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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DAVID MORTON, on his own behalf and
on behalf of all similarly situated
individuals,

Plaintiff,

v.

GROUP HEALTH COOPERATIVE and
GROUP HEALTH OPTIONS, INC.,
Washington Corporations,

Defendants.

NO. 16-2-02011-9 SEA

COMPLAINT
(CLASS ACTION)

I. PARTIES

1. *David Morton.* Plaintiff David Morton is a resident of King County, Washington. Mr. Morton is insured under a health insurance plan issued, delivered, administered and insured by Group Health Cooperative.

2. *GHC.* Defendants Group Health Cooperative and Group Health Options are Washington corporations that do business in the State of Washington, including King County. Group Health Options is a wholly-owned subsidiary of Group Health Cooperative, and they are “alter egos.” See *McKinnon v. Blue Cross-Blue Shield of Alabama*, 691 F. Supp. 1314, 1319 (1988), *aff’d*, 874 F.2d 820 (1989). They use the same standard contracts, the same standard definition of “medical necessity” and the same internal policies and procedures for determining the medical necessity. For the purpose of this Complaint, both are referred to as a single defendant, “GHC.” GHC is an authorized

1 health carrier and is engaged in the business of insurance in the State of Washington,
2 including King County.

3 **II. JURISDICTION AND VENUE**

4 3. *Jurisdiction.* Jurisdiction of this Court arises pursuant to RCW 2.08.010.

5 4. *Venue.* Venue is proper under RCW 4.12.025(1) and (3) because defendant
6 GHC transacts business, has an office and/or resides in King County.

7 **III. NATURE OF THE CASE**

8 5. *Mr. Morton's Need for Treatment with Harvoni.* Mr. Morton has been
9 diagnosed with Hepatitis C ("HCV"). He seeks a treatment with Harvoni®, ledipasvir-
10 sofosbuvir ("Harvoni"), one of several direct-acting antiviral medications ("DAAs")
11 recommended for nearly *all* patients diagnosed with chronic HCV infection by the
12 American Association for the Study of Liver Diseases and the Infectious Diseases Society
13 of America. Treatment results in a more than *90% cure rate*. There is no alternative
14 medication or medical intervention that would provide Mr. Morton with equally
15 beneficial results.

16 6. *GHC Limits Coverage for Harvoni for Financial - Not Medical - Reasons.*
17 GHC, pursuant to a uniform medical policy, will not approve Mr. Morton's treatment
18 with Harvoni. GHC has put in place internal coverage restrictions that impermissibly
19 deny all its insureds access to curative treatment for HCV solely because it is perceived
20 to be expensive by GHC. Specifically, GHC rations the HCV treatment, excluding all
21 coverage except to the most severely ill insureds. The restrictions on coverage do not
22 have a clinical purpose but are imposed solely due to GHC's financial concerns over the
23 expense of the curative medication.

24 7. *GHC's Uniform Policy Risks the Lives and Health of Its Insureds.* GHC's
25 restrictive internal coverage criteria require that infected individuals wait for treatment
26 - potentially for years - until they demonstrate serious scarring or cirrhosis of the liver

1 from HCV infection. In the meantime, Mr. Morton and others are forced to live with a
2 chronic inflammatory disease, including the pain, fatigue, depression, deteriorating
3 health and increased risk of cancer and death that accompanies it.

4 8. *GHC Has Breached its Contracts, Committed Unfair and Deceptive Acts,*
5 *and Misrepresented its Contractual Obligations.* This lawsuit seeks to end GHC's
6 improper exclusion of Harvoni and other DAAs for the treatment of HCV. It seeks legal
7 and equitable remedies against GHC on behalf of plaintiff and the class he seeks to
8 represent. It also seeks a court order declaring GHC's internal exclusionary criteria
9 illegal, deceptive, unfair, void and inconsistent with its contractual obligations to cover
10 medically necessary treatments without regard to its own financial interests. The
11 lawsuit further seeks an injunction to prevent any future or ongoing efforts by GHC to
12 use and enforce any policies or practices that impermissibly deny, exclude or limit its
13 insureds' access to medically necessary services to treat HCV, in addition to ensuring
14 that both coverage and corrective notice be provided to its insureds.

15 IV. FACTUAL BACKGROUND

16 HCV TREATMENT

17 9. *HCV Is Widespread.* HCV is a widespread contagious disease of the liver.
18 It is estimated that approximately five million individuals in the United States are living
19 with HCV, accounting for over 1% of the population.

20 10. *HCV Is a Serious Disease.* HCV can lead to severe liver damage, infections,
21 liver cancer, and death. Nearly 20,000 people in the United States die each year due to
22 liver disease caused by HCV. See <http://www.cdc.gov/hepatitis/Statistics/index.htm>
23 (last visited 1/25/16). Even before the advanced stages of the disease, individuals with
24 HCV can suffer from heart attacks, fatigue, joint pain, depression, sore muscles, arthritis
25 and jaundice. Statistics from the Centers for Disease Control and Prevention indicate
26 that up to 70% of those with HCV will develop chronic liver disease, 20% will develop

1 cirrhosis, and 5% will develop liver cancer.

2 11. *Severity of HCV Is Measured by a Fibrosis Score.* Liver health is graded
3 according the level of liver scarring under a fibrosis score. A score of F0 or F1 indicates
4 a lack of scarring, while a score of F3 indicates severe fibrosis and stage F4 indicates
5 cirrhosis.

6 12. *Prior Treatments Were Expensive, Often Ineffective and Accompanied by*
7 *Significant Side Effects.* Until DAAs were approved, the standard of care for the
8 treatment of HCV was a three-drug treatment containing boceprevir, interferon and
9 ribavirin at a cost of approximately \$170,000 per cure. The treatment only provided at
10 most a 70% cure rate, and was accompanied by significant adverse side effects such as
11 anemia, insomnia, anxiety, depression, nausea, bone pain, muscle, liver failure, joint
12 pain, memory loss and death.

13 13. *FDA Approves Harvoni and other DAAs as a “Breakthrough Therapy.”*
14 Since 2011, the FDA has approved DAAs to treat HCV. The United States Food and
15 Drug Administration approved Harvoni on October 10, 2014. It has a success rate
16 approaching 100% and is accompanied by few, if any, side effects. It costs substantially
17 less than the prior, much less effective treatments for each patient cured. Harvoni was
18 designated a “breakthrough therapy” by the FDA, a classification reserved for drugs that
19 have proven to provide substantial improvement over available therapies for patients
20 with serious or life-threatening diseases.

21 14. *Harvoni and Other DAAs Are the Standard of Care for the Treatment of*
22 *HCV Irrespective of Fibrosis Score.* Harvoni and other DAAs are the standard of
23 medical care for the treatment of all HCV. This includes treatment of all individuals
24 irrespective of the individual’s fibrosis score. Treatment guidelines approved by the
25 American Association for the Study of Liver Diseases and the Infectious Diseases Society
26 of America confirm that Harvoni and other DAAs should *not* be reserved for only

1 individuals with fibrosis scores of F3 and F4. See <http://hcvguidelines.org/> (last visited
2 1/25/16). Rather, the standard of care is treat “all patients with chronic HCV infection,
3 except those with short life expectancies that cannot be remediated by treated HCV, by
4 transplantation, or by other directed therapy.” See [http://hcvguidelines.org/full-
5 report/when-and-whom-initiate-hcv-therapy](http://hcvguidelines.org/full-report/when-and-whom-initiate-hcv-therapy) (last visited 1/25/16). Treating all
6 patients is the standard of care in the community, and the only obstruction to treatment
7 today is insurance company approval.

8 **GHC’S UNIFORM EXCLUSIONARY COVERAGE CRITERIA**

9 15. *GHC Has Adopted Coverage Criteria for Harvoni.* GHC has adopted a
10 uniform coverage approach with respect to when, and under what conditions, it will
11 approve Harvoni and other similar DAAs for coverage under its health insurance
12 policies.

13 16. *GHC Does Not Provide Coverage for All Its HCV-infected Insureds.* Among
14 other improper exclusions, GHC’s coverage criteria generally exclude coverage for
15 Harvoni and other DAAs for its insureds with fibrosis scores of F0, F1 and F2 where no
16 other conditions are present.

17 17. *GHC’s Coverage Criteria Are Inconsistent with Accepted Medical Practice.*
18 GHC has no clinical or medical basis to deny treatment to individuals with a fibrosis
19 score of F0, F1 or F2. On the contrary, the HCV Guidelines provide that “[b]ecause of the
20 myriad benefits associated with successful HCV treatment, clinicians should treat HCV-
21 infected patients with antiviral therapy with the goal of achieving an SVR, *preferably*
22 *early in the course of their chronic HCV infection before the development of severe liver*
23 *disease and other complications.*” See [http://hcvguidelines.org/full-report/when-
24 and-whom-initiate-hcv-therapy](http://hcvguidelines.org/full-report/when-and-whom-initiate-hcv-therapy) (last visited 1/25/16) (emphasis added). Treatment of
25 HCV even in patients with mild liver disease decreases complications and death rate
26 due to liver disease.

1 18. *GHC's Coverage Criteria Put the Life and Health of Its Insureds at Risk of*
2 *Multiple HCV Complications, Including Death.* GHC's insureds who meet the
3 standards set forth by the American Association for the Study of Liver Diseases and the
4 Infectious Diseases Society of America, but who are excluded under GHC's coverage
5 criteria, are put at risk. They are needlessly exposed to health conditions caused by
6 HCV, including cirrhosis, cancer, heart attacks, fatigue, joint pain, depression, sore
7 muscles, arthritis, death and unneeded liver transplants and jaundice. In addition, the
8 lack of treatment of infected individuals increases the chance that members of the
9 insured's household and the public will be exposed to, and contract, HCV.

10 19. *GHC Has Publicly Stated Its Coverage Position.* GHC's coverage position
11 is known by many doctors treating GHC insureds, including (but not limited to)
12 physicians working for GHC itself.

13 20. *GHC's Coverage Criteria Represent an Effort to Impermissibly Ration Care.*
14 GHC's coverage criteria are not tied to its contractual language, which provides that
15 coverage of medically necessary drugs is covered. Rather, GHC's denial of coverage is
16 an effort to ration care, at least in part, because of its concern over the perceived expense
17 of Harvoni and other DAAs. However, nothing in GHC's policy permits it to ration
18 medically necessary treatment based on its assessment of perceived cost.

19 **MR. MORTON REQUIRES HARVONI TO TREAT HIS HCV.**

20 21. *Mr. Morton Is Insured by GHC.* During certain time periods on and after
21 October 10, 2014, Mr. Morton and members of the class have been or will be insured
22 under "health plans," as that term is defined in RCW 48.43.005(19), issued by GHC, and
23 are exempt from the Employee Income Security Act of 1974 under ERISA § 4, 29 U.S.C.
24 § 1003.

25 22. *Treatment with Harvoni Is Medically Necessary for Mr. Morton.*
26 Mr. Morton's treating doctor has recommended that he be treated immediately with

1 Harvoni, which will likely cure his HCV.

2 23. *Treatment with Harvoni Is “Medically Necessary” for Mr. Morton, and*
3 *Others Like Him, Under the GHC Policy of Insurance.* Treatment with Harvoni is
4 “medically necessary” for Mr. Morton and others like him under the explicit definition
5 of “medically necessary” contained in the GHC policy. Harvoni and other similar DAAs
6 are covered under the prescription drug benefit of the GHC policy and not otherwise
7 properly excluded under the policy of insurance.

8 24. *Mr. Morton’s Request for Harvoni Was Denied Under GHC’s Uniform*
9 *Coverage Criteria.* GHC denied Mr. Morton’s doctor’s preauthorization request for
10 treatment with Harvoni on October 20, 2015. It denied his appeal on November 25, 2015.
11 GHC’s denials were both based solely upon its application of its HCV coverage criteria.
12 Specifically, GHC concluded that Mr. Morton, who currently has a fibrosis score of F1,
13 was not ill enough to qualify for coverage under its coverage criteria.

14 **V. CLASS ALLEGATIONS**

15 25. *Size and Definition of Class.* The class consists of all individuals who:

- 16 (i) have been, are, or will be insured under a non-ERISA
17 governed “health plan,” as that term is defined by RCW
18 48.43.005(19), on or after October 10, 2014, by:
19 (a) defendant GHC; (b) any Washington State affiliate of
20 defendant; (c) predecessors or successors in interest of any
21 of the foregoing; and (d) all Washington state subsidiaries
22 of any of the foregoing; and
23 (ii) have received, require, or are expected to require
24 treatment for Hepatitis C with Harvoni/ledipasvir-
25 sofosbuvir or other similar direct acting antivirals under
26 the current guidelines adopted by the American
Association for the Study of Liver Diseases and the
Infectious Diseases Society of America (*see*
[http://www.hcvguidelines.org/full-report/when-and-
whom-initiate-hcv-therapy](http://www.hcvguidelines.org/full-report/when-and-whom-initiate-hcv-therapy)) (last visited 1/25/16); and

1 (iii) do not meet the coverage criteria for HCV medication
2 adopted by GHC.

3 26. ***Class Representative Morton.*** Named plaintiff David Morton has been
4 continuously insured since October 1, 2015 under a non-ERISA policy issued by GHC.
5 Mr. Morton has HCV. He sought coverage for Harvoni from GHC after October 10, 2014
6 and was denied under GHC's uniform approach to coverage for Harvoni. Mr. Morton,
7 however, meets the criteria for treatment under the guidelines approved by the
8 American Association for the Study of Liver Diseases and the Infectious Diseases Society
9 of America. His claims are typical of the claims of the other members of the class, and
10 he will fairly and adequately represent the interests of the class.

11 27. ***Size of Class.*** Over 1% of the United States population has HCV. Of that
12 number, a majority has a fibrosis score of F0, F1 or F2, which would result in exclusion
13 under MHP coverage criteria. GHC's Washington non-ERISA Washington enrollment
14 exceeds 100,000. As a result, the class is expected to number in the hundreds or
15 thousands and is so large that joinder of all members is impracticable.

16 28. ***Common Questions of Law and Fact.*** This action requires a determination
17 of whether GHC's application of internal policies and practices that deny, exclude
18 and/or limit coverage of Harvoni and other similar DAAs are proper under the terms
19 of the insurance policies and applicable law. A determination of this issue will in turn
20 determine whether plaintiff and the class are entitled to a declaratory judgment
21 pursuant to RCW 7.24, *et seq.*, an injunction pursuant to RCW 19.86.090, an injunction
22 under common law, damages for breach of contract and damages and treble damages
23 due to violations of the Washington Consumer Protection Act, RCW 19.86, *et. seq.* In
24 addition, GHC's position that it does not, and is not required to, provide coverage
25 constitutes an anticipatory breach of contract and misrepresents policy terms and
26 conditions which entitles the class to additional legal and equitable remedies, including
corrective notice to its insureds.

1 are entitled to damages for breach of contract including, without limitation, out-of-
2 pocket losses, consequential damages and restitution/disgorgement. *See, e.g., Moore v.*
3 *Wash. State Health Care Auth.*, 181 Wn. 2d 299, 332 P.3d 461 (2014).

4 **SECOND CLAIM: DECLARATORY RELIEF**

5 34. Plaintiff re-alleges paragraphs 1 through 33, *above*.

6 35. Under RCW 7.24, *et seq.*, plaintiff Morton and the plaintiff class are entitled
7 to a declaratory judgment determining their legal rights under their contracts. Plaintiff
8 Morton and the plaintiff class are entitled to a declaration that GHC may not exclude
9 medically necessary coverage for Harvoni and other similar DAAs as determined by
10 accepted medical practice. The declaratory judgment should reject GHC's HCV
11 coverage criteria as inconsistent with its policy's definition of medically necessary,
12 standard medical practice and Washington law.

13 **THIRD CLAIM: VIOLATION OF THE WASHINGTON CONSUMER**
14 **PROTECTION ACT, RCW 19.86, ET SEQ.**

15 36. Plaintiff re-alleges paragraphs 1 through 35, *above*.

16 37. GHC's repeated breaches of its insurance contracts with plaintiff Morton
17 and the plaintiff class, particularly when due to the cost of the treatment to it, violate the
18 Washington Consumer Protection Act, RCW 19.86, *et seq.*, and its fiduciary or quasi-
19 fiduciary obligations to its insureds. Specifically, GHC has engaged in, and continues to
20 engage in, unfair or deceptive acts or practices in trade or commerce in violation of the
21 Washington State Consumer Protection Act by restricting coverage at the expense of the
22 health of its insureds in order to save money. Such conduct affects the public interest,
23 and has caused injury to the named plaintiff and the plaintiff class.

24 38. Plaintiff and the plaintiff class are entitled to an injunction under RCW
25 19.86.090.

26 39. Plaintiff and plaintiff class are entitled to compensatory damages and treble

1 damages under RCW 19.86.090, along with costs of suit and attorney fees.

2 **FOURTH CLAIM: INJUNCTIVE RELIEF**

3 40. Plaintiff re-alleges paragraphs 1 through 39, *above*.

4 41. Plaintiff and the plaintiff class are entitled to an injunction under RCW
5 19.86.090, under the common law, and under any other applicable laws to enjoin GHC
6 from further breaches of its health insurance contracts and/or its unfair or deceptive acts
7 and practices.

8 42. Plaintiff and the plaintiff class are also entitled to a corrective notice by GHC
9 affirming its obligation to provide its insureds with access to Harvoni and other similar
10 DAAs for the treatment of HCV regardless of fibrosis score.

11 **FIFTH CLAIM: MISREPRESENTATION**

12 43. Plaintiff re-alleges paragraphs 1 through 42, *above*.

13 44. GHC's statements concerning its exclusionary coverage criteria misstate its
14 coverage obligations under the policy and mislead class members and their doctors as
15 to its coverage obligations under its policies of insurance. GHC knows, or should know,
16 that under its Washington health insurance policies, it cannot ration Harvoni and other
17 DAA prescription medications, which are the standard of care for treatment of HCV
18 irrespective of fibrosis score.

19 45. Plaintiff and the plaintiff class are entitled to remedies for GHC's
20 misrepresentations as to its coverage obligations, including corrective notice to its
21 insureds.

22 **VII. DEMAND FOR RELIEF**

23 WHEREFORE, plaintiff requests that this Court:

24 (a) Certify this case as a class action, designate the named plaintiff as class
25 representative, and designate SIRIANNI YOUTZ SPOONEMORE HAMBURGER, Richard E.
26 Spoonemore and Eleanor Hamburger, as class counsel;

1 (b) Declare that GHC may not apply policies or practices that exclude or
2 impermissibly limit treatment of HCV with Harvoni or other similar DAAs;

3 (c) Enjoin GHC from continuing to breach its contracts with its insureds, and
4 enjoin GHC from committing further unfair and deceptive acts and practices;

5 (d) Enter judgment in favor of plaintiff and the class for damages in an amount
6 to be proven at trial due to GHC's failure to provide coverage;

7 (e) Enter judgment for damages in favor of plaintiff and the class in an amount
8 to be proven at trial on plaintiff's Consumer Protection Act claim against GHC and
9 award treble damages up to \$25,000 to each class member for each violation;

10 (f) Award plaintiff and the class damages for GHC's breach of contract;

11 (g) Award plaintiff and the class their attorney fees and costs under *Olympic*
12 *Steamship* and its progeny, and under the CPA;

13 (h) Order corrective notice and other relief due to GHC's misrepresentations
14 and violations of the CPA concerning its coverage obligations; and

15 (i) Award such other relief as is just and proper.

16 DATED: January 26, 2016.

17 SIRIANNI YOUTZ
18 SPOONEMORE HAMBURGER

19 /s/ Eleanor Hamburger

20 Richard E. Spoonemore (WSBA #21833)
21 Eleanor Hamburger (WSBA #26478)
22 Attorneys for Plaintiff