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11 Attorneys for Plaintiff  
12 MARY CALDWELL,  
13 on behalf of herself and all others  
14 similarly situated

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

17 MARY CALDWELL, on behalf of  
18 herself and all others similarly situated,

19 Plaintiff,

20 v.

21 UNITEDHEALTHCARE INSURANCE )  
22 COMPANY; UNITED HEALTHCARE )  
23 SERVICES, INC., )

24 Defendants. )

) Case No.: 3:19-cv-2861-WHA  
) Assigned to Hon. William H. Alsup  
) Courtroom 12, 19<sup>th</sup> Floor

) **CLASS ACTION**

) **FIRST AMENDED COMPLAINT FOR**  
) **BENEFITS, DETERMINATION OF**  
) **RIGHTS AND BREACH OF**  
) **FIDUCIARY DUTY UNDER ERISA**

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1 Plaintiff, Mary Caldwell (“Plaintiff”), on behalf of herself and all others  
2 similarly situated, herein sets forth the allegations of her First Amended Complaint  
3 against Defendants UnitedHealthcare Insurance Company and United HealthCare  
4 Services, Inc.

## 5 INTRODUCTION

6 1. Defendants UnitedHealthcare Insurance Company and United HealthCare  
7 Services, Inc. ("hereinafter "United") is in the business of insuring and/or  
8 administering group health plans within the meaning of 29 Code of Federal  
9 Regulations § 2560.503-1(m) (both fully insured and self-insured), most of which are  
10 employer-sponsored and governed by the Employee Retirement Income Security Act  
11 of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.* Those ERISA-governed group health  
12 plans are hereinafter referred to as “United plans.”

13 2. Plaintiff brings this action to address United’s practice of improperly  
14 denying claims for surgical treatment of lipedema made by patients under United  
15 plans. As set forth below, United denies claims for the surgical treatment of lipedema  
16 on the basis they are "unproven." Lipedema is a rare condition that is chronic,  
17 progressive, painful, and immobilizing. It involves an abnormal buildup of adipose  
18 (fat) tissue, usually in the lower body but sometimes in the arms. Often misdiagnosed  
19 as obesity or lymphedema, lipedema primarily affects women. Surgical treatment of  
20 lipedema is not unproven It is the only available therapy for this condition and has  
21 been the subject of various studies that show its beneficial effect.

## 22 JURISDICTION AND VENUE

23 3. This action is brought under 29 U.S.C. §§ 1132(a), (e), (f) and (g) as it  
24 involves claims by Plaintiff for employee benefits under employee benefit plans  
25 regulated and governed by ERISA. Subject matter jurisdiction is predicated under  
26 these code sections as well as 28 U.S.C. § 1331 as this action involves a federal  
27 question.

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1 and should be considered as such. Unlike obesity, the adipocyte hypertrophy and  
2 swelling associated with lipedema are resistant to change with diet and exercise or  
3 bariatric surgery and caloric restriction.

4 10. There are four stages of lipedema: Stage 1 in which there is a normal skin  
5 surface with enlarged hypodermal adipose tissue; Stage 2 with indentations of the skin  
6 and underlying adipose tissue similar to a mattress containing larger mounds of  
7 adipose tissue that grow as non-encapsulated masses, lipomas and angioliipomas; Stage  
8 3 where large extrusions of tissue (skin and adipose tissue) cause gross deformations  
9 especially on the thighs and around the knees. Lymphedema, where lymph fluid  
10 develops dependently on the feet and hands increasing cranially due to dysfunctional  
11 lymphatics, can develop during any stage of lipedema, and is called lipolymphedema  
12 or Stage 4 lipedema.

13 11. As lipedema progresses, it causes pain, mobility problems, joint disorders,  
14 and other physical problems that prevent patients from engaging in the activities of  
15 daily living.

16 12. The only effective treatment for the pain and immobility caused by  
17 lipedema is a specialized form of liposuction. This is different from the techniques  
18 used for cosmetic liposuction. During this procedure, a solution is injected into the  
19 targeted areas. The solution contains epinephrine to help reduce bleeding, bruising, and  
20 swelling and lidocaine as a local anesthetic. The surgeon uses a gentle, vacuum-like  
21 instrument to remove excess fat. The removal of this tissue allows patients to gain  
22 mobility, reduce or eliminate pain, and lead a productive life.

23 **B. United's wrongful denial of lipedema surgery claims.**

24 13. United plans exclude from coverage those medical services that United  
25 considers to be "unproven."

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1 14. "Unproven" is defined in United plans as services:

2 [T]hat are determined not to be effective for treatment of the medical  
3 condition and/or not to have a beneficial effect on net health outcomes  
4 due to insufficient and inadequate clinical evidence from well-  
5 conducted randomized controlled trials or cohort studies in the  
6 prevailing published peer-reviewed medical literature.

7 15. United has followed a consistent practice of denying claims for  
8 specialized liposuction to treat advanced lipedema in arms, legs, and other body parts  
9 on the basis the treatment is "unproven" pursuant to the above-referenced standardized  
10 definition.

11 16. Contrary to United's position, specialized liposuction to treat the  
12 symptoms of lipedema is not unproven. It is the only available therapy for this  
13 condition and has been the subject of various studies that show its beneficial effect. It  
14 is routinely performed at Stanford University Medical Center and other leading  
15 medical facilities.

16 **C. United's denial of Mary Caldwell's claim.**

17 17. At all relevant times, Plaintiff Mary Caldwell was covered under a United  
18 plan through her husband's employer, Oracle America, Inc ("Oracle").

19 18. Oracle offered its employees a choice of different medical plans with  
20 United. Plaintiff and her husband chose the "United HealthCare Premium PPO Choice  
21 Plus Plan."

22 19. Like all United plans, this plan covers health services to treat illnesses and  
23 injuries. It is an ERISA group health plan because it is arranged by Oracle for the  
24 benefit of its employees and, *inter alia*, provides payment for the diagnosis, cure,  
25 mitigation, treatment, or prevention of disease, or amounts paid for the purpose of  
26 affecting any structure or function of the body.

27 20. Plaintiff's United plan provides that "Covered Health Services (including  
28 Prescription Drugs and Mental Health) for all UnitedHealthcare Medical Plans are  
outlined and described below." It then lists a large number of Covered Health Services

1 that include both outpatient and inpatient surgery.

2 **OUTPATIENT SURGERY, DIAGNOSTIC, AND THERAPEUTIC**  
3 **SERVICES**

4 Covered Health Services received on an Outpatient basis at a Hospital or  
5 Alternate Facility including:

6 Surgery & Related Services

7 Lab & Radiology/X-Ray

8 Mammography Testing

9 Sleep Studies

10 Other diagnostic tests and therapeutic treatments (including Cancer  
11 Chemotherapy and Intravenous Infusion Therapy).

12 ...

13 **SURGERY, INPATIENT AND OUTPATIENT**  
14 **IMPORTANT:** Prior Authorization is required.

15 Charges for Inpatient and Outpatient services and supplies furnished in  
16 connection with a surgical procedure (including sleep apnea and  
17 orthognathic surgeries) performed in the Hospital, Outpatient center or  
18 doctor's office. Covered Health Services include services due to a  
19 medical condition, which are rendered for illness, injury, or congenital  
20 defect.

21 21. The list of Covered Health Services also includes reconstructive  
22 procedures.

23 **RECONSTRUCTIVE PROCEDURES**

24 **IMPORTANT:** Prior Authorization is required.

25 Services are considered reconstructive procedures when a physical  
26 impairment exists and the primary purpose of the procedure is to  
27 improve or restore physiologic function for an organ or body part. By  
28 improving or restoring physiologic function, it is meant that the target  
organ or body part is made to work better. An example of a  
reconstructive procedure is surgery on the inside of the nose so that a  
person's breathing can be improved or restored.

29 22. The benefits under Plaintiff's United plan are self-insured by Oracle.  
30 United, through an administrative services agreement with Oracle, acts as the claims  
31 administrator and a fiduciary under Plaintiff's United plan with responsibility for  
32 adjudicating claims such as those alleged herein by Plaintiff. Plaintiff's United plan  
33 through Oracle provides that:

1 Medical, dental and vision benefits are paid from Oracle's general assets  
2 on a self-insurance basis, including benefits that are paid from a claims  
3 administrator's account in order to facilitate administration of the benefit  
4 program. UnitedHealthcare's function is to provide administrative and  
5 fiduciary services.

6 23. Pursuant to the foregoing, Plaintiff's United plan provides that:

7 UnitedHealthcare will pay Network Providers directly for Covered  
8 Health Services. If a Network Provider bills You for any Covered Health  
9 Service, contact UnitedHealthcare at the number on Your ID card.

10 24. As alleged herein, Plaintiff was diagnosed with Stage 3 lipedema. Her  
11 advanced lipedema has caused her pain, immobility, bruising, and other problems. As  
12 her lipedema condition has progressed, her symptoms have become worse and have  
13 interfered with her activities of daily living, including the ability to walk for any  
14 appreciable distance. Plaintiff's condition has become worse despite the fact that she  
15 has followed various conservative measures for treating her disease, including wearing  
16 medical-grade compression garments, daily use of a Flexi-Touch lymphatic pump, and  
17 receiving manual lymphatic drainage therapy.

18 25. Plaintiff sought prior authorization (a "pre-service" claim) from United to  
19 provide coverage for specialized liposuction to treat her advanced lipedema. Her  
20 physician, a plastic surgeon, submitted information to United setting forth Plaintiff's  
21 diagnosis and the proposed treatment.

22 26. On November 28, 2017, pursuant to its administrative agreement with  
23 Oracle to administer Plaintiff's United plan and adjudicate claims thereunder, United  
24 sent a letter to Plaintiff denying coverage for the proposed surgery stating that "these  
25 procedures are not proven to be helpful for people with your condition. Your plan does  
26 not cover for unproven services."

27 27. Plaintiff appealed this decision.

28 28. On June 1, 2018, pursuant to its administrative agreement with Oracle to  
administer Plaintiff's United plan and adjudicate claims thereunder, United denied the

1 appeal. United stated that:

2 [T]he clinical information and the peer-reviewed literature do not  
3 support the use of the service requested in your type of case. The service  
4 requested is an unproven service under the plan.

5 29. As alleged above, specialized liposuction is a surgical procedure  
6 performed to address the functional problems that result from lipedema, an illness  
7 covered under the terms of Plaintiff's plan. This surgery is a covered service under  
8 Plaintiff's United plan because the plan covers surgical procedures to treat illnesses and  
9 injuries, including lipedema. Specialized liposuction is also a covered reconstructive  
10 procedure under Plaintiff's United plan because the plan covers such procedures when  
11 a physical impairment exists and the primary purpose of the procedure is to improve or  
12 restore physiologic function for an organ or body part. Plaintiff requested specialized  
13 liposuction for the improvement or restoration of the physiologic function of her legs,  
14 not to make herself look better. Specialized liposuction is the only effective treatment  
15 for the pain, immobility, bruising, and other problems that result from advanced  
16 lipedema. In coming to its "unproven" position, United has ignored the foregoing facts  
17 and the clinical evidence and various studies demonstrating that the surgery is effective  
18 and necessary for the treatment of the disabling effects of lipedema.

### 19 **CLASS ACTION ALLEGATIONS**

20 30. Plaintiff brings this action on behalf of herself and all others similarly  
21 situated as a class action pursuant to Federal Rules of Civil Procedure Rule 23.  
22 Pursuant to Rule 23(b)(1) and (b)(2), Plaintiff seeks certification of the following class:

23 All persons covered under ERISA health plans, self-funded or fully  
24 insured, that are administered by United and whose claims for  
25 specialized liposuction for treatment of their lipedema were denied as  
unproven.

26 31. Plaintiff and the class members reserve the right under Federal Rule of  
27 Civil Procedure Rule 23(c)(1)(C) to amend or modify the class to include greater  
28 specificity, by further division into subclasses, or by limitation to particular issues.



1           32. This action has been brought and may be properly maintained as a class  
2 action under the provisions of Federal Rules of Civil Procedure Rule 23 because it  
3 meets the requirements of Rule 23(a) and Rule 23(b)1 and (b)(2).

4           **A. Numerosity.**

5           33. The potential members of the proposed class as defined are so numerous  
6 that joinder of all the members of the proposed class is impracticable. While the  
7 precise number of proposed class members has not been determined at this time,  
8 Plaintiff is informed and believes that there are a substantial number of individuals  
9 covered under United plans who have been similarly affected.

10           **B. Commonality.**

11           34. Common questions of law and fact exist as to all members of the proposed  
12 class.

13           **C. Typicality.**

14           35. The claims of the named Plaintiff are typical of the claims of the proposed  
15 class. Plaintiff and all members of the class are similarly affected by United's wrongful  
16 conduct.

17           **D. Adequacy of representation.**

18           36. Plaintiff will fairly and adequately represent and protect the interests of  
19 the members of the proposed class. Counsel who represent Plaintiff are competent and  
20 experienced in litigating large and complex class actions, including class actions  
21 against health plans such as United.

22           **E. Superiority of class action.**

23           37. A class action is superior to all other available means for the fair and  
24 efficient adjudication of this controversy. Individual joinder of all members of the  
25 proposed class is not practicable, and common questions of law and fact exist as to all  
26 class members.

27           38. Class action treatment will allow those similarly situated persons to  
28 litigate their claims in the manner that is most efficient and economical for the parties

1 and the judicial system. Plaintiff is unaware of any difficulties that are likely to be  
2 encountered in the management of this action that would preclude its maintenance as a  
3 class action.

4 **F. Rule 23(b) requirements.**

5 39. Inconsistent or varying adjudications with respect to individual members  
6 of the class would establish incompatible standards of conduct for United.

7 40. Adjudications with respect to individual class members would be  
8 dispositive of the interests of the other members not parties to the individual  
9 adjudications or would substantially impair or impede their ability to protect their  
10 interests.

11 41. United has acted or refused to act on grounds generally applicable to the  
12 class, thereby making appropriate final injunctive relief or corresponding declaratory  
13 relief with respect to the class as a whole.

14 **FIRST CLAIM FOR RELIEF**  
15 **DENIAL OF PLAN BENEFITS AND FOR CLARIFICATION OF RIGHTS**  
16 **UNDER AN ERISA PLAN [29 U.S.C. § 1132(a)(1)(B)]**

17 42. Plaintiff and the class members repeat and re-allege each and every  
18 allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

19 43. 29 U.S.C. § 1132(a)(1)(B) entitles Plaintiff to recover benefits due and to  
20 enforce and clarify her rights to the benefits at issue.

21 44. As alleged herein, Plaintiff's United plan covers surgery to treat illness  
22 and injury. It also covers surgery to address functional problems resulting from illness  
23 and injury.

24 45. As set forth above, United has followed a practice of denying claims for  
25 specialized liposuction for the treatment of lipedema on the basis the treatment is  
26 unproven and excluded from coverage.

27 46. Pursuant to its practice, United denied Plaintiff's request for liposuction  
28 surgery to treat the symptoms of her lipedema on the basis the treatment is unproven.  
Contrary to United's position, specialized liposuction to treat the symptoms of

1 lipedema is not unproven. It is the only available therapy for this condition and has  
2 been the subject of various studies that show its beneficial effect. It is routinely  
3 performed at Stanford University Medical Center and other leading medical facilities.

4 47. Plaintiff has exhausted her administrative remedies, as alleged above.

5 48. Based on the foregoing, Plaintiff and the class members seek the payment  
6 of medical expenses, interest thereon, a clarification of rights, and attorney fees.

7 **SECOND CLAIM FOR RELIEF**  
8 **BREACH OF FIDUCIARY DUTY AND EQUITABLE RELIEF UNDER AN**  
9 **ERISA PLAN [29 U.S.C. § 1132(a)(3)]**

10 49. Plaintiff and the class members repeat and re-allege each and every  
11 allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

12 50. As alleged herein, United has acted as an ERISA fiduciary with respect to  
13 the administration and claims decisions under United plans and, in particular, has acted  
14 as an ERISA fiduciary in denying claims for liposuction to treat lipedema, as alleged  
15 herein.

16 51. United improperly denied Plaintiff's and the class members' claims for  
17 liposuction treatment of lipedema in breach of its fiduciary duties, as alleged herein.

18 52. Pursuant to 29 U.S.C. § 1132(a)(3), Plaintiff and the class members seek  
19 declaratory, equitable and remedial relief as follows:

20 a. An order declaring that United's denials of claims for liposuction  
21 treatment for advanced lipedema are wrong and improper;

22 b. An injunction requiring United to reevaluate and reprocess  
23 Plaintiff's and class members' claims without the erroneous denial basis under  
24 appropriate and valid medical criteria;

25 c. An injunction requiring United to provide notice of the reevaluation  
26 and reprocessing in the form and manner required by ERISA to all class members;

27 d. An accounting of any profits made by United from the monies  
28 representing the improperly denied claims and disgorgement of any profits;

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1 e. Such other equitable and remedial relief as the Court may deem  
2 appropriate; and

3 f. Attorneys' fees in an amount to be proven.

4 **REQUEST FOR RELIEF**

5 Wherefore, Plaintiff and the class members pray for judgment against United as  
6 follows:

- 7 1. Benefits denied in an amount to be proven at trial, including interest;  
8 2. A clarification of rights to future benefits under the plan for all class  
9 members;  
10 3. Injunctive and declaratory relief, as described above;  
11 4. An accounting of any profits made and retained through the improper  
12 denial of claims and disgorgement of any profits;  
13 5. Attorneys' fees; and  
14 6. Such other equitable and remedial relief as the Court may deem just and  
15 proper.

16 DATED: October 7, 2019

GIANELLI & MORRIS

17  
18 By: /s/ Adrian J. Barrio  
19 ROBERT S. GIANELLI  
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