UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

DINAH NISSEN, Plaintiff, vs. CIGNA HEALTH AND LIFE INSURANCE COMPANY, Defendant.	**COMPLAINT** JANUARY 19, 2021

Plaintiff, Dinah Nissen, by her undersigned attorneys, alleges the following based upon her knowledge as set forth herein and upon information and belief. Further additional evidence supporting the claims set forth herein can be obtained after a reasonable opportunity for discovery.

INTRODUCTION

1. Plaintiff, who received health benefits through a group health plan issued and administered by Cigna Health and Life Insurance Company ("Cigna") (the "Plan"), alleges violations of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq*.

JURISDICTION

2. This court has subject matter jurisdiction over this action pursuant to (a) 28 U.S.C. § 1331, which provides for federal jurisdiction over civil actions arising under the laws of the United States, including ERISA; and (b) 29 U.S.C. § 1132(e)(1) providing for federal jurisdiction of actions brought under Title I of ERISA. Further, declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202 and Rules 58 and 65 of the Federal Rules of Civil Procedure.

3. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2) provides for nationwide service of process. Upon information and belief, Defendant is a resident of the United States and subject to

service in the United States, and this Court therefore has personal jurisdiction over it. This Court also has personal jurisdiction over Defendant pursuant to Fed. R. Civ. P. 4(k)(1)(A) because it would be subject to the jurisdiction of a court of general jurisdiction in Connecticut. Defendant also resides or may be found in this District or has consented to jurisdiction in this District. In any event, this Court has personal jurisdiction over Defendant because a substantial portion of the wrongdoing alleged in this Complaint took place in the State of Connecticut; Defendant is authorized to do business in the State of Connecticut; Defendant conducts business in the State of Connecticut and this District; Defendant has principal executive offices in the State of Connecticut and this District; Defendant advertises and promotes its services in the State of Connecticut and this District; Defendant has sufficient minimum contacts with the State of Connecticut; Defendant administers health plans from the State of Connecticut; and/or Defendant otherwise intentionally avails itself of the markets in the State of Connecticut through the marketing and sale of insurance and related products and services in this State so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to the claims herein occurred within this District and/or Defendant resides in this district. Venue is also proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Defendant resides or may be found in this District and some or all of the fiduciary breaches or other violations for which relief is sought occurred in or originated in this District. Venue is also proper in this District pursuant to 18 U.S.C. § 1965, because Defendant resides, is found, has an agent, or transacts its affairs in this District.

PARTIES

5. Plaintiff Nissen is a citizen and resident of New York who received coverage under a group health plan sponsored by Greater Than One, Inc. using a governing form plan document

provided by Cigna (the ”Plan”). This Plan is a welfare benefit plan, as that term is defined in 29 U.S.C. § 1002(1)(A), subject to ERISA. This Plan at all relevant times has been administered by Cigna.

6. Defendant Cigna, incorporated in Connecticut, is a wholly-owned subsidiary of Cigna Corporation with its principal place of business in Bloomfield, Connecticut.[1] Cigna health insurance policies. Cigna also administers health benefits for health insurance policies it sells and health plans it administers.

SUBSTANTIVE ALLEGATIONS

7. Health plans are paid for by a premium for a defined period or through employer plans that either provide benefits by purchasing group insurance policies or are self-funded but administered by health insurance companies and their affiliates.[2] Premiums and contributions to coverage in all types of plans can be paid by individual plan participants or beneficiaries, employees, unions, employers or other institutions.

[1] Cigna Corporation is a global health services organization. In 2015, it reported revenue in excess of $37.9 billion, and the company is currently ranked 79th on the Fortune 500. Cigna operates through three segments: (1) Global Health Care, which is comprised of the Commercial operating segment, which encompasses both the U.S. commercial and certain international health care businesses serving employers and her employees, and other groups, and the Individuals and Government operating segment, which offers Medicare Advantage and Medicare Part D plans to seniors and Medicaid plans; (2) Global Supplemental Benefits, which offers supplemental health, life and accident insurance products in selected international markets and in the U.S.; and (3) Group Disability and Life, which provides group long-term and short-term disability, group life, accident and specialty insurance products and related services.

[2] According to Cigna, over 85% of its market is in ERISA-covered health plans, while 5% is in the individual market and government-related plans like Medicare. Approximately 83% of Cigna’s customers are in “administrative services only” arrangements where Cigna and its affiliates manage and administer self-funded plans, while approximately 17% of plans are insured through Cigna policies. Whatever the plan structure, Cigna and its affiliates contract with managers to access her networks of providers/vendors.

8. Consumers purchase health insurance and enroll in employer-sponsored health plans to protect them from unexpected high medical costs.

9. Plaintiff's Plan provided for **"Emergency and Urgent Care Services*EHB"** (emphasis in the original). These services included "Outpatient Professional Services" at an "Outpatient Facility."

10. According to the Plan, "Emergency Services" means services "with respect to an emergency medical condition."

11. According to the Plan, an "Emergency Medical Condition" includes "serious disfigurement."

12. On or about Sunday May 17, 2020 at 1:30pm, Plaintiff was badly bitten on her right cheek in Sagaponack, New York by a rescue dog that had been picked up from an animal shelter that day.

13. Following the bite, Plaintiff went straight to the closest urgent care location at Northwell Urgent Care in Bridgehampton, New York. The Northwell doctor who examined the wound told Plaintiff that she would need to have the wound stitched up by a plastic surgeon as a matter of urgency.

14. The Northwell doctor told Plaintiff that there were two plastic surgeons in the area and that he would check to see which one was on call in the emergency room at the closest hospital, Stony Brook Southampton Hospital in Southampton, New York. Plaintiff was put in touch with Dr. John Anton and told that he was on call at Stony Brook Southampton Hospital that afternoon.

15. Dr. Anton contacted Plaintiff and told her that she should come to his office, rather than the hospital, given the number of COVID patients at the hospital. Plaintiff went from

Northwell Urgent Care in Bridgehampton straight to Dr. Anton's office, which is located within a quarter mile of the Stony Brook Southampton Hospital.

16. After filling out a number of forms, including credit card details, Plaintiff spent two hours at Dr. Anton's office on Sunday May 17, 2020 and received four layers of stitches to deal with the wounds caused by the dog bite.

17. As Plaintiff left Dr. Anton's office, she received a text that her credit card had been charged $9,200.

18. On June 16, 2020 Plaintiff received an invoice from Dr. Anton's billing provider, Ms. Annette Charnow, for $10,300 (showing $9,200 paid). The invoice indicated that the procedure conducted on May 17, 2020 had been an emergency procedure.

19. On June 26, 2020 Plaintiff called Cigna and was told by the Cigna representative that she spoke to that Cigna would cover the costs of an emergency procedure (subject to any applicable deductions/co-insurance etc.)

20. On June 28, 2020 Plaintiff submitted a claim to Cigna for the May 17, 2020 emergency procedure, providing background information and making it clear that the treatment she had received had been provided on an emergency basis.

21. On July 13, 2020 Cigna rejected Plaintiff's claim on grounds that Dr. Anton was a non-network provider and the codes on his invoice did not indicate an emergency.

22. On July 20, 2020 Plaintiff emailed Dr. Anton's billing provider, Ms. Chernow, to explain that Cigna had rejected her claim due to the absence of emergency codes on the letter. Ms. Chernow responded by email that same day (elipses do not indicate missing text):

"There is not a code for emergency… place of service code 23 states you were seen in an emergency room. We cannot [bill] that place of service code because you were seen in the office. Place of service code 11. You must appeal and state that you had no choice but to go to a local plastic surgeon instead of the ER due to Covid 19…"

23. On July 20, 2020 Ms. Chernow emailed Plaintiff a letter addressed "To Whom It May Concern", confirming that Dr. Anton had been the doctor on call at the hospital on May 17 and explaining the background to his seeing Plaintiff at his office rather than the hospital due to COVID cases at the hospital. The letter stated:

> To Whom It May Concern:
>
> Patient Dinah Nissen DOB 3-23-1959 was bitten by a dog on her face on 5-17-2020.
>
> Ms. Nissen [was] told by the local Urgent care to call the local emergency room at Southampton Hospital. The Emergency room directed her to the on-call Plastic Surgeon Dr John Anton. Dr Anton told Ms. Nissen that due the emergency room still treating Covid19 patients, that he would see and treat her in his private office.
>
> Please be aware, that the Southampton area of Eastern Long Island does not have many plastic surgeons and the only hospital in town, Southampton Hospital. The Emergency room has been inundated with Covid-19 patients since March.
>
> Please review and reconsider your member claim for reimbursement. Your member needed immediate care at the time of her injury. There was no other Plastic Surgeon available at the time to see her. Please make an exception, due to the Pandemic in New York.
>
> Dr. John Anton does not participate with any insurance plans. Payment for his services were due at the time of service. This is our standard billing practice.

24. On August 1, 2020 Plaintiff appealed Cigna's decision to deny coverage, again clearly explaining that the treatment had been provided on an emergency basis and including a copy of the letter dated July 20, 2020 from Ms Chernow.

25. On August 24, 2020 Cigna rejected Plaintiff's appeal on grounds that Dr. Anton was out of network. The decision made no mention of Plaintiff's claim that the treatment had been provided on an emergency basis.

26. On October 8, 2020 Plaintiff submitted a second appeal restressing that this was a claim for emergency services and pointing out that the first appeal decision had completely ignored that issue.

27. On October 22, 2020 Cigna denied the second appeal, again ignoring the issue about emergency service:

"We have denied your claim because you did not receive services from a participating provider in your network and you do not have Out-of-Network benefits."

28. Under the Plan, Defendant had a fiduciary duty to apply the Plan terms set forth above in administering Plaintiff's benefits. Cigna's form Plans provide:

Discretionary Authority

The Plan Administrator delegates to Cigna the discretionary authority to interpret and apply plan terms and to make factual determinations in connection with its review of claims under the plan. Such discretionary authority is intended to include, but not limited to, the determination of the eligibility of persons desiring to enroll in or claim benefits under the plan, the determination of whether a person is entitled to benefits under the plan, and the computation of any and all benefit payments. The Plan Administrator also delegates to Cigna the discretionary authority to perform a full and fair review, as required by ERISA, of each claim denial which has been appealed by the claimant or his duly authorized representative.

29. Defendant did not adjudicate Plaintiff's claim in accordance with Defendant's duties under the Plan to provide coverage for EHB. Instead, it simply ignored the fact that the claim was for EHB.

Defendant failed to establish or maintain reasonable claim procedures

30. Upon information and belief, Defendant established and maintained, on a system-wide basis, benefit-claim procedures that are unreasonable and designed to inhibit and hinder Plaintiff and other covered members from receiving benefits.

31. A "claim for benefits" is defined specifically in DOL Regulations as a "request for a plan benefit" "in accordance with a plan's reasonable procedures for filing benefit claims." 29 C.F.R. § 2560-503-1 (e).

32. Every Plan must "establish and maintain reasonable procedures governing the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations." 29 C.F.R. § 2560-503-1 (b). In particular with respect to notification of benefit determinations, the Regulation requires, among other things, that the notice include (1) the specific reason for a denial of benefits, (2) a reference to the plan provisions on which the determination was based, (3) a description of the review procedures, and (4) the rules relied upon in making the determination. 29 C.F.R. § 2560-503-1 (g).

33. Defendant violated 29 C.F.R. § 2560-503-1 (g) in notifying Plaintiff of Cigna's response to Plaintiff' claims for benefits, Cigna ignored the claim for EHB and never told Plaintiff the reasons for the denial. Accordingly, Cigna's "notification" does not meet the requirements of 29 C.F.R. § 2560-503-1 (g). Therefore, Cigna failed to establish and maintain reasonable claims procedures for adjudicating Plaintiff's claim.

34. Because Cigna failed to establish and maintain reasonable claim procedures through two of Plaintiff's appeals, upon information and belief, Cigna has failed to establish and maintain reasonable claim procedures in violation of its Plan mandated discretionary duties on a nation-wide basis.

Defendant Is a Fiduciary and Party In Interest

35. Plaintiff is a member of an employee welfare benefit plan as that term is defined in 29 U.S.C. § 1002(1)(A), insured or administered by Defendant to provide members with medical care.

36. ERISA requires every plan to provide for one or more named fiduciaries who will have "authority to control and manage the operation and administration of the plan." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1).

37. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who in fact perform fiduciary functions. Thus, a person is a fiduciary to the extent "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). This is a functional test. Neither "named fiduciary" status nor formal delegation is required for a finding of fiduciary status, and contractual agreements cannot override finding fiduciary status when the statutory test is met.

38. In addition, a fiduciary that appoints another person to fulfill all or part of its duties, by formal or informal hiring, subcontracting, or delegation, assumes the duty to monitor that appointee to protect the interests of the ERISA Plans and their participants. The power to appoint, retain, and remove plan fiduciaries or service providers confers fiduciary status upon the person holding such power. An appointing fiduciary must take prudent and reasonable action to determine whether the appointees are fulfilling her own separate fiduciary obligations.

39. Defendant is a fiduciary in that it *exercised* discretionary authority or control respecting the following plan management activities, ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i), and in that it *had* discretionary authority or discretionary responsibility in the

administration of the Plaintiff's Plan, ERISA § 3(21)(A)(iii), 29 U.S.C. § 1002(21)(A)(iii), because, by way of example, it did and/or could do one or more of the following:

(a) exercise discretionary authority pursuant to the Plan as alleged above;

(b) dictate the amount paid to providers for healthcare;

(c) charge and/or dictate the amount charged patients for healthcare;

(d) charge patients more for healthcare than they should have been charged pursuant to the terms of the Plan;

(e) manage the provision of healthcare, including processing and paying for claims, services and equipment;

(f) improperly trade off the interests of members for the benefit of itself or its affiliates; and

(g) dictate and negotiate whether a type of healthcare was covered.

40. Moreover, the Plan expressly granted Cigna broad discretionary authority under the Plan, including the authority to determine benefit payments.

Defendant's ERISA Duties

41. **The Statutory Requirements:** ERISA imposes strict fiduciary duties upon plan fiduciaries. ERISA § 404(a), 29 U.S.C. § 1104(a), states, in relevant part, that:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of providing benefit to participants and her beneficiaries; and defraying reasonable expenses of administering the plan; with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; . . . in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and Title IV.

42. **The Duty of Loyalty.** ERISA imposes on a plan fiduciary the duty of loyalty—that is, the duty to "discharge his duties with respect to a plan solely in the interest of the participants

and beneficiaries and . . . for the exclusive purpose of . . . providing benefits to participants and her beneficiaries . . . .” The duty of loyalty entails a duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an “eye single” to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor.

43. **The Duty of Prudence.** Section 404(a)(1)(B) also imposes on a plan fiduciary the duty of prudence—that is, the duty “to discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. . . .”

44. **The Duty to Inform.** The duties of loyalty and prudence include the duty to disclose and inform. These duties entail: (a) a negative duty not to misinform; (b) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (c) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

45. **Rights of Action Under the Plans, for Fiduciary Breach, Prohibited Transactions, and Related Claims.** ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), provides that a participant or beneficiary may bring an action to recover benefits, enforce rights under the terms of the plan or to clarify his rights to future benefits under the terms of the plan. Further, ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes individual participants and fiduciaries to bring suit “(A) to enjoin any act or practice which violates any provision of this subchapter or the

terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan."

COUNT I

ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)

46. Plaintiff incorporates by reference each and every allegation above as if set forth fully herein.

47. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) provides that a participant or beneficiary may bring an action to recover benefits due under the terms of a plan, enforce rights under the terms of the plan or to clarify rights to future benefits under the terms of the plan.

48. As set forth above, Plaintiff has been denied her benefits under the Plan and is entitled to enforce her rights under the terms of the Plan.

49. Plaintiff has been damaged in the amount of the benefit denied.

50. Plaintiff is entitled to recover benefits, enforce her rights under the terms of the plans and seek clarification of her future rights and is entitled to an order providing, among other things, for payment of all amounts due in accordance with her rights under the Plan.

COUNT II

ERISA § 502(a)(2) and (3), 29 U.S.C. § 1132(a)(2) and (3)
for Violations of ERISA § 404, 29 U.S.C. § 1104

51. Plaintiff incorporates by reference each and every allegation above as if set forth fully herein.

52. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), provides that a fiduciary shall discharge its duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying

reasonable expenses of administering the plan, and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

53. Defendant breached its fiduciary duties by failing to follow the claim procedures set forth in the Plans and failing to establish and maintain reasonable claim procedures.

54. Plaintiff has been damaged and suffered losses in the amount of the amount she paid for medical services.

55. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action: "(A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan."

56. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), the Court should order equitable relief to Plaintiff, including but not limited to:

(a) an accounting;

(b) a surcharge;

(c) readjudication of her claim;

(d) correction of the transaction;

(e) disgorgement of profits;

(f) an equitable lien;

(g) a constructive trust;

(h) restitution;

(i) full disclosure of the foregoing acts and practices;

(j) an injunction against further violations; and/or

(k) any other remedy the Court deems proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

A. Finding that Defendant is a fiduciary as defined by ERISA;

B. Finding that Defendant violated its fiduciary duties of loyalty and prudence and awarding Plaintiff such relief as the Court deems proper;

C. Finding that Defendant denied Plaintiff her benefits and her rights under the Plan and awarding such relief as the Court deems proper;

D. Finding that Plaintiff is entitled to clarification of her rights under the Plan and awarding such relief as the Court deems proper;

E. Awarding Plaintiff damages, surcharge, and/or other monetary compensation as deemed appropriate by the Court;

F. Awarding Plaintiff' counsel attorneys' fees, litigation expenses, expert witness fees and other costs pursuant to ERISA § 502(g)(1), 29 U.S.C. 1132(g)(1); and

G. Awarding such other and further relief as may be just and proper, including pre-judgment and post-judgment interest on the above amounts.

Respectfully submitted,

Dated: January 19, 2021

/s/ Robert A. Izard

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JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

NISSEN, DINAH

(b) County of Residence of First Listed Plaintiff Kings County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Izard, Kindall & Raabe, LLP, 29 South Main Street, Suite 305, West Hartford, CT 06107 (860) 493-6292

DEFENDANTS

CIGNA HEALTH AND LIFE INSURANCE COMPANY

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
Employee Retirement Income Security Act of 1974; 29 U.S.C. Section 1001, et seq.

Brief description of cause:
Violations of ERISA related to Group Health Plan issued and administered by Defendant

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
01/19/2021

SIGNATURE OF ATTORNEY OF RECORD
/s/ Robert A. Izard

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.