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

STEVEN VILLALOBOS,

Plaintiff,

vs.

BLUE SHIELD OF CALIFORNIA
 LIFE & HEALTH INSURANCE
 COMPANY,

Defendant.

Case No. 2:21-cv-06375

COMPLAINT FOR:

1. DECLARATION OF RIGHTS
 UNDER THE EMPLOYEE
 RETIREMENT INCOME
 SECURITY ACT OF 1974;
2. DECLARATORY RELIEF;
3. EQUITABLE RELIEF.

Plaintiff, Steven Villalobos (hereinafter “Dr. Villalobos” or “Plaintiff”),
 herein sets forth the allegations of his Complaint against Blue Shield of California
 Life & Health Insurance Company (“Blue Shield”).

PRELIMINARY ALLEGATIONS

1. “Jurisdiction” - This action is brought under 29 U.S.C. §§ 1132(a),
 (e), (f) and (g) of the Employee Retirement Income Security Act of 1974
 (hereinafter “ERISA”) as it involves a claim by Plaintiff for employee benefits
 under an employee benefit plan regulated and governed by ERISA. Jurisdiction is
 predicated under these code sections as well as 28 U.S.C. § 1331 as this action
 involves a federal question. This action is brought for the purpose of obtaining
 benefits under the terms of an employee benefit plan; to clarify and enforce

1 plan; and to obtain other equitable relief, including but not limited to, an injunction
2 ordering Defendant to qualify Plaintiff for the receipt of benefits and to pay health
3 care claims for treatments provided to Plaintiff; for prejudgment and
4 postjudgment interest; and for attorneys' fees and costs.

5 2. Dr. Villalobos is a citizen of the state of California, residing in West
6 Covina, in the County of Los Angeles, California. He is a physician who
7 graduated from the University of Southern California Medical School in 1985 and
8 is employed as a Physician Advisor with Alignment Health Plan, a Medicare
9 Advantage Healthplan ("Alignment").

10 3. Due to his employment with Alignment, Dr. Villalobos' medical
11 coverage is provided by the Alignment Health Plan ("the Plan"). Because the Plan
12 provides employer sponsored medical benefits, funded by a group insurance policy
13 issued by defendant Blue Shield, Dr. Villalobos' health care claims are governed
14 by ERISA.

15 4. Blue Shield is in the business of providing health insurance. It is a
16 California Corporation with its principal place of business in Oakland, California.
17 Blue Shield issued TriNet III Blue Shield HMO 30-500/Admit ("the Policy") to
18 fund medical benefits under the Plan. Blue Shield ultimately makes all coverage
19 determinations for the Plan, including whether an insured should receive a referral
20 to a different medical provider.

21 5. Dr. Villalobos' claim arose in this judicial district, as his claim for
22 benefits was denied in this district. Moreover, Blue Shield can be found in this
23 judicial district and thus venue is proper in this judicial district pursuant to 29
24 U.S.C. Section 1132(e)(2) (special venue rules applicable to ERISA actions).

25 **GENERAL STATEMENT OF RELEVANT FACTS**

26 6. The Policy requires insureds to select a "Primary Care Physician"
27 ("PCP") from a network of authorized providers. Once selected, the PCP acts as

1 treatment is a covered service. In particular the PCP controls, on Blue Shield's
2 behalf, whether an insured may see a specialist or obtain medical treatment from
3 other physicians or medical providers.

4 7. Dr. Villalobos' assigned PCP was HealthCare Partners Medical Group
5 ("HealthCare").

6 8. In June of 2019 Dr. Villalobos suffered from a serious infection of the
7 bottom of his right foot near his toes. On June 2, 2019 he received a referral by
8 HealthCare to be treated at the Inter-Community Medical Center ("ICMC"). Dr.
9 Villalobos went to the ICMC emergency room and he was admitted to the hospital.
10 The ICMC physicians started him on antibiotics and performed two wound
11 debridements, which is a surgical process for cleaning a wound and opening it up
12 so it could drain and be treated. The debridements were unsuccessful in resolving
13 the infection which continued to worsen.

14 9. After the debridements were unsuccessful Dr. Villalobos consulted
15 with the general surgeon and vascular surgeon assigned to his case by ICMC. The
16 surgeons told Dr. Villalobos that his only remaining option was an extensive
17 amputation. This, they told Dr. Villalobos, might involve removing most of his
18 right foot but more likely would involve a "below-the-knee" amputation of his
19 lower leg.

20 10. Dr. Villalobos did not want a below-the-knee amputation of his right
21 foot, so he asked HealthCare for an expeditious transfer—as his infection was
22 progressing—to another facility, preferable a tertiary facility that had foot surgeons
23 who specialized in limb salvage. HealthCare denied this request for a transfer, and
24 instead had a network orthopaedic foot surgeon from another hospital consult with
25 Dr. Villalobos for a second opinion. This surgeon agreed with the two ICMC
26 physicians, stating that a mid-foot amputation was an unlikely possibility but his
27 recommendation was for a full below-the-knee amputation.

1 11. Dr. Villalobos was unhappy with this option so he called the Ronald
2 Reagan UCLA Medical Center (“UCLA”), and was told it had contracts with both
3 HealthCare and Blue Shield. At this point his infection was visibly progressing,
4 and the third toe on his right foot was blue. After discussing the matter with his
5 wife, Dr. Villalobos checked out of the ICMC and was driven by his wife to the
6 UCLA emergency room. He consulted with Dr. Virit Butani, a podiatrist with a
7 speciality in diabetic limb salvage. Dr. Butani, after reviewing Dr. Villalobos’
8 imaging and performing an extensive evaluation, stated that he would have to
9 amputate Dr. Villalobos’ right third tow and a small part of the third ray bone but
10 could save the rest of Dr. Villalobos’ right foot.

11 12. Unfortunately, HealthCare refused to approve Dr. Villalobos being
12 treated at UCLA and insisted that he be transferred back to an “in-network” facility
13 (even though UCLA *was* an in-network facility). Dr. Villalobos was informed by a
14 UCLA Case Manager that, although UCLA had contracts with both HealthCare
15 and Blue Shield, Blue Shield did not like to use UCLA because it was more
16 expensive.

17 13. At that point, Dr. Villalobos had a stark choice. He could agree to
18 treatment at a facility that was acceptable to HealthCare, which would almost
19 certainly result in a below-the-knee amputation of his right leg. Or, he could agree
20 to be financially responsible for the UCLA surgery and save his right leg below-
21 the-knee and almost all of his right foot. And, because the infection was steadily
22 worsening, he needed to make an immediate decision.

23 14. Dr. Villalobos agreed, not unreasonably, to continue his treatment at
24 UCLA so his foot could be saved. In June of 2019 Dr. Butani operated on Dr.
25 Villalobos’ foot, amputating his toe and a small portion of his ray bone but saving
26 the rest of his foot (“the June 2019 surgery”). Dr. Villalobos recovered fully from
27 the surgery, retaining continued use of his foot.

1 15. Dr. Villalobos submitted the UCLA bills to Blue Shield, which
2 refused to pay them. Eventually Blue Shield did pay some of the bills, however it
3 left a substantial balance owed for which Dr. Villalobos was responsible.

4 16. In addition, after the surgery HealthCare approved multiple continued
5 outpatient services at UCLA with the UCLA Wound Clinic, which was not
6 involved in the surgery or the inpatient hospital stay.

7 17. Dr. Villalobos retained counsel who, on January 11, 2021 appealed
8 the denial to Blue Shield. A Blue Shield representative responded that Blue Shield
9 was offering a “one-time administrative exception” and would negotiate with
10 UCLA over the billings.

11 18. On March 22, 2021 counsel for Dr. Villalobos submitted the UCLA
12 billings to Blue Shield. On June 3, 2021, not having heard from Blue Shield,
13 counsel wrote asking for an update.

14 19. In response counsel received two brief facsimiles which provided no
15 substantive information but suggested he contact Dr. Villalobos’ medical group.
16 The facsimiles provided a telephone number but no name and address.

17 20. On July 27, 2021 counsel called the number provided in the facsimile,
18 reaching an entity called Optum which, from the recorded message he listened to
19 while on hold, appeared to be a third party administrator. Counsel waited on hold
20 for fifteen minutes but no representative of Optum picked up. Counsel left a
21 voicemail message which was not returned.

22 21. That same day counsel sent an email to Blue Shield, asking for an
23 update. He informed Blue Shield that he would file a lawsuit if there was no
24 timely response. Again, Blue Shield did not provide a response.

25 22. At present, Blue Shield has not provided a response to Dr. Villalobos’
26 appeal.

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