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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.
24

Case No. 3:18-cv-06336

CLASS ACTION COMPLAINT

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1 Plaintiff Jane Smith (“Plaintiff”)¹ 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
23

24 ¹ 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

28

1 11. Defendant UHIC is a health insurance company that operates nationwide.
 2 Defendant UHIC administers both fully-insured health plans (such as the Plan), meaning that
 3 health care benefits are paid by UHIC from its own assets, and self-funded plans, meaning that
 4 health care benefits are paid by the plan from the assets of the plan sponsor employer.
 5 (collectively, “United Plans”). For all United Plans, Defendant UHIC controls and otherwise
 6 participates in the development of the policies and procedures applicable to the processing of
 7 benefit claims, and exercises discretion regarding the interpretation of the Plans’ written terms,
 8 which claims to cover, and how much a given United Plan should pay for a covered claim. In that
 9 capacity, UHIC participated in and has knowledge of the development and application of the
 10 Discriminatory Reimbursement Penalty challenged herein.

11 12. In that same capacity, Defendant UHIC delegated responsibility to its corporate
 12 affiliate, Defendant UBH, to make benefit coverage determinations for mental health and
 13 substance use services under the United Plans. Defendant UBH is a corporation organized under
 14 California law, with its principal place of business in San Francisco, California. UBH receives a
 15 per-member-per-month (“PMPM”) rate for providing this service for UHIC’s fully-insured plans.
 16 UBH is responsible for paying benefits out of the PMPM amounts it receives from UHIC. UBH,
 17 thus, bears the risk for benefit expenses for fully-insured plans, such as Plaintiff’s Plan. For all
 18 United Plans, Defendant UBH controls and otherwise participates in the development of the
 19 policies and procedures applicable to the processing of benefit claims for mental health and
 20 substance use services and exercises discretion regarding the interpretation of the Plans’ written
 21 terms, which claims to cover, and how much a given United Plan should pay for a covered claim.
 22 In that capacity, Defendant UBH also participated in and has knowledge of the development and
 23 application of the Discriminatory Reimbursement Penalty challenged herein.

JURISDICTION AND VENUE

24 13. United’s actions in administering employer-sponsored health care plans, including
 25 determining reimbursements for Plaintiff under her Plan, are governed by ERISA, 29 U.S.C.
 26 § 1001, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
 27 question jurisdiction) and 29 U.S.C. § 1132(e) (ERISA).
 28

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
28

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 29. Defendant UBH denied Plaintiff's second-level appeal. In its denial, UBH entirely
2 failed to address the issue which Plaintiff appealed. In particular, UBH ignored Plaintiff's
3 concerns about the legality of United's Discriminatory Reimbursement Penalty and United's lack
4 of compliance with the Parity Act. Rather, UBH simply repeated what it had written in its denial
5 of Plaintiff's first-level appeal: that Plaintiff's claims had been adjudicated properly. UBH also
6 wrote that this "is the Final Adverse Determination of your internal appeal. All internal appeals
7 through UBH have been exhausted."

8 30. UBH's final adverse determination went on to inform Plaintiff of the following:
9 "You may have the right to file a civil action under ERISA if all required reviews of your claim
10 have been completed."

11 **VIOLATION OF THE FEDERAL PARITY ACT**

12 31. The Parity Act, which is incorporated into ERISA at 29 U.S.C. § 1185a, prohibits
13 discrimination with respect to mental health and substance use disorder benefits, by requiring that
14 any group health plan, such as Plaintiff's Plan, which "provides both medical and surgical
15 benefits and mental health or substance use disorder benefits . . . shall ensure that:

16 (i) the financial requirements applicable to such mental health or substance use
17 disorder benefits are no more restrictive than the predominant financial
18 requirements applied to substantially all medical and surgical benefits covered by
19 the plan (or coverage), and there are no separate cost sharing requirements that are
applicable only with respect to mental health or substance use disorder benefits;
and

20 (ii) the treatment limitations applicable to such mental health or substance use
21 disorder benefits are no more restrictive than the predominant treatment limitations
22 applied to substantially all medical and surgical benefits covered by the plan (or
coverage) and there are no separate treatment limitations that are applicable only
with respect to mental health or substance use disorder benefits."

23 32. In defining the Parity Act requirements, the relevant federal agencies have
24 explained that it is impermissible to impose more restrictive quantitative limitations on mental
25 health coverage than for medical or surgical services. It is also impermissible for those
26 administering plans to "impose a nonquantitative treatment limitation with respect to mental
27 health or substance use disorder benefits in any classification unless, under the terms of the plan
28

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

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

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

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

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

15 * * * *

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

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

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

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

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

- 25 1. Whether Defendants are ERISA fiduciaries;
26 2. Whether the Discriminatory Reimbursement Penalty violates the
27 Federal Parity Act;
28

- 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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1 Dated: October 16, 2018

/s/ Meiram Bendat
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Complaints and Other Initiating Documents

[3:18-cv-06336 Smith v. United Healthcare Insurance Company et al](#)

U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered by Bendat, Meiram on 10/16/2018 at 1:33 PM and filed on 10/16/2018

Case Name: Smith v. United Healthcare Insurance Company et al

Case Number: [3:18-cv-06336](#)

Filer: Jane Smith

Document Number: [1](#)

Docket Text:

COMPLAINT Class Action Complaint against United Behavioral Health, United Healthcare Insurance Company (Filing fee \$ 400, receipt number 0971-12767407.). Filed by Jane Smith. (Attachments: # (1) Civil Cover Sheet Civil Cover Sheet)(Bendat, Meiram) (Filed on 10/16/2018)

3:18-cv-06336 Notice has been electronically mailed to:

Meiram Bendat mbendat@psych-appeal.com

3:18-cv-06336 Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\2018-10-16 Complaint.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=10/16/2018] [FileNumber=15255221-0] [38ace49585d9074b871bee6a86892b8ed1022bcab1ddb3699291d9c0b71e6ac700cbda5c729d3e97efc44195b9a2064b8d87ace346bdd7bd707f1d897ead366]]

Document description:Civil Cover Sheet Civil Cover Sheet

Original filename:C:\fakepath\2018-10-16 Civil Cover Sheet.PDF

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=10/16/2018] [FileNumber=15255221-1] [7a125ef90083cbd7475c936b99a38705df96071473c92627f6724156f182fc059f4b9ac4b15b34d557c9f6f8238eddc9be088d35d77f3bd02299cc32bf07fb3a]]