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14 similarly situated

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

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

20 v.)

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

25 Case No.: 3:19-cv-02861-WHA
26 Assigned to Hon. William H. Alsup
27 COURTROOM 12, 19th Floor

28 **NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: November 30, 2023
Time: 8:00 a.m.
Place: Courtroom 12

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TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 30, 2023 at 8:00 a.m. in Courtroom 12 of the above-entitled Court, Plaintiff Mary Caldwell will move the Court under Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, and 29 U.S.C. section 1132(g)(1), for an order: (1) finding that the Class Notice has been adequate and reasonable, met the requirements of Rule 23, and has constituted the best notice practicable under the circumstances; (2) granting final approval of the proposed class action Settlement; and (3) directing entry of Final Judgment, dismissing the action (including all individual and class claims presented thereby) on the merits with prejudice.

This Motion is based on this Notice of Motion and Motion; the attached memorandum of points and authorities in support thereof; the Declaration of Reed Baessler of JND Legal Administration re: Settlement Administration and attached exhibits; the Declaration of Adrian J. Barrio and attached exhibits; the Court’s files and records in this matter; and upon such other matters as may be presented at the time of the hearing.

DATED: October 26, 2023

GIANELLI & MORRIS

By: /s/ *Adrian J. Barrio*

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ADRIAN J. BARRIO
Attorneys for Plaintiff
MARY CALDWELL,
on behalf of herself and all others similarly
situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On July 20, 2023, the Court preliminarily approved the Settlement Agreement (“the Settlement”) between Plaintiff Mary Caldwell (“Plaintiff”), on the one hand, and Defendants United Healthcare Services, Inc. and United Healthcare Insurance Company (collectively, “United”), on the other, finding it fair, adequate, reasonable, and within the realm of possible final approval. (Minute Order Granting Motion for Preliminary Approval of Class-Action Settlement, Dkt. 245.) Nothing has occurred since then to deviate from that finding.

Plaintiff respectfully requests that the Court finally approve the Settlement, which provides substantially all of the relief requested in the pleadings. Indeed, United has agreed that it will cover Lipedema Surgery for all class members, whether or not they meet United’s medical necessity criteria, with no cap on reimbursement amounts. Class members who seek reimbursement for out-of-pocket payments will only need to fill out a simple claim form and provide evidence of payment and medical records that indicate they had Lipedema Surgery. United will also cover future surgeries for class members who have not yet had Lipedema Surgery, even if they are no longer United members, so long as their surgeon verifies that the earlier pre-service request was for medically necessary Lipedema Surgery.

The parties reached this Settlement after extensive, arms-length negotiations, which followed more than four years of hard-fought litigation. Through these numerous battles, discovery and investigation, and consultation with experts, the parties were made aware of the strengths and weaknesses of the claims and defenses and well positioned to assess the fairness, adequacy, and reasonableness of the Settlement against the risks and uncertainties of continued litigation.

As required by the relevant Ninth Circuit authority and Rule 23(e) of the Federal Rules of Civil Procedure, the Settlement is fundamentally fair, adequate and reasonable. Further, the Class Notice has satisfied Rule 23(c)(2)(B) and (e)(B), and has provided the best notice practicable under the circumstances. Accordingly, the Court should issue a final order and judgment certifying the Class and granting final approval of the Settlement.

///

1 **II. SUMMARY OF THE LITIGATION**

2 For a history of the litigation, summary of the settlement negotiations, and a discussion of
3 the settlement terms, see Plaintiffs' Motion for Award of Attorney Fees and Litigation Costs ("Fee
4 Motion"). (Fee Motion, Dkt. 253, at Section II [History of the Litigation and Settlement].)

5 **III. THE SETTLEMENT SHOULD BE FINALLY APPROVED**

6 Rule 23(e)(1)(A) requires that the "claims, issues, or defenses of a certified class may be
7 settled, voluntarily dismissed, or compromised only with the court's approval." Approval under
8 Rule 23 involves a two-step process "in which the [c]ourt first determines whether a proposed class
9 action deserves preliminary approval and then, after notice is given to the class members, whether
10 final approval is warranted." *Nat'l Rural Telecommunications Cooperative v. DIRECTV, Inc.*, 221
11 F.R.D. 523, 525 (C.D. Cal. 2004) (citing MANUAL FOR COMPLEX LITIGATION, THIRD, §
12 30.14, at 236-37 (1995)). The Ninth Circuit has noted that, in considering whether to finally approve
13 a settlement, "there is a strong judicial policy that favors settlements, particularly where class action
14 litigation is concerned." *In re Syncor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008);
15 *Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982) ("[I]t must not
16 be overlooked that voluntary conciliation and settlement are the preferred means of dispute
17 resolution. This is especially true in complex class action litigation.") *cert denied*, 495 U.S. 1217
18 (1983).

19 Here, this Court preliminarily approved the Settlement on July 20, 2023. (Dkt. 245.) As
20 explained below, notice has been given to the Class Members in accordance with the Court's
21 directions. In addition, the Settlement is fundamentally fair, adequate and reasonable.

22 **A. The Class Notice was adequate and effective.**

23 **1. The Administrator has provided the best practicable notice of the**
24 **settlement to the Class Members in the manner directed by this Court.**

25 Rule 23(e) requires that "notice of the proposed dismissal and compromise [of a class
26 action] shall be given to all members of the class in such a manner as the court directs." Notice by
27 mail is sufficient to provide due process to known affected parties, so long as the notice is
28 "reasonably calculated ... to apprise interested parties of the pendency of the action and afford them

1 an opportunity to present their objections.” *Monterrubio v. Best Buy Stores, LP.*, 291 F.R.D. 443,
2 452 (E.D. Cal. 2013) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314
3 (1950)).

4 On July 27, 2023, the Court approved a revised class notice submitted by counsel pursuant
5 to the Court’s instructions, and ordered that notice to the Class Members be effected by August 10,
6 2023. (Dkt. Nos. 248 [order requesting further revisions to class notice]; 249 [revised class notice]
7 and 250 [order approving notice].)

8 Pursuant to the Court’s Orders, the Settlement Administrator provided Class Notice to the
9 28 identified Class Members by mail on August 10, 2023. (Declaration of Reed Baessler of JND
10 Legal Administration re Settlement Administration (“Baessler Decl.”), ¶ 9.) Prior to mailing, JND
11 performed address research using data from the National Change of Address (“NCOA”) database
12 and updated the mailing addresses accordingly. (*Id.*) Of the 28 Notices mailed, 28 were delivered, a
13 rate of 100%.¹ (*Id.*)

14 Thus, 100 percent of the Class Members (28 out of 28) received the Class Notice. That is
15 more than sufficient to satisfy Rule 23(c). *See, e.g., In re Integra Realty Res., Inc.*, 262 F.3d 1089,
16 1110-1118 (10th Cir. 2001) (Rule 23 and due process satisfied where 77% of class members
17 received notice of settlement.).

18 **2. The Class Notice adequately advises Class Members of the Settlement.**

19 Notice is satisfactory if it “generally describes the terms of the settlement in sufficient detail
20 to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill*
21 *Village, LLC v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004). In addition, Rule 23(h)(1)
22 requires that notice of Class Counsel’s request for attorneys’ fees be “directed to class members in a
23 reasonable manner.” The *Caldwell* Class Notice easily satisfies these requirements.

24 ///

25 ///

26
27 ¹ The Settlement Administrator also sent the Notice by email to 23 Class Members with an email
28 address. (Baessler Decl., ¶ 11.) Of the 23 Notices emailed, 23 were delivered, a rate of 100% (*Id.*)

1 The Class Notice clearly and concisely states in plain, easily understood language the nature
2 of the action, the defined Class, the class claims, issues and defenses, the terms of the Settlement,
3 including attorney fees paid to Class Counsel, that a Class Member may object to the Settlement,
4 that the Court will exclude anyone from the *Caldwell* Class who requests exclusion, the time and
5 manner for requesting exclusion or objecting to the Settlement, and the binding effect of a class
6 judgment on members under Rule 23(c)(3). (*See* Ex. B to Baessler Decl.) Thus, the Class Notice
7 adequately informed Class Members of the proposed Settlement.

8 **B. The Settlement is fundamentally fair, adequate and reasonable.**

9 The Ninth Circuit has interpreted Rule 23(e) to require the district court to determine
10 whether a proposed settlement is “fundamentally fair, adequate and reasonable.” *In re Mego*
11 *Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). To make this
12 determination, courts “may consider some or all of the following factors,” including: (1) the
13 strength of plaintiff’s case; (2) the risk, expense, complexity and likely duration of further litigation;
14 (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in
15 settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the
16 experience and view of counsel; (7) the presence of a governmental participant; and (8) the reaction
17 of the class members to the proposed settlement. *Id.* In addition, the settlement cannot be the
18 product of collusion among the negotiating parties. *Class Pls. v. City of Seattle*, 955 F.2d 1268,
19 1290 (9th Cir. 1992).

20 Not all factors will apply to every class action settlement, and certain factors may
21 predominate depending on the nature of the case. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370,
22 1376 (9th Cir.1993). “The degree of importance attached to each factor is determined by the nature
23 of the claim, the type of relief sought and the facts and circumstances of each case.” *Davis v. City &*
24 *Cnty. of San Francisco*, 890 F.2d 1438, 1444–45 (9th Cir. 1989).

25 **1. Strength of the class claims.**

26 A key factor in considering the reasonableness of a settlement “is the strength of the
27 plaintiffs’ case on the merits balanced against the amount offered in the settlement.” *Nat’l Rural*
28 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (internal quotation

1 marks and citation omitted). However, the court's role is not “to reach any ultimate conclusions on
2 the contested issues of fact and law which underlie the merits of the dispute, for it is the very
3 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
4 consensual settlements.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir.
5 1982).

6 The strength of the class claims in this case weighs decisively in favor of settlement
7 approval. This case was brought to address United’s practice of denying all requests for liposuction
8 to treat lipedema as “Unproven.” The Unproven definition applies when “[h]ealth services...are
9 determined not to be effective ... and/or not to have a beneficial effect on health outcomes” based
10 on the results of “well-conducted randomized controlled trials” and “well-conducted cohort
11 studies.” (Depo. Ex. 32 at 89; Depo. Ex. 36 at 92.)

12 In *Wise v. Maximus Federal Services*, 2020 WL 4673152 at *11 (N.D. Cal. Aug. 12, 2020),
13 the Honorable Lucy Koh was called upon to interpret this exact same language in a United plan.
14 Judge Koh first determined that United had the burden to show that the “unproven” exclusion
15 applied, “[b]ecause the question before the Court is the applicability of an exclusion of coverage[.]”
16 *Id.* at *10. Turning to the language of the definition itself, Judge Koh held that United’s burden
17 could not be met as a matter of law by relying on the purported absence of clinical evidence of
18 effectiveness:

19 The Court construes the “Unproven Service(s)” exclusion to apply only when the
20 outcome of qualifying studies affirmatively suggest that a treatment is ineffective
21 and does not have a beneficial impact on health outcomes. ... [*T*]his is a higher
22 threshold than mere absence of evidence; by its terms, the exclusion instead requires
the actual existence of evidence of ineffectiveness and lack of impact.

23 *Id.* at *11 (emphasis added).

24 On the basis of *Wise*, this Court held that the language of the “Unproven” definition in
25 United’s plans “places the burden of proof on United to show, by appropriate studies, that the
26 procedure is *not* effective[.]” (Dkt. 125, Order Denying United’s Motion for Summary Judgment, at
27 p. 6.)

28 ///

1 Had trial gone forward, United would have been hard pressed to carry the heavy burden
2 framed by this Court’s summary judgment ruling. In moving for summary judgment, United
3 admitted that “well-conducted randomized controlled trials” and “well-conducted cohort studies”
4 addressing liposuction’s effectiveness in treating lipedema *do not exist*—a fact that Plaintiff’s
5 experts will confirm at trial. (Dkt. 102 at p. 14) (“To this day, there are no studies that satisfy the
6 definition of “well-conducted randomized control trials” or “well-conducted cohort studies” as
7 those terms are expressly defined in the Oracle plan.”) Just like the defendant in *Wise*, therefore,
8 United would have been unable to put forth, through its experts or otherwise, any qualifying clinical
9 evidence affirmatively showing “ineffectiveness and lack of [beneficial] impact.” *Wise, supra*, 2020
10 WL 4673152 at *11.

11 The plain language of the contract controls regardless of the standard of review, and thus the
12 absence of qualifying clinical evidence would have prevented United from meeting its burden of
13 proof even if the abuse of discretion standard was found to apply. *Pacific Shores Hosp. v. United*
14 *Behavioral Health*, 764 F.3d 1030, 1042 (9th Cir. 2014) (stating that “a plan administrator abuses
15 its discretion if it ... construes provisions of the plan in a way that conflicts with the plain language
16 of the plan”); *Call v. Ameritech Management Pension Plan*, 475 F.3d 816, 822-823 (7th Cir. 2007)
17 (“unambiguous terms” of an ERISA plan “leave no room for the exercise of interpretive discretion
18 by the plan’s administrator”).

19 **2. Risk and expense of further litigation.**

20 Despite the strength of Plaintiff’s position, had this case not settled, the parties faced an
21 expensive, multi-week trial. Indeed, although the parties “had already incurred significant litigation
22 expenses, the cost of preparing for and handling the trial with a number of expert witnesses on both
23 sides would have been enormous.” *Lane v. Brown*, 166 F.Supp.3d 1180, 1189 (D. Or. 2016).
24 Moreover, “no matter who won at trial, an appeal was likely, adding further costs.” *Id.* Finally, even
25 if Plaintiff and the Class prevailed, “the precise nature and scope of relief ordered by the court may
26 not have been as comprehensive or detailed as contained in the Agreement and could have taken
27 potentially many more years to implement.” *Id.* The risk and expense of further litigation thus
28 weigh in favor of approval. *Id.*

1 **3. Risk of maintaining class action status through trial.**

2 The parties' settlement eliminates any risk of decertification and "immunizes the class
3 certification order from attack by [Anthem]." *Lane, supra*, 166 F.Supp.3d at 1189. This factor
4 weighs in favor of approval. *Id.*

5 **4. Amount and benefits of the Settlement.**

6 "[T]he critical component of any settlement is the amount of relief obtained by the
7 class." *Lane, supra*, 166 F.Supp.3d at 1189 (quoting *Bayat v. Bank of the West*, No. C-13-2376
8 EMC, 2015 WL 1744342, at *4 (N.D. Cal. April 15, 2015)). A settlement that provides for
9 "comprehensive and substantial" injunctive relief weighs strongly in favor of approval. *Lane, supra*,
10 166 F.3d at 1189 (approving injunctive relief settlement that, among other things, required the State
11 of Oregon to "create and implement a number of policies and practices to facilitate compliance with
12 the [Americans with Disabilities Act of 1990]"). *See also Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
13 1027 (9th Cir. 1998) (approving injunctive relief settlement that "obligate[d]" the defendant to
14 "make [its] minivans safe").

15 The operative First Amended Complaint (FAC) asserts class claims for declaratory and
16 injunctive relief on behalf of the class pursuant to 29 U.S.C. § 1132(a)(1)(B) for denial of plan
17 benefits under an ERISA plan and for clarification of rights and 29 U.S.C. § 1132(a)(3) for breach of
18 fiduciary duty and equitable relief under an ERISA plan. Ms. Caldwell sought an injunction
19 requiring United to reverse its coverage position, provide notice to members who have had requests
20 for Liposuction Surgery denied by United as "unproven," re-review the denied claims under the
21 proper standard, and make payment where appropriate. (Dkt. 43 at ¶ 53.)

22 The proposed Settlement provides even more relief than requested in the First Amended
23 Complaint. United has agreed to cover Lipedema Surgery for all class members, with no cap on
24 reimbursement amounts.

25 Class Members who paid out of pocket for Lipedema Surgery will get reimbursed by filling
26 out a simple claim form and providing evidence of payment and medical records that indicate they
27 had Lipedema Surgery. (Revised Settlement, ¶ 4(B); Dkt. 233-2 at 9.) For Class Members who have
28 not yet had Lipedema Surgery, so long as the Class Member's surgeon verifies that their earlier pre-

1 service request was for medically necessary Lipedema Surgery, United will cover their future
2 surgery. (Revised Settlement, ¶ 5(D)-(E); Dkt. 233-2 at 11-12.) United will provide coverage for
3 future surgeries for Class Members who are no longer United members, as long as they were covered
4 by United at the time of the original denial. (Revised Settlement, ¶ 4(B); Dkt. 233-2 at 9.)

5 Class Counsel has agreed to assist class members in submitting their reimbursement and
6 reprocessing requests. (Revised Settlement, ¶ 6. Dkt. 233-2 at 16.) United has also agreed to assist
7 class members who submit reimbursement and reprocessing requests when additional information is
8 needed to perfect a claim. United will advise class members in writing of what specific additional
9 information it needs, and offer a peer to peer telephone conference with a medical director within 60
10 days of receiving a claim submission or reprocessing request. (*Id.*)

11 If Class Members' reimbursement and/or reprocessing requests are denied for any reason, the
12 Revised Settlement does away with the need for new lawsuits, by providing a streamlined appeal
13 process to a special master. (Revised Settlement, ¶ 7, Dkt. 233-2 at 13.) If a Class Member receives
14 an unfavorable decision, Class Counsel and United's Counsel will meet and confer and attempt to
15 resolve the dispute. If they are unable to resolve it, Class Counsel and United's Counsel will jointly
16 and concisely present the matter to the special master for final resolution. (*Id.*)

17 The Revised Settlement has no cap on the amount that United will pay as part of any
18 reimbursements for Lipedema Surgery. The only reductions will be the cost-share (deductible or co-
19 insurance) the Class Members would have paid under their contract with United. (Revised
20 Settlement, ¶¶ 4(b) and 5(E), Dkt. 233-2 at 10 and 12.)

21 The Revised Settlement's Release provides that Class Members release claims only if they
22 receive full reimbursement or accept partial reimbursement, or receive authorization for future
23 Lipedema Surgery. In addition, the Release is narrow and applies only to the certified claims in this
24 lawsuit, in accordance with this Court's Standing Order on Class Action Settlements. (Revised
25 Settlement, Definition O and ¶ 10; Dkt. 233-2 at 7 and 14.)

26 Class-wide injunctive relief that achieves the fundamental aims of the lawsuit meets approval
27 requirements. *Hanlon*, 150 F.3d at 1027 (approving settlement that "obligate[d] Chrysler to make the
28 minivans safe").

1 In addition to the class benefits from the Settlement, this litigation has also resulted in major
2 coverage changes by United as to Lipedema Surgery. As a direct result of this litigation, United
3 eliminated its “Unproven” coverage position on Lipedema Surgery from its Omnibus medical policy
4 and no longer denies Lipedema Surgery as “unproven.” (Davis Decl. in Support of Fee Motion, Dkt.
5 253-1, at ¶ 32.) This will result in hundreds of covered surgeries over the next five years, that would
6 otherwise have been denied as unproven.

7 **5. Extent of discovery and stage of proceedings, including the absence of**
8 **collusion.**

9 The extent of discovery completed and the state of the proceedings at the time of settlement
10 is an indicator of whether the parties have a sufficient understanding of each other's cases to make an
11 informed judgment about their likelihood of prevailing. Typically, “[a] court is more likely to
12 approve a settlement if most of the discovery is completed because it suggests that the parties arrived
13 at a compromise based on a full understanding of the legal and factual issues surrounding the
14 case.” *Nat'l Rural Telecomm. Coop., supra*, 221 F.R.D. at 527 (internal quotation marks and citation
15 omitted). For that reason, “[a] settlement following sufficient discovery and genuine arms-length
16 negotiation is presumed fair.” *Id.* at 528.

17 The parties’ settlement occurred after four years of litigation, and four days before trial was
18 set to commence, and was well informed by the extensive discovery and investigation completed up
19 to that point. (Davis Decl. in Support of Fee Motion, Dkt. ¶ 253-1.) At the time of the Settlement,
20 United had produced about 14,965 pages of documents on class and merits issues. (*Id.* at ¶ 26.) For
21 her part, Plaintiff produced nearly 1,900 pages of information supportive of her position that
22 United’s policies and practices are amenable to class treatment and that Lipedema Surgery is safe
23 and effective. (*Id.*) Plaintiff served four sets of requests for production of documents. Plaintiff also
24 served interrogatories and requests for admissions, and responded to written discovery served by
25 United. (*Id.*)

26 In addition, Plaintiff deposed 12 United witnesses, traveling to Washington, D.C. and
27 Phoenix for several depositions. (*Id.* at ¶ 27.) These witnesses included: (1) two depositions of Dr.
28 Upasana Bhatnagar, a United senior medical director and team lead for the clinical writers of

1 United's medical policy team, who testified as United's 30(b)(6) witness on, among other things, the
2 conclusions and basis for conclusions that Lipedema Surgery was "Unproven," all research
3 conducted, and United's policies and procedures for handling Lipedema Surgery claims; (2) Dr.
4 Anne Cramer, a United Senior Medical Director who was in charge of the member appeals and was
5 the plastic surgeon subject matter expert on United's policy that Lipedema Surgery was unproven;
6 (3) Dr. Donald Stepita, a United Senior Medical Director who handled plastic surgery appeals
7 including both Plaintiff's appeals; (4) Caron Ory, a United medical management consultant who
8 researched and drafted United's medical policy on Lipedema Surgery; (5) Lisa Nelson, another
9 United policy writer who also conducted research on Lipedema Surgery for United; 6) Jayne
10 Capiello, United's Director of Prior Authorization, who testified as United's 30(b)(6) witness on
11 United's pre-authorization data and records, (7) Jason Schoonover, who testified as United's
12 30(b)(6) witness on post-service claims data; (8) Dr. William Utley, a United medical director who
13 testified as United's 30(b)(6) witness on United's handling of Plaintiff's 2019 request for Lipedema
14 Surgery; and (9) Dr. Ash Chabra, a United Medical Director who testified as United's 30(b)(6)
15 witness on the handling of Plaintiff's 2017 request for Lipedema Surgery. (*Id.*) United also took
16 depositions of Plaintiff and Angela Blaikie, Plaintiff's physical therapist. (*Id.*)

17 It was through this extensive discovery that Plaintiff was able to uncover United's practice as
18 evidence by the MTIS document, and develop the evidence needed to challenge United's coverage
19 position as not just wrong, but an abuse of its discretion. (Davis Decl., Dkt. 253-1, at ¶ 28.)

20 Like every other aspect of this case, discovery was hard fought and contested. (Davis Dec., ¶
21 29.) Several discovery disputes arose that required Court assistance. Plaintiff filed three discovery
22 letter briefs, which resulted in three discovery conferences and two discovery orders. (*Id.* See also,
23 Dkt. Nos. 51, 53, 56, 66, 70.)

24 Class Counsel supplemented formal discovery with their own investigation and research.
25 (Davis Dec., Dkt. 253-1, at ¶ 30.) Class Counsel engaged in extensive investigation and research
26 regarding the safety and effectiveness of Lipedema Surgery and retained and extensively worked
27 with renowned experts on lipedema, reconstructive surgery, and the body of medical literature
28 addressing it. (*Id.*) These included Drs. Dung Nguyen and Stanley Rockson from Stanford University

1 and Dr. Branko Kopjar, a biostatistician from the University of Washington. (*Id.*) The Parties
2 exchanged expert reports on December 21, 2021 and rebuttal reports on January 21, 2022. (*Id.*)

3 Accordingly, the settlement was reached after the parties achieved “a full understanding of
4 the legal and factual issues surrounding the case,” and represents the end-result of an adversarial
5 process where the interests of the *Caldwell* Class were vigorously and fully represented by Class
6 Counsel. *Nat’l Rural Telecomm. Coop., supra*, 221 F.R.D. at 527.

7 “Nor is there any dispute that counsel had considerable experience in litigating ...
8 class actions, and other complex litigation.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 967
9 (9th Cir. 2009). Plaintiff and the Class are represented by counsel who have extensive experience in
10 the litigation of insurance class actions and have successfully prosecuted other class actions over
11 policyholders’ rights to health benefits. (Davis Decl. in Support of Fee Motion, Dkt. 253-1, at ¶¶ 2-
12 4.) United is represented by the law firm of Hogan Lovells US LLP, a firm that has expertise in
13 health care matters and that regularly represents United and other health plans.

14 The Ninth Circuit has held that “[p]arties represented by competent counsel are better
15 positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in
16 litigation[.]” *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Thus, this factor weighs
17 in favor of approval.

18 **6. Experience and views of counsel.**

19 “The recommendations of plaintiffs’ counsel should be given a presumption of
20 reasonableness.” *In re TOYS “R” US-DELAWARE, INC.*, 295 F.R.D. 438, 455 (C.D. Cal. 2014).
21 “Parties represented by competent counsel are better positioned than courts to produce a settlement
22 that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises, supra*, 47
23 F.3d at 378.

24 As noted, Class Counsel has extensive experience prosecuting insurance class actions, and
25 has represented policyholders in a number of published insurance law decisions. (Davis Decl. in
26 Support of Fee Motion, Dkt. 253-1, at ¶¶ 2-4.) Class Counsel’s belief that the revised Settlement
27 “addresses all the Court’s concerns” and is fair, adequate and reasonable weighs in favor of approval.
28 (Davis Decl. Regarding Notice of Revised Settlement, Dkt. 233-1, at ¶¶ 2, 7.)

1 **7. The reaction of the Class has been overwhelmingly positive and strongly**
2 **supports approval.**

3 The reaction of the Class Members has been overwhelmingly positive, creating a strong
4 presumption that the Settlement is fair, adequate and reasonable. Of the 28 Class Members, there
5 have been no exclusions and only one objection by a class member, Marianne Klaczynski (“Ms.
6 Klaczynski”).² (Baessler Decl., ¶ 26.) The remaining “objectors”—Carmon Drummond; Thomas
7 Hagepian, M.D.; Borsi Volshetyn, M.D.; Stephanie Berland; and Lisa R. Anderson—are not class
8 members. (Baessler Decl., ¶ 27.) Accordingly, they lack standing to object. *In re Sunrise Sec. Litig.*,
9 131 F.R.D. 450, 459 (E.D. Pa. 1990) (only class members have standing to object to a proposed class
10 action settlement). To merit inclusion in the class, the person must have been covered under an
11 ERISA health plan, and have had their claim for Lipedema Surgery denied as unproven during the
12 class period (between January 1, 2015 and December 31, 2019) and, at the time of denial, must have
13 been a United member. (Settlement Agreement, Dkt. 233-2, at p. 4 [definition of “Class”].)

14 Ms. Klaczynski is being represented by an unlicensed attorney named “Karie Kozak”.
15 (Klaczynski Objection., ¶ 8) (“I grant permission for Karie Kozak to appear and speak on my behalf
16 at the Final Approval Hearing.”). According to State Bar records, Ms. Kozak has not been active
17 since 2018, was determined to be “not eligible to practice law” in California on May 18, 2022, and
18 resigned her license officially on November 4, 2022. (Barrio Decl., ¶ 2; Ex. 1.)

19 Ms. Kozak is also not a neutral, but the registered agent and director of Coverlipedema Inc.,
20 the corporation behind CoverLipedema.com. (Barrio Decl., ¶ 3; Ex. 2.) Coverlipedema.com is a for-
21 profit entity that purports to assist individuals in obtaining health insurance coverage for lipedema
22 and out-of-network surgeons. (Barrio Decl., ¶ 4; Ex. 3.)

23 Ms. Klaczynski asserts several objections, none of which actually involve the terms of the
24 Settlement, and which should be overruled by the Court.

25 First, Ms. Klaczynksin seeks a “cash settlement” for “[r]etired class members” who were
26 denied by [United] but who currently lack “access ... to [United] Medicare Advantage plans or who
27

28 ² The deadline for exclusions and objections was October 20, 2023. The Court set that deadline at the
July 20, 2023 hearing on Plaintiff’s Motion for Preliminary Approval.

1 now have Medicare for other conditions” and further lack “access to plastic surgeons who take
2 regular Medicare or other Medicare Advantage plans[.]” (Klaczynski Decl., ¶ 1.) As an initial matter,
3 the class is small, consisting of 28 members, and no evidence is presented that any such members are
4 “retired” or otherwise fit the description provided at paragraph one of Ms. Klaczinski’s declaration.
5 Even if there are such Class Members, the Settlement affords redress to such former United members
6 who have not yet had the surgery without regard to their current coverage status. The Settlement
7 Agreement provides that “[a] Class Member who is not covered under a United Plan as of the
8 Effective Date, and who has not paid out-of-pocket, also can submit a request for re-review of a
9 previously denied liposuction-for-lipedema service as described in paragraph 5(C).” (Settlement
10 Agreement, Dkt. 233-2, at p. 10 [former United members].) It further provides that,

11 “[a] Class Member will be eligible to receive coverage for previously denied
12 liposuction services as set forth in this Agreement upon re-review if (i) she
13 had coverage under her plan at the time of the original denial, (ii) her surgeon
14 verifies that the request is for medically necessary liposuction to treat
15 lipedema, and (iii) the liposuction for lipedema will be provided in an in-
network or out-of-network setting (e.g., a hospital or ancillary facility in the
United States) as covered under her plan.”

16 (*Id.* at p. 10-11 [Eligibility for Re-review].) Thus, the limitations of any class member’s *current*
17 coverage or coverage network is irrelevant. And United is obligated to pay for Lipedema Surgery
18 performed by *any* qualified surgeon who possesses sufficient “information to support the surgeon’s
19 verifications.” (*Id.*)

20 The concern expressed by Ms. Klaczinski that “class members who continue to be [United]
21 plan members have no assurance that [United] will in fact cover their surgery in accordance with the
22 lipedema coverage policy” is similarly misplaced here. (Klaczynski Obj., ¶ 2.) The Class Members
23 to this Settlement are not subject to United’s new medical policy either for their reimbursement or
24 re-review requests. The sole criteria and conditions applicable to their requests are those set forth in
25 the Settlement itself set forth above. Accordingly, the validity of United’s new policy, and United’s
26 claim denials pursuant to that new policy, are issues that are beyond the scope of the Settlement
27 Agreement and this final approval motion. For this reason, the Settlement Agreement explicitly
28 preserves existing and future claims concerning the validity of United’s new policy and practices

1 thereunder. (Settlement Agreement, Dkt. 233-2, at p. 13 [Future Requests Not Part of Settlement
2 And Not Released]).)

3 Ms. Klaczinski's concern that United "has excluded skin excisions from coverage" is also
4 outside the scope of this Settlement. (Klaczynski Obj., ¶ 3.) This case does not concern the validity
5 of United's policies and practices with respect to excess skin excisions, and thus such issue cannot be
6 part of the Settlement. (See First Amended Complaint (Dkt. 43); Class Cert. Order (Dkt. 114).)
7 Moreover, as noted, the release is narrow and covers only claims that were "certified for class
8 treatment by the Court[.]" (Settlement Agreement, Dkt. 233-2, at p. 6 [definition of "released
9 claims"]).) Thus, any claims predicated on United's wrongful denials of requests for excess skin
10 surgery are not released and remain viable.

11 The contention that the settlement is unfair because United purportedly requires that
12 "lipedema surgery be completed in 1 year" lacks merit. (Klaczynski Obj., ¶ 4.) The apparent source
13 of this contention is not the Settlement Agreement but United's new medical policy, which sets forth
14 various criteria a claimant must satisfy to obtain coverage for Lipedema Surgery. Among these
15 criteria is that the requested surgery must be part of a "[t]reatment plan [that] includes all of the
16 following:... Treatment for each body area (e.g., extremity) will take place within a 12-month period
17 following the initial surgical treatment of that body area, unless it is medically contraindicated to
18 proceed with complete surgical intervention during the allotted time[.]" (Ex. 4, Liposuction for
19 Lipedema [eff. October 1, 2023]; Barrio Decl., ¶ 5.) The medical criteria contained in the new policy
20 are not at issue here. United has agreed that it will cover Lipedema Surgery for all class members,
21 whether or not they meet the criteria contained in the new policy. The only criteria that need be met
22 are the criteria contained in the Settlement Agreement. (Settlement Agreement, Dkt. 233-2, at p. 8, ¶
23 4(B) [eligibility requirements for reimbursement]; pp. 10-11, 5(D) [eligibility requirements for re-
24 review].)

25 The contention that "[United]'s lipedema policy should be amended to remove prohibitions
26 on addental surgery on a body part to remove the remaining lipedema," (Kaczynski Obj. at ¶ 5), does
27 not provide a basis for denying final approval of the Settlement. As noted, the validity of United's
28 new policy and its practices thereunder are issues beyond the scope of the Settlement Agreement.

1 There is no restriction on addental Lipedema Surgery as to the Class Members under the Settlement.
2 (Settlement Agreement, Dkt. 233-2, at p. 8, ¶ 4(B) [eligibility requirements for reimbursement]; pp.
3 10-11, 5(D) [eligibility requirements for re-review].)

4 The suggestion that Ms. Kozak, an unlicensed attorney, through her company,
5 Coverlipedema.com, should assist class members with their requests for reimbursement and
6 reprocessing rather than Class Counsel is highly suspect, and imputes a profit motive to Class
7 Counsel when there is none. The Settlement provision obligating Class Counsel to assist class
8 members with their reprocessing and reimbursement requests, (Settlement Agreement, Dkt. 233-2, at
9 p. 12, ¶ 6), was included at the request of this Court, to ensure that class members are not left on
10 their own during the reprocessing phase, and to help ensure the highest participation rate possible
11 with reprocessing and reimbursement requests. Moreover, Class Counsel's fee request does not
12 include compensation for the projected hours that will be spent assisting class members with their
13 reprocessing and reimbursement requests, even though the Court has indicated that the requested fee
14 award will be paid in full only at the conclusion of the reimbursement and reprocessing phase.

15 Concerns expressed regarding coverage for future out-of-network surgeons is misplaced.
16 The Parties cannot require a non-network surgeon, who is not a party to the Settlement Agreement,
17 to agree he or she will not require cash up front. Moreover, the reimbursement methodology in the
18 Settlement is reasonable and fair. The Settlement requires that United authorize surgery by either a
19 non-network surgeon, and reimburse them under the terms of their current or former Plan, or as to
20 former members, their plan in effect at the time of their denial or the median contracted rate.
21 (Settlement Agreement, Dkt. 233-2, at pp. 11-12 [Reimbursement Methodology].)

22 Plaintiff also notes that the concerns raised in Ms. Klaczynski's declaration apply to class
23 members who have not yet had the surgery. Ms. Klaczynski, however, had two lipedema surgeries,
24 one in 2018 and the other in 2019, with no future surgeries planned. She paid a total of \$19,064.00
25 for the two surgeries. (Barrio Decl., ¶ 6.) No concerns are raised regarding her ability to obtain
26 reimbursement for those surgeries under the Settlement.

27 ///

28 ///

1 Finally, while the objectors who are not class members lack standing, it should be noted that
 2 they simply re-hash the same concerns raised in Ms. Klaczynski's declaration. Their objections are
 3 invalid for the same reasons expressed above with respect to Ms. Klaczynski's objections.³

4 **C. All CAFA requirements have been satisfied.**

5 The Class Action Fairness Act of 2005 ("CAFA") requires defendants who settle federal
 6 class actions to "serve [notice of the proposed settlement] upon the appropriate State official of each
 7 State in which a class member resides and the appropriate Federal official..." 28 U.S.C. § 1715(b).
 8 As explained in Senate Report 109-14 from the Senate Judiciary Committee, this section "is
 9 designed to ensure that a responsible state and/or federal official receives information about
 10 proposed class action settlements and is in a position to react if the settlement appears unfair to some
 11 or all class members or inconsistent with applicable regulatory policies." S. Rep. No. 109-14, at 32
 12 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3.

13 Pursuant to the requirements of CAFA, on August 4, 2023, United (through class
 14 administrator JND Legal Administration) notified the appropriate entities of the Settlement.
 15 (Baessler Decl. at ¶¶ 5-6.) JND Legal Administration has not received any objections to the notice of
 16 settlement from the entities served. (*Id.* at ¶ 6.)

17 CAFA further provides that "[a]n order giving final approval of a proposed settlement may
 18 not be issued earlier than 90 days after the later of the dates on which the appropriate Federal
 19 official and the appropriate State official are served with the notice required under subsection (b)."
 20 28 U.S.C. § 1715(d). Based on the August 4, 2023 service date, above, the 90-day CAFA notice
 21 period expires on November 2, 2023.

22 ///

23 ///

24
 25 ³ The Settlement Administrator also received one (1) late objection, postmarked October 21, 2023,
 26 from Class Member Velma Leggett, a true and correct copy of which is attached as **Exhibit E** to the
 27 Declaration of Reed Baessler. Ms. Leggett's objection is identical to the objection of Ms.
 28 Klaczynski and is set forth on pages 1-4 of the Exhibit. (Baessler Decl., ¶ 28.) Included with Ms.
 Leggett's late objection at pages 5-14 are declarations from the same non-class members included
 in Ms. Klaczynski's objection. (*Id.* at ¶ 29.)

1 **IV. CONCLUSION**

2 For all of the reasons set forth above, Plaintiffs respectfully request that this Court issue an
3 Order: (1) finding that the Class Notice was adequate and reasonable, met the requirements of Rule
4 23, and constituted the best notice practicable under the circumstances; (2) granting final approval of
5 the Settlement; and (3) directing entry of Final Judgment, dismissing the Action (including all
6 individual and class claims presented thereby) on the merits with prejudice.

7

8 DATED: October 26, 2023

GIANELLI & MORRIS

9

10

By: /s/ *Adrian J. Barrio*

11

ROBERT S. GIANELLI

12

JOSHUA S. DAVIS

13

ADRIAN J. BARRIO

14

Attorneys for Plaintiff

15

MARY CALDWELL

16

on behalf of herself and all others
similarly situated

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28

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

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

18 MARY CALDWELL, on behalf of herself and)
19 all others similarly situated,)
20 Plaintiff,)

21 v.)

22 UNITEDHEALTHCARE INSURANCE)
23 COMPANY; UNITED HEALTHCARE)
24 SERVICES, INC.,)
25 Defendants.)

26 Case No.: 3:19-cv-02861-WHA
27 Assigned to Hon. William H. Alsup
28 COURTROOM 12, 19th Floor

**DECLARATION OF ADRIAN J. BARRIO
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: November 30, 2023
Time: 8:00 a.m.
Place: Courtroom 12

1 I, Adrian J. Barrio, declare:

2 1. I am an attorney licensed in California and duly admitted to practice law before this
3 Court. I am an attorney in the law firm of Gianelli & Morris, attorneys of record for Plaintiff Mary
4 Caldwell (“Plaintiff”) and the class in this case. I submit this declaration in support of Plaintiff’s
5 motion for final approval. I have first-hand knowledge of all matters stated in this declaration. If
6 called upon to testify, I could competently do so.

7 2. On or about October 23, 2023, I accessed the State Bar of California website at
8 calbar.org and ran an attorney search for Karie Kozak (“Ms. Kozak”). According to State Bar
9 records, Ms. Kozak has not been active since 2018, was determined to be “not eligible to practice
10 law” in California on May 18, 2022, and resigned her license officially on November 4, 2022.
11 Attached hereto as **Exhibit 1** is a true and correct copy of the attorney search printout substantiating
12 the foregoing information.

13 3. On October 23, 2023, I accessed the Nevada Secretary of State’s online business
14 portal and ran a search for “coverlipedema.” The search yielded information for the corporation
15 Coverlipedema Inc. Ms. Kozak is the registered agent and director of Coverlipedema Inc. Attached
16 hereto as **Exhibit 2** is a true and correct copy of the Nevada Secretary of State business portal
17 printout reflecting the foregoing information.

18 4. On October 23, 2023, I accessed the web page for Coverlipedema.com. The web
19 page substantiates that Coverlipedema.com is a for-profit entity that purports to assist individuals in
20 obtaining health insurance coverage for lipedema and out-of-network surgeons. Attached hereto as
21 **Exhibit 3** is a true and correct copy of the Coverlipedema.com home page.

22 5. On October 26, 2023, I accessed Defendant United’s publicly available medical
23 policy, Liposuction for Lipedema (effective date October 1, 2023) through an online Google search.
24 Attached hereto as **Exhibit 4** is a true and correct copy of that policy.

25 ///

26 ///

27 ///

28 ///

1 6. Class Counsel’s records show that lead objector, Marianne Klaczynski, had two
2 lipedema surgeries, one in 2018 and the other in 2019, with no future surgeries planned. She paid a
3 total of \$19,064.00 for the two surgeries.

4 I declare under penalty of perjury under the laws of the United States of America and the
5 State of California that the foregoing is true and correct and that this declaration was executed this
6 26th day of October, 2023 at Redondo Beach, California.

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 /s/ *Adrian J. Barrio*
ADRIAN J. BARRIO

[EXHIBIT 01]



Karie Lynn Kozak #208911

License Status: Resigned

Address: 930 Tahoe Blvd., Suite 802, PMB 588, Incline Village, NV 89451

Phone: Not Available | Fax: Not Available

Email: Not Available | Website: Not Available

[More about This Attorney](#) ▼

All changes of license status due to nondisciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Resigned		
11/4/2022	Resigned		Resignation, no charges pending
5/18/2022	Not eligible to practice law in CA		Inactive - Vol. resignation tendered
6/7/2018	Inactive		
8/14/2017	Active		
2/1/2013	Inactive		
11/28/2000	Admitted to the State Bar of California		

Additional Information:

- [About the disciplinary system](#)

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[EXHIBIT 02]

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

COVERLIPEDEMA INC.

Entity Number:

E32095882023-7

Entity Type:

Domestic Corporation (78)

Entity Status:

Active

Formation Date:

05/20/2023

NV Business ID:

NV20232794340

Termination Date:

Perpetual

Annual Report Due Date:

5/31/2024

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

Karie Kozak

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

903 Tahoe Blvd 802-588, Incline Village, NV, 89451, USA

Mailing Address:

Individual with Authority to Act:

Fictitious Website or Domain Name:

OFFICER INFORMATION

VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
Director	Karie Kozak	930 Tahoe Blvd 802-588, Incline Village, NV, 89451, USA	05/20/2023	Active

Page 1 of 1, records 1 to 1 of 1

CURRENT SHARES

Class/Series	Type	Share Number	Value
	Authorized	100	10

Page 1 of 1, records 1 to 1 of 1

Number of No Par Value Shares:

0

Total Authorized Capital:

1,000

[Filing History](#)

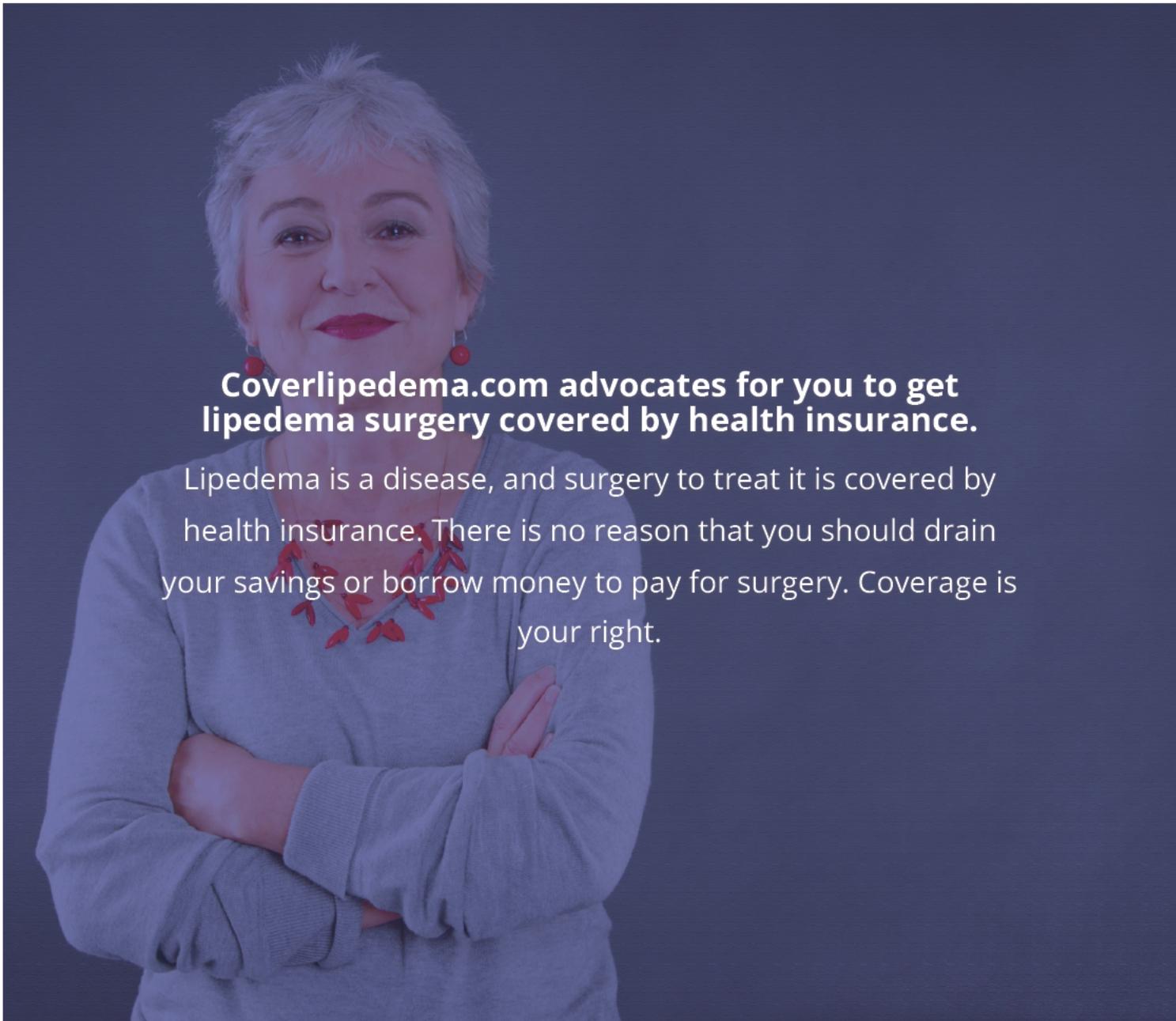
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[Mergers/Conversions](#)

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[Return to Results](#)

[EXHIBIT 03]



Coverlipedema.com advocates for you to get lipedema surgery covered by health insurance.

Lipedema is a disease, and surgery to treat it is covered by health insurance. There is no reason that you should drain your savings or borrow money to pay for surgery. Coverage is your right.

Our fees start at just \$299!

[Click Here to Join Now](#)

Most insurance companies cover lipedema surgery. Over the past five years, we have helped over 550 women get over 50 million dollars of lipedema surgery fully covered. We know how to overcome the roadblocks to getting your insurance company to pay fairly for your medically necessary treatment. You don't have to pay your surgeon upfront, hoping to get reimbursed or face surprise medical bills later. You should never have to borrow money or crowdfund to pay for your surgery. Fair coverage is not only your right, but is a reality now.

Our Process



Step 1

Join Coverlipedema.com to access the members-only content and learn how you can get your safe and effective surgeries covered by your insurance and the right surgeon.



Step 2

Follow the step-by-step process to create an effective coverage request package based on your insurance and surgeon that will get you covered directly or on appeal.



Step 3

Treat your lipedema by having your surgeries fairly covered by your insurance without having to pay tens of thousands of dollars out of pocket.





I thank my lucky stars that Coverlipedema.com got involved. They had the contacts and the knowledge to press for coverage for me. They called and emailed all the top dogs and legal counsel from the insurance company, my employer and the third party that my employer hires to handle their insurance issues. This has been a TOUGH fight and BCBS of Texas finally agreed to cover but they still made it very hard. There is no way I could have managed this on my own. The amount of money you will spend to have Coverlipedema.com advocate for you is the best money you will ever spend.

Sharon

Coverlipedema.com is committed to correcting the misinformation that keeps women from regaining their health. We have the knowledge and documents that you need to get your safe surgeries covered for the least amount of out-of-pocket cost when using a board-certified plastic surgeon.

We can help you avoid critical mistakes that people often make in the coverage process, such as:

Failing to get a network gap exception.

Not having the right type of functional evaluation.

Sending too many or the wrong supporting documents.

Paying for your surgery up front, hoping to get reimbursed later.

Letting your surgeon's staff handle the coverage and appeal process.

We've won over millions of dollars in coverage for patients insured by:

Aetna	Blue Cross Blue Shield of Massachusetts
UnitedHealthcare	Blue Cross Blue Shield of Alabama
Cigna	Blue Cross Blue Shield of Mississippi
Anthem	Blue Cross Blue Shield of Illinois
Blue Shield California	Blue Cross Blue Shield of Texas
Blue Cross Blue Shield of Arizona	Blue Cross Blue Shield of Michigan
Blue Cross Blue Shield of North Carolina	
Blue Cross Blue Shield of South Carolina	
Florida Blue	

Premiera Blue Cross Blue
Shield

HealthPartners

Medicare

CareFirst Blue Cross Blue
Shield

State Medicaid Programs

Horizon Blue Cross Blue
Shield

Federal Employees

Tricare

Excellus Blue Cross Blue
Shield

And many other individual
and employer plans!

Highmark Blue Cross Blue
Shield

Regence Blue Cross Blue
Shield

Humana

Health Net

Aetna

UnitedHealthcare

Cigna

Anthem

Blue Shield California

Blue Cross Blue Shield of Arizona

Blue Cross Blue Shield of North Carolina

Blue Cross Blue Shield of South Carolina

Florida Blue

Blue Cross Blue Shield of Massachusetts

Blue Cross Blue Shield of Alabama

Blue Cross Blue Shield of Mississippi

Blue Cross Blue Shield of Illinois

Blue Cross Blue Shield of Texas

Blue Cross Blue Shield of Michigan

Premera Blue Cross Blue Shield

CareFirst Blue Cross Blue Shield

Horizon Blue Cross Blue Shield

Excellus Blue Cross Blue Shield

Highmark Blue Cross Blue Shield

Regence Blue Cross Blue Shield

Humana

Health Net

HealthPartners

Medicare

State Medicaid Programs

Federal Employees

Tricare

And many other individual and employer plans!

If you do not see your insurance plan, contact us

Home - Coverlipedema.com
If you do not see your insurance plan, contact us.
We're also working with other plans not listed here and love the challenge of expanding coverage to more insurers.



"I just got all my surgeries pre-approved with a Single Case Agreement thanks to the amazing help from coverlipedema.com."

Ivette

[Read more of what our members say about us](#)

A background image showing medical professionals in blue scrubs, with one person holding a stethoscope. The image is overlaid with a semi-transparent blue gradient.

We advocate for you to get the insurance coverage that you deserve.

[Click to learn more](#)





We are proud to be a part of helping women regain their function, reduce their pain and live fulfilling lives with their families and friends.

[Contact](#) [Terms of Service](#) [My Account](#)



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[EXHIBIT 04]



UnitedHealthcare® Commercial and Individual Exchange
Medical Policy

Liposuction for Lipedema

Policy Number: 2023T0625E
Effective Date: October 1, 2023

[Instructions for Use](#)

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Applicable Codes	3
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Related Commercial/Individual Exchange Policies

- [Bariatric Surgery](#)
- [Cosmetic and Reconstructive Procedures](#)
- [Gender Dysphoria Treatment \(for Commercial Only\)](#)
- [Gender Dysphoria Treatment \(for Individual Exchange Only\)](#)
- [Panniculectomy and Body Contouring Procedures](#)

Community Plan Policy

- [Liposuction for Lipedema](#)

Application

UnitedHealthcare Commercial

This Medical Policy applies to all UnitedHealthcare Commercial benefit plans.

UnitedHealthcare Individual Exchange

This Medical Policy applies to Individual Exchange benefit plans in all states except for Colorado.

Coverage Rationale

Liposuction for Lipedema is considered reconstructive and medically necessary to treat [Functional Impairment](#) when all the following criteria are met:

- A diagnosis of Lipedema that meets the following criteria:
 - Absence of pitting edema from Lipedema; and
 - Bilateral and symmetrical manifestation with minimal involvement of the feet; and
 - Disproportionate adipocyte hypertrophy of the affected extremity; and
 - Photographs of the area to be treated that document disproportional fat distribution consistent with diagnosis; and
 - Failure of the limb adipose hypertrophy to respond to recommended bariatric surgery or other medically supervised weight loss modalities, if [Class II or III Obesity](#); and
 - Negative [Stemmer Sign](#); and
 - Pressure induced pain and tenderness on palpation
- Failure to respond to 6 or more months of [Conservative Treatment](#) (compression or manual therapy); and
- Treatment plan includes all the following:
 - Assessment by the referring primary care provider or a specialist in vascular conditions (different from the treating surgeon) confirms that Lipedema is an independent cause of the [Functional Impairment](#) (interference with activities of daily living) and the surgery is expected to restore or improve the [Functional Impairment](#); and

- Treatment for each body area (e.g., extremity) will take place within a 12-month period following the initial surgical treatment of that body area, unless it is medically contraindicated to proceed with complete surgical intervention during the allotted time; and
- Documentation that the request is not a re-treatment of a previously treated area; and
- The postoperative plan of care is to continue to wear compression garments as instructed and continue [Conservative Treatment](#)

Note: Quality evidence does not support the superiority of one liposuction technique/approach (such as water-assisted or high-volume liposuction) over another technique/approach for Lipedema.

Liposuction for Lipedema is not medically necessary when performed for cosmetic purposes (i.e., procedures or services that change or improve appearance without significantly improving Functional Impairment).

Documentation Requirements

Benefit coverage for health services is determined by the member specific benefit plan document and applicable laws that may require coverage for a specific service. The documentation requirements outlined below are used to assess whether the member meets the clinical criteria for coverage but do not guarantee coverage of the service requested.

CPT Code*	Required Clinical Information
Liposuction for Lipedema	
15877	Medical notes documenting the following, when applicable: <ul style="list-style-type: none"> ● Diagnosis ● Specific procedure requested and treatment plan, including post-operative plan of care ● History of the medical condition(s) requiring treatment ● Level of functional impairment ● Physical exam including evidence of lipedema ● High-quality color photographs: all photos must be labeled with the date taken and the applicable case number obtained at time of notification, or member's name and ID number on the photograph(s) ● Relevant medical history ● Treatments tried, failed, or contraindicated; include the dates and reason for discontinuation, including failure of the limb adipose hypertrophy to respond to recommended bariatric surgery or other medically supervised weight loss modalities ● Relevant surgical history, including dates ● Assessment of the cause of functional impairment by primary care provider or specialist in vascular conditions other than treating surgeon
15878	
15879	

*For code descriptions, refer to the [Applicable Codes](#) section.

Definitions

Class II or III Obesity: The National Heart, Lung and Blood Institute (NHLBI) (Jensen et al., 2013) classifies the ranges of BMI in adults as follows:

- < 18.5 - Underweight
- 18.5 to 24.9 kg/m² – Normal Weight
- 25-29.9 kg/m² – Overweight
- 30-34.9 kg/m² – Obesity Class I
- 35-39.9 kg/m² – Obesity Class II
- ≥ 40 kg/m² – Obesity Class III

The American Society of Metabolic and Bariatric Surgeons (ASMBS; Pratt et al., 2018), classifies severe obesity in adolescents as follows:

- Class II obesity – 120% of the 95th percentile height, or an absolute BMI of 35-39.9 kg/m², whichever is lower*

- Class III obesity – 140% of the 95th percentile height, or an absolute BMI of ≥ 40 kg/m², whichever is lower

*Also as defined by the American Heart Association (Kelly et al., 2013).

Conservative Treatment: Conservative treatment includes non-surgical interventions, which encompass adhering to a healthy lifestyle through diet and exercise, complete decongestive therapy (i.e., bandaging, compression garments, manual lymphatic drainage,) and emotional, psychological, and social support (Peled, 2016).

Functional or Physical or Physiological Impairment: A Functional or Physical or Physiological Impairment causes deviation from the normal function of a tissue or organ. This results in a significantly limited, impaired, or delayed capacity to move, coordinate actions, or perform physical activities and is exhibited by difficulties in one or more of the following areas: physical and motor tasks; independent movement; performing basic life functions.

Lipedema: An adipose tissue disorder affecting nearly 1 in 9 adult women. It is characterized as a disproportionate deposit of subcutaneous fat on the buttocks, hips and lower extremities and may affect the upper extremities (Buck, 2017). Symptoms may include physical functional impairment (e.g., difficulty ambulating or performing activities of daily living), pain and tenderness upon pressure, bilateral and symmetrical manifestation with minimal involvement of the feet, bruising, minimal pitting edema, negative stemmer sign, and failure to respond to extreme weight loss modalities (Wold, 1951). Additional symptoms may include hypothermia of the skin, telangiectasias, or swelling that worsens with orthostasis during summer months (Herbst, 2012).

Stemmer Sign: Stemmer's test is a physical examination finding used to diagnosis lymphedema. Upon physical examination if the examiner cannot pinch the skin of the dorsum of the foot or hand, then the test is considered a positive finding, which is associated with lymphedema (Goss, 2019).

Applicable Codes

The following list(s) of procedure and/or diagnosis codes is provided for reference purposes only and may not be all inclusive. Listing of a code in this policy does not imply that the service described by the code is a covered or non-covered health service. Benefit coverage for health services is determined by the member specific benefit plan document and applicable laws that may require coverage for a specific service. The inclusion of a code does not imply any right to reimbursement or guarantee claim payment. Other Policies and Guidelines may apply.

CPT Code	Description
15877	Suction assisted lipectomy; trunk
15878	Suction assisted lipectomy; upper extremity
15879	Suction assisted lipectomy; lower extremity

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Diagnosis Code	Description
E65	Localized adiposity
E88.2	Lipomatosis, not elsewhere classified

Description of Services

Lipedema is a chronic, progressive disorder and is characterized by fat tissue build up in the arms, legs, thighs and buttocks. The exact cause of Lipedema is largely unknown however it most commonly appears in women during puberty, pregnancy and menopause. It is often misdiagnosed as lymphedema or obesity, and there are currently no definitive diagnostic tests. Lipedema management aims to minimize symptoms, prevent progression, and improve function, and include conservative and surgical (e.g., liposuction) treatments. Conservative treatment includes promoting a healthy lifestyle through diet and exercise, complete decongestive therapy (i.e., manual lymphatic massage, bandaging, and skin care) as well as emotional, psychological, and social support. When conservative treatment fails, liposuction may be considered. Commonly used

liposuction methods for Lipedema are tumescent anesthesia (TA) liposuction, and water assisted liposuction (WAL). Although liposuction is noncurative and may require multiple sessions, it may improve functionality, pain, swelling, physical appearance, and quality of life. In addition, postoperatively, patients often need to continue conservative treatment and avoid weight gain to maintain the results (Peled, 2016; Peparah and MacDougall, 2019).

Clinical Evidence

In a 2022 retrospective, single-center, noncomparative study, Kruppa et al. evaluated patients with lipedema who underwent liposuction. Surgical treatment was performed under general anesthesia with at least 24 hours of post-operative observation. A tumescent solution consisting of saline and epinephrine, and power-assisted or water-jet assisted liposuction was performed. The surgical goal was fat removal equivalent to approximately 6% of the patient's body weight, and often required megaliposuction (defined as large-volume liposuction with a minimum of 4 liters of pure fat or 5 liters of total aspirate). After a minimum of 6 months since last treatment, patients completed a disease related questionnaire. The primary endpoint was the need for complex decongestive therapy based on a composite score, and secondary endpoints included the severity of disease-related complaints as measured on a visual analogue scale. 106 patients underwent 298 large volume liposuction procedures with a mean lipoaspirate of 6355 ml. The results showed after a median follow up of 20 months, the median complex decongestive therapy score reduction by 37.5 percent. This reduction was greater in patients with a BMI \leq 35, and in Stage I and II patients. There was also an overall improvement in lipedema associated symptoms. There was no correlation between aspiration volume and primary or secondary endpoints. The authors concluded that liposuction decreases the need for conservative treatment and reduces the intensity of lipedema-associated complaints in long-term follow-up of up to 20 months. This study is limited by a retrospective, single center design and lack of a control group. Furthermore, primary and secondary endpoint results relied on subjective patient reporting. Additionally, the sample size may have been too small to detect important but unusual adverse events.

A 2022 Hayes evolving evidence review entitled Liposuction for the Treatment of Lipedema concluded that the evidence from 3 very poor-quality studies suggests that liposuction leads to clinically significant improvements in quality of life, disability, and pain and reduced need for conservative treatment in women with lipedema at 2 to 3 years of follow-up. Nonserious complications such as bruising, and post operative bleeding were common.

Baumgartner et al. (2021) reported the results of a single center group of 60 patients to monitor the 12-year success of liposuction for treating lipedema from the patients' perspective. (The authors previously reported 4- and 8-year outcomes, and those results are summarized below (Baumgartner et al. 2016). Patients were mailed a questionnaire with questions regarding any relevant changes, and if conservative measures had continued. Prior to liposuction, 18 patients had Stage I lipedema, and 42 had Stage II. On a scale of 0-4, with 4 being "none", patients were asked to indicate to what extent they are currently experiencing the following: spontaneous pain, sensitivity to pressure, edema, bruising, restriction of movement, cosmetic impairment, reduction in quality of life. In addition to these individual impairments, an overall impairment score was calculated which was the mean value of all seven. The results showed significant improvement in scores across all indicators, as well as overall impairment score. of the 60 patients in this study, 37 underwent combined decongestive therapy (CDT) with manual lymph drainage (MLD) plus compression garments before surgery. These patients were separately evaluated as a sub-group in order to assess treatment success, and the results showed seven patients required fewer conservative treatments, either MLD or compression, and 10 no longer needed any conservative treatment. The authors concluded that these results demonstrate a permanent improvement in lipedema symptoms for patients with Stage I and II lipedema. This study is limited by a lack of Stage III lipedema patients, and that it relies on patient reported outcomes only.

Van de Pas et al. (2020) conducted a case series study to investigate whether lymphatic system function changed in patients diagnosed with lipedema and treated with tumescent liposuction. Lymphoscintigraphy was performed to quantify the lymph outflow. Mean clearance percentages of radioactive protein loaded after 1 minute with respect to the total injected dose and corrected for decay of the radiopharmaceutical in the subcutaneous lymphatics were used as functional quantitative parameters as well as the clearance percentages and inguinal uptake 2 hours post injection. The results of lymphatic function in patients with lipedema were compared with values obtained from normal healthy volunteers. In 117 patients with lipedema, clearance 2 hours post injection in the right and left foot was disturbed in 79.5 and 87.2% respectively, and normal in 20.5 and 12.8% respectively compared to normal volunteers. The inguinal uptake after 2 hours in the right and left groin was disturbed in 60.3 and 64.7% respectively and normal in 39.7 and 35.3% respectively compared to normal volunteers. A subset analysis was conducted with 50 of the 117 patients, which compared lymphoscintigraphies before and six months after tumescent liposuction. In this subset analysis, the mean clearance of both right and left foot (or of both feet) was slightly improved, 0.01 (p

= 0.37) after tumescent liposuction. Mean inguinal uptake of the groin was also slightly improved, 0.02 ($p = 0.02$). The authors concluded that tumescent liposuction does not diminish the lymphatic function and can be regarded as a safe treatment. They also stated that a larger study is needed to confirm these results. Limitations of this study include its design as a case series without a contemporaneous comparison to another treatment modality, all the procedures were performed by a single professional who had performed liposuction on patients with lipedema for 15 years, and that the subset analysis included only a small proportion (i.e., 43%) of the study population and a follow-up period of only 6 months.

Witte et al. (2020) conducted a case series study to assess the long-term results of water-jet-assisted liposuction (WAL) using a standard treatment protocol for the treatment of lipedema. Patients who participated in the study received questionnaires preoperatively and postoperatively assessing lipedema characteristics and symptom severity with visual analog scales (VASs). The primary outcome was pain. A total of 155 participants received treatment and of those, 63 had pre- and postoperative questionnaires available for analysis. The median age was 35 years, mean BMI was 28.4 ± 0.6 , and all patients had stages I or II lipedema diagnosed by two separate specialists. After a median follow-up of 21.5 months, the VAS score of all 10 tested items had significant decreases. Pain was reduced from 6.5 ± 2.1 to 1.4 ± 1.7 ($p < 0.001$). General impairment dropped from 7.8 ± 2.1 to 1.0 ± 1.4 ($p < 0.001$) and esthetic impairment from 8.7 ± 2.3 to 3.1 ± 2.5 ($p < 0.001$). All patients wore compression garments and/or received manual lymphatic drainage preoperatively; this was reduced to 44% of patients needing any conservative treatment postoperatively. No significant complications occurred in any of the patients. Postoperative swelling was present for a mean of 4.3 weeks; patients were absent from work for a mean of 2.7 weeks postoperatively. No recurrence of excess subcutaneous fat was observed in the patients in the follow-up period. The authors concluded that liposuction using their WAL technique is an efficient method of surgical treatment of early-stage lipedema and leads to a marked decrease in symptom severity and need for conservative treatment. Limitations of this study include its case series design, that only patients with early stages of lipedema (i.e., stages I and II) were included, and that 41% (63/155) of the study population had pre- and post-treatment assessments completed. The study was not designed to compare the benefits or risks of WAL compared to other approaches.

A 2020 ECRI clinical evidence assessment, *Liposuction for Treating Lipedema*, evaluated evidence from 5 pre- and post-treatment studies and states that the evidence suggests that liposuction may reduce pain and improve quality of life for up to 8 years in patients with lipedema. However, due to a high risk of bias, the evidence cannot be considered conclusive, and larger, multi-center, controlled studies with standardized inclusion criteria are needed to assess the safety and effectiveness of liposuction for treating lipedema. The review also assessed clinical guidelines and states that despite the lack of strong evidence, there are clinical guidelines that recommend liposuction for patients with advanced lipedema.

Wollina et al. (2019) conducted a single-center case series study to determine if micro-cannular liposuction with tumescent anesthesia (TA) is an effective treatment modality for patients with lipedema who are not responding to complex decongestive therapy (CDT). Outcomes included changes in the circumference of the treated area, pain (measured by a 10-point VAS), and mobility and bruising (both measure by a 3-point scale: 0—no improvement, 1—minor to medium improvement, 3—marked improvement or no impairment at all). A total of 111 patients with lipedema received 334 liposuction treatments. Seven patients were classified as having stage I lipedema, 50 had stage II and 48 had stage III. All were females between 20–81 years of age, with a median age of 44 ± 16.8 years. All patients were treated with CDT for at least 6 months without improvement or deterioration of pain sensations and/or leg volume. The median follow-up period was 2.0 ± 2.1 years. After treatment, the median reduction of limb circumference on thighs was 6 ± 1.6 cm. The median pain level before treatment was 7.8 ± 2.1 and 2.2 ± 1.3 at the end of the treatment ($p < 0.3$). An improvement of mobility was achieved in all patients i.e., marked improvement or complete loss of impairment reported by 86% of patients, minor to medium improvement reported by 14% of patients. Bruising after minor trauma improved somewhat in 20.9% and completely or almost completely in 29.1% ($p < 0.5$). In 16.4% of patients, further CDT was no longer necessary. Serious adverse events were observed in 1.2% of procedures, the infection rate was 0% and the bleeding rate was 0.3%. The authors concluded that liposuction is an effective treatment for painful lipedema and that the procedure should be performed in specialized centers. Limitations of this study include its case series design and short follow-up period. Additional prospective randomized trials are still needed to determine the safety and efficacy of liposuction for individuals diagnosed with lipedema.

The Canadian Agency for Drugs and Technologies in Health (CADTH) published a Rapid Response Report that appraised clinical effectiveness studies and guidelines on liposuction for the treatment of lipedema. The information was sourced from five uncontrolled before-and-after studies and one clinical guideline. The reviewers concluded that data from the studies showed that patients with lipedema who were treated with liposuction experienced a significant improvement in pain, sensitivity to pressure, edema, bruising, feeling of tension, and quality of life, and experienced significant reductions in extremity size,

restriction of movement, and the need for conservative therapy. The reviewers also reported that the benefits of liposuction remained up to 88 months, and that liposuction was generally well tolerated; most adverse events occurred in < 5% of patients. They also stated that a clinical guideline recommends that tumescent liposuction, performed by a skilled healthcare professional at a specialized facility, be considered the treatment of choice for patients with a suitable health profile and/or inadequate response to conservative and supportive measures however, the quality of the supporting evidence and the strength of the recommendations were not provided (Peprah & MacDougall, 2019).

In 2016, Baumgartner et al. presented the outcomes of liposuction for treating lipedema from the patients' perspective at 4- and 8-years post procedure. In this single-center study, 112 patients with lipedema were treated with liposuction and followed up after 4 years. Patients were asked to complete a questionnaire scoring on a 0-4 scale, 0 being "none" and 4 being "very strong". The questions were regarding spontaneous pain, sensitivity to pressure, edema, bruising, restriction of movement, cosmetic impairment and reduction in QoL. Scoring also included an overall score which was the mean value of the combined scores. At 8 years, 85 of the same patients were available for providing subjective assessment of surgery using the same questionnaire and scoring method. The results showed in general, the 4 years results were still in place at 8 years, with some worsening of bruising, restricted movement, cosmetic impairment, reduced QoL and overall impairment that was not clinically relevant. In addition, an unchanged significant reduction in the extent of the conservative treatment (CDT) still required or used was also observed. The authors believe this may be an expression of disease progression or increasing age of the patients who were all between age 50-69 at the time of surgery. The authors concluded that liposuction appears to be the most effective and long-lasting treatment for lipedema, even though only one-third of patients were completely symptom free. Conservative treatment continues to play a significant role. This study is limited by a lack of Stage III lipedema patients, and that it relies on patient reported outcomes only.

A clinical trial evaluating liposuction versus complex decongestive therapy (LIPLEG) is ongoing. Further information can be found at: <https://clinicaltrials.gov/NCT04272827>.

Clinical Practice Guidelines

American Society of Plastic Surgeons (ASPS)

In a 2003 practice advisory, the ASPS does not make recommendations for lipedema specifically, but makes the following recommendations for liposuction:

- No single liposuction technique or cannula is best suited for all patients in all circumstances.
 - Factors such as the patient's overall health, the patient's body mass index, the estimated volume of aspirate to be removed, the number of sites to be addressed, and any other concomitant procedures to be performed should be considered
- There is no scientific data available that support a specific volume maximum at which point liposuction is no longer safe, however the risk of complications is higher as the volume of aspirate and the number of anatomic sites treated increases
- Large volume liposuction (greater than 5,000 cc total aspirate) should be performed in an acute-care hospital or in a facility that is either accredited or licensed
- In certain circumstances, it may be in the best interest of the patient to perform large volume procedures as separate serial procedures and avoid combining with additional procedures
- Compression garments and elastic stockings are generally used for several weeks postoperatively

Dutch Society of Dermatology and Venereology

With little consistent information regarding the diagnostic or therapeutic parameters for lipedema, in 2017, the Dutch Society of Dermatology and Venereology published the results of a task force that convened to create evidence-based and expert opinion guidelines for treating lipedema using the International Classification of Functioning, Disability and Health of the World Health Organization (Halk et al., 2017). The following recommendations were made:

- Tumescent liposuction (TLA) is the treatment of choice for patients with a suitable health profile and/or inadequate response to conservative and supportive measures
- Prior to TLA, associated deteriorating components, such as edema, obesity, unhealthy lifestyle, lack of physical activity, lack of knowledge about the disease, and psychosocial distress, should be addressed
- Following TLA, women generally require ongoing conservative therapy, and weight normalization should remain a goal
- TLA requires the specialized skills of a healthcare provider and should only be performed at a specialized center.
- Multiple sessions are often necessary to remove the extensive amount of adipose tissue

Fat Disorders Resource Society

In 2021, a variety of lipedema experts convened to review the literature and, using the Delphi Method, developed Standards of Care for Lipedema in the United States (Herbst et al.). Regarding liposuction, the following standards of care were developed:

- Lipedema reduction surgery is currently the only available technique for removing abnormal lipedema tissue
- Indications for lipedema reduction surgery include a diagnosis of lipedema with demonstrated compliance and adherence to or failure of conservative therapies
- Lipedema reduction surgery should be performed by surgeons experienced in the care of people with lipedema, with expert knowledge of the anatomy and function of lymphatic collection systems
- The arterial and venous vascular status should be evaluated, as lipedema is associated with comorbid conditions that increase the risk of venous thromboembolism
- The types of suction lipectomy recommended for people with lipedema are based around tumescent liposuction
- Liposuction of lipedema tissue may require larger than traditional suction aspirate volumes and multiple surgeries with proper intervals in-between
- Lipedema reduction surgery may be less effective in advanced stages of lipedema and in patients with severe obesity
- Consider overnight observation after surgery for significant comorbidities or high-volume aspirate
- Compression garments should be worn regularly to prevent rebound edema
 - For early-stage lipedema they should be worn for 2-3 months
 - For advanced lipedema and/or lipolymphedema may need to continue compression garments for life

First International Consensus Conference on Lipedema

In 2020, Sandhofer et al. reported on the findings of the *First International Consensus Conference on Lipedema*. A group of international experts convened to review the current European guidelines and the literature and concluded that lymph-sparing liposuction for lipedema using tumescent local anesthesia is the only effective treatment option for patients who do not respond to conservative, non-surgical treatment. Several publications reported long term benefits of up to 8 years. Additionally, the following were reported:

- 2-6 treatment sessions may be required
- The liposuction technique should cause the least possible trauma to blood vessels, nerves, and lymphatics
- Bilateral areas should be treated during the same treatment session to minimize asymmetry
- Compression stockings should be worn for 2-4 weeks postoperatively
- Patients will require long-term follow-up

Wounds UK

Wounds UK 2017 Best Practice Guidelines on the management of lipedema make the following recommendations regarding liposuction:

- Patients should be advised and encouraged to undertake non-surgical treatment for at least 6-12 months as a first step
- Non-lipedema fat should have been reduced as much as possible before surgery
- Patients should not have medical conditions that increase the risk of complications from anesthesia or bleeding
- Pre-operative counselling is very important to ensure that the patient has realistic expectations of what can be achieved, understands the procedure and the importance of post-operative care (including compression therapy), and comprehends that there is no evidence that liposuction is curative
- Should be carried out by a surgeon who is appropriately qualified to treatment someone with lipedema and who works as part of a multidisciplinary team

National Institute for Health and Care Excellence (NICE)

A March 2022 NICE interventional procedures guidance document states that the evidence on the safety of liposuction for chronic lipedema is inadequate but raises concerns of major adverse events such as fluid imbalance, fat embolism, deep vein thrombosis, and toxicity from local anesthetic agents. Evidence on the efficacy is also inadequate, based mainly on retrospective studies with methodological limitations. Therefore, this procedure should only be used in the context of research.

U.S. Food and Drug Administration (FDA)

This section is to be used for informational purposes only. FDA approval alone is not a basis for coverage.

The FDA has approved several devices for use in liposuction. Refer to the following website for more information (use product codes MUU): <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfPMN/pmn.cfm>. (Accessed October 18, 2022).

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Policy History/Revision Information

Date	Summary of Changes
10/01/2023	<p>Application Individual Exchange Plans</p> <ul style="list-style-type: none"> Removed language indicating this Medical Policy does not apply to Individual Exchange benefit plans in the states of Massachusetts, Nevada, and New York <p>Supporting Information</p> <ul style="list-style-type: none"> Archived previous policy version 2023T0625D

Instructions for Use

This Medical Policy provides assistance in interpreting UnitedHealthcare standard benefit plans. When deciding coverage, the member specific benefit plan document must be referenced as the terms of the member specific benefit plan may differ from the standard plan. In the event of a conflict, the member specific benefit plan document governs. Before using this policy, please check the member specific benefit plan document and any applicable federal or state mandates. UnitedHealthcare reserves the right to modify its Policies and Guidelines as necessary. This Medical Policy is provided for informational purposes. It does not constitute medical advice.

This Medical Policy may also be applied to Medicare Advantage plans in certain instances. In the absence of a Medicare National Coverage Determination (NCD), Local Coverage Determination (LCD), or other Medicare coverage guidance, CMS allows a Medicare Advantage Organization (MAO) to create its own coverage determinations, using objective evidence-based rationale relying on authoritative evidence ([Medicare IOM Pub. No. 100-16, Ch. 4, §90.5](#)).

UnitedHealthcare may also use tools developed by third parties, such as the InterQual® criteria, to assist us in administering health benefits. UnitedHealthcare Medical Policies are intended to be used in connection with the independent professional medical judgment of a qualified health care provider and do not constitute the practice of medicine or medical advice.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

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

Plaintiff,

v.

UNITEDHEALTHCARE INSURANCE
COMPANY; UNITED HEALTHCARE
SERVICES, INC.,

Defendants.

Case No.: 3:19-cv-02861-WHA

**DECLARATION OF REED
BAESSLER REGARDING
SETTLEMENT ADMINISTRATION**

1 I, REED BAESSLER, declare and state as follows:

2 1. I am an Assistant Director of JND Legal Administration (“JND”). This Declaration is
3 based on my personal knowledge, as well as upon information provided to me by experienced JND
4 employees, and if called upon to do so, I could and would testify competently thereto.

5 2. JND is a legal administration services provider with its headquarters located in Seattle,
6 Washington. JND has extensive experience in all aspects of legal administration and has administered
7 settlements in hundreds of cases. As an Assistant Director of JND, among my responsibilities is to
8 monitor the implementation of our notice and claim administration programs. I have more than 11
9 years of experience with such programs.

10 3. JND is serving as the Settlement Administrator¹ in the above-captioned litigation
11 (“Settlement”) for the purposes of administering the notice plan pursuant to Preliminary Approval of
12 Class Settlement, dated July 20, 2023, and Order Approving Further Revised Class Notice, dated July
13 27, 2023 (collectively, “Orders”).

14 4. This Declaration is being filed to report on the implementation of the notice of pendency
15 and proposed Settlement outlined in the Settlement Agreement.

16 **CAFA NOTICE**

17 5. In compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, JND
18 compiled a CD-ROM containing the following documents:

- 19 a. Complaint, filed on May 23, 2019;
- 20 b. Amended Complaint, filed on October 7, 2019;
- 21 c. Motion for Preliminary Approval, filed on February 17, 2023;
- 22 d. Declaration of Joshua S. Davis in Support of Preliminary Approval, filed on
23 February 17, 2023;
- 24 e. Notice of Revised Settlement Agreement, filed on July 11, 2023;
- 25 f. Settlement Agreement, filed on July 11, 2023;
- 26 g. Revised Class Notice, filed on July 25, 2023;

27 _____
28 ¹ Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Settlement Agreement.

- 1 h. Preliminary Approval Order, filed on July 20, 2023;
- 2 i. Amended Preliminary Approval Order, filed on July 27, 2023;
- 3 j. List of Class Members by State; and
- 4 k. Proportionate Share of Class Members by State.

5 6. The CD-ROM was mailed on August 4, 2023, to the appropriate Federal and State officials
6 identified in the attachment with an accompanying cover letter, a copy of which is attached hereto as **Exhibit**

7 **A.** JND has not received any objections to the notice of settlement from the entities served.

8 **CLASS LIST DATA**

9 7. On July 28, 2023, JND received a data file from Plaintiff that they received from
10 Defendants which contained the names, mailing addresses, and—where available—email addresses
11 and phone numbers of 28 individuals identified as Class Members.

12 8. The Class Member data was promptly loaded into a database established for this
13 Settlement.

14 **NOTICE**

15 9. On August 10, 2023, JND mailed the Court-approved long-form notice (“Notice”) to 28
16 Class Members. Prior to mailing, JND performed address research using data from the National Change
17 of Address (“NCOA”) database and updated the mailing addresses accordingly.² A representative copy
18 of the Notice is attached hereto as **Exhibit B.**

19 10. Of the 28 Notices mailed, 28 were delivered, a rate of 100%.

20 11. On August 10, 2023, JND sent the Notice by email to 23 Class Members with an email
21 address.

22 12. Of the 23 Notices emailed, 23 were delivered, a rate of 100%

23 13. On September 15, 2023, JND mailed a notice update (“Update”) to 28 Class Members
24 informing them of the changed Final Approval Hearing date. A representative copy of the Update is attached
25 hereto as **Exhibit C.**

26 14. Of the 28 Updates mailed, 28 were delivered, a rate of 100%.

27 _____
28 ² The NCOA database is the official United States Postal Service (“USPS”) technology product which makes changes of
address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream.

1 15. On September 15, 2023, JND sent the Update by email to 23 Class Members with an email
2 address.

3 16. Of the 23 Updates emailed, 23 were delivered, a rate of 100%.

4 **WEBSITE**

5 17. On August 10, 2023, JND established a website for the Settlement,
6 www.UnitedLipedemaSettlement.com, which informs Class Members about the Settlement; hosts copies
7 of relevant case documents including copies of the Long Form Notice, First Amended Complaint,
8 Settlement Agreement, Orders, and Motion for Award of Attorney Fees; provides answers to
9 frequently asked questions; and lists contact information for JND by telephone, email address, and
10 mailing address.

11 18. As of October 26, 2023, the Settlement Website has tracked 258 unique visitors and
12 489 pageviews.

13 **EMAIL ADDRESS**

14 19. On August 10, 2023, JND established an email address for the Settlement,
15 info@UnitedLipedemaSettlement.com, for Class Members to email for information related to the
16 Settlement.

17 20. As of October 26, 2023, JND has received 1 email.

18 **TOLL-FREE TELEPHONE NUMBER**

19 21. On August 10, 2023, JND launched a toll-free telephone number, 1-866-848-0924, for
20 Class Members to call for information related to the Settlement. The telephone line is available 24
21 hours a day, 7 days a week.

22 22. As of October 26, 2023, JND has received 0 calls.

23 **EXCLUSIONS RECEIVED**

24 23. The Notice informed Class Members that to request exclusion from the Settlement,
25 they must submit their exclusion request to JND, and the request must be postmarked no later than
26 October 20, 2023.

27 24. As of October 26, 2023, JND has received 0 exclusion requests.
28

1 **OBJECTIONS**

2 25. The Notice informed Class Members that to object to the Settlement, they must submit
3 their written objection to JND postmarked no later than October 20, 2023.

4 26. As of October 26, 2023, JND has received 1 timely objection, from Class Member
5 Marianne Klaczynski, a true and correct copy of which is attached as **Exhibit D**. Ms. Klaczynski's
6 objection is set forth on pages 1-4 of the Exhibit.

7 27. Included with her objection are declarations from several persons in pages 5-12 who
8 identified as current or former United Healthcare members. None of these people, however, are Class
9 Members.

10 28. JND also received 1 late objection, postmarked October 21, 2023, from Class Member
11 Velma Leggett, a true and correct copy of which is attached as **Exhibit E**. Ms. Leggett's objection is
12 identical to the objection of Ms. Klaczynski and is set forth on pages 1-4 of the Exhibit.

13 29. Included with her late objection in pages 5-14 are declarations from the same persons
14 included in Ms. Klaczynski's objection. None of these people are Class Members.

15
16 I declare under the penalty of perjury pursuant to the laws of the United States of America that
17 the foregoing is true and correct.

18
19 Executed on October 26, 2023, at Seattle, Washington.

20
21 

22 REED BAESSLER

- EXHIBIT A -



August 4, 2023

The Appropriate Federal
and State Officials Identified
in Attachment A

RE: CAFA Notice of Proposed Class Action Settlement

Dear Sir or Madam:

This Notice is being provided to you in accordance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715 on behalf of Defendants UnitedHealthcare Insurance Company and United Healthcare Services, Inc. in the below-referenced class action (“the Action”). A Settlement Agreement was filed with the Court on July 11, 2023. The Court granted preliminary approval to the settlement on July 20, 2023, granted revised class notice on July 27, 2023, and has scheduled a Final Approval Hearing on November 16, 2023, at 11:00 a.m. Pacific Time.

Case Name:	<i>Caldwell et al. v. UnitedHealthcare Insurance Company et al.</i>
Case Number:	3:19-cv-02861-WHA
Jurisdiction:	United States District Court for the Northern District of California, San Francisco Division
Date Settlement filed with Court:	July 11, 2023

Copies of all materials filed in the above-named Action are electronically available on the Court’s Pacer website found at <https://pcl.uscourts.gov>. Additionally, in compliance with 28 U.S.C. § 1715(b), the enclosed CD-ROM contains the following documents filed in the Action:

01 - Complaint.pdf

Complaint for Benefits, Determination of Rights and Breach of Fiduciary Duty Under ERISA, filed on May 23, 2019

02 - Amended Complaint.pdf

First Amended Complaint for Benefits, Determination of Rights and Breach of Fiduciary Duty Under ERISA, filed on October 7, 2019

03 - Motion for Preliminary Approval.pdf

Notice of Renewed Motion and Renewed Motion for Preliminary Approval of Class-Action Settlement, filed on February 17, 2023

04 - Declaration of Joshua S. Davis in Support of Preliminary Approval.pdf

Declaration of Joshua S. Davis in Support of Renewed Motion for Preliminary Approval of Class-Action Settlement, filed on February 17, 2023

05 - Notice of Revised Settlement Agreement.pdf

Notice That Parties Have Executed a Revised Settlement Agreement That Addresses the Court’s Concerns at April 13 Hearing; Request to Schedule Further Preliminary Approval Hearing on Revised Agreement on July 24; and Request to Continue Trial Date at Least 30 Days, filed on July 11, 2023

06 - Settlement Agreement.pdf

Settlement Agreement, filed on July 11, 2023, and attaching:
Exhibit A - Long Form Notice
Exhibit B - Proposed Order Granting Motion for Preliminary Approval
Exhibit C - Proposed Final Order Approving Class Action Settlement
Exhibit D - Claim Form
Exhibit E - Re-Review Claim Form

07 - Revised Class Notice.pdf

Notice of Submission of Revised Class Notice in Accordance with Court's Instructions at Hearing on Motion for Preliminary Approval of Class-Action Settlement, filed on July 25, 2023

08 - Preliminary Approval Order.pdf

Minute Entry, filed on July 20, 2023

09 - Amended Preliminary Approval Order.pdf

Order Approving Further Revised Class Notice, filed on July 27, 2023

Pursuant to 28 U.S.C. § 1715(b)(7), the CD-ROM also contains the following additional documents containing the names of class members who reside in each state and a breakdown detailing the proportionate share of the number of class members who reside in each state:

10 - List of Class Members by State.pdf

11 - Proportionate Share of Class Members by State.pdf

There are no other settlements or agreements made between Counsel for the parties related to the class defined in the proposed settlement, and as of the date of this Notice, no Final Judgment or notice of dismissal has been entered in this case.

If you have any questions regarding the details of the case and settlement, please contact Defendants' Counsel's representative at:

Michael M. Maddigan
Hogan Lovells US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Email: michael.maddigan@hoganlovells.com
Tel: 310-785-4727

For questions regarding this Notice, please contact JND at:

JND Legal Administration
1100 2nd Ave, Suite 300
Seattle, WA 98101
Phone: 800-207-7160

Regards,

JND Legal Administration

Encl.

- EXHIBIT B -

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If you had a pre-service or post-service claim for liposuction to treat lipedema denied by United Healthcare as “Unproven”, you could receive benefits from a class action settlement.

A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

- Persons who paid out-of-pocket for liposuction to treat lipedema that were denied as “Unproven” between January 1, 2015 and December 31, 2019 can submit a claim for potential reimbursement under a settlement agreement with UnitedHealthcare that covers liposuction to treat lipedema. Such persons are eligible for reimbursement to the extent their out-of-pocket payments were not paid by other insurance, Medicare, or other reimbursement sources for which the Class Members owe no reimbursement obligation.
- Persons who were denied liposuction to treat lipedema by UnitedHealthcare during the same time period but have not yet undergone the surgery are also hereby notified that they can submit their requests for approval for the surgery under the terms of a settlement agreement.
- Court-appointed lawyers for the class will ask the Court for attorneys’ fees and expenses to be paid separately by UnitedHealthcare for investigating the facts, litigating the case, and negotiating the settlement.
- Your legal rights are affected whether you act or don’t act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	If you do nothing, you will remain a Class Member and you will be able to seek (i) reimbursement for out-of-pocket expenses incurred for liposuction to treat lipedema, and (ii) re-review of a denied request for coverage for liposuction for lipedema.
EXCLUDE YOURSELF	If you choose to exclude yourself, you will lose the ability to seek coverage for the prior denial of liposuction to treat lipedema under the terms of the settlement, but you can bring your own lawsuit.
OBJECT	Write to the Court about why you don’t like the settlement.

GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
APPEAR THROUGH AN ATTORNEY	If you desire, you may enter an appearance in this case through an attorney at your own expense.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Benefits under the settlement will be provided if the Court approves the settlement, if any appeals relating to the settlement are resolved, and after claim forms and supporting documentation are provided. Please be patient.

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BASIC INFORMATION

1. Why did I get this notice package?

You are or were covered under an ERISA-governed plan issued or administered by UnitedHealthcare, and previously had either a pre-service authorization request or post-service claim for liposuction to treat lipedema (“Lipedema Surgery”) denied as “unproven.”

The Court sent you this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all your options, before the Court decides whether to approve the settlement. This package explains the lawsuit, the settlement, your legal rights, what benefits may be available to you, who is eligible for them, and how to get them.

The Court in charge of this case is the United States District Court for the Northern District of California, and the case is known as *Mary Caldwell v. UnitedHealthcare Insurance Company, et al.*, Case No. 19-CV-02861-WHA.

2. What is this lawsuit about?

This lawsuit concerns whether United Healthcare improperly determined that liposuction to treat lipedema was “unproven” and excluded the procedure from coverage from January 1, 2015 through December 31, 2019.

3. Why is this a class action?

In a class action lawsuit, one or more people, called the “Class Representatives” (in this case, Mary Caldwell), sue on behalf of other people who allegedly have a similar claim. The people together are a “Class” or “Class Members.” Ms. Caldwell—and all the Class Members like her—are called the Plaintiffs. The companies they sued (in this case, United HealthCare Services, Inc. and UnitedHealthcare Insurance Company [collectively referred to as “UnitedHealthcare” or “United”]) are called the Defendants. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Honorable William Alsup is in charge of this class action.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost and risk of a trial, and Class Members may be entitled to reimbursement. The Class Representatives and the attorneys think the settlement is best for everyone whose claims for liposuction to treat lipedema have been denied as “unproven.”

WHO IS IN THE SETTLEMENT?

To see if you will get relief from the settlement, including potential monetary benefits, you first have to decide if you are a Class Member.

5. How do I know if I am part of the settlement?

The Court decided that everyone who fits the following description is a Class Member under this settlement:

All persons covered under ERISA health plans, self-funded or fully insured, that are administered by United and whose claims for specialized liposuction for treatment of their lipedema were denied as unproven between January 1, 2015 and December 31, 2019.

A damages subclass will be created for members denied solely on the grounds that liposuction is “unproven” for the treatment of lipedema and who paid for the surgery themselves.

6. I’m still not sure if I’m included

If you are still not sure whether you are included, you can ask for free help. You can call 1-866-848-0924 and ask the Settlement Administrator for further information to help you determine whether you are a Class Member.

THE SETTLEMENT BENEFITS—WHAT YOU GET

7. What does the settlement provide?

Class members whose claims for liposuction to treat lipedema were denied as “unproven” during the relevant time period and who paid out-of-pocket for the surgery may make a claim for reimbursement. Class members who have yet to undergo the surgery, may request that their denied requests for coverage be re-reviewed under the terms of the settlement.

8. How do I seek reimbursement for the liposuction that I paid for?

If your request or claim for liposuction to treat lipedema was denied as “unproven” during the relevant time period, under a plan issued or administered by UnitedHealthcare, and you paid out-of-pocket for the liposuction procedure, you can make a claim for reimbursement by submitting the claim form that will be mailed following final approval and by providing the information requested therein.

Class Members shall be reimbursed if they (i) had coverage under their plan at the time their claims for liposuction for treatment of their lipedema were denied as unproven, (ii) provide medical records stating that they had liposuction to treat lipedema, (iii) provide evidence of out-of-

pocket payment, and (iv) attest that the out-of-pocket payment has not been reimbursed from another source for which the Class Member owes no reimbursement obligation.

If you submit a claim for reimbursement that meets these requirements, then United will reimburse you for unreimbursed out-of-pocket costs for liposuction for lipedema, subject to a reduction only for the cost-share you would have paid under your contract with United.

If you want to participate in the settlement, you do not have to do anything now. If the settlement gets final approval, you will be sent a claim form after the final approval, which you will then have to fill out and **submit no later than April 12, 2024**.

9. I didn't pay for surgery but can I still get the denial of my request re-reviewed?

If your request or claim for liposuction to treat lipedema was denied as unproven but you did not have the procedure or pay for the surgery, then you can submit a request for re-review of your request by submitting the re-review form that will be mailed following final approval and by providing the information requested therein.

A Class Member will be eligible to receive coverage for previously denied liposuction services upon re-review if (i) she had coverage under her plan at the time of the original denial, (ii) her surgeon verifies that the request is for medically necessary liposuction to treat lipedema, and (iii) the liposuction for lipedema will be provided in an in-network or out-of-network setting (*e.g.*, a hospital or ancillary facility in the United States) as covered under her plan.

If you are currently a United member, reimbursement on a request for re-review will be made in accordance with your existing United plan. If you are not a current United member, reimbursement will be made in accordance with your United plan in effect at the time United denied your pre-service request for liposuction to treat lipedema.

If you want to participate in the settlement, you do not have to do anything now. If the settlement gets final approval, you will be sent a claim form after the final approval, which you will then have to fill out and **submit no later than April 12, 2024**.

10. Class Counsel and United Healthcare can assist you with your reimbursement and re-review requests.

If you contact Class Counsel within 120 days of the final approval order, Class Counsel will assist you with your reimbursement and reprocessing requests.

To the extent additional information is needed to approve the reimbursement and re-review requests, United Healthcare will advise Class Members in writing of what specific additional information is needed and offer a peer-to-peer telephone conference with a medical director within 60 days of receiving a reimbursement or re-review request.

11. Can I Appeal if my Request for Reimbursement or Re-Review is Denied?

The Settlement includes a streamlined appeal process.

You may appeal United’s reimbursement and re-review decisions to a Special Master agreed to by the parties, Ed Oster, Esq. of Judicate West. If a Class Member appeals, Class Counsel and United’s Counsel will meet and confer regarding the decision and attempt to resolve it. If the issue remains unresolved, Class Counsel and United’s Counsel will jointly and concisely present the matter to Mr. Oster, for a final resolution. Neither the Class Member nor the parties may appeal or contest the Special Master’s resolution.

12. What am I giving up to stay in the Class?

Unless you exclude yourself, if (1) you submit a reimbursement request and (a) receive the full reimbursement amount provided for under this Agreement, or (b) accept a partial reimbursement amount subject to the appeal rights in this Agreement, or (2) submit a re-review request and are determined to be eligible for Lipedema Surgery under this Settlement Agreement, you will be releasing UnitedHealthcare from the following: Claims for relief alleged in the Complaint and the First Amended Complaint for Denial of Plan Benefits, Declaratory Relief, Breach of Fiduciary Duty, and Equitable Relief, under 29 U.S.C. section 1132(a)(1)(B) and 29 U.S.C. section 1132(a)(3), whether representative, class, or individual in nature, that were asserted against any of the United and its Related Parties, and certified for class treatment by the Court, by reason of or arising out of: United’s denial of any request (whether pre-service or post-service) for Lipedema Surgery on the grounds that the procedure is “unproven,” under ERISA-governed plans, either fully insured or self-insured.

It also means that all of the Court’s orders will apply to you and legally bind you. Staying in the Class does not prevent you from suing on your own for any denial of requests for liposuction to treat lipedema made in the future.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don’t want to be included in this settlement but you want to keep the right to sue or continue to sue UnitedHealthcare on your own about the legal issues in this case, then you must take steps to get out of this case. This is called excluding yourself (“opting out”) from the settlement Class.

13. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail clearly stating that you want to be excluded from *Mary Caldwell v. UnitedHealthcare Insurance Company, et al.* Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request, **postmarked no later than October 20, 2023**, to:

United Lipedema Settlement
c/o JND Legal Administration
PO Box 91232
Seattle, WA 98111

If you ask to be excluded, you cannot get any benefits under the settlement, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

14. If I do not exclude myself, can I sue UnitedHealthcare for the same thing later?

Unless you exclude yourself, if (1) you submit a reimbursement request and (a) receive the full reimbursement amount provided for under this Agreement, or (b) accept a partial reimbursement amount subject to the appeal rights in this Agreement, or (2) submit a re-review request and are determined to be eligible for Lipedema Surgery under this Settlement Agreement, you give up any right to sue UnitedHealthcare for a previous denial of a request for authorization or claim for reimbursement for liposuction to treat lipedema. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is October 20, 2023. This lawsuit, however, does not resolve any disputes you may have with UnitedHealthcare over any future denial of coverage for liposuction to treat lipedema.

15. If I exclude myself, can I get benefits from this settlement?

No. If you exclude yourself, you will not be able to seek coverage through this settlement for expenses incurred for liposuction to treat lipedema. But, you may sue, continue to sue, or be part of a different lawsuit against UnitedHealthcare.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

Yes. The court appointed the following attorneys as Class Counsel: Robert S. Gianelli and Joshua S. Davis of Gianelli & Morris. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers get paid?

Class Counsel will apply to the Court for an award of attorneys' fees and costs. After reviewing that application, the Court will determine the amount of any appropriate award. The fees would pay Class Counsel for their fees and expenses in investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than the amounts the lawyers request. UnitedHealthcare will pay the fees and expenses that the Court awards. These amounts will not reduce the relief available to Class Members. UnitedHealthcare will also separately pay the costs to administer the settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

18. How do I tell the Court I don't like the settlement?

If you are a Class Member, you ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement.

Any objection to the proposed settlement must be in writing and must clearly identify your name, address, telephone number, and signature. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Mary Caldwell v. United Healthcare Insurance Company.*, Case No. 3:19-cv-02861-WHA), (b) be **mailed, no later than October 20, 2023** to:

United Lipedema Settlement
c/o JND Legal Administration
PO Box 91232
Seattle, WA 98111

If your objection does not comply with the above requirements, your objection may be deemed waived and you may be barred from raising your objection in this lawsuit or any other proceeding.

19. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you object but do not exclude yourself, and your objection is overruled in whole or in part, then you will nevertheless be bound by the settlement.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

20. When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing at 11:00 a.m. on November 16, 2023 in Courtroom 12—19th Floor of the United States District Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people

who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the settlement. The Court will also decide how much to award to Class Counsel. We do not know how long these decisions will take.

21. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have. But you are welcome to come, at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter stating that it is your "Notice of Intention to Appear in *Mary Caldwell v. UnitedHealthcare Insurance Company, et al.*" Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be **postmarked no later than November 9, 2023** and be sent to the Settlement Administrator at the address stated above in response to question 18. You cannot speak at the hearing if you have excluded yourself from the Class.

GETTING MORE INFORMATION

23. Are there more details about the settlement?

This Notice summarizes the proposed settlement. For the precise terms of the settlement, please see the settlement agreement available at www.UnitedLipedemaSettlement.com, by contacting Class Counsel at Gianelli & Morris, 550 S. Hope Street, Suite 1645, Los Angeles, California, Tel. 213-489-1600, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://pacer.uscourts.gov> or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, , located at 450 Golden Gate Avenue, San Francisco, CA 94102 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

IMPORTANT DATES

24. What are the important dates and deadlines relating to this settlement?

Deadline	Event
August 17, 2023	Class Counsel will file a motion for approval of attorneys' fees and costs and request for a service award for the Class Representative.
October 20, 2023	Last day to submit a request for exclusion from the proposed Settlement.
October 20, 2023	Last day to serve Class Counsel and UnitedHealthcare with objections to the proposed settlement.
November 9, 2023	Last day to file Notice of Intent to Appear.
November 16, 2023 at 11:00 a.m.	Final Approval Hearing
December 14, 2023	Claim forms delivered to Class Members
April 12, 2024	Last day to submit claim form

Dated: August 10, 2023

Honorable William Alsup
United States District Court Judge

- EXHIBIT C -

UNITED LIPEDEMA SETTLEMENT
c/o JND LEGAL ADMINISTRATION
PO BOX 91232
SEATTLE, WA 98111

[Mailing Barcode]

[Name]

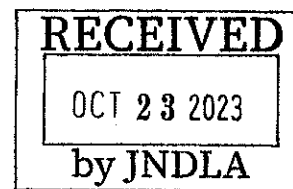
[Address]

Notice Update

Please note, the Court has changed the date of the Final Approval Hearing to November 30, 2023 at 8:00 a.m. This may change the date claim forms will be delivered to Class Members and the deadline to submit a claim form. Please check the Settlement website, www.UnitedLipedemaSettlement.com, for updates.

- EXHIBIT D -

United Lipedema Settlement
c/o JND Legal Administration
PO Box 91232
Seattle, WA 98111



Class Member Objections

Mary Caldwell v. United Healthcare Insurance Company., Case No. 3:19-cv-02861- WHA)

We are objecting to the settlement because:

1. Retired class members, who after being denied by UHC, did not have the money to pay cash for surgery and now do not have access in their area to UHC Medicare Advantage plans or now have regular Medicare for other conditions. These class members have limited access to plastic surgeons who take regular Medicare or other Medicare Advantage plans. Had UHC covered lipedema surgery when the class members request was made, they would have greater access to surgeons. There is no provision in the settlement for these members and they should receive a cash settlement based in FAIR health non-network rates to proceed with surgery.
2. Class members who continue to be UHC plan members have no assurances that UHC will in fact cover their surgery in accordance with the lipedema coverage policy given that UHC has failed to educate their medical directors and has continued to deny women seeing lipedema coverage more than other insurers who settled similar lawsuits. UHC should be required to

develop a plan to educate staff and the Special Master should ensure that UHC properly reviews class member requests.

3. Class members are concerned that UHC, unlike the other insurers who settled lipedema related lawsuits or issues policies without having to be sued, has excluded skin excisions from coverage. This leaves women with hanging skin following lipedema surgery which interferes with wearing the compression garments that UHC requires as a condition of covering lipedema surgery. UHC's lipedema policy should be amended to include removal of hanging skin following lipedema surgery otherwise class members requesting coverage of their surgeries will be denied.
4. Class members are concerned that UHC, unlike other insurers who settled lipedema related lawsuits or issues policies without having to be sued, have insisted that lipedema surgery be completed in 1 year when UHC knows that lipedema surgeries are staged 3 months apart and that due to UHC failure to pay network surgeons fairly or bring plastic surgeons who treat lipedema in-network, plastic surgeons often have over 100 patients waiting for surgery. Other insurers including, Aetna, Anthem and most other BCBS plans have no restrictions on time to complete surgery and provide up to 24 months. UHC's lipedema policy should be amended to remove time restrictions on lipedema surgeries.
5. Class members are concerned that UHC, unlike other insurers who settled lipedema related lawsuits or issues policies without having to be sued, prohibits women who have had liposuction on a body part from having more surgery. However, many of the early physicians

treating lipedema and still even now are not plastic surgeons who are more skilled at safely and effectively removing larger volumes of lipedema. There are many women who need more surgery due to ineffective lipedema removal by dermatologists, OBGYNs and internal medicine doctors. Unlike some insurers that require members have surgery with board certified plastic surgeons, UHC approves women in these settings because they know the physicians ask for cash upfront so UHC can underpay when the patient submits a claim later. UHC's lipedema policy should be amended to remove prohibitions on addental surgery on a body part to remove the remaining lipedema,

6. The Special Master and not Gianelli and Morris should oversee the re-submission of requests for coverage as Gianelli and Morris profits from UHC denials of care and can further increase its attorney's fees and costs. The national patient advocacy organization, Coverlipedema.com, which has helped over 550 women get fully covered including over 50 UHC members, will assist UHC class members for no charge so they can assemble a coverage request. A fairer settlement for UHC members should not involve more attorney's fees.
7. Even if requests for coverage are granted, the Special Master needs to ensure that class members have access to timely and effective lipedema surgery close to their residences even if the plastic surgeon is not currently in network with UHC. Rather than the class member paying cash up front, UHC should grant a network exception and agree to pay the surgeon based on FAIR health rates for the zip code where the surgery occurs.

8. I grant permission for Karie Kozak to appear and speak on my behalf at the Final Approval Hearing.

A handwritten signature in black ink that reads "Marianne Klaczynski". The signature is written in a cursive style with a horizontal line underneath the name.

Marianne Klaczynski

Address: 1001 Main St Ste.19, East Greenwich, RI 02818

Phone: 401-440-3240

DECLARATION

1. I have lipedema and am a UHC plan member.
2. Despite having extensive documentation of my diagnosis, functioning and conservative measures, UHC denied my request for liposuction on my arms, legs and trunk a total of nine times between October 2020 and August 2023. No valid reasoning was given for these denials – on four separate occasion approvals were granted only to be retracted and/or “corrected” days later. ALL of these denials were systematically overturned by my husband’s employer.
3. UHC also denied my request to have skin excisions to remove hanging skin after the liposuction. I had to spend 30 months appealing these decisions and fighting to ensure that the physician reviewing my case was a plastic surgeon who had experience with lipedema patients as required by federal law. ALL of these denials were systematically overturned by my husband’s employer.
4. UHC has denied any revisions or “retreatment” of any area that has been operated on requiring me to start the year long appeal process or simply pay cash for the procedures.
5. I had trouble finding a qualified network surgeon to treat lipedema and was denied an Out of Network Exception by UHC – this was also overturned by my husband’s employer. UHC then refused to work out a Single Case Agreement and stalled for over four months until my husband’s employer changed and we were then under a different UHC policy. I had to start the entire process over again with blanket denials of “unproven” and “not medically necessary” in spite of them now having a published coverage policy. They refused the Out of Network exception and rather than start the appeal process again, I was directed to an in network surgeon, not by UHC, but by an advocate I employed, who was

DECLARATION

1. I have lipedema and am a UHC plan member.
2. I was approved for liposuction (suction assisted lipectomy).
3. Despite my surgeon's detailed notes that suction assisted lipectomy was ineffective and requested skin excisions to remove the diseased tissue, UHC denied my request to have skin excisions to remove hanging skin after the liposuction. I have had to spend 11 months appealing this decision and fighting to ensure that the physician reviewing my case was a plastic surgeon who had experience with lipedema patients as required by federal law. Despite my surgeon's insistence that skin excisions are reconstructive, UHC continues to deny me claiming the procedures are cosmetic opposed to reconstructive as noted by my surgeon.
4. I had one external review performed by a doctor that copied and pasted the denial for skin excisions. Despite UHC approving liposuction, this doctor argued why the liposuction wasn't proven. This doctor noted an incorrect weight that did not exist anywhere in doctors notes and suggested that I have bariatric surgery to lose weight. At that time, I weighed 199 lbs. UHC was fully aware that this IRO and the doctor were continuing to perform reviews with the same copy and pasted denial and in full awareness that the doctor had done this multiple times previously and yet still continued to allow the doctor to review cases without ensuring a fair external review.
5. After a policy change June 1, 2023 I had to start the prior authorization process again. This time UHC and their Independent Review Organization have denied my right to an external review of their denial claiming that cosmetic procedures are

I declare under penalty of perjury that the foregoing is true and correct.

Carmon Drummond October 15, 2023

Carmon Drummond
2215 S. Indianapolis Ave
Tulsa, OK 74114

Date

DECLARATION

1. I am a board-certified plastic surgeon in Atlanta who has done surgery on lipedema patients for 2 years.
2. I have worked with many insurers who now cover lipedema surgery including UHC, Aetna and many different BCBS plans.
3. UHC is a difficult insurer to work with compared to the insurers because they will often deny coverage even though their lipedema policy covers liposuction on the legs, arms, and trunk.
4. UHC is also one of the few insurers that does not routinely cover skin excision following liposuction, leaving women with hanging skin that may make it difficult to properly wear the compression following surgery.
5. Limiting surgery coverage to 1 year is difficult given the limited number of plastic surgeons treating lipedema. Women also need further surgery on areas where non-plastic surgeons have treated them with low volume liposuction. Additionally, many women need staged procedures that require longer than 1 year to complete.

I declare under penalty of perjury that the foregoing is true and correct.

Thomas Hagepian



10/15/23

Name

Date

Address 99 Krog St NE
Atlanta, GA 30329

DECLARATION

1. I am a board-certified plastic surgeon in New Jersey with over 20 years of clinical experience and I have treated lipedema patients for over 3 years.
2. I am working with multiple insurers who now cover lipedema surgery including UHC, UPMC, Aetna, Cigna, Horizon, Humana, and BCBS plans.
3. UHC is the most difficult insurers to work with as UHC routinely provides patients and providers with confusing, inconsistent, and misleading instructions, fails to respond in timely fashion to surgical requests, often denies coverage based on individual Medical Director misinterpretation their own Lipedema Policy.
4. UHC does not cover skin excision following liposuction leaving women with residual painful hanging skin, making it difficult to maintain hygiene, properly wear the required compression and affecting patient's ability to walk in a more normal fashion.
5. UHC limits surgery coverage to 1 year which is commonly impossible given the limited number of plastic surgeons, and patients with very high BMI requiring multiple procedures.
6. UHC routinely denies surgery if previously patient had any liposuction in the past (even cosmetic) claiming single treatment requirement.
7. UHC severely limits local networks and commonly misrepresents specialists in directory, listing ENT and Dermatologists as double specialists in Plastic Surgery or include UHC Community plan providers as participating with regular UHC Networks.
8. I have reached out to UHC on multiple occasions over the last 3 years to become in network provider for Lipedema and tried to schedule meetings without success.

I declare under penalty of perjury that the foregoing is true and correct.



10/15/2023

Boris Volshteyn MD Atlantic Surgical Associates PA
107 Monmouth Rd Ste 102 West Long Branch NJ 07764 732-641-3350 732-333-6324 fax

DECLARATION

1. I have lipedema and am a UHC plan member.
2. UHC initially approved my appeal for liposuction on my legs, arms, and trunk.
3. After submitting a second appeal for approval of skin excisions, a UHC nurse reversed the approval despite having my appeal reviewed and approved by UnitedHealthcare Medical Director Anne Cramer, MD, specializing in plastic Surgery. Dr Cramer's decision was made based on the UnitedHealthcare policies, Liposuction for Lipedema and Panniculectomy and Body Contouring Procedures. The nurse did not provide a valid reason for this reversal.
4. UHC also denied my request to have skin excisions to remove hanging skin after the liposuction. I have spent 4 months appealing this decision and fighting to ensure that the physician reviewing my case was a plastic surgeon who had experience with lipedema patients as required by federal law.
5. I had trouble finding a network surgeon to treat lipedema and asked to see a non-network surgeon. UHC still have not approved my request to work with a non-network surgeon and will not engage with my chosen surgeon to work on a single case agreement.
6. I am an active member of multiple Lipedema support groups, where daily, I see other women have their lipedema surgeries covered by other insurers. UHC is known as one of the worst insurers for providing coverage to lipedema patients.

I declare under penalty of perjury that the foregoing is true and correct.

Name 

10/16/2023
Date

Address - 4165 Nia Drive, Irving, Texas 75038

DECLARATION

1. I have lipedema and was a UHC plan member during 2022 and 2023.
2. Despite having extensive documentation of my diagnosis, functioning, conservative measures and photographs, UHC denied my request for liposuction on my arms, legs, trunk claiming no pictures had been submitted. This was not true but pictures had to be re-submitted again to gain approval.
3. UHC also denied my request to have skin excisions to remove hanging skin after the liposuction. I had to spend 2 months appealing this decision externally and fighting to ensure that the physician reviewing my case was a plastic surgeon who had experience with lipedema patients as required by federal law.
4. I had trouble finding a network surgeon in Ohio to treat lipedema and had to travel out of state to find a UHC network provider to do my surgeries.
5. I am in contact with many women who had their lipedema surgery covered by other insurers. UHC is known as one of the worst insurers for providing coverage to lipedema patients.

I declare under penalty of perjury that the foregoing is true and correct.

Stephanie Berland
1810 Lynnhaven Dr
Columbus, OH 43221

 _____
Name Date 10/17/23

DECLARATION

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I declare under penalty of perjury that the foregoing is true and correct.



Name Lisa R Anderson
Address 4360 151st LN NE
Ham Lake MN 55304

10/16/2023
Date

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*Insurance does not cover certain items. For details regarding claims exclusions see the Domestic Mail Manual at <http://pe.usps.com>.

**See International Mail Manual at <http://pe.usps.com> for availability and limitations of coverage.

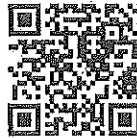
FR: W Klarczyk
1001 Main St. Ste 19
E. Greenwich, RI 02818

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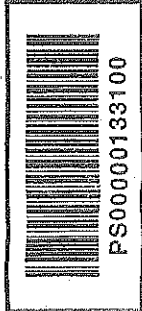
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46 JND legal Administration
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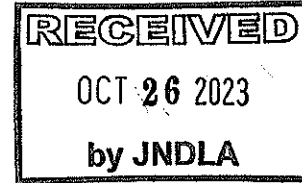
USPS TRACKING® #

9505 5128 7058 3293 9898 60

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- EXHIBIT E -

United Lipedema Settlement
c/o JND Legal Administration
PO Box 91232
Seattle, WA 98111



Class Member Objections

Mary Caldwell v. United Healthcare Insurance Company, Case No. 3:19-cv-02861- WHA)

We are objecting to the settlement because:

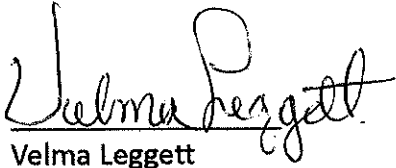
1. Retired class members, who after being denied by UHC, did not have the money to pay cash for surgery and now do not have access in their area to UHC Medicare Advantage plans or now have regular Medicare for other conditions. These class members have limited access to plastic surgeons who take regular Medicare or other Medicare Advantage plans. Had UHC covered lipedema surgery when the class members request was made, they would have greater access to surgeons. There is no provision in the settlement for these members and they should receive a cash settlement based in FAIR health non-network rates to proceed with surgery.
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7. Even if requests for coverage are granted, the Special Master needs to ensure that class members have access to timely and effective lipedema surgery close to their residences even if the plastic surgeon is not currently in network with UHC. Rather than the class member paying cash up front, UHC should grant a network exception and agree to pay the surgeon based on FAIR health rates for the zip code where the surgery occurs.
8. We grant permission for Karie Kozak to appear and speak on our behalf at the Final Approval Hearing.

A handwritten signature in black ink that reads "Velma Leggett". The signature is written in a cursive style with a large, looped initial "V".

Velma Leggett

Address: 104 Bridges Rd., Polk City FL 33868

Phone: 863-370-1322

DECLARATION

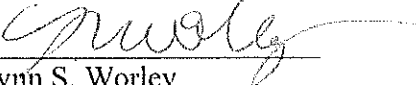
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2. Despite having extensive documentation of my diagnosis, functioning and conservative measures, UHC denied my request for liposuction on my arms, legs and trunk a total of nine times between October 2020 and August 2023. No valid reasoning was given for these denials – on four separate occasion approvals were granted only to be retracted and/or “corrected” days later. ALL of these denials were systematically overturned by my husband’s employer.
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5. I had trouble finding a qualified network surgeon to treat lipedema and was denied an Out of Network Exception by UHC – this was also overturned by my husband’s employer. UHC then refused to work out a Single Case Agreement and stalled for over four months until my husband’s employer changed and we were then under a different UHC policy. I had to start the entire process over again with blanket denials of “unproven” and “not medically necessary” in spite of them now having a published coverage policy. They refused the Out of Network exception and rather than start the appeal process again, I was directed to an in network surgeon, not by UHC, but by an advocate I employed, who was

800 miles from my home. Each trip costs roughly \$5,000.00 for my husband and I to travel, lodge and stay for each surgery.

6. I am in contact with many women who had their lipedema surgery covered by other insurers. UHC is known as one of the worst insurers for providing coverage to lipedema patients. If my husband's employer was not self-insured and essentially had the last word of these denials, I believe I would still not be approved.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 17th day of October, 2023.



Lynn S. Worley
4239 S. 188th E. Avenue
Tulsa, OK 74134
(918) 406-8652

DECLARATION

1. I have lipedema and am a UHC plan member.
2. I was approved for liposuction (suction assisted lipectomy).
3. Despite my surgeon's detailed notes that suction assisted lipectomy was ineffective and requested skin excisions to remove the diseased tissue, UHC denied my request to have skin excisions to remove hanging skin after the liposuction. I have had to spend 11 months appealing this decision and fighting to ensure that the physician reviewing my case was a plastic surgeon who had experience with lipedema patients as required by federal law. Despite my surgeon's insistence that skin excisions are reconstructive, UHC continues to deny me claiming the procedures are cosmetic opposed to reconstructive as noted by my surgeon.
4. I had one external review performed by a doctor that copied and pasted the denial for skin excisions. Despite UHC approving liposuction, this doctor argued why the liposuction wasn't proven. This doctor noted an incorrect weight that did not exist anywhere in doctors notes and suggested that I have bariatric surgery to lose weight. At that time, I weighed 199 lbs. UHC was fully aware that this IRO and the doctor were continuing to perform reviews with the same copy and pasted denial and in full awareness that the doctor had done this multiple times previously and yet still continued to allow the doctor to review cases without ensuring a fair external review.
5. After a policy change June 1, 2023 I had to start the prior authorization process again. This time UHC and their Independent Review Organization have denied my right to an external review of their denial claiming that cosmetic procedures are

excluded from coverage, despite reconstructive procedures being broadly covered by my plan. I am still fighting to get a fair external review after UHC told the IRO that the codes requested are cosmetic and excluded. Neither UHC or the IRO are reviewing my surgeon's notes about why the excisions are needed to remove the disease from my body or the fact that the surgery codes are considered reconstructive.

6. During the last 11 months, UHC has told me that I was not eligible for an external review, told me I was not eligible for an internal review, medical directors approved me for skin excisions but after legal became involved, UHC send me a updated letter that denied me the previously approved skin excisions without explanation until I demanded answers. At that time, legal told me the policy excluded it. Obviously, the medical director that initially approved agreed with reconstruction. Legal was concerned about setting a precedent about covering skin excisions.
7. I had trouble finding a network surgeon to treat lipedema and asked to see a non-network surgeon. This process took so many months that I gave up and went to the closest network surgeon to me. The closest network surgeon was 783 miles away from me. This costs me about \$3,500 in air travel, hotel stay, car rental and other travel related expenses. On top of this, no surgeon or doctor at home will treat complications from surgery.
8. I am in contact with many women who had their lipedema surgery covered by other insurers. UHC is known as one of the worst insurers for providing coverage to lipedema patients.


I declare under penalty of perjury that the foregoing is true and correct.

Carmon Drummond October 15, 2023
Carmon Drummond Date
2215 S. Indianapolis Ave
Tulsa, OK 74114

DECLARATION

1. I have lipedema and am a UHC plan member.
2. UHC initially approved my appeal for liposuction on my legs, arms, and trunk.
3. After submitting a second appeal for approval of skin excisions, a UHC nurse reversed the approval despite having my appeal reviewed and approved by UnitedHealthcare Medical Director Anne Cramer, MD, specializing in plastic Surgery. Dr Cramer's decision was made based on the UnitedHealthcare policies, Liposuction for Lipedema and Panniculectomy and Body Contouring Procedures. The nurse did not provide a valid reason for this reversal.
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6. I am an active member of multiple Lipedema support groups, where daily, I see other women have their lipedema surgeries covered by other insurers. UHC is known as one of the worst insurers for providing coverage to lipedema patients.

I declare under penalty of perjury that the foregoing is true and correct.

Name  Date 10/16/2023

Address - 4165 Nia Drive, Irving, Texas 75038

DECLARATION

1. I have lipedema and was a UHC plan member during 2022 and 2023.
2. Despite having extensive documentation of my diagnosis, functioning, conservative measures and photographs, UHC denied my request for liposuction on my arms, legs, trunk claiming no pictures had been submitted. This was not true but pictures had to be re-submitted again to gain approval.
3. UHC also denied my request to have skin excisions to remove hanging skin after the liposuction. I had to spend 2 months appealing this decision externally and fighting to ensure that the physician reviewing my case was a plastic surgeon who had experience with lipedema patients as required by federal law.
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I declare under penalty of perjury that the foregoing is true and correct.

Stephanie Berland
1810 Lynnhaven Dr
Columbus, OH 43221

Stephanie Berland _____
Name Date 10/17/23

DECLARATION

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I declare under penalty of perjury that the foregoing is true and correct.




Name Lisa R Anderson
Address 4360 151st LN NE
Ham Lake MN 55304

10/16/2023
Date

DECLARATION

1. I am a board-certified plastic surgeon in Atlanta who has done surgery on lipedema patients for 2 years.
2. I have worked with many insurers who now cover lipedema surgery including UHC, Aetna and many different BCBS plans.
3. UHC is a difficult insurer to work with compared to the insurers because they will often deny coverage even though their lipedema policy covers liposuction on the legs, arms, and trunk.
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I declare under penalty of perjury that the foregoing is true and correct.

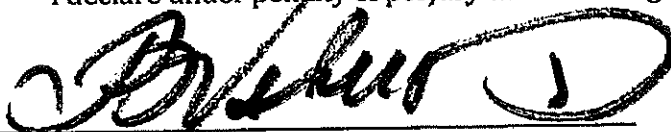
Thomas Hagepian 
Name
Address 99 Krog St NE
Atlanta, GA 30329

10/15/23
Date

DECLARATION

1. I am a board-certified plastic surgeon in New Jersey with over 20 years of clinical experience and I have treated lipedema patients for over 3 years.
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6. UHC routinely denies surgery if previously patient had any liposuction in the past (even cosmetic) claiming single treatment requirement.
7. UHC severely limits local networks and commonly misrepresents specialists in directory, listing ENT and Dermatologists as double specialists in Plastic Surgery or include UHC Community plan providers as participating with regular UHC Networks.
8. I have reached out to UHC on multiple occasions over the last 3 years to become in network provider for Lipedema and tried to schedule meetings without success.

I declare under penalty of perjury that the foregoing is true and correct.



10/15/2023

Boris Volshteyn MD Atlantic Surgical Associates PA
107 Monmouth Rd Ste 102 West Long Branch NJ 07764 732-641-3350 732-333-6324 fax



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LJR

OCT 26 2023

TO:
United Lipedema Settlement
c/o SND Legal Administration
P.O. Box 91232
Seattle, WA 98111

Label 226, March 2016

FOR DOMESTIC AND INTERNATIONAL USE

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

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

18 MARY CALDWELL, on behalf of herself and)
19 all others similarly situated,)
20 Plaintiff,)

21 v.)

22 UNITEDHEALTHCARE INSURANCE)
23 COMPANY; UNITED HEALTHCARE)
24 SERVICES, INC.,)
25 Defendants.)

26 Case No.: 3:19-cv-02861-WHA
27 Assigned to Hon. William H. Alsup
28 COURTROOM 12, 19th Floor

[PROPOSED] FINAL APPROVAL ORDER

Date: November 30, 2023
Time: 8:00 a.m.
Place: Courtroom 12

1 The Motion of Plaintiff Mary Caldwell (“Plaintiff”), on behalf of herself and the Class, for
2 final approval of the class action Settlement reached with Defendants United Healthcare Services,
3 Inc. and United Healthcare Insurance Company (collectively, “United”) in this lawsuit (the
4 “Litigation”) came on for hearing before this Court on November 30, 2023. Plaintiff and United are
5 collectively referred to herein as the “Parties.” Michael M. Maddigan appeared as attorney for
6 United, and Robert S. Gianelli and Joshua S. Davis appeared as attorneys for Plaintiff and the Class.
7 After considering the Settlement, the moving papers, arguments of counsel, and all other matters
8 presented to the Court, it is hereby ORDERED, ADJUDGED, AND DECREED, as follows:

9 1. The Motion for Final Approval of Class Action Settlement is hereby GRANTED.

10 2. This Final Order Approving Class Action Settlement and Judgment (“Final Order
11 and Judgment”) incorporates and makes part hereof: (a) the Parties’ Settlement Agreement filed on
12 July 11, 2023, including Exhibits A to E [Dkt. No. 233-2] (collectively the “Agreement”); and (b)
13 the Court’s findings and conclusions as expressed at the hearing in which the Court granted
14 preliminary approval of the Settlement. All defined terms in this Final Order and Judgment shall
15 have the same meanings as in the Agreement.

16 3. All preliminary findings and conclusions made by the Court at the July 20, 2023
17 hearing in which the Court granted preliminary approval of the Settlement are hereby made final.

18 4. The Court has personal jurisdiction over all members of the Class. The Court has
19 subject matter jurisdiction over the claims asserted in this Litigation to approve the Settlement, and
20 all exhibits attached thereto. Venue is proper. The Settlement is fair, reasonable and adequate, and
21 consistent and in compliance with the applicable provisions of the United States Constitution, its
22 Amendments, and the Federal Rules of Civil Procedure, as to, and in the best interests of, the
23 Settlement Class. The Court also finds that the Settlement was reached only after Plaintiff and
24 United conducted their own investigations and evaluations of the factual and legal issues raised by
25 Plaintiff’s claims, as well as United’s defenses, and is the result of arms-length negotiations. The
26 Court has received two objections to the Settlement from the Class Members. The objections are
27 identical. For the reasons expressed in the Final Approval Motion, and as discussed at the Final
28 Approval Hearing, the Court overrules them. Accordingly, the Settlement is hereby finally

1 approved.

2 5. The Court hereby directs the Parties and their counsel to implement and consummate
3 the Settlement according to its terms and provisions.

4 6. The notice requirement was satisfied in that the Settlement Administrator provided
5 Class Notice to the 28 identified Class Members by mail on August 10, 2023. Prior to mailing, the
6 Settlement Administrator performed address research using data from the National Change of
7 Address (“NCOA”) database and updated the mailing addresses accordingly. Of the 28 Notices
8 mailed, 28 were delivered, a rate of 100%. Thus, Class Members had the opportunity to object to
9 the Settlement and the Agreement, or to exclude themselves from the Class. Class members were
10 informed of the date, time, and location of the Final Approval Hearing. When the Court changed the
11 Final Approval Hearing date to November 30, 2023 at 8:00 a.m., the Settlement Administrator mailed
12 a notice update to the Class Members informing them of the changed Final Approval Hearing date.
13 These procedures afforded protections to persons in the Class and provide the basis for the Court to
14 make an informed decision on approval of the Settlement based on the responses of Class Members.

15 7. The Notices and all other instruments provided to the Class Members:

16 (a) constituted the best practicable notice under the circumstances;

17 (b) constituted notice that was reasonably calculated to apprise Class Members
18 of the pendency of the Litigation, their right to object to or exclude themselves from the proposed
19 Settlement and to appear at the Final Approval Hearing;

20 (c) were reasonable and constituted due, adequate, and sufficient notice to all
21 persons entitled to receive notice; and

22 (d) met all applicable requirements of the Federal Rules of Civil Procedure, the
23 United States Constitution, and its Amendments, including the Due Process Clause.

24 8. Class Counsel and Plaintiff adequately represented the Class for purposes of entering
25 into and implementing the Settlement.

26 9. No Class Members have requested exclusion from the Class.

27 10. Class Counsel are hereby awarded attorneys’ fees in the amount of \$_____ and
28 costs in the amount of \$_____, for a total award of \$_____ (“Class Counsel Payment”). This

1 amount covers any and all claims for attorneys' fees, expenses, and costs incurred by any and all
2 Class Counsel in connection with the Settlement of the Litigation and the administration of such
3 Settlement. Class Counsel Payment shall be provided by United to Gianelli & Morris in accordance
4 with Paragraph 12 of the Settlement.

5 11. The release of claims set forth in Paragraph 10 of the Settlement is incorporated
6 herein and effective as of the date of this Final Order and Judgment, and forever discharges the
7 Released Parties from any claims or liabilities arising from or related to the Released Claims.

8 12. Without affecting the finality of this Final Order and Judgment for purposes of
9 appeal, the Court shall retain jurisdiction as to all matters relating to administration, consummation,
10 enforcement, and interpretation of the Settlement and this Order, and for any other necessary
11 purpose; *provided, however*, that nothing in this paragraph shall restrict the ability of the Parties to
12 exercise their rights under Paragraphs 16, 17, and 18 of this Final Order and Judgment. The Parties
13 submit to the jurisdiction of the Court for purposes of administration, construction, consummation,
14 enforcement, and interpretation of the Settlement.

15 13. The Settlement is binding on, and has *res judicata* and preclusive effect in, all
16 pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and any
17 other Class Members, as well as their Related Parties that allege Released Claims, as defined in the
18 Settlement.

19 14. Neither this Final Order and Judgment, nor the Settlement, nor any other document
20 referred to herein or therein, nor any action taken to carry out this Final Order and Judgment or the
21 Settlement is, may be construed as, or may be used as an admission or concession by or against
22 United of the validity of any claim or any actual or potential fault, wrongdoing or liability
23 whatsoever. Entering into or carrying out the Settlement, and any negotiations or proceedings
24 relating to it, shall not in any event be construed as, or deemed evidence of, an admission or
25 concession as to Plaintiff's claims or United's denials or defenses, and shall not be offered or
26 received in evidence in any action or proceeding against any party hereto in any court,
27 administrative agency or other tribunal for any purpose whatsoever, except as evidence of the
28 Settlement or to enforce the provisions of this Final Order and Judgment or the Settlement;

1 provided, however, that this Final Order and Judgment and the Settlement may be filed in any
2 action against or by United or the Class Members to support a defense of *res judicata*, collateral
3 estoppel, release, waiver, good-faith Settlement, judgment bar or reduction, full faith and credit, or
4 any other theory of claim preclusion, issue preclusion or similar defense or counterclaim to the
5 extent allowed by law.

6 15. The Parties are authorized, without further approval from the Court, to agree to and
7 adopt such non-substantive amendments, modifications, or expansions of the Settlement and all
8 exhibits attached thereto that are consistent with this Final Order and Judgment, and that do not
9 limit the rights of persons in the Settlement Class. Any substantive amendments, modifications, or
10 expansions of the Settlement and the exhibits attached thereto shall require prior approval by the
11 Court.

12 16. Any work product retained by Plaintiff or Class Counsel that is based on or
13 incorporates information designated as Confidential Material pursuant to the terms of the Protective
14 Order previously entered in this case and provided by United shall be deemed Confidential Material
15 pursuant to the terms of the Protective Order, and the disclosure or use of such materials shall be
16 subject to the same restrictions as Confidential Materials pursuant to the terms of the Protective
17 Order previously entered in this case.

18 17. Each and every Class Member who has not been excluded from the Settlement, and
19 their Related Parties, are forever barred and enjoined from commencing, instituting, or continuing
20 to prosecute any action or proceeding in any court of law or equity, arbitration tribunal,
21 administrative forum, or other forum of any kind, asserting any of the Released Claims against any
22 of the Released Parties, except for claims to enforce the Settlement.

23 18. Section 1715(b) of the Class Action Fairness Act of 2005 requires a settling
24 defendant to “serve upon the appropriate State official of each State in which a class member
25 resides and the appropriate Federal official” a specified group of documents describing the
26 settlement. Pursuant to section 1715(d), final approval cannot be issued earlier than 90 days after
27 notice is given under section 1715(b). United served the necessary documents upon the appropriate
28 officials on August 4, 2023. This order is signed more than 90 days after United served the

1 documents. The Court therefore finds that United is in full compliance with the Class Action
2 Fairness Act, 28 U.S.C. section 1715.

3 19. There being no just reason for delay, the Court, in the interests of justice, expressly
4 directs the Clerk of the Court to enter this Final Order and Judgment, and hereby decrees that, upon
5 entry, it be deemed a final judgment.

6

7 **IT IS SO ORDERED.**

8

9 DATED: _____

By: _____

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Honorable William Alsup
United States District Court Judge

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