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

14 SHIMA ANDRE, an individual,

15 Plaintiff,

16 vs.

17 BLUE CROSS OF CALIFORNIA, dba
18 ANTHEM BLUE CROSS, a California
19 corporation; ANTHEM HOLDING CORP.,
20 formerly known as WELLPOINT HEALTH
21 NETWORKS, INC., a Delaware
22 corporation; ANTHEM UM SERVICES,
23 INC., an Indiana corporation; ANTHEM
24 BLUE CROSS LIFE AND HEALTH
25 INSURANCE COMPANY formerly known
26 as BC LIFE & HEALTH INSURANCE
27 COMPANY, a California corporation; and
28 DOES 1 through 100, inclusive,

Defendants.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAY 15 2015

Sherri R. Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

Case No.: **BC 5 8 2 0 6 3**

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

1. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
2. BREACH OF CONTRACT
3. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
4. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
5. [CLASS ACTION] VIOLATIONS OF BUSINESS & PROFESSIONS CODE §17200, ET SEQ. FOR UNLAWFUL, UNFAIR, AND FRAUDULENT CONDUCT





I.

INTRODUCTION

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3 1. Blue Cross of California, dba Anthem Blue Cross (Blue Cross) sells and
4 markets its insurance products to millions of vulnerable consumers in California, and
5 across the nation, who have the right to rely on Blue Cross to handle their health
6 insurance claims with the utmost good faith.

7 2. The privilege of selling insurance in California imposes solemn,
8 obligatory responsibilities on insurers such as Blue Cross to promptly, thoroughly, and
9 fairly conduct balanced investigations of claims for benefits made by their insureds.

10 3. In discharging this responsibility, Blue Cross is required to:

- 11 • Give as much consideration to the interests of its insureds as it does
- 12 to its own; and
- 13 • Search diligently for any and all facts that support the payment of
- 14 the claim for benefits.

15 4. Despite these solemn obligations, Blue Cross is engaged in an
16 unremediated pattern and practice of unreasonable and egregious claims investigation
17 procedures, particularly regarding Hepatitis C patients in stages F0, F1, or F2 such as
18 Plaintiff Shima Andre ("Shima" or "plaintiff"). Blue Cross's systematic violations of
19 California law include repeatedly ignoring treating physicians' recommendations and
20 using undisclosed criteria at variance with the Evidence of Coverage ("EOC"), which
21 violates well-established standards in California. This conduct has not only caused
22 harm to Shima in this action, but to millions of other Californians similarly situated.

23 5. During Christmas in 2011, Shima was diagnosed with Hepatitis C.
24 Hepatitis C is a contagious liver disease that is transmitted through contact with an
25 infected person's blood. Hepatitis C leads to serious health complications including
26 severe liver damage, infections, liver cancer, and death. In fact, Hepatitis C is the
27 leading cause of cirrhosis—a disease in which healthy liver tissue is replaced with scar
28 tissue, which prevents the liver from functioning properly and can lead to liver



1 failure—and liver cancer in the United States. Even before liver deterioration, those
2 with Hepatitis C can suffer other health issues including a higher risk of heart attack,
3 fatigue, depression, joint pain, itchy skin, fever, sore muscles, arthritis, and jaundice.

4 6. After diagnosis in 2011, Shima immediately began asking her treating
5 physician, Clement C. Yang, M.D. at Cedars-Sinai, about the available treatment options
6 and her prognosis. Dr. Yang is a board-certified internist at Cedars-Sinai. He received
7 his bachelor's degree from UCLA and his medical degree from Mount Sinai School of
8 Medicine in New York.

9 7. Shima quickly learned that the then-available treatment options were
10 incredibly invasive and produced unbearable side effects. At that time, the standard of
11 care in the medical community for treating Hepatitis C patients was a three-drug
12 treatment containing boceprevir, interferon, and ribavirin, at a cost of \$170,000. That
13 three-drug treatment provided a 70% cure rate but came with tremendous adverse side
14 effects including, anemia, insomnia, anxiety, depression, and memory loss.

15 8. Dr. Yang assured Shima that much more effective treatment options with
16 fewer side effects would become available within the next few years. Dr. Yang
17 recommended waiting for the new, more effective treatment options, while at the same
18 time closely monitoring her health through regular blood tests and ultrasounds.

19 9. Over the next few years, Shima's viral load—the amount of the Hepatitis
20 C virus present in her blood—increased steadily, and she began experiencing sharp
21 liver pains. Shima prayed nightly for a cure and spent many sleepless nights concerned
22 about her health. As a newlywed—then 38 years of age—hoping to start a family, Shima
23 was also concerned that the disease would prevent her from having children since the
24 virus can be passed down from mother to child. Thus, until Shima is cured, she is
25 unable to have children without placing those children at risk for contracting this
26 deadly disease.

27 10. Three years after her diagnosis, in October 2014, Shima's prayers were
28 answered when the U.S. Food and Drug Administration approved Harvoni, a

1 prescription drug that dramatically changes the lives of those infected with Hepatitis C.
2 Harvoni is a once daily tablet that can cure Hepatitis C in as little as eight weeks with
3 few side effects. In clinical studies, 95-99% of Hepatitis C patients were cured with just
4 eight to twelve weeks of Harvoni treatments. Since 2014, the standard of care in the
5 medical community for treating Hepatitis C patients is Harvoni, which provides a cure
6 rate of 95-99% at a cost of \$99,000 for a 12-week treatment with little to no harmful side
7 effects.

8 11. In October 2014, Dr. Yang recommended that then 41-year-old Shima
9 begin Harvoni and promptly requested authorization from Blue Cross for the
10 medication.

11 12. Almost immediately, on October 29, 2014, Blue Cross denied coverage for
12 Harvoni for Shima, claiming that the medication was "not medically necessary" for her
13 because her liver had not sufficiently deteriorated. According to Blue Cross, it would
14 only consider approving Harvoni when Shima's "liver has a certain amount of scarring
15 (advanced fibrosis of stage F3 or greater) on a liver biopsy." (Exhibit 2, pg. 1.) One of the
16 manifestations of Hepatitis C is fibrosis, which is the first stage of liver scarring. The
17 degree of fibrosis varies and is described in several stages from F0 to F4. A normal liver
18 is designated as stages F0 or F1. Stage F3 is reserved for individuals suffering from
19 severe fibrosis and those with cirrhosis are designated as stage F4.

20 13. Dr. Yang and Shima were shocked by Blue Cross's position. Dr. Yang
21 immediately appealed the denial in a letter dated November 3, 2014. But Blue Cross
22 again affirmed its denial, claiming the medication was not medically necessary for
23 Shima because she was not F3 or F4.

24 14. During the appeal process, Dr. Yang attempted to speak with Blue Cross
25 reviewers about the denial and why he felt the medication was medically necessary for
26 Shima. But Blue Cross refused on multiple occasions to engage in a peer-to-peer
27 discussion with Dr. Yang.

28



1 15. Unable to speak with Blue Cross reviewers, Dr. Yang again wrote to Blue
2 Cross appealing its denial of Harvoni. (Exhibit 5.) In a letter dated January 13, 2015, Dr.
3 Yang explained that the American Association for the Study of Liver Diseases (AASLD)
4 supports Harvoni treatment for individuals with Hepatitis C, and not just those with
5 stage 3 or 4 fibrosis. According to the AASLD website: "Evidence clearly supports
6 treatment in all HCV-infected persons, except those with limited life expectancy (less
7 than 12 months) due to non-liver-related comorbid conditions." In his January 13 appeal
8 letter, Dr. Yang also noted that "there is no valid reason for denying her HCV treatment
9 with Harvoni at this time." (Exhibit 5, pg. 1.)

10 16. In a letter dated March 12, 2015, Blue Cross upheld its denial a second
11 time, again claiming Harvoni was not medically necessary for Shima because she was
12 not F3 or F4. (Exhibit 6.) On May 4, 2015, Blue Cross upheld its denial of Harvoni a third
13 time. Again Blue Cross told Shima that she would have to live with daily pain,
14 depression, chronic fatigue, and wait until her liver drastically worsened before it
15 would approve the medication. (Exhibit 7.) Blue Cross prefers that its insureds get
16 much worse before paying for treatment almost guaranteed to cure their disease. The
17 health of Shima and her family are of no concern to Blue Cross in the face of Blue
18 Cross's profits.

19 17. As a result of Blue Cross's unreasonable denials, Shima has been unable to
20 begin the Harvoni treatment which would cure her disease and allow her to safely have
21 children. At a cost of \$99,000 for a 12-week treatment, she is unable to pay for the
22 treatment out-of-pocket. Thus, Shima has sustained damages including personal
23 physical injuries, physical sickness, physical disability, economic damages, severe
24 emotional distress, and attorney's fees.

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II.
THE PARTIES

18. Plaintiff Shima, an individual, is and at all relevant times was, a resident of the State of California, County of Los Angeles, City of West Hollywood.

19. Defendant Blue Cross of California, dba Anthem Blue Cross ("Blue Cross") is, and at all relevant times was, a corporation duly organized and existing under the laws of the State of California and is authorized to transact, and is transacting, the business of insurance in the State of California, with its principle place of business in the County of Los Angeles. Plaintiff further alleges that Blue Cross is a wholly-owned subsidiary of Anthem Holding Corp., formerly known as Wellpoint Health Networks, Inc.

20. Plaintiff is informed and believes and thereon alleges that Anthem Holding Corp., formerly known as Wellpoint Health Network, Inc. ("Anthem") is, and at all relevant times was, a corporation duly organized and existing under the laws of the State of Delaware, and is authorized to transact and is transacting the business of insurance in the State of California, with its headquarters in Indianapolis, Indiana.

21. Plaintiff is informed and believes and thereon alleges that Anthem UM Service, Inc. ("Anthem UM") is, and at all relevant times was, a corporation duly organized and existing under the laws of the State of Indiana, and is authorized to transact and transacting the business of insurance in the State of California, with its headquarters in Indianapolis, Indiana.

22. Plaintiff is informed and believes and thereon alleges that Anthem Blue Cross Life and Health Insurance Company, formerly known as BC Life & Health Insurance Company ("Anthem Blue Cross") is, and at all relevant times was, a corporation duly organized and existing under the laws of the State of California, and is authorized to transact and transacting the business of insurance in the State of California, with its headquarters in Indianapolis, Indiana.

1 23. Plaintiff alleges on information and belief that profits made on policies
2 issued by Blue Cross and Anthem Blue Cross are shared with Anthem and Anthem
3 UM. Blue Cross and Anthem Blue Cross are backed by the financial strength of Anthem
4 and Anthem UM. Anthem and Anthem UM provide a host of services to Blue Cross
5 and Anthem Blue Cross, including regulatory compliance, accounting, marketing, and
6 personnel. Anthem and Anthem UM operate through various subsidiaries in various
7 states; and these subsidiaries, including Blue Cross and Anthem Blue Cross, are mere
8 conduits that allow Anthem and Anthem UM to conduct business in those states.

9 24. Plaintiff alleges on information and belief that Anthem and Anthem UM
10 owned, operated, managed, maintained, and controlled the activities of Blue Cross and
11 Anthem Blue Cross. Therefore, in reality, the activities, acts, and omissions of Blue
12 Cross and Anthem Blue Cross are and were the activities, acts, and omissions of
13 Anthem and Anthem UM. Blue Cross, Anthem UM, Anthem Blue Cross, and Anthem
14 will be collectively referred to herein in the singular as Blue Cross.

15 25. The true names or capacities, whether individual, corporate, associate, or
16 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to plaintiff, who
17 therefore sues said defendants by such fictitious names. Plaintiff is informed and
18 believes and on such information and belief alleges that each of the defendants sued
19 herein as a DOE is legally responsible in some manner for the events and happenings
20 referred to herein, and will ask leave of this court to amend this complaint to insert their
21 true names and capacities in place and instead of the fictitious names when the same
22 become known to plaintiff.

23 26. Plaintiff is informed and believes and based thereon alleges that at all
24 times mentioned herein, each of the defendants was the agent, partner, joint venturer,
25 associate and/or employee of one or more of the other defendants and was acting in the
26 course and scope of such agency, partnership, joint venture, association and/or
27 employment when the acts giving rise to the cause of action occurred.

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III.

FACTUAL BACKGROUND

A. Shima's Blue Cross Plan

27. Shima is a book editor and home maker. In September 2011, she married Ted Andre, a film industry professional. At that time, Ted enrolled Shima in a Blue Cross plan through his employer. When Ted left his company, Shima enrolled in an individual Blue Cross plan in September 2014.

28. Since September 2014, Shima has been enrolled in a Blue Cross Exclusive Provider Organization (EPO) Plan (the "Plan"). The Plan provides coverage for medically necessary care in exchange for the payment of premiums. A true and correct copy of Shima's EOC is attached hereto as Exhibit 1. Shima's monthly premium for the plan is \$614.00.

29. Shima's EOC defines medically necessary care as follows:

Medically Necessary and Medical Necessity services are procedures, treatments, supplies, devices, equipment, Facilities, or Drugs (all services) that a medical practitioner, exercising prudent clinical judgment would provide to an Member for the purpose of preventing, evaluating, diagnosing, or treating an illness, injury, or disease or its symptoms, and that are:

- in accordance with generally accepted standards of medical practice; and
- clinically appropriate in terms of type, frequency, extent, site and duration and considered effective for the Member's illness, injury or disease; and
- not primarily for the convenience of the Member, Physician or other health care Provider; and
- not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that Member's illness, injury, or disease.

1 For these purposes, "generally accepted standards of medical
2 practice" means standards that are based on credible scientific
3 evidence published in peer-reviewed medical literature generally
4 recognized by the relevant medical community, national Physician
5 specialty society recommendations and the views of medical
6 practitioners practicing in relevant clinical areas and any other
7 relevant factors. In evaluating new technology and whether to
8 consider it as eligible for coverage under our Agreement, we
9 consider peer-reviewed medical literature, consultations with
10 Physicians, Specialists and other health care professionals, policies
11 and procedures of government agencies and study results showing
12 the impact of new technology on long-term health.
13 (Exhibit 1, p. 162, bold emphasis in the original.)

11 **B. Shima is diagnosed with Hepatitis C**

12 30. During Christmas in 2011, at 38 years of age, Shima was diagnosed with
13 Hepatitis C. It was her first Christmas as a newlywed and one of the most upsetting
14 moments of her life. Shima, then 38 years old, had been looking forward to having
15 children. With news of the diagnosis, her plans of immediately starting a family were
16 placed on hold to protect the health of her future children.

17 31. Hepatitis C was first discovered in 1990 and is a contagious virus that
18 attacks the liver. It spreads primarily through contact with the blood of an infected
19 person. In 1992, the United States began screening blood utilized in transplants and
20 transfusions for the presence of contagious diseases including Hepatitis C. Before 1992,
21 Hepatitis C was commonly spread through blood transfusions or transplant surgeries.

22 32. Hepatitis C can also be transmitted from mothers to infants at birth.
23 Several factors influence the likelihood that the virus will be passed from mother to
24 child, including the viral load of the mother, the gender of the newborn, and whether
25 there is premature membrane rupture.

26 33. Hepatitis C has six different genotypes, or virus classifications, based on
27 the virus's genetic material in the RNA strands. Genotype one is the most common in
28 the United States. It accounts for approximately 75% of Americans with the disease and

1 was considered the most difficult genotype to treat. Shima has genotype one Hepatitis
2 C. Genotypes two and three are less common, affecting approximately 20% of those
3 with Hepatitis C, and are much easier to cure.

4 34. Hepatitis C is a widespread contagious disease in the United States with
5 severe public health ramifications. It is estimated that more than three million
6 individuals in the United States are living with chronic Hepatitis C and it is estimated
7 that 3% of the world's 7.2 billion population is infected with the disease. Approximately
8 15,000 people in the United States die each year due to liver disease caused by Hepatitis
9 C. By 2000, Hepatitis C had infected almost 600,000 people in California alone, and
10 another 5,000 Californians become infected with the virus each year.

11 35. Hepatitis C can lead to severe liver damage, infections, liver cancer, and
12 even death. Even before liver deterioration, those with Hepatitis C can suffer other
13 health issues including a higher risk of heart attack, fatigue, joint pain, depression, sore
14 muscles, arthritis, and jaundice. Centers for Disease Control and Prevention statistics
15 reveal that up to 70% of those with Hepatitis C will develop chronic liver disease, 20%
16 will develop cirrhosis, and 5% will develop liver cancer.

17 36. Hepatitis C also leads to liver fibrosis, which is the first stage of liver
18 scarring. The degree of fibrosis varies and is described in several stages from F0 to F4. A
19 normal liver is designated as stages F0 or F1. Someone in stage F3 suffers from severe
20 fibrosis and stage F4 indicates cirrhosis.

21
22 **C. The standard of care in the medical community to treat Hepatitis C at the time**
23 **of Shima's diagnosis**

24 37. Following diagnosis in 2011, Shima immediately asked her treating
25 physician, Dr. Yang, about her prognosis and treatment options. But he advised her that
26 the then-available treatment options produced unbearable side effects.

27 38. In 2011, the standard of care in the medical community for treating
28 Hepatitis C patients was a three-drug treatment program containing boceprevir,

1 interferon, and ribavirin. The overall cost of this treatment program was \$170,000 and
2 only provided a 70% cure rate. It came with tremendous adverse side effects, including
3 anemia, insomnia, depression, diarrhea, and memory loss.

4 39. Dr. Yang advised Shima that much more effective treatment options with
5 fewer side effects would become available within the next few years. Due to the
6 significant side effects and cure rate, he recommended waiting for these more effective
7 treatment options, while also closely monitoring Shima's health through regular blood
8 tests and ultrasounds.

9 40. Over the next few years Shima's viral load steadily increased and she
10 began experiencing frequent sharp liver pains and depression. Shima spent many
11 sleepless nights in agonizing pain, wondering if she would ever rid herself of the
12 disease and worried that she may infect her husband with the deadly virus. Her worry,
13 her sense of hopelessness, and her fear of infecting her own family have caused her to
14 suffer life-changing emotional distress.

15
16 **D. The FDA approves a new cure for Hepatitis C—changing the standard of care**
17 **in the medical community**

18 41. In October 2014, the FDA approved Harvoni, a prescription drug that
19 dramatically changes the lives of those infected with Hepatitis C. Harvoni is a once
20 daily tablet that contains two drugs, ledipasvir and sofosbuvir, and can completely cure
21 the disease in just eight to twelve weeks. The length of the treatment depends on a
22 patient's condition, particularly their viral load. If a patient has a viral load of more than
23 6 million, then they will remain on Harvoni for twelve weeks. If they have a viral load
24 of less than 6 million, then they will remain on Harvoni for eight weeks. Harvoni has
25 proven highly successful for those with Shima's genotype, genotype 1.

26 42. Since the FDA approval in 2014, the standard of care in the medical
27 community for treating Hepatitis C patients *is* Harvoni, which provides a cure rate of
28

1 95%-99% at a cost of \$99,000 for a 12-week treatment with little to no harmful side
2 effects.

3 43. Harvoni's efficacy has been tested in three clinical trials consisting of more
4 than 1,500 participants. In these trials, Harvoni cured 95-99% of patients within twelve
5 weeks. In one study of 865 patients with genotype 1, 99% of individuals who received a
6 twelve-week Harvoni regimen were "cured" and study participants were considered
7 "cured" if the virus was not detected in the patients' blood three months after the
8 conclusion of the last Harvoni treatment. Another study concerning an additional 440
9 Hepatitis C patients with genotype 1 who had failed prior treatments produced
10 astounding results: within twelve weeks Harvoni cured 95% of patients without
11 cirrhosis and after 24 weeks 100% of those with cirrhosis.

12 44. This revolutionary cure is not only far more effective than other treatment
13 options, but eliminates the harmful side effects associated with other available
14 treatments such as Sovaldi, a prescription medication utilized in combination with
15 ribavirin. Other treatment options result in severe, unbearable side effects such as
16 nausea, fatigue, anemia, insomnia, anxiety, diarrhea, low red blood cell count,
17 depression, memory loss, and muscle, joint, or bone pain. In contrast, the most severe
18 common side effects associated with Harvoni are tiredness and headaches.

19 45. In light of its high success rate and minimal side effects, in 2014 Harvoni
20 was designated by the FDA as a "breakthrough therapy." This designation is reserved
21 for drugs that have proven to provide "substantial improvement over available
22 therapies for patients with serious or life-threatening diseases."

23 46. Hepatitis C is only the second disease or condition for which a cure has
24 been discovered in a single lifespan from the discovery of the disease or condition.
25 Hepatitis C was discovered in 1990 and the cure arrived in 2014. Hepatitis C could be
26 completely eradicated in the coming few years as a result of Harvoni, assuming
27 patients, such as Shima, have access to this incredible cure.

28

1 E. Shima's treating doctor recommends that she begin Harvoni treatment
2 immediately, but Blue Cross refuses to provide coverage for the cure

3 47. In October 2014, Dr. Yang recommended Shima begin Harvoni and
4 promptly requested authorization from Blue Cross for the medication.

5 48. In a letter dated October 29, 2014, Blue Cross denied coverage for Harvoni
6 by claiming the medication—which provided a 95-99% chance of curing her deadly
7 disease within just 12 weeks—was not medically necessary. A true and correct copy of
8 the October 29, 2014, letter is attached as Exhibit 2. Blue Cross reviewer Harry
9 Weisman, M.D., determined that Harvoni is not medically necessary because Shima has
10 yet to experience severe liver damage:

11 Our clinical reviewer concluded the following: because of details
12 we received about your liver illness (hepatitis C). We may approve
13 HARVONI when the liver has a certain amount of scarring
14 (advanced fibrosis of stage F3 or greater) on a liver biopsy. Records
15 we received do not show that your liver has this amount of scarring
16 on a liver biopsy. We based this decision on your health plan's
17 prior authorization criteria for Harvoni. . . Your provider may call
18 our medical reviewer at 800-794-0838 to discuss this determination.

19 (Exhibit 2, pg. 1.)

20 49. On information and belief, plaintiff alleges that Blue Cross's reviewers,
21 such as Dr. Weisman, receive approximately \$45 per case reviewed regardless of the
22 time spent investigating the claim or conducting the review. Thus, Blue Cross
23 incentivizes the reviewers to complete the investigation and review claims as quickly as
24 possible.

25 50. On information and belief, plaintiff further alleges that Dr. Weisman, and
26 all other Blue Cross reviewers, individually review approximately 550 cases per month.
27 Thus, they review approximately 27.5 cases per day and spend approximately 17
28 minutes reviewing each case. (If they work 5 days per week for four weeks in a month
(550 cases/20 days = 27.5 cases per day per month) and spend approximately 17 minutes
reviewing each case (8 hours x 60 minutes = 480 minutes per day; 480 minutes per day/

1 27.5 cases = 17.45 minutes per case).) Plaintiff also alleges on information and belief that
2 Blue Cross pays the reviewers approximately \$25,000 per month to conduct these
3 cursory reviews.

4 51. Blue Cross's reviewers, such as Dr. Weisman, routinely deny the majority
5 of the claims that they review. Based on information and belief, the reviewers average a
6 denial rating of 90% or higher.

7 **F. Dr. Yang appeals the denial, but Blue Cross refuses to overturn its decision**

8 52. Dr. Yang and Shima were shocked to discover that Blue Cross limits
9 coverage to only those patients who have already sustained severe liver damage,
10 despite the treatment curing patients in exactly Shima's position.

11 53. On November 3, 2014, Dr. Yang requested that Blue Cross reconsider its
12 denial. A true and correct copy of Dr. Yang's appeal letter is attached as Exhibit 3.
13 Within this letter, Dr. Yang notes that Harvoni provides the easiest administration, with
14 far fewer side effects, and has demonstrated vastly higher success rates than other
15 Hepatitis C treatment options.

16 54. In a letter dated December 3, 2014, Blue Cross again ignored the
17 recommendations of Dr. Yang, standing firm in its position that Harvoni is not
18 medically necessary. A true and correct copy of the denial letter is attached as Exhibit 4.
19 Blue Cross stated:

20 We reviewed your specific circumstances and health condition as
21 documented in the appeal request and in the medical information
22 provided by Dr. Yang. The reviewers included: a health plan
23 consultant who is a board-certified Gastroenterologist, and a health
24 plan medical director who is board-certified in family practice,
25 Anita Rajan, MD.

26 The records reviewed indicate that you have chronic active
27 hepatitis (CAH) C, genotype 1. The Prior Authorization of Benefits
28 guidelines for Harvoni state that this drug may not be approved

1 without evidence of advanced fibrosis. Therefore, the criteria for
2 approval were not met.

3 (Exhibit 4, pg. 1.)

4 55. Blue Cross did not send a copy of the December 3 denial letter to Dr.
5 Yang. Throughout December, Dr. Yang and his staff called Blue Cross to obtain a copy
6 of the denial letter and to arrange a peer-to-peer review with the Blue Cross doctors.
7 But, Blue Cross failed to return Dr. Yang's calls and refused to schedule that review.

8 **G. Blue Cross continues to ignore the recommendation of Shima's treating**
9 **physician**

10 56. On January 9, 2015, Dr. Yang's office spoke with Mark, a Blue Cross
11 representative, who advised that Blue Cross would not schedule a peer-to-peer review
12 with Dr. Yang because Shima's fibrosis was not considered severe.

13 57. Throughout January, Dr. Yang tried to reach Blue Cross to discuss the
14 medical necessity of Harvoni. Yet, Blue Cross consistently placed Dr. Yang on hold for
15 long periods of time and refused to return his calls.

16 58. Because Blue Cross refused to speak with Dr. Yang, he again appealed
17 their denial of Harvoni in writing. A true and correct copy of his January 13, 2015,
18 appeal letter is attached as Exhibit 5. In this letter, Dr. Yang reiterated the medical
19 necessity of Harvoni as well as Blue Cross's refusal to speak with him to discuss his
20 patient and why she needs the medication:

21 Ms. Shima Andre was denied Hepatitis C treatment with Harvoni
22 therapy. The denial was appealed and the appeal was also denied. I
23 have never received the appeal denial letter after asking for it
24 multiple times. I was also not given the information to appeal this
25 case to the independent review board after numerous requests and
was denied a peer-to-peer review opportunity. . . .

26 Ms. Andre was denied HCV treatment with Harvoni because she
27 does not have stage F3 or F4 fibrosis. AASLD does not recommend
28 that only these patients be treated, but suggests that urgent
prioritization for the treatment should be given to these patients

1 based on available resources. Since there is no shortage or limited
2 availability of Harvoni therapy requested for this patient, this
3 denial is not warranted.

4 AASLD guidelines also advise to prioritize treatment for patients at
5 elevated risk of HCV transmission and that HCV treatment would
6 yield transmission reduction benefits. These patients include HCV-
7 infected women of child-bearing potential wishing to get pregnant.
8 Ms. Andre is a young female, planning to have children as soon as
9 possible.

10 The cure rates with Harvoni exceed 90% while other therapies only
11 had 30% or less cure rates, and the treatment is highly successful
12 for Genotype 1, which is the type Ms. Andre carries. It is my
13 opinion that Ms. Andre should be approved for this therapy and
14 there is no valid reason for denying her HCV treatment with
15 Harvoni at this time.

16 (Exhibit 5, pg. 1.)

17 59. In a letter dated March 12, 2015, Blue Cross again denied coverage for
18 Harvoni, claiming the treatment was not medically necessary for Shima. A true and
19 correct copy is attached as Exhibit 6.

20 60. On May 4, 2015, Blue Cross affirmed its denial of Harvoni for Shima
21 because she does not currently suffer from advanced fibrosis. Blue Cross basically
22 wants its insureds to live with daily pain and suffer debilitating liver damage before
23 providing a proven, necessary, and safe cure. A true and correct copy of the May 4, 2015
24 denial letter is attached as Exhibit 7.

25 61. Doctors recently discovered a tumor on Shima's liver. Although they
26 determined it was benign, Shima must monitor it indefinitely. As a result, Dr. Yang
27 referred Shima to hepatologist Vinay Sundaram, M.D. at the Cedars-Sinai transplant
28 center. Hepatology is the study of the liver, gallbladder, and pancreas. Dr. Sundaram
has conducted extensive research in transplant hepatology and has written on
numerous topics related to liver disease. He also completed a transplant hepatology

1 fellowship at Beth Israel Deaconess Medical Center in Boston and was a faculty member
2 at Harvard Medical School.

3 62. Upon evaluation of Shima, Dr. Sundaram also recommended that she
4 begin Harvoni treatment immediately.

5 63. To date, Blue Cross continues to deny Shima access to the cure. Instead,
6 Shima must wait and allow her medical condition to significantly deteriorate before
7 Blue Cross will provide coverage for Harvoni.

8
9 **H. Blue Cross engages in a pattern and practice of unreasonably denying**
10 **subscribers' claims, including plaintiff's, based on guidelines and criteria not**
11 **disclosed and markedly different from the EOC**

12 64. Shima's EOC provides coverage for medically necessary care. The EOC
13 contains a definition of medical necessity, which is the only criteria Blue Cross
14 subscribers, such as Shima, are aware of before receiving a denial letter.

15 65. According to Shima's EOC, in order for medication such as Harvoni to be
16 medically necessary, it must be a drug that a medical practitioner would provide to a
17 member for purposes of treating an illness, injury, or disease, in accordance with
18 generally accepted standards of medicine, clinically appropriate, not primarily for
19 Shima's or her providers' convenience, and not more costly than an equivalent service
20 that is medically appropriate and likely to produce equivalent therapeutic results.
21 (Exhibit 1, p. 162.) Harvoni meets all of these requirements. Nothing requires that a
22 member allow his or her medical condition to deteriorate to severe fibrosis in order for
23 their care to be considered "Medically Necessary."

24 66. But the definition of "Medical Necessity" is not the test that Blue Cross
25 used to deny Shima's claim for Harvoni. Rather, it applied a more restrictive test created
26 by Blue Cross in an effort to increase company profits by limiting the number of
27 patients who would qualify for this life-saving medication. Blue Cross's denial letter
28 states: "We may approve Harvoni when the liver has a certain amount of scarring
(advanced fibrosis of stage F3 or greater) on a liver biopsy. Records we received do not

1 show that your liver has this amount of scarring on a liver biopsy." (See Exhibit 2.)
2 Notably, Blue Cross does not cite to any provision of the EOC in support of this
3 standard. An online search of Blue Cross guidelines and medical policies fails to turn up
4 any guidelines for Harvoni.

5 67. Blue Cross's requirement of severe fibrosis before treatment severely
6 limits insureds' access to medically necessary treatment and places restrictions on
7 treatment that are not disclosed in the EOC. Shima had no notice before receiving the
8 denial letter that coverage could be determined by anything outside of her EOC, or that
9 Blue Cross would place arbitrary restrictions on who can access medically necessary
10 treatment.

11 68. Despite the plain language of Shima's EOC, Blue Cross did not rely on it
12 to determine if Harvoni was covered. Instead, Blue Cross used an undisclosed medical
13 policy, only created to elevate profits over concerns for the health of its insureds.

14 69. By using this restrictive medical criteria as a barrier to access Harvoni,
15 Blue Cross is breaching its contract with its members. The members' EOCs contain the
16 entirety of the terms of the agreement.

17
18 **I. Blue Cross's investigation of the medical necessity of Harvoni was conducted**
19 **by unqualified reviewers in violation of California Health and Safety Code**
20 **§ 1367.01, and at odds with the EOC**

21 70. Subdivision (e) of California Health & Safety Code § 1367.01 provides, in
22 relevant part, the following:

23 [N]o individual, other than a licensed physician or a licensed health
24 care professional who is competent to evaluate the specific clinical
25 issues involved in the health care services requested by the
26 provider, may deny or modify requests for authorization of health
27 care services for an enrollee for reasons of medical necessity.

28 71. Blue Cross has consistently utilized unqualified reviewers in Shima's case
in violation of California Health and Safety Code §1367.01.

1 72. For example, Anita Rajan, M.D., is board-certified in family practice. Dr.
2 Rajan is one of the physician reviewers identified in Blue Cross's December 3, 2014
3 letter. (Exhibit 4.) On information and belief, Dr. Rajan has neither experience nor
4 specialty in treating Hepatitis C patients. Blue Cross also fails to identify the
5 qualifications or specialties for the reviewers named in the October 29, 2014 and March
6 12, 2015 denial letters. As a result, Shima is unable to determine if these individuals are
7 competent to evaluate the specific issues of her case, as required by Section 1367.01.

8
9 **J. Shima has been left without a cure and continues to suffer on a daily basis due
10 to Blue Cross's unreasonable conduct**

11 73. Each day Shima remains at risk and her health condition continues to
12 deteriorate. The cost of Harvoni is approximately \$99,000, which Shima cannot afford to
13 pay for out-of-pocket.

14 74. Since marrying Ted in 2011, Shima has desperately wanted to start a
15 family. But after being diagnosed with Hepatitis C, Shima has placed her dreams of a
16 family on hold because Hepatitis C can be passed from mother to child. Shima, now 42
17 years old, is unable to have children until the disease is cured.

18 75. Despite knowing that Harvoni provided Shima with a 95-99% chance of
19 curing her deadly disease, Blue Cross refused to provide coverage for the treatment.
20 Instead, Blue Cross told Shima that it would only provide coverage for Harvoni once
21 her medical condition had significantly deteriorated.

22 76. Shima has endured and continues to endure stress, grief, and worry
23 concerning her medical condition. She spends many sleepless nights worried about her
24 future and her family, her mind racing with questions—whether she will develop liver
25 cancer, ever have children, or even be around to spend her golden years with Ted.

26 77. As a result of Blue Cross's unreasonable denials, Shima awakens every
27 morning with the stress of not knowing what her future holds. She also feels dread,
28 anger, fear, and hopelessness. Blue Cross's refusal to provide a known cure for
Hepatitis C only reinforces Shima's sense of hopelessness in having this deadly disease.

1 FIRST CAUSE OF ACTION

2 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

3 PLAINTIFF, FOR A FIRST CAUSE OF ACTION AGAINST BLUE CROSS OF
4 CALIFORNIA, dba ANTHEM BLUE CROSS; ANTHEM HOLDING CORP.,
5 FORMERLY KNOWN AS WELLPOINT HEALTH NETWORKS, INC.; ANTHEM UM
6 SERVICES, INC.; ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE
7 COMPANY, FORMERLY KNOWN AS BC LIFE & HEALTH INSURANCE COMPANY;
8 AND DOES 1 THROUGH 100, INCLUSIVE, FOR BREACH OF THE COVENANT OF
9 GOOD FAITH AND FAIR DEALING, ALLEGES:

10 78. Plaintiff refers to each and every paragraph above and incorporates those
11 paragraphs as though set forth in full in this cause of action.

12 79. Defendants, and each of them, breached their duty of good faith and fair
13 dealing owed to Plaintiff in the following respects:

- 14 a. Unreasonably delaying and denying coverage for Shima's medically
15 necessary treatment;
- 16 b. Unreasonably denying Shima coverage for Harvoni before conducting
17 a reasonable investigation of her provider's request for the medication;
- 18 c. Unreasonably failing to give at least as much consideration to Shima's
19 interests and welfare in the investigation and handling of her claim as
20 it gave to its own interests;
- 21 d. Unreasonably engaging in a pattern and practice of failing to give at
22 least as much consideration to the interests and welfare of its insureds
23 in the investigation and handling of their claims as it gives to its own
24 interests;
- 25 e. Unreasonably requiring Shima's health to deteriorate before providing
26 coverage for medically necessary treatment;
- 27 f. Unreasonably compelling plaintiff to institute this litigation to obtain
28 benefits due under the Plan;

- 1 g. Unreasonably failing to conduct a thorough, fair, and balanced
- 2 investigation in evaluating the medical necessity of Shima's claims for
- 3 benefits and services under her EOC;
- 4 h. Unreasonably engaging in a pattern and practice of failing to conduct a
- 5 thorough, fair, and balanced investigation in evaluating the medical
- 6 necessity of benefits and services for its members under their EOC;
- 7 i. Unreasonably failing to have qualified reviewing physicians conduct a
- 8 thorough, fair, and balanced investigation of Shima's claim for benefits
- 9 and/or services;
- 10 j. Unreasonably engaging in a pattern and practice of failing to have
- 11 qualified reviewing physicians to conduct a thorough, fair, and
- 12 balanced investigation of its members' claim for benefits and/or
- 13 services;
- 14 k. Unreasonably failing to diligently search for and consider evidence
- 15 that supported the medical necessity of Shima's claim for benefits and
- 16 services; and
- 17 l. Unreasonably engaging in a pattern and practice of failing to diligently
- 18 search for and consider evidence that supports the medical necessity of
- 19 its members' claim for benefits and services.

20 80. Plaintiff is informed and believes and thereon alleges that defendants, and
21 each of them, have breached their duty of good faith and fair dealing owed to plaintiff
22 by other acts or omission of which plaintiff is presently unaware and which will be
23 shown according to proof at the time of trial.

24 81. Defendants furthermore have committed institutional bad faith.
25 Defendants' institutional bad faith amounts to reprehensible conduct because the
26 conduct is part of a repeated pattern of unfair practices and not an isolated occurrence.
27 The pattern of unfair practices constitutes a conscious course of wrongful conduct that
28 is firmly grounded in the established company policies of defendants. Plaintiff is

1 informed and believes and thereon alleges that defendants have engaged in similar
2 wrongful conduct as to individuals other than plaintiff and that defendants have
3 substantially increased their profits as a result of causing similar harm to others.

4 82. As a proximate result of the aforementioned unreasonable and bad faith
5 conduct of defendants, plaintiff has suffered, and will continue to suffer in the future,
6 damages under the Plan, plus interest and other economic and consequential damages,
7 including personal physical injuries, physical sickness, and physical disability, for a
8 total amount to be shown at the time of trial.

9 83. As a further proximate result of the unreasonable and bad faith conduct of
10 defendants, and each of them, plaintiff has suffered anxiety, worry, and mental and
11 emotional distress, all to her general damages in a sum to be determined at the time of
12 trial.

13 84. As a further proximate result of the aforementioned wrongful conduct of
14 defendants, plaintiff was compelled to retain legal counsel to obtain the benefits due
15 under the Plan. Therefore, defendants are liable to plaintiff for those attorneys' fees
16 reasonably necessary and incurred by plaintiff in order to obtain the benefits under the
17 Plan in a sum to be determined at the time of trial.

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

27 86. Defendants' conduct described herein was undertaken by the corporate
28 defendants' officers or managing agents, identified herein as DOES 1 through 100, who

1 were responsible for claims supervision and operations, underwriting, communications,
2 and/or decisions. The aforementioned conduct of said managing agents and individuals
3 was therefore undertaken on behalf of the corporate defendant. Further, said corporate
4 defendant had advance knowledge of the actions and conduct of said individuals
5 whose actions and conduct were ratified, authorized and approved by managing agents
6 whose precise identities are unknown to plaintiff at this time and are therefore
7 identified and designated herein as DOES 1 through 100, inclusive.

8
9 **SECOND CAUSE OF ACTION**

10 **(Breach of Contract)**

11 PLAINTIFF, FOR A SECOND CAUSE OF ACTION AGAINST BLUE CROSS OF
12 CALIFORNIA, dba ANTHEM BLUE CROSS; ANTHEM HOLDING CORP.,
13 FORMERLY KNOWN AS WELLPOINT HEALTH NETWORKS, INC.; ANTHEM UM
14 SERVICES, INC.; ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE
15 COMPANY, FORMERLY KNOWN AS BC LIFE & HEALTH INSURANCE COMPANY;
16 AND DOES 1 THROUGH 100, INCLUSIVE, FOR BREACH OF CONTRACT, ALLEGE:

17 87. Plaintiff refers to each and every paragraph above and incorporates those
18 paragraphs as though set forth in full in this cause of action.

19 88. Defendants, and each of them, breached the terms of the Plan by failing to
20 provide benefits Shima was entitled to under the Plan. Specifically, defendants
21 breached the terms of the Plan in the following respects:

- 22 a. Denying coverage for medically necessary treatment for Shima;
- 23 b. Requiring that Shima's medical condition deteriorate before providing
24 medically necessary treatment under the Plan;
- 25 c. Failing and refusing to provide Shima coverage for Harvoni with
26 knowledge that the medication was medically necessary and with
27 knowledge that Shima's claims were valid under her EOC; and

28

1 d. Failing to evaluate the claim for benefits based on the definition of
2 "Medical Necessity" in the EOC.

3 89. Plaintiff is informed and believes and thereon alleges that defendants
4 have breached the terms and provisions of the Plan by other acts or omissions of which
5 plaintiff is presently unaware and which will be shown according to proof at the time of
6 trial.

7 90. As a direct and proximate result of defendants' conduct and breach of
8 their contractual obligations, plaintiff has suffered damages under the Plan in an
9 amount to be determined according to proof at the time of trial, plus interest and other
10 foreseeable and incidental damages, including personal physical injuries, physical
11 sickness, and physical disability, according to proof, and in amounts to be determined
12 at the time of trial.

13
14 **THIRD CAUSE OF ACTION**

15 **(Negligent Infliction of Emotional Distress)**

16 PLAINTIFF, FOR A THIRD CAUSE OF ACTION AGAINST BLUE CROSS OF
17 CALIFORNIA, dba ANTHEM BLUE CROSS; ANTHEM HOLDING CORP.,
18 FORMERLY KNOWN AS WELLPOINT HEALTH NETWORKS, INC.; ANTHEM UM
19 SERVICES, INC.; ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE
20 COMPANY, FORMERLY KNOWN AS BC LIFE & HEALTH INSURANCE COMPANY;
21 AND DOES 1 THROUGH 100, INCLUSIVE, FOR NEGLIGENT INFLECTION OF
22 EMOTIONAL DISTRESS, ALLEGES:

23 91. Plaintiff refers to each and every paragraph above and incorporates those
24 paragraphs as though set forth in full in this cause of action.

25 92. Since marrying Ted in 2011, Shima has desperately wanted to start a
26 family. But after being diagnosed with Hepatitis C, Shima's dreams of a family were
27 placed on hold. Because Hepatitis C can be passed from mother to child, Shima is
28 unable to have children until the disease is cured. Despite knowing that Harvoni

1 provided Shima with a 95-99% chance of curing her deadly disease, Blue Cross refused
2 to provide coverage for the treatment. Instead Blue Cross advised Shima that it would
3 only provide coverage for Harvoni once her medical condition had significantly
4 deteriorated. Shima has endured and continues to endure stress, grief, and worry
5 concerning her medical condition. As a result of Blue Cross's unreasonable denials,
6 Shima awakens every morning with stress not knowing what her future holds. She also
7 feels dread, anger, fear, and hopelessness on a daily basis, as a result of her current
8 medical condition.

9 93. At all relevant times, defendants owed plaintiff a duty of due care, which
10 they breached.

11 94. Defendants, and each of them, knew, or with any exercise of reasonable
12 care should have known, the potential seriousness of Shima's medical condition and
13 that her treating physician felt strongly that she required Harvoni, that their
14 aforementioned wrongful conduct would result in the delay and denial of benefits that
15 Shima was entitled to under the Plan, and would cause her severe emotional distress.
16 Despite this knowledge, defendants, and each of them, negligently and without
17 exercising reasonable care, processed, reviewed, and made recommendations and
18 decisions contrary to Shima's treating provider, and otherwise engaged in conduct that
19 directly caused benefits to be denied under the Plan.

20 95. Plaintiff is informed and believes and thereon alleges that defendants, and
21 each of them, have been negligent by other acts or omissions of which plaintiff is
22 presently unaware, and which will be shown according to proof at time of trial.

23 96. Defendants' conduct described herein was undertaken by the corporate
24 defendants' officers, managing agents, or employees identified herein as DOES 1
25 through 100, inclusive, who were responsible for claims handling and/or decisions. The
26 aforementioned conduct of said managing agents and individuals was therefore
27 undertaken on behalf of the corporate defendants. Said corporate defendants further
28 had advance knowledge of the actions and conduct of said individuals whose actions

1 and conduct were ratified, authorized, and approved by managing agents and by other
2 corporate officers, directors, or managing agents whose precise identities are unknown
3 to plaintiff at this time and are therefore identified and designated herein as DOES 1
4 through 100, inclusive.

5 97. As a direct and proximate result of the negligent conduct of defendants,
6 and each of them, as alleged above, Shima has suffered severe physical, mental, and
7 emotional distress and discomfort, including, but not limited to, suffering, anguish,
8 fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame, all to
9 her detriment and damage in an amount to be shown according to proof at the time of
10 trial.

11
12 **FOURTH CAUSE OF ACTION**

13 **(Intentional Infliction of Emotional Distress)**

14 PLAINTIFF, FOR A FOURTH CAUSE OF ACTION AGAINST BLUE CROSS OF
15 CALIFORNIA, dba ANTHEM BLUE CROSS; ANTHEM HOLDING CORP.,
16 FORMERLY KNOWN AS WELLPOINT HEALTH NETWORKS, INC.; ANTHEM UM
17 SERVICES, INC.; ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE
18 COMPANY, FORMERLY KNOWN AS BC LIFE & HEALTH INSURANCE COMPANY;
19 AND DOES 1 THROUGH 100, INCLUSIVE, FOR INTENTIONAL INFLICTION OF
20 EMOTIONAL DISTRESS, ALLEGES:

21 98. Plaintiff incorporates by reference each and every paragraph above and
22 incorporates those paragraphs as though set forth in full in this cause of action.

23 99. Defendants endangered Shima's health, safety, and wellbeing when they
24 denied the medically necessary medication requested by her treating provider, even
25 though defendants knew, or should have known, that the medication was medically
26 necessary and covered under the EOC. Defendants knew, or should have known, that
27 their refusal to approve Shima's medically necessary care caused her to suffer stress,
28 grief, worry, and anxiety concerning her medical condition.

1 100. Defendants, knowing the seriousness of Shima's medical condition,
2 knowing the physical damage that could result from denying the care, knowing that it
3 held a position of authority which gave it power to affect the plaintiff's interests, and
4 knowing that plaintiff would be forced to deal with the emotional, physical, and
5 financial implications of the denial of care for Shima, intentionally, unreasonably, and
6 unfairly refused to provide Shima with the requested medically necessary care, thereby
7 placing Shima's safety and life in jeopardy.

8 101. In light of Shima's condition, the defendants' improper and unreasonable
9 delays and denials constitute extreme and outrageous conduct.

10 102. Defendants, and each of them, intentionally and with malicious motive
11 engaged in said conduct. Defendants' conduct was directed at and was calculated to
12 cause, and did cause, Shima to suffer humiliation, mental anguish, and severe
13 emotional distress, in an attempt to gain an advantage over Shima, and deprive Shima
14 of the entitlement to the full benefits under her EOC.

15 103. As a direct and proximate result of the aforementioned acts of defendants,
16 Shima suffered severe emotional distress including suffering, anguish, fright, horror,
17 nervousness, grief, anxiety, worry, shock, humiliation, and shame. This emotional
18 distress was beyond what a reasonable person in a civilized society should be expected
19 to bear.

20 104. Defendants' conduct described herein was intended by said defendants to
21 cause injury to Shima, or was despicable conduct carried on by said defendants with a
22 willful and conscious disregard of the rights, health, and safety of Shima, subjected her
23 to cruel and unjust hardship in conscious disregard of her rights, and was an intentional
24 misrepresentation, deceit, or concealment of a material fact known to defendants with
25 the intention to deprive Shima of property, legal rights, or to otherwise cause injury,
26 such as to constitute malice, oppression, or fraud under California Civil Code § 3294,
27 thereby entitling plaintiff to punitive damages in an amount appropriate to punish or
28 set an example of defendants.

1 105. Defendants’ conduct described herein was undertaken by the corporate
2 defendants’ officers, managing agents, or employees identified herein as DOES 1
3 through 100, inclusive, who were responsible for claims handling and/or decisions. The
4 aforescribed conduct of said managing agents and individuals was therefore
5 undertaken on behalf of the corporate defendants. Said corporate defendants further
6 had advance knowledge of the actions and conduct of said individuals whose actions
7 and conduct were ratified, authorized, and approved by managing agents and by other
8 corporate officers, directors, or managing agents whose precise identities are unknown
9 to plaintiff at this time and are therefore identified and designated herein as DOES 1
10 through 100, inclusive.

11
12 **FIFTH CAUSE OF ACTION**

13 **[Class Action]**

14 **(Violations of California Business & Professions Code §§ 17200 et seq.)**

15 PLAINTIFF FOR A FIFTH CAUSE OF ACTION AGAINST BLUE CROSS OF
16 CALIFORNIA, dba ANTHEM BLUE CROSS; ANTHEM HOLDING CORP.,
17 FORMERLY KNOWN AS WELLPOINT HEALTH NETWORKS, INC.; ANTHEM UM
18 SERVICES, INC.; ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE
19 COMPANY, FORMERLY KNOWN AS BC LIFE & HEALTH INSURANCE COMPANY;
20 AND DOES 1 THROUGH 100, INCLUSIVE, FOR VIOLATION OF CALIFORNIA
21 BUSINESS & PROFESSIONS CODE §§ 17200 *ET SEQ.*, BY THEIR UNLAWFUL,
22 UNFAIR, AND FRAUDULENT CONDUCT ALLEGES:

23 106. Plaintiff refers to each and every paragraph of the Complaint and
24 incorporates those paragraphs as though set forth in full in this cause of action.

25 107. California Business and Professions Code §§ 17200 *et seq.* precludes a
26 person or entity from engaging in unfair competition, defined as business practices
27 which are unlawful, unfair, and fraudulent. Business and Professions Code § 17203
28 permits the court in an action based on allegations of unfair competition to issue

1 injunctive, restitutionary or other equitable relief, and any person who meets the
2 standing requirements of California Business and Professions Code § 17204 and
3 complies with California Code of Civil Procedure § 382 may pursue a representative
4 action.

5 108. California Business & Professions Code § 17204 permits individuals, such
6 as plaintiff, to institute an action on behalf of the general public to obtain injunctive and
7 restitutionary relief against persons and entities that engage in unfair business practices
8 and/or unfair competition.

9 109. Plaintiff has suffered injury in fact as a result of Blue Cross's unlawful,
10 unfair, and fraudulent business practices. Blue Cross's unlawful, unfair, and fraudulent
11 business practice in not paying for the Harvoni cure for Hepatitis C patients suffering
12 from stages F0, F1 or F2 has caused plaintiff to suffer economic and consequential
13 damages, plus interest, for a total amount to be proven at the time of trial.

14 110. Plaintiff has suffered a loss of money or property as a result of the Blue
15 Cross' unlawful, unfair and fraudulent business practices. Plaintiff has been denied her
16 legal rights to a full, complete, and fair handling of her claims in violation of well-
17 established principals of insurance claims handling set forth in statutory and case law.

18 111. Defendant has committed acts of unfair competition as defined by
19 California Business and Professions Code §§ 17200 *et seq.* by engaging in the following
20 acts:

- 21 a. Unlawfully violating California Health & Safety Code § 1367.01 by
22 utilizing unqualified reviewers who are neither experienced nor
23 specialize in treating Hepatitis C patients;
- 24 b. Unlawfully and unfairly engaging in unfair claims settlement practices
25 in violation of California Insurance Code § 790.03(h);
- 26 c. Unfairly delaying medically necessary care causing their insureds to
27 first suffer significant symptoms and liver damage before approving
28 coverage for a proven cure;

- 1 d. Fraudulently attempting to apply undisclosed criteria contrary to the
- 2 definition of Medically Necessary contained in insureds' EOCs; and
- 3 e. Other acts of unfair competition of which plaintiff is presently
- 4 unaware, and which may be determined through discovery in this
- 5 action.

6 112. Plaintiff respectfully requests an injunction be issued against
7 defendants, and each of them, to enjoin them from continuing to engage in the
8 unfair, unlawful, and fraudulent conduct alleged herein.

9 113. Plaintiff respectfully requests an award of attorneys' fees upon
10 prevailing in the request for injunctive relief pursuant to California Code of Civil
11 Procedure § 1021.5.

12
13 **CLASS ACTION ALLEGATIONS**

14 114. Shima only brings this fifth cause of action as a class action for
15 violations of California Business & Professions Code § 17200 on her behalf and as
16 a class action on behalf of all others similarly situated pursuant to California
17 Code of Civil Procedure § 382. The issues in this case are of common interest to
18 thousands of Blue Cross insureds who are subjected to Blue Cross' unfair,
19 unlawful, and fraudulent scheme and it would be impracticable to bring them all
20 before the Court.

21 115. Shima is a member of the class, her claims are typical of the class
22 members' claims, and she will fairly and adequately represent the interests of the
23 class.

24
25 **A. An ascertainable class exists**

26 116. There are numerous Blue Cross insureds suffering from stages F0,
27 F1, or F2 Hepatitis C who have been subjected to unlawful, unfair, and
28

1 fraudulent business practices of denying the Harvoni cure because they are not
2 yet stage F3 or F4.

3 117. Subject to refinement based on information learned during
4 discovery; Shima defines the proposed class as follows:

5 The class includes all California residents who were, or who are, Blue
6 Cross insureds in California; and
7 (1) who have Hepatitis C and stage F0, F1 or F2 fibrosis and; (2) have a
8 prescription from their treating physician for Harvoni and; (3) have been
9 denied Harvoni by Blue Cross because they are not stage F3 or F4 (the
10 Class). Excluded from the Class are the defendants, officers, and directors
11 of the defendants, members of the immediate family of the defendants,
12 any entity in which any defendant has a controlling interest, and legal
13 representatives, heirs, successors or assigns of any such excluded party.
14

15 118. Although the precise number of Class members is unknown to
16 Shima at this time and can only be determined by appropriate discovery, Shima
17 alleges that the class of persons affected by the actions and Blue Cross' conduct is
18 so numerous, consisting of thousands of people, that joinder of all members is
19 impracticable.
20

21 **B. Commonality of interest**

22 119. Common questions of law and fact exist as to all Class members
23 and predominate over any questions affecting solely individual members of the
24 Class. The common questions of law and fact include, but are not limited to, the
25 following:

- 26 a. Did Blue Cross engage in a pattern and practice of denying
27 Harvoni treatment for Hepatitis C patients suffering from stages
28 F0, F1, or F2?

- 1 b. Did Blue Cross' pattern and practice of denying Harvoni
2 treatment for Hepatitis C patients suffering from stages F0, F1,
3 or F2 constitute an unlawful unfair, and fraudulent business
4 practice pursuant to Business and Professions Code § 17200?
5 c. Did Blue Cross engage in a pattern and practice of relying on
6 materials outside of and contrary to the EOC and never
7 disclosed to the insureds to deny coverage?
8 d. Are the Class members entitled to injunctive relief?
9

10 **C. Shima's claims are typical of the Class**

11 120. Shima's claims and defenses are typical of the claims and defenses
12 of the Class.

13 121. Blue Cross's handling of Shima's claims is not unique to her.
14 Instead, it is typical of the Blue Cross's handling of all Class members' requests
15 and claims for Harvoni.

16 122. The Class members have been injured by the same course of
17 conduct that has injured Shima.
18

19 **D. Class treatment is superior**

20 123. The prosecution of this cause of action as a class action is the
21 superior means of resolving this litigation, both for the parties and the Court.

22 124. The numerous Class members have suffered injury as a result of
23 Blue Cross's conduct; however, the individual claims of numerous Class
24 members are not of sufficient size to warrant individual action. Thus, the denial
25 of class relief would result in unjust enrichment to Blue Cross for its
26 wrongdoings.

27 125. It would be impracticable to bring all members of the Class before
28 the court.

1 126. The prosecution of separate actions by individual members of the
2 Class would create a risk of inconsistency and varying adjudications,
3 establishing incompatible standards of conduct for Blue Cross.

4 127. Blue Cross has acted, and refused to act, on grounds generally
5 applicable to the Class, thereby making final injunctive relief with respect to the
6 Class as a whole appropriate. There are questions of law and fact common to the
7 members of the Class which predominate over questions affecting only
8 individual Class members.

9 128. A class action is superior to all other available methods for the fair
10 and efficient adjudication of this controversy. Prosecution of this cause of action
11 as a class action will provide redress for claims too small to support the expense
12 of complex litigation, and reduce the possibility of repetitious litigation.

13 129. Shima anticipates no unusual case management problems with the
14 pursuit of this cause of action as a class action.

15
16 **E. Adequate representation**

17 130. Shima will fairly and adequately represent and protect the interests
18 of the Class. Shima's interests are consistent with, and not antagonistic to, those
19 of the other Class members.

20 131. Shima has retained counsel with extensive experience and
21 background in insurance bad faith and related class actions in the area of
22 insurance.

23 132. Shima is entitled to an award of attorneys' fees and costs pursuant
24 to California Code of Civil Procedure §1021.5 in prosecuting this case because:

- 25 a. A successful outcome in this case will result in enforcement of
26 important rights affecting the public interest by maintaining the
27 integrity of institutions that provide health care in this State;

28

- 1 b. This action will result in a significant benefit being conferred on
2 a large class of persons by enabling Blue Cross insureds to be
3 made whole in accordance with California law and by allowing
4 Blue Cross insureds to receive safe, curative medical treatment
5 for Harvoni.
6 c. The necessity and financial burden of private enforcement is
7 such that an award of attorneys' fees and costs is appropriate;
8 d. Unless the attorneys' fees and costs are awarded against Blue
9 Cross, the Class will not fully recover for the injuries caused to
10 them; and
11 e. The interests of justice necessitate that such attorneys' fees and
12 costs not be paid out of the Class' recovery.
13

14 **PRAYER FOR RELIEF**

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

17 **AS TO THE FIRST CAUSE OF ACTION AGAINST DEFENDANTS BLUE**
18 **CROSS OF CALIFORNIA, dba ANTHEM BLUE CROSS; ANTHEM HOLDING**
19 **CORP., FORMERLY KNOWN AS WELLPOINT HEALTH NETWORKS, INC.;**
20 **ANTHEM UM SERVICES, INC.; ANTHEM BLUE CROSS LIFE AND HEALTH**
21 **INSURANCE COMPANY, FORMERLY KNOWN AS BC LIFE & HEALTH**
22 **INSURANCE COMPANY; AND DOES 1 THROUGH 100, INCLUSIVE, FOR**
23 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING:**

- 24 1. Damages for failure to provide benefits under the Plan, that plaintiff
25 would have been entitled to receive had the contract been honored by Blue Cross, plus
26 interest, in a sum to be determined at the time of trial;
27 2. For prejudgment interest on all damages awarded to plaintiff in
28 accordance with California Civil Code section 3287;

1 3. For attorneys' fees, witness fees and costs of litigation incurred by plaintiff
2 to obtain the Plan benefits, in an amount to be determined at trial;

3 4. For economic and consequential damages arising out of the defendants'
4 unreasonable failure to provide benefits under the Plan;

5 5. For general damages for mental and emotional distress in a sum to be
6 determined at the time of trial;

7 6. For punitive and exemplary damages in an amount appropriate to punish
8 or set an example of defendants;

9 7. For costs of suit herein; and

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

11
12 **AS TO THE SECOND CAUSE OF ACTION AGAINST DEFENDANTS BLUE**
13 **CROSS OF CALIFORNIA, dba ANTHEM BLUE CROSS; ANTHEM HOLDING**
14 **CORP., FORMERLY KNOWN AS WELLPOINT HEALTH NETWORKS, INC.;**
15 **ANTHEM UM SERVICES, INC.; ANTHEM BLUE CROSS LIFE AND HEALTH**
16 **INSURANCE COMPANY, FORMERLY KNOWN AS BC LIFE & HEALTH**
17 **INSURANCE COMPANY; AND DOES 1 THROUGH 100, INCLUSIVE, FOR**
18 **BREACH OF CONTRACT:**

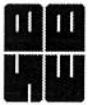
19 9. Damages under the Plan, plus interest, and other economic and
20 consequential damages, in an amount to be determined according to proof at the time of
21 trial;

22 10. For prejudgment interest on all damages awarded to plaintiff in
23 accordance with California Civil Code section 3287;

24 11. For costs of suit herein; and

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

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1 AS TO THE THIRD CAUSE OF ACTION AGAINST DEFENDANTS BLUE
2 CROSS OF CALIFORNIA, dba ANTHEM BLUE CROSS; ANTHEM HOLDING
3 CORP., FORMERLY KNOWN AS WELLPOINT HEALTH NETWORKS, INC.;
4 ANTHEM UM SERVICES, INC.; ANTHEM BLUE CROSS LIFE AND HEALTH
5 INSURANCE COMPANY, FORMERLY KNOWN AS BC LIFE & HEALTH
6 INSURANCE COMPANY; AND DOES 1 THROUGH 100, INCLUSIVE, FOR
7 NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS:

8 13. For general damages for mental and emotional distress in a sum to be
9 determined at the time of trial;

10 14. For non-economic damages for pain and suffering; and

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

12
13 AS TO THE FOURTH CAUSE OF ACTION AGAINST DEFENDANTS BLUE
14 CROSS OF CALIFORNIA, dba ANTHEM BLUE CROSS; ANTHEM HOLDING
15 CORP., FORMERLY KNOWN AS WELLPOINT HEALTH NETWORKS, INC.;
16 ANTHEM UM SERVICES, INC.; ANTHEM BLUE CROSS LIFE AND HEALTH
17 INSURANCE COMPANY, FORMERLY KNOWN AS BC LIFE & HEALTH
18 INSURANCE COMPANY; AND DOES 1 THROUGH 100, INCLUSIVE, FOR
19 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS:

20 16. For general damages for mental and emotional distress in a sum to be
21 determined at the time of trial;

22 17. Punitive and exemplary damages in an amount appropriate to punish or
23 set an example of defendants;

24 18. For non-economic damages for pain and suffering; and

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

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1 AS TO THE FIFTH CAUSE OF ACTION AGAINST DEFENDANTS BLUE
2 CROSS OF CALIFORNIA, dba ANTHEM BLUE CROSS; ANTHEM HOLDING
3 CORP., FORMERLY KNOWN AS WELLPOINT HEALTH NETWORKS, INC.;
4 ANTHEM UM SERVICES, INC.; ANTHEM BLUE CROSS LIFE AND HEALTH
5 INSURANCE COMPANY, FORMERLY KNOWN AS BC LIFE & HEALTH
6 INSURANCE COMPANY; AND DOES 1 THROUGH 100, INCLUSIVE, FOR
7 INJUNCTIVE AND RESTITUTIONARY RELIEF UNDER CALIFORNIA BUSINESS
8 AND PROFESSIONS CODE §§ 17200, *ET. SEQ.*

9 20. For a permanent injunction against defendants restraining and enjoining
10 them from engaging in the unfair, unlawful or fraudulent business practices alleged
11 herein;

12 21. For an order requiring defendants to properly re-adjust all claims they
13 have denied for Harvoni patients suffering from stages F0, F1, or F2, to restore to these
14 policyholders the benefits owed under the Plan;

15 22. For an order requiring Blue Cross to notify class members that Blue Cross
16 will be re-adjusting their claims as set forth above;

17 23. For the attorneys fees incurred to obtain the equitable relief requested,
18 including the re-adjusted claims;

19 24. For costs of suit incurred herein; and

20 25. For such other and further relief as the Court may deem just and proper.

21 Dated: May 15, 2015

SHERNOFF BIDART
ECHEVERRIA BENTLEY LLP


22
23
24 By: 
25 MICHAEL J. BIDART
26 RICARDO ECHEVERRIA
27 DANICA DOUGHERTY
28 CLARE H. LUCICH
Attorneys for Plaintiff

JURY DEMAND

Plaintiff hereby demands a jury trial.

Dated: May 15, 2015

SHERNOFF BIDART
ECHEVERRIA BENTLEY LLP

By: 
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DANICA DOUGHERTY
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LAWYERS FOR INSURANCE POLICYHOLDERS



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