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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LUCI SOLORIO, on her own behalf and on behalf of similarly situated others,

Plaintiff,

v.

REGENCE BLUESHIELD,

Defendant.

NO. 23-2-10004-2

**COMPLAINT  
(CLASS ACTION)**

**I. INTRODUCTION**

1. Plaintiff Luci “Lynette” Solorio is an enrollee in a Regence BlueShield (“Regence”) insured health plan who was subjected to disability discrimination by Regence because she has a record of being diagnosed with obesity. Specifically, Regence denied coverage of medically necessary – and life-saving – surgical treatment because Regence concluded that the treatment she received was “related to obesity” and therefore excluded under the terms of her Regence contract.

2. Solorio’s Regence contract contains a categorical exclusion of all treatment deemed related to obesity:

## Obesity or Weight Reduction/Control

Except as provided in the Nutritional Counseling benefit, as required as part of the USPSTF, HRSA or CDC requirements, or as required by law, services or supplies that are intended to result in or relate to weight reduction (regardless of diagnosis or psychological conditions) are not covered, including but not limited to:

- medical treatment
- medications
- surgical treatment (including treatment of complications, revisions and reversals) or
- programs

*Exh. 1*, p. 31, attached hereto.

3. Based on information and belief, all Regence Washington non-grandfathered insured plans contain the same or functionally similar plan language (collectively "Obesity Exclusion").

4. Solorio, on behalf of similarly situated others, challenges Regence's exclusion of all coverage relating to obesity as violating RCW 48.43.018, the Washington Law Against Discrimination ("WLAD"), and the Washington Consumer Protection Act ("CPA"), in addition to breaching its contract with her and other similarly situated individuals. Solorio does not challenge Regence's exclusion of treatment related to weight loss or weight control when unrelated to a diagnosis of obesity, whether past, present, or perceived.

5. Under the WLAD, obesity is a recognized disability such that insurers like Regence may not discriminate in the design or administration of health insurance based upon a categorical exclusion of treatment related to obesity. *See Taylor v. Burlington N.*

1 R.R. *Holdings, Inc.*, 193 Wn.2d 611, 615, 444 P.3d 606, 608 (2019) (“obesity always  
2 qualifies as an impairment” under the WLAD).

3 6. The WLAD applies to Washington non-grandfathered health plans,  
4 pursuant to RCW 48.43.0128. Regence is prohibited from applying any benefit design  
5 that discriminates on the basis of disability or health condition in its non-grandfathered  
6 health plans. *Id.* This state law enters into the applicable Regence contracts and  
7 eliminates all non-conforming terms such that a violation of the statute is also a breach  
8 of contract. *See* RCW 48.18.510. Regence’s violation also subjects the insurer to liability  
9 under the CPA. *See* RCW 49.60.030(1)(e).

10 7. Categorical exclusions of all treatment related to obesity are grounded in  
11 the historic isolation and segregation of people with disabilities, including those with  
12 obesity, from the mainstream of American society. *See* 42 U.S.C. § 12101(a)(2)–(3). The  
13 Obesity Exclusion at issue here is one of many historical yet ongoing discriminatory  
14 barriers that individuals with disabilities continually encounter and that anti-  
15 discrimination law was designed to combat. *See* 42 U.S.C. § 12101(a)(5). Categorical  
16 exclusions of a particular treatment were routinely applied when the treatment at issue  
17 was overwhelmingly required by disabled individuals and not the general population.  
18 *See* Blake, Valarie, *Restoring Civil Rights to the Disabled in Health Insurance*, 95 Neb. L. Rev.  
19 1071, 1086 (2017) (hereinafter “Blake”). Indeed, before enactment of the Affordable Care  
20 Act (“ACA”) and RCW 48.43.0128, health insurers purposefully and legally eliminated  
21 coverage of such treatment in order to avoid covering the needs of people with  
22 disabilities. *Id.* That is the case with Regence’s Obesity Exclusion.

23 8. Regence BlueShield is the successor to the first “Blue Shield” company in  
24 the United States, which was formed in 1917 by Pierce County physicians. The original  
25 purpose of Blue Shield plans like Regence was to provide medical care for certain  
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1 populations of able-bodied workers. At that time, coverage was focused on benefiting  
2 employers by providing coverage for health services to temporarily ill or injured  
3 workers so that they could continue to perform on the job. Accordingly, coverage for  
4 treatment and health conditions associated with disabilities was excluded.

5 9. Such historic exclusionary practices against individuals with disabilities  
6 are grounded in the misperception that persons with disabilities cannot participate in  
7 work, benefit from medical treatment, or fully engage in other aspects of society. These  
8 historic exclusions were never reexamined by Regence when state and federal anti-  
9 discrimination laws took effect. Such “thoughtless indifference” or “benign neglect” of  
10 the coverage needs of insureds with disabilities is a form of discriminatory prejudice.  
11 *See Payan v. L.A. Cmty. Coll. Dist.*, 11 F.4th 729, 737 (9th Cir. 2021).

12 10. Regence BlueShield and other Washington insurance companies  
13 historically excluded the treatment of various disabilities including developmental  
14 disabilities, psychiatric disabilities, intellectual disabilities, and obesity from coverage.  
15 They also excluded the treatment specific to those conditions. In sum, the exclusion of  
16 all coverage related to treatment for obesity is a remnant of the historic exclusionary  
17 treatment of people with disabilities by Regence.

18 11. Solorio also asserts an individual claim for breach of the duty of good faith  
19 and fair dealing by Regence for designing, selling, and administering a health plan with  
20 a categorical exclusion of all coverage for treatment related to obesity, unreasonably, in  
21 violation of state anti-discrimination law, and in a manner designed to increase its own  
22 profits rather than benefit its insureds. Specifically, Regence’s administration of the  
23 Obesity Exclusion to deny all coverage of medically necessary surgical treatment based  
24 upon Regence’s belief that the treatment was “related to obesity” was both illegal and  
25 unreasonable.  
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**II. PARTIES**

12. *Luci “Lynette” Solorio*. Solorio is insured under a non-grandfathered Regence BlueShield non-grandfathered insured health plan. She resides in Lewis County, Washington. This dispute arose out of medical procedures provided to Solorio in King County, Washington.

13. *Regence BlueShield*. Regence is a Washington corporation and a health care service carrier that is engaged in the business of insurance in the state of Washington, including in King County.

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**III. JURISDICTION AND VENUE**

14. Jurisdiction is proper under RCW 2.08.010.

15. Venue is appropriate in King County, Washington where Regence resides and where the cause of action arose. RCW 4.12.020; 4.12.025.

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**IV. CLASS DEFINITION AND CR 23 ALLEGATIONS**

16. *Definition of Class*. The proposed class consists of all individuals who:

- (1) have been, are, or will be insured under a non-grandfathered Washington health insurance plan that has been, is, or will be delivered, issued for delivery, or renewed by (a) Regence; (b) any affiliate of Regence; (c) predecessors or successors in interest of any of the foregoing; and (d) all subsidiaries or parent entities of any of the foregoing, at any time on or after April 19, 2019; and
- (2) have required, require, or will require treatment for a diagnosis of obesity or treatment that Regence excludes because it considers the treatment to be related to obesity.

17. *Size of Class*. The class of Regence insureds in non-grandfathered Washington health plans who have required, require, or will require treatment for a diagnosis of obesity or treatment that Regence considers to be “related to obesity” is so numerous that joinder of all members is impracticable.

1           18. *Class Representative Solorio.* Solorio was and remains an enrollee in a  
2 non-grandfathered Regence insured health plan in the State of Washington.

3           19. Solorio was diagnosed with obesity on or before she received a sleeve  
4 gastrectomy in 2017 while she was covered in an ERISA health benefit plan  
5 administered by Anthem Blue Cross Blue Shield. Anthem covered the sleeve  
6 gastrectomy as medically necessary, and the treatment was successful, such that Solorio  
7 no longer met the diagnostic criteria for obesity.

8           20. Although Solorio is no longer diagnosed with obesity, she has a record of  
9 such impairment and remains perceived as a person with obesity by Regence, which  
10 denied coverage of medically necessary surgery and other treatment for Solorio in 2021  
11 based upon her prior diagnosis with obesity and previous surgery for it. As a result, she  
12 was and remains perceived as “disabled” as described in the WLAD. Solorio required  
13 and continues to require medically necessary treatment that Regence deems “related  
14 to” her former diagnosed condition of obesity.

15           21. Consistent with the written language of the policy, Regence denied  
16 coverage of medically necessary surgical procedures required by Solorio based upon  
17 Regence’s position that the surgical procedures were related to her prior treatment for  
18 obesity. Solorio has exhausted the administrative appeals process for Regence’s denial  
19 of these claims. Solorio’s claims are typical of the claims of the other members of the  
20 class. Solorio will fairly and adequately represent the interests of the class.

21           22. *Common Questions of Law and Fact.* This action requires a determination  
22 of the following common questions: (1) whether Regence’s design, imposition, and  
23 administration of the Obesity Exclusion violates RCW 48.43.0128 and the WLAD  
24 because it subjects class members to illegal disability discrimination, including  
25 disparate treatment, proxy, and disparate impact discrimination; (2) whether Regence’s  
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1 sale of health plans containing the Obesity Exclusion and its administration violates the  
2 Washington CPA; and (3) whether Regence's administration of the Obesity Exclusion  
3 breaches the insurance contract between Regence and class members because it violates  
4 RCW 48.43.0128. Adjudication of these issues will in turn determine whether:  
5 (1) Regence may be enjoined from designing, enforcing, and administering the Obesity  
6 Exclusion; (2) Regence may be liable for classwide compensatory damages; and  
7 (3) other appropriate classwide equitable relief.

8         23. *Separate suits would create risk of varying conduct requirements.* The  
9 prosecution of separate actions by proposed class members against Regence would  
10 create a risk of inconsistent or varying adjudications with respect to individual class  
11 members that would establish incompatible standards of conduct. Certification is  
12 therefore proper under Civil Rule 23(b)(1).

13         24. *Regence Has Acted on Grounds Generally Applicable to the Class.*  
14 Regence, by imposing the uniform Obesity Exclusion, has acted on grounds generally  
15 applicable to the class, rendering declaratory and injunctive relief appropriate  
16 respecting the whole class. Certification is therefore proper under Civil Rule 23(b)(2).

17         25. *Questions of Law and Fact Common to the Class Predominate Over*  
18 *Individual Issues.* The claims of the individual class members are more efficiently  
19 adjudicated on a classwide basis. Any interest that individual members of the class may  
20 have in individually controlling the prosecution of separate actions is outweighed by  
21 the efficiency of the class action mechanism. Issues as to Regence's conduct in applying  
22 standard policies and practices towards all members of the class predominate over  
23 questions, if any, unique to members of the class. Certification is therefore additionally  
24 proper under Civil Rule 23(b)(3).





1 34. Obesity involves numerous pathophysiological processes, including  
2 changes at the cellular, hormonal, neurochemical, and organ levels. It causes or  
3 contributes to altered production of numerous hormones, which have pathologic effects  
4 across bodily systems and cause further adverse health effects.

5 35. At a neurochemical level, obesity leads to inflammation within appetite  
6 control centers in the hypothalamus, which decreases response to hunger and satiety  
7 signaling from other parts of the body. This appetite dysregulation, which leads to  
8 elevated hunger and diminished satiety, makes behavioral changes to decrease food  
9 intake progressively more challenging. This and other biochemical changes likely  
10 underly why sustained weight loss is so difficult to achieve and maintain.

11 36. Obesity is a recognized physiological medical condition characterized by  
12 excessive fat tissue that affects one's endocrine, cardiovascular, and musculoskeletal  
13 systems. In other words, it is an impairment that causes concurrent physiological  
14 changes in the body and is caused by a variety of factors including physiological factors.

15 37. In contrast, being overweight, as opposed to being obese, means having  
16 more body weight than is considered normal for an individual's age and height. Being  
17 overweight is not a disease condition or impairment.

18 **B. Diagnosing Obesity**

19 38. The initial screening for obesity is usually done by calculating body mass  
20 index ("BMI"), a ratio of weight and height that has been shown in actuarial and public  
21 health studies to correlate with risk for premature mortality.

22 39. Misclassification is common with BMI, but as a screening tool, it is  
23 inexpensive and efficient.

24 40. After BMI, a diagnosing provider considers the clinical effects of obesity  
25 on health via a medical history and physical examination. The clinical review considers  
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1 the patient's risk for obesity, history of weight trajectory, and impact of the patient's  
2 weight on their health status.

3 41. Based upon these results, patients may be diagnosed with obesity and be  
4 eligible for evidence-based, effective medical treatment.

5 **C. Obesity is Treated with Medically Necessary Medications, Counseling,  
6 and/or Surgery**

7 42. There are proven, clinically effective treatments for obesity.

8 43. These treatments include behavioral counseling, Food and Drug  
9 Administration ("FDA") approved medications or medical device placement, and/or  
10 bariatric/metabolic surgery.

11 44. For example, in 2021, the FDA approved Wegovy as a medication for  
12 treatment of obesity. See [https://www.fda.gov/news-events/press-  
13 announcements/fda-approves-new-drug-treatment-chronic-weight-management-  
14 first-2014](https://www.fda.gov/news-events/press-announcements/fda-approves-new-drug-treatment-chronic-weight-management-first-2014) (last visited 2/7/2023).

15 45. Wegovy works by mimicking a hormone called glucagon-like peptide-1  
16 (GLP-1) that targets areas of the brain that regulate appetite and food intake.

17 46. Wegovy was reviewed in four random, double-blind, placebo-controlled  
18 trials. Patients in the trials lost between 12.4% to 6% of their initial body weight,  
19 compared to those who received the placebo.

20 47. Bariatric surgery is also a clinically effective treatment for obesity. It is a  
21 "major surgical intervention which aims to reduce weight, eliminate or improve  
22 comorbid conditions and maintain weight loss through lifestyle modifications." *Exh. 2*,  
23 p. 1, attached hereto.

24 48. Regence's internal clinical policy recognizes that bariatric surgery can be  
25 medically necessary and effective for treatment of obesity. *See id.*, pp. 1-4.  
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1 49. These and other treatments are excluded by Regence when it deems the  
2 treatment to be “related to obesity” even if the treatment is sought years after the patient  
3 is no longer obese and when the treatment is medically necessary.

4 50. Regence’s Obesity Exclusion acts as a hidden, illegal pre-existing condition  
5 exclusion when it is applied to deny coverage for medically necessary surgery required  
6 as a consequence of a previous diagnosis with obesity.

7 **D. History of Disability-Based Exclusions in Health Insurance**

8 51. Based on information and belief, the Obesity Exclusion is based on historic  
9 stigma and prejudice against people with obesity.

10 52. “The Blue Shield concept grew out of the lumber and mining camps of the  
11 Pacific Northwest at the turn of the century. Employers who wanted to provide medical  
12 care for their workers made arrangements with physicians who were paid a monthly  
13 fee for their services. These contracts led to the creation of ‘medical service bureaus’  
14 composed of groups of physicians. The first was organized in Tacoma, Washington by  
15 Pierce County physicians in 1917. Some bureaus, including the Pierce County bureau,  
16 still operate today as Blue Shield Plans.” *BCBSA History Fact Sheet*, found at  
17 [https://digitalcommons.unf.edu/cgi/viewcontent.cgi?article=3089&context=flablue](https://digitalcommons.unf.edu/cgi/viewcontent.cgi?article=3089&context=flablue_text)  
18 [text](https://digitalcommons.unf.edu/cgi/viewcontent.cgi?article=3089&context=flablue_text) (last visited 06/01/23). Regence BlueShield is the successor organization to that  
19 original Blue Shield plan.

20 53. Blue Shield plans initially offered coverage only to employer-based  
21 groups. See *Blue Cross and Blue Shield: A Historical Compilation*, Consumer Reports, found  
22 at: [https://advocacy.consumerreports.org/wp-content/uploads/2013/03/](https://advocacy.consumerreports.org/wp-content/uploads/2013/03/yourhealthdollar.org_blue-cross-history-compilation.pdf)  
23 [yourhealthdollar.org\\_blue-cross-history-compilation.pdf](https://advocacy.consumerreports.org/wp-content/uploads/2013/03/yourhealthdollar.org_blue-cross-history-compilation.pdf), pp. 7-8 (last visited  
24 06/01/23). During the 1940s, these plans began to offer direct enrollment to individuals  
25 as well as employer-based groups. *Id.* at 9. These plans could freely avoid providing  
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1 coverage to any groups that were viewed as undesirable risks, including disabled  
2 individuals. *See* Blake, p. 1085. Based upon information and belief, Regence’s benefit  
3 design during this period did not provide coverage for disability-related conditions,  
4 including obesity.

5 54. In 1965, the Medicare and Medicaid Act was signed into law. These two  
6 programs were intended to meet the needs of the elderly and disabled, two populations  
7 that were generally excluded from coverage by private insurance. Medicare coverage  
8 was modeled on the private coverage offered by Blue Cross and Blue Shield plans at the  
9 time. *See* Lew, Nancy, *Medicare 35 Years of Service*, Health Care Finance Rev. 2000 Fall:  
10 22(1): 75-103 (hereinafter “Lew”).

11 55. Thus, the exclusions imposed in the typical Blue Cross and Blue Shield  
12 plans were imported into Medicare. This caused significant problems since Medicare’s  
13 benefit package with its attendant exclusions was not designed to meet the needs of  
14 those who are elderly or disabled. *Id.* As a result, the discrimination that occurred in  
15 private coverage was imported into Medicare. *Id.*

16 56. Medicare began to cover bariatric surgery for treatment of obesity starting  
17 in 2006. Nonetheless, Regence continued to exclude all coverage related to obesity.

18 57. Until the ACA was passed, health insurers like Regence were free to  
19 discriminate in the design of their benefits, including as related to obesity. *Schmitt v.*  
20 *Kaiser Found. Health Plan of Wash.*, 965 F.3d 945, 948 (9th Cir. 2020). The ACA, however,  
21 required insurers to ensure that their benefit design did not result in disability  
22 discrimination. *See* 42 U.S.C. § 18116(a). Accordingly, upon implementation of the ACA  
23 and, in Washington, after the enactment of RCW 48.43.0128 in 2019, health insurers  
24 should have reconsidered whether historic disability-based exclusions, like the Obesity  
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1 Exclusion, were the result of discrimination or were justified using the same medical  
2 and scientific standards applied to other covered services.

3 58. Based upon this history and on information and belief, the Obesity  
4 Exclusion has likely always been part of the benefit design in the Regence non-  
5 grandfathered health plans.

6 59. Based on information and belief, Regence has never evaluated whether the  
7 Obesity Exclusion was based on medical and scientific evidence.

8 60. Based on information and belief, Regence did not consider whether obesity  
9 should be covered in its non-grandfathered health plans, even when Regence evaluated  
10 the required changes in coverage resulting from the non-discrimination requirements  
11 in the ACA and passage of RCW 48.43.0128.

12 61. Although Regence's own medical policies confirm that treatment for  
13 obesity can be medically necessary and clinically effective, Regence has not taken action  
14 to include such treatment in its Washington non-grandfathered insured health plans.

15 62. Based on information and belief, Regence did not engage in a "cost-  
16 benefit" analysis to determine whether coverage for treatment related to obesity should  
17 be added to its non-grandfathered, Washington insured health plans.

18 63. Regence continued to design and administer the Obesity Exclusion simply  
19 because it had always done so.

20 64. Regence's design and administration of the categorical Obesity Exclusion  
21 is an intentional act from which facial discrimination may be inferred. *Schmitt*, 965 F.3d  
22 at 954.

23 **E. Regence's Obesity Exclusion**

24 65. Regence issues and delivers non-grandfathered insured plans to hundreds  
25 of thousands of Washington consumers.

1           66. Regence’s Washington non-grandfathered insured plans are governed by  
2 Washington State insurance law. *See Exh. 1*, p. 55 (“This policy will be governed by and  
3 construed in accordance with the laws of the United States of America and by the laws  
4 of the State of Washington”).

5           67. Regence generally covers medically necessary medications and surgical  
6 procedures to treat illness or injury. These benefits would cover the treatment required  
7 by Solorio and the proposed class if the Obesity Exclusion was not present in their  
8 Regence Washington non-grandfathered plan.

9           68. Specifically, Regence covers inpatient, outpatient, and ambulatory surgical  
10 center services for the treatment of illness or injury. *Exh. 1*, p. 9. It also covers  
11 prescription medications either on its formulary or via pre-authorization request when  
12 medically necessary. *Id.*, pp. 15–16.

13           69. The term “illness” is defined in the Regence contract as any “condition,  
14 disease, ailment or bodily disorder other than an injury.” *Id.* at 60.

15           70. Accordingly, the clinically effective, evidence-based treatment for the  
16 diagnosis of obesity – certain medication and surgical procedures – would be covered  
17 under the Regence policy and internal clinical policies *but for* Regence’s decision to  
18 design and administer its health plans to exclude all treatment related to obesity.

19           71. The Obesity Exclusion is targeted at eliminating otherwise medically  
20 necessary coverage for its insureds who are disabled due to their diagnosed condition  
21 of obesity.

22           72. Given Regence’s existing medical policy, the only purpose of the Obesity  
23 Exclusion is to eliminate coverage of medically necessary treatment (medications and  
24 surgery) for the diagnosis of obesity, *i.e.*, the precise coverage needed by disabled  
25 insureds diagnosed with obesity.  
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1           73. By intentional design, the Obesity Exclusion is uniquely and specifically  
2 targeted at disabled insureds with a diagnosis of obesity. Based on information and  
3 belief, Regence deliberately included these exclusions to ensure that medically  
4 necessary treatment for obesity needed by disabled insureds would be excluded.

5           74. The exclusion of all treatment related to obesity is a proxy for  
6 discrimination against insureds with obesity, all of whom are disabled under  
7 Washington law.

8           75. Based on information and belief, Regence administers the Obesity  
9 Exclusion by denying all claims for treatment submitted with a diagnosis related to  
10 obesity and/or treatment that is related to obesity.

11           76. That is exactly what occurred for Solorio. Regence denied her treatment  
12 because Regence deemed the treatment to be a procedure related to her medically  
13 necessary 2017 sleeve gastrectomy, which was required to treat her obesity.

14           77. The Obesity Exclusion also disparately impacts insureds diagnosed with  
15 obesity. The treatment excluded by Regence is medically required by people who are  
16 diagnosed with obesity.

17           78. While non-disabled insureds may seek weight control services, those  
18 services are not typically medical in nature (*i.e.*, they are not prescribed by a licensed  
19 health provider and/or do not require surgery). As a result, those services would not  
20 be entitled to coverage under the application of Regence's Obesity Exclusion.

21           79. Moreover, the fact that the Obesity Exclusion may impact people who are  
22 not disabled, a form of "overdiscrimination," does not relieve Regence from liability.  
23 *See Schmitt*, 965 F.3d at 959.

1 **F. Plaintiff's Need for Treatment that Regence Excluded or Excludes under**  
2 **the Obesity Exclusion**

3 80. Solorio was treated for her diagnosed condition of morbid obesity in 2017  
4 with a sleeve gastrectomy.

5 81. Prior to her surgery, Solorio was diagnosed with multiple chronic health  
6 conditions including sleep apnea, morbid obesity, and gastroesophageal reflux disease  
7 (GERD) esophagitis.

8 82. She completed a six-month, medically supervised weight-loss program  
9 through Swedish Hospital, which was not successful.

10 83. At the time, Solorio was covered by a health plan administered by Anthem  
11 Blue Cross. The health plan covered treatment related to obesity.

12 84. In May 2017, Solorio sought and received pre-authorization of sleeve  
13 gastrectomy surgery, which was certified as medically necessary.

14 85. The surgery was successful, and Solorio was able to lose significant weight  
15 and has maintained a BMI at or below 30 since the procedure. Solorio's other co-morbid  
16 conditions improved significantly.

17 86. At the time of the 2017 sleeve gastrectomy, Solorio's surgeon, Dr. Peter  
18 Billing, also provided a concomitant hiatal hernia repair.

19 87. In the years following the surgery, Solorio's symptoms related to her  
20 existing diagnosis of GERD gradually increased.

21 88. GERD is a disease condition that occurs when stomach acid repeatedly  
22 flows back from the stomach into the esophagus. If the condition is not treated, it can  
23 lead to permanent damage of the esophagus.

24 89. Solorio tried both lifestyle changes and medications to address the GERD  
25 but was not able to resolve it.  
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1           90. In 2020, Solorio had an upper endoscopy that showed a hiatal hernia and  
2 possible Barrett’s esophagus.

3           91. In 2021, Solorio had another endoscopy that showed antral gastritis.

4           92. On September 28, 2021, Solorio had surgery to address the hernia and to  
5 convert her gastric sleeve to Roux-en-Y gastric bypass to resolve her chronic GERD.

6           93. The surgery Solorio required was medically necessary under the Regence  
7 Bariatric Surgery clinical guidelines. *Exh. 2*.

8           94. The Regence guidelines specifically note that reoperation with conversion  
9 of a sleeve gastrectomy to a Roux-en-Y bypass is medically necessary where, as here,  
10 severe esophagitis, including Barrett’s esophagus, is diagnosed. *Id.*, p. 3.

11           95. Regence did not deny coverage for Solorio’s treatment based upon medical  
12 necessity.

13           96. Regence denied coverage based upon the Obesity Exclusion, concluding  
14 that the surgery was excluded as “related to” prior treatment for obesity. *Exh. 3*, p. 2.

15           97. Regence provided no other basis for the denial.

16           98. Solorio’s previous diagnosis with obesity and previous treatment for that  
17 condition was the sole basis of the denial of her 2022 treatment.

18           99. Solorio, with her medical provider, appealed the denial of coverage. *Id.*

19           100. Regence also denied the appeal based solely on the Obesity Exclusion. *Id.*

20           101. After the denial, Regence conducted a “sweep” of Solorio’s claims to  
21 determine if other claims that were approved should have been denied under the  
22 Obesity Exclusion. *Id.*, pp. 2-3.

23           102. Solorio and her medical provider also submitted an appeal to an  
24 independent review organization (“IRO”). *Exh. 4*.

1           103. The IRO upheld the decision by Regence solely because the procedures for  
2 which coverage was sought were considered to be a complication of earlier treatment  
3 for obesity. *Id.*, p. 3.

4           104. The IRO decision did not conclude that the surgery was not medically  
5 necessary. The decision stated “[t]his review is not a question of medical necessity or  
6 appropriate treatment.” *Id.*

7           105. As a result of Regence’s denials, Solorio owes more than \$700,000 to  
8 various medical providers and the hospital where the surgery was performed.

9           106. Solorio has a “disability” under the WLAD because she has been  
10 diagnosed with obesity and required, and requires, treatment related to that condition.

11           107. No administrative appeal is required before a claim under the WLAD may  
12 be brought.

13           108. In any event, such an appeal would be futile given Regence’s clearly  
14 articulated position in its Washington non-grandfathered insured policies. *See Horan v.*  
15 *Regence Steel Ret. Plan*, 947 F.2d 1412, 1416 (9th Cir. 1991).

16           109. Nonetheless, Solorio exhausted the appeals process available through  
17 Regence, to no avail.

18 **G. Classwide Factual Allegations**

19           110. During the relevant time periods, Solorio and members of the class have  
20 been insured in one or more Regence non-grandfathered Washington insured plans.

21           111. Solorio and other members of the class have been diagnosed with obesity.  
22 As a result, Solorio and other members of the class are “disabled” pursuant to the  
23 WLAD.

24           112. Solorio and other members of the class have required, require, and/or will  
25 require medical treatment that Regence considers to be related to obesity. In other  
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1 words, class members have been, are, or will be diagnosed with obesity and have been,  
2 are, or will be recommended or prescribed treatment for obesity by a licensed health  
3 provider.

4 113. Regence has designed, issued, and administered Washington non-  
5 grandfathered insured health plans that exclude all coverage for treatment related to  
6 obesity. Regence continues to do so, to date.

7 114. Regence's non-grandfathered Washington insured health plans must  
8 comply with the requirements of RCW 48.43.0128.

9 115. Based upon the Obesity Exclusion, Regence has a standard policy of  
10 denying coverage of medically necessary treatment when the treatment is considered  
11 by Regence to be related to obesity. Regence's design, sale, administration, and  
12 enforcement of the Obesity Exclusion is a form of illegal disability discrimination under  
13 the WLAD. It is also an illegal pre-existing condition exclusion.

14 116. Specifically, Regence designed the Obesity Exclusion to target and exclude  
15 the health care needs of insureds with obesity, which is always a disability under  
16 Washington law.

17 117. To the extent non-disabled insureds seek treatment related to weight  
18 control, such treatment does not meet the definition in the Regence contract and  
19 Regence clinical policies for "medical necessity." These claims are already excluded as  
20 "not medically necessary." Thus, the Obesity Exclusion is targeted at excluding  
21 medically necessary treatment for obesity sought by disabled insureds.

22 118. Regence does not meet the needs of disabled enrollees diagnosed with  
23 obesity with other evidence-based, equally effective treatments in the health plan.  
24 Instead, Regence's Obesity Exclusion eliminates all coverage for obesity (except  
25 unidentified services that it deems to be required by law).  
26

1 119. As a result of Regence’s deliberate discriminatory actions, Regence  
2 insureds with disabling obesity, like Solorio, do not receive coverage for medically  
3 necessary medications or surgical procedures to treat their condition.

4 120. Regence excludes all coverage for treatment it deems related to obesity,  
5 even though it covers the same or similar treatment (medications and surgical  
6 procedures) for other medical conditions.

7 121. Regence’s Obesity Exclusion is not based upon clinical or medical  
8 evidence.

9 122. The application of Regence’s Obesity Exclusion denies individuals with  
10 disabling obesity the benefits and health coverage available to other insureds, based on  
11 their disability.

12 123. As a direct result, Solorio and members of the class owe extensive sums to  
13 medical providers or have paid out-of-pocket for medically necessary treatment that  
14 Regence considers to be related to obesity, including medications and surgical  
15 procedures. Other class members have been forced to forgo needed medical treatment  
16 due to Regence’s conduct.

17 **VI. CLAIMS FOR RELIEF:**

18 **COUNT I – ON BEHALF OF SOLORIO AND THE PROPOSED CLASS,  
19 VIOLATION OF RCW 48.43.0128 AND THE WLAD**

20 124. Solorio re-alleges all of the paragraphs above.

21 125. RCW 48.43.0128 provides that a health carrier such as Regence is  
22 prohibited from “[i]n its benefit design or implementation of its benefit design,  
23 discriminat[ing] against individuals because of ... present or predicted disability.” A  
24 violation of RCW 48.43.0128 is “unfair discrimination” under RCW 4 and therefore  
25 subject to the WLAD.  
26

1           126. The definition of “disability” under Washington law is broader than the  
2 federal Americans with Disabilities Act (“ADA”) definition. *See* RCW 49.60.040(7)(a)  
3 (“Disability means the presence of a sensory, mental or physical impairment that: (i) [i]s  
4 medically cognizable or diagnosable; or (ii) [e]xists as a record or history; or (iii) [i]s  
5 perceived to exist whether or not it exists in fact.”). Under Washington law, a diagnosis  
6 of obesity is always a “disability” because it is a physiological disorder or condition that  
7 affects the body systems listed in RCW 49.60.040(7)(c)(i). *See Taylor v. Burlington N. R.R.*  
8 *Holdings, Inc.*, 193 Wn.2d 611, 617, 444 P.3d 606 (2019).

9           127. Regence designed a benefit plan that provides coverage for prescription  
10 medications and surgical interventions but excludes coverage of that medically  
11 necessary care when provided to treat insureds diagnosed with obesity. For insureds  
12 diagnosed with obesity, there is no coverage for their disease, apart from screenings  
13 and nutritional counseling. These services fail to address the treatment needs of  
14 insureds diagnosed with obesity. The Obesity Exclusion is a benefit design that  
15 uniquely targets those insureds diagnosed with obesity and arbitrarily excludes the  
16 essential treatment for their disease.

17           128. Solorio and the class are entitled to remedies under the WLAD, including  
18 injunctive relief requiring reprocessing of claims, actual damages, attorney fees, and all  
19 other appropriate remedies permitted under RCW 49.60.030(2).

20                   **COUNT II – ON BEHALF OF SOLORIO AND THE PROPOSED CLASS,**  
21                   **BREACH OF CONTRACT AND VIOLATION OF RCW 48.43.0128**

22           129. Solorio re-alleges all paragraphs above.

23           130. All Washington health plans incorporate the relevant requirements of the  
24 Insurance Code as additional terms and conditions of the contract, rendering any non-  
25 conforming terms void. *See* RCW 48.18.200(2); RCW 48.18.510; *Brown v. Snohomish Cty.*  
26

1 *Physicians Corp.*, 120 Wn.2d 747, 753, 845 P.2d 334, 337 (1993); accord *UNUM Life Ins. v.*  
2 *Ward*, 526 U.S. 358, 376 (1999).

3 131. RCW 48.43.0128 forbids Regence’s health plans from discriminating “in its  
4 benefit design or implementation of its benefit design, ... against individuals because  
5 of their ... present or predicted disability, ... or other health conditions” or otherwise  
6 “discriminate on the basis of ... disability.”

7 132. RCW 48.43.0128 renders Regence’s Obesity Exclusion null and void since  
8 it is a form of benefit-design discrimination targeted at disabled individuals with  
9 obesity. Specifically, since Solorio is disabled or perceived as disabled under  
10 Washington law, and Regence’s non-grandfathered Washington health plans are  
11 subject to RCW 48.43.0128, the Obesity Exclusion discriminates against Solorio and  
12 violates the insurance contract since Solorio’s disability is a “substantial factor” in the  
13 design and administration of the exclusion of coverage. See *Fell v. Spokane Transit Auth.*,  
14 128 Wn.2d 618, 637, 911 P.2d 1319 (1996).

15 133. Based on information and belief, Regence’s administration of the Obesity  
16 Exclusion turns exclusively or substantially on whether the treatment is or was “related  
17 to” a diagnosis of obesity.

18 134. By excluding coverage of all health care that it deems is related to obesity,  
19 Regence has discriminated, and continues to discriminate, against Solorio and the class  
20 she seeks to represent, on the basis of disability, in violation of RCW 48.43.0128. As  
21 Regence’s contracts must be construed and applied without the Obesity Exclusion  
22 pursuant to RCW 48.43.0128 and Washington contract law, Regence’s use of the Obesity  
23 Exclusion to deny coverage is also a breach of contract.

24 **COUNT III – ON BEHALF OF SOLORIO AND THE PROPOSED CLASS,  
25 VIOLATION OF THE WASHINGTON CPA, RCW 19.86 ET SEQ.**

26 135. Solorio re-alleges all paragraphs above.

1 136. Pursuant to WAC 284-43-0140, Regence must comply with state and  
2 federal laws relating to the acts and practices of carriers and law relating to health plan  
3 benefits. Regence violated RCW 48.43.0128 by excluding coverage of all health care that  
4 it deems is related to obesity, thereby violating WAC 284-43-0140. Regence's breach of  
5 its insurance contract and failure to comply with the WLAD violated the Washington  
6 CPA, RCW 19.86 *et seq.*

7 137. Specifically, Regence engaged in unfair or deceptive acts or practices in  
8 trade or commerce in violation of the Washington CPA when it sold plans that violated  
9 and continue to violate the WLAD, RCW 48.43.0128, and WAC 284-43-0140 by  
10 including a categorical exclusion of coverage for treatment related to obesity, and when  
11 it denied the claims of Solorio and other members of the class.

12 138. The business of insurance is one affected by the public interest. Regence's  
13 conduct affected and continues to affect the public interest and injured Solorio and the  
14 proposed class.

15 139. Solorio and members of the class were injured as to their property by  
16 having to pay out-of-pocket for treatment that Regence deemed to be related to obesity  
17 when that treatment should have been covered under their Regence policy but for the  
18 application of the Obesity Exclusion.

19 140. Regence was and is the proximate cause of the injury suffered by Solorio  
20 and the members of the class.

21 141. Solorio and the proposed class are entitled to compensatory damages,  
22 treble damages under RCW 19.86.090, and attorney fees and litigation costs.

23 **COUNT IV – ON BEHALF OF SOLORIO ALONE,  
24 BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

25 142. Solorio re-alleges all paragraphs above.  
26

1 143. Solorio purchased her health insurance from Regence from the  
2 Washington State Benefit Exchange. As with all first-party insurance, Regence had the  
3 common law duty of good faith and fair dealing to give equal consideration to Solorio's  
4 needs and not place its economic needs above hers.

5 144. Regence violated its common law duty of good faith and fair dealing when  
6 it designed, marketed, sold, and administered a Washington insured health plan to  
7 Solorio that contained a categorical exclusion of all coverage for treatment related to  
8 obesity, and then unreasonably and in violation of the WLAD and Washington CPA  
9 denied coverage of medically necessary, life-saving surgical treatment based solely on  
10 the Obesity Exclusion.

11 145. Regence failed to meet its common law duty of good faith when it denied  
12 payment for and/or refused to reimburse Solorio for the expenses related to her  
13 medically necessary procedures that it deemed "related to obesity."

14 146. Regence's unreasonable actions caused Solorio financial, emotional, and  
15 mental distress.

16 147. Solorio is entitled, without limitation, to economic and non-economic  
17 damages resulting from Regence's breach of the duty of good faith and fair dealing.

## 18 **VII. DEMAND FOR RELIEF**

19 WHEREFORE, Solorio requests that this Court:

20 1. Certify this case as a class action; designate Solorio as class representative;  
21 and designate SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC, Eleanor Hamburger and  
22 Richard E. Spoonemore, and PNW STRATEGIC LEGAL SOLUTIONS PLLC, Marlena Grundy,  
23 as Class Counsel;



1           2.       Enter judgment on behalf of Solorio and the class due to Regence's  
2 discrimination on the basis of disability under the Washington Law Against  
3 Discrimination and RCW 48.43.0128;

4           3.       Declare on behalf of Solorio and the class that Regence may not apply the  
5 Obesity Exclusion and/or other contract provisions, policies, or practices that exclude or  
6 impermissibly limit coverage of medically necessary treatment on the basis that the  
7 treatment is for or related to a diagnosis of obesity;

8           4.       Enjoin Regence from applying the Obesity Exclusion now and in the future  
9 to claims from Solorio and the proposed class;

10          5.       Enter judgment in favor of Solorio and the class for all damages due to  
11 Regence's violation of RCW 48.43.0128, the Washington Law Against Discrimination,  
12 the Washington Consumer Protection Act, and its breach of the insurance contracts with  
13 Solorio and proposed class members;

14          6.       Award Solorio and the class treble damages due to Regence's violations of  
15 the Washington Consumer Protection Act;

16          7.       Award Solorio and the class their attorney fees and costs under *Olympia*  
17 *S.S. Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991), the Washington Law  
18 Against Discrimination, RCW 19.86, and other applicable law;

19          8.       Award Solorio any individual damages resulting from Regence's breach of  
20 the duty of good faith and fair dealing; and

21          9.       Award any such other relief as is just and proper.

1 DATED: June 1, 2023.

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