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19 **UNITED STATES DISTRICT COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 ANNETTE WEIL, on her own behalf  
22 and on behalf of all others similarly  
23 situated,

24 Plaintiff,

25 v.

26 CIGNA HEALTH AND LIFE  
27 INSURANCE COMPANY, CIGNA  
28 HEALTH MANAGEMENT, INC.,  
CIGNA BEHAVIORAL HEALTH,  
INC., and MCMC, LLC,

Defendants.

Case No. 2:15-cv-7074

**CLASS ACTION COMPLAINT**

1 Plaintiff Annette Weil (“Plaintiff”), complains as follows on her own behalf  
2 and on behalf of all others similarly situated, against Defendants Cigna Health and  
3 Life Insurance Company, Cigna Health Management, Inc., Cigna Behavioral  
4 Health, Inc. (collectively “Cigna”), and MCMC, LLC (“MCMC” and, collectively  
5 with Cigna, “Defendants”).  
6

### 7 INTRODUCTION

8  
9 1. Plaintiff is a 61-year old beneficiary of the Starz Health and Welfare  
10 Plan (the “Weil Plan”), a group health benefit plan sponsored by the private-sector  
11 employer of Plaintiff’s husband. The Weil Plan is governed by the Employee  
12 Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001, *et seq.*, and is  
13 administered by Cigna.  
14

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16 2. Plaintiff suffers from Major Depressive Disorder, which has not been  
17 alleviated by psychotherapy, numerous administrations of anti-depressant  
18 medications, and Electro-Convulsive Therapy (“ECT”). In October 2014,  
19 Plaintiff’s treating mental health care providers recommended that Plaintiff  
20 undergo therapeutic repetitive Transcranial Magnetic Stimulation (“TMS” or  
21 “rTMS”) therapy. Cigna, however, denied Plaintiff’s request for pre-authorization  
22 for TMS therapy based on a medical policy that it created (“TMS Policy”), which  
23 analyzes TMS therapy and concludes that it is not covered by Cigna Plans because  
24 those plans all contain an exclusion for “experimental/investigational/unproven”  
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1 services (the “E/I Exclusion”). Thereafter, Plaintiff proceeded to obtain TMS  
2 therapy, with tremendous results, and submitted TMS-related claims to Cigna.

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4 3. Upon receipt of Plaintiff’s TMS claims, Cigna continued to deny tens  
5 of thousands of dollars in benefits. Following Cigna’s preauthorization and claims  
6 denials, Plaintiff exhausted all internal appeals provided by the Plan. Cigna  
7 responded to each level of appeal by upholding the denial of coverage based solely  
8 on its TMS Policy and the E/I Exclusion, and without considering the substantial  
9 materials submitted by Plaintiff and her providers supporting coverage for TMS.  
10 Thereafter, Plaintiff filed an external appeal with MCMC, a so-called “Independent  
11 Review Organization” (“IRO”), which upheld the denial on the same basis.  
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14 4. In denying coverage, Cigna followed its uniform TMS Policy, that  
15 mandates denial of coverage for TMS therapy for all Cigna-administered plans. In  
16 turn, MCMC rubber-stamped Cigna’s denial based on a perfunctory review by an  
17 anonymous child psychiatrist who lacked direct experience with TMS and who  
18 referenced outdated literature while ignoring a body of contemporary, peer-  
19 reviewed, published evidence for TMS as a safe and effective treatment for Major  
20 Depressive Disorder. Neither Cigna nor MCMC properly applied the E/I Exclusion  
21 found in the Weil Plan.  
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25 5. TMS is a non-invasive procedure that uses an electromagnet to  
26 generate repeated pulsed magnetic fields that stimulate nerve cells in the region of  
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1 the brain associated with mood control, thereby improving symptoms of  
2 depression. Unlike electroconvulsive therapy (“ECT”)—sometimes known as  
3 electro-shock therapy—in which an outside electric current is applied to the brain  
4 via electrodes, TMS only induces electrical activity within the brain, and does not  
5 cause seizures or the related side effects.  
6

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8 6. There is overwhelming evidence that TMS is safe and effective and is  
9 a generally accepted standard of medical practice for the treatment of depression  
10 within the mental health community: TMS has been around and well-accepted for  
11 over 20 years; the Food and Drug Administration (“FDA”) has approved TMS for  
12 Major Depressive Disorder; the American Psychiatric Association and other  
13 nationally-recognized medical organizations, and numerous meticulous peer-  
14 reviewed studies have validated the safety and effectiveness of TMS; hundreds of  
15 respected mental health facilities and providers, including UCLA, the Harvard  
16 Medical System, Boston Medical Center, Johns Hopkins University, Cornell  
17 University, Boston University, and Brown University, recommend and use TMS  
18 on a regular basis; and many insurers, including Medicare, UnitedHealthcare,  
19 Anthem, Health Care Service Corporation, and nearly 25 independent Blue  
20 Cross/Blue Shields have recognized that TMS is a safe and effective treatment for  
21 refractory Major Depressive Disorder and that it is not “experimental.”  
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1 7. TMS therapy is, therefore, a proven, efficacious treatment for  
2 depression, and is not experimental or investigational by any fair definition of  
3 those terms, and certainly not within the meaning of those terms as defined in the  
4 Weil Plan or in similar Cigna-administered plans. Cigna's TMS Policy, and  
5 Defendants' resulting denial of TMS coverage for Plaintiff and members of the  
6 Classes she seeks to represent (as defined below), violated the terms of the relevant  
7 plans and Defendants' fiduciary obligations under ERISA.  
8

9  
10 8. Under ERISA, Plaintiff and the members of the Classes are entitled to  
11 equitable and declaratory relief enjoining application of Cigna's erroneous medical  
12 policy, reversing Defendants' benefits denials of coverage for TMS therapy, and  
13 awarding such other relief as the Court finds appropriate.  
14

15  
16 **THE PARTIES**

17 9. Plaintiff resides in Malibu, California.

18 10. Defendant Cigna Health and Life Insurance Company is a  
19 Connecticut corporation headquartered at 900 Cottage Grove Road, Bloomfield,  
20 Connecticut 06002. Defendant Cigna Health Management, Inc. is a Delaware  
21 corporation headquartered at 1601 Chestnut Street, Philadelphia, Pennsylvania  
22 19192. Defendant Cigna Behavioral Health, Inc. is a Minnesota corporation  
23 headquartered at 11095 Viking Drive, Suite 350, Eden Prairie, Minnesota 55344.  
24 All these entities are registered with the California Secretary of State to do  
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1 business in California. According to URAC, a national utilization review  
2 accrediting organization, Defendant Cigna Health Management, Inc., is accredited  
3 for “Health Utilization Management” at 400 North Brand Boulevard, Suite 400, in  
4 Glendale, California 91203. In the letters issued by Cigna to Plaintiff denying  
5 coverage for TMS treatments, Cigna explains that “Cigna Behavioral Health, Inc.,  
6 a licensed utilization review agent, reviews certain health care services for medical  
7 necessity for Cigna Health and Life Insurance Company.”  
8

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10 11. Defendant MCMC is a Delaware limited liability managed care  
11 services company headquartered at 300 Crown Colony Drive, Suite 203, Quincy,  
12 Massachusetts 02169. It operates a primary processing center in Rancho  
13 Cucamonga, California and is registered with the California Secretary of State to  
14 do business in California. Among other things, MCMC directly contracts with  
15 Cigna and other insurers to serve as an IRO to adjudicate external appeals pursued  
16 by Cigna insureds or their providers.  
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19  
20 **JURISDICTION AND VENUE**

21 12. Defendants’ actions in administering employer-sponsored health care  
22 plans, making coverage and benefit determinations under the terms and conditions  
23 of the health care plans, and/or processing appeals of coverage and benefit  
24 determinations under the terms and conditions of the health care plans are  
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1 governed by ERISA. This Court has jurisdiction of this case under 28 U.S.C.  
2 § 1331 (federal question jurisdiction) and 29 U.S.C. § 1132(e) (ERISA).

3  
4 13. Venue is appropriate in this District because Plaintiff and her treating  
5 providers reside here and the TMS treatment at issue was offered and provided  
6 here. Additionally, Defendants conduct significant operations in this District and  
7  
8 are registered with the California Secretary of State to do so.

9 **FACTUAL ALLEGATIONS**

10 14. The majority of the health plans underwritten and/or administered by  
11 Cigna, including the Weil Plan, are employee welfare benefit plans sponsored by  
12 private-sector employers governed by ERISA (“ERISA plans”).

13  
14 15. During all relevant times, Cigna acted as a fiduciary with respect to its  
15 administration of ERISA plans. In particular, Cigna interpreted and applied ERISA  
16 plan terms, made coverage and benefit decisions under the ERISA plans within its  
17 sole discretion, and provided payment under the ERISA plans to  
18 participants/beneficiaries and their providers. Accordingly, Cigna was required to  
19  
20 comply with the requirements ERISA imposes on fiduciaries.

21  
22 16. In serving in the capacity of an IRO for external appeals from Cigna’s  
23 coverage and benefit decisions under the ERISA plans, MCMC also acted as an  
24 ERISA fiduciary, in that it was vested with discretion to make final benefit  
25 determinations as to such external appeals. In that capacity, MCMC was also  
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1 responsible for interpreting and applying ERISA plan terms, making coverage and  
2 benefit decisions, and authorizing payments to participants/beneficiaries and their  
3 providers. In fulfilling this responsibility, MCMC therefore was required to  
4 comply with the requirements ERISA imposes on fiduciaries.  
5

6 17. The health insurance plans administered by Cigna are either fully-  
7 insured or self-funded. With respect to fully-insured plans, Cigna both administers  
8 the plan by making all benefit determinations and pays the benefits out of its own  
9 assets. With respect to self-funded plans, Cigna administers the plan, but the  
10 underlying plan sponsor or employer through which the insurance is provided is  
11 ultimately responsible for reimbursing Cigna for the benefit payments.  
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14 18. When processing benefits for a self-funded plan, Cigna makes all  
15 benefit determinations and authorizes benefit checks to be issued out of bank  
16 accounts which Cigna controls. Periodically, Cigna will notify the sponsors of the  
17 self-funded plans of the need to replenish their accounts so that benefits can be  
18 paid. But Cigna nevertheless continues to control these accounts and is fully  
19 responsible for processing the insurance claims and making the determination  
20 whether to issue the check from these accounts.  
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24 19. Thus, irrespective of whether a particular ERISA plan is fully-insured  
25 or self-funded, Cigna is the proper party for Plaintiff, and the putative class, to sue  
26 because Cigna – not the underlying plan sponsor or employer – made all the  
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1 relevant decisions and wielded the authority to issue benefit checks under the  
2 ERISA plans.

3  
4 20. The only exception to Cigna's control over benefit determinations is a  
5 situation in which Cigna denies a claim and the relevant insured elects to pursue an  
6 external appeal with an IRO. In this situation, Cigna agrees to comply with the  
7 decision of the IRO (which it self-selects and with which it directly contracts),  
8 such as MCMC, but only with regard to the specific decision from which the  
9 appeal was taken. As a result, even if an IRO disagrees with a particular Cigna  
10 medical policy and approves coverage for a specific claim, Cigna will continue to  
11 apply its medical policy going forward with regard to similar claims.  
12  
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#### 14 **The Weil Plan**

15  
16 21. The Weil Plan is a self-funded plan, meaning that the plan sponsor,  
17 Starz, is responsible for reimbursing Cigna for the benefit payments. However,  
18 Cigna maintains control over the decision-making process and is ultimately  
19 responsible for authorizing the issuance of checks for paying benefits.  
20

21 22. The Weil Plan reimburses Plaintiff or her treating providers for  
22 "Covered Services," which is defined as "the expenses incurred by or on behalf of  
23 a person" for the specified charges, including "charges made by a Physician or a  
24 Psychologist for professional services." Among other things, the Weil Plan covers  
25 "Mental Health Services," defined as "services that are required to treat a disorder  
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1 that impairs the behavior, emotional reaction or thought processes,” including  
2 “Outpatient Mental Health Services.” Covered Outpatient Mental Health Services  
3  
4 “include, but are not limited to, outpatient treatment of conditions such as: anxiety  
5 or depression which interfere with daily functioning [and] emotional adjustment or  
6 concerns related to chronic conditions, such as psychosis or depression . . .”  
7

8 23. The Weil Plan includes a list of “exclusions,” which is a list of  
9 services “specifically excluded from Mental Health and Substance Abuse  
10 Services.” TMS is not part of the exclusion list, nor do any of the enumerated  
11 exclusion categories relate to or include TMS treatment. In addition, the Weil Plan  
12 has a separate category of “Exclusions, Expenses Not Covered and General  
13 Limitations,” which includes a list of services which are “specifically excluded  
14 from this plan,” including “experimental, investigational or unproven services.”  
15  
16 These are defined as follows:  
17

18 Experimental, investigational and unproven services are medical, surgical,  
19 diagnostic, psychiatric, substance abuse or other health care technologies,  
20 supplies, treatments, procedures, drug therapies or devices that are  
21 determined by the utilization review Physician to be:

- 22 • not demonstrated, through existing peer-reviewed, evidence-based,  
23 scientific literature to be safe and effective for treating or diagnosing  
24 the condition or sickness for which its use is proposed;
- 25 • not approved by the U.S. Food and Drug Administration (FDA) or  
26 other appropriate regulatory agency to be lawfully marketed for the  
27 proposed use;
- 28 • the subject of review or approval by an Institutional Review Board for  
the proposed use except as provided in the “Clinical Trials” section of

1 this plan; or

- 2 • the subject of an ongoing phase I, II or III clinical trial, except as  
3 provided in the “Clinical Trials” Section of this plan.

4 24. The last two criteria under the E/I Exclusion, relating to an  
5 Institutional Review Board or clinical trials, are not relevant to TMS therapy  
6 systems. TMS therapy is not subject to other institutional approval before it can be  
7 used. It is similarly not the subject of an ongoing Phase I, II or III clinical trial.  
8 Thus only the first two criteria, relating to FDA approval, and “peer-reviewed,  
9 evidence-based, scientific literature” bear on whether or not the E/I Exclusion  
10 applies.  
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13 25. In October 2008, the FDA approved TMS therapy systems,  
14 designating them as a Class II Device for the treatment of Major Depressive  
15 Disorder. This classification was codified at 21 C.F.R. § 882.5805, and describes  
16 TMS as “an external device that delivers transcranial repetitive pulsed magnetic  
17 fields of sufficient magnitude to induce neural action potentials in the prefrontal  
18 cortex to treat the symptoms of major depressive disorder without inducing seizure  
19 in patients.”  
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23 26. There is a wealth of “peer-reviewed, evidence-based, scientific  
24 literature” that “demonstrate[s]” TMS “to be safe and effective for treating” Major  
25 Depressive Disorder. For example, the 2010 American Psychiatric Association  
26 Practice Guideline for the Treatment of Patients With Major Depressive Disorder  
27  
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1 lists TMS as a valid treatment option for refractory depression, a *Psychological*  
2 *Medicine* meta-analysis of the literature from 1995-2012 on MEDLINE,  
3  
4 EMBASE, PsycINFO, Cochrane Central Register of Controlled Trials, SCOPUS,  
5 and ProQuest Dissertations & Theses concluded that TMS “seems to be associated  
6 with clinically relevant antidepressant effects and with a benign tolerability  
7  
8 profile,” and a 2014 *Clinical Neurophysiology* article authored by the leading  
9 researchers in the field established the “definite efficacy” of TMS for the treatment  
10 of depression.

11  
12 27. Thus, TMS therapy systems do not fit within the E/I Exclusion to the  
13 Weil Plan.

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15 28. In addition to the E/I Exclusion, the Weil Plan has a section entitled  
16 “General Limitations.” This specifies, *inter alia*, that “[n]o payment will be made  
17 for . . . expenses for supplies, care, treatment, or surgery that are not Medically  
18 Necessary,” which is defined as follows:

19  
20 **Medically Necessary/Medical Necessity**

21 Medically Necessary Covered Services and Supplies are those  
22 determined by the Medical Director to be:

- 23 • required to diagnose or treat an illness, injury, disease or its  
24 symptoms;
- 25 • in accordance with generally accepted standards of medical  
26 practice;
- 27 • clinically appropriate in terms of type, frequency, extent, site and  
28 duration;
- not primarily for the convenience of the patient, Physician or

1 other health care provider; and

- 2 • rendered in the least intensive setting that is appropriate for the  
3 delivery of the services and supplies. Where applicable, the  
4 Medical Director may compare the cost-effectiveness of  
5 alternative services, settings or supplies when determining least  
6 intensive setting.

7 29. The denials at issue in this case relate to Cigna’s E/I Exclusion. In  
8 applying this policy, Defendants did not make a Medical Necessity determination,  
9 but only determined that TMS is not covered as “experimental, investigational or  
10 unproven.”

11 **Defendants’ Denial of Coverage for Plaintiff’s TMS Therapy**

12 30. Plaintiff has been in treatment for chronic depression – diagnosed as  
13 Major Depressive Disorder – for over 35 years. She has obtained extensive  
14 outpatient therapy, without success, and has tried and failed numerous anti-  
15 depressant medications, including Prozac, Abilify, Saphris, Seroquel, Zyprexa,  
16 Cymbalta, Effexor, Emsam, Lexapro, Paxil, Pristiq, Vivactil, Zoloft and Lamictal.  
17 Plaintiff did not positively respond to any of these treatments for any sustained  
18 period of time. In addition, Plaintiff underwent 20 sessions of ECT in 2014, which  
19 were similarly ineffective over time, while also causing undesirable neuro-  
20 cognitive side effects, including memory loss.  
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22 31. Accordingly, in October 2014, Plaintiff’s treating providers  
23 recommended that she receive TMS therapy.  
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1           32. Although the Weil Plan did not require Plaintiff to receive  
2 preauthorization from Cigna for TMS, her provider nonetheless sought  
3 preauthorization, as provided for by ERISA, before Plaintiff incurred the expense.  
4

5           33. By letter dated October 21, 2014, Dr. William F. Stubbeman, a board-  
6 certified psychiatrist specializing in TMS therapy for Major Depressive Disorder,  
7 wrote to Cigna to obtain pre-certification for coverage. He explained that,  
8 “[h]aving exhausted all other available treatment options,” Plaintiff had been  
9 referred to his office for TMS treatment by her treating psychiatrist, Dr. Harvey  
10 Sternbach, a Distinguished Life Fellow of the American Psychiatric Association,  
11 and sought to begin TMS therapy on October 27, 2014. Dr. Stubbeman stated:  
12  
13 “After ruling out all contraindications, I have recommended TMS as it is the only  
14 alternative to all the failed medications, ECT and [other] evidenced-based  
15 therapies.” He further explained:  
16  
17

18           As a certified TMS psychiatrist who has trained with the most  
19 prominent TMS physicians in the country including Dr. Sarah H.  
20 Lisanby at Duke and Dr. Alvaro Pascual-Leone at Harvard, and  
21 administered the most TMS treatments in the country just a few years  
22 ago, I have treated numerous patients who had similar psychiatric  
23 histories. TMS has been the only treatment that not only brings their  
24 depression into remission, but also has lasting results. I have treated  
25 patients who are now over three years out of TMS treatment, and they  
26 continue not only to maintain remission, but lead happy, productive  
27 lives. I ask, on behalf of my patient, that you provide coverage for this  
28 medically necessary treatment.

1 34. By letter dated October 29, 2014, Defendant Cigna Health  
2 Management, Inc., responded to Dr. Stubbeman's letter by denying coverage for  
3 Plaintiff's TMS treatments, stating:  
4

5 Based upon current available information, coverage cannot be  
6 approved because there is not enough scientific evidence that shows  
7 the safety and/or effectiveness of transcranial magnetic stimulation  
8 (TMS) for any indication including Major Depressive Disorder. At the  
9 present time, it is considered non-standard therapy and falls under the  
category of experimental/investigational/unproven. Your benefit plan  
does not cover experimental/investigational/unproven services.

10 The letter added that the decision not to cover TMS was made by Dr. John  
11 Granato, Jr. on behalf of Cigna. No information was given concerning Dr.  
12 Granato's training or experience, including any knowledge or experience relating  
13 to TMS. Plaintiff's investigation has revealed that Dr. Granato is a 76-year-old  
14 urologist. Based on information and belief, he has no independent knowledge of or  
15 experience with providing TMS or treating Major Depressive Disorder. Dr.  
16 Granato has previously received negative publicity for denials of coverage on  
17 behalf of Cigna. *See* <http://www.iptca.org/cigna-rejects-care-for-2-year-old>.  
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21 35. In denying coverage for TMS, Cigna failed to discuss the many  
22 studies which demonstrate the safety and effectiveness of TMS, or its widespread  
23 use by well-recognized, leading mental health providers.  
24

25 36. Plaintiff obtained the TMS treatments on the advice and  
26 recommendation of her treating providers. By letter dated January 13, 2015,  
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1 Plaintiff's treating psychiatrist, Dr. Sternbach, appealed Cigna's coverage denial  
2 on Plaintiff's behalf. In his appeal letter, Dr. Sternbach explained that Plaintiff had  
3 begun TMS treatment with Dr. Stubbeman "[d]ue to unremitting depression,  
4 adding that she "has had improvement of depression and we hope to continue  
5 treatment and avoid a relapse with risk of suicide."  
6

7  
8 37. In support of his appeal, Dr. Sternbach enclosed a June 2012 summary  
9 of the Institute for Clinical and Economic Review ("ICER"), a leading academic  
10 comparative effectiveness research group based at the Massachusetts General  
11 Hospital's Institute for Technology Assessment, entitled "Coverage Policy  
12 Analysis. Repetitive TMS." In this article, ICER reported that in December 2011,  
13 the New England Comparative Effectiveness Public Advisory Council ("CEPAC")  
14 had "reviewed the [Agency for Healthcare Research and Quality ("AHRQ")]  
15 evidence review on rTMS along with supplemental information on utilization,  
16 costs, and cost-effectiveness," and had "voted that the evidence was adequate to  
17 demonstrate that (rTMS) was as good as or better than usual care for patients with  
18 treatment-resistant depression."  
19

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22 38. Dr. Sternbach further enclosed a copy of the medical policy covering  
23 TMS for Blue Cross Blue Shield of Kansas, effective October 2014, along with  
24 "[a]bstracts of 4 articles (out of many in the literature) regarding the effectiveness  
25 of TMS." He then concluded:  
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1 In summary, TMS is not investigational treatment, is being used all  
2 over the world to treat depression, including pharmacotherapy-  
3 resistant depression, and as such, is a necessary and potentially life-  
4 saving treatment for patients with depression. In the case of my  
5 patient, Annette Weil, TMS has been beneficial and Cigna's policy to  
6 deny this treatment should be reviewed and overturned based upon the  
7 patient's response and the scientific literature. The Institute for  
8 Clinical and Economic Review analysis was funded by the Agency for  
Healthcare Research and Quality and, as such, is an objective review  
of this treatment. Cigna's policy is, in my opinion, one that is outdated  
and potentially discriminatory.

9 39. By letter dated February 12, 2015, Defendant Cigna Behavioral  
10 Health, Inc., out of its offices in Eden Prairie, Minnesota, issued a denial of the  
11 appeal, stating:  
12

13 Cigna Behavioral Health, Inc., a licensed utilization review agent,  
14 reviews certain health care services for medical necessity for Cigna  
15 Health and Life Insurance Company. . . . After a review of the  
16 information submitted and the terms of your benefit plan, we have  
17 decided to uphold the original decision not to authorize the requested  
18 services. Cigna's Peer Reviewer, Mohsin Qayyum, M.D. (TX:  
TN2254), a board certified psychiatrist, has determined that the  
19 requested services are not covered. The decision was based on the  
20 following:

- 21 • The clinical basis for this decision is: Authorization for  
22 Transcranial Magnetic Stimulation starting 10/24/2014 cannot  
23 be justified. Your benefit is governed by policy 0383 which  
24 considers this procedure to be one of a group that is considered  
25 investigational, experimental or unproven. This is therefore not  
26 considered to be reimbursable. Other clinically appropriate  
27 assessment and/or treatment interventions are covered under the  
28 medical necessity criteria for your benefit plan. . . .

29 40. The letter added that "[t]his coverage decision is not a treatment  
30 decision or a medical consultation," and that "[i]f you choose to proceed with the  
31

1 requested service(s), any claims associated with the denied request will not be  
2 considered for treatment.” Although the Weil Plan actually provides for two levels  
3 of internal appeals, Cigna cemented its position on TMS by depriving Plaintiff of a  
4 second level internal appeal and misinforming her that “[t]his decision represents  
5 the final step of the internal review process.” Instead, Cigna stated to Plaintiff that  
6 she had the right to appeal the denial through an Independent Review Organization  
7 (“IRO”) or to pursue litigation in court under ERISA. Notably, Cigna’s denial  
8 failed to acknowledge or address Dr. Sternbach’s letter or the substantial evidence  
9 he submitted in support of TMS.  
10  
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13 41. According to the website of the company that Dr. Qayyum works for,  
14 Progressive Behavioral Health, he is a Medical Director at Cigna with “clinical  
15 experience” in Adult Psychiatry, Forensic Psychiatry, Addiction Psychiatry,  
16 Consultation & Liaison Psychiatry, Neuropsychiatry, Geriatric Psychiatry and  
17 Occupational Psychiatry and “is certified to perform Outpatient Narcotics  
18 Detoxification and Maintenance Treatment by using Buprenorphine.” There is no  
19 indication that Dr. Qayyum has any knowledge of or experience with TMS.  
20 According to the Texas Medical Board, which licenses Dr. Qayyum, Dr. Qayyum  
21 has not reported any “Awards, Honors, Publications and Academic  
22 Appointments.” The California Medical Board website indicates that Dr.  
23  
24  
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1 Qayyum’s “License is in retired status and the licensee is exempt from payment of  
2 the renewal fee. No practice is permitted.”

3  
4 42. By letter dated April 20, 2015, Plaintiff submitted a formal request to  
5 Cigna for an IRO Review of Cigna’s denial of coverage for TMS treatment. Along  
6 with this request, Plaintiff included an updated letter from Dr. Stubbeman,  
7  
8 referencing “a recent article, published in the peer-reviewed journal, Clinical  
9 Neurophysiology, and authored by almost every leading researcher in the field,  
10 outlining significant clinical effects of TMS over numerous studies worldwide, and  
11 establishing Level A efficacy (‘definite efficacy’) of TMS for the treatment of  
12 depression.” Cigna referred the IRO Review to MCMC, a purported “Independent  
13 Peer Review division” servicing over 400 corporate clients.  
14

15  
16 43. MCMC denied Plaintiff’s appeal by letter dated June 18, 2015. In  
17 explaining the basis for its denial, MCMC stated:

18 **Review Question:**

19 **Is the requested service a Plan/Benefit exclusion as defined by the**  
20 **Summary Plan Description?**

21 Yes. The requested service is a Plan/Benefit exclusion by way of  
22 being experimental/investigational. The requested service is  
23 experimental/investigational as per the definition in the Summary Plan  
24 Description. Experimental, investigational and unproven services  
25 include medical and psychiatric health care technologies, treatments,  
26 and procedures that determined to not have been demonstrated,  
27 through existing peer-reviewed, evidence-based, scientific literature to  
28 be safe and effective for treating or diagnosing the condition or  
sickness for which its use is proposed.

1 There is evidence from short term clinical trials that TMS can be  
2 beneficial. These results have not been adequately supported by long  
3 term studies to lead to net health benefits. Continued study is ongoing  
4 and required to determine appropriate clinical parameters, appropriate  
5 patient population, and appropriate clinical parameters including  
6 number of sessions and need for adjuvant treatment.

7 44. MCMC then quoted the purportedly applicable language in the Weil

8 Plan:

9 Per the Summary Plan Description:

10 Experimental, investigational and unproven services are medical,  
11 surgical, diagnostic, psychiatric, substance abuse or other health care  
12 technologies, supplies, treatments, procedures, drug therapies or  
13 devices that are determined by the utilization review Physician to be:

- 14 • Not demonstrated, through existing peer-reviewed, evidence  
15 based, scientific literature to be safe and effective for treating or  
16 diagnosing the condition or sickness for which its use is  
17 proposed . . .

18 45. In support of its conclusion, MCMC cited to a series of outdated  
19 studies and did not reference any sources published in the past three years.  
20 Strikingly, while MCMC cited to a 2001 ECT practice parameter by the American  
21 Psychiatric Association, it completely failed to reference the far more recent  
22 inclusion of TMS as a valid treatment option for refractory depression in the 2010  
23 American Psychiatric Association Practice Guideline for the Treatment of Patients  
24 With Major Depressive Disorder.

25 46. In upholding Cigna's decision, MCMC failed to acknowledge, address  
26 or consider the detailed information submitted by Plaintiff and her providers,  
27  
28

1 including the amply referenced (and far more contemporaneous) studies regarding  
2 the safety and efficacy of TMS. Instead, MCMC merely rubber-stamped Cigna's  
3 position. MCMC's decision, like Cigna's, was without support or validity,  
4 arbitrary and capricious, and contrary to generally accepted standards of medical  
5 practice.  
6

7  
8 47. According to the MCMC letter, the reviewer who made the decision  
9 and identified only as "Reviewer 32041" was board certified in Psychiatry with a  
10 sub-certification in Child and Adolescent Psychiatry. The anonymous reviewer's  
11 areas of expertise were generically described as including all psychiatric disorders,  
12 forensic psychiatry and child and adolescent psychiatry.  
13

14  
15 48. Nothing in this summary indicates that the reviewer had any direct  
16 training or experience with TMS or related treatments for Major Depressive  
17 Disorder, or with patients – like Plaintiff – who suffered from long-term depression  
18 resistant even to ECT. Notably, while the reviewer's primary area of expertise was  
19 related to child and adolescent psychiatry, TMS is not performed on children, and  
20 rarely performed on adolescents, and has been approved by the FDA solely for  
21 adults. MCMC therefore did not use a reviewer who was qualified to make a  
22 judgment about the safety and effectiveness of TMS therapy.  
23  
24  
25  
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28

1 **Defendants' ERISA Violations**

2 49. As the claims administrator responsible for interpreting and  
3 administering the Weil Plan, and similar Cigna plans issued nationwide, vested  
4 with responsibility for making final benefit determinations, Cigna is an ERISA  
5 fiduciary.  
6

7 50. Similarly, when MCMC assumes the responsibility for making a final  
8 benefit determination as part of an external review, it also assumes responsibility  
9 for administering the Weil Plan and similar Cigna plans, and making benefit  
10 determinations thereunder. Thus, when acting in this capacity, MCMC is an  
11 ERISA fiduciary.  
12  
13

14 51. As ERISA fiduciaries, Defendants were required to discharge their  
15 duties consistent with 29 U.S.C. Section 1104, which requires (among other things)  
16 that they do so “solely in the interest of the participants and beneficiaries” and for  
17 the “exclusive purpose” of providing benefits to participants and their  
18 beneficiaries” and paying reasonable expenses of administering the plan. They  
19 must do so with the “care, skill, prudence, and diligence” and in accordance with  
20 the terms of the plans they administer. Defendants violated all of these  
21 requirements.  
22  
23  
24

25 52. Cigna violated these duties when it prepared and promulgated the  
26 TMS Policy, because Cigna relied upon outdated evidence, ignored evidence  
27  
28

1 indicating that TMS was not experimental, and unreasonably concluded that TMS  
2 was “experimental, investigational or unproven.” Cigna then compounded that  
3 breach of duty by relying upon the TMS Policy to deny insurance claims submitted  
4 by Plaintiff and members of the Class in contravention of the terms of their Cigna  
5 plans.  
6

7  
8 53. In doing so, Cigna elevated its own interests above the interests of  
9 plan participants and beneficiaries, reflecting its conflict of interest when  
10 determining whether to cover TMS. By promulgating and applying the TMS  
11 Policy, Cigna sacrificed the interests of insureds like Plaintiff so that it could  
12 artificially decrease the number and value of claims it was required to pay from its  
13 own assets (*i.e.*, with respect to fully-insured plans and self-funded plans with stop-  
14 loss provisions requiring Cigna to cover benefits above a certain threshold) and the  
15 assets of its employer-sponsor customers (*i.e.*, with respect to other self-funded  
16 plans), moreover, by prioritizing the assets of its employer-sponsor customers,  
17 Cigna also advanced its own interests in retaining and expanding its business with  
18 such customers.  
19  
20  
21

22 54. MCMC violated these duties when it similarly concluded that TMS  
23 Therapy was experimental based on outdated evidence and because it ignored  
24 evidence indicating that TMS was not experimental as defined by the terms of the  
25 Weil Plan and similar Cigna plans.  
26  
27  
28

1 55. MCMC has a self-serving motive to uphold Cigna's policies and  
2 coverage denials made pursuant to those policies, since Cigna decides whether it  
3 will continue to hire MCMC to review a large volume of appeals. As such, MCMC  
4 operates with a conflict of interest when it serves as an IRO in reviewing Cigna  
5 appeals.  
6

7  
8 56. Defendants' continued reliance on Cigna's internal policy to deny  
9 coverage for TMS therapy based on its E/I Exclusion is particularly egregious  
10 given that in a number of external appeals relating to TMS coverage, IRO's – other  
11 than MCMC – have frequently made independent determinations that TMS does  
12 not fall within experimental and investigational exclusions, but is generally  
13 accepted in the mental health community as safe and effective. Defendants are  
14 fully aware of these holdings in support of TMS therapy, but choose to ignore  
15 them.  
16  
17

18 57. According to public records of appeals to IROs regulated by the  
19 California Department of Insurance and the California Department of Managed  
20 Health Care, since 2011 there have been at least 74 reversals of TMS denials by  
21 insurers on the basis of an E/I Exclusion.  
22

23  
24 58. For example, in 2011, two IRO physician reviewers overturned an  
25 insurer's denial of TMS on the basis of an E/I Exclusion:  
26

27 [I]t is worth noting that TMS has been reported to be free of complications  
28 associated with anesthesia, cardiac risks, and memory disturbances as



1 reported with electroconvulsive therapy (ECT) in the treatment of depression  
2 and has a mild side effect profile. All told, the use of TMS for the treatment  
3 of MDD was scientifically established and in widespread use prior to this  
4 patient's start of TMS therapy. Therefore, the therapy at issue was and is  
5 likely to be more beneficial for treatment of the patient's medical condition  
6 than any available standard therapy.

7 59. In another 2012 case, two IRO physician reviewers concluded that  
8 "TMS is widely practiced throughout the U.S., has been granted a category I CPT  
9 code by the American Medical Association (AMA), and is FDA approved for  
10 patients with treatment-resistant major depressive disorder. Consistent with this  
11 support, the requested TMS therapy will likely be more beneficial for treatment of  
12 the patient's medical condition than any available modality for this patient's  
13 depression."  
14

15 60. In yet another 2012 case, two physician reviewers for an IRO  
16 similarly reversed the insurer's denial of coverage for TMS, stating:  
17

18 The body of evidence in the peer-reviewed literature provides  
19 adequate support for the efficacy of TMS therapy for the treatment of  
20 major depressive disorder. It is a well-tolerated procedure and carries  
21 less risk and fewer barriers when compared to electroconvulsive  
22 therapy (ECT). Further, and most compelling in support of its  
23 application, TMS is endorsed by the American Psychiatric  
24 Association in its current clinical practice guideline for the treatment  
25 of individuals with depression.

26 61. In a 2014 appeal, three physician reviewers representing an IRO  
27 rejected the insurer's denial of coverage for TMS, concluding: "TMS is safe,  
28 appropriate and consistent with good medical practice. Considering the case in its

1 entirety within the context of the most current practice guidelines and relevant peer  
2 reviewed literature, repetitive TMS is likely to be more beneficial for treatment of  
3 the patient's medical condition than any remaining available standard therapy.”  
4

5 **CLASS ACTION ALLEGATIONS**

6 62. Plaintiff Annette Weil brings her claims on her own behalf and on  
7 behalf of a “Cigna Class,” defined as:  
8

9 All participants or beneficiaries in ERISA Plans underwritten or  
10 administered by Defendant Cigna (or any of its operating divisions)  
11 who, during the relevant limitations period were denied health  
12 insurance coverage for TMS provided for the treatment of Major  
13 Depressive Disorder on grounds that included the assertion that it was  
14 “experimental or investigational.”

15 63. The definition of “experimental or investigational services” in Cigna’s  
16 health insurance policies at all relevant times has been or substantially similar to  
17 the definition in the Weil Plan.

18 64. In addition, Plaintiff brings her claims on her own behalf and on  
19 behalf of an “MCMC Class,” defined as:

20 All participants or beneficiaries in ERISA Plans underwritten or  
21 administered by Defendant Cigna (or any of its operating divisions)  
22 who, during the relevant limitations period, were denied health  
23 insurance coverage for TMS provided for the treatment of Major  
24 Depressive Disorder following an external appeal in which MCMC  
25 upheld a denial of coverage, on grounds that included the assertion  
26 that it was “experimental or investigational.”

27 65. The E/I Exclusion contained in the Weil Plan and relied upon by both  
28 Cigna and MCMC in denying coverage for Plaintiff is functionally

1 indistinguishable from, and is interpreted by Defendants in the same manner as,  
2 comparable exclusions included in the Cigna plans applicable to all Class  
3 members.  
4

5 66. The Classes meet all requirements of F. R. Civ. P. 23(a) and 23(b). In  
6 particular:

7  
8 (a) The members of the Classes are so numerous that joinder of all  
9 members is impractical. While the precise number of members in these  
10 Classes is known only to Defendants, Cigna is the ERISA fiduciary and  
11 has issued the policies providing coverage under tens of thousands of  
12 employer-sponsored ERISA plans, and TMS therapy has become so  
13 widespread that, at a minimum, requests for coverage of this therapy  
14 numbering in the thousands must have been submitted to, and robotically  
15 denied by, Cigna. Similarly, MCMC is a national IRO that has likely  
16 reviewed hundreds of claims for TMS, if not more. The identities of the  
17 class members are readily identifiable. Cigna maintains claims databases  
18 that record each instance in which it denies coverage for TMS for  
19 treatment of Major Depressive Disorder and MCMC maintains records of  
20 each of its external reviews, including those relating to requests for  
21 coverage for TMS. TMS therapy is described with a discrete set of  
22 procedure codes under the Current Procedural Terminology (“CPT”)  
23  
24  
25  
26  
27  
28

1 promulgated by the American Medical Association, and depression is  
2 likewise described with a discrete set of diagnostic codes under the  
3 Diagnostic and Statistical Manual of Mental Disorders (“DSM”).  
4 Accordingly, the members of the Classes can be readily and objectively  
5 ascertained through use of records maintained by Defendants.  
6

7  
8 (b) There exist issues of fact and law common to all members of each of  
9 these Classes, and indeed common to both Classes, the most obvious and  
10 important of which is whether TMS therapy is an “experimental or  
11 investigational service.” The facts that determine the answer to this  
12 question do not vary among class members.  
13

14 (c) Plaintiff’s claims are typical of the claims of the members of both  
15 Classes because Defendants based their denial of coverage on a medical  
16 policy that Cigna employs and an incomplete research database that  
17 MCMC references with respect to all requests for coverage for TMS for  
18 treatment of Major Depressive Disorder.  
19

20  
21 (d) Plaintiff will fairly and adequately protect the interests of the  
22 members of the Classes, is committed to the vigorous prosecution of this  
23 action, has retained counsel competent and experienced in class action  
24 litigation and the prosecution of ERISA claims, and has no interests  
25 antagonistic to or in conflict with those of the Classes.  
26  
27  
28

1 (e) The prosecution of separate actions by individual members of the  
2 Classes would create a risk of inconsistent or varying adjudications that  
3 could establish incompatible standards of conduct for Defendants.  
4

5 (f) By applying a uniform medical policy and uniformly deficient and  
6 woefully outdated rationale for treating TMS therapy services as  
7 “experimental, investigational or unproven,” Defendants have acted and  
8 refused to act on grounds that apply generally to the Classes.  
9

10 (g) A class action is superior to other available methods for the fair and  
11 efficient adjudication of this controversy because joinder of all members  
12 of the Classes is impracticable. Further, because the unpaid benefits  
13 denied Class members are small relative to the expense and burden of  
14 individual litigation, it would be impossible for the Class members to  
15 redress individually the harm done to them.  
16  
17

18 **COUNT I**

19  
20 **CLAIM FOR VIOLATION OF FIDUCIARY OBLIGATIONS**  
21 **BROUGHT ON BEHALF OF PLAINTIFF AND THE CLASSES**

22 67. Plaintiff incorporates by reference the preceding paragraphs as though  
23 such paragraphs were fully stated herein.

24 68. This count is brought pursuant to 29 U.S.C. § 1132(a)(1)(B).

25  
26 69. As the entity responsible for making mental health and substance  
27 abuse benefit determinations under the Weil Plan and the Cigna Class members’  
28

1 similar plans, and responsible for developing internal practices and policies to  
2 facilitate such determinations, Cigna is an ERISA fiduciary.

3  
4 70. Similarly, as the entity which assumed responsibility for making the  
5 final benefit determinations with respect to the Weil Plan and the MCMC Class  
6 members' similar plans, while serving as an IRO, MCMC is an ERISA fiduciary.

7  
8 71. As ERISA fiduciaries, and pursuant to 29 U.S.C. Section 1104(a),  
9 Cigna and MCMC are required to discharge their duties "solely in the interests of  
10 the participants and beneficiaries" and for the "exclusive purpose" of providing  
11 benefits to participants and their beneficiaries" and paying reasonable expenses of  
12 administering the plan. They must do so with reasonable "care, skill, prudence, and  
13 diligence" and in accordance with the terms of the plans they administer. They  
14 must conform their conduct to a fiduciary duty of loyalty and may not make  
15 misrepresentations to their insureds.  
16  
17

18 72. Cigna violated these duties by adopting and implementing a policy to  
19 deny coverage for TMS based on the experimental and investigational exclusions  
20 under its plans, when such a finding was contrary to generally accepted practices  
21 and to the terms of the plans. Similarly, MCMC violated these duties by  
22 improperly applying the E/I Exclusion to TMS during the course of issuing its final  
23 denial through the IRO process. In particular, both Cigna and MCMC ignored  
24 current evidence, and widespread acceptance of TMS as a safe and effective  
25  
26  
27  
28

1 treatment for depression in improperly applying the E/I Exclusion to TMS. In  
2 doing so, Cigna and MCMC did not act “solely in the interests of the participants  
3 and beneficiaries” for the “exclusive purpose” of “providing benefits.” They did  
4 not utilize the “care, skill, prudence, and diligence” of a “prudent man” acting in a  
5 similar capacity. They did not act in accordance with the terms of the Weil Plan  
6 and other Cigna plans, all of which contain E/I Exclusions.  
7  
8

9         73. Instead, Cigna and MCMC elevated their own interests and those of  
10 their corporate affiliate above the interests of plan participants and beneficiaries.  
11 By adhering to an incorrect and outdated policy with regard to TMS, Cigna  
12 artificially decreased the number and value of covered claims thereby benefiting its  
13 corporate affiliates at the expense of insureds. By improperly applying the E/I  
14 Exclusion to TMS, MCMC artificially decreased the number and value of covered  
15 claims thereby benefiting its client Cigna, and by extension, itself.  
16  
17

18         74. Plaintiff and the other members of the Classes have been harmed by  
19 breaches of fiduciary duty of Cigna and MCMC (with respect to the MCMC Class)  
20 because their claims have been subjected improperly to the E/I Exclusion, leading  
21 to denials of coverage for TMS, when TMS is actually a Covered Service within  
22 the definition of the Cigna plans.  
23  
24

25         75. Plaintiff, on her own behalf and on behalf of the Classes, seeks the  
26 relief identified below to remedy this claim.  
27  
28

1 **COUNT II**

2 **CLAIM FOR IMPROPER DENIAL OF BENEFITS BROUGHT**  
3 **ON BEHALF OF PLAINTIFF AND THE CIGNA TMS CLASS**

4 76. Plaintiff incorporates by reference the preceding paragraphs as though  
5 such paragraphs were fully stated herein.  
6

7 77. This count is brought pursuant to 29 U.S.C. §1132(a)(1)(B).

8 78. Cigna denied the insurance claims for TMS submitted by Plaintiff and  
9 other members of the Class in violation of the terms of the Weil Plan and the other  
10 Cigna plans that insure members of the Class. Cigna denied these claims based on  
11 its E/I Exclusion, which does not properly apply to TMS.  
12

13 79. Plaintiff and the members of the Class have been harmed by Cigna's  
14 improper benefit denials because they were deprived of insurance benefits they  
15 were owed.  
16

17 80. Plaintiff, on her own behalf and on behalf of the Classes, seeks the  
18 relief identified below to remedy this claim.  
19

20 **COUNT III**

21 **CLAIM FOR EQUITABLE RELIEF**  
22 **BROUGHT ON BEHALF OF PLAINTIFF AND THE CLASSES**  
23

24 81. Plaintiff incorporates by reference the preceding paragraphs as though  
25 such paragraphs were fully stated herein.  
26  
27  
28



1 82. This count is brought pursuant to 29 U.S.C. § 1132(a)(3)(A) only to  
2 the extent that the Court finds that the injunctive relief sought to remedy Counts I  
3 and/or II are unavailable pursuant to 29 U.S.C. § 1132(a)(1)(B). Plaintiff and the  
4 Class have been harmed, and are likely to be harmed in the future, by the breaches  
5 of fiduciary duty of Cigna and MCMC described above.  
6

7  
8 83. In order to remedy these harms, Plaintiff and the Class are entitled to  
9 enjoin these acts and practices pursuant to 29 U.S.C. § 1132(a)(3)(A).  
10

11 **COUNT IV**

12 **CLAIM FOR OTHER APPROPRIATE EQUITABLE RELIEF**  
13 **BROUGHT ON BEHALF OF PLAINTIFF AND THE CLASSES**

14 84. Plaintiff incorporates by reference the preceding paragraphs as though  
15 such paragraphs were fully stated herein.  
16

17 85. This count is brought pursuant to 29 U.S.C. § 1132(a)(3)(B) only to  
18 the extent that the Court finds that the equitable relief sought to remedy Counts I  
19 and II are unavailable pursuant to 29 U.S.C. § 1132(a)(1)(B).  
20

21 86. Plaintiff and the Class have been harmed, and are likely to be harmed  
22 in the future, by the breaches of fiduciary duty of Cigna and MCMC described  
23 above.  
24

25 87. Additionally, by engaging in this misconduct, Cigna was unjustly  
26 enriched in two ways: first, with regard to fully-insured plans or plans that include  
27  
28

1 a stop-loss provision requiring Cigna to pay all benefits above a certain threshold,  
2 it avoided paying benefits out of its own funds and/or the funds of its corporate  
3 affiliates; second, with regard to other self-funded plans, Cigna charged its  
4 corporate customers fees for serving as claims administrator while improperly  
5 denying TMS benefits based on the inapplicable E/I Exclusion and also lowered  
6 costs for its corporate customers, allowing Cigna to retain current customers and  
7 expand its business to new customers.  
8  
9

10 88. Similarly, MCMC was unjustly enriched by charging fees for serving  
11 as an IRO and by maintaining and/or expanding its business with Cigna and by  
12 improperly denying benefits based on the application of the inapplicable E/I  
13 Exclusion to TMS.  
14

15 89. In order to remedy these harms, Plaintiff and the Class are entitled to  
16 appropriate equitable relief, including an appropriate monetary award based on  
17 restitution, disgorgement or surcharge, pursuant to 29 U.S.C. § 1132(a)(3)(B).  
18  
19

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff demands judgment in her favor against Defendants  
22 as follows:  
23

24 A. Certifying the Classes, as set forth in this Complaint, and appointing  
25 Plaintiff as Class Representative;  
26  
27  
28

1 B. Declaring that Cigna violated the ERISA Plans, and awarding  
2 appropriate benefits;

3  
4 C. Ordering Cigna to make payment, with interest, of unpaid benefits to  
5 Plaintiff and all Cigna Class members;

6 D. Permanently enjoining Defendants from treating TMS therapy  
7 services as “experimental or investigational” when provided to treat clinical  
8 depression;

9  
10 E. Declaring that Defendants violated the Weil Plan and the similar  
11 Cigna plans of the other members of both Classes and that Defendants violated  
12 their fiduciary duties under ERISA, and awarding appropriate equitable relief  
13 including restitution, disgorgement and surcharges;

14  
15  
16 F. Awarding Plaintiff disbursements and expenses of this action,  
17 including reasonable attorneys’ fees, in amounts to be determined by the Court;  
18 and

19  
20 G. Granting such other and further relief as is just and proper.

21 //

22 //

23 //

24 //

25 //

26 //

1 Dated: September 8, 2015

2 Respectfully submitted,

3 /s/ Meiram Bendat

4 Meiram Bendat (Cal. Bar No.  
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