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Superior Court of California
County of Los Angeles

JUL 30 2018

Shelli A. Sanchez, Executive Officer/Clerk
By RAHI SANCHEZ, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BOBBIE CANDLER BUYALOS, an individual,

Plaintiffs,

vs.

CALIFORNIA PHYSICIANS' SERVICES dba BLUE SHIELD OF CALIFORNIA; and DOES 1 through 100, inclusive,

Defendants.

Case No.: BC706472

[Assigned for all purposes to the Honorable Holly Kendig, Dept. 42]

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

1. Breach of the Implied Covenant of Good Faith and Fair Dealing;
2. Breach of Contract; and
3. Violations of Business & Professions Code Section 17200.

1 Plaintiff alleges with respect to her own acts and on information and belief with respect to
2 all other matters:

3 **GENERAL ALLEGATIONS**

4 **1.**

5 **INTRODUCTION**

6 1. This is an action by Plaintiff Bobbie Candler Buyalos (“Bobbie”) against her
7 health insurer, Defendant California Physician’s Services dba Blue Shield of California (“Blue
8 Shield”) arising out of its denial of coverage for medically necessary residential rehabilitation
9 treatment. On or about December 30, 2017, plaintiff was involved in a skiing accident when
10 another skier struck her, causing catastrophic injury to her spinal cord and leading to
11 quadriplegia, the partial or total loss of use of all four limbs. She was admitted and treating at an
12 acute rehabilitation unit (“ARU”) which provides intensive therapy and medical oversight, but her
13 doctors there have deemed it appropriate for her to step down in care to a transitional care unit
14 (“TCU”), a residential care facility that can still provide intensive rehabilitation therapy but with
15 less medical oversight.

16 2. Despite its contractual obligation to provide coverage for the medically necessary
17 service, Blue Shield has denied coverage for plaintiff to be admitted in a TCU and instead has
18 told plaintiff that she should get treatment at home, which is impossible given her home’s
19 geography and unsafe environment, or in a skilled nursing facility offering a much lower level of
20 care and service. If plaintiff were to go home, then she would irreparably lose the opportunity to
21 progress and gain daily life activities in treatment. The facility in which plaintiff currently resides
22 therefore has nowhere safe to discharge her and she as a result, she had to pay out of pocket for
23 the continued care. As a result of Blue Shield’s denial, plaintiff has suffered emotionally and
24 economically during an extremely difficult time when she is dealing with the reality of her injury
25 and care of her three children.

26 **2.**

27 **THE PARTIES**

28 3. Plaintiff Bobbie Candler Buyalos (“Bobbie”) is and was at all relevant times, the

1 subscriber for a Blue Shield health plan (Member ID: 905561940) under which Blue Shield is
2 obligated to provide her with medically necessary health care benefits. At all relevant times she
3 was and is a resident of Los Angeles County in California.

4 4. Defendant California Physicians' Services dba Blue Shield of California ("Blue
5 Shield") is, and at all relevant times was, a corporation duly organized and existing under and by
6 virtue of the laws of the State of California and authorized to transact and transacting business in
7 the State of California, with its headquarters in the County of Los Angeles.

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

15 6. At all times mentioned herein, each of the defendants was the agent or employee
16 of each of the other defendants, or an independent contractor, or joint venturer, and in doing the
17 things herein alleged, each such defendant was acting within the purpose and scope of said
18 agency and/or employment and with the permission and consent of each other defendant.

19 **3.**

20 **FACTUAL BACKGROUND**

21 7. At all relevant times, Bobbie has been covered under a health plan issued by Blue
22 Shield. She is the subscriber for the plan and pays monthly premiums in exchange for Blue
23 Shield's promise to provide assessment, diagnosis and medically necessary treatment. The
24 material terms of the Blue Shield plan requires it to provide medically necessary treatment.

25 8. On or about December 30, 2017, plaintiff was involved in a tragic skiing accident
26 when another skier struck her, causing catastrophic injury to her spinal cord and leading to
27 quadriplegia. Later, she was hospitalized and underwent emergency treatment. She was admitted
28 into the California Rehabilitation Institute ("CRI") in Los Angeles, California. CRI is a physical

1 medicine and rehabilitation hospital partnership between Cedars-Sinai, UCLA Health, and Select
2 Medical.

3 9. Bobbie received care in the CRI Acute Rehabilitation Unit which provides a
4 medically-based, multidisciplinary approach to the treatment of stroke, brain injury, spinal cord
5 injury, amputation, neuromuscular disorders and orthopedic conditions designed to restore
6 strength, improve physical and cognitive function, and promote independence in daily activities,
7 including self-care skills such as dressing, grooming and eating. It has doctors providing
8 comprehensive medical management and involves highly skilled therapy.

9 10. At CRI, Bobbie received therapy to improve her ambulation and help her activities
10 of daily living such as dressing, bathing, transfers, toileting, and eating. After a few months of
11 intensive rehabilitation and medical management, the doctors at CRI determined that Bobbie was
12 ready to step down in care to discharge her to a residential rehabilitation facility.

13 11. Her doctors recommended that she transition to a residential rehabilitation
14 program, such as the Transitional Living Center at Casa Colina because without intensive
15 residential rehabilitation, she would lose the opportunity to make further gains in her ambulation
16 and in her activities of daily living skills during a crucial time window. Should that time window
17 pass without the appropriate care, then Bobbie could lose the ability to make gains she otherwise
18 would have permanently.

19 12. Despite defendant's contractual and statutory obligations to timely cover medically
20 necessary care for Bobbie, Blue Shield denied coverage for the residential treatment unit,
21 claiming that the care is not medically necessary and then that the residential transitional care is
22 not a covered benefit. Instead, Blue Shield determined that Bobbie should be sent to a skilled
23 nursing facility ("SNF"), which does not provide intensive therapy, or be sent home. Bobbie's
24 doctor's conducted three separate peer-to-peer appeals through March and April of 2018 where
25 her doctors talked directly to Blue Shield's medical directors and/or administrators in order to get
26 the denial overturned. Blue Shield sent a letter back to Bobbie's doctor following the peer-to-
27 peers stating that he had agreed it was appropriate to send Bobbie to a SNF, but he had never
28 agreed that a SNF was appropriate and to the contrary expressed his belief to Blue Shield that a

1 SNF would not be a sufficient level of care. Plaintiff at the same time also submitted a written
2 appeal imploring Blue Shield to change its position and provide her with the care that she needed.

3 13. Blue Shield refused to overturn its improper denial and stopped paying for
4 plaintiff's treatment at CRI even though Blue Shield preventing CRI from discharging Bobbie to
5 a safe setting by refusing coverage for residential transitional care. Bobbie was therefore left with
6 no choice but to pay out of pocket for the CRI stay and has been forced to stay at CRI. Blue
7 Shield's actions constituted a breach of conduct and imposed significant financial burden upon
8 plaintiff. Further, Blue Shield's actions caused Bobbie severe anxiety and emotional distress at a
9 time when she is particularly vulnerable.

10 4.

11 **FIRST CAUSE OF ACTION**

12 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

13 PLAINTIFF FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT AND
14 DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR BREACH OF IMPLIED
15 COVENANT OF GOOD FAITH AND FAIR DEALING, ALLEGES:

16 14. Plaintiff incorporates by reference each and every paragraph of the General
17 Allegations as though set forth in full in this cause of action.

18 15. In exchange for plaintiff's payments of premiums, Blue Shield issued a health
19 care policy, the material terms of which include, without limitation, that plaintiff was to have
20 timely access to coverage for medically necessary diagnosis, assessment, evaluation, care and
21 treatment.

22 16. Notwithstanding defendant's legal and contractual obligations, defendant has
23 refused to provide timely benefits for plaintiff's medically necessary residential treatment, as
24 outlined in the foregoing paragraphs.

25 17. Therefore, by refusing to provide plaintiff with timely benefits, defendant not only
26 breached the contract, but also acted unreasonably and subjected itself to bad faith liability. As a
27 consequence of defendant's unreasonable and wrongful refusal to pay for plaintiff's treatment and
28 do so in a timely fashion, plaintiff suffered injuries. Plaintiff suffered severe emotional distress

1 because of defendant's refusals to abide by its contractual and legal obligations to provide her
2 with benefits for treatment, despite her payment of premiums on the policy and her fulfillment of
3 all contractual obligations.

4 18. Defendant breached its duty of good faith and fair dealing owed to plaintiff by
5 failing to provide plaintiff with timely access to medically necessary care and treatment. In
6 addition, Defendants breached its duty of good faith and fair dealing under the Plan as follows:

- 7 (a) Unreasonably denying benefits under the Plan;
- 8 (b) Unreasonably delaying benefits due under the Plan;
- 9 (c) Unreasonably refusing to cover medically necessary services;
- 10 (d) Unreasonably failing to adequately investigate the request for benefits;
- 11 (e) Unreasonably making treatment decisions based on financial concerns;
- 12 (f) Unreasonably using utilization guidelines that are unreasonably stringent
13 and stop members from receiving medically necessary care;
- 14 (g) Unreasonably failing and refusing to give at least as much consideration to
15 plaintiffs' interests as they gave to their own interests; and
- 16 (h) Unreasonably engaging in the practice of preventing Plan members from
17 using covered services, in order to save money.

18 19. Plaintiff is informed and believes and thereon alleges that defendant and Does 1-
19 100, inclusive, have breached their duties of good faith and fair dealing owed to plaintiffs by
20 other acts or omissions of which plaintiffs are presently unaware and which will be shown
21 according to proof at the time of trial.

22 20. As a proximate result of the aforementioned unreasonable and bad faith conduct of
23 defendants, plaintiffs have suffered, and will continue to suffer in the future, damages under the
24 plan contract, plus interest, and other economic and consequential damages, for a total amount to
25 be shown at the time of trial.

26 21. As a further proximate result of the aforementioned wrongful conduct of
27 defendants as alleged in this cause of action, plaintiff has suffered anxiety, worry, and mental and
28 emotional distress, all to plaintiff's general damage in a sum to be determined at the time of trial.

1 22. As a further proximate result of the unreasonable and bad faith conduct of
2 defendants as alleged in this cause of action, plaintiffs were compelled to retain legal counsel and
3 expend costs in an effort to obtain the benefits due under the plan contract. Therefore, defendants
4 as alleged in this cause of action are liable to plaintiffs for those attorneys' fees and litigation
5 costs reasonably necessary and incurred by plaintiff in order to obtain the plan benefits in a sum
6 to be determined at trial.

7 23. Defendants' conduct described herein was intended by the defendants to cause
8 injury to plaintiffs or was despicable conduct carried on by the defendants with a willful and
9 conscious disregard of the rights of plaintiff, or subjected plaintiff to cruel and unjust hardship in
10 conscious disregard of plaintiff's rights, or was an intentional misrepresentation, deceit, or
11 concealment of a material fact known to the defendants with the intention to deprive plaintiffs of
12 property, legal rights or to otherwise cause injury, such as to constitute malice, oppression or
13 fraud under California Civil Code section 3294, thereby entitling plaintiff to punitive damages in
14 an amount appropriate to punish or set an example of defendants.

15 24. Defendants' conduct described herein was undertaken by the corporate defendants'
16 officers or managing agents, identified herein as DOES 1 through 100, inclusive, who were
17 responsible for claims supervision and operations, underwriting, communications and/or
18 decisions. The aforementioned conduct of said managing agents and individuals was therefore
19 undertaken on behalf of the corporate defendants. Said corporate defendants further had advance
20 knowledge of the actions and conduct of said individuals whose action and conduct were ratified,
21 authorized, and approved by managing agents whose precise identities are unknown to plaintiffs
22 at this time and are therefore identified and designated herein as DOES 1 through 100.

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SECOND CAUSE OF ACTION

(Breach of Contract)

PLAINTIFF FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT AND DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR BREACH CONTRACT, ALLEGES:

25. Plaintiff incorporates by reference each and every paragraph of the General Allegations as though set forth in full in this cause of action.

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

27. Defendants breached their contractual duties owed to plaintiff by failing to provide plaintiff with coverage for medically necessary care and treatment. Defendants' refusals to pay for the medication at issue have caused Landen to suffer injuries.

28. Plaintiffs complied with all of their obligations under the contract.

29. As a result of defendants' breach of contract, plaintiff has suffered unnecessary financial injury as well as unnecessary emotional distress.

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

31. As a direct and proximate result of defendants' conduct and breach of its contractual obligations, plaintiffs have suffered damages under the Policy in an amount to be determined according to proof at the time of trial.

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THIRD CAUSE OF ACTION

(Violation of Business & Professions Code section 17200)

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

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

33. Defendants' conduct as alleged above, in 1) creating and following a policy and practice whereby it refuses to provide benefits for residential transitional care irrespective of need in violation of contract and 2) denying expensive medical treatment without conducting a thorough, objective and/or fair investigation, constitutes acts of unfair, unlawful, misleading, and fraudulent business practices as set forth in Business & Professions Code section 17200 et seq.

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

WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as follows:

AS TO THE FIRST CAUSE OF ACTION:

1. For special and general damages according to proof at the time of trial;
2. For punitive damages;
3. For attorney's 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 SECOND CAUSE OF ACTION:

6. For special and general damages according to proof at the time of trial;

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- 7. For costs of suit incurred herein; and
- 8. For such other and further relief as the Court deems just and proper.

AS TO THE THIRD CAUSE OF ACTION:

- 9. For restitution according to proof at the time of trial;
- 10. For any equitable relief deemed necessary by the Court including injunctive relief;
- 11. For costs of suit incurred herein; and
- 12. For such other and further relief as the Court deems just and proper.

Dated this 27th day of July 2018, at Pasadena, 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: July 27, 2018

LAW OFFICES OF SCOTT GLOVSKY, APC

By: 

SCOTT C. GLOVSKY
ARI DYBNIS
Attorneys for Plaintiff