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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

DEC 31 2018

Sherri R. Carter, Executive Officer/Clerk  
By: Glorietta Robinson, Deputy

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

14 ALLISON KREMER, an individual,

15 Plaintiff,

16 vs.

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

20 Defendants.  
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Case No.:

18STCV10392

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 Allison Kremer ("Allison") against her health insurer,  
7 Defendant California Physician's Services dba Blue Shield of California ("Blue Shield") arising  
8 out of its denial of coverage for medically necessary treatment for chronic regional pain  
9 syndrome ("CRPS"). Allison's CRPS specialist has tried a number of various treatments but  
10 determined that the only effective treatment is ketamine infusion therapy. Ketamine is an FDA  
11 approved drug that has been prescribed by doctors as both an anesthetic and an analgesic or pain  
12 reliever.

13 2. Despite its contractual obligation to provide coverage for medically necessary  
14 treatments, Blue Shield has denied coverage for the ketamine treatment claiming that the drug is  
15 experimental. The denial has left Allison with the choice of living with writhing and debilitating  
16 pain or to incur tens of thousands of dollars of medical costs. Plaintiff has so far opted to pay out  
17 of pocket for the incredibly expensive treatments yet she cannot afford the mounting bills. As a  
18 result of Blue Shield's denial, plaintiff has suffered severe emotional and economic distress.

#### 19 2.

#### 20 THE PARTIES

21 3. Plaintiff Allison Kremer ("Allison") is and was at all relevant times, the  
22 subscriber for a Blue Shield health plan (Member ID: XED902615767) under which Blue Shield  
23 is obligated to provide her with medically necessary health care benefits. At all relevant times  
24 she was and is a resident of Los Angeles County in California.

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

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

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

### 3.

## FACTUAL BACKGROUND

7. At all relevant times, Allison Kremer (“Allison”) has been covered under a health plan issued by Blue Shield. She is the subscriber for the plan and pays monthly premiums in exchange for Blue Shield’s promise to provide assessment, diagnosis and medically necessary treatment. The material terms of the Blue Shield plan require it to provide medically necessary treatment.

8. Allison has lived with severe pain and tightening of her skin. She visited dozens of Blue Shield doctors seeking a diagnosis and treatment options. However, none of the doctors were able to even properly diagnose the cause of her symptoms or provide any appropriate treatment options. Her condition was so bad that she was forced to go to the emergency room on more than twenty occasions and on numerous occasions was debilitated for periods of time.

9. About a year ago, she found Dr. Joshua Prager, a pain management specialist who has an expertise in treating CRPS. He was able to properly diagnose her with the condition and prescribed ketamine infusion therapy and flector patch (diclofenac), both of which are FDA approved drugs. Allison sought coverage for her visits with Dr. Prager and for the medications from her insurer, Blue Shield.

10. On or about May 14, 2018, Blue Shield wrote to Allison stating that it was denying coverage for the flector due to a purported lack of medical necessity. Upon receiving the denial, Dr. Prager contacted Blue Shield about the denial yet Blue Shield followed up with another denial letter on or about May 15, 2018. Allison sought another review of the denial and Blue Shield had an independent reviewer consider the request for coverage. Ultimately, the independent reviewer confirmed medical necessity and on May 24, 2018, Blue Shield finally agreed to provide coverage.

11. This being said, on or about May 22, 2018, Blue shield sent another letter in which it denied coverage for the ketamine infusion asserting that the treatment is investigational or experimental. Plaintiff alleges upon information and belief that this denial is consistent with Blue Shield's practice of denying all coverage requests for ketamine infusions for the treatment of CRPS regardless of medical necessity.

12. Despite defendant's contractual and statutory obligations to timely cover medically necessary care for Allison, Blue Shield denied coverage for the medically necessary ketamine infusion treatment. Allison has had no choice but to proceed with the ketamine infusion treatment on an out-of-pocket basis as it is the only treatment that has allowed her to live without debilitating pain.

13. Blue Shield's actions constituted a breach of contract and imposed significant financial burden upon plaintiff. Further, Blue Shield's actions caused Allison severe anxiety, physical pain, and emotional distress.

**4.**

**FIRST CAUSE OF ACTION**

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

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

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

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

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

8           17.     Therefore, by refusing to provide plaintiff with timely benefits, defendant not only  
9 breached the contract, but also acted unreasonably and subjected itself to bad faith liability. As a  
10 consequence of defendant's unreasonable and wrongful refusal to pay for plaintiff's treatment and  
11 do so in a timely fashion, plaintiff suffered injuries. Plaintiff suffered physical pain and severe  
12 emotional distress because of defendant's refusals to abide by its contractual and legal obligations  
13 to provide her with benefits for treatment, despite her payment of premiums on the policy and her  
14 fulfillment of all contractual obligations.

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

- 18                   (a)     Unreasonably denying benefits under the Plan;
- 19                   (b)     Unreasonably delaying benefits due under the Plan;
- 20                   (c)     Unreasonably refusing to cover medically necessary services;
- 21                   (d)     Unreasonably failing to adequately investigate the request for benefits;
- 22                   (e)     Unreasonably making treatment decisions based on financial concerns;
- 23                   (f)     Unreasonably using utilization guidelines that are unreasonably stringent  
24                           and stop members from receiving medically necessary care;
- 25                   (g)     Unreasonably failing and refusing to give at least as much consideration to  
26                           plaintiff's interests as they gave to their own interests; and
- 27                   (h)     Unreasonably engaging in the practice of preventing Plan members from  
28                           using covered services, in order to save money.

1           19. Plaintiff is informed and believes and thereon alleges that defendant and Does 1-  
2 100, inclusive, have breached their duties of good faith and fair dealing owed to plaintiff by other  
3 acts or omissions of which plaintiff is presently unaware and which will be shown according to  
4 proof at the time of trial.

5           20. As a proximate result of the aforementioned unreasonable and bad faith conduct of  
6 defendants, plaintiff has suffered, and will continue to suffer in the future, damages under the  
7 plan contract, plus interest, and other economic and consequential damages, for a total amount to  
8 be shown at the time of trial.

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

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

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

26           24. Defendant's conduct described herein was undertaken by the corporate defendant's  
27 officers or managing agents, identified herein as DOES 1 through 100, inclusive, who were  
28 responsible for claims supervision and operations, underwriting, communications and/or

1 decisions. The aforementioned conduct of said managing agents and individuals was therefore  
2 undertaken on behalf of the corporate defendants. Said corporate defendants further had advance  
3 knowledge of the actions and conduct of said individuals whose action and conduct were ratified,  
4 authorized, and approved by managing agents whose precise identities are unknown to plaintiff at  
5 this time and are therefore identified and designated herein as DOES 1 through 100.

6  
7 5.

8 **SECOND CAUSE OF ACTION**

9 **(Breach of Contract)**

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

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

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

19 27. Defendant breached its contractual duties owed to plaintiff by failing to provide  
20 plaintiff with coverage for medically necessary care and treatment. Defendant's refusals to pay  
21 for the medication at issue have caused Allison to suffer injuries.

22 28. Plaintiff complied with all of her obligations under the contract.

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

25 30. Plaintiff is informed and believes and thereon alleges that defendant and Does 1-  
26 100, inclusive, have breached their contractual duties owed to plaintiff by other acts or omissions  
27 of which plaintiff is presently unaware and which will be shown according to proof at the time of  
28 trial.

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

**6.**

### 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) in denying FDA approved ketamine infusions for the treatment of CRPS regardless of medical necessity when the treatment is not experimental 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



1           5. For such other and further relief as the Court deems just and proper.

2  
3           AS TO THE SECOND CAUSE OF ACTION:

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

5           7. For costs of suit incurred herein; and

6           8. For such other and further relief as the Court deems just and proper.

7  
8           AS TO THE THIRD CAUSE OF ACTION:

9           9. For restitution according to proof at the time of trial;

10          10. For any equitable relief deemed necessary by the Court including injunctive relief;


11          11. For costs of suit incurred herein; and

12          12. For such other and further relief as the Court deems just and proper.

13  
14          Dated this 28th day of December 2018, at Claremont, California.

15  
16                                   LAW OFFICES OF SCOTT GLOVSKY, APC

17  
18          By: \_\_\_\_\_

  
19                   SCOTT C. GLOVSKY  
20                   ARI DYBNIS  
21                   Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

DATED: December 28, 2018

LAW OFFICES OF SCOTT GLOVSKY, APC

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

SCOTT C. GLOVSKY

ARI DYBNIS

Attorneys for Plaintiff