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DENIS O’SULLIVAN
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 DENIS O’SULLIVAN,
11
12 Plaintiff,

CASE NO.: 3:23-cv-01000
COMPLAINT (ERISA)

13 vs.

14 LINCOLN NATIONAL LIFE INSURANCE
COMPANY (THE),
15
16 Defendant(s).

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17
18 Plaintiff Denis O’Sullivan (“Plaintiff” or “Mr. O’Sullivan”), herein sets forth the
19 allegations of his Complaint against Defendant Lincoln National Life Insurance Company (The
20 “Lincoln”) for its wrongful denial of his long-term disability benefit claim.

21 **PRELIMINARY ALLEGATIONS**

22 **JURISDICTION**

23 1. This action is brought under 29 U.S.C. §§ 1132(a), (e), (f) and (g) of the Employee
24 Retirement Income Security Act of 1974 (hereinafter “ERISA”) as it involves claims by Plaintiff
25 for employee benefits under an employee benefit plan regulated and governed under ERISA.
26 Jurisdiction is predicated under these code sections as well as 28 U.S.C. § 1331 as this action
27 involves a federal question. This action is brought for the purpose of recovering benefits under the
28 terms of an employee benefit plan, enforcing Plaintiff’s rights under the terms of an employee

1 benefit plan, and to clarify Plaintiff’s rights to future benefits under the employee benefit plan.
2 Plaintiff seeks relief, including but not limited to, payment of the correct amount of benefits due
3 under his plan, prejudgment and post-judgment interest, reinstatement to the benefit plan at issue
4 herein, and attorneys’ fees and costs.

5 VENUE

6 2. Venue lies in the Northern District of California pursuant to ERISA § 502(e)(2), 29
7 U.S.C. § 1132(e)(2), because Plaintiff resides in this district, the breaches alleged occurred in this
8 District, and the ERISA-governed plan at issue was administered in part in this District. Venue is
9 also proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions
10 giving rise to Plaintiff’s claims occurred within this District.

11 INTRADISTRICT ASSIGNMENT

12 3. Intradistrict Assignment - Pursuant to Civil L.R. 3-2(c) and 3-5, Plaintiff believes
13 that this matter should be assigned to either the Oakland or San Francisco divisions since Plaintiff
14 resides in Contra Costa County and a substantial part of the events or omissions which give rise to
15 this action occurred primarily in Contra Costa County.

16 PARTIES

17 4. Plaintiff was, at all times relevant, a Telecommunications Manager at Riverbed
18 Technology, Inc. located in San Francisco, California. Plaintiff resides in Briones, California.
19 Plaintiff became disabled and unable to work starting March 21, 2021. At the time of his
20 disability, Plaintiff was a participant, as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), in a health
21 and welfare benefit plan sponsored by Riverbed Technology, Inc. (“the Plan”), which provided,
22 among other benefits, long term disability (“LTD”) benefits. The Plan’s LTD benefits are insured
23 and administered by Lincoln, under policy number GD/GF3-890-LF0446-01. The policy was
24 issued by Lincoln Life Assurance Company of Boston.

25 5. In 2021, Lincoln Life Assurance Company of Boston merged with Defendant
26 Lincoln National Life Insurance Company and is now headquartered in Fort Wayne, Indiana.
27 Lincoln offers group LTD policies in various states, including California. Lincoln is authorized to
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1 transact business in the Northern District of California and may be found in the Northern District
2 of California.

3 FACTS

4 6. On June 19, 2019, Tara O’Sullivan, a Sacramento Police officer, and Mr.
5 O’Sullivan’s 26-year-old daughter, died tragically in the line of duty. Tara was shot and killed by
6 Adel Sambrano Ramos on June 19, 2019, responding to a domestic dispute call. Tara was
7 ambushed as she and her training officer, Daniel Chipp, knocked on a door at the residence as
8 Chipp called out that they were not there to arrest Ramos, that they were simply trying to handle a
9 routine call to retrieve his former girlfriend’s belongings.

10 7. Tara was shot at 6:09 p.m., and other officers scrambled for safety as repeated
11 volleys of gunfire from assault rifles poured from inside the house. During an eight-hour standoff,
12 police were unable to reach Tara to provide medical aid. Police were forced to mount a rescue
13 operation with an armored “Bear Cat” SUV to get Tara to medical treatment. By the time the Bear
14 Cat, which came under heavy fire, made its way into the backyard toward Tara, she had already
15 expired. Her body-worn camera video, which showed footage pointing straight to the sky after she
16 fell from being shot, recorded audio, including shots being fired near her body and a man’s voice
17 coming from off camera. “Are you dead yet, b----?” the voice said. Two minutes later, the audio
18 picked up a man saying, “Breathe, m-----, breathe,” followed by, “You’re dead, b----. Who’s
19 next, m-----, bring it on. You never got invited to this place, anyway.”

20 8. Tara’s death was very public and because she was a slain police officer it was a
21 news story covered by both local and national media. Body-cam footage of the entire stand-off
22 taken from multiple officers on the scene, including from Tara, was released to the public and has
23 been played over and over on the news and throughout social media—footage that Mr. O’Sullivan
24 has had to see and endure over and over.

25 9. Tara was Mr. O’Sullivan’s pride and joy. Even from the time she began high
26 school, Tara knew she wanted to be a police officer. Friends describe her as single-minded,
27 focused, driven—a young woman of strong convictions and unique qualities. At her memorial
28 service, her godfather said, “She was one of those people who devoured life with strength and

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1 kindness in equal measure. Aggressive vigor, a gentle touch. Marble wrapped in velvet.”

2 Following her completion of general education classes at a community college, Tara was hired by
3 the City of Sacramento Police Department in January of 2018 as a Community Service Officer. In
4 July of that same year, she entered the police academy as a police recruit and graduated from the
5 academy on December 20, 2018. Tara was part of the 2017 inaugural class of graduates from
6 Sacramento State University’s Law Enforcement Candidate Scholars program.

7 10. Tara’s passing stunned the local community and left a deep wound in her family,
8 one from which Mr. O’Sullivan has not since been able to recover. He went from being an active
9 member of his community and a manager and supervisor in his career to mostly a shut-in due to
10 his consuming and unremitting grief.

11 11. Following Tara’s death, despite his overwhelming grief and significant mental
12 health symptoms, Mr. O’Sullivan attempted to “keep it together” and returned to work for the sake
13 of his family. Moreover, despite his grief, Mr. O’Sullivan was expected to attend memorial
14 services and other events to honor Tara, because if he did not attend, it would be looked upon as
15 disrespectful by the police community. Mr. O’Sullivan further believed it was his duty to attend
16 the events and if he did not attend it would dishonor the memory of his beloved daughter. So,
17 staying home simply was not an option, even though his medical providers advised him that
18 attendance at the events would likely trigger and worsen his mental health symptoms, which they
19 did.

20 12. Mr. O’Sullivan began experiencing frequent (almost nightly) nightmares, disrupted
21 sleep, extreme lack of concentration, depression, anxiety, agitation, irritability and anger. He
22 would isolate himself from others and began having extreme negative thoughts and difficulty
23 remaining positive. His brain would hyper-focus and replay his daughter’s death over and over in
24 his head. He had frequent flashbacks and upsetting memories of the event, causing him increased
25 emotional and physical distress, including panic attacks. Mr. O’Sullivan retreated and isolated
26 himself, many days not leaving his home and spending all day on the couch or in bed. He began
27 avoiding other people because he was unable to handle the interactions.
28

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1 13. Mr. O’Sullivan sought medical treatment and was diagnosed with Chronic Post
2 Traumatic Stress Disorder (“PTSD”); Major Depressive Disorder, Recurrent, Moderate; and
3 Generalized Anxiety Disorder.

4 14. By March 2021, Mr. O’Sullivan could no longer continue working in his
5 significantly accommodated position. In addition to the increasing and mounting symptoms he
6 was suffering as a result of Tara’s murder, in March 2021, Mr. O’Sullivan’s son, Justin, suffered
7 significant health issues and was hospitalized. Upon his release, Justin moved back home with Mr.
8 O’Sullivan and his wife to recover and work on his doctors’ prescribed treatment plan. Justin’s
9 illness further exacerbated Mr. O’Sullivan’s mental health conditions. Mr. O’Sullivan believed he
10 had let both Tara and Justin down as their father, because he had been unable to help either of
11 them. Mr. O’Sullivan experienced increased symptoms consisting of: intrusive thoughts and
12 unwanted upsetting memories of Tara’s death; disrupted sleep; nightmares and night terrors;
13 visual hallucinations; emotional distress and physical reactivity after exposure to traumatic
14 reminders of the event; avoidance of thoughts, feelings, people, places and things that are
15 traumatic reminders; negative thoughts and assumptions about himself and the world; negative
16 affect; decreased interest in activities; difficulty experiencing positive affect; detachment from his
17 relationship; heightened startle reaction; hypervigilance; difficulty concentrating; decreased short-
18 term memory; agitation and irritability; flashbacks; depressive symptoms; withdrawal and
19 isolation; and overwhelming guilt.

20 15. On March 22, 2021, Mr. O’Sullivan stopped working and submitted a claim for
21 short-term disability (“STD”) benefits. Lincoln approved STD benefits for the maximum benefit
22 period of 12 weeks, and then transitioned the claim for LTD benefits. Mr. O’Sullivan and his
23 medical providers submitted medical information sufficient to support Mr. O’Sullivan’s ongoing
24 disability.

25 16. From April 2021 through May 2022, Lincoln requested and received updated
26 records and forms from Simrita Singh, M.D. (Psychiatry); Maureen Cummings, MFT; Joshua
27 Skinner, LMFT; and William Longton, M.D. (Pain Medicine).

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1 17. On April 13, 2021, treating psychiatrist Dr. Singh wrote that Mr. O’Sullivan was
2 unable to work due to his mental health conditions. She reported that Mr. O’Sullivan’s prognosis
3 was “guarded” as he “has been grieving loss of daughter and upcoming trial for her murder will
4 likely be re-traumatizing him.”

5 18. On June 3, 2021, Dr. Singh completed a Functional Mental Status Evaluation form
6 noting that Mr. O’Sullivan had “depressed mood, restricted affect, alert, oriented x3, memory and
7 cognition intact, limited judgment and insight, unable to focus due to depressive symptoms,
8 unable to maintain attendance, no functional abilities or job tasks able to perform, no work settings
9 available.” In addition to her treatment, Dr. Singh noted that Mr. O’Sullivan was seeing three
10 different therapists.

11 19. Almost four months later, Dr. Singh’s medical opinion had not changed. On
12 September 27, 2021, she wrote that Mr. O’Sullivan was “unable to work at all” due to PTSD and
13 major depressive disorder. She noted symptoms of “ongoing depressed and anxious mood,
14 frequent triggers of daughter’s traumatic death, unable to maintain a schedule, wife does
15 household chores, cooking and shopping; able to groom self, able to drive, but anxious.
16 Symptoms started after daughter’s death and have not remitted since then. Remains of a moderate
17 to severe intensity on a daily basis and worse when triggered. Will be entering a residential
18 treatment center in 11/21, already in intensive psychotherapy, EMDR for PTSD.”

19 20. By February 10, 2022, Dr. Singh continued to report Mr. O’Sullivan’s total
20 disability due to PTSD and major depressive disorder. She wrote “easily triggered with reminders
21 of daughter’s death, mood can get depressed for 2-3 days when this happens, stays in bed, isolates
22 self, crying spells, no energy/motivation to do anything. Poor sleep. Unable to focus/concentrate.
23 Symptoms first appeared 6/19, reduced ability to work 3/2/21, advised to stop work 3/22/21. No
24 physical limitation or job modifications. Treatment – medication mgmt., EMDR therapy,
25 individual therapy, grief couples therapy. Prognosis is guarded, unlikely to improve due to trial
26 starting and re-traumatizing him. Reminders of her death are setbacks for his mood and
27 functioning.”
28

1 21. Lincoln obtained an outside medical records review from Dr. Sara Sicher, who
2 never evaluated Mr. O’Sullivan in person. Dr. Sicher concluded “taking into consideration the
3 entire clinical picture, including evidence-based medicine” that Mr. O’Sullivan’s PTSD and
4 depression symptoms were “not of a severity as to limit occupational functioning.” Dr. Sicher
5 claimed that Mr. O’Sullivan had symptoms prior to his leave of absence from work, which she
6 claimed suggests he had the functional capacity needed to maintain gainful employment despite
7 his symptoms. Dr. Sicher further claimed, despite Mr. O’Sullivan’s abnormalities upon mental
8 status examination, he did not require a higher level of care, such as an intensive outpatient
9 program or hospitalization. Dr. Sicher admitted that “a reasonably supported barrier documented
10 in the medical records contributing to or impacting the claimant’s ability to perform sustainable
11 activities was the court trial for his daughter’s murder.” However, she suggested that because Mr.
12 O’Sullivan had engaged in preliminary hearings, and the trial had been set for 2023, that his PTSD
13 symptoms were no longer triggered. Dr. Sicher also found that Mr. O’Sullivan’s participation in
14 activities to honor his slain daughter, which consisted of travelling to Sacramento and Washington
15 D.C., attending a sports game, and camping, conflicted with the severity of his condition.

16 22. By letter dated May 20, 2022, Lincoln informed Mr. O’Sullivan that it had denied
17 his LTD claim. Lincoln relied largely on the medical review of records done by Dr. Sarah Sicher.

18 23. Dr. Sicher has a documented history of her medical opinions having been criticized
19 and rejected in other cases where she has similarly found no psychiatric restrictions or limitations
20 based on a lack of objective evidence supporting psychiatric impairment and purported
21 inconsistent activities. *See e.g., Adams v. United of Omaha Life Insurance Company*, 2021 WL
22 3163777 at *10–11 (D.S.C., July 27, 2021); *Hamid v. Metropolitan Life Insurance Company*, 517
23 F.Supp.3d 903, 913 (N.D. Cal. 2021).

24 24. In *Adams v. United of Omaha Life Insurance Company*, 2021 WL 3163777 at *10–
25 11 (D.S.C., July 27, 2021), the court rejected Dr. Sicher’s opinion because she concluded that
26 Adams had no psychiatric restrictions or limitations because there was no objective evidence
27 supporting psychiatric impairment. The Court found, just as is the case here, that the focus on the
28

1 lack of objective evidence is inconsistent with the Policy, which does not require proof by
2 objective medical evidence. *Id.* at 11.

3 25. Similarly, in *Hamid v. Metropolitan Life Insurance Company*, 517 F.Supp.3d 903,
4 913 (N.D. Cal. 2021), California Northern District Judge Vince Chhabria rejected Dr. Sicher’s
5 opinion, along with the opinions of three other consulting physicians. In a paper review, Dr. Sicher
6 concluded that Hamid’s medical history did not support psychiatric functional impairment. The
7 court noted that each of the consultants, including Dr. Sicher, concluded that Hamid was not
8 “disabled” because there was a lack of “objective,” “clinical” and “exam” findings, and that the
9 insurer was wrong to insist on “objective” and “clinical” evidence as a prerequisite for disability
10 benefits. *Id.* at 915. The court further noted that “the only people to question whether Hamid’s
11 reported symptoms were real—were also the only people to not evaluate him in person.” *Id.* at
12 917.

13 26. Mr. O’Sullivan retained counsel who submitted an appeal of the denial to Lincoln
14 by letter dated November 23, 2022. In the appeal, Mr. O’Sullivan’s attorney explained how Dr.
15 Sicher failed to discuss the multitude of medical records documenting Mr. O’Sullivan’s mental
16 incapacity both on a day-to-day basis, and in direct response to his efforts to engage in those
17 obligatory activities to honor his slain daughter. Moreover, Dr. Sicher made no connection with
18 Mr. O’Sullivan’s ability to attend as a guest an event honoring his daughter and his ability to work
19 full-time in a demanding occupation where he must organize, direct, and lead an IT team—a
20 profession that demands a high level of cognitive ability. Mr. O’Sullivan’s attorney also pointed
21 out that Dr. Sicher concludes that one can be disabled only if there is a referral to a higher level of
22 care like an intensive outpatient program (IOP), which is simply illogical. His attorney explained
23 that one can suffer from symptoms not rising to the level of IOP but still be disabled from one’s
24 own occupation. And, if the plan required an IOP or higher level of care to qualify for disability
25 benefits stemming from a mental health claim, then the policy should state that explicitly. Mr.
26 O’Sullivan’s attorney noted that the plan does not have such a provision, Lincoln cannot create
27 plan terms that do not exist, and cited *Saffle v. Sierra Power Pacific Co.*, 9 F.3d 600, 608 (9th Cir.
28 1996) (A plan administrator may not interpret a plan so as to “impose a new requirement for

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1 coverage” as the administrator “lacks discretion to rewrite the plan.”). Mr. O’Sullivan’s activities
2 were taken out of context to imply that he was not disabled.

3 27. Additionally, as part of the appeal, Mr. O’Sullivan submitted letters and records
4 from Dr. Singh, MFT Cummings, LMFT Skinner and LCWS Shaunna Edwards-Murtha all of
5 which refuted Dr. Sicher’s findings and conclusions, along with statements under the penalty of
6 perjury by Mr. O’Sullivan, his wife, his two sisters, his brother-in-law, and two former coworkers
7 and friends. The appeal also included a video statement of Mr. O’Sullivan, wherein he struggles to
8 keep his composure as he talks about the death of his daughter and his current state.

9 28. On August 28, 2022, therapist Maureen Cummings, MFT wrote:

10 Mr. O’Sullivan has been severely impacted by the murder of his 26-year-old
11 daughter on June 19th 2019. When he began individual therapy with me, he
12 presented with several PTSD symptoms, and continues to experience many of those
13 symptoms today, including recurrent dissociation, especially during court
14 proceedings. Mr. O’Sullivan also continues to experience recurrent nightmares
15 about his daughter’s murder, as well as trouble falling and staying asleep. He has
16 high anxiety, a diminished interest in things and people, an inability to experience
17 positive emotions, feelings of detachment from others, and difficulty concentrating
18 or staying focused.

15

16 However, I do not believe it was a particular change in circumstance or condition
17 that made it such that he could no longer perform work I believe it was more that
18 the many months of pushing through the pain just caught up with him, and he could
19 not do it anymore. I also believe his PTSD symptoms will continue to be
20 debilitating, at least until after the trial, as he is retraumatized each time there is a
21 court proceeding.

22 While not technically an Intensive Outpatient Program (IOP), Mr. O’Sullivan’s
23 treatment is quite intensive, as he is working with a psychiatrist, individual
24 therapist, EMDR therapist, and a couple grief therapist. He is also participating in
25 regular group meetings sponsored by the treatment facility he attended.

26 29. On August 25, 2022, couple grief therapist Joshua Skinner, LMFT wrote:

27 I observed symptoms of Post-Traumatic Stress Disorder in Denis O’Sullivan that
28 included:

- Active avoidance of reminders
- Flashbacks
- Night terrors
- Visual hallucinations
- An increased startle response

Overwhelming guilt
Detachment from his relationship
Difficulty with short-term memory

With the lack of motivation and lack of short-term memory which are hallmarks of not getting enough rest due to persistent night terrors as well as a stress response, I am confident that he is not able to perform daily work related tasks, keep to a tight schedule or perform in a way that he once did prior to the murder of his daughter.

30. On August 22, 2022, EMDR (Eye Movement Desensitization and Reprocessing) therapist, Shaunna Edwards (née Murtha), LCSW wrote:

Mr. O’Sullivan’s symptoms were/are pervasive and impact all of his life domains. See 7/7/2021 letter regarding symptom array.

31. On July 7, 2021, Ms. Edwards wrote:

Mr. O’Sullivan meets the diagnostic criterion as outlined in the Diagnostic & Statistical Manual 5 (DSM-5), for Post Trauma Stress Disorder (PTSD) due to experiencing the following array of symptoms:

- Direct exposure to traumatic events
- Indirect exposure to traumatic events/details of event/repeated exposure to details of events
- Intrusive thoughts/unwanted upsetting memories of the event
- Disrupted sleep/nightmares
- Emotional distress after exposure to traumatic reminders
- Physical reactivity after exposure to traumatic reminders
- Avoidance of traumatic reminders (thoughts, feelings, people, places, things)
- Overly negative thoughts/assumptions about oneself or the world
- Negative affect
- Decreased interest in activities
- Difficulty experiencing positive affect
- Heightened startle reaction
- Hypervigilance
- Difficulty concentrating
- Agitation/Irritability
- Flashbacks
- Depressive Symptoms
- Withdrawal/Isolation
- Guilt
- Central nervous system dysregulation/panic attacks

32. As identified in the appeal letter, each of Mr. O’Sullivan’s treating providers confirms what Dr. Singh told Lincoln repeatedly in forms she completed for Lincoln. Mr. O’Sullivan is “unable to work at all” due to “ongoing depressed and anxious mood” and “frequent triggers of daughter’s traumatic death.” Mr. O’Sullivan is “unable to work or maintain a

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1 schedule/attendance.” Not one of Mr. O’Sullivan’s treating providers believes he is able to sustain
2 full-time work in his occupation.

3 33. Mr. O’Sullivan’s wife addressed her husband’s symptoms and activities since the
4 death of their daughter. She stated:

5 After our daughter Tara was murdered in June of 2019, Denis slammed into a deep
6 depression, he began using his prescription medication more than he should have,
7 he withdrew from family and friends, and I had to cover for him a lot. He would
8 spend 4-5 days at a time just sleeping on the couch or in his chair in the office at
9 home. He began to eat poorly no matter what was available, he would binge on fast
10 food and candy/cookies/junk. When we would attend events to honor Tara, his
11 behavior would become erratic, and we would have to leave. He wasn’t himself at
12 all. He reminded me of my dad who was an alcoholic. Denis was a people person
13 who could talk to anyone and made strangers feel comfortable around him. He
14 can’t do that anymore. He continues to have a really hard time focusing on tasks to
15 completion, he currently has several ‘open tickets’ going on at home. He starts one
16 project but then gets distracted and starts reorganizing the garage or tool shed only
17 to start mowing the weeds which leads to tinkering with the weed whackers,
18 nothing ever gets completed. We don’t go to the movies anymore as what we used
19 to enjoy only reminds us of what we’ve lost. (There are so many triggers for him in
20 movies, it’s crazy.) These would include the child of any of the characters who
21 becomes seriously ill or dies (strangely common lately), a funeral scene where
22 there’s a flag draped casket and the character slams a pin into the casket (Maverick
23 Top Gun), a father character’s sole purpose is to protect his daughter’s kind of
24 drama (trailer of Beast that we viewed while waiting for Maverick). I can feel the
25 energy drain out of him at the movie, he’s deciding if he can stay to finish it or not
26 and then doesn’t remember a lot of details about the movie when we discuss it
27 afterwards which is not how it used to be at all. We could talk for hours if we really
28 liked the plot.

Other social triggers for Denis include when people share their good news, Denis goes to, “Tara will never get to experience that” which causes him to lose focus on the conversation; he just fades out. He begins to walk away in the middle of conversation only to come back and be very tired, his lids closing and then opening again to eye rolling like a baby who’s trying to go to sleep but fights it. It’s difficult to watch so I get us out of there as soon as I can. Tara’s death was very public and because she was a police officer, there are yearly ceremonies and events we attend to honor her and other fallen officers. These events are also very public, sometimes they are covered by local and national media. It’s quite stressful to ‘be okay’ when there’s a camera in your face, trying not to look completely devastated yet presentable is challenging. We travel to memorial ceremonies to honor Tara within the City of Sacramento, County of Sacramento, the State of California, and the national events in Washington DC every year. We also travel to a parent’s retreat for counseling and to be with other parents in this situation, who have lost a child in the line of duty. Only they can truly understand what happens in these situations and we have learned that many of them have not and do not ever fully recover to the life they lived before their tragedy. Marriages have broken up; families have splintered, and I know Denis is afraid that will happen to us too, which weighs heavily on him. After any event we attend, we usually have to take days off to reset, for Denis that means at least two days sleeping on the couch, not eating or anything else, just sleeping, followed by a few more days of being awake and doing the minimum but not much else. He really struggles to get moving again.

1 34. Mr. O’Sullivan’s sister provided observations of his symptoms. She stated:

2 After Tara’s death, I did not know what to say to Denis or what to do. I cannot even
3 describe what it is like to have this shroud of grief with your brother and sister-in-
4 law as the center of it. It was devastating. Denis and I could laugh and joke and
5 gossip with each other since we were young. After Tara died, I did not know how
6 to reach him. He became silent, remote, and kind of shrunk into himself. On the
7 night that Tara died, Denis looked like a shell of a human being. Denis talks to me
8 about his struggles. For the longest time, he had regular nightmares involving Tara
9 dying and calling out to him and he can’t get to her. He’s impotent and helpless to
10 save his daughter. He did not tell me about these nightmares until two years after
11 her death because he could not speak of them. He’d say he can’t sleep or was afraid
12 to go to sleep. I just assumed it was grief and one day he told me about these
13 nightmares. The first couple times he told me about them it was in a
14 detached, matter-of-fact way. It took a while before he was able to give me more
15 intimate details about his grief and about his nightmares. They were happening
16 every night.

17 35. Mr. O’Sullivan’s direct manager at work wrote:

18 Denis was not the same at work after Tara’s death. Riverbed had two offices, one in
19 Sunnyvale and one in San Francisco. I worked out of the Sunnyvale office, and I’d
20 go to the San Francisco office on occasion for meetings. Technically, the SF office
21 was Denis’s home office, but he lived over an hour away. I was letting him work
22 from home so he could ease in and not deal with the stress of the commute. He
23 struggled to complete the tasks that he took on. He managed our vendors in
24 Telecom. All these vendors need internet connectivity and phone lines. Denis had
25 to oversee multiple contracts and vendors. He was supposed to manage the vendor
26 contracts. Many of these started to become a lot of big data files and spreadsheets.
27 He could not really work through them and keep them in the proper framework. We
28 had a meeting with one of our vendors and went through part of the agenda
covering priorities. Denis asked a question about what we just covered. It was clear
he wasn’t grasping what he needed to do. I told him he needed to rest and go home,
regather himself, because he was out of it. Though he did technically return to a
full-time position, I had to scale back things for him significantly, so he focused on
very tactical sort of tasks. I told him just do X, Y, and Z, and simplified his job for
him.

...

Even though Denis could not focus on things, he wanted to do the right thing for
the company and help support me as a friend/manager. But the same attention
wasn’t there, the same spark in the eye wasn’t there. I would see him flex his hand
a lot, so I knew there was physical pain from that. He described it as being in his
hand and moving up to his back and neck area. In a job where a keyboard and
mouse are involved in all activities, I could see that getting in the way. Denis also
gets re-triggered from the developments with the trial of the man who murdered
Tara. He has talked to me about how he can’t sleep and has recurrent nightmares
about Tara calling him for help and him not being there. The sleep deprivation has
caused a lot of issues.

36. After receiving Mr. O’Sullivan’s appeal, Lincoln sought additional paper reviews
of his claim, which it arranged through its vendor, Network Medical Review Co., Ltd. (“NMR”).

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1 NMR retained Dr. Tahir Tellioglu to perform a review. Dr. Tellioglu, who never evaluated Mr.
2 O’Sullivan in person, concluded “despite the presence of multiple psychological
3 stressors/symptoms” that the “clinical data does not offer convincing documentation of a
4 psychiatric impairment.” He suggested that Mr. O’Sullivan’s “documented psychiatric symptoms,
5 including low mood, isolation, anhedonia and passive death thoughts are more consistent with a
6 diagnose [*sic*] of Major Depression and grief, rather than PTSD.” He further wrote: “The claimant
7 is receiving regular, outpatient mental health treatment that is not indicative of severe/impairing
8 mental illness. The frequency and intensity of psychiatric treatment is not consistent with the
9 reported severity of symptoms sufficient to limit work activities.” Dr. Tellioglu claimed, “[t]he
10 claimant’s complaint of lack of focus and decreased concentration were reviewed. There is no
11 evidence of quantified cognitive impairment. There is no elaboration of the extend [*sic*] of
12 psychiatric symptoms and their impact on his work functioning.” There is no indication from his
13 report that he was provided with or that he watched Mr. O’Sullivan’s video statement. And while
14 the statements provided by Mr. O’Sullivan’s family, friends and coworkers were identified on the
15 list of materials submitted to NMR, there is no indication from his report that Dr. Tellioglu ever
16 reviewed them.

17 37. It is particularly telling that Dr. Tellioglu’s conclusions regarding Mr. O’Sullivan’s
18 claim are eerily similar to those he rendered in another matter where his opinions and conclusions
19 were discredited, and the insurer was found to have abused its discretion in denying the plaintiff’s
20 psychiatric-based disability claim. In *Gallupe v. Sedgwick Claims Management Services, Inc.* 358
21 F.Supp.3d 1183 (W.D. Wash 2019), Sedgwick submitted Ms. Gallupe’s appeal and claim
22 documents for peer review by Dr. Tellioglu, who concluded that Ms. Gallupe’s disability claim
23 was not supported by “objective observable data.” He stated:

24 There is lack of elaboration of the extent of psychiatric symptoms and their impact on her
25 work functioning. Her psychiatric symptoms were not severe enough to require treatment
26 in a higher level of psychiatric care such as PHP (partial hospitalization) or IOP (intensive
27 outpatient) during the review period. There is no evidence of altered sensorium, quantified
28 cognitive dysfunction or loss of global functionality. Memory concentration and other
cognitive abilities are not demonstrated to be impaired.

1 *Id.* at 1189. The Court criticized and wholly discounted Dr. Tellioglu’s report and opinions. It
2 noted:

3 Dr. Krebs [plaintiff’s treating physician] provided a detailed explanation of Ms.
4 Gallupe’s psychiatric symptoms and their impact on her ability to work as an
5 Information Security Officer (i.e., “difficulty with concentration and focus, along
6 with her physical and emotional fatigue, prevented her from being able to pay
7 attention to detail or to deal with data or issues requiring attention to minute detail,
8 to prioritize tasks, to organize and complete tasks, and to resume attention after
9 multiple interruptions,” “to make decisions and to attend to professional matters on
10 a consistent and sustained basis,” and “to effectively communicate and collaborate
11 with coworkers due to her social withdrawal and isolation; low self-esteem and
12 negative sense of self-worth; and continued mental distress”).

13 Neither Sedgwick nor Dr. Tellioglu addresses this narrative, let alone explain how
14 it could be further elaborated upon. Moreover, neither Sedgwick nor Dr. Tellioglu
15 explains why “altered sensorium, quantified cognitive dysfunction or loss of global
16 functionality” are dispositive as to psychiatric disability, or why the PHQ-9 and
17 GAD-7 scores are not “quantified” evidence of cognitive dysfunction.

18 *Id.* at 1192. The Court further noted that “neither Sedgwick nor Dr. Tellioglu identifies any
19 contradictory evidence concerning Ms. Gallupe’s ability to work.” *Id.* With regard to Dr.
20 Tellioglu’s requirement that there exist “objective observable data” the Court stated:

21 Sedgwick also contends, based upon Dr. Tellioglu’s conclusion that there is
22 “insufficient objective observable data...to support a psychiatric disability or any
23 need for restrictions or limitations in the work setting[]” that “the clinical data does
24 not offer convincing documentation of a psychiatric disability.” However, neither
25 Sedgwick nor Dr. Tellioglu explains how in-person observations by Ms. Gallupe’s
26 treating physicians (e.g., that Ms. Gallupe was “often visibly distraught and
27 tearful,” that she “appeared increasingly fatigued,” etc.) and PHQ-9 and GAD-7
28 scores indicating “severe” depression are not “objective” evidence, particularly in
the context of a disorder that is inherently subjective and self-reported; *see also*,
e.g., Burnett v. Raytheon Co. Short Term Disability Basic Benefit Plan, 784
F.Supp.2d 1170, 1184 (C.D. Cal. 2011) (noting “the unique nature of psychiatric
disabilities, which often involve subjective complaints.”); *James v. AT & T West
Disability Benefits Prog.*, 41 F.Supp.3d 849, 880-81 (N.D. Cal. 2014). (finding
abuse of discretion where administrator did not explain why examining physician’s
observations are not “objective evidence”).

29 *Id.* at 1193. The Court held that “Sedgwick’s failure to credit reliable evidence concerning Ms.
30 Gallupe’s disability indicates an abuse of discretion.” *Id.*

31 38. NMR also retained a general preventative medicine physician, Dr. Gregory
32 Schwaid to perform a review of Mr. O’Sullivan’s physical conditions. In his report, Dr. Schwaid

1 wrote that the scope of his report was limited to “non-neuropsychiatric diagnoses.” Dr. Schwaid,
2 who never evaluated Mr. O’Sullivan in person, concluded that Mr. O’Sullivan’s physical
3 conditions, which included left hand injury (with amputation of left 4th finger), complex regional
4 pain syndrome, diabetes mellitus with peripheral neuropathy, kidney cancer and left kidney
5 removal, did not preclude Mr. O’Sullivan for full-time work.

6 39. Lincoln afforded Mr. O’Sullivan an opportunity to respond to the new evidence,
7 including Dr. Tellioglu and Dr. Schwaid’s reports. By letter dated January 23, 2023, Mr.
8 O’Sullivan’s attorney submitted additional reports from Mr. O’Sullivan’s treating providers, MFT
9 Cummings and LMFT Skinner, as well as supplemental declaration from Mr. O’Sullivan.

10 40. On December 21, 2022, couple grief therapist, Joshua Skinner, LMFT wrote:

11 In regard to a possible diagnosis, what is required for a diagnosis of post traumatic
12 stress disorder in addition to the symptoms I listed in a previous letter, is the actual
13 death or threat of a death to an individual or another person. Given the fact that
14 Denis O’Sullivan's daughter was murdered in the line of duty, in addition to his
15 reported symptoms, certainly qualifies him for a diagnosis of post traumatic stress
16 disorder. Furthermore, other diagnoses, such as an adjustment disorder, or
17 depression are not appropriate as they do not include the symptoms of post
18 traumatic stress disorder, nor are they appropriate after a family member is
19 murdered.

20 In addition to losing his daughter, in such a violent manner, Mr. O’Sullivan has
21 visited the scene of her murder and has viewed the body cam footage from his
22 daughter as she gasped, and had repeated bullets fired into her body. Out of a sense
23 of honoring the memory of their daughter, the O’Sullivan’s have attended talks
24 with police Academy classes, as well as community events designed to honor their
25 daughter. When I was working with Mr. O’Sullivan, it was clear the toll that these
26 events were taking. For example, Mr. O’Sullivan would often talk about needing a
27 minimum of two or three days of downtime after an event, due to the fact that the
28 event was so emotionally taxing. Additionally, Mr. O’Sullivan found it incredibly
difficult to focus on his work and reported not being able to get things done at his
home that he had planned due to exhaustion.

Mr. O’Sullivan also reported frequent nightmares or night terrors which would
prevent him from getting restful and restorative of sleep. On several occasions,
when I was working with both of the O’Sullivan’s, Denis would often join the
session late reporting that he had been too tired to attend the session on time. Mr.
O’Sullivan also reported visual hallucinations of his daughter as well as
overwhelming feelings of guilt and shame that he could not protect her from being
murdered.

Through the devastation of losing his daughter, in such a horrific manner, Mr.
O’Sullivan found himself in a perfect storm that prevented him from getting restful
and restorative sleep, dramatically impacted his short term, memory and ability to
concentrate, negatively impacted his relationship with his wife and robbed him of
any peace. In such a state, Mr. O’Sullivan found it increasingly difficult to be able

1 to focus on work related tasks and maintain conversations that required him to
2 think quickly. It is my professional opinion that there is no other diagnosis in the
3 diagnostic and statistical manual that is more appropriate for Mr. O’Sullivan than
4 post traumatic stress disorder.

5 41. On January 5, 2023, Maureen Cummings, MFT wrote:

6 As he stated in his review, Dr. Tellioglu never saw or assessed O’Sullivan in
7 person. He seems to have based his review on his opinions of the reports and
8 records made by the clinicians who did work with Mr. O’Sullivan in person. These
9 clinicians, myself included, have determined that Mr. O’Sullivan does meet the
10 criteria for PTSD, and that it is, in fact, disabling for him. My response to Dr.
11 Tellioglu’s review is to refer you back to the report/questionnaire I submitted on
12 August 28, 2022, as my assessment has not changed.

13 42. Mr. O’Sullivan also submitted a Supplemental Declaration dated January 17, 2023,
14 addressing Dr. Tellioglu’s paper review. He stated:

15 I have reviewed the report of Dr. Tellioglu on behalf of Lincoln and am shocked at
16 his flippant conclusions, particularly since he has never seen or even spoken to me.
17 Of particular note, Dr. Tellioglu concluded that the medical evidence (clinical data)
18 “does not offer convincing documentation of a psychiatric impairment.” If my
19 condition and symptoms do not document psychiatric impairment, it would seem
20 that nothing short of hospitalization or catatonia would suffice in Dr. Tellioglu’s
21 opinion. Apparently the fact that I have been in regular treatment with no less than
22 four (4) mental health providers, and have been prescribed multiple medications to
23 treat my psychiatric symptoms is not treatment of the “frequency” or “intensity”
24 that Dr. Tellioglu believes supports impairment.

25 Dr. Tellioglu also reported that because I had attended a few events honoring my
26 fallen daughter, that meant I had the ability to travel and engage in activities. This
27 is absolutely false. I have attended a handful of events honoring Tara because it
28 was expected of me, and because if I did not attend it would dishonor the memory
of my beloved daughter. However, my attendance at those events only triggered my
PTSD further and increased my symptoms (nightmares, sleep disruption, panic
attacks, isolation, etc.), and I was left at home in bed for days following each event.
It is my duty as a father to attend, so staying home simply wasn’t an option, even
though my therapists advised me that the events would likely trigger and worsen
my symptoms.

It is clear that Lincoln’s medical reviewers have not considered the impact of the
ongoing legal activities against the individual who took Tara’s life have had on me.
It has been over 3 years since I lost my daughter, but the murder trial is only set to
begin this year. It is expected to last for months. And, because the prosecutors are
seeking the death penalty, every proceeding is surrounded by protestors (those both
in favor and against the death penalty). They are aggressive and relentless; and they
do not understand that both my wife and I played no part in the government’s
decision to seek the death penalty. We had no say in it. And yet, we are expected to
attend the proceedings and “tune out” the angry chaos. We have recently been
informed that the district attorneys’ office is considering sequestering us in a hotel
for the duration of the trial to “protect” us from angry protestors. Additionally, the
district attorney has asked us to review in advance the materials they will be
presenting at trial so as to determine which will be too shocking for us to view in
open court without adverse affect. This review simply requires us to experience the
event all over again. And, the trial, while having a finite period of time, does not

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1 end with a conviction. We have been told that the endless appeals that are expected
2 can last over 25 years. There is no real end and no closure in the near future. All of
3 these issues only compound my mental health condition and many symptoms.

4 Added to these substantial problems are the financial ones caused specifically by
5 Lincoln's failure to approve my LTD claim. I have not been able to keep up with
6 the extremely costly COBRA insurance payments, and have lost my medical
7 insurance. I cannot get approved under the "Covered California" plans, and I have
8 been forced to stop seeing LMFTs Skinner and Edwards, even though I desperately
9 need to continue with their treatment. I am paying out of pocket for my other
10 providers.

11 I have had to withdraw money from my retirement fund (which leaves me
12 concerned for the future when I get older), in order to pay the mortgage. I am in
13 danger of losing our family home.

14 Having been informed by Lincoln on December 19, 2022, just 5 days before
15 Christmas that it would likely be upholding that denial on appeal was absolutely
16 devastating. I was not able to engage with my family over the holidays, and left in a
17 cocoon of isolation and nightmares. I am utterly unable to engage in any social
18 activities with my family, let alone other individuals/friends.

19 I simply cannot engage in any work, either full-time or part-time. I cannot finish any
20 tasks, cannot remember things, and cannot follow through on things. I would
21 desperately like to get back to work and reverse the sense that my world is
22 crumbling down around me, but I cannot do so.

23 43. Mr. O'Sullivan's attorney argued, contrary to Dr. Tellioglu's claims that Mr.
24 O'Sullivan provided Lincoln with adequate "observable data" of his psychiatric impairment
25 including mental status examinations ("MSEs") and provider observations. As for the review of
26 Mr. O'Sullivan's non-psychiatric conditions by Dr. Schwaid, Mr. O'Sullivan's attorney noted with
27 regard to the diagnosis of complex regional pain syndrome in Mr. O'Sullivan's left hand, Dr.
28 Schwaid's report and opinions did not take into consideration the fact that further surgery to
address Mr. O'Sullivan's left-hand injury and resulting pain syndrome has been recommended.
And, Mr. O'Sullivan is currently unable to obtain the recommended surgery due to the financial
strain caused by Lincoln's termination of disability benefits. As documented in his supplemental
declaration, Mr. O'Sullivan no longer has health insurance, and is in danger of losing his family
home.

44. By letter dated February 28, 2023, Lincoln upheld its decision to deny Mr.
O'Sullivan's LTD claim effective September 1, 2021. The letter advised that Dr. Tellioglu had
reviewed the additional materials Mr. O'Sullivan submitted, as well as Mr. O'Sullivan's video
statement, but they did not alter his opinion. However, Lincoln did not provide Mr. O'Sullivan

1 with Dr. Tellioglu’s addendum report or provide Mr. O’Sullivan with an opportunity to respond.
2 The letter stated: “Mr. O’Sullivan’s administrative right to review has been exhausted and no
3 further review will be conducted by Lincoln and his claim will remain closed.”

4 45. Mr. O’Sullivan suffered a tragedy unimaginable to many parents. He lost his
5 beautiful bright daughter to a horrific and tragic murder. Mr. O’Sullivan has been continuously
6 disabled under the terms of the Plan since March 22, 2021. Mr. O’Sullivan’s disability is
7 supported by significant and compelling medical evidence. Lincoln used biased peer reviewers to
8 wrongfully terminate Mr. O’Sullivan’s claim.

9 FIRST CLAIM FOR RELIEF
10 (29 U.S.C. § 1132(a)(1)(B))
11 Claim for Long-Term Disability Benefits against Defendants

12 46. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth
13 herein.

14 47. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a plan participant to
15 bring a civil action to recover benefits due to him under the terms of a plan, to enforce his rights
16 under the terms of a plan, and/or to clarify his rights to future benefits under the terms of a plan.

17 48. At all relevant times, Mr. O’Sullivan has been entitled to long-term disability
18 benefits under the Plan due to his disability. By denying Mr. O’Sullivan’s claim for LTD benefits
19 under the Plan, and by related acts and omissions, Lincoln has violated, and continues to violate,
20 the terms of the Plan and Mr. O’Sullivan’s rights thereunder.

21 REQUEST FOR RELIEF

22 WHEREFORE, Plaintiff prays that the Court grant the following relief against Lincoln:

- 23 1. Declare that Lincoln violated the terms of the Plan by denying Plaintiff’s claim for long-
24 term disability benefits from March 22, 2021 through the date of judgment;
25 2. Order Lincoln to pay long-term disability benefits to Plaintiff pursuant to the terms
26 of the Plan from March 22, 2021 through the present, together with prejudgment interest
27 on each and every such monthly payment through the date judgment is entered herein;
28

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- 1 3. Award Plaintiff reasonable attorneys' fees and costs incurred herein pursuant to 29 U.S.C.
- 2 § 1132(g); and
- 3 4. Provide such other and further relief as this Court deems equitable and just.

4 DATED: March 6, 2023

ROBERTS DISABILITY LAW, P.C.

5 By: /s/ Michelle L. Roberts

6 /s/ Kristin P. Kyle de Bautista

7 Michelle L. Roberts
8 Kristin P. Kyle de Bautista
9 Attorneys for Plaintiff,
10 DENIS O'SULLIVAN

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