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NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ALEXANDER ELSINGA,

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE
COMPANY, KAISER FOUNDATION HEALTH
PLAN, INC. LONG TERM DISABILITY PLAN

Defendants.

CV13- 0829

COMPLAINT FOR BREACH OF
EMPLOYEE BENEFIT PLAN
(29 U.S.C. § 1002 et seq);

COMPLAINT FOR BENEFITS

Elsinga vs. Metropolitan Life Ins. Co., et. al.- Complaint

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2 **I. JURISDICTION**

3 1. Alexander Elsinga ("Elsinga") is and at all times mentioned herein was an
4 employee of Kaiser Permanente ("Kaiser"). Kaiser is and at all times mentioned herein was a
5 Health Care provider doing business in Santa Clara and Santa Cruz Counties, California in the
6 Northern District of California. Kaiser created the Kaiser Foundation Health Plan, Inc. Long
7 Term Disability Plan ("the LTD Plan") as an employee benefit. The LTD Plan was fully insured
8 with the Metropolitan Insurance Company ("MetLife") effective prior to March 17, 2011 as
9 Group Policy 959110-1-G. MetLife is an insurer doing business in Santa Clara County,
10 California in the Northern District of California. The LTD Plan is in writing. This claim arises
11 under an ERISA registered and controlled employee benefit plan. Jurisdiction of this court is
12 present under 29 U.S.C. § 1002, 29 U.S.C. § 1132.

13 **II. STATEMENT OF FACTS**

14 2. Prior to March 17, 2011 Kaiser created the LTD plan in writing for its
15 employees as an employee benefit fully insured with MetLife. Under the terms of the LTD Plan,
16 MetLife promised to pay Long Term Disability benefits to any of such employees as would
17 become totally disabled as defined by the LTD Plan while employed by Kaiser.

18 3. At all times herein mentioned, Elsinga was an employee of Kaiser and is a
19 covered employee under the Plan.

20 4. On or about March 17, 2011, Elsinga became totally disabled in accordance
21 with the definition of total disability under the LTD Plan and timely applied for benefits under
22 the Plan.

23 5. The LTD Plan was to provide long term benefits to Elsinga commencing
24 September 13, 2011 at 60% of Elsinga's salary subject to offset by payments from California SDI
25 and Federal SSDI.

6. Elsinga timely applied for benefits under the Plan. The Plan denied benefits to Elsinga on the basis that he was not disabled under the terms of the Plan.

7. Elsinga properly appealed the denial of benefits to the LTD Plan. On February 20, 2013 the LTD plan denied Elsinga's appeal in a final and administratively binding decision. Elsinga has now exhausted his administrative remedies under the LTD Plan.

8. Elsinga is and at all times mentioned herein was totally disabled as that term is defined in the LTD Plan.

FIRST CAUSE OF ACTION

1. The Long Term Disability Plan is an employee benefit plan defined under 29 U.S.C. § 1002.

2. In accordance with 29 U.S.C. § 1132, Plaintiff herein seeks to recover the benefits due under the Plan including prejudgment interest and attorney's fees expended herein.

3. In all cases, Plaintiff has performed all conditions required on Plaintiff's part to be performed and, in accordance with the Plan, gave the Plan due and timely notice of and proof of loss.

4. The action of the Plan in rejecting claims, terminating benefits, and failing to provide a full and fair review cannot withstand scrutiny under any standard of review.

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1 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 2 1. For all benefits due Plaintiff under the LTD Plan together with prejudgment
3 interest thereon at the legal rate;
4 2. For cost of suit incurred herein;
5 3. For attorney's fees; and
6 4. For such other and further relief as the court deems appropriate and just under the
7 circumstances.

8 Dated: Feb 25, 2013

SILVER & TAUBE


MELVYN D. SILVER
Attorney for Plaintiff