

1 Scott C. Glovsky, Bar No. 170477  
2 Email: Sglovsky@scottglovskylaw.com  
3 Ari Dybnis, Bar No. 272767  
4 Email: Adybnis@scottglovskylaw.com  
5 LAW OFFICES OF SCOTT C. GLOVSKY, APC  
6 343 Harvard Avenue  
7 Claremont, CA 91711  
8 Website: www.scottglovsky.com  
9 Telephone: (626) 243-5598  
10 Facsimile: (866) 243-2243

11 Attorneys for Plaintiff

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

JAN 08 2020

BY Alma Vallejo Garcia  
ALMA VALLEJO GARCIA, DEPUTY

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF SAN BERNARDINO

13 JACK P. WINSTEN, an individual,

14 Plaintiff,

15 vs.

16 LOMA LINDA UNIVERSITY HEALTH  
17 CARE, a California corporation, and DOES  
18 1 through 100, inclusive,

19 Defendants.

Case No. CIV DS 2000389

NEGLIGENCE COMPLAINT AND  
DEMAND FOR JURY TRIAL

By Fax

1 Plaintiff Jack Winsten, an individual, alleges based on his personal knowledge with  
2 respect to his own acts and on information and belief with respect to all other matters:

### 3 GENERAL ALLEGATIONS

#### 4 1.

#### 5 INTRODUCTION

6 1. Plaintiff Jack Winsten ("Jack") lives with amyotrophic lateral sclerosis  
7 (commonly known as "ALS"). ALS is a progressive neurodegenerative disease that affects nerve  
8 cells in the brain and the spinal cord and the wasting of motor neurons. Motor neurons reach  
9 from the brain to the spinal cord and from the spinal cord to the muscles throughout the body.  
10 When the motor neurons die, the ability of the brain to initiate and control muscle movement is  
11 lost. With voluntary muscle action progressively affected, people may lose the ability to speak,  
12 eat, move and breathe. The progressive degeneration of the motor neurons in ALS eventually  
13 leads to their demise. In Jack's case, ALS has left him unable to ambulate and requires him to  
14 need use of a wheelchair.

15 2. Jack sought coverage for a power wheelchair from the medical group to which his  
16 insurance company assigned to him, Defendant Loma Linda University Health Care ("Loma  
17 Linda"). Despite Loma Linda's obligation to provide coverage for medically necessary durable  
18 medical equipment and the chair's necessity, when Jack and his doctors sought coverage for the  
19 power wheelchair, Defendant denied the request as not medically necessary. As a result of Loma  
20 Linda's denial, Jack suffered economic and physical injury and emotional distress.

#### 21 2.

#### 22 THE PARTIES

23 3. Plaintiff Jack Winsten lives and has lived at all relevant times in San Bernardino  
24 County, California.

25 4. Defendant Loma Linda University Health Care is, and at all relevant times was, a  
26 corporation duly organized and existing under and by virtue of the laws of the State of California,  
27 and authorized to transact and transacting business in the State of California. Its principal place  
28

1 of business is in Loma Linda, California in San Bernardino, California.

2 5. The true names and capacities, whether individual, corporate, associate or  
3 otherwise, of defendants named herein as Does 1 through 100, inclusive, are unknown to plaintiff,  
4 who therefore sue said defendants by such fictitious names. Each of the defendants named herein  
5 as a Doe is responsible in some manner for the events and happenings hereinafter referred to, and  
6 some of plaintiff's damages as herein alleged were proximately caused by such defendants.  
7 Plaintiff will seek leave to amend this complaint to show said defendants' true names and  
8 capacities when the same have been ascertained.

9  
10 3.

11 **FACTUAL BACKGROUND**

12 6. At all relevant times, Jack Winsten ("Jack") has had a UnitedHealthcare Medicare  
13 Advantage health plan. The plan is a HMO plan. His member ID Number is 009060711-1. Jack  
14 is the subscriber for the plan through which UnitedHealthcare promised to provide assessment,  
15 diagnosis and medically necessary treatment.

16 7. UnitedHealthcare had a pre-existing business relationship with Loma Linda.  
17 UnitedHealthcare entered into managed care agreements with Loma Linda, whereby  
18 UnitedHealthcare shifted the financial risk and burden of providing covered services to Loma  
19 Linda by paying it as a captivated provider. UnitedHealthcare paid a set, per-number amount to  
20 Loma Linda, and it in return agreed to arrange for the provision of health care services to the  
21 UnitedHealthcare members assigned to it. Expenses incurred to treat the members were borne by  
22 Loma Linda. Under its agreement with Loma Linda, UnitedHealthcare delegated to Loma Linda  
23 the primary function of authorizing treatment and approving referrals to specialists.

24 8. Because Loma Linda undertook the primary responsibility for the provision of  
25 health care and did not practice medicine or directly deliver medical services, it assumed the role  
26 and acted in the capacity of a health care service plan, not a medical provider or independent  
27 practice association, in its dealings with Jack.



1           9.     Jack lives with amyotrophic lateral sclerosis (commonly known as "ALS"). ALS,  
2 is a progressive nervous system disease that affects nerve cells in the brain and spinal cord,  
3 causing loss of muscle control. ALS is often called Lou Gehrig's disease, after the baseball player  
4 who was diagnosed with it. ALS often begins with muscle twitching and weakness in a limb, or  
5 slurred speech. However it eventually affects control of the muscles needed to move, speak, eat  
6 and breathe. There is no cure for this fatal disease.

7           10.    Jack has minimal function left in his limbs and is unable to walk. It is therefore  
8 medically necessary for Jack to use a power wheelchair. In particular, it is necessary for Jack to  
9 use a specialized and customized power wheelchair otherwise he can suffer physical injury which  
10 for a person in Jack's condition could quickly escalate and put his general well-being in danger.  
11 Jack through a provider, requested authorization for such a power wheelchair from Loma Linda.  
12 Despite its obligation to provide such durable medical equipment, Loma Linda denied the request  
13 on October 24, 2019.

14           11.    The denial was a result of Loma Linda's failure to conduct a full, fair and adequate  
15 investigation of the information provided which supported coverage. Loma Linda also relied  
16 upon reviewers who lacked adequate qualification to appropriately and sufficiently review the  
17 authorization request that Plaintiff made. Because of the denial, Jack was unable to get the  
18 wheelchair he needed.

19           12.    Following the denial, Jack appealed to UnitedHealthcare and it subsequently  
20 overturned the denial. Loma Linda then did not provide authorization until November 12, 2019.

21           13.    Had it not been for Defendant's denial and delays, Jack would have been able to  
22 get the power wheel chair that needed when he needed it and would not have suffered physical,  
23 emotional and economic injury.

24           14.    Jack's injuries cannot be remedied by a reversal of the coverage determination  
25 because she has suffered emotional and physical injury as a result of defendant's conduct, in  
26 addition to economic injuries.

27    //

28    //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

## 2

3  
45  
67  
89  
1011  
12

13  
14  
15  
16  
17

18  
19

20  
21  
22  
23  
24  
25

27

28

1. For special and general damages according to proof at the time of trial;
2. For punitive damages;
3. For pre-judgement and post-judgement interest as provided by law;
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court deems just and proper.

Dated this 7th day of January 2020, at Claremont, California.

LAW OFFICES OF SCOTT GLOVSKY, APC

By: \_\_\_\_\_

SCOTT C. GLOVSKY  
ARI DYBNIS  
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: January 7, 2020

LAW OFFICES OF SCOTT GLOVSKY, APC

By: 

SCOTT C. GLOVSKY  
ARI DYBNIS  
Attorneys for Plaintiff