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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 JANE SMITH, on her own behalf and on  
behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 UNITED HEALTHCARE INSURANCE  
22 CO. and UNITED BEHAVIORAL  
HEALTH,

23 Defendants.  
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Case No. 3:18-cv-06336

**CLASS ACTION COMPLAINT**

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1 Plaintiff Jane Smith (“Plaintiff”)<sup>1</sup> complains as follows on her own behalf and on behalf of  
2 all others similarly situated, based on the best of her knowledge, information and belief, formed  
3 after an inquiry reasonable under the circumstances by herself and her undersigned counsel,  
4 against Defendants:

### 5 INTRODUCTION

6 1. Office-based psychotherapy is a mainstay of mental health treatment. Research  
7 published by the National Institutes of Health on managed behavioral healthcare network trends  
8 indicates that psychotherapy constitutes the lion’s share (84%) of outpatient, office-based mental  
9 healthcare claims. *See* Reif, Horgan, Torres, & Merrick (2010). Psychotherapy and counseling  
10 services are most commonly delivered by psychologists and master’s level clinicians who,  
11 according to a 2015 Congressional Research Service report, comprise the core of mental health  
12 providers.

13 2. Meanwhile, mental health conditions affect millions of Americans—the National  
14 Institute of Mental Health estimates 26% of American adults suffer from some type of mental  
15 health condition each year. The World Health Organization reports that mental health and  
16 substance abuse disorders are among the leading causes of disability in the United States.  
17 Outpatient psychotherapy plays a critical role in addressing these pervasive public health issues.

18 3. Defendants United HealthCare Insurance Co. (“UHIC”) and United Behavioral  
19 Health (“UBH”) (collectively, “United” or “Defendants”) serve as the claims administrators for  
20 health insurance plans that cover more than one in five Americans. Most of these plans are  
21 governed by the Employee Retirement Income Security Act of 1974 (“ERISA”). ERISA requires  
22 that claims administrators such as Defendants discharge their duties in the interests of participants  
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24 <sup>1</sup> Plaintiff challenges Defendants’ under-reimbursements for covered mental health  
25 services. Because mental illness remains subject to pervasive stigma, Plaintiff has legitimate  
26 concerns about publicly disclosing her psychiatric conditions. Thus, Plaintiff has chosen to file  
27 this action pseudonymously, using “Jane Smith” for herself. Her identity and that of her employer  
28 will be fully disclosed to Defendants and to the Court, so long as such identifying information is  
not released into the public record. Plaintiff’s motion to proceed under a pseudonym will be filed  
nearly contemporaneously with this complaint, pending assignment of a judge and case number.

1 and beneficiaries, and in accordance with the written plan terms unless those terms are  
2 inconsistent with ERISA's provisions, including its anti-discrimination provisions.

3 4. Two such anti-discrimination provisions are the Paul Wellstone and Pete  
4 Domenici Mental Health Parity and Addiction Equity Act of 2008 ("Parity Act"), codified at 42  
5 U.S.C. § 300gg-26, which has been incorporated into ERISA at 29 U.S.C. § 1185a, and Section  
6 2706 of the Affordable Care Act ("Section 2706 of the ACA"), codified at 42 U.S.C. § 300gg-5,  
7 which has been incorporated into ERISA at 29 U.S.C. § 1185d.

8 5. Despite the critical importance of office-based psychotherapy to the health of plan  
9 participants and beneficiaries who suffer from mental illness or substance use, and Defendants'  
10 legal obligation to ensure compliance with ERISA's anti-discrimination provisions, Defendants  
11 have imposed and continue to impose reimbursement penalties on claims for coverage for  
12 psychotherapy services rendered by psychologists and master's level counselors (and thus on the  
13 lion's share of psychotherapy and office-based mental health treatment). These penalties are  
14 neither equally imposed on comparable office-based medical/surgical care nor grounded in actual  
15 provider quality/expertise. United's application of these penalties, therefore, violates its legal  
16 duties under ERISA to comply with the Parity Act and Section 2706 of the ACA. It also leads  
17 directly to United's wrongful denials of benefits.

18 6. Plaintiff was insured by a health insurance plan ("Plan") issued by Defendant  
19 UHIC, and administered by both Defendants. The Plan is governed by ERISA.

20 7. Plaintiff suffers from post-traumatic stress disorder, for which she receives  
21 outpatient psychotherapy from a licensed clinical social worker with over 28 years of post-  
22 masters degree experience who completed advanced, post-graduate training. Plaintiff's  
23 independently-licensed provider maintains a private practice, does not participate in United's  
24 provider network (i.e., she is out-of-network ("ONET"), or a non-participating ("Non-Par"),  
25 provider), and therefore has not entered into any contract with United to accept United's in-  
26 network rates.

27 8. Since 2016, Plaintiff has received treatment from her provider, and since she  
28 became insured by United in 2018, has submitted resulting claims for benefits to United. United

1 processed these claims, determined that they were covered under the Plan, and issued benefit  
2 payments under the Plan. As a result, there is no dispute in this case over whether the services at  
3 issue were medically necessary or covered by the Plan. The dispute in this case concerns the  
4 amount of benefits United determined to pay for the covered services.

5 9. Under the terms of Plaintiff's Plan, ONET benefits are to be determined based on  
6 an "Eligible Expense," which is the maximum amount of the provider's bill deemed eligible for  
7 reimbursement. The Plan specifies, however, that "[f]or Mental Health Services and Substance  
8 Use Disorder Services the Eligible Expense will be reduced by 25% for Covered Health Services  
9 provided by a psychologist and by 35% for Covered Health Services provided by a masters level  
10 counselor."

11 10. Critically, this provision and the policy it embodies (United's "Discriminatory  
12 Reimbursement Penalty") violates the Parity Act and Section 2706 of the ACA.

13 11. Yet, United applied the Discriminatory Reimbursement Penalty to Plaintiff's  
14 claims and reduced the Allowed Amount on her claims by 35%. Had Plaintiff sought counseling  
15 services from internists without specialized mental health training, for example, United would not  
16 have imposed this reduction.

17 12. By engaging in this type of discrimination against Plaintiff, based on nothing other  
18 than the fact that she sought mental healthcare from the type of clinician likely to be most  
19 available and qualified to provide it, United violated its legal duty (both as a fiduciary and  
20 otherwise) to comply with the Parity Act and Section 2706 of the ACA.

## 21 **THE PARTIES**

### 22 **Plaintiff**

23 10. Plaintiff, who resides in Philadelphia, Pennsylvania, was insured as a participant  
24 under the Plan, which is a fully-insured, non-grandfathered large group commercial policy  
25 sponsored by her employer. The Plan, identified as a "UnitedHealthcare Choice Plus," is  
26 governed by ERISA and is both insured and administered by United.

### 27 **Defendants**

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1 14. Venue is appropriate in this District. Defendants administer plans in this District,  
2 conduct significant operations in this District, and Defendant UBH is headquartered in this  
3 District.

4 **STATEMENT OF FACTS**

5 15. Plaintiff was insured through her employer pursuant to a UnitedHealthcare Choice  
6 Plus plan effective June 1 for each plan year. Plaintiff's large-group, fully-insured policy is non-  
7 grandfathered under the Affordable Care Act.

8 16. The Certificate of Coverage ("COC"), which provides in- and out-of-network  
9 coverage for both medical and behavioral health services, was provided to Plaintiff as part of a  
10 booklet from Defendant UHIC.

11 17. In the section entitled "Eligible Expenses," the COC states in pertinent part:

12 When Covered Health Services are received from a non-Network provider,  
13 Eligible Expenses are determined, based on:

- 14 • Negotiated rates agreed to by the non-Network provider and either us or  
15 one of our vendors, affiliates or subcontractors, at our discretion.
- 16 • If rates have not been negotiated, then one of the following amounts:
  - 17 ○ Eligible Expenses are determined based on 110% of the published  
18 rates allowed by the *Centers for Medicare and Medicaid Services*  
(CMS) for Medicare for the same or similar service within the  
19 geographic market...;
  - 20 ○ When a rate is not published by CMS for the service, we use an  
21 available gap methodology to determine a rate for the service...;
  - 22 ○ ***For Mental Health Services and Substance Use Disorder Services***  
23 ***the Eligible Expense will be reduced by 25% for Covered Health***  
***Services provided by a psychologist and by 35% for Covered***  
***Health Services provided by a masters level counselor.***

24 18. Beginning January 29, 2018 and continuing until June 28, 2018, Plaintiff  
25 submitted claims to United for coverage for behavioral health services she received. Each discrete  
26 service received was identified by and billed based on a five-digit code known as a "CPT" Code,  
27  
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1 which is shorthand for “Current Procedural Terminology.” The CPT Codes are developed and  
2 licensed for use by the American Medical Association.

3 19. The two CPT Codes primarily used by the behavioral health provider for Plaintiff  
4 were CPT Codes 90839, representing psychotherapy for crisis services and procedures for 60  
5 minutes, and 90840, psychotherapy for crisis services and procedures for each additional 30  
6 minutes.

7 20. Plaintiff, or her provider on her behalf, submitted claims to United, which  
8 processed them, and then UHIC sent to Plaintiff ERISA-mandated Explanation of Benefits  
9 (“EOBs”) reporting how United had processed the claims and what benefits were payable (if any)  
10 by the Plan. For CPT Code 90839, Plaintiff’s provider submitted claims with a billed amount of  
11 \$120. For CPT Code 90840, Plaintiff’s provider submitted claims with a billed amount of \$60.

12 21. Each EOB reported, among other things, the Date of Service, Type of Service,  
13 Notes, Amount Billed (defined as the “total amount that your provider billed for the services that  
14 were provided to you”), amount Your Plan Paid (defined as “the portion of the amount billed that  
15 was paid by your plan.”), and Amount You Owe.

16 22. Under the Notes column, each claim had a note listed as “ND,” which United  
17 defined as: “This out-of-network service was paid based on Medicare allowed amounts or other  
18 sources if no Medicare amount is available. These amounts are used even if the patient doesn’t  
19 have Medicare.”

20 23. During the relevant time period, United set the amount “Your Plan Paid” for  
21 Plaintiff’s 60 minute therapy sessions (CPT Code 90839) with Plaintiff’s master’s level counselor  
22 in the applicable zip code at \$61.86, while Plaintiff’s master’s level counselor billed at \$120 per  
23 session. United set the amount “Your Plan Paid” for Plaintiff’s 30 minute add-on sessions (CPT  
24 Code 90840) with Plaintiff’s master’s level counselor in the applicable zip code at \$29.55, while  
25 Plaintiff’s master’s level counselor billed at \$60 per session.

26 24. Although the EOBs did not say so, these calculations reflected United’s  
27 application of the Discriminatory Reimbursement Penalty. For instance, the 2018 Centers for  
28 Medicare and Medicaid Services (CMS) fee schedule for CPT Code 90839 in the metropolitan

1 Philadelphia area indicates rates of \$144.20. Plaintiff's COC stated that, with respect to out-of-  
2 network services, "Eligible Expenses are determined based on 110% of the published rates  
3 allowed by [CMS] for Medicare for the same or similar services within the geographic market."  
4 At 110% of the Medicare rate, Plaintiff's Plan should have covered the service in the amount of  
5 \$158.62. However, through applying the Discriminatory Reimbursement Penalty, United reduced  
6 the covered amount by 35%, and thus, only covered \$103.10. Under Plaintiff's Plan, she was  
7 responsible for 40% coinsurance, so the Plan paid \$61.86, or 60% of \$103.10.

8 25. On March 30, 2018, Plaintiff filed a direct appeal with United to challenge its  
9 inadequate reimbursements for her therapy sessions rendered by her master's level counselor. In  
10 her appeal, Plaintiff stated, among other things, that "[p]er the Federal Mental Health Parity and  
11 Addiction Equity Act passed in 2008, all insurers must cover mental health services on the same  
12 terms they cover medical and surgical services" and that United was violating the law.

13 26. Plaintiff inquired about the status of her appeal on April 11, April 17, and April  
14 26, 2018. Each time she was told that it was being processed.

15 27. On May 3, 2018, Defendant UBH denied her appeal. It acknowledged that it "is  
16 responsible for making benefit coverage determinations for mental health and substance abuse  
17 services that are provided to UBH members," but concluded that the submitted claims for dates  
18 of service, 01/29/2018 through 04/04/2018, have not been approved for additional payment."

19 28. In response to Defendant UBH's letter denying Plaintiff's appeal, Plaintiff  
20 subsequently sent a second-level appeal letter. She wrote that "[w]hile my Certificate of Coverage  
21 states that, with respect to out-of-network claims, 'Eligible Expenses are determined based on  
22 110% of the published rates allowed by the Centers for Medicare and Medicaid Services (CMS)  
23 for Medicare for the same or similar service within the geographic market,' my psychotherapy  
24 claims have not been reimbursed [at the rate of metropolitan Philadelphia]." This was because  
25 "apparently, UBH has imposed a 35% penalty on mental health services rendered by  
26 independently licensed, experienced masters' level clinicians. Because such penalty, as written in  
27 my Certificate of Coverage, is only imposed on mental health benefits, it violates the [Parity Act]  
28 as well as the Affordable Care Act's prohibition on provider discrimination."



1 (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary  
2 standards, or other factors used in applying the nonquantitative treatment limitation to mental  
3 health or substance use disorder benefits in the classification are comparable to, and are applied  
4 no more stringently than, the processes, strategies, evidentiary standards, or other factors used in  
5 applying the limitation with respect to medical/surgical benefits in the classification.” 29 C.F.R. §  
6 2590.712(c)(4)(i).

7 33. On November 13, 2013, the Department of the Treasury, the Department of Labor  
8 and the Department of Health and Human Services jointly issued their “Final Rules” governing  
9 the Federal Parity Act. *See* 78 Fed. Reg. 68239-96 (“Final Parity Act Rule”). Among other things,  
10 the Final Rules describe “nonquantitative treatment limitations” (“NQTLS”), “which are limits on  
11 the scope or duration of treatment that are not expressed numerically,” and provide an  
12 “illustrative list” of NQTLS which are subject to the Federal Parity Act requirements. This non-  
13 exhaustive list includes “methods for determining usual, customary and reasonable charges,”  
14 which includes the methods United uses for determining allowed amounts or eligible expenses for  
15 Non-Par services.

16 34. The illustrative list of NQTLS in the Final Parity Act Rule to include methods for  
17 determining allowed amounts and eligible expenses mirrored an earlier articulation by the three  
18 federal agencies in their February 2, 2010 Interim Final Rules under the Federal Parity Act and  
19 was again highlighted in 2016 by the DOL in its “Warning Signs - Plan or Policy Non-  
20 Quantitative Treatment Limitations (NQTLS) that Require Additional Analysis to Determine  
21 Mental Health Parity Compliance” at [https://www.dol.gov/sites/default/files/ebsa/  
22 laws-and-regulations/laws/mental-health-parity/warning-signs-plan-or-policy-nqtls-that-require-  
23 additional-analysis-to-determine-mhpaea-compliance.pdf](https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/mental-health-parity/warning-signs-plan-or-policy-nqtls-that-require-additional-analysis-to-determine-mhpaea-compliance.pdf).

24 35. The New York Attorney General (“NYAG”) has also issued a statement  
25 summarizing actions by insurers that violate the federal mental health parity act. The list of  
26 “health plan conduct that may suggest violations of mental health parity and other laws” includes  
27 the following: “Reduced ‘UCR’ reimbursement for visits to a non-M.D. out-of-network provider,  
28

1 if the plan has an out-of-network benefit.” It is available at [http://www.nyscouncil.org/wp-](http://www.nyscouncil.org/wp-content/uploads/2014/01/Mental-Health-Parity-Flyer-for-providers.pdf)  
2 content/uploads/2014/01/Mental-Health-Parity-Flyer-for-providers.pdf.

3 36. The Discriminatory Reimbursement Penalty is not just an impermissible  
4 nonquantitative treatment limitation. It is also an illegal discriminatory financial requirement and  
5 a quantitative treatment limitation because it is a cap on units of service. If Defendants cover only  
6 three out of four patient visits, the outcome is the same as if United covered each visit at 75% of  
7 the Eligible Expense.

8 **VIOLATION OF THE ACA’S PROVIDER**  
**ANTI-DISCRIMINATION MANDATE**

9 37. The Affordable Care Act (“ACA”) sought, among other things, to empower  
10 insureds to make their own decisions about which medical providers to use for treatment, and  
11 explicitly precludes discrimination with respect to benefit payments based on the type of  
12 provider, stating in Section 2706 (42 U.S.C. § 300gg-5) as follows:

13 A group health plan and a health insurance issuer offering group or individual  
14 health insurance coverage shall not discriminate with respect to participation under  
15 the plan or coverage against any health care provider who is acting within the  
16 scope of that provider’s license or certification under applicable State law. This  
17 section shall not require that a group health plan or health insurance issuer contract  
18 with any health care provider willing to abide by the terms and conditions for  
19 participation established by the plan or issuer. Nothing in this section shall be  
20 construed as preventing a group health plan, a health insurance issuer, or the  
21 Secretary from establishing varying reimbursement rates based on quality or  
22 performance measures.

23 The provision has been incorporated into ERISA through 29 U.S.C. § 1185d.

24 38. United’s application of the Discriminatory Reimbursement Penalty violates this  
25 law because it discriminates “with respect to coverage” against psychologists and master’s level  
26 counselors by paying less than the Eligible Expenses otherwise used as the basis for determining  
27 benefits. Thus, United is discriminating in coverage against psychologists and master’s level  
28 counselors, despite such providers acting within the scope of their licenses under applicable state  
law.

39. Moreover, while Section 2706 of the ACA allows “varying reimbursement rates  
based on quality or performance measures,” United has failed to apply such measures here, let

1 alone on any individualized basis (and particularly with respect to Plaintiff’s mental health  
2 provider). United’s Discriminatory Reimbursement Penalty applies to *all* psychologists and  
3 master’s level counselors, with no regard to “quality or performance measures” whatsoever. This  
4 is particularly egregious, given that such clinicians constitute the bulk of the core mental health  
5 work force providing the services at issue and frequently have the most relevant psychotherapy  
6 training and experience, yet are paid less than other providers who could well have far less  
7 psychotherapy training, experience, patient satisfaction, or treatment success.

8 **ADDITIONAL ALLEGATIONS RELATING TO UNITED’S**  
9 **CONFLICT OF INTEREST AND BREACH OF FIDUCIARY DUTIES**

10 40. ERISA, 29 U.S.C 1104, requires fiduciaries to discharge their duties solely in the  
11 interests of plan beneficiaries and participants, and in accordance with the provisions of ERISA  
12 (such as the Parity Act and Section 2706 of the ACA). ERISA not only imposes liability where  
13 the fiduciary itself breaches these duties, but also where the fiduciary participants in another  
14 fiduciary’s breach, or where the fiduciary knows about another fiduciary’s breach but does not  
15 take reasonable steps to stop it. Indeed, ERISA even imposes remedies on a non-fiduciary who  
16 participates in a fiduciary’s breach. Defendants breached all of these duties.

17 41. Moreover, United’s application of the illegal Discriminatory Reimbursement  
18 Policy was not an innocent mistake. Instead, it was driven by United’s own financial interests,  
19 which United elevated above the interests of plan participants and beneficiaries, including  
20 Plaintiff. United sacrificed the interests of insureds so that it could artificially decrease the  
21 amount of benefits it was required to pay from its own assets (i.e., with respect to fully-insured  
22 plans) and the assets of its employer-sponsor customers (i.e., with respect to self-funded plans).  
23 Moreover, by prioritizing the assets of its employer-sponsored customers over the interests of  
24 participants and beneficiaries, United also advanced its own interests in retaining and expanding  
25 its business with such customers.

**CLASS CLAIMS**

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42. Defendants applied, and continue to apply, the Discriminatory Reimbursement Penalty across the board. They do so regardless of whether the written plan terms base benefit payments for out-of-network services on Medicare rates or another measure such as FAIR Health.

43. United also applies the Discriminatory Reimbursement Penalty to all United Plans, regardless of whether the applicable COCs expressly incorporate language purporting to authorize it.

44. For instance, United has applied the Discriminatory Reimbursement Penalty to members of other commercial group plans where the COCs have stated in pertinent part:

**Allowed Amount.** “Allowed Amount” means the maximum amount we will pay to a Provider for the services or supplies covered under this Certificate, before any applicable Deductible, Copayment, and Coinsurance amounts are subtracted. We determine our Allowed Amounts as follows:

The Allowed Amount for Participating Providers will be the amount we have negotiated with the Participating Provider.

\* \* \* \*

The Allowed Amount for Non-Participating Providers will be determined as follows:

The Allowed Amount will be 80% of the FAIR Health rate.

45. As a result, Plaintiff brings Counts I, II, III and IV on her own behalf, and on behalf of the following Class:

all participants or beneficiaries in ERISA plans whose claim(s) for behavioral health services provided by out-of-network psychologists or master’s level counselors were subjected to United’s Discriminatory Reimbursement Penalty, excluding plans issued by Oxford Health Insurance, Inc.

46. Common class claims and issues exist for the Class, including, but not limited to, the following:

- 1. Whether Defendants are ERISA fiduciaries;
- 2. Whether the Discriminatory Reimbursement Penalty violates the Federal Parity Act;

- 1                   3.     Whether Defendants' legal duties (fiduciary or otherwise) required  
2                   them to refrain from applying the Discriminatory Reimbursement  
3                   Penalty because it violates the Federal Parity Act;
- 4                   4.     Whether the Discriminatory Reimbursement Penalty violates  
5                   Section 2706 of the ACA;
- 6                   5.     Whether Defendants' legal duties (fiduciary or otherwise) required  
7                   them to refrain from applying the Discriminatory Reimbursement  
8                   Penalty because it violates Section 2706 of the ACA.

9                   47.    The members of the Class are so numerous that joinder of all members is  
10                  impracticable. United is one of the largest insurers and administrators in the country. The Class  
11                  consists of thousands of subscribers.

12                48.    Common questions of law and fact exist as to all members of the Class and  
13                  predominate over any questions affecting solely individual members of the Class, including the  
14                  class action claims and issues listed above.

15                49.    Plaintiff's claims are typical of the claims of the Class members because, as  
16                  alleged herein, the Discriminatory Reimbursement Penalty applied to Plaintiff was also applied to  
17                  members of the Class.

18                50.    Plaintiff will fairly and adequately protect the interests of the members of the  
19                  Class, is committed to the vigorous prosecution of this action, has retained counsel competent and  
20                  experienced in class action and ERISA health insurance-related litigation, and has no interests  
21                  antagonistic to or in conflict with those of the Class.

22                51.    A class action is superior to other available methods for the fair and efficient  
23                  adjudication of this controversy, because joinder of all members of the Class is impracticable.  
24                  Further, the expense and burden of individual litigation make it irrational for Class members  
25                  individually to redress the harm done to them. Moreover, because this case involves Class  
26                  members who suffer from mental health conditions, and those who suffer from such conditions  
27                  continue to experience social stigma, it is unlikely that many Class members would be willing to  
28                  have their conditions become public knowledge by filing individual lawsuits. Given the uniform  
policy and practices at issue, there will also be no difficulty in the management of this litigation  
as a class action.

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**COUNT I**  
**(claim for relief under ERISA, 29 U.S.C. § 1132(a)(1)(B), and the Federal Parity Act)**

52. Plaintiff incorporates by reference the preceding paragraphs as though such paragraphs were fully stated herein.

53. This count is a claim to recover benefits due to Plaintiff under the terms of her Plan, to enforce her rights under the terms of the Plan, and/or to clarify her rights to future benefits under the terms of the Plan, brought pursuant to ERISA, 29 U.S.C. § 1132(a)(1)(B).

54. As ERISA fiduciaries, each Defendant was required discharge its duties in compliance with the Federal Parity Act, refrain from participating in the other Defendant's breach of the Federal Parity Act, and take reasonable efforts to remedy the other Defendant's breach. Indeed, even if one of the Defendants was not a fiduciary, such Defendant is liable for participating in the breach of the other's fiduciary duty.

55. Yet, both Defendants knew about, did nothing to stop, and knowingly participated in the application of the Discriminatory Reimbursement Penalty that violates the Federal Parity Act.

56. By doing so, Defendants not only violated their legal duties, they also wrongfully denied benefits to Plaintiff.

**COUNT II**  
**(claim for relief under ERISA, 29 U.S.C. § 1132(a)(1)(B), and the Affordable Care Act)**

57. Plaintiff incorporates by reference the preceding paragraphs as though such paragraphs were fully stated herein.

58. This count is a claim to recover benefits due to Plaintiff under the terms of her Plan, to enforce her rights under the terms of the Plan, and/or to clarify her rights to future benefits under the terms of the Plan, brought pursuant to ERISA, 29 U.S.C. § 1132(a)(1)(B).

59. As ERISA fiduciaries, each Defendant was required discharge its duties in compliance with Section 2706 of the ACA, refrain from participating in the other Defendant's breach of Section 2706 of the ACA, and take reasonable efforts to remedy the other Defendant's

1 breach. Indeed, even if one of the Defendants was not a fiduciary, such Defendant is liable for  
2 participating in the breach of the other's fiduciary duty.

3 60. Yet, both Defendants knew about, did nothing to stop, and knowingly participated  
4 in the application of the Discriminatory Reimbursement Penalty that violates Section 2706 of the  
5 ACA.

6 61. By doing so, Defendants not only violated their legal duties, they also wrongfully  
7 denied benefits to Plaintiff.

8 **COUNT III**  
9 **(claim for relief under ERISA, 29 U.S.C. § 1132(a)(3)(A))**

10 62. Plaintiff incorporates by reference the preceding paragraphs as though such  
11 paragraphs were fully stated herein.

12 63. This count is brought pursuant to ERISA, 29 U.S.C. § 1132(a)(3)(A), to enjoin  
13 United's acts and practices which violate the Federal Parity Act and Section 2706 of the ACA, as  
14 incorporated into the Plan and ERISA, as detailed herein. Plaintiff brings this claim only to the  
15 extent that the Court finds that the injunctive relief sought is unavailable pursuant to 29 U.S.C.  
16 § 1132(a)(1)(B).

17 **COUNT IV**  
18 **(claim for relief under ERISA, 29 U.S.C. § 1132(a)(3)(B))**

19 64. Plaintiff incorporates by reference the preceding paragraphs as though such  
20 paragraphs were fully stated herein.

21 65. This count is brought pursuant to 29 U.S.C. § 1132(a)(3)(B), to obtain appropriate  
22 equitable relief (i) to redress United's violations of the Federal Parity Act and Section 2706 of the  
23 ACA, as incorporated into the Plan and ERISA, and/or (ii) to enforce such provisions of ERISA  
24 or the Plan. Plaintiff brings this claim only to the extent that the Court finds that the equitable  
25 relief sought is unavailable pursuant to 29 U.S.C. § 1132(a)(1)(B) or 29 U.S.C. § 1132(a)(3)(A).

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff demands judgment in her favor against Defendants as follows:  
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- 1           A.     Certifying the Class and appointing Plaintiff as Class Representative;
- 2           B.     Declaring that Defendants violated their legal obligations in the manner described
- 3 herein;
- 4           C.     Permanently enjoining Defendants from engaging in the misconduct described
- 5 herein;
- 6           D.     Ordering Defendants to pay or reprocess all wrongfully denied claims without the
- 7 illegal limitations described herein, with interest;
- 8           E.     Ordering appropriate equitable relief, including but not limited to an appropriate
- 9 monetary award based on disgorgement, restitution, surcharge or other basis;
- 10          F.     Awarding Plaintiff disbursements and expenses of this action, including
- 11 reasonable attorneys' fees, in amounts to be determined by the Court; and
- 12          G.     Granting such other and further relief as is just and proper in light of the evidence.
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Dated: October 16, 2018

/s/ Meiram Bendat  
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