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7 Attorneys for Plaintiffs
8 CALLIE MCKAY; BETHANY MCKAY

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

13 CALLIE MCKAY; BETHANY MCKAY,) CASE NO.: 25STCV25633
14)
Plaintiffs,) **COMPLAINT FOR:**
15)
v.) **BREACH OF CONTRACT**
16)
17) **BREACH OF THE IMPLIED COVENANT**
ANTHEM BLUE CROSS LIFE AND) **OF GOOD FAITH AND FAIR DEALING**
HEALTH INSURANCE COMPANY and)
18 DOES 1 through 20, inclusive,)
19)
20 Defendants.)
21)
_____)

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1 **INTRODUCTION**

2 1. This lawsuit arises out of Defendant Anthem Blue Cross Life and Health Insurance
3 Company's ("Anthem") wrongful refusal to cover necessary medical treatment for Callie McKay
4 ("Callie"). Callie was suffering from multiple sclerosis, a progressive and debilitating disease. Her
5 treating physician requested that Anthem authorize a hematopoietic stem cell transplantation
6 ("HSCT") for Callie. This treatment was medically necessary for Callie because it was the best
7 treatment available to treat her aggressive multiple sclerosis as demonstrated by peer-reviewed
8 medical studies and as determined specialists in the field, including Callie’s treating physician.
9 Anthem, however, refused to cover the treatment giving varied and erroneous bases for its denial.
10 Even after Callie filed grievances (appeals) over Anthem's refusals, Anthem continued to
11 wrongfully deny Callie this necessary care that would prevent the progression of her disease and
12 disability. Anthem’s failure to properly investigate and respond to Callie’s grievances is part of a
13 longstanding practice at Anthem of ignoring policyholder grievances to dissuade policyholders
14 from contesting Anthem’s denials and to increase Anthem’s financial bottom line.

15 **PARTIES**

16 2. Callie and Plaintiff Bethany McKay are, and at all relevant times were, individuals
17 residing in Riverside County, State of California.

18 3. Anthem is, and all relevant times was, a corporation with its principal place of
19 business in Los Angeles County, State of California.

20 4. Plaintiffs are unaware of the true names and capacities of Defendants Does 1
21 through 20, inclusive, and therefore sues these defendants by such fictitious names. Plaintiffs will
22 amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs allege
23 on information and belief that each of the Doe Defendants is responsible or liable in some manner
24 for the conduct alleged in this Complaint and that the damages as herein alleged were proximately
25 caused by those Doe Defendants.

26 **JURISDICTION AND VENUE**

27 5. Jurisdiction is proper pursuant to Code of Civil Procedure sections 410.10 and
28 410.50.

1 13. The Policy also contained an exclusion for services that are “Experimental or
2 Investigative.”

3 14. Anthem Life added endorsements to the Policy almost every year making
4 substantial changes to the benefits. In an endorsement added to the Policy dated January 21, 2022,
5 Anthem changed the definitions of “Experimental” and “Investigative” to read as follows:

6 **Experimental and Experimental Procedures** are any medical, surgical
7 and/or other procedures, services, products, drugs, or devices, including implants
8 used for research, except as specified in CLINICAL TRIALS in
9 COMPREHENSIVE BENEFITS: WHAT IS COVERED.

9 **Investigational and Investigational Procedures** are procedures, treatments,
10 supplies, devices,
11 equipment, facilities, or Drugs (all services) that do not meet one (1) or more of the
12 following criteria:

- 11 • Have final approval from the appropriate government regulatory body, or
- 12 • Have the credible scientific evidence published in peer-reviewed medical
13 literature generally recognized by the relevant medical community which
14 permits reasonable conclusions concerning the effect of the procedure,
15 treatment, supply, device, equipment, facility or drug (all services) on
16 health outcomes, or
- Be proven materially to improve the net health outcome, or
- Be as beneficial as any established alternative, or
- Show improvement outside the investigational settings.

17 Recommendations of national Physician specialty societies, nationally recognized
18 professional healthcare organizations and public health agencies, as well as
19 information from the practicing community may also be considered.

19 15. Under a section titled "Comprehensive Benefits: What Is Covered," the Policy
20 states:

21 **CENTERS OF MEDICAL EXCELLENCE (CME) FOR TRANSPLANTS
22 AND BARIATRIC SURGERY (requires Preservice Review)**

23 Anthem has established a network of Hospital facilities known as Centers of
24 Medical Excellence (CME) to provide services for specified organ and tissue
25 transplants and bariatric surgical procedures.

26 ...

25 **Organ and Tissue Transplants (requires Preservice Review)** You or your
26 Physician must obtain Preservice Review for all services related to specified organ
27 and tissue transplants (heart, liver, lung, heart/lung, pancreas, kidney, simultaneous
28 pancreas/kidney, bone marrow harvest and transplant, including autologous bone
marrow transplant, peripheral stem cell replacement and similar procedures).

Preservice Review can be obtained by calling toll free 1-888-613-1130.

1 **Note: Charges for these specified transplants and related services are covered**
2 **only when the transplant and related services are performed at an Anthem**
3 **CME.**

4 16. Callie was diagnosed with multiple sclerosis in 2018. In July 2024 she underwent
5 an MRI that showed increased significant burden of the disease in the brain and cervical spine with
6 new lesions.

7 17. The best treatment for relapsing multiple sclerosis is HSCT which has been shown
8 to reverse the disease. Other treatments slow the relapsing of multiple sclerosis but do not stop the
9 progression of disability. HSCT is a disease and disability reversal therapy.

10 18. In a position statement issued in February 2019 a panel of experts from the
11 American Society for Blood and Bone Marrow Transplantation recommended that HSCT be
12 considered “standard of care” for patients with active multiple sclerosis due to the numerous
13 clinical trials, systematic reviews, and retrospective studies that show HSCT is a safe and effective
14 treatment. Additionally, the European Society for Blood and Marrow Transplantation (EBMT)
15 published an article in April 2019 also concluding that HSCT should be considered “standard of
16 care” for patients diagnosed with relapsing-remitting multiple sclerosis.

17 19. A randomized clinical trial of HSCT published in 2019 showed that HSCT was
18 superior to other treatments in change in neurologic disability of patients with multiple sclerosis.
19 *Effect of Nonmyeloablative Hematopoietic Stem Cell Transplantation vs Continued Disease-*
20 *Modifying Therapy on Disease Progression in Patients with Relapsing-Relmitting Multiple*
21 *Sclerosis: A Randomized Clinical Trial.* Burt RK, Balabanov R, Burman J, Sharrack B, Snowden, J,
22 Oliveira MC, Fagius J, Rose J, Nelson F, Barreira AA, Carlson K, Han X, Moraes D, Morgan A,
23 Quigley K, Yaung K, Buckley R, Alldredge C, Clendenan A, Calvario M, Henry J, Jovanovic B,
24 Helenowski I. JAMA. 2019 Jan 15; 321(2): 165-174.

25 20. Dr. Robert Burt is a leading expert on HSCT for treating multiple sclerosis and the
26 primary author of the above-referenced study and other articles on the subject.

27 21. Callie saw Dr. Burt for treatment of her multiple sclerosis. He recommended
28 HSCT for Callie given her progressing disability from multiple sclerosis.

 22. On Callie’s behalf, Dr. Burt requested that Anthem authorize HSCT for Callie.

1 23. Anthem uses guidelines to make decisions on whether certain treatments are
2 investigational and not medically necessary under its policies. The guidelines are developed by
3 employees of Elevance and are adopted by Anthem pursuant to service contracts between Anthem
4 and Elevance.

5 24. One such guideline is called "TRANS:00031 Hematopoietic Stem Cell
6 Transplantation for Autoimmune Disease and Miscellaneous Solid Tumors." It addresses the use of
7 HSCT for certain conditions including autoimmune diseases. It states that:

8 25. A single autologous (ablative or non-myeloablative [mini-transplant])
9 hematopoietic stem cell transplantation is considered medically necessary for individuals with
10 multiple sclerosis when all of the following criteria are met:

- 11 A. The transplant is used to treat relapsing-remitting multiple sclerosis; and
12 B. The individual is between 18 and 45 years of age with disease duration less than
13 10 years; and
14 C. The individual is disabled in at least one functional system but able to ambulate
15 for 100 meters without aid or rest (expanded disability status scale [EDSS] score
16 from 2.0 to 5.5); and
17 D. The individual has highly active and treatment resistant disease meeting criteria
18 1 and 2 below:
19 1. Highly active disease as seen by 1.a or 1.b below:
20 a. Two or more clinical relapses at separate times but within the previous 12
21 months; or
22 b. One clinical relapse and one or more magnetic resonance imaging (MRI) lesions
23 typical for MS (gadolinium-enhancing or T2-hyperintense lesion), with the MRI
24 lesion occurring at a separate time than the clinical relapse but both occurring
25 within the previous 12 months; and
26 2. Treatment resistant disease as seen by the disease activity meeting criteria D1
27 above occurring despite disease-modifying treatment (DMT) meeting all of the
28 following requirements:
29 a. Each relapse or episode of new MRI lesion(s) must occur after at least 3 months
30 of treatment with a U.S. Food and Drug Administration-approved DMT; and
31 b. At least 1 episode must be a clinical relapse, and MRI evidence of activity must
32 include at least 2 unique or active lesions in the brain or spinal cord; and
33 c. At least 1 of those episodes must occur after treatment with a DMT considered to
34 be highly efficacious (natalizumab, ocrelizumab, rituximab, or alemtuzumab).

25 26. On March 3, 2025 Anthem sent two letters to Callie in response to Dr. Burt's
26 request for HSCT. One letter stated that Anthem would not authorize HSCT because the facility
27 where the procedure was to be performed, Scripps Green Hospital, was out-of-network. The other
28 letter stated that Anthem was refusing to authorize HSCT for Callie because the treatment did not

1 meet a criterion of TRANS.00031, a showing that the disease is not responding to a standard
2 treatment. Anthem said “[t]he information we have does not show your disease has not responded to
3 standard treatment.” Anthem did not identify what that standard treatment was. The persons making
4 these denials were given the authority by Anthem to reject requests for services such as HSCT
5 without any review by any other person at Anthem.

6 27. Contrary to the statements in these letters, Anthem knew that Scripps Green
7 Hospital was an in-network hospital with Anthem and, even if not, knew that Scripps Green Hospital
8 needed to be treated as in-network to provide Callie continuity of care with Dr. Burt. Anthem also
9 knew that Callie met the criteria of TRANS.00031, including the reason given by Anthem, i.e., that
10 the information did not show a failure to respond to "standard treatment." This apparently refers to
11 the criterion requiring that the relapse or positive MRI occur at least three months after treatment
12 with an FDA-approved disease modifying treatment, including drugs considered to be highly
13 efficacious (e.g., natalizumab). But Anthem knew it had denied Callie’s request for those drugs,
14 including natalizumab (Tysabri), on the basis she needed to try a less efficacious drug (because it
15 was less expensive) even though a less efficacious drug would not have been appropriate treatment
16 for Callie’s aggressive multiple sclerosis. Anthem also knew it had denied Callie’s request for
17 intravenous immunoglobulin that also would have been considered a standard treatment. Because
18 those drug denials by Anthem were patently wrong, Anthem knew it could not deny HSCT for Callie
19 on the basis she had not undergone “standard treatment.” Anthem also knew that under the
20 community medical standard, the physicians treating multiple sclerosis, disease modifying therapies
21 like Ocrevus or KESIMPTA allow progression independent of relapse that eventually leads to
22 irreversible progressive disability due to smoldering T cell mediated disease. Anthem knew that
23 HSCT was the best treatment for patients with progressing multiple sclerosis without purported
24 disease modifying therapy drugs.

25 28. Through Dr. Burt’s office, Callie filed an appeal, known as a “grievance,” regarding
26 Anthem’s denials.

27 29. In its April 7, 2025 grievance response letter, Anthem said “[w]e’ve gone over
28 everything and have decided to keep our previous coverage position.” Anthem stated that it was

1 upholding its denial because Scripps Green Hospital was not a CME facility (but not out-of-network)
2 and identified the following facilities as CME facilities: Cedars-Sinai Medical Center, UCSD La
3 Jolla John M & Sally B Thornton Hospital, and USC Norris Cancer Hospital. Anthem further stated
4 that Callie had “not been treated with all available treatments (FDA approved MS therapies).”
5 Anthem also stated that HSCT was “investigational” because “there is not proof or not enough proof
6 it improves health” per TRANS.00031 even though that guideline states the treatment is medically
7 necessary when certain criteria are met. The person denying the grievance was given the authority by
8 Anthem to reject grievances without any review by any other person at Anthem.

9 30. On June 9, 2025, Callie wrote Anthem and advised that she was under the care of
10 Dr. Burt, the researcher and developer of HSCT for multiple sclerosis, and that his research is used
11 by other hospitals that offer HSCT. Callie advised that of the three facilities identified by Anthem as
12 a CME facility only UCSD performed HSCT to treat multiple sclerosis and that she was willing to
13 transfer care to UCSD if Anthem would cover it. Callie further advised Anthem that she was
14 scheduled to receive HSCT at Scripps Green Hospital on July 17, 2025 as a cash patient and
15 requested that Anthem respond as soon as possible.

16 31. On July 17, 2025, “Elisa L.,” a Lead in Anthem’s Grievances and Appeals
17 Department, sent a letter to Callie stating that “We received your request for a grievance” and “You
18 would like Anthem to reconsider their determination of the denial letter issued on April 7, 2025.”
19 The letter went on to state that Callie previously “went to the California Department of Insurance”
20 and that she should go to the Department with “questions or concerns regarding the services
21 requested.” The letter advised that “We sent you a letter with our final coverage decision for this
22 matter on April 7, 2025. Anthem did not address Callie’s request that Anthem authorize the
23 treatment at UCSD and never retracted its position that it would not cover HSCT for Callie because
24 she had not received a standard treatment and that the procedure was investigational.

25 32. Anthem's rejection of Callie’s request for HSCT and subsequent grievance were
26 wrong and known by Anthem be wrong given the facts Anthem had in its possession. Anthem knew
27 that HSCT for multiple sclerosis was not investigational because Anthem had developed a guideline
28 that deemed it medically necessary when certain criteria were met and Anthem knew that Callie

1 satisfied those criteria and had taken all reasonable steps to treat her disease including requesting
2 certain disease modifying treatment drugs and therapies that Anthem also rejected. Anthem knew
3 HSCT was medically necessary for Callie because: it was recommended for her in accordance with
4 generally accepted standards of practice, indeed, by the leading expert on using HSCT to treat
5 multiple sclerosis, Dr. Burt, consistent with results of the peer-reviewed medical research recognized
6 by those practicing in the field, referenced above; it was clinically appropriate and considered
7 effective as evidenced by the medical research referenced above and the conclusions by Dr. Burt;
8 was not for the convenience of Callie or Dr. Burt and there was no other cheaper equivalent.
9 Anthem's actions in rejecting Callie's request for HSCT were not based on any facts known to
10 Anthem but due solely to Anthem's intent to avoid payment for an expensive treatment.

11 33. Anthem also knew that HSCT was medically necessary for Callie under the
12 community medical standard for physicians treating patients with advancing multiple sclerosis. As
13 evidenced by the medical research and consensus among physicians treating multiple sclerosis,
14 alleged above, HSCT was medically necessary for Callie. Anthem ignored, and did not attempt to
15 apply, the community medical standard to TRANS.00031 or the medical necessity of HSCT for
16 Callie all in an intentional effort to avoid payment for this treatment.

17 34. Anthem also knew that, effective July 16, 2025, Scripps Green Hospital was a CME
18 facility. Anthem knew for some time that Scripps Green Hospital would be approved as of that date
19 because it engaged in an application process with the hospital. Additionally, Anthem had flipfopped
20 on its position that Scripps Green Hospital was not in-network and/or not a CME facility. At one
21 point, Anthem advised Callie that although the hospital was not in-network or a CME facility, this
22 would only affect the amount of the payment, not whether the surgery was covered. "Your health
23 plan provides a greater level of benefits when you use a Blue Distinction Center (BOC) or Center of
24 Medical Excellence (CME) facility. The facility listed below doesn't meet this requirement.
25 However, you do have out of network benefits." But Anthem subsequently stated there was no
26 coverage at all for treatment at Scripps Green Hospital. When Callie then offered to go to the one
27 CME facility Anthem identified that performs HSCT for multiple sclerosis, UCSD, Anthem refused
28 to authorize the care and relied on its prior position that Callie had not tried an standard treatment

1 and that HSCT was investigational while simultaneously failing to disclose and concealing that
2 Scripps Green Hospital was being approved as a CME facility effective July 16, 2025.

3 35. Based on her pressing need for HSCT to treat her multiple sclerosis, Callie received
4 HSCT from Dr. Burt at Scripps Green Hospital on July 17, 2025 as a cash patient.

5 36. In performing the acts and omissions alleged above, Anthem at all times knew that
6 wrongfully refusing HSCT for an insured such as Callie with multiple sclerosis was highly likely to
7 cause the insured further suffering, illness and disability. Multiple sclerosis is a progressive and
8 debilitating disease as Anthem's own guideline concedes. Anthem denied HSCT for Callie knowing
9 that its wrongful actions, as herein alleged, would cause Callie further suffering, illness, disability,
10 and emotional distress.

11 37. Additionally, Anthem's failure to recognize and effectively respond to Callie's
12 grievances is part of a systemic problem at Anthem of failing to recognize, properly investigate, and
13 resolve grievances from policyholders. For years, Anthem has failed to properly recognize,
14 investigate, and resolve policyholder grievances. The same Elevance employees using the same
15 procedures handle grievances from both Anthem insureds and the covered members of its sister
16 health care service plan, Blue Cross of California dba Anthem Blue Cross, within the very same
17 Grievances and Appeals Department.

18 38. Anthem Blue Cross has been repeatedly cited and fined by the California
19 Department of Managed Health Care ("DMHC") for its deficient grievance procedures. In 2017, the
20 DMHC filed an Accusation against Anthem Blue Cross detailing its long-standing practice of failing
21 to recognize, properly investigate, and resolve member grievances and sought \$5 million in fines. In
22 2019, Anthem Blue Cross agreed to resolve the Accusation by formally acknowledging the DMHC's
23 allegations and paying a \$2.8 million fine. The DMHC conducted a follow-up review and issued a
24 report dated August 9, 2022. The report states that certain "deficiencies" identified in the Accusation
25 and addressed in the Stipulated Settlement Agreement related to grievances and appeals were "not
26 corrected," including that Anthem Blue Cross's "grievances and appeals policies and procedures are
27 not in accordance with Department regulations and do not ensure adequate consideration of enrollee
28 grievances."

- 1 b) Ignoring medical and other information when refusing to authorize HSCT for
2 Callie;
- 3 c) Failing to investigate for and apply the community medical standard when refusing
4 HSCT for Callie;
- 5 d) Misrepresenting to Callie that she had not received a standard drug treatment when
6 Anthem knew it had denied Callie’s request for disease modifying treatment drugs identified in its
7 guideline, including natalizumab, on the basis she needed to try a less efficacious drug (because it
8 was less expensive) even though a less efficacious drug would not have been appropriate for treating
9 Callie’s multiple sclerosis;
- 10 e) Creating and using an erroneous guideline that was inconsistent with community
11 medical standard by insisting that HSCT was only medically necessary for multiple sclerosis with
12 purported disease modifying therapies had first been used and applying the erroneous guideline to
13 Callie’s request for HSCT;
- 14 f) Misrepresenting facts and policy provisions to Callie in violation of Insurance Code
15 § 790.03, subd. (h)(1) when first advising her that she would be covered, but at a lower rate, for
16 HSCT at Scripps Green Hospital even though it was not a CME facility, then advising her that there
17 was no coverage for treatment at that hospital, and then refusing to authorize the procedure when
18 Callie agreed to go to a facility identified by Anthem at a CME facility;
- 19 g) Failing to disclose and concealing that Scripps Green Hospital was a CME facility
20 covered under the Policy effective July 16, 2025 even though Callie advised Anthem that she was
21 scheduled to undergo surgery there on July 17, 2025 and would change to another facility if Anthem
22 approved the surgery;
- 23 h) Rejecting Callie’s grievances as part of its longstanding wrongful grievance
24 practice, as alleged herein, that ignores, fails to properly investigate, and fails to properly resolve
25 policyholder grievances in order to discourage grievances and for the purpose of generating larger
26 profits for itself and that of its parent company, Elevance;
- 27 i) Providing false and misleading information when denying Callie HSCT and when
28 responding to her grievances all in an effort to defeat her request for needed medical care;

1 j) Other acts of which Plaintiffs are currently unaware.

2 54. As a proximate result of said acts, Plaintiffs have suffered loss of benefits and loss
3 of treatment, suffered further injury and disability, great physical and mental stress, pain, and shock
4 to their nervous systems, great emotional distress, humiliation and anxiety, and economic loss, all to
5 their damage in a sum to be proven at the time of trial.

6 55. Anthem's conduct, described herein, was intended to cause injury to Plaintiffs or
7 was conduct carried out by Anthem with a willful and conscious disregard of the rights of Plaintiffs,
8 subjected Plaintiffs to cruel and unjust hardship in conscious disregard to their rights, and was an
9 intentional misrepresentation, deceit, or concealment of a material fact known to Anthem with the
10 intention to deprive Plaintiffs of property, legal rights, or to otherwise cause injury, such as to
11 constitute malice oppression or fraud under California Civil Code section 3294, thereby entitling
12 Plaintiffs to punitive damages in an amount appropriate to punish or set an example of Anthem. Said
13 acts were authorized, performed, and ratified by officers and managing agents of Anthem as the
14 acts, as alleged herein, were part of an ongoing corporate practice by Anthem, consented to and
15 authorized by Anthem's management employees and officers.

16 WHEREFORE, Plaintiffs pray for judgment against Anthem as follows:

- 17 1. Special and consequential damages in an amount to be proven at the time of trial;
- 18 2. General damages in an amount to be proven at the time of trial;
- 19 3. Punitive damages in an amount appropriate to punish or set an example of
20 Anthem;
- 21 4. Costs of suit incurred herein; and
- 22 5. For such other and further relief as the Court deems just and proper.

23 DATED: September 2, 2025

GIANELLI & MORRIS, ALC



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25
26 By: _____
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