UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **ED CV 17-2547-JFW (KKx)** Date: February 4, 2019

Title: David Trujillo, etc., et al. *-v-* UnitedHealth Group, Inc., et al.

PRESENT:
HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS (IN CHAMBERS): **ORDER GRANTING PLAINTIFFS' SECOND RENEWED MOTION FOR CLASS CERTIFICATION [filed 12/21/2018; Docket No. 91]**

On December 21, 2018, Plaintiffs David Trujillo and Deanna Harden ("Plaintiffs") filed a Second Renewed Motion for Class Certification ("Motion"). On January 7, 2019, Defendants UnitedHealth Group Incorporated, United Healthcare Services, Inc., and UnitedHealthcare Insurance Company (collectively, "Defendants" or "United") filed their Opposition. On January 14, 2019, Plaintiffs filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's January 28, 2019 hearing calendar and the parties were given advance notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

In this putative class action, Plaintiffs challenge United's practices in denying coverage for prosthetic devices for persons suffering from upper and lower limb loss. Specifically, Plaintiffs claim that United has failed to ensure that benefit claim determinations are made in accordance with governing plan documents, failed to establish reasonable claims procedures, and failed to provide adequate notice of adverse benefit determinations in violation of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq*.

[1]To the extent that the Court has relied on evidence to which the parties have objected, the Court has considered and overruled those objections. As to the remaining objections, the Court finds that it is unnecessary to rule on those objections because the disputed evidence was not relied on by the Court.

A. Plaintiffs' Health Insurance Plans and United's Coverage Guidelines

United issues or administers health plans for millions of members residing in all 50 states, including members who receive health benefits through employee benefit plans governed by ERISA.[2] Plaintiffs David Trujillo and Deanna Harden were United members with coverage through an employee benefit plan governed by ERISA.

Both Plaintiffs' plans provide coverage for prosthetic devices based on an individualized assessment of the member's functional needs, subject to certain limitations. Mr. Trujillo's plan provides, in relevant part: "If more than one prosthetic device can meet your functional needs, Benefits are available only for the prosthetic device that meets the minimum specifications for your needs." Ms. Harden's plan provides, in relevant part: "If more than one prosthetic device can meet a covered person's functional needs, benefits are available only for the most cost-effective device." Although the plans use somewhat different language, based on the evidence presented, it does not appear that these differences are material.

To ensure that United interprets its benefit plans in a consistent and accurate manner, United has developed and published Coverage Determination Guidelines ("CDGs"), including a specific guideline for prosthetic devices entitled, "Prosthetic Devices, Wigs, Specialized, Microprocessor or Myoelectric Limbs" ("CDG.018.060"). Tracking the language of Mr. Trujillo's plan, CDG.018.060 instructs: "If more than one prosthetic device can meet the member's functional needs, benefits are only available for the prosthetic device that meets the minimum specifications for the member's needs." This limitation will be referred to as the "Minimum Specifications Limitation." In making coverage determinations, United directs employees to apply the criteria set forth in both the member's plan and the relevant CDG.

Requests for coverage for prosthetic devices necessarily include a series of billing codes known as the Healthcare Common Procedure Billing Coding System ("HCPCS"), each of which corresponds to a certain component or service related to the device. Almost all prosthetic devices are billed using "L-codes," meaning the letter L and four numbers. A prosthetic limb will typically have ten to twenty different L-codes, one for each component in the device. United reviews these codes pursuant to the Pricing, Data, Analysis and Coding ("PDAC") guidance published by Noridian Healthcare Services pursuant to its contract with the Centers for Medicare and Medicaid Services. The PDAC provides guidance on how specific devices should be presented for approval using the HCPCS codes. Although certain devices or components on the market have not yet been assigned specific HCPCS codes, the PDAC provides guidance on how to request approval for these devices using existing HCPCS codes as well as guidance on the proper and improper use of "miscellaneous codes," which are designated L5999 for lower extremities and L7499 for upper extremities. Providers sometimes ignore that guidance and use the miscellaneous codes (L5999 and L7499) when billing for more advanced and more expensive devices, because the existing recommended codes would not provide adequate reimbursement for those devices.

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[2]The Court declines to address whether Defendant UnitedHealth Group Incorporated is a proper defendant at the class certification stage, and concludes that this issue is more appropriately resolved on a motion for summary judgment.

B. United's Denials of Coverage

United denied both of Plaintiffs' requests for coverage for prosthetic devices based on the Minimum Specifications Limitation.

1. Plaintiff David Trujillo

Plaintiff David Trujillo suffered severe injuries in a March 2017 accident, which resulted in a below-the-knee amputation of his left leg. Before the accident, Mr. Trujillo enjoyed an active lifestyle that included jogging, hiking, and mountain biking. Mr. Trujillo was referred by his physician to a team of prosthetists[3] for a below-the-knee prosthetic device. The prosthetists recommended a below-the-knee device that included a Trans-tibial High-Fidelity Interface (socket) prosthesis ("HiFi Socket Prosthesis").

Mr. Trujillo submitted a pre-authorization request to United for coverage for the HiFi Socket Prosthesis. United denied the request in its letter dated May 12, 2017, which stated in relevant part:

> Your health plan's benefit document will cover the most basic artificial leg which can meet your needs. The leg requested may not be the most basic.

Plaintiffs' Exhibit 6 at 24. United's denial letter did not suggest or identify any alternative devices that would meet Mr. Trujillo's functional needs, nor did it specify which components had been denied as uncovered. The denial letter advised: "If you would like your physician or health care professional to discuss this case with our physician or clinical reviewer, he or she may call the UnitedHealthcare Health Care Peer-to-Peer Support Team . . . ." Mr. Trujillo's providers did not initiate such a "peer-to-peer" conversation with United, nor did United attempt to contact Mr. Trujillo or his providers to provide a more detailed explanation. Mr. Trujillo appealed this determination twice, and each time, United upheld the denial of coverage.

According to United's doctors who reviewed Mr. Trujillo's request and/or who upheld the denial of coverage, United denied coverage for the requested prosthetic device because, *inter alia*, (1) Mr. Trujillo's providers used three miscellaneous lower extremity billing codes (L5999 codes) for a HiFi socket without sufficiently explaining why that socket was necessary; (2) the provider should have used the recognized codes for a "flexible inner socket" instead of the L5999 miscellaneous codes; and (3) based on these issues, pursuant to United's policy, the entire device was not covered because the remaining codes (that could otherwise have been approved) did not constitute a fully functional device. United did not communicate any of these reasons to Mr. Trujillo or his providers.

[3]A prosthetist is a licensed medical professional who designs and fits prosthetic devices. The prosthetist conducts complex clinical assessments during the prosthetic design, development, fitting, and delivery process that directly contribute to the safety and efficacy of the device.

2. Plaintiff Deanna Harden

Plaintiff Deanna Harden's son, Logan Harden, suffers from a congenitally-acquired absence of the right forearm and hand. As Logan has grown, he has required new prosthetic devices to fit his body. Logan, currently age thirteen, needs the use of both hands to perform everyday functions including opening jars, self-care, eating, typing on a keyboard, and holding objects with two hands. A prosthetist recommended an "i-limb quantum device with a High-fidelity socket/interface," a powered device with articulating fingers that simulates a human hand by providing the six fundamental grips of the human hand. The "i-limb quantum device with a High-fidelity socket/interface" allows individuals to cut food with both hands, use a keyboard, and perform many of the other daily tasks that cannot be accomplished with a limited grip device.

Plaintiff Deanna Harden submitted a pre-authorization request to United for coverage for the recommended prosthetic device for Logan. United denied the request in a letter dated August 18, 2016, which stated in relevant part:

> Your health plan covers artificial arms that meet the minimum specifications for your child's needs. The artificial arm requested exceeds the benefit provided under your health plan. Therefore, your health plan will not cover the requested device at this time.

Plaintiffs' Exhibit 2 at 7. United's denial letter did not suggest or identify any alternative devices that would meet Logan's functional needs, nor did it specify which components had been denied as uncovered. The denial letter advised: "If you would like your physician or health care professional to discuss this case with our physician or clinical reviewer, he or she may call the UnitedHealthcare Health Care Peer-to-Peer Support Team . . . ."

United's initial reviewer, Dr. Arvin Gallanosa, conducted a "peer-to-peer" conversation with Logan's physician, Dr. Lee. Dr. Gallanosa advised Dr. Lee that the device exceeded Logan's "minimum specifications" and that the member could talk to her employer's benefit manager to determine if any exception was available. It is unclear when this conversation took place, whether Dr. Gallanosa provided any more detail than what was already included in the denial letter, and whether Dr. Lee or Dr. Gallanosa initiated this conversation. *See* United's Exhibit K at ¶ 17.

Plaintiff Harden appealed the denial of the prosthetic device for her son, and, on October 21, 2016, United upheld the denial. Logan's physician thereafter wrote a new prescription, and Logan's prosthetists prepared a new detailed written order for a less expensive prosthesis and submitted a new claim to United. On May 8, 2017, United again denied the claim based on the Minimum Specifications Limitation, without suggesting or identifying any alternative devices that would meet Logan's functional needs and without specifying which components had been denied as uncovered.

According to the doctors who reviewed Ms. Harden's request and/or upheld the denial of coverage, United denied coverage for the requested prosthetic device because, *inter alia*, the request was not properly coded. Specifically, the request included several miscellaneous upper extremity billing codes (L7499 codes) which were for components (or services) that were not covered under the plan, should have been coded under other billing codes, or were "unbundled,"

i.e., included components that were already included as part of other submitted codes. United did not communicate these reasons in any of the written correspondence sent to Plaintiff Harden or her son's providers.

3. United's Peer-to-Peer Process and the March 2017 "Medically Necessary DME Alternative" Program

When United makes an adverse coverage determination, as it did for the named Plaintiffs in this case, United advises its members that United has a "peer-to-peer" process available and provides a phone number where the member's physician can contact the physician or clinical reviewer who denied coverage. It is unclear how frequently these peer-to-peer conversations are initiated by a provider. Plaintiffs have presented substantial evidence that reviewers do not identify a specific alternative device to providers during these conversations.[4] *See, e.g.,* Plaintiffs' Exhibit 10 at 116-119; Exhibit 15 at 219-2 to 219-4, Exhibit 21 at 315; Exhibit 23 at 366-367. *But see, e.g.,* United's Exhibit B at ¶ 10; United's Exhibit C at ¶ 7; Plaintiffs' Exhibit 22 at 333.

In March 2017, presumably in an attempt to provide more guidance to physicians (or prosthetists) regarding the reasons why a requested device was not covered, United implemented a "Medically Necessary DME Alternative" program with respect to prosthetic devices. This program: (1) encourages United's reviewers to proactively initiate the peer-to-peer discussion with providers and to consider potential alternative equipment before denying members' requests, and (2) instructs the reviewers to document the recommended alternatives in United's clinical record system. Even after the implementation of this program, however, United expressly instructs its reviewers not to include any alternative devices in denial letters to members. Moreover, the program appears to be very limited in its scope: it only applies to requests for lower limb prosthetic devices, and has not been implemented with respect to reviewers who handle appeals. And, even at the initial review level, the evidence suggests that United has not adequately educated or informed its reviewers regarding the existence of this program. *See* Plaintiffs' Exhibit 21 at 317-3 to 317-4.

C. This Action

On December 27, 2017, Plaintiffs filed a Complaint against United, and on August 8, 2018, filed a Motion for Class Certification. On September 14, 2018, the Court denied Plaintiffs' Motion for Class Certification without prejudice. Although the Court found that Plaintiffs had presented substantial evidence that United had engaged in certain uniform practices, the Court found Plaintiffs' class definition overinclusive and afforded Plaintiffs an opportunity to file a First Amended Complaint and Renewed Motion for Class Certification that cured the defects set forth in the Court's Order. Accordingly, on September 24, 2018, Plaintiffs filed a First Amended Complaint, and on December 21, 2018, filed this Second Renewed Motion for Class Certification.[5]

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[4]Notably, United has failed to submit any administrative records or review files documenting the substance of these peer-to-peer conversations.

[5]On October 15, 2018, Plaintiffs filed a Renewed Motion for Class Certification. That Renewed Motion was denied without prejudice for failure to comply with the Local Rules and the Court's Standing Order.

In their First Amended Complaint, Plaintiffs allege that, as a matter of practice: (1) United denies coverage for prosthetics based on the Minimum Specifications Limitation without determining and/or identifying an alternative device that would meet the member's functional needs; (2) United fails to identify an alternative device that meets the member's functional needs in its notices of adverse determination; and (3) if United determines that any of the components in a request or claim are not covered, United denies coverage for the entire request or claim without informing the member that some or all of the other components are covered. First Amended Complaint ("FAC") [Docket No. 77] at ¶¶ 59, 67, 69. Plaintiffs claim that these practices violate the plain language of the plans and CDG.018.06, ERISA claim procedures (29 C.F.R. § 2560.503-1(b)), and/or ERISA's notice provisions (29 C.F.R. § 2560.503-1(g)).

Plaintiffs seek certification of the following class:

> All persons covered under United plans, governed by ERISA, self-funded or fully insured, whose requests for prosthetic arm and leg devices have been denied during the applicable statute of limitations on the basis of the Minimum Specifications Limitation. Not included in this class are persons whose requests for arm and leg devices have been denied for other reasons.

Notice of Plaintiffs' Second Renewed Motion [Docket No. 91] at 1; FAC [Docket No. 77] at ¶ 45. Plaintiffs also request appointment of their counsel, Gianelli & Morris and Doyle Law, as class counsel.

Plaintiffs seek equitable relief on behalf of the proposed class, which would require United to: (1) reform its claim procedures and practices regarding the denial of prosthetic limb requests; and (2) re-process claims under the corrected standard. Plaintiffs do not seek a determination as to whether individual class members are entitled to a requested device, but rather seek a determination as to whether the process used by United to deny requests for coverage was wrongful.

II. LEGAL STANDARD

Before certifying a class, the trial court must conduct a "rigorous analysis" to determine whether the party seeking certification has met the prerequisites of Federal Rule of Civil Procedure 23. *Zinser v. Accufix Research Institute, Inc.*. 253 F. 3d 1180, 1186 (9th Cir. 2001), *as amended*, 273 F.3d 1266 (9th Cir. 2001). The party seeking class certification bears the burden of demonstrating that the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b) have been satisfied. *Id.*

Under Rule 23(a), a class action is only proper if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. Proc. 23(a).

If the Rule 23(a) prerequisites are met, the Court must decide if certification is appropriate under Rule 23(b). In this case, Plaintiffs request certification of the class under Rule 23(b)(1) and 23(b)(2). Rule 23(b)(1) authorizes class certification if:

> prosecuting separate actions by or against individual class members would create a risk of:
>
> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
>
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

Rule 23(b)(2) authorizes certification if: "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."

"Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule -- that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S 338, 350 (2011). "When considering class certification under Rule 23, district courts are not only at liberty to, but must perform 'a rigorous analysis [to ensure] that the prerequisites of Rule 23(a) have been satisfied.'" *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 980 (9th Cir. 2011) (quoting *Dukes*, 564 U.S at 350-51). "In many cases, 'that rigorous analysis will entail some overlap with the merits of the plaintiff's underlying claim. That cannot be helped.'" *Id.* (quoting *Dukes*, 564 U.S at 351).

III. DISCUSSION

For the reasons discussed *infra*, the Court grants Plaintiffs' Second Renewed Motion for Class Certification.

A. Rule 23(a) Requirements

1. Numerosity

To satisfy the numerosity requirement of Rule 23(a), the class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Courts routinely find the numerosity requirement satisfied when the class consists of 40 or more members. *See EEOC v. Kovacevich "5" Farms*, 2007 WL 1174444, at *21 (E.D. Cal. Apr. 19, 2007).

In this case, the Court concludes, and United does not dispute, that the numerosity requirement is easily satisfied. Indeed, United has identified at least 1,008 members whose preauthorization requests for prosthetics were denied from January 2015 through May 2018, and a majority of these requests were denied on the basis of the Minimum Specifications Limitation.

2. Commonality

The commonality requirement is satisfied "if there are questions of fact and law which are common to the class." Fed. R. Civ. P. 23(a)(2). "The Supreme Court has recently emphasized that commonality requires that the class members' claims 'depend upon a common contention' such that 'determination of its truth or falsity will resolve an issue that is central to the validity of each claim in one stroke.'" *Mazza v. Am. Honda Motor* Co., 666 F.3d 581, 588 (9th Cir. 2012) (quoting *Dukes*, 564 U.S. at 350 (internal alteration omitted). "What matters to class certification is not the raising of common 'questions' – even in droves – but rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Dukes*, 564 U.S. at 350 (quotations and citations omitted). "This does not, however, mean that *every* question of law or fact must be common to the class; all that Rule 23(a)(2) requires is 'a single *significant* question of law or fact.'" *Abdullah v. U.S. Security Associates, Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (quoting *Mazza*, 666 F.3d at 589).

The Court concludes that Plaintiffs have met their burden of demonstrating that there are significant questions of fact and law that are common to the Class. Specifically, Plaintiffs have presented substantial evidence that United engages in certain uniform practices, including, *for example*, that: (1) United fails to identify an alternative device that meets the member's functional needs in its notices of adverse determination; and (2) if United determines that any of the components in a request or claim are not covered (and the remaining components do not constitute a complete functioning device), United denies coverage for the entire request or claim. The Court concludes that proceeding as a class action has the capacity to generate common answers to common questions apt to drive the resolution of the litigation, including whether United's practices violate the terms of the plans, or ERISA's claim procedures and notice requirements.

3. Typicality

Typicality exists when "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1020 (9th Cir.1998). "Although the claims of the purported class representative need not be identical to the claims of other class members, the class representative 'must be part of the class and possess the same interest and suffer the same injury as the class members.'" *Lymburner v. U.S. Financial Funds, Inc.*, 263 F.R.D. 534, 540 (N.D. Cal. 2010) (quoting *General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 156 (1982)). To assess whether or not the representative's claims are typical, the Court examines "'whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal.1985)). In

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addition, "class certification is inappropriate where the putative class representative is subject to unique defenses which threaten to become the focus of the litigation." *Id*. (citing cases).

The Court concludes that Plaintiffs' claims are sufficiently typical of the class claims. It is undisputed that United denied Mr. Trujillo's and Logan Harden's requests for prosthetic devices on the basis of the Minimum Specifications Limitation. It is also undisputed that, in doing so, United did not identify an alternative device that would meet their functional needs and did not specify the components or codes that United would cover.

4. Adequacy of Representation

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). To satisfy constitutional due process concerns, "absent class members must be afforded adequate representation before entry of a judgment which binds them." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) (citing *Hansberry v. Lee*, 311 U.S. 32, 42-3 (1940)). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Id.* (citing *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)).

The Court concludes that Plaintiffs have no conflict of interest with other class members, and have been and will continue prosecuting the action vigorously on behalf of the class. Likewise, the Court concludes that class counsel have no conflicts of interest and will vigorously prosecute this action on behalf of the class. Class counsel has significant experience in insurance and class litigation, and Gianelli & Morris has successfully prosecuted numerous insurance class actions including class actions against health plans. In addition, co-counsel Conal Doyle of Doyle Law has successfully prosecuted a number of individual cases over wrongful denials of prosthetic devices.

B. Rule 23(b) Requirements

1. Rule 23(b)(1)

Rule 23(b)(1) is divided into two subsections, Rule 23(b)(1)(A) and 23(b)(1)(B). Because the Court finds that a class action is maintainable under Rule 23(b)(1)(A), the Court finds it unnecessary to address Rule 23(b)(1)(B).

A class action is maintainable under Rule 23(b)(1)(A) if "prosecuting separate actions . . . would create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A). The phrase "incompatible standards of conduct" refers to the situation where "different results in separate actions would impair the opposing party's ability to pursue a uniform continuing course of conduct." *Zinser v. Accufix Research Institute*, 253 F.3d 1180, 1193 (9th Cir. 2001) (quotations and citations omitted). Certification under Rule 23(b)(1)(A) is particularly appropriate in ERISA injunctive relief class actions because ERISA fiduciaries must apply the same standards to all members. *De Roches v. California Physicians' Service*, 320 F.R.D. 486, 506 (N.D. Cal. 2017).

The Court concludes that the requirements of Rule 23b(1)(A) are met here. ERISA requires that, where appropriate, plan provisions must be "applied consistently with respect to similarly situated claimants." 29 C.F.R. § 2560.503-1(b)(5). Accordingly, if this Court were to find that the terms of United plans and ERISA claim processing and notice rules required United to act in a certain fashion, and another court found that those same terms and rules required United to act in a different fashion, United would face an "incompatible standard of conduct." To avoid such a result, the class should be certified pursuant to Rule 23(b)(1)(A).

2. Rule 23(b)(2)

Federal Rule of Civil Procedure 23(b)(2) authorizes class certification when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). As the Supreme Court summarized:

> Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class. It does not authorize class certification when each individual class member would be entitled to a *different* injunction or declaratory judgment against the defendant. Similarly, it does not authorize class certification when each class member would be entitled to an individualized award of monetary damages.

Wal-mart Stores, Inc. v. Dukes, 564 U.S. 338, 360-61 (2011).

In this case, Plaintiffs and the class members seek declaratory and injunctive relief that includes, *inter alia*: (1) "[a]n order declaring that United's denials of claims for prosthetic and arm and leg devices made under the Minimum Specifications Limitation . . . [have been made] without adequate notices of adverse benefit determination as required by ERISA;" (2) "[a]n injunction requiring United to revise the language of CDG.018.06 to require an identification of [an alternative device] that meets the member's functional needs;" (3) "[a]n injunction requiring United to adopt and utilize proper claims procedures for the consideration of claims [for] prosthetic arm and leg devices under the Minimum Specifications Limitation set forth in the plans and CDG.018.06, including the use of proper notices of adverse benefit determination;" (4) "[a]n injunction requiring United to reevaluate and reprocess Plaintiffs' and class members' claims under revised procedures compliant with the provisions of ERISA;" and (5) "[a]n injunction requiring United to provide notice to all class members of the reevaluation and reprocessing in the form and manner required by ERISA."[6] FAC at ¶ 70. Because Plaintiffs seek declaratory and injunctive relief that would provide relief to the entire class, the Court concludes that Plaintiffs satisfy Rule 23(b)(2).

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[6]Plaintiffs, in their First Amended Complaint also seek an "an order declaring that United's denials of claims for prosthetic arm and leg devices made under the Minimum Specifications Limitation . . . have been erroneously made." FAC at ¶ 70a. Based on Plaintiffs' representations that they are not seeking a determination as to whether individual class members are entitled to a specific prosthetic device, the Court construes this request for relief as limited to an order declaring that the *process* used by United to deny requests for coverage is wrongful.

C. Ascertainability or Administrative Feasability

The Court concludes that Plaintiff need not demonstrate ascertainability or administrative feasability in order for the Court to certify the class. *See Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1126 (9th Cir. 2017) ("[T]he language of Rule 23 does not impose a freestanding administrative feasability prerequisite to class certification. Mindful of the Supreme Court's guidance, we decline to impose an additional hurdle into the class certification process delineated in the enacted Rule.").

In any event, United is a sophisticated national insurance company that maintains detailed data on its members. The Court concludes, based on the evidence presented, that United will be able to use this data to identify the members who had their requests for prosthetic arm and leg devices denied on the basis of the Minimum Specifications Limitation.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Class Certification is **GRANTED**. Plaintiffs' claims, to the extent that they seek declaratory and injunctive relief,[7] shall be maintained as a class action on behalf of the following class of plaintiffs:

> All persons covered under United plans, governed by ERISA, self-funded or fully insured, whose requests for prosthetic arm and leg devices have been denied during the applicable statute of limitations on the basis of the Minimum Specifications Limitation. Not included in this class are persons whose requests for arm and leg devices have been denied for other reasons.

The Court appoints Gianelli & Morris and Doyle Law as class counsel.

If, at anytime, it appears that the requirements of Rule 23(a) or Rule 23(b) are no longer satisfied, the Court will not hesitate to decertify the Class. *See* Fed. R. Civ. P. 23(c)(1)(C)("An order that grants or denies class certification may be altered or amended before final judgment.").

IT IS SO ORDERED.

[7]In Plaintiffs' first claim for relief, Plaintiffs allege that they "seek the payment of medical expenses" on behalf of the class. FAC at ¶ 64. Plaintiffs, however, have represented that they do not seek damages on behalf of the class. Accordingly, Plaintiffs will be precluded from seeking such relief on behalf of the class.