term disability benefits going back to April  
27 2007. *Id.* ¶ 10. On July 10, 2008, Standard accepted the claim and paid Plaintiff  
28 disability benefits. *Id.* ¶ 11.

          In January 2010, Standard informed Plaintiff that “LTD benefits have been  
terminated as of December 31, 2009 because [Plaintiff] no longer satisfies the  
Definition of Disability as stated in the Group Coverage.” *Id.* ¶ 12. Plaintiff requested  
that Standard review the termination of benefits. *Id.* ¶ 14. On November 18, 2010,  
Plaintiff sent Standard a letter informing Standard that “she disagreed that her inability

1 to work stemmed from mental illness, but even if it did, Standard's practice of limiting  
2 her coverage to two years due to mental illness was discriminatory and contrary to  
3 California law." *Id.* ¶ 17.

4 On October 10, 2011, Standard issued its final decision, denying Plaintiff's long  
5 term disability claim after its administrative review unit evaluated the December 31,  
6 2009 decision to close the claim. *Id.* ¶ 32. The basis of Standard's final denial was  
7 solely because "[t]he group policy limits the payment of LTD benefits to a maximum  
8 of 24 months, during your entire lifetime, for certain conditions..." and "[Plaintiff]'s  
9 diagnosis of Major Depression is considered to be a Mental Disorder and is subject to  
10 the 24 month maximum benefit period limitation." *Id.* Standard concluded,  
11 "[t]herefore, after 24 months we cannot consider [Plaintiff's] Major Depression or  
12 another mental disorder or another limited condition when determining whether  
13 [Plaintiff] is disabled, even if her Major Depression or other limited condition is still  
14 disabling." *Id.*

15 Plaintiff asserts the following causes of action: (1) Claim for Benefits pursuant  
16 to 29 U.S.C. § 1132(a)(1)(B); (2) Claim for Equitable Relief pursuant to 29 U.S.C. §  
17 1132(a)(3); (3) Breach of Fiduciary Duty pursuant to 29 U.S.C. §§ 1104(a)(1),  
18 1132(a)(3); and (4) Declaratory Relief. Each of Plaintiff's claims arise from her  
19 contention that the Group Policy's provision entitled, "Disabilities Subject to Limited  
20 Pay Periods," is unenforceable because Standard has not complied with California  
21 Insurance Code section 10144.<sup>1</sup> *See* ECF No. 1 ¶¶ 53, 59, 67, 73. Plaintiff brings the  
22 action on behalf of herself and a putative class consisting of all California residents who  
23 are participants in a group plan administered by Standard which contains the same

---

24  
25 <sup>1</sup> Section 10144 provides:  
26 No insurer issuing, providing, or administering any contract of individual  
27 or group insurance providing ... disability benefits ... shall refuse to insure,  
28 or refuse to continue to insure, or limit the amount, extent, or kind of  
coverage available to an individual, or charge a different rate for the same  
coverage solely because of a physical or mental impairment, except where  
the refusal, limitation or rate differential is based on sound actuarial  
principles or is related to actual and reasonably anticipated experience.  
Cal. Ins. Code § 10144.

1 “Disabilities Subject to Limited Pay Periods” provision as the one in the Group Policy.  
2 *Id.* ¶ 33. Plaintiff requests declaratory, injunctive and equitable relief, as well as  
3 statutory damages, attorneys’ fees and costs.

4 **B. Motion to Dismiss**

5 On April 15, 2013, all Defendants filed the Motion to Dismiss. (ECF No. 16).  
6 Defendants request dismissal of the Complaint with prejudice pursuant to Federal Rule  
7 of Civil Procedure 12(b)(6), and an award of costs and reasonable attorneys’ fees  
8 incurred pursuant to 29 U.S.C. § 1132(g). Defendants assert that “[a]ll full-time  
9 employees [of Defendant Countrywide Financial Corp.] receive exactly the same  
10 disability coverage under the Group Policy on completely equal terms. The Group  
11 Policy authorizes payment of disability benefits up to age 65, but caps benefits at 24  
12 months for disabilities caused by ‘Mental Disorders, Substance Abuse, and Other  
13 Limited Conditions.’” (ECF No. 16-1 at 5 (quoting ECF No. 1 ¶ 8)). Defendants  
14 contend that the “entire Complaint rests on the false premise that Standard’s  
15 enforcement of contractual benefit caps for Mental Disorders violates §10144. But  
16 [Plaintiff]’s discrimination theory is incompatible with the statutory language of §10144  
17 and well established law defining the parameters of unlawful discrimination. Two  
18 California federal courts recently rejected Nelson’s same discrimination theory as a  
19 matter of law...” *Id.* at 6. Defendants contend:

20 Section 10144 does not mandate that disability insurance policies provide  
21 the same coverage for all types of disabilities. And §10144 does not  
22 regulate the content of disability insurance policies offered on equal terms  
23 to all employees. Standard did not single out [Plaintiff] for unequal  
24 treatment because of her mental impairment. [Plaintiff] obtained the same  
25 coverage under the Group Policy provided to all employees of  
Countrywide, and she obtained her coverage before she became mentally  
impaired. Standard simply enforced the non-discriminatory terms of the  
Group Policy, and paid benefits to [Plaintiff] for 24 months as required by  
the Group Policy.

26 *Id.* at 7.

27 On April 6, 2013, Plaintiff filed an opposition to the Motion to Dismiss. (ECF  
28 No. 18). Plaintiff contends:

Section 10144 is a broad statute ... equally protecting those with physical

1 and mental impairments. It does not compare treatment of physical  
2 impairments to mental impairments. Rather, any exclusion – whether  
3 addressing physical or mental conditions – limiting the amount, extent or  
4 kind of coverage available must be supported with objective, actuarial  
support (or actual and reasonable experience). Insurance companies must  
– whether based on physical or mental characteristics.

5 *Id.* at 14. Plaintiff contends:

6 Countrywide and Standard arbitrarily limit disability coverage to two  
7 years for a broadly defined class of individuals with a wide array of  
8 impairments from allergies to Schizophrenia – solely due to the  
9 impairment. The result is discrimination against consumers like [Plaintiff]  
who have limited disability insurance available to them because of mental  
impairment without any scientific, actuarial basis. This arbitrary,  
discriminatory policy violates California Insurance Code Section 10144  
... and must be invalidated.

10 *Id.* at 5. Plaintiff also contends that a motion to dismiss “is not the proper vehicle for  
11 seeking a ruling on the merits – especially questions regarding interpretation of a  
12 California insurance regulation requiring facts outside the complaint.” *Id.* at 10.  
13 Plaintiff requests leave to amend the Complaint if the Court grants the Motion to  
14 Dismiss.

15 On June 4, 2013, Defendants filed a reply in support of the Motion to Dismiss.  
16 (ECF No. 21). On June 28, 2013, the Court heard oral argument on the Motion to  
17 Dismiss.

## 18 **II. Standard of Review**

19 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state  
20 a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of  
21 Civil Procedure 8(a) provides that “[a] pleading that states a claim for relief must  
22 contain ... a short and plain statement of the claim showing that the pleader is entitled  
23 to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where  
24 the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable  
25 legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

26 A plaintiff’s “grounds” to relief must contain “more than labels and conclusions,  
27 and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl.*  
28 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). When

1 considering a motion to dismiss, a court must accept as true all “well-pleaded factual  
2 allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). However, a court is not  
3 “required to accept as true allegations that are merely conclusory, unwarranted  
4 deductions of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266  
5 F.3d 979, 988 (9th Cir. 2001). “In sum, for a complaint to survive a motion to dismiss,  
6 the non-conclusory factual content, and reasonable inferences from that content, must  
7 be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret*  
8 *Service*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations omitted).

### 9 **III. Discussion**

10 California Insurance Code § 10144 provides:

11 No insurer issuing, providing, or administering any contract of individual  
12 or group insurance providing ... disability benefits ... shall refuse to insure,  
13 or refuse to continue to insure, or limit the amount, extent, or kind of  
14 coverage available to an individual, or charge a different rate for the same  
coverage solely because of a physical or mental impairment, except where  
the refusal, limitation or rate differential is based on sound actuarial  
principles or is related to actual and reasonably anticipated experience.

15 Cal. Ins. Code § 10144.

16 Plaintiff contends that the provision in the Group Policy limiting disability  
17 benefits for mental disorders to 24 months violates section 10144 and is therefore  
18 unenforceable. Plaintiff contends that “any exclusion – whether addressing physical or  
19 mental conditions – limiting the amount, extent or kind of coverage available must be  
20 supported with objective, actuarial support (or actual and reasonable experience)” in  
21 order to comply with section 10144. (ECF No. 18 at 14). Plaintiff contends that she  
22 has “limited disability insurance available to [her] because of mental impairment  
23 without any scientific, actuarial basis,” and “[t]his arbitrary, discriminatory policy  
24 violates California Insurance Code Section 10144 ... and must be invalidated.” *Id.* at  
25 5.

26 In *Monterastelli v. Standard Insurance Co.*, No. CV 12-01669 (AGRx) (C.D.  
27 Cal. June 12, 2012), the court considered the same contention in the same factual  
28 situation. *See Monterastelli*, Slip Op. at 3, ECF No. 16-2 (“Plaintiff alleges that section

1 10144 ‘permits insurance companies ... to limit benefits under disability policies for  
2 mental or physical disabilities *IF* the limitations are supported by sound actuarial  
3 principles or are related to actual and reasonably anticipated experience.’ Plaintiff  
4 contends that Defendant’s 24-month limitation of benefits [for mental disabilities and  
5 other conditions] does not meet this threshold requirement. Thus, Plaintiff concludes  
6 that the limitation is unenforceable under section 10144.’). The court examined the text  
7 of section 10144 and stated:

8       On its face, section 10144 only addresses access to or charges for  
9 disability insurance. It does so by proscribing four types of conduct by an  
10 insurer: (1) refusal to insure; (2) refusal to continue to insure; (3)  
11 limitation on coverage; and (4) charging of a different rate for similar  
12 coverage. However, by its terms, the provision does not dictate or even  
13 address the content of insurance that insurers must provide the insureds.  
14 It leaves open the possibility that an insurer may provide unequal coverage  
15 for mental and physical disabilities. Therefore, if an insurer chooses to  
16 allocate more resources to physical disabilities than to mental disabilities,  
17 this decision does not run afoul of section 10144. The California  
18 Legislature did not seek to create parity of coverage for mental and  
19 physical disabilities when it enacted section 10144.

20 *Id.* at 4. The court concluded that “the California Supreme Court would interpret  
21 section 10144 as only ensuring that a given insurance plan affords disabled individuals  
22 equal access to and eligibility for the same benefits as non-disabled individuals.” *Id.*  
23 at 5. The court stated that the plaintiff’s complaint “converts a provision that only  
24 concerns the right to *access* insurance on equal terms into a legislative mandate for  
25 equal *coverage*.” *Id.* The court stated, “Plaintiff received exactly what section 10144  
26 promises: *access* to insurance. Defendant’s 24-month cap goes to the *content* of the  
27 benefits under the policy, and, on the question of *content*, section 10144 is silent.” *Id.*  
28 The court stated that, “so long as every employee is offered the same plan regardless  
of that employee’s contemporary or future disability status, no violation of section  
10144 has occurred.” *Id.* at 5-6 (citing *Equal Emp’t Opportunity Comm’n v. CNA Ins.*  
*Cos.*, 96 F.3d 1039,1044 (7th Cir. 1996) (observing that a 24-month limit for mental  
disability benefits “may or may not be an enlightened way to do things but it is not  
discriminatory in the usual sense of the term’’)). The court granted defendant’s motion  
to dismiss.

1           In *Townsend v. Thomson Reuters Group Disability Income Insurance Plan*, 867  
2 F. Supp. 2d 1085 (C.D. Cal. 2012), the court considered the same contention in the  
3 same factual situation. *See id.* at 1086 (“The Complaint asserts that Defendant ...  
4 terminated Plaintiff’s LTD benefits pursuant to a provision in the Plan that limits the  
5 payment of LTD benefits originating from a mental impairment to a period of 24  
6 months.... [T]he Complaint alleges that Defendants’ termination of these benefits was  
7 in violation of California Insurance Code § 10144, asserting that Section 10144 required  
8 Defendants to base any termination of her LTD benefits on actuarial data or evidence.”).  
9 The court granted defendants’ motion for summary judgment, holding that “Section  
10 10144 does not apply to Plaintiff’s claim.” *Id.* The court stated: “Plaintiff was not  
11 singled out individually for a coverage limitation, nor was her coverage limited *because*  
12 *of her mental condition*. She was offered the same coverage as all other employees of  
13 Thomson Reuters. Her coverage was not limited because of her mental condition.”).  
14 *Id.*

15           Both *Monterastelli* and *Townsend* distinguished *Chabner v. United of Omaha*  
16 *Life Ins. Co.*, 994 F. Supp. 1185 (N.D. Cal. 1998), *affirmed*, 225 F.3d 1042 (9th Cir.  
17 2000). In *Chabner*, an insured who suffered from a rare form of muscular dystrophy  
18 brought an action against an insurer to recover for disability discrimination because his  
19 life insurance “premium was 96.5% greater than standard” despite the fact that his  
20 condition “had only a small effect on mortality.” *Chabner*, 225 F.3d at 1046. Finding  
21 that defendant violated section 10144’s prohibition against “charging different  
22 premiums for arbitrary reasons,” the district court entered summary judgment for the  
23 plaintiff and the Court of Appeals affirmed. *Id.* at 1049. In *Monterastelli*, the court  
24 distinguished *Chabner* as follows: “[C]harging a different rate for individuals with  
25 certain disabilities is one of the specific acts section 10144 prohibits (absent sound  
26 actuarial principles to support the differential rate). In the instant case, Plaintiff does  
27 not allege that Defendant charged her a different rate; rather, Plaintiff alleges that  
28 Defendant enforced a 24-month cap on her disability payments for her mental disorder,

1 which is not one of the four insurance practices forbidden by section 10144.”  
2 *Monterastelli*, Slip Op. at 7 n.4, ECF No. 16-2. Similarly, the court in *Townsend* stated:  
3 “Every case cited by both Plaintiff and Defendants has applied Section 10144 in  
4 situations where an individual has been discriminated against and denied coverage or  
5 charged higher rates for coverage compared to other individuals because of a mental or  
6 physical limitation. No court has held that Section 10144 requires insurers to offer  
7 equal benefits for both mental and physical disabilities.” *Townsend*, 867 F. Supp. 2d  
8 at 1086 (citing *Chabner*, 994 F. Supp. 1185).

9 The Court finds the reasoning of *Monterastelli* and *Townsend* to be persuasive.  
10 As the Court of Appeals for the Ninth Circuit stated in the context of a challenge to a  
11 similar disability policy provision under the Americans with Disabilities Act,  
12 “[i]nsurers have historically and consistently made distinctions between mental and  
13 physical illness in offering health and disability coverage.” *Weyer v. Twentieth Century*  
14 *Fox Film Corp.*, 198 F.3d 1104, 1116 (9th Cir. 2000) (quotation omitted). “[H]ad  
15 Congress intended to control which coverages had to be offered by employers, it would  
16 have spoken more plainly because of the well-established marketing process to the  
17 contrary.” *Id.* Accepting all facts alleged in the Complaint as true, the Group Policy’s  
18 provision entitled, “Disabilities Subject to Limited Pay Periods,” does not violate  
19 California Insurance Code § 10144. The Court finds that Plaintiff has failed to state a  
20 claim upon which relief may be granted because the Complaint “lack[s] a cognizable  
21 legal theory.” *Balistreri*, 901 F.2d at 699 (citation omitted).

22 In a footnote in her brief, Plaintiff states: “Even if the [section] 10144 claim is  
23 not viable, plaintiff has other bases for her ERISA claims, including a claim for benefits  
24 owed under the physical, sleep disability, and breach of fiduciary duty for concurrent  
25 application of the Mental Disorder limitation to disability caused by a physical  
26 impairment.” (ECF No. 18 at 11 n.1). In the initial, “Factual Background” section of  
27 the Complaint, Plaintiff alleges that Plaintiff told Standard that she had been diagnosed  
28 with sleep disorders, “so the disability claim should not be limited to mental disorders.”

1 (ECF No. 1 ¶ 11). After the “Factual Background” section, the Complaint alleges four  
2 Counts. Each Count references Plaintiff’s theory that the Group Policy violates  
3 California Insurance Code § 10144. *Id.* ¶¶ 53-55, 59, 61, 67, 70, 73. No Count  
4 references any other basis for liability, such as that Defendants failed to recognize that  
5 Plaintiff’s disability was caused by a physical impairment. To the extent Plaintiff  
6 contends that the Complaint alleges a basis for her claims other than her section 10144  
7 theory, the Court finds that those other claims have not been adequately alleged.

8 Defendants request attorney’s fees pursuant to 29 U.S.C. § 1132(g). Section  
9 1132(g) provides that a “court in its discretion may allow a reasonable attorney’s fee  
10 and costs of action to either party.” 29 U.S.C. § 1132(g)(1). “In general, a court  
11 considering whether to award attorney’s fees and costs under ERISA must consider five  
12 factors: (1) the degree of the opposing party’s culpability or bad faith; (2) the ability of  
13 the opposing party to satisfy an award of fees; (3) whether an award of fees would deter  
14 others from breaching duties under similar circumstances; (4) whether the party  
15 requesting fees sought to benefit all participants and beneficiaries of an ERISA plan or  
16 to resolve a significant legal question regarding ERISA; and (5) the relative merits of  
17 the parties’ positions.” *Cal. Ironworkers Field Pension Trust v. Loomis Sayles & Co.*,  
18 259 F.3d 1036, 1048 (9th Cir. 2001) (citations omitted). After considering the relevant  
19 factors, the Court declines to award attorney’s fees to Defendants.

20 //

21 //

22 //

23 //

24 //

25 //

26 **IV. Conclusion**

27 IT IS HEREBY ORDERED that the Motion to Dismiss is GRANTED. (ECF No.  
28 16). The Complaint is dismissed without prejudice. No later than thirty (30) days from

1 the date this Order is filed, Plaintiff may file a motion for leave to amend the  
2 Complaint, accompanied by a proposed first amended complaint. If no motion for leave  
3 to amend the Complaint is filed within thirty days, the Court will order the Clerk of the  
4 Court to close this case.

5 DATED: July 17, 2013

6   
7 **WILLIAM Q. HAYES**  
8 United States District Judge

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28