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6 IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7 R. K., on his own behalf and on behalf of all
8 similarly situated individuals,

9 Plaintiff,

10 v.

11 BRIDGESPAN HEALTH COMPANY, a
12 Utah corporation,

13 Defendant.

NO. 16-2-01672-3 SEA

COMPLAINT
(CLASS ACTION)

14 **I. PARTIES**

15 1. **R. K.** Plaintiff R. K. is a resident of Snohomish County, Washington. Mr. K.
16 is insured under a health insurance plan issued, delivered, administered and insured by
17 BridgeSpan Health Company (“BridgeSpan”).

18 2. **BridgeSpan Health Company.** Defendant BridgeSpan is a health care service
19 contractor, as defined in RCW 48.44.010, with a certificate of registration issued by the
20 Washington Office of the Insurance Commissioner. Its headquarters and principal place
21 of business are in King County, Washington. It is authorized to sell, and does sell,
22 individual health plans through Washington State’s online health insurance exchange.

23 **II. JURISDICTION AND VENUE**

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

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

III. NATURE OF THE CASE

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

6. *BridgeSpan Limits Coverage for Harvoni for Financial - Not Medical - Reasons.* BridgeSpan, pursuant to a uniform medical policy, will not approve Mr. K.'s treatment with Harvoni. BridgeSpan has put in place internal coverage restrictions that impermissibly deny all its insureds access to curative treatment for HCV solely because it is perceived to be expensive by BridgeSpan. Specifically, BridgeSpan rations the HCV treatment, excluding all coverage except to the most severely ill insureds. The restrictions on coverage do not have a clinical purpose but are imposed solely due to BridgeSpan's financial concerns over the expense of the curative medication. The coverage policy criteria used by BridgeSpan admit this: "Given the high cost of oral medications for HCV infection and the lack of overall affordability to the health care system, at this time coverage is limited to patient population at the highest risk for severe complications as described above." See *Exhibit A*, BridgeSpan Medication Policy for Harvoni, p. 4.

7. *BridgeSpan's Uniform Policy Risks the Lives and Health of Its Insureds.* BridgeSpan's restrictive internal coverage criteria require that infected individuals wait for treatment - potentially for years - until they demonstrate serious scarring or cirrhosis of the liver from HCV infection. In the meantime, Mr. K. and others are forced to live

1 with a chronic inflammatory disease, including the pain, fatigue, depression,
2 deteriorating health and increased risk of cancer and death that accompanies it.

3 8. *BridgeSpan Has Breached its Contracts, Committed Unfair and Deceptive*
4 *Acts, and Misrepresented its Contractual Obligations.* This lawsuit seeks to end
5 BridgeSpan's improper exclusion of Harvoni and other DAAs for the treatment of HCV.
6 It seeks legal and equitable remedies against BridgeSpan on behalf of plaintiff and the
7 class he seeks to represent. It also seeks a court order declaring BridgeSpan's internal
8 exclusionary criteria illegal, deceptive, unfair, void and inconsistent with its contractual
9 obligations to cover medically necessary treatments without regard to its own financial
10 interests. The lawsuit further seeks an injunction to prevent any future or ongoing
11 efforts by BridgeSpan to use and enforce any policies or practices that impermissibly
12 deny, exclude or limit its insureds' access to medically necessary services to treat HCV,
13 in addition to ensuring that both coverage and corrective notice be provided to its
14 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 1/8/16). 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 that is reserved for
19 drugs that have proven to provide substantial improvement over available therapies for
20 patients 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 1/11/16). 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 1/11/16). 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 **BRIDGESPAN’S UNIFORM EXCLUSIONARY COVERAGE CRITERIA**

9 15. *BridgeSpan Has Adopted Coverage Criteria for Harvoni.* BridgeSpan has
10 adopted a uniform coverage approach with respect to when, and under what conditions,
11 it will approve Harvoni and other similar DAAs for coverage under its health insurance
12 policies. A copy of that policy is attached hereto as *Exhibit A*, and is incorporated herein
13 by reference.

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

18 17. *BridgeSpan’s Coverage Criteria Are Inconsistent with Accepted Medical*
19 *Practice.* BridgeSpan has no clinical or medical basis to deny treatment to individuals
20 with a fibrosis score of F0, F1 or F2. On the contrary, the HCV Guidelines provide that
21 “[b]ecause of the myriad benefits associated with successful HCV treatment, clinicians
22 should treat HCV-infected patients with antiviral therapy with the goal of
23 achieving an SVR, *preferably early in the course of their chronic HCV infection*
24 *before the development of severe liver disease and other complications.*” See
25 <http://hcvguidelines.org/full-report/when-and-whom-initiate-hcv-therapy> (last
26 visited 1/11/16) (emphasis added). Treatment of HCV even in patients with mild liver

1 disease decreases complications and death rate due to liver disease.

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

12 19. *BridgeSpan Has Publicly Stated Its Coverage Position.* BridgeSpan's
13 coverage position is known by many doctors treating BridgeSpan insureds, and has been
14 publically posted at <http://blue.regence.com/trgmedpol/drugs/dru366.pdf> (last
15 visited 1/5/16); see *Exhibit A*.

16 20. *BridgeSpan's Coverage Criteria Are Influenced by the Perceived Cost of the*
17 *Treatment.* BridgeSpan has adopted its coverage criteria, at least in part, because of its
18 concern over the perceived expense of Harvoni and other DAAs. See *Exhibit A*, p. 4
19 ("Given the high cost of oral medications for HCV infection and the lack of overall
20 affordability to the health care system, at this time coverage is limited to patient
21 population at the highest risk for severe complications as described above."). However,
22 nothing in BridgeSpan's policy permits it to ration medically necessary treatment based
23 on its assessment of perceived cost.

24 **MR. K. REQUIRES HARVONI TO TREAT HIS HCV.**

25 21. *Mr. K. Is Insured by BridgeSpan.* During certain time periods on and after
26 October 10, 2014, Mr. K. and members of the class have been or will be insured under

1 “health plans,” as that term is defined in RCW 48.43.005(19), issued by BridgeSpan, and
2 exempt from the Employee Income Security Act of 1974 under ERISA § 4, 29 U.S.C.
3 § 1003.

4 22. *Treatment with Harvoni Is Medically Necessary for Mr. K.* Mr. K.’s treating
5 doctor has recommended that he be treated immediately with Harvoni, which will likely
6 cure his HCV. Mr. K. suffers from debilitating peripheral neuropathy, which is caused
7 by his ongoing HCV infection.

8 23. *Treatment with Harvoni Is “Medically Necessary” for Mr. K., and Others*
9 *Like Him, Under the BridgeSpan Policy of Insurance.* Treatment with Harvoni is
10 “medically necessary” for Mr. K. and others like him under the explicit definition of
11 “medically necessary” contained in the BridgeSpan policy. Harvoni and other similar
12 DAAs are covered under the prescription drug benefit of the BridgeSpan policy and not
13 otherwise properly excluded under the policy of insurance.

14 24. *Mr. K.’s Request for Harvoni Was Denied Under BridgeSpan’s Uniform*
15 *Coverage Criteria.* BridgeSpan denied Mr. K.’s doctor’s preauthorization request for
16 treatment with Harvoni on October 9, 2015. It denied his appeal on December 14, 2015.
17 BridgeSpan’s denials were both based solely upon its application of its HCV coverage
18 criteria. Specifically, BridgeSpan concluded that Mr. K., who currently has a fibrosis
19 score of F1/F2, was not ill enough to qualify for coverage under its coverage criteria.

20 **V. CLASS ALLEGATIONS**

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

- 22 (i) have been, are, or will be insured under a non-ERISA
23 governed “health plan,” as that term is defined by RCW
24 48.43.005(19), on or after October 10, 2014, by:
25 (a) defendant BridgeSpan; (b) any Washington State
26 affiliate of defendant; (c) predecessors or successors in
interest of any of the foregoing; and (d) all Washington
state subsidiaries of any of the foregoing; and

1 (ii) have received, require, or are expected to require
2 treatment for Hepatitis C with Harvoni/ledipasvir-
3 sofosbuvir or other similar direct acting antivirals under
4 the current guidelines adopted by the American
5 Association for the Study of Liver Diseases and the
6 Infectious Diseases Society of America (*see*
7 [http://www.hcvguidelines.org/full-report/when-and-
8 whom-initiate-hcv-therapy](http://www.hcvguidelines.org/full-report/when-and-whom-initiate-hcv-therapy)) (last visited 1/8/16); and

9 (iii) do not meet the coverage criteria for HCV medication
10 adopted by BridgeSpan, as described in *Exhibit A*.

11 26. *Class Representative K*. Named plaintiff R. K. has been continuously
12 insured since July 1, 2015 under an individual policy issued by BridgeSpan. Mr. K. has
13 HCV. He sought coverage for Harvoni from BridgeSpan after October 10, 2014 and was
14 denied under BridgeSpan's uniform approach to coverage for Harvoni. Mr. K.,
15 however, meets the criteria for treatment under the guidelines approved by the
16 American Association for the Study of Liver Diseases and the Infectious Diseases Society
17 of America. His claims are typical of the claims of the other members of the class, and
18 he will fairly and adequately represent the interests of the class.

19 27. *Size of Class*. Over 1% of the United States population has HCV. Of that
20 number, a majority has a fibrosis score of F0, F1 or F2 which would result in exclusion
21 under BridgeSpan's coverage criteria. BridgeSpan's Washington enrollment exceeds
22 10,000. As a result, the class is expected to number in the hundreds and is so large that
23 joinder of all members is impracticable.

24 28. *Common Questions of Law and Fact*. This action requires a determination
25 of whether BridgeSpan's application of internal policies and practices that deny, exclude
26 and/or limit coverage of Harvoni and other similar DAAs are proper under the terms
of the insurance policies and applicable law. A determination of this issue will in turn
determine whether plaintiff and the class are entitled to a declaratory judgment
pursuant to RCW 7.24, *et seq.*, an injunction pursuant to RCW 19.86.090, an injunction

1 under common law, damages for breach of contract and damages and treble damages
2 due to violations of the Washington Consumer Protection Act, RCW 19.86, *et. seq.* In
3 addition, BridgeSpan's public position that it does not, and is not required to, provide
4 coverage constitutes an anticipatory breach of contract and misrepresents policy terms
5 and conditions which entitles the class to additional legal and equitable remedies,
6 including corrective notice to its insureds.

7 29. ***BridgeSpan Has Acted on Grounds Generally Applicable to the Class.***

8 BridgeSpan, by applying a uniform policy that results in the exclusion of Harvoni and
9 other similar DAAs, has acted on grounds generally applicable to the class. Certification
10 is therefore proper under CR 23(b)(2).

11 30. ***Questions of Law and Fact Common to the Class Predominate Over***
12 ***Individual Issues.*** The claims of the individual class members are too small to justify
13 filing and prosecuting the claims separately. Thus, any interest that individual members
14 of the class may have in individually controlling the prosecution of separate actions is
15 outweighed by the efficiency of the class action mechanism. Upon information and
16 belief, there has been no class action suit filed against this defendant for the relief
17 requested in this action for a class of non-ERISA insureds. This action can be most
18 efficiently prosecuted as a class action in King County Superior Court, where defendant
19 has its principal place of business and does business. Issues as to BridgeSpan's uniform
20 conduct in excluding Harvoni and other similar DAAs for all members of the class
21 predominate over questions, if any, unique to members of the class. Certification is
22 therefore additionally proper under CR 23(b)(3).

23 31. ***Class Counsel.*** Plaintiff has retained experienced and competent class
24 counsel.

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VI. CLAIMS FOR RELIEF

FIRST CLAIM: BREACH OF CONTRACT

32. Plaintiff re-alleges paragraphs 1 through 31, *above*.

33. As an insured under health insurance plans issued, delivered, and insured by BridgeSpan, plaintiff R. K. and the plaintiff class are entitled to the full benefit of coverage contained in their policies of insurance, consistent with all relevant legal requirements, including but not limited to WAC 284-43-5620(7). BridgeSpan breached its contracts by denying, excluding and/or limiting coverage for Harvoni and other similar DAAs. Plaintiff K. and the plaintiff class are entitled to damages for breach of contract including, without limitation, out-of-pocket losses, consequential damages and restitution/disgorgement. *See, e.g., Moore v. Wash. State Health Care Auth.*, 181 Wn. 2d 299, 332 P.3d 461 (2014).

SECOND CLAIM: DECLARATORY RELIEF

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

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

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

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

37. BridgeSpan's repeated breaches of its insurance contracts with plaintiff K. and the plaintiff class, practically when due to the cost of the treatment to it, violate the Washington Consumer Protection Act, RCW 19.86, *et seq.*, and its fiduciary or quasi-

1 fiduciary obligations to its insureds. Specifically, BridgeSpan has engaged in, and
2 continues to engage in, unfair or deceptive acts or practices in trade or commerce in
3 violation of the Washington State Consumer Protection Act by restricting coverage at
4 the expense of the health of its insureds in order to save money. Such conduct affects
5 the public interest, and has caused injury to the named plaintiff and the plaintiff class.

6 38. Plaintiff and the plaintiff class are entitled to an injunction under RCW
7 19.86.090.

8 39. Plaintiff and plaintiff class are entitled to compensatory damages and treble
9 damages under RCW 19.86.090, along with costs of suit and attorney fees.

10 ***FOURTH CLAIM: INJUNCTIVE RELIEF***

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

12 41. Plaintiff and the plaintiff class are entitled to an injunction under RCW
13 19.86.090, under the common law, and under any other applicable laws to enjoin
14 BridgeSpan from further breaches of its health insurance contracts and/or its unfair or
15 deceptive acts and practices.

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

19 ***FIFTH CLAIM: MISREPRESENTATION***

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

21 44. BridgeSpan's public statements to doctors and publication of the
22 exclusionary coverage criteria misstate its coverage obligations under the policy and
23 mislead class members and their doctors as to its coverage obligations under its policies
24 of insurance. BridgeSpan knows, or should know, that under its Washington health
25 insurance policies, it cannot ration Harvoni and other DAA prescription medications,
26 which are the standard of care for treatment of HCV irrespective of fibrosis score, based

1 upon an alleged “lack of overall affordability to the health care system.”

2 45. Plaintiff and the plaintiff class are entitled to remedies for BridgeSpan’s
3 misrepresentations as to its coverage obligations, including corrective notice to its
4 insureds.

5 **VII. DEMAND FOR RELIEF**

6 WHEREFORE, plaintiff requests that this Court:

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

10 (b) Declare that BridgeSpan may not apply policies or practices that exclude or
11 impermissibly limit treatment of HCV with Harvoni or other similar DAAs;

12 (c) Enjoin BridgeSpan from continuing to breach its contracts with its insureds,
13 and enjoin BridgeSpan from committing further unfair and deceptive acts and practices;

14 (d) Enter judgment in favor of plaintiff and the class for damages in an amount
15 to be proven at trial due to BridgeSpan’s failure to provide coverage;

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

19 (f) Award plaintiff and the class damages for BridgeSpan’s breach of contract;

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

22 (h) Order corrective notice and other relief due to BridgeSpan’s
23 misrepresentations and violations of the CPA concerning its coverage obligations; and

24 (i) Award such other relief as is just and proper.
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1 DATED: January 21, 2016.

2 SIRIANNI YOUTZ
3 SPOONEMORE HAMBURGER

4 /s/ Richard E. Spoonemore

5 Richard E. Spoonemore (WSBA #21833)
6 Eleanor Hamburger (WSBA #26478)
7 Attorneys for Plaintiff
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