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7 Attorneys for Plaintiff Irina Morris

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

10  
11 IRINA MORRIS,

12 Plaintiff,

13 v.

14 HARTFORD LIFE AND ACCIDENT  
15 INSURANCE COMPANY; and  
16 DOES 1 through 10, inclusive,

17 Defendants.

Case No.:

Action Filed:

Trial Date:

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**COMPLAINT FOR RECOVERY OF  
ERISA PLAN BENEFITS; OR, IN  
THE ALTERNATIVE, BREACH OF  
FIDUCIARY DUTY AND  
EQUITABLE RELIEF;  
ENFORCEMENT AND  
CLARIFICATION OF RIGHTS**

[Filed Concurrently With:

- Civil Cover Sheet;
- Certification of Interested Entities or Persons; and
- Summons]





NATURE OF ACTION

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1. Plaintiff Irina Morris (“Ms. Morris” or “Plaintiff”) was diagnosed with stage III serous peritoneal cancer in February 2009 and underwent a hysterectomy, bowel resection and omentectomy on February 5, 2009, which required multiple rounds of chemotherapy and two additional bowel surgeries during the spring and summer of that year. Her cancer unfortunately recurred in November 2011 and she underwent a six-month series of chemotherapy treatment. Her extensive chemotherapy treatment has resulted in permanent cognitive and physical limitations and life-long side effects, including a hospitalization from December 11, 2011 to January 12, 2012 for bowel obstruction and an adverse reaction to her necessary chemotherapy treatments. During her hospitalization, she had another surgery due to the recurrence of her peritoneal carcinoma where part of her sigmoid colon was removed. She has since been hospitalized five times with bowel-related complications. More recently, Ms. Morris was diagnosed with adenocarcinoma of her right lung and thyroid papillary carcinoma. She suffers from worsening residual nerve injury to her right arm and portal vein thrombosis related to her malignancy, lumbar stenosis, chronic arthritic joint pain and stiffness in her back, neck, right hip and knees, as well as ongoing peripheral neuropathy with neurosensory deficits in her fingers, which limit any fine motor skills. Ms. Morris also has co-morbid conditions of depressive disorder and cognitive impairment as a side effect from her extensive chemotherapy treatments. As a result of her disability, Aetna Life Insurance Company (“Aetna”)<sup>1</sup> deemed her disabled beginning in February 2009 under the terms of the employee welfare benefit plan (the “Plan”) established by her

<sup>1</sup> In November 2017, Aetna sold its group life and disability insurance and absence management business to Defendant Hartford Life and Accident Insurance Company (“Hartford”) for \$1.45 billion. Aetna originally managed Ms. Morris’ claim, but this apparently switched to Hartford sometime in 2019, based on correspondence sent by the two companies to Ms. Morris. For purposes of this Complaint, Plaintiff will refer to both companies interchangeably as “Aetna/Hartford” or “Defendant.”



1 former employer Callidus Software, Inc. dba CallidusCloud (“Callidus”), which  
2 plan is at issue in this action.

3  
4 2. Despite multiple representations as to her calculation of benefits and  
5 clarifications of her monthly benefit amount, after nearly 10 years of receiving  
6 monthly disability benefits, Defendant suddenly reversed course. Ms. Morris  
7 received correspondence from Aetna/Hartford that indicated that **Defendant had**  
8 **purportedly miscalculated her benefits 10 years prior and that, due to this**  
9 **error, Ms. Morris owed \$56,478.17 in overpayment.** Ms. Morris paid taxes based  
10 on her original benefit amount, obtained multiple mortgages based on this benefit  
11 amount with corresponding income verifications from Aetna/Hartford, factored this  
12 benefit into her divorce agreement with her now-deceased ex-spouse and relied  
13 upon this calculation in planning her financial future. After doing a perfunctory  
14 appeal review, Aetna/Hartford upheld its determination and reduced her monthly  
15 benefit amount to \$0, to recoup its decade-old calculation based upon ambiguous  
16 plan terms. Defendant breached its fiduciary duty owed to Plaintiff, waived its right  
17 and is estopped from reducing Ms. Morris’ benefit amount. Plaintiff also seeks an  
18 injunction and a clarification of her rights under the Employee Retirement Income  
19 Security Act of 1974 (“ERISA”).

20  
21 **JURISDICTION AND VENUE**

22  
23 3. Ms. Morris brings this action to recover benefits and to enforce and  
24 clarify her rights under Section 502(a)(1)(B) of ERISA, 502(a)(3), 29 U.S.C.  
25 Section 1132(a)(1)(B). This Court has subject-matter jurisdiction over Plaintiff’s  
26 claim pursuant to ERISA Section 502(e) and (f), 29 U.S.C. Section 1132(e) and (f),  
27 and 28 U.S.C. Section 1331.

28



1 4. Venue lies in the Central District of California, Southern Division  
2 pursuant to ERISA Section 502(e)(2), 29 U.S.C. Section 1132(e)(2), because  
3 Plaintiff resides in this district, some of the alleged breaches occurred in this district  
4 and the ERISA-governed plan at issue was administered in part in this district.

5  
6 **THE PARTIES**  
7

8 5. Plaintiff is an individual who, at all times relevant to this action, was  
9 a citizen of the State of California and a resident of the City of Costa Mesa in  
10 Orange County. Further, at all times relevant to this action, Plaintiff was a  
11 participant, as defined by ERISA Section 3(7), 29 U.S.C. Section 1002(7), in the  
12 Plan established by her former employer Callidus, which is at issue in this action.

13  
14 6. Defendant Aetna/Hartford, at all times relevant, administered long-term  
15 disability (“LTD”) benefits provided to Plan participants, including Plaintiff, by  
16 issuing group policy number LK090243 (the “LTD Policy”) to Callidus.<sup>2</sup> The LTD  
17 Policy and the Plan promised to pay LTD benefits to Plaintiff should she become  
18 disabled. Hartford has acted as a claims administrator and as an ERISA claims  
19 fiduciary of the Plan. Aetna previously acted as a claims administrator and as an  
20 ERISA claims fiduciary of the Plan prior to Hartford’s acquisition of Aetna’s group  
21 disability business in 2017.

22  
23 7. The true names and capacities, whether individual, corporate, associate  
24 or otherwise, of the defendants named herein as DOES 1 through 10, inclusive, are  
25 unknown to Plaintiff at this time, who therefore sues DOES 1 through 10 by  
26 fictitious names and will ask leave of the Court to amend this Complaint to show  
27 the true names and capacities of DOES 1 through 10 when the same are ascertained;

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 <sup>2</sup> See fn. 1.



1 DOES 1 through 10 are sued as principals and/or agents, servants, attorneys or  
2 employees of said principals, and all of the acts performed by them were within  
3 the course and scope of their authority and employment. Plaintiff is informed and  
4 believes and thereupon alleges that each of DOES 1 through 10 is legally  
5 responsible in some manner for the events referred to herein, and directly and  
6 proximately caused the damages and injuries to Plaintiff as hereinafter alleged.

7  
8 **FACTUAL BACKGROUND**

9  
10 8. Ms. Morris started her employment with Callidus on January 30, 2008.  
11 Callidus is a global-enterprise software company known for its cloud-based  
12 solutions, software and services. Her position at the time was a principal consultant,  
13 in which she was responsible for client implementation in finance and insurance  
14 industry sectors. She was required to travel 70-80% of the time.

15  
16 9. Ms. Morris was diagnosed with stage III serous peritoneal cancer in  
17 January 2009 and she went on sick leave on February 4, 2009.

18  
19 10. On February 5, 2009, Ms. Morris underwent a hysterectomy, bowel  
20 resection and omentectomy under the treatment of oncologist Lisa Abaid, M.D. in  
21 an attempt to remove her cancer. She soon underwent a six-month series of  
22 chemotherapy with the drugs carboplatin and Taxol.

23  
24 11. On February 11, 2009, Ms. Morris' sick/vacation leave had exhausted  
25 and thus she made a claim for short-term disability ("STD") and LTD benefits with  
26 Aetna.





1           12. In March 2009, Ms. Morris underwent another bowel resection where  
2 part of her ascending colon was removed.

3  
4           13. On April 22, 2009, Aetna sent Ms. Morris a letter, indicating that to be  
5 eligible for monthly disability benefits she must be unable to perform the material  
6 duties of her own occupation solely due to injury or illness. Aetna stated that it had  
7 reviewed her claim for LTD benefits and determined that, according to the Plan,  
8 she was totally disabled from her own occupation and that she was eligible to  
9 receive benefits effective May 5, 2009 and continuing up to 24 months as long as  
10 she remained disabled from being able to perform her own occupation. The letter  
11 informed her that, in accordance with contractual provisions, her maximum period  
12 of benefit entitlement will end October 31, 2024. Aetna also wrote, “LTD benefits  
13 supplement certain other income described in the enclosed ‘Notice Concerning  
14 Benefits’. *The total amount from all applicable sources will not be less than 60%*  
15 *of your Monthly Rate of Basic Earnings (“MRBE”) of \$10381.95, at the time your*  
16 *disability began.”* (Emphasis added). MRBE is not defined and does not appear in  
17 the Plan.

18  
19           14. In July 2009, Ms. Morris required further intestinal surgery for  
20 adhesions of her small intestine.

21  
22           15. On August 1, 2009, Ms. Morris received an award of Social Security  
23 Disability Insurance benefits (“SSDI”) in the amount of \$2,116 per month.

24  
25           16. On March 25, 2010, Aetna wrote to Ms. Morris, indicating that,  
26 effective February 10, 2010, she was no longer eligible to receive California State  
27 Disability benefits from the Employment Development Department (“EDD”) and  
28 that her LTD benefit would increase after that date. Aetna provided benefit



1 calculations from February 1, 2010 through October 31, 2024. It listed her gross  
2 monthly benefit as \$6,229.17 less \$2,116 for SSDI and less \$1,385.22 for EDD, for  
3 a net benefit of \$2,727.95 from February 1, 2010 through February 28, 2010. **Aetna**  
4 **added that, from March 1, 2010 through October 31, 2024, Ms. Morris’ gross**  
5 **benefit would be \$6,229.17 less \$2,116 for SSDI, for a net monthly benefit of**  
6 **\$4,113.17.**

7  
8 17. On May 10, 2010, Aetna wrote to Ms. Morris, noting that her LTD  
9 benefit period had begun on May 6, 2009 and that the Plan’s definition of  
10 “disability” would change on May 5, 2011. Aetna wrote that, for the first 24 months  
11 of benefits, Ms. Morris must be unable, solely because of injury or disease, to  
12 perform the material duties of her own occupation and that after 24 months of  
13 benefits Ms. Morris must be unable, solely because of injury or disease, to work at  
14 any reasonable occupation.

15  
16 18. On May 27, 2011, Aetna wrote to Ms. Morris, indicating that upon a  
17 complete review of her claim, it was determined that she had met the Plan’s  
18 definition of being totally disabled from any gainful occupation and that therefore  
19 her benefits would continue beyond the 24-month mark (May 6, 2011). It further  
20 wrote that, according to the Plan’s requirements, she would continue to receive LTD  
21 benefits as long as she continued to meet the Plan’s definition of “disability.”

22  
23 19. In September 2011, Ms. Morris applied for a home mortgage with  
24 WaterMark Home Loans, and asked Aetna to confirm her benefits to verify her  
25 income.



1           20. On September 8, 2011, Aetna wrote to Ms. Morris, responding to her  
2 request for a confirmation of her benefits. Aetna cc'ed Kenny George of  
3 WaterMark Home Loans via fax. Aetna wrote,

4  
5           **Our records show that you are receiving LTD benefits in the**  
6           **amount of \$4,113.17 per month. Subject to the terms and**  
7           **conditions of your plan, this income may continue through**  
8           **10/31/2024.** The benefit is subject to reduction by offset of all other  
applicable income you may receive. Please review the summary plan  
description of your disability plan for other income benefits that will  
reduce your disability benefit. (Emphasis added).

9           21. In December 2011, cancer indicators were discovered in Ms. Morris'  
10 blood tests, and her physicians recommended another six-month chemotherapy  
11 course. Thus, she began chemotherapy in January 2012, switching from carboplatin  
12 to Taxotere because she developed an allergy to carboplatin after her original six-  
13 month course of chemotherapy.

14  
15           22. On January 10, 2012, Ms. Morris underwent surgery with Dr. Abaid  
16 due to the recurrence of her peritoneal carcinoma. Part of her sigmoid colon was  
17 removed in surgery.

18  
19           23. On June 19, 2012, **Ms. Morris obtained a mortgage refinance from**  
20 **Quicken Loans based on monthly benefit income verifications from Aetna.**

21  
22           24. On August 12, 2012, Ms. Morris underwent a divorce mediation with  
23 her husband Fred Morris. Ms. Morris' continued benefit payments from Aetna and  
24 her future income stream factored into her divorce settlement, and she negotiated  
25 terms. Due to Aetna's representations of her entitlement to a net benefit of  
26 \$4113.17 per month, her IRA account was divided and over one-half of it was  
27 distributed to Mr. Morris, who is now deceased. She was also denied survivor rights  
28 for the divided IRA funds, based on her monthly benefit amount from Aetna and





1 Aetna’s representations that she would receive a gross net monthly benefit of  
2 \$4,113.17 until she no longer meets the terms of the Plan, to a maximum period  
3 ending in October 2024.

4  
5 25. On October 12, 2012, Ms. Morris called Aetna, requesting a letter that  
6 would verify her income for a refinance of her home mortgage. Aetna documented  
7 this note in her claim file.

8  
9 26. On October 21, 2012, Aetna noted that it faxed an LTD benefit letter to  
10 Kenny George at WaterMark Home Loans via fax number 949-492-5602.

11  
12 27. On that same date, Aetna wrote to Ms. Morris, indicating that she met  
13 the definition of “disability” under the Policy. The letter also stated that, in  
14 accordance with contractual provisions, Ms. Morris’ maximum period of benefit  
15 entitlement will end on October 31, 2024. **It further stated that her LTD benefits**  
16 **will not be less than 60% of her MRBE of \$10,381.95 at the time her disability**  
17 **began. Aetna reiterated that, minus her SSDI benefit offset, her net monthly**  
18 **payment was \$4,113.17.<sup>3</sup>**

19  
20 28. On July 16, 2013, Ms. Morris obtained a mortgage loan to purchase her  
21 current residence and on August 27, 2014, **Ms. Morris obtained a refinance of her**  
22 **mortgage, based on income verification by Aetna to her mortgage lenders.**

23  
24  
25 <sup>3</sup> The letter that Aetna sent on October 21, 2012 surprisingly said that she met the  
26 test of disability under the “own occupation” definition of “disability,” even though  
27 Aetna had already found that she met the “any occupation” definition of “disability”  
28 on May 27, 2011 and had been receiving continued disability benefits past that date.  
It appears that this letter erroneously stated that she was disabled under only the  
“own occupation” Policy definition. Ms. Morris called Aetna to raise concerns  
about this error, as documented in the claim file.





1           29. On February 14, 2015, Ms. Morris again refinanced the mortgage on  
2 her primary residence. Her mortgage amount was established by Aetna’s income  
3 verification, which confirmed again that her net monthly benefit was \$4,113.17.

4  
5           30. On October 26, 2017, Ms. Morris applied for a home equity line of  
6 credit with Bank of America in the amount of \$100,000. This amount was  
7 established by her monthly income as documented by Aetna (\$4,113.17 per month)  
8 to prove her ability to sustain debt.

9  
10           31. On November 15, 2017, Aetna noted that an employee from Bank of  
11 America named Ryan called for a copy of her LTD award letter to verify her income  
12 for a loan application.

13  
14           32. On November 17, 2017, Aetna sent to Bank of America **verification of**  
15 **Ms. Morris’ entitlement to LTD benefits in the amount of \$4,113.17 per month.**  
16 The fax included a copy of Aetna’s original approval letter for Ms. Morris’ claim for  
17 LTD benefits, as well as a **calculation of her gross monthly benefit in the amount**  
18 **of \$6,229.17 from February 1, 2010 through October 31, 2024.**

19  
20           33. In September 2018, Ms. Morris unfortunately had a recurrence of  
21 cancer, this time in her right lung. On September 18, 2018, she underwent a right-  
22 lung wedge resection for her adenocarcinoma with Daryl Pearlstein, M.D.

23  
24           34. On January 22, 2019, Aetna/Hartford employee Eleanor Newtown,  
25 R.N. performed a medical review of Ms. Morris’ file. RN Newtown wrote:

26  
27           The claimant has a history of serous peritoneal cancer Stage III treated  
28 with chemotherapy Feb- July 2009. She was diagnosed with a  
recurrence in 11/11 resumed chemotherapy, had reaction to chemo  
and hospitalized 12/11-1/12 for bowel obstruction. She was recently



1 diagnosed with adenocarcinoma of right lung and underwent wedge  
2 resection on 9/5/18 with worsening residual nerve injury to right arm  
3 and portal vein thrombosis related to malignancy. Claimant has  
4 lumbar stenosis and chronic arthritic joint pain and stiffness in back  
5 and right hip and knees. She has ongoing peripheral neuropathy with  
6 neurosensory deficits in her fingers which limit any fine motor skills.  
7 She has contributing co-morbid conditions of depressive disorder,  
8 cognitive impairment, anxiety disorder, diverticulitis, CFS [chronic  
9 fatigue syndrome]. Based on her chronic conditions, I opine she is  
10 MMI [maximum medical improvement] with inability to perform  
11 sustained or consistent tasks beyond ADLS [activities of daily living].  
12 No medical recommendations.

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AFTER NEARLY 10 YEARS, AETNA/HARTFORD  
SUDDENLY REVERSED COURSE AND ATTEMPTED TO  
RECALCULATE MS. MORRIS' LTD BENEFITS

35. On February 19, 2019, Aetna wrote to Ms. Morris, indicating that her original pre-disability monthly earnings were calculated using a bi-weekly format, but she was paid on a semi-monthly basis. It wrote further that records in her file showed earnings of \$4,791.67 semi-monthly, which calculates to a monthly earnings amount of \$9,583.34. Aetna wrote, "Your previous monthly earnings were miscalculated at \$10,381.95 per month. Due to the calculation error, there will be an overpayment and our Financial Department will be in contact in regard to the amount due."

36. On February 25, 2019, Aetna wrote to Ms. Morris, indicating that, based on its review, Aetna had inadvertently overpaid her, and that the overpayment was in the amount of \$56,478.17. It added she was inadvertently paid based on an incorrect rate of \$10,381.95 instead of \$9,583.54 for the period of May 6, 2009 through January 31, 2019. Aetna stated that this was the reason for the overpayment of her claim.



1           37. The Policy does not define “Monthly Rate of Basic Earnings” or  
2 “MRBE” but defines “Predisability Earnings” as:

3  
4           This is the amount of salary or wages you were receiving from an  
5 employer participating in this Plan on the day before a period of  
6 disability started, calculated on a monthly basis.

7  
8           It will be figured from the rule below that applies to you.

9  
10           If you are paid on an annual contract basis, your monthly salary is  
11 1/12th of your annual contract salary.

12  
13           If you are paid on an hourly basis, the calculation of your monthly  
14 wages is based on your hourly pay rate multiplied by the number of  
15 hours you are regularly scheduled to work per month; but not more  
16 than 173 hours per month.

17  
18           If you do not have regular work hours, the calculation of your  
19 monthly salary or wages is based on the average number of hours you  
20 worked per month during the last 12 calendar months (or during your  
21 period of employment if fewer than 12 months); but not more than  
22 173 hours per month.

23           38. The Policy does not define “annual contract basis” and the terms “bi-  
24 weekly” or “semi-monthly” do not appear anywhere in the Policy. Here, Ms. Morris  
25 received paychecks from her employer every two weeks. Thus, none of the above  
26 Predisability Earnings rules above apply directly to her previous payment plan with  
27 Callidus. Ms. Morris reasonably expected that her benefits were properly calculated  
28 based upon the paychecks she received. Given the Policy’s silence on the issue and  
Defendant’s verification of benefits, this expectation was reasonable. At best, the  
policy phrase “Predisability Earnings” is susceptible to two reasonable  
interpretations, thus ambiguous in this respect, and therefore, must be interpreted  
against Hartford in favor of the insured Ms. Morris because the standard of review  
in this lawsuit is de novo. *See Cyr v. Reliance Standard Life Ins. Co.*, 525  
F.Supp.2d 1165, 1180 (C.D.Cal 2007), *aff’d*, 448 F. App’x 749 (9th Cir. 2011)  
 (“Where a Plan is ambiguous courts that are reviewing benefits denials de novo



1 must apply the canon of *contra proferentum*, which ‘holds that if, applying the  
2 normal principles of contractual construction, the insurance contract is fairly  
3 susceptible to two different interpretations, another rule of construction will be  
4 applied: the interpretation that is most favorable to the insured will be adopted,’”).

5  
6 39. Following Aetna’s February 2019 correspondence indicating that Aetna  
7 had inadvertently overpaid her, Ms. Morris’ disability benefit was reduced from  
8 \$4,113.17 per month to \$3,632.13.

9  
10 40. On March 5, 2019, Ms. Morris called and spoke with Aetna claim  
11 representative Lee Hamilton. Ms. Hamilton noted their conversation in the claim  
12 file and wrote that:

13 [Ms. Morris stated] she used to do taxes, and there is no way she can get  
14 revised tax forms for the past 10 years, and re-file with IRS. Aetna’s extra  
15 MRBE went toward her taxes, as it put her in an upper tax bracket. She  
16 knows, as she did taxes. I told her to file her appeal, and mention everything  
17 about her taxes. ***If she can’t get amended returns, she may have a valid  
18 argument.***” (Emphasis added).

19 Ms. Hamilton noted that Ms. Morris had stated that she cannot afford to live in her  
20 house if her benefit is reduced by \$800 and that she will lose everything. Ms.  
21 Hamilton noted that she told Ms. Morris to file her appeal and to see what happens.  
22 She wrote, “**We are not in business to take homes.** But this was a calculation that  
23 occurred over a 9+ period of time. **Had it been caught earlier, it would not be so  
24 bad.**” (Emphasis added).

25 41. On April 12, 2019, Ms. Morris (via her former attorney Brock  
26 Chwialkowski) appealed Aetna’s decision to reduce her LTD benefits based upon its  
27 purported miscalculation. Ms. Morris wrote that she had detrimentally relied upon  
28 Aetna’s purported overpayment for nearly a decade and that she would assert the  
affirmative defense of laches due to Aetna’s lack of diligence and activity in making



1 a legal claim and Aetna’s moving forward with its purported right to legal  
2 enforcement of reimbursement of the overpayment. Ms. Morris also asserted the  
3 legal doctrine of promissory estoppel in her appeal letter. She requested that Aetna  
4 review her claim and reverse its erroneous decision.

5  
6 42. On April 15, 2019, Aetna wrote to Ms. Morris’ prior attorney, Mr.  
7 Chwialkowski, stating that it had received the request for appeal on April 12, 2019,  
8 and that her claim had been assigned to an appeal specialist.

9  
10 43. On April 18, 2019, Aetna wrote that it had finished reviewing Ms.  
11 Morris’ appeal for her LTD claim. Three days after it affirmed receipt of the appeal,  
12 Aetna stated that it agreed with the original decision to correct the pre-disability  
13 monthly earnings and calculate the overpayment. Aetna wrote:

14  
15 According to the letter sent to Ms. Morris, dated 2/18/2019, a  
16 calculation error caused an overpayment of her LTD benefits. While  
17 we acknowledge the concerns regarding the reduction in benefits,  
18 outlined in your letter of appeal, we must administer the Policy as it is  
19 written, which outlines that if payments are made greater than the  
20 benefits entitled, Aetna has the right to require repayment, including,  
21 but not limited to, placing a stop payment of benefits, until the  
22 overpayment is recovered.

23  
24 44. Aetna also responded to Ms. Morris’ reference to the doctrine of  
25 promissory estoppel in her original appeal, incorrectly interpreting her argument.  
26 Aetna wrote, “[T]he promise in this case, was the contract, which outlined that Ms.  
27 Morris was eligible for benefits based on her actual pre-disability earnings, which is  
28 what is being applied.”

45. On September 10, 2019, Hartford purportedly wrote to Mr.  
Chwialkowski, following up on the overpayment of Ms. Morris’ claim. Harford  
requested that Ms. Morris forward a check or money order payable to Hartford in



1 the amount of \$56,478.17 to be postmarked no later than September 25, 2019.  
2 Hartford added that if it did not receive the full amount by this date, it would begin  
3 recovery of the overpayment, starting with Ms. Morris' October 2019 LTD  
4 payment, reducing her payment to zero until the overpayment had been recovered in  
5 full. *Hartford wrote that it may refer the matter to a collection agency for handling.*  
6 However, the September 10, 2019 letter was never sent directly to Ms. Morris and  
7 Mr. Chwialkowski's office purports to have never received delivery of the  
8 referenced letter.

9  
10 46. Suddenly and without notice to Ms. Morris, Hartford reduced her  
11 monthly benefit from \$3,634.13 per month to \$0, starting in October 2019. Prior to  
12 its reduction of her benefits, *Ms. Morris had been receiving a net benefit amount of*  
13 *\$4,113.17 from Aetna/Hartford for almost ten years.*

14  
15 47. In November 2019, Ms. Morris was diagnosed with thyroid papillary  
16 carcinoma (cancer of her thyroid) and had surgery with Colleen Coleman, M.D. on  
17 November 13, 2019 to remove her left thyroid lobe.

18  
19 48. Following an agreement with Ms. Morris' attorneys of record, Hartford  
20 changed Ms. Morris' overpayment-repayment plan beginning with the month of  
21 April 2020, now paying 50% of her monthly benefit amount of \$3,634.13, or  
22 \$1,817.00. Hartford refused to accept a less-aggressive overpayment recovery.

23  
24 49. As of the date of this filing, Hartford continues to withdraw Ms.  
25 Morris' alleged overpayment from her continuing monthly disability benefits.  
26 Ms. Morris remains, and Hartford continues to deem her, "disabled" under the "any  
27 occupation" Policy definition. She is thus entitled to benefits under the Policy.

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**FIRST CLAIM FOR RELIEF**

To Recover Benefits, Declaratory Relief and Attorneys’ Fees under ERISA Plan –  
29 U.S.C. Sections 1132(a)(1)(B), (g)(1)  
(Plaintiff against Defendant and Does 1 through 10)

50. Plaintiff incorporates the previous paragraphs as though fully set forth herein.

51. ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B), permits a plan participant to bring a civil action to recover benefits due to her under the terms of a plan, to enforce her rights under the terms of a plan and/or to clarify her rights to future benefits under the terms of a plan.

52. At all times relevant, Ms. Morris has been entitled to LTD benefits under the Plan. By committing a purported calculation error and reducing her LTD benefits under the Plan, and by related acts and omissions, Defendant violated, and continues to violate, the terms of the Plan, and Plaintiff’s rights thereunder. Defendant also impermissibly interpreted undefined and ambiguous provisions in the Plan to reduce Ms. Morris’ benefits.

53. The Plan’s ambiguity regarding calculation of benefits and “Predisability Earnings” resulted in Defendant calculating benefits on a bi-weekly basis for almost a decade, **with Defendant conducting multiple verifications of Ms. Morris’ benefit amount.** Here, the Plan is silent on the calculation of Predisability Earnings on either a bi-weekly or semi-monthly basis. Thus, the Plan is ambiguous. Applying federal contract law in ERISA cases, “courts should first look to explicit language of the agreement to determine, if possible, the clear intent of the parties.” *Gilliam v. Nev. Power Co.*, 488 F.3d 1189, 1194 (9th Cir. 2007)



1 (internal quotation marks omitted). “[T]erms in an ERISA plan should be interpreted  
2 in an ordinary and popular sense as would a person of average intelligence and  
3 experience.” *Id.* at 1194 (internal quotation marks and alterations omitted). To find a  
4 term unambiguous courts must be able to “exclude all other alternative constructions  
5 . . . as unreasonable.” *McDaniel v. Chevron Corp.*, 203 F.3d 1099, 1112 (9th Cir.  
6 2000). Where a Plan is ambiguous, courts that are reviewing benefits denials de  
7 novo must apply the canon of *contra proferentum*, which “holds that if, applying the  
8 normal principles of contractual construction, the insurance contract is fairly  
9 susceptible to two different interpretations, another rule of construction will be  
10 applied: the interpretation that is most favorable to the insured will be adopted.”  
11 *Blankenship v. Liberty Life Ass. Co.*, 486 F.3d 620, 625 (9th Cir. 2007) (internal  
12 quotation marks omitted); *Cyr*, 525 F. Supp. 2d at 1179-80 aff’d, 448 F. App’x 749  
13 (9th Cir. 2011). This is consistent with principles of ERISA that should apply when  
14 an administrator is given the authority to determine eligibility and construe the  
15 Plan’s terms, including the duty of loyalty to interpret and apply Plan terms “solely  
16 in the interest of the participants and beneficiaries” and “for the exclusive purpose  
17 of. . . providing benefits to participants and their beneficiaries. . . .” See ERISA §  
18 404(a)(1)(A), 29 U.S.C. § 1104; see *Shaw v. Delta Airlines, Inc.*, 463 U. S. 85, 90  
19 (1983) (ERISA was enacted to “to promote the interests of employees and their  
20 beneficiaries in employee benefit plans”); see also *Mass. Mutual Life Ins. Co. v.*  
21 *Russell*, 473 U. S. 134, 148 (1985) (“to protect contractually defined benefits”); see  
22 generally 29 U. S. C. § 1001 (setting forth congressional findings and declarations  
23 of policy regarding ERISA).

24  
25 54. Ms. Morris received paychecks from her employer every two weeks  
26 and not on an annual contract or hourly basis. Thus, the Policy’s Predisability  
27 Earnings rules do not apply directly to Ms. Morris’ previous earnings with Callidus.  
28 She reasonably expected that her benefits were calculated based upon the paychecks



1 she received. Given the Policy’s silence on the issue and Defendant’s verification of  
2 benefits, this expectation was reasonable. At best, the Policy phrase “Predisability  
3 Earnings” is susceptible to two reasonable interpretations, thus ambiguous in this  
4 respect, and therefore, must be interpreted against Hartford in favor of the insured  
5 Ms. Morris because the standard of review in this lawsuit is de novo.

6  
7 55. A “prudent person” standard is imposed on ERISA fiduciaries. *See* 29  
8 U.S.C. § 1104(a)(1)(b). A “fiduciary” is also under a duty of loyalty and care to the  
9 beneficiaries of the Plan. *See* 29 U.S.C. Section 1104(a)(1). Under ERISA: (1) a  
10 fiduciary must fulfill its duties solely in the interest of plan participants and  
11 beneficiaries and for the exclusive purpose of providing plan benefits to them; (2) a  
12 fiduciary must act with care, skill, prudence and diligence; and (3) a fiduciary may  
13 not act in any capacity involving the Plan, on behalf of a party whose interests are  
14 adverse to the interests of the Plan, its participants or its beneficiaries. Defendant’s  
15 handling of Plaintiff’s disability benefit claim falls far short of these standards.

16  
17 56. For all of the reasons set forth above, the decision to reduce Ms.  
18 Morris’ disability insurance benefits was arbitrary, capricious, wrongful,  
19 unreasonable, irrational, contrary to the evidence, contrary to the terms of the Plan  
20 and contrary to law. Defendant abused its discretion in deciding to reduce Ms.  
21 Morris’ LTD benefits, as the evidence shows that its decision was arbitrary and  
22 capricious. Further, Defendant’s decision and related actions heighten the level of  
23 skepticism with which a court views a conflicted administrator’s decision under  
24 *Abatie v. Alta Health & Life Insurance Co.*, 458 F.3d 955 (9th Cir. 2006) and  
25 *Metropolitan Life Insurance Co. v. Glenn*, 544 U.S. 105 (2008). Defendant’s  
26 reduction of Plaintiff’s LTD benefits constitutes an abuse of discretion.





1           61. Ms. Morris incorporates by reference each of the foregoing paragraphs  
2 of this Complaint, as though fully set forth herein.

3  
4           62. Plaintiff asserts this Second Claim for Relief seeking equitable relief in  
5 the alternative to her First Claim for Relief seeking the payment of Plan benefits.

6  
7           63. ERISA Section 502(a)(3), 29 U.S.C. Section 1132(a)(3)(B) permits  
8 a plan participant or beneficiary such as Ms. Morris to bring a civil action against  
9 fiduciaries such as Defendant to obtain “other appropriate equitable relief,”  
10 including the equitable remedies of waiver, estoppel, injunctive relief and  
11 “surcharge” (i.e., make-whole relief), or any other such discretionary relief, in order  
12 to redress the fiduciary’s violations of ERISA or an ERISA plan.

13  
14           64. At all times relevant herein, a fiduciary relationship existed between  
15 Ms. Morris and Defendant, who was and is a Plan fiduciary. Defendant funded and  
16 administered the Plan that provided disability coverage to Plan participants via  
17 Callidus’ employee welfare benefit plan, which included Ms. Morris.<sup>4</sup> Defendant  
18 acted as the claims administrator for the Plan and generally for all insurance claims  
19 made under its group policy and the employee welfare benefit plan.

20  
21           65. Defendant has, and at all times relevant had, the authority to grant or  
22 deny claims, including Ms. Morris’ claims for disability benefits. Thus, to the  
23 extent that Defendant exercised that discretion, it acted as an ERISA Plan fiduciary  
24 for the group policy and Ms. Morris’ claims thereunder, including as a claim-review  
25 and policy-interpretation fiduciary, as well as a plan-administrator fiduciary for the  
26 group policy. *See Aetna Life Ins. Co. v. Bayona*, 223 F.3d 1030, 1033 (9th Cir.  
27 2000) (“When an insurance company administers claims for an employee welfare

28 \_\_\_\_\_  
<sup>4</sup> See fn. 1.



1 benefit plan and has authority to grant or deny the claims, the company is an ERISA  
2 ‘fiduciary’ under 29 U.S.C. § 1002(21)(A)(iii).”) *See also* 29 U.S.C. §  
3 1002(21)(A)(i), (iii) (“[A] person is a fiduciary with respect to a plan to the extent  
4 (i) he exercises any discretionary authority or discretionary control respecting  
5 management of such plan or exercises any authority or control respecting  
6 management or disposition of its assets, . . . or (iii) he has any discretionary  
7 authority or discretionary responsibility in the administration of such plan.”).

8  
9 66. Defendant, as a Plan fiduciary, further owed Ms. Morris a duty of  
10 utmost loyalty and care to serve, in good faith, in a manner that was in the best  
11 interests of Ms. Morris, who was a Plan participant. As a fiduciary, Defendant owed  
12 Ms. Morris a duty to administer the Plan solely in the interest of Ms. Morris, not  
13 itself. Defendant owed a duty to disclose material facts concerning the Plan, to  
14 accurately provide information and advice to Ms. Morris and not to mislead her  
15 regarding material information about benefits or Plan terms so that she could make  
16 appropriate decisions about her coverage under the Plan.

17  
18 67. Defendant owed a fiduciary duty to affirmatively provide information  
19 about benefits that it knew or should have known would be harmful to withhold,  
20 based on its knowledge of Ms. Morris’ situation. *See Barker v. Am. Mobil Power*  
21 *Corp.*, 64 F.3d 1397, 1403 (9th Cir. 1995). This included “an affirmative duty to  
22 inform beneficiaries of circumstances that threaten the funding of benefits.” *Id.*  
23 This also included a fiduciary “obligation to convey complete and accurate  
24 information material to the beneficiary’s circumstance, even when a beneficiary  
25 has not specifically asked for the information.” *Id.* Finally, it included a duty to  
26 investigate suspicions that Defendant had and alert the Plan participants and  
27 beneficiaries of any concerns they had about calculation of benefits that may have  
28 adversely impacted her disability benefits. *Id.*



1           68. Defendant also owed Ms. Morris a duty to hire, train and supervise its  
2 personnel to anticipate confusion over eligibility for Plan benefits and coverages and  
3 to properly calculate benefits. “[B]ecause it is foreseeable if not inevitable that  
4 participants and beneficiaries will have questions for plan representatives about their  
5 benefits, our cases also recognize an obligation on the part of plan fiduciaries to  
6 anticipate such inquiries and to select and train personnel accordingly.” *Kenseth v.*  
7 *Dean Health Plan, Inc.*, 610 F.3d 452, 471–72 (7th Cir. 2010).

8  
9           69. Defendant breached the fiduciary duties owed to Ms. Morris by, among  
10 other things:

- 11
- 12       ▪ Misleading Ms. Morris by repeatedly affirming her entitlement to ongoing  
13 monthly benefits in the amount of \$6,229.17 (before offsets) until October 31,  
14 2024.
- 15       ▪ Asserting that it miscalculated her Predisability Earnings on a biweekly basis  
16 instead of a semi-monthly basis due to an interpretation of ambiguous or non-  
17 existent Plan terms.
- 18       ▪ Calculating Ms. Morris’ Predisability Earnings at \$10,381.95 and affirming  
19 this calculation to Ms. Morris, her home loan lender WaterMark Home Loans  
20 and financial representatives at Bank of America and Quicken Loans  
21 regarding Ms. Morris’ application for a home equity line of credit and for the  
22 multiple refinances of her previous home loans knowing that she was relying  
23 on this calculation to incur debt.
- 24       ▪ Paying to Ms. Morris the net monthly benefit amount of \$6,229.17 (before  
25 offsets) for nearly a decade.
- 26       ▪ Failing to properly inform Ms. Morris within a reasonable time from the  
27 initial calculation about what it believed to be discrepancies or deficiencies in  
28 the calculation of her Predisability Earnings.





- 1       ▪ Failing to routinely perform an audit of benefit accountings, so as to prevent  
2       a situation like the one here in which Defendant is now attempting to recover  
3       10 years of purported monthly benefit overpayments that was caused by its  
4       own purported benefit calculation error.
- 5       ▪ Failing to anticipate that Plan participants, such as Ms. Morris, and indeed  
6       Defendant’s own internal claim department, would be confused by the  
7       ambiguous language in the Plan that is completely silent on calculation of  
8       benefits in situations like Ms. Morris’ (including the group policy and  
9       corresponding personalized certificates) and enrollment forms as to  
10      calculation of Ms. Morris’ Predisability Earnings;
- 11      ▪ Including conflicting and confusing Plan language that was unclear and  
12      misleading and at a minimum created an ambiguity about the calculation of  
13      Ms. Morris’ monthly LTD benefits.
- 14      ▪ Any other way as alleged above in the general facts and allegations section of  
15      this Complaint.

16  
17       70. Defendant’s breach of its fiduciary duties and other ERISA violations  
18      described above proximately caused the denial of Ms. Morris’ monthly disability  
19      benefits and created an overpayment balance of over \$56,000, of which Defendant is  
20      actively recovering so as to reduce her monthly LTD benefit. Ms. Morris is  
21      therefore entitled to equitable relief under the equitable remedies of waiver,  
22      estoppel, surcharge, injunctive relief or any other such relief as the Court deems  
23      proper, in its equitable discretion.

24  
25       71. As a direct and proximate result of Defendant’s breach of its fiduciary  
26      duties, Ms. Morris has been required to incur attorneys’ fees to pursue this action,  
27      and she is entitled to reimbursement of these fees pursuant to 29 U.S.C. Section  
28      1132(g)(1).

1           72. Defendant also waived its right to reduce Ms. Morris' LTD benefits to  
2 a gross amount of \$5,750 (before offsets) and to calculate her Predisability Earnings  
3 as less than the \$10,381.95 figure that was previously confirmed by Defendant  
4 multiple times. Waiver occurs when a "party intentionally relinquishes a right" or  
5 "when that party's acts are so inconsistent with an intent to enforce the right as to  
6 induce a reasonable belief that such right has been relinquished." *See Salyers v.*  
7 *Metro. Life Ins. Co.*, 871 F.3d 934, 938 (9th Cir. 2017). The doctrine of waiver  
8 "looks to the act, or the consequences of the act, of one side only." *Intel Corp. v.*  
9 *Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1559 (9th Cir. 1991).

10  
11           73. Defendant's multiple instances (over nearly a decade) of calculating  
12 Ms. Morris' Predisability Earnings at \$10,381.95 (allegedly inaccurately) were  
13 inconsistent with the right to calculate her LTD benefits at a lower amount. After  
14 multiple years of benefit payments as well as affirmations and verification of  
15 income amount for Ms. Morris' home purchase loan application, multiple first  
16 mortgage refinances and a home equity line of credit, Defendant suddenly changed  
17 course and recalculated her benefit amount, to her detriment.

18  
19           74. Defendant is also equitably estopped from reducing Ms. Morris' LTD  
20 benefit amount. Defendant knew Ms. Morris' pre-disability earnings and had access  
21 to her paystubs and to the Plan provisions regarding calculation of disability  
22 benefits. Defendant sent her a detailed accounting and breakdown of her benefit  
23 calculations multiple times and affirmed its calculations multiple times. Ms. Morris  
24 reasonably relied upon Defendant's representations when she planned her financial  
25 future, applied for a home loan, refinanced her mortgage(s), applied for a home  
26 equity line of credit, negotiated the division of assets in her divorce with her now-  
27 deceased ex-spouse and paid taxes on the benefits she received. Due to her  
28 unquestionable disability as a cancer survivor, Ms. Morris reasonably believed that





1 she was permanently disabled, and thus entitled to gross monthly benefit amounts of  
2 \$6,229.17 (before offsets) until October 2024. Defendant promised this payment  
3 schedule multiple times in correspondence to her in which it affirmed her  
4 entitlement to benefits and indicated that she had met the Plan's disability terms  
5 under the "own occupation" and "any occupation" definitions. Ms. Morris now has  
6 suffered injury in that Defendant has been attempting to recover over \$56,000 in  
7 LTD benefit payments by reducing her monthly benefit amount to \$0 for multiple  
8 months. She also is unable to work due to her permanent disability and is especially  
9 vulnerable to financial devastation resulting from the zeroing out of her desperately  
10 needed disability benefits. Ms. Morris relied upon Defendant's representations in  
11 the division of her marital estate with her now-deceased ex-spouse and cannot  
12 redistribute the assets because of Defendant's purported calculation error. Further,  
13 she paid taxes on the benefits she received, yet the IRS only allows individuals to  
14 file amended tax returns for the previous three years. Therefore, Ms. Morris is  
15 unable to recover or receive a refund from the IRS for the taxes she paid at the  
16 higher amount due to Defendant's purported error. Finally, she, and several lending  
17 institutions such as Quicken Loans, WaterMark Home Loans and Bank of America,  
18 relied upon Defendant's verification of Ms. Morris' benefit amount in issuing her a  
19 mortgage, refinancing her mortgage and extending a home equity line of credit. Ms.  
20 Morris now faces financial ruin, including foreclosure and bankruptcy, due to  
21 Defendant's purported mistake and its demand for recovery of overpayment.

22  
23 75. In addition, Ms. Morris' circumstances as a permanently disabled  
24 cancer survivor who reasonably and detrimentally relied upon Defendant's conduct  
25 for nearly a decade are extraordinary. Defendant's initial conduct in calculating her  
26 Predisability Earnings was based upon ambiguous Plan language that did not define  
27 calculation of earnings in situations like Ms. Morris' where she was not paid either  
28 hourly or on an annual contract basis with Callidus. Defendant interpreted this



1 provision in calculating her Predisability Earnings on a bi-weekly basis and not a  
2 semi-monthly basis, both phrases that do not appear in the Plan. Defendant’s  
3 calculation of her Predisability Earnings was thus an interpretation of the Plan which  
4 was ambiguous such that reasonable persons could disagree as to its meaning or  
5 effect. The Plan terms were so ambiguous that even Defendant could not and did  
6 not understand the calculations involved and apparently or purportedly mistakenly  
7 paid Ms. Morris for many years. Therefore, Defendant is equitably estopped from  
8 recalculating Ms. Morris’ benefits at a lower rate.

9  
10 76. Plaintiff also seeks an injunction to prohibit Defendant from continuing  
11 to reduce Ms. Morris’ benefit amount (after offsets) from \$4,113.17 in an attempt to  
12 recover a purported overpayment. *See Mertens v. Hewitt Assocs.*, 508 U.S. 248, 256  
13 (1993) (“Congress intended ‘equitable relief’ to include . . . types of relief that were  
14 available in equity, such as injunction, mandamus, and restitution.”)

15  
16 77. Plaintiff also asserts that the doctrine of laches prevents Defendant  
17 from attempting to enforce its legal right to reduce her monthly LTD benefits.  
18 Defendant’s dilatory conduct created a scenario in which it now has attempted to  
19 recalculate Ms. Morris’ LTD benefits and recover over \$56,000 after nearly 10 years  
20 of payment of her benefits in the net amount of \$4,113.17 per month. Defendant’s  
21 unreasonable delay and lack of diligence has severely prejudiced Plaintiff.

22  
23 **PRAYER FOR RELIEF**

24  
25 **WHEREFORE**, Plaintiff prays that this Court grant the following relief  
26 against all defendants:



1. For all Plan benefits due and owing to Ms. Morris and for declaratory relief.
2. Alternatively, for equitable relief, including waiver, equitable estoppel and surcharge, and/or any other such relief as the court deems proper, in its equitable discretion,
3. For injunctive relief preventing Defendant from reducing Ms. Morris' monthly benefits.
4. For interest, costs and reasonable attorneys' fees pursuant to 29 U.S.C. Section 1132(g).
5. For any such other and further relief as this Court deems just and proper.

Dated: April 28, 2020

McKENNON LAW GROUP PC

By: 

ROBERT J. McKENNON  
RYAN R. TIKKER  
Attorneys for Plaintiff  
IRINA MORRIS



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CERTIFICATE OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 20321 SW Birch St., #200, Newport Beach, California 92660; Fax 949-464-9714; E-mail address: xx@mckennonlawgroup.com.

I hereby certify that on [Click here to enter a date.](#), I served the foregoing documents described as: **COMPLAINT FOR RECOVERY OF ERISA PLAN BENEFITS**; or, in the alternative, breach of fiduciary duty and equitable relief; **ENFORCEMENT AND CLARIFICATION OF RIGHTS Error! No text of specified style in document.** on the interested parties as follows:

[Insert]

Attorneys for [Insert]  
 ECF Participant

**ECF/CM:** I caused a true and correct copy thereof to be electronically filed using the Court’s Electronic Court Filing (“ECF”) System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System. I served those parties who are not registered participants of the ECF System as indicated below.

I placed the  original  a true copy thereof enclosed in sealed envelope(s) to the notification address(es) of record and caused such envelope(s) to be delivered by  **FIRST-CLASS MAIL**  **OVERNIGHT DELIVERY**.

**BY E-MAIL:** I electronically transmitted a true and correct copy thereof to the notification electronic mail address(es) of record before close of business for the purpose of effecting service and the transmission was reported as complete and without error.

**FACSIMILE:** Based on  courtesy  court order  agreement of the parties, I caused a true copy thereof to be served by transmitting via facsimile machine to the notification facsimile number(s) of record before close of business. The transmission was reported as complete, without error.

**PERSONAL DELIVERY:** I caused  the original  a true copy thereof to be delivered by hand to the notification address(es) of record by an employee or independent contractor of a registered process service.

I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the Unites States of America and the State of California that the above is true and correct. Executed at Newport Beach, California on [Click here to enter a date.](#)

NAME:

\_\_\_\_\_  
(Signature)

