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12 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF RIVERSIDE

14
15 NICOLE YOUNG, an individual,

16 Plaintiffs,

17 vs.

18 CALIFORNIA PHYSICIANS' SERVICE
19 dba BLUE SHIELD OF CALIFORNIA; and
DOES 1 through 100, inclusive,

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21 Defendants.
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Case No.: **RIC1903369**

COMPLAINT AND DEMAND FOR JURY TRIAL

1. Breach of the Duty of Good Faith and Fair Dealing;
2. Breach of Contract; and
3. Violation of Business & Professions Code § 17200.

FILED
Superior Court of California
County of Riverside

6/14/2019

T. Davis

By Fax

1 Plaintiff Nicole Young, as an individual, alleges based on her personal knowledge with
2 respect to her own acts and on information and belief with respect to all other matters:

3 **GENERAL ALLEGATIONS**

4 **1.**

5 **INTRODUCTION**

6 1. Plaintiff Nicole Young (“Nicole”) lives with a rare and terminal form of congenital
7 hydroencephalitis. Hydrocephalus is the buildup of fluid in the cavities (ventricles) deep within
8 the brain. The excess fluid increases the size of the ventricles and puts pressure on the brain. The
9 pressure in Nicole’s brain causes debilitating migraines and will unfortunately lead to her death.
10 There is no cure for Nicole’s condition but her doctors have been treating her with palliative care
11 to try to control and minimize the overwhelming pain through the use of fentanyl, a powerful
12 FDA-approved opioid, delivered to Nicole through a lozenge, a patch and a compounded powder,
13 and hydromorphone HCL, also an FDA-approved powerful opioid. It is only through a
14 combination of these fentanyl applications that Nicole has been able to control the pain enough to
15 live her life.

16 2. Given the necessity of the drug to Nicole’s ability to function, her health insurer,
17 California Physician Services dba Blue Shield of California (“Blue Shield”), preapproved the
18 lozenge form of the drug in 2015 and extended the approval to December 31, 2099. Her doctors
19 were then able to administer the drug and Blue Shield covered the expense of the drug in the
20 lozenge, powder and patch form and hydromorphone HCL for the next few years. However in
21 early 2019, Blue Shield began to deny coverage for the medications asserting that they do not
22 meet Blue Shield’s medical necessity criteria, are not a provided benefit, and/or cannot be
23 provided without a plan from her provider for how she can be weaned off the medications used to
24 treat her terminal condition.

25 3. Blue Shield was contracted to provide Nicole with medically necessary health care
26 in exchange for monthly premium payments. However, by denying coverage and restricting
27 Nicole’s ability to get the medically necessary medications, Blue Shield breached its contract and
28 shirked its responsibility to Nicole. As a result, Nicole lives with excruciating pain and emotional

1 distress and has had to spend money out of pocket for her expensive medications.

2 **2.**

3 **THE PARTIES**

4 1. Plaintiff Nicole Young (“Nicole”) is and was at all relevant times, the subscriber
5 for a Blue Shield health plan (Member ID: 904949858) under which Blue Shield is obligated to
6 provide her with medically necessary health care benefits. At all relevant times she was and is a
7 resident of Riverside County in California.

8 2. Defendant California Physicians’ Services dba Blue Shield of California (“Blue
9 Shield”) is, and at all relevant times was, a corporation duly organized and existing under and by
10 virtue of the laws of the State of California and authorized to transact and transacting business in
11 the State of California, with its headquarters in the County of Los Angeles.

12 3. The true names and capacities, whether individual, corporate, associate or
13 otherwise, of defendants named herein as Does 1 through 100, inclusive, are unknown to
14 plaintiffs, who therefore sue said defendants by such fictitious names. Each of the defendants
15 named herein as a Doe is responsible in some manner for the events and happenings hereinafter
16 referred to, and some of Plaintiff’s damages as herein alleged were proximately caused by such
17 defendants. Plaintiffs will seek leave to amend this complaint to show said defendants’ true
18 names and capacities when the same have been ascertained.

19 4. At all times mentioned herein, each of the defendants was the agent or employee
20 of each of the other defendants, or an independent contractor, or joint venturer, and in doing the
21 things herein alleged, each such defendant was acting within the purpose and scope of said
22 agency and/or employment and with the permission and consent of each other defendant.

23
24 **3.**

25 **FACTUAL BACKGROUND**

26 5. At all relevant times, Nicole Young (“Nicole”) has been covered under a health
27 care plan issued by Blue Shield. She pays monthly premiums in exchange for Blue Shield’s
28 promise to provide assessment, diagnosis and medically necessary treatment. The material terms

1 of Blue Shield's plan require it to provide timely assessment, diagnosis and medically necessary
2 treatment to her.

3 6. Nicole was born with hydrocephalus but was not diagnosed with the condition
4 until around 2000. This is a condition in which there is a mechanical obstruction in her brain that
5 restricts fluid from draining properly and results in incredible pressure on her brain against her
6 skull. Among other symptoms, her condition causes her to live with constant and debilitating
7 migraines. Her form of hydrocephalus is particularly severe and will ultimately result in her
8 death. It is for this reason that her doctors are treating her with palliative and not curative care.

9 7. Nicole began seeing Dr. Forrest Tennant, a pain specialist, in 2014 for her severe
10 migraines. Dr. Tennant prescribed Fentanyl, a powerful opiate, in lozenge form. In addition to
11 the lozenge, Dr. Tennant found that it was not providing sufficient relief so he added a
12 prescription of Hydromorphone HCL as well as fentanyl in an injectable form compounded from
13 powder. A few months of this treatment and she still did not have adequate relief and so he added
14 a prescription for a fentanyl patch in addition to the lozenges, Hydromorphone HCL, and
15 compounding fentanyl powder. Dr. Tennant also added various other prescriptions to address
16 Nicole's pain and allow her to function and perform activities of daily life.

17 8. Nicole sought coverage for the fentanyl in lozenge, patch and powder form and the
18 Hydromorphone HCL and Blue Shield provided coverage and payment given the medical
19 necessity of these medications. In fact on or about September 25, 2015, Blue Shield wrote Nicole
20 to let her know that it had approved the Fentanyl lozenges between September 18, 2015 through
21 December 31, 2099 as long as she was a Blue Shield member under her policy during this time
22 period.

23 9. In or around July of 2018, Dr. Tennant retired and Dr. Margaret Aranda, an
24 anesthesiologist, took over Dr. Tennant's practice. She continued to prescribe the regimen of
25 Fentanyl and Hydromorphone HCL for Nicole.

26 10. Nicole was able to get her medication and live her life until earlier this year when
27 Blue Shield began to deny coverage and payment for these medications on a variety of different
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1 rationales. Specifically, in or about early 2019, Plaintiff's pharmacist could not fill her
2 prescription for Hydromorphone HCL because Blue Shield had denied coverage. On or about
3 January 5, 2019, Nicole received a formal denial letter from Blue Shield stating that the
4 Hydromorphone HCL was no longer a covered benefit. Blue Shield had provided coverage for
5 this drug for a couple of years up to this point and was obligated to provide the benefit as a
6 continuation of coverage. The denial letter was signed not by a doctor but by a pharmacist named
7 Satinder Mehta.

8 11. Nicole has not been able to get coverage for Hydromorphone HCL since then but
9 was still able to receive coverage for her fentanyl prescriptions up until on or about February 26,
10 2019. In or about February of 2019, Nicole attempted to fill her prescription for fentanyl powder,
11 yet she was unable to because Blue Shield again denied coverage. Despite providing coverage
12 for the power for years up to that point, on or about February 26, 2019, Blue Shield sent a letter
13 from Crystal Martin, a Blue Shield pharmacist, who had denied coverage for the fentanyl powder
14 on the basis that it is only appropriate to treat pain caused by cancer and Nicole does not have
15 cancer and as Nicole had failed to provide a treatment plan that includes measures to reduce use
16 of the drug over time.

17 12. Pain from cancer is not the only condition for which the fentanyl powder is
18 medically necessary. Further, the denial for lack of a treatment plan showing how to wean Nicole
19 off the drug is improper as there is no need for Nicole to have a treatment plan to wean her off of
20 the drug considering that her condition is terminal and she is being provided the drug for
21 palliative care.

22 13. A few months later, Blue Shield also began to deny coverage for Nicole's fentanyl
23 patches for a purported lack of medical necessity. Specifically, on or about May 20, 2019 Lady
24 Jay Masana, a Blue Shield pharmacist, denied coverage for Nicole's fentanyl patches stating as
25 the reason for the denial that Nicole had failed to provide a treatment plan to reduce use of the
26 patch that Blue Shield had previously provided coverage for the prior three years. On or about
27 June 1, 2019, Jason Orozco, a Blue Shield pharmacist, sent a letter denying coverage for fentanyl
28 patches on the same basis.

1 access to medically necessary diagnosis, assessment, evaluation, care and treatment. Defendant
2 breached its contractual duties owed to Plaintiff by failing to provide Nicole with coverage for
3 medically necessary care and treatment.

4 20. Plaintiff complied with all of her obligations under the contract.

5 21. As a result of defendant's breach of contract, Plaintiff has suffered unnecessary
6 emotional distress, physical pain and economic injury.

7 22. Plaintiff is informed and believes and thereon alleges that defendant and Does 1-
8 100, inclusive, have breached their contractual duties owed to Plaintiff by other acts or omissions
9 of which plaintiff is presently unaware and which will be shown according to proof at the time of
10 trial.

11 23. As a direct and proximate result of Defendant's conduct and breach of its
12 contractual obligations, Plaintiff has suffered damages under the Policy in an amount to be
13 determined according to proof at the time of trial.

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15 **SECOND CAUSE OF ACTION**

16 **(Breach of the Duty of Good Faith and Fair Dealing)**

17 PLAINTIFF, FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT AND
18 DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR BREACH OF THE
19 DUTY OF GOOD FAITH AND FAIR DEALING, ALLEGES:

20 24. Plaintiff incorporates by reference each and every of the foregoing paragraphs as
21 though set forth in full in this cause of action.

22 25. In exchange for plaintiff's payments of premiums, Blue Shield issued a health care
23 policy, the material terms of which include, without limitation, that Plaintiff was to have timely
24 access to coverage for medically necessary diagnosis, assessment, evaluation, care and treatment.

25 26. Notwithstanding defendant's legal and contractual obligations, defendant has
26 refused to provide benefits for Plaintiff's medically necessary pain medication, as outlined in the
27 foregoing paragraphs.

28 27. Therefore, by refusing to provide Plaintiff with timely benefits, Defendant not only

1 breached the contract, but also acted unreasonably and subjected themselves to bad faith liability.
2 As a consequence of defendant's unreasonable and wrongful refusal to pay for Plaintiff's
3 treatment, Plaintiff suffered injuries and also suffered severe emotional distress because of
4 defendant's repeated refusals to abide by its contractual and legal obligations to provide her with
5 benefits for treatment.

6 28. Defendants breached their duty of good faith and fair dealing owed to Plaintiff by
7 failing to provide him with timely access to medically necessary care and treatment. In addition,
8 Defendants, and each of them, breached their duty of good faith and fair dealing under the Plan as
9 follows:

- 10 (a) Unreasonably denying benefits under the Plan;
- 11 (b) Unreasonably delaying benefits due under the Plan;
- 12 (c) Unreasonably refusing to cover critically necessary services;
- 13 (d) Unreasonably failing to adequately investigate the request for benefits;
- 14 (e) Unreasonably making treatment decisions based on financial concerns;
- 15 (f) Unreasonably using utilization guidelines that are unreasonably stringent
16 and stop members from receiving medically necessary care;
- 17 (g) Unreasonably failing and refusing to give at least as much consideration to
18 plaintiffs' interests as they gave to their own interests;
- 19 (h) Unreasonably engaging in the practice of preventing Plan members from
20 using covered services, in order to save money; and
- 21 (i) Unreasonably using reviewers who are unqualified to understand the
22 clinical issues necessary to determine appropriateness of the coverage
23 sought.

24 29. Plaintiff is informed and believes and thereon alleges that defendants and Does 1-
25 100, inclusive, have breached their duties of good faith and fair dealing owed to Plaintiff by other
26 acts or omissions of which Plaintiff is presently unaware and which will be shown according to
27 proof at the time of trial.

28 30. As a proximate result of the aforementioned unreasonable and bad faith conduct of

1 defendants, Plaintiff has suffered, and will continue to suffer in the future, damages under the
2 plan contract, plus interest, and other economic and consequential damages, for a total amount to
3 be shown at the time of trial.

4 31. As a further proximate result of the aforementioned wrongful conduct of
5 defendants as alleged in this cause of action, Plaintiffs has suffered anxiety, worry, and mental
6 and emotional distress, all to Plaintiff's general damage in a sum to be determined at the time of
7 trial.

8 32. As a further proximate result of the unreasonable and bad faith conduct of
9 defendants as alleged in this cause of action, Plaintiff was compelled to retain legal counsel and
10 expend costs in an effort to obtain the benefits due under the plan contract. Therefore,
11 Defendants as alleged in this cause of action are liable to Plaintiff for those attorneys' fees and
12 litigation costs reasonably necessary and incurred by Plaintiff in order to obtain the plan benefits
13 in a sum to be determined at trial.

14 33. Defendant's conduct described herein was intended by the Defendant to cause
15 injury to Plaintiff or was despicable conduct carried on by the Defendant with a willful and
16 conscious disregard of the rights of Plaintiff, or subjected Plaintiff to cruel and unjust hardship in
17 conscious disregard of Plaintiff's rights, or was an intentional misrepresentation, deceit, or
18 concealment of a material fact known to the defendants with the intention to deprive Plaintiff of
19 property, legal rights or to otherwise cause injury, such as to constitute malice, oppression or
20 fraud under California Civil Code section 3294, thereby entitling Plaintiff to punitive damages in
21 an amount appropriate to punish or set an example of defendants.

22 34. Defendant's conduct described herein was undertaken by the corporate
23 Defendant's officers or managing agents, identified herein as DOES 1 through 100, inclusive,
24 who were responsible for claims supervision and operations, underwriting, communications
25 and/or decisions. The aforementioned conduct of said managing agents and individuals was
26 therefore undertaken on behalf of the corporate defendants. Said corporate Defendants further
27 had advance knowledge of the actions and conduct of said individuals whose action and conduct
28 were ratified, authorized, and approved by managing agents whose precise identities are unknown

1 to plaintiff at this time and are therefore identified and designated herein as DOES 1 through 100.

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3 **THIRD CAUSE OF ACTION**

4 **(Violation of Business & Professions Code section 17200)**

5 PLAINTIFF FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT AND
6 DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR VIOLATIONS OF
7 BUSINESS & PROFESSIONS CODE SECTION 17200, ALLEGES:

8 35. Plaintiff incorporates by reference each and every of the foregoing paragraphs as
9 though set forth in full in this cause of action.

10 36. Defendant is engaged in a pattern and practice of systematically denying
11 medically necessary treatment for opioid medications on the basis that the member lacks a
12 treatment plan to show how they will be weaned off the medication yet there is no medical basis
13 for such a requirement, particularly for members like Nicole who have terminal conditions.
14 Defendant is also engaged in a pattern and practice of systematically denying medically necessary
15 treatment without conducting thorough investigations before denying the requests. Defendant
16 also systemically utilizes unqualified reviewers to determine the appropriateness of coverage for
17 treatments for medical conditions for which they have no experience or understanding. Such
18 conduct is done for economic reasons, in order to increase Defendant's profits, and constitutes a
19 violation of California Civil Code Section 3428 and Health & Safety Code § 1367.01. Further,
20 Defendant's conduct constitutes unfair, unlawful, misleading, and fraudulent business practices as
21 set forth in Business & Professions Code section 17200 et seq.

22 37. Plaintiff has suffered an injury in fact and has lost money or property as the result
23 of defendant's conduct. Plaintiff respectfully requests that the Court order any equitable relief
24 deemed necessary by the Court including injunctive relief to stop the wrongful practices.

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27 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
28 follows:

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AS TO THE FIRST CAUSE OF ACTION:

1. For special and general damages according to proof at the time of trial;
2. For costs of suit incurred herein; and
3. For such other and further relief as the Court deems just and proper.

AS TO THE SECOND CAUSE OF ACTION:

1. For special and general damages according to proof at the time of trial;
2. For punitive damages;
3. For attorneys' fees and litigation costs;
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court deems just and proper.

AS TO THE THIRD CAUSE OF ACTION:

1. For restitution according to proof at the time of trial;
2. For any equitable relief deemed necessary by the Court including injunctive relief;
3. For costs of suit incurred herein; and
4. For such other and further relief as the Court deems just and proper.

Dated this 14th day of June 2019, at Claremont, California.

LAW OFFICES OF SCOTT GLOVSKY, APC

By: _____


SCOTT C. GLOVSKY
ARI DYBNIS
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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Plaintiff hereby demands a trial by jury.

DATED: June 14, 2019

LAW OFFICES OF SCOTT GLOVSKY, APC

By: 
SCOTT C. GLOVSKY
ARI DYBNIS
Attorneys for Plaintiff