

1 ROBERT S. GIANELLI, #82116
2 JOSHUA S. DAVIS, #193187
3 ADRIAN J. BARRIO, #219266
4 GIANELLI & MORRIS, A Law Corporation
5 550 South Hope Street, Suite 1645
6 Los Angeles, CA 90071
7 Tel: (213) 489-1600; Fax: (213) 489-1611
8 rob.gianelli@gmlawyers.com
9 joshua.davis@gmlawyers.com
10 adrian.barrio@gmlawyers.com

11 Attorneys for Plaintiffs
12 BRIAN HENDRICKS;
13 ANDREW SAGALONGOS

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 BRIAN HENDRICKS; ANDREW
17 SAGALONGOS, on behalf of
18 themselves and all others similarly
19 situated,

20 Plaintiffs,

21 v.

22 AETNA LIFE INSURANCE
23 COMPANY;

24 Defendant.

) Case No.: 2:19-cv-6840

)
) **COMPLAINT FOR RECOVERY OF**
) **ERISA PLAN BENEFITS;**
) **ENFORCEMENT AND**
) **CLARIFICATION OF RIGHTS; AND**
) **BREACH OF FIDUCIARY DUTY**

) **CLASS COMPLAINT**
)
)
)
)

25
26
27
28

1 Plaintiffs, Brian Hendricks and Andrew Sagalongos, on behalf of themselves
2 and all others similarly situated, set forth herein the allegations of their Complaint
3 against Aetna Life Insurance Company.

4 INTRODUCTION

5 1. Defendant Aetna Life Insurance Company (“Aetna”) is in the business of
6 insuring and/or administering health insurance plans (both fully insured and self-
7 insured), most of which are employer-sponsored and governed by the Employee
8 Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.* (“Aetna
9 plans”).

10 2. Plaintiffs bring this action to address Aetna’s repeated violations of
11 ERISA resulting from its systemic practice of denying services for lumbar artificial
12 disc replacement surgery (L-ADR) on the basis that such services are “experimental
13 and investigational.” Aetna has developed and used a coverage policy, the Clinical
14 Policy Bulletin “Intervertebral Disc Prostheses,” that it uses when deciding claims for
15 L-ADR. That Policy Bulletin provides that lumbar ADR is experimental and
16 investigational and, therefore, excluded in all circumstances. Aetna has systematically
17 denied all requests for L-ADR as experimental and investigational under this Clinical
18 Policy Bulletin. Contrary to Aetna’ position, lumbar ADR surgery has been approved
19 by The United States Food and Drug Administration (“FDA”) for fifteen years and is a
20 safe, effective, and often recommended procedure that has successfully treated the
21 symptoms of lumbar disc disease.

22 JURISDICTION AND VENUE

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

28 ///

1 level degenerative disc disease of the lumbar spine (L4-L5 or L5-S1).

2 11. The FDA's Premarket Approval process is rigorous and applies to all
3 Class III medical devices such as the PRODISC-L and the activL. Class III medical
4 devices are devices which, by definition, present significant risks to human health.
5 These devices must therefore meet the FDA's most stringent safety standards before
6 they are approved for commercial sale and distribution. These include sufficient
7 controlled clinical trial evidence to ensure that a given device is safe and effective. *See*
8 *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 317-318, 322-323 (2008).

9 12. There have been numerous published peer-reviewed articles of controlled
10 clinical trials establishing that L-ADR with an FDA-approved device is safe and
11 effective. L-ADR is widely recognized in the medical community and by providers
12 throughout the nation as a viable, safe and effective treatment for degenerative disc
13 disease. Artificial disc devices have been used in thousands of spinal arthroplasties and
14 have been proven to be safe and effective in the treatment of degenerative disc disease.
15 Medical societies such as the North American Spine Society have endorsed the surgery
16 and it is performed at leading medical centers across the country. All major health
17 insurers other than Aetna (Anthem, United HealthCare, Humana, Cigna) cover the
18 surgery.

19 **B. Aetna's categorical denial of requests for L-ADR**

20 13. Aetna plans exclude from coverage those medical services that Aetna
21 considers "experimental and investigational."

22 14. Aetna has developed internal Clinical Policy Bulletins ("CPB"), that is,
23 written directives on coverage positions Aetna takes with respect to certain medical
24 treatments.

25 15. Aetna's CPB 0591, "Intervertebral Disc Prostheses," sets forth Aetna's
26 coverage position on L-ADR. It provides in pertinent part:

27 Aetna considers lumbar prosthetic intervertebral discs (e.g., the activL
28 Artificial Disc, the Charité Artificial Disc, and the ProDisc-L Total Disc
Replacement) experimental and investigational for lumbosacral
degenerative disc disease and for all other indications.

1 16. Pursuant to CPB 0591, Aetna has denied all requests for L-ADR on the
2 basis that L-ADR is “experimental and investigational.” Aetna denies coverage for L-
3 ADR regardless of the member’s medical profile or medical need. Aetna denies
4 coverage for L-ADR upon the initial request for the surgery and on any appeal taken
5 on the identical basis, that L-ADR is experimental and investigational.

6 **C. Aetna’s denial of Plaintiff Brian Hendricks' request for L-ADR**

7 17. Plaintiff Brian Hendricks suffered from disc disease at the L5-S1 level
8 of his lumbar spine that caused Plaintiff significant pain and immobility.
9 Conservative measures such as medication and corrective exercises did not help to
10 relieve these symptoms or the further degeneration of Plaintiff’s spine condition.

11 18. After confirming Plaintiff’s condition on MRI, and conducting a
12 history and physical of Plaintiff, his surgeon, Brian Perri, M.D., recommended that
13 Plaintiff undergo L-ADR. Plaintiff elected to proceed with the procedure.

14 19. Request was made of Aetna to approve L-ADR for Plaintiff.

15 20. On April 29, 2019, Aetna advised Plaintiff that it was denying his
16 request for L-ADR because it was experimental and investigational pursuant to CPB
17 0591. Aetna stated:

18 We reviewed information received about your condition and
19 circumstances. We used the Clinical Policy Bulletin (CPB):
20 Intervertebral Disc Prostheses. Based on CPB criteria and the
21 information we have, we are denying coverage for spinal disc
22 replacement in your lower back and any associated services, procedures
or devices. Clinical studies have not proven that replacing your lumbar
discs with artificial spine discs is effective to treat lumbar disc disease or
other back conditions.

23 21. Plaintiff and his physician appealed this decision. On June 27, 2019,
24 Aetna rejected the appeal and affirmed its initial denial of Plaintiff’s request for L-
25 ADR surgery pursuant to CPB 0591 on the basis that L-ADR is experimental and
26 investigational.

27 22. As a result of Aetna's rejection of his claim, Plaintiffs paid for L-ADR out
28 of his own pocket.

D. Aetna's denial of Plaintiff Andrew Sagalongos' request for L-ADR

23. Plaintiff Andrew Sagalongos has suffered from disc disease at the L5-S1 level of his lumbar spine that has caused him significant pain and immobility for 13 years. Conservative measures such as medication and corrective exercises did not help to relieve these symptoms or the further degeneration of Plaintiff's spine condition.

24. After confirming Plaintiff's condition on MRI, and conducting a history and physical of Plaintiff, his surgeon, Robert Jackson, M.D., recommended that Plaintiff undergo L-ADR. Plaintiff elected to proceed with the procedure.

25. Request was made of Aetna to approve L-ADR for Plaintiff.

26. On July 5, 2019 Aetna advised Plaintiff that it was denying his request for L-ADR because it was experimental and investigational pursuant to CPB 0591. Aetna stated:

We reviewed information received about your condition and circumstances. We used the Clinical Policy Bulletin (CPB): Intervertebral Disc Prostheses. Based on CPB criteria and the information we have, we are denying coverage for spinal disc replacement in your lower back and any associated services, procedures or devices. Medical studies have not proven that prosthetic intervertebral discs are effective for use in the lumbar spine for lumbosacral degenerative disc disease and for all other indications.

27. Plaintiff appealed this decision. On July 24, 2019, Aetna rejected the appeal and affirmed its initial denial of Plaintiff's request for L-ADR surgery pursuant to CPB 0591 on the basis that L-ADR is experimental and investigational.

CLASS ACTION ALLEGATIONS

28. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a Class Action pursuant to Federal Rules of Civil Procedure Rule 23. Pursuant to Rule 23(b)(1) and (b)(2), Plaintiffs seek certification of a class defined as follows:

All persons covered under Aetna Plans, governed by ERISA, self-funded or fully insured, whose requests for lumbar artificial disc replacement

///

1 surgery were denied at any time within the applicable statute of
2 limitations.

3 29. Plaintiffs and the Class reserve the right under Federal Rule of Civil
4 Procedure Rule 23(c)(1)(C) to amend or modify the class to include greater specificity,
5 by further division into subclasses, or by limitation to particular issues.

6 30. This action has been brought and may be properly maintained as a class
7 action under the provisions of Federal Rules of Civil Procedure Rule 23 because there
8 is a well-defined community of interest in the litigation and the proposed class is easily
9 ascertainable.

10 **A. Numerosity**

11 31. The potential members of the proposed class as defined are so numerous
12 that joinder of all the members of the proposed class is impracticable. While the
13 precise number of proposed class members has not been determined at this time,
14 Plaintiffs are informed and believes that there are a substantial number of individuals
15 covered under Aetna plans who have been similarly affected.

16 **B. Commonality**

17 32. Common questions of law and fact exist as to all members of the proposed
18 class.

19 **C. Typicality**

20 33. The claims of the named Plaintiffs are typical of the claims of the
21 proposed class. Plaintiffs and all members of the class are similarly affected by Aetna's
22 wrongful conduct.

23 **D. Adequacy of representation**

24 34. Plaintiffs will fairly and adequately represent and protect the interests of
25 the members of the proposed class. Counsel who represent Plaintiffs are competent and
26 experienced in litigating large and complex class actions.

27 **E. Superiority of class action**

28 35. A class action is superior to all other available means for the fair and

1 efficient adjudication of this controversy. Individual joinder of all members of the
2 proposed Class is not practicable, and common questions of law and fact exist as to all
3 class members.

4 36. Class action treatment will allow those similarly situated persons to
5 litigate their claims in the manner that is most efficient and economical for the parties
6 and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be
7 encountered in the management of this action that would preclude its maintenance as a
8 class action.

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

10 37. Inconsistent or varying adjudications with respect to individual members
11 of the class would establish incompatible standards of conduct for Aetna.

12 38. Adjudications with respect to individual class members would be
13 dispositive of the interests of the other members not parties to the individual
14 adjudications or would substantially impair or impede their ability to protect their
15 interests.

16 39. Aetna has acted or refused to act on grounds generally applicable to the
17 class, thereby making appropriate final injunctive relief or corresponding declaratory
18 relief with respect to the class as a whole.

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

22 40. Plaintiffs and the Class repeat and re-allege each and every allegation set
23 forth in all of the foregoing paragraphs as if fully set forth herein.

24 41. 29 U.S.C. § 1132(a)(1)(B) entitles Plaintiffs to recover benefits due and to
25 enforce and clarify her rights to the benefits at issue.

26 42. As set forth above, Aetna categorically denies all requests for L-ADR
27 based upon the position set forth in CPB 0591 that L-ADR surgery is “experimental
28 and investigational” and excluded under all Aetna plans.

1 43. Aetna improperly denied Plaintiffs' requests for L-ADR on the basis it is
2 experimental and investigational and excluded under Plaintiffs' plans. Aetna has
3 applied and continues to apply its internal guideline in a manner which restricts access
4 to L-ADR for individuals with degenerative disc disease, a practice wholly inconsistent
5 with the terms of Plaintiffs' plans. L-ADR is a safe and effective treatment and has
6 been approved by the FDA for over thirteen years.

7 44. There is now due and owing to Plaintiffs benefits, interest, and attorney
8 fees in an amount to be determined at the time of trial.

9 45. On behalf of the class, Plaintiffs seeks a clarification of rights relating to
10 Aetna' categorical denial of L-ADR as experimental and investigational.

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

13 46. Plaintiffs and the Class repeat and re-allege each and every allegation set
14 forth in all of the foregoing paragraphs as is fully set forth herein.

15 47. Aetna acts as ERISA fiduciary with respect to the administration and
16 claims decisions under Aetna plans, such as plans at issue, within the meaning of 29
17 U.S.C. § 1109(a) and 1002(21)(A). With respect to these plans, Aetna exercises
18 discretionary authority or control respecting management of the plans, and exercises
19 authority and control respecting management or disposition of the plans' assets. Aetna
20 has the authority, and actually exercise the authority, to fund the plans, make decisions
21 on claims for benefits and appeals thereof, and to write checks for benefits.

22 48. Aetna has categorically and improperly denied Plaintiffs' and class
23 members' requests for L-ADR surgery, as alleged above.

24 49. In acting and failing to act as described above, Aetna has breached its
25 fiduciary duties.

26 50. Pursuant to 29 U.S.C. § 1132(a)(3), Plaintiffs and the Class seek
27 declaratory, equitable and remedial relief as follows:
28

1 a. An order declaring that Aetna’s policies and practices, as alleged
2 herein, violate ERISA and the terms of the Aetna plans;

3 b. An injunction compelling Aetna to: (1) retract its categorical denial
4 basis for L-ADR; (2) provide notice of said determination in the form and manner
5 required by ERISA to all class members who have had requests for L-ADR denied;
6 and (3) provide for the reprocessing of all denied claims without the improper
7 "experimental and investigational" denial basis;

8 c. An accounting of any profits made by Aetna from the monies
9 representing the improperly denied claims and disgorgement of any profits;

10 d. Such other equitable and remedial relief as the Court may deem
11 appropriate; and

12 e. Attorney fees in an amount to be proven.

13 **REQUEST FOR RELIEF**

14 Wherefore, Plaintiffs and the Class pray for judgment against Aetna as follows:

15 1. Re-process and payment of the health benefits due to Plaintiffs;

16 2. A clarification of rights to future benefits under the plan for all class
17 members;

18 3. Injunctive and declaratory relief for all class members, as described
19 above;

20 4. An accounting of any profits made by Aetna from the monies representing
21 the improperly denied claims and disgorgement of any profits;

22 5. Pursuant to 29 U.S.C. § 1132(g), payment of all costs and attorney fees
23 incurred in pursuing this action;

24 6. Payment of prejudgment and post-judgment interest as allowed for under
25 ERISA; and

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. For such other and further relief as the Court deems just and proper.

DATED: August 7, 2019

GIANELLI & MORRIS

By: /s/ Adrian J. Barrio
ROBERT S. GIANELLI
JOSHUA S. DAVIS
ADRIAN J. BARRIO
Attorneys for Plaintiffs,
BRAIN HENDRICKS
ANDREW SAGALONGOS