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10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF RIVERSIDE

12 DAWN FOILES, an individual,

13 Plaintiff,

14 vs.

15 WELLPOINT HEALTH NETWORKS, INC.;  
16 BLUE CROSS OF CALIFORNIA; BC LIFE &  
17 HEALTH INSURANCE COMPANY; and  
18 DOES 1-50 inclusive,

19 Defendants.

Case No.:

**COMPLAINT FOR**

1. Breach of Contract
2. Breach of Duty of Good Faith and Fair Dealing
3. Declaratory Relief
4. Violation of Business & Professions Code Section 17200 et seq.

**DEMAND FOR JURY TRIAL**

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23 **I. INTRODUCTION**

24 1. This action arises from the defendants' illegal and unfair scheme of rescinding  
25 individual health insurance policies in response to claims made by insureds. The center of the  
26 scheme is a special unit created by the defendants - the Retroaction Review Department. The  
27 Retroaction Review Department exists for one purpose - to find a supposed material  
28

1 misstatement or omission in the insured’s application for coverage that will allow the defendants  
2 a pretext to rescind the policy and avoid their obligation to pay claims.

3 2. As a result of its wholesale practice of improper rescissions through Retroaction  
4 Review, the defendants have reaped substantial profits by failing to pay benefits. Insureds have  
5 suffered substantial, sometimes crushing, financial burdens because their medical providers seek  
6 to collect payment directly from them. The defendants’ practice is particularly reprehensible  
7 because it deprives insureds of their health coverage at precisely the moment they need it and  
8 subjects them to emotional and financial distress at precisely the time when they are most  
9 vulnerable.

10 3. Plaintiff is one of the victims of the foregoing scheme. Plaintiff underwent back  
11 surgery after the defendants authorized her procedure. The defendants sent plaintiff’s claims to  
12 the Retroaction Review Department. The defendants purported to find a material omission in  
13 plaintiff’s application, purported to rescind the policy and refused to pay plaintiff’s medical  
14 providers. As a result, plaintiff’s providers sought, and continue to seek, payment from plaintiff.

15 4. The purported rescission of plaintiff’s policy is void and the Retro Action Review  
16 conducted by the defendants violates California law and constitutes an unfair business practice:

17 a. The defendants were prohibited from using plaintiff’s application as the basis for  
18 rescission because a copy of the application was not attached to the policy when the policy was  
19 issued to plaintiff (Insurance Code [“Ins. C.”] § 10381.5);

20 b. The defendants were obligated to pay plaintiff’s medical providers who rendered  
21 services and treatment to plaintiff in good faith after it was authorized by the defendants (Ins. C.  
22 § 796.04);

23 c. The defendants were prohibited from engaging in postclaims underwriting (Ins. C.  
24 § 10384).

25 d. The Health Care Questionnaire contained in defendants’ form application is  
26 designed to trap innocent persons into making misstatements and omissions in their answers in  
27 order to justify rescissions. The Health Care Questionnaire is unfair in that it is confusing,  
28 overbroad, ambiguous and in effect unintelligible to persons of ordinary intelligence. Further,

1 the Health Care Questionnaire is unfair in that it provides only for unqualified “yes” or “no”  
2 answers, and fails to provide for responses in circumstances where a person might not recall past  
3 events or fully understand the import of the question and the consequences of the answer.

4 5. As more fully alleged below, plaintiff is informed and believes and thereon  
5 alleges that the defendants have a custom and practice of rescinding policies in violation of the  
6 foregoing statutes and engaging in the foregoing unfair practices, and that such illegal and unfair  
7 conduct is ongoing. In this action plaintiff seeks damages for breach of contract and bad faith, a  
8 judicial declaration as to the defendants’ obligation to pay claims under the agreements in  
9 question, and an injunction prohibiting the defendants from continuing their illegal and unfair  
10 conduct.

11 **II. THE PARTIES**

12 6. Plaintiff is a resident of the city of Riverside, County of Riverside, State of  
13 California.

14 7. Defendant Wellpoint Health Networks ("Wellpoint") is a corporation duly  
15 organized and existing under the laws of the State of Delaware, and authorized to transact and  
16 transacting the business of insurance in the State of California.

17 8. Defendant Blue Cross of California ("Blue Cross") is a corporation duly  
18 organized and existing under the laws of the State of California and authorized to transact and  
19 transacting the business of insurance in this state,

20 9. Defendant Blue Cross Life & Health Insurance Company (“BC Life”) is  
21 organized and existing under the laws of the State of California, authorized to transact and  
22 transacting the business of insurance in this state. BC Life is an affiliate of Blue Cross. Blue  
23 Cross administers health policies of insurance issued by BC Life, including the policy at issue in  
24 this action.

25 10. Plaintiff is informed and believes and thereon alleges that Wellpoint is the  
26 corporate parent of Blue Cross.

27 11. Plaintiff is informed and believes and thereon alleges that Wellpoint operates,  
28 manages, maintains, controls and ratifies the activities of Blue Cross and BC Life. Therefore,

1 the activities, acts and omissions of Blue Cross and BC Life are in fact the activities, acts and  
2 omissions of Wellpoint. (Wellpoint, Blue Cross and BC Life are hereinafter referred to  
3 collectively as “Blue Cross.”)

4 12. The true names or capacities, whether individual, corporate, associate, or  
5 otherwise, of defendants DOES 1 through 50, are unknown to plaintiff, who therefore designates  
6 those defendants by these fictitious names. Each of the defendants sued herein as a DOE is  
7 legally responsible in some manner for the events and happenings referred to and proximately  
8 caused the injuries suffered by plaintiff. Plaintiff will amend this complaint to allege their true  
9 names and capacities when the same becomes known to plaintiff.

10 13. Plaintiff is informed and believes and thereon alleges that at all relevant times  
11 each of the defendants was the agent and employee of each of the remaining defendants, and in  
12 doing the things hereinafter alleged was acting within the course and scope of such agency and  
13 employment.

14 **III. JURISDICTION**

15 14. The damages sustained by plaintiff exceed the jurisdictional minimum of this  
16 court.

17 **IV. FACTUAL BACKGROUND**

18 15. Plaintiff applied for individual health care coverage with Blue Cross on  
19 November 24, 2003. In the Health History Questionnaire contained in the Blue Cross Individual  
20 Enrollment Application (“Application”), plaintiff disclosed that she had surgery to repair a  
21 herniated disc in 1997.

22 16. On December 2, 2003, Blue Cross approved plaintiff for coverage under the “BC  
23 Life Individual RightPlan PPO 40 (P958).” (ID No. 166A68220.) Thereafter, Blue Cross  
24 delivered to plaintiff the “Service Agreement and Combined Evidence of Coverage and  
25 Disclosure Form” policy (the “Policy”). (A true and correct copy of the Policy is attached as  
26 Exhibit A.)

27 17. A copy of plaintiff’s Application was not attached to the Policy when it was  
28 issued to plaintiff.

1           18.     In or about April 2004, plaintiff hurt her back. Plaintiff went to the Haider Spine  
2 Center (“Haider”) where she was diagnosed with a collapsed disc.

3           19.     Blue Cross authorized Haider to perform surgery on plaintiff. After receiving  
4 Blue Cross’s authorization, the surgery was performed on May 11, 2004.

5           20.     After plaintiff’s surgery, Haider and other medical providers submitted claims to  
6 Blue Cross. Thereafter, Blue Cross notified plaintiff it was reviewing the claims and obtaining  
7 information about plaintiff’s medical history.

8           21.     In a letter dated April 7, 2005, Blue Cross purported to rescind plaintiff’s Policy  
9 on the ground that plaintiff failed to disclose on the Application her chronic back problem and  
10 history of surgeries. Blue Cross contended it would not have insured plaintiff if it had known her  
11 history of back problems. Blue Cross contended it was deprived of material information despite  
12 the fact that such information was readily available to Blue Cross because plaintiff indisputably  
13 disclosed a prior back surgery on her Application. Blue Cross chose not to underwrite plaintiff’s  
14 Application before issuing coverage for plaintiff.

15           22.     Plaintiff is informed and believes and thereon alleges that the purported rescission  
16 of her Policy was a result of a postclaims underwriting investigation conducted by the  
17 Retroaction Review Department. Plaintiff is informed and believes and thereon alleges that Blue  
18 Cross’s “investigation” was nothing more than a fishing expedition to justify a rescission of  
19 plaintiff’s Policy. Further, plaintiff did not fully understand the meaning of questions on Blue  
20 Cross’s exceedingly confusing, overbroad, ambiguous and unintelligible Health History  
21 Questionnaire or appreciate the consequences of her answers to such questions.

22           23.     As a result of its purported rescission of plaintiff’s Policy, Blue Cross refused to  
23 pay claims submitted by Haider and other medical providers who rendered services and  
24 treatment to plaintiff in good faith pursuant to Blue Cross’s authorization of such treatment.

25           24.     Blue Cross’s purported rescission violated Ins. C. section 10381.5, rendering the  
26 rescission void. In pertinent part, section 10381.5 provides “[t]he insured shall not be bound by  
27 any statement made in an application for a policy unless a copy of such application is attached to  
28 or endorsed on the policy when issued as a part thereof.” Blue Cross failed to attach a copy of

1 plaintiff's Application to the Policy when it was issued to plaintiff, thereby precluding Blue  
2 Cross from using the Application as the basis to rescind the Policy.

3 25. Blue Cross's Retroaction Review of plaintiff's file further violated Ins. C. section  
4 10384, which prohibits postclaims underwriting.

5 26. Plaintiff was the express intended beneficiary of Blue Cross's authorization of  
6 treatments performed by Haider and other providers. Blue Cross's refusal to pay Haider and  
7 other providers violated Ins. C. section 796.04, which prohibits a health insurer from rescinding  
8 or modifying its authorization of services or treatment after the provider renders such service or  
9 treatment in good faith pursuant to the authorization. As a result of Blue Cross's refusal to pay,  
10 Haider and other providers have billed plaintiff directly for the services.

11 **FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT**

12 **(Against all Defendants)**

13 27. Plaintiff refers to paragraphs 1 through 26, inclusive, and incorporates those  
14 paragraphs as though set forth in full in this cause of action.

15 28. Plaintiff paid all premiums due and performed all of her obligations under the  
16 Policy.

17 29. Blue Cross's purported rescission of the Policy constitutes a breach of contract in  
18 that Blue Cross failed to pay benefits owed under the Policy.

19 30. As a proximate result of Blue Cross's breach of contract, plaintiff has suffered  
20 general and consequential damages under the Policy in an amount to be determined according to  
21 proof at the time of trial, plus interest.

22 **SECOND CAUSE OF ACTION FOR BREACH OF THE DUTY**

23 **OF GOOD FAITH AND FAIR DEALING**

24 **(Against all Defendants)**

25 31. Plaintiff refers to paragraphs 1 through 30, inclusive, and incorporates those  
26 paragraphs as though set forth in full in this cause of action.

27 32. Blue Cross has breached the duty of good faith and fair dealing owed to plaintiff  
28 in the following respects:

- 1 a. Unreasonably and in bad faith refusing to pay benefits owed under the Policy;
- 2 b. Unreasonably and in bad faith using plaintiff’s Application as the basis to rescind
- 3 plaintiff’s policy in violation of Ins. C. section 10381.5;
- 4 c. Unreasonably and in bad faith conducting postclaims underwriting in violation of
- 5 Ins. C. section 10384;
- 6 d. Unreasonably and in faith refusing to pay benefits to plaintiff’s medical providers
- 7 for services and treatments rendered in violation of Ins. C. section 796.04; and
- 8 e. Proximately causing plaintiff’s medical providers to bill plaintiff directly for
- 9 services and treatment that Blue Cross was obligated to pay for as result of its authorization of
- 10 such services treatment.

11 33. Plaintiff is informed and believes and thereon alleges that Blue Cross has  
12 breached its duty of good faith and fair dealing owed to plaintiff by other acts or omissions of  
13 which plaintiff is presently unaware and which will be shown at the time of trial.

14 34. As a proximate result of the aforementioned unreasonable and bad faith conduct  
15 of Blue Cross plaintiff has suffered, and will continue to suffer in the future, physical injury, pain  
16 and suffering, mental and emotional distress and medical expenses in an amount to be proven at  
17 trial, plus interest.

18 35. As a further and proximate result of the unreasonable and bad faith conduct of  
19 Blue Cross plaintiff was compelled to retain legal counsel and to institute litigation to obtain the  
20 benefits due under the Policy. Therefore, Blue Cross is liable for those attorneys’ fees  
21 reasonably incurred in order to obtain her benefits under the Policy.

22 36. Blue Cross’s conduct as described herein was despicable and was committed  
23 maliciously, fraudulently and oppressively with the wrongful intention of injuring plaintiff and  
24 with a willful and conscious disregard of the rights of plaintiff. Blue Cross subjected plaintiff to  
25 cruel and unjust hardship, and via intentional misrepresentation, deceit, or concealment of  
26 material facts, Blue Cross intended to deprive plaintiff of property or legal rights all to the  
27 detriment of plaintiff and to the financial benefit of Blue Cross. Accordingly, plaintiff is entitled  
28 to recover exemplary and punitive damages under Civil Code section 3294, in an amount

1 according to proof, in order to punish and to make an example of Blue Cross, and to deter such  
2 conduct in the future.

3 37. Blue Cross’s conduct described herein was undertaken by Blue Cross’s officers,  
4 directors and managing agents, who were responsible for corporate policies, medical  
5 underwriting, claims supervision and operational decisions. The previously described conduct of  
6 said officers, directors and managing agents was therefore undertaken on behalf of the corporate  
7 defendant. Said corporate defendant further had advance knowledge of the actions and conduct  
8 of other employees, including but not limited to, underwriters and claims adjusters, whose  
9 actions and conduct were ratified, authorized, and approved by the corporate defendant.

10 38. Blue Cross’s conduct is particularly reprehensible because it was part of a  
11 repeated corporate practice and not an isolated occurrence. Plaintiff is informed and believes  
12 and thereon alleges that Blue Cross has engaged in similar wrongful conduct as to individuals  
13 other than plaintiff and that Blue Cross has substantially increased its profits as a result of  
14 causing similar harm to others.

15 **THIRD CAUSE OF ACTION FOR DECLARATORY RELIEF**

16 **(Against all Defendants)**

17 39. Plaintiff refers to paragraphs 1 through 38, inclusive, and incorporates those  
18 paragraphs as though set forth in full in this cause of action.

19 40. Plaintiff is a party to the insurance contract with Blue Cross. Plaintiff also is the  
20 third party beneficiary of Blue Cross’s authorization for providers to render services and  
21 treatment to plaintiff. Plaintiff obtained services and treatment with the justified expectation that  
22 her medical bills would be covered by Blue Cross, under the terms of her Policy and pursuant to  
23 Blue Cross’s authorization to providers. Plaintiff’s providers treated plaintiff in good faith after  
24 Blue Cross authorized such treatments. The law prohibited Blue Cross from renegeing on its  
25 authorization and refusing to pay the providers.

26 41. Under Code of Civil Procedure section 1060, plaintiff has an interest in her Policy  
27 and in Blue Cross’s authorization to providers to render treatment on her behalf. A present and  
28 actual controversy between plaintiff and Blue Cross exists in that Blue Cross’s refusal to pay

1 providers has caused providers to bill plaintiff directly. As a result, plaintiff has been threatened  
2 with collection, is subject to possible lawsuits, and has been forced to grant a lien to Haider.  
3 Such actual and imminent events have caused, and will continue to cause, great harm to  
4 plaintiff's credit, economic well-being and emotional well-being.

5 42. Plaintiff requests a declaration from this Court that Blue Cross has an obligation  
6 to pay all of the claims submitted by providers who rendered services and treatment to plaintiff  
7 in good faith after Blue Cross authorized such treatment. Plaintiff further requests a declaration  
8 that she is not liable to providers for any sums that are the responsibility of Blue Cross.

9 **FOURTH CAUSE OF ACTION FOR VIOLATION OF BUSINESS & PROFESSIONS**

10 **CODE SECTION 17200 et seq.**

11 **(Against all Defendants)**

12 43. Plaintiff refers to paragraphs 1 through 42, inclusive, and incorporates those  
13 paragraphs as though set forth in full in this cause of action.

14 44. Blue Cross's conduct as described herein constitutes unfair competition under  
15 Business & Professions Code section 17200. As more fully alleged above, that conduct includes  
16 the following unlawful, fraudulent or unfair business acts or practices:

- 17 a. Utilizing a Health Care Questionnaire that is unfair as alleged above;
- 18 b. Purporting to rescind policies based on statements in the insurance application  
19 where the application was not attached to the policy when it was issued in violation of Ins. C.  
20 section 10381.5;
- 21 c. Engaging in postclaims underwriting in violation of Ins. C. section 10384;
- 22 d. Rescinding or modifying authorizations for services and treatments in violation of  
23 Ins. C. section 796.04;
- 24 e. Inducing plaintiff to obtain medical services and treatment, and inducing  
25 providers to perform services and give treatment, based on authorizations that were rescinded in  
26 violation of Ins. C. section 796.04;
- 27 f. Causing plaintiff to be subjected to billing and collection efforts, and possible  
28 lawsuits, by providers who were not paid by Blue Cross.

1           45. Plaintiff “has suffered injury in fact and has lost money or property as a result of  
2 [Blue Cross’s] unfair competition.” (Business & Professions Code [“B.&P.”] § 17203.) Plaintiff  
3 can “compl[y] with Section 382 of the Code of Civil Procedure.” (B.&P. § 17204.)

4           46. Plaintiff is informed and believes and thereon alleges that the unlawful, fraudulent  
5 or unfair conduct alleged above is continuing in nature and reflects widespread acts or practices  
6 engaged in by Blue Cross.

7           47. Plaintiff requests that this Court issue an injunction prohibiting Blue Cross from:

- 8           a. Utilizing a Health Care Questionnaire that is unfair as alleged above;
- 9           b. Purporting to rescind policies based on statements in the insurance application in  
10 violation of Ins. C. section 10381.5;
- 11           c. Engaging in postclaims underwriting in violation of Ins. C. section 10384; and
- 12           d. Rescinding or modifying authorizations for services or treatments in violation of  
13 Ins. C. section 796.04.

14           48. Plaintiff requests that this Court issue an injunction requiring Blue Cross to offer  
15 reinstatement of coverage that is equivalent to plaintiff’s prior coverage with Blue Cross.

16           49. Plaintiff respectfully requests an award of attorney’s fees under Code of Civil  
17 procedure section 1021.5

18           WHEREFORE, plaintiff prays for judgment as follows:

- 19           1. For general and consequential damages according to proof, plus prejudgment  
20 interest, for breach of contract;
- 21           2. For general and consequential damages, including damages for physical injury,  
22 pain and suffering, mental and emotional distress and medical expenses, plus prejudgment  
23 interest, for breach of the implied covenant of good faith and fair dealing;
- 24           3. For punitive and exemplary damages;
- 25           4. For attorneys’ fees incurred to recover benefits under the policy;
- 26           5. For a declaration of the rights and obligations of the parties under the written  
27 agreement in question;
- 28           6. For injunctive relief under Business & Professions Code section 17200;

- 1           7.     For attorneys' fees under Code of Civil Procedure section 1021.5;
- 2           8.     For costs of suit incurred herein; and
- 3           9.     For such other and further relief as the Court deems just and proper.

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DATED: March 27, 2006

SHERNOFF BIDART & DARRAS LLP

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WILLIAM M. SHERNOFF  
EVANGELINE FISHER GARRIS  
JOEL A. COHEN  
Attorney for Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all causes of action that are triable to a jury.

DATED: March 27, 2006

SHERNOFF BIDART & DARRAS LLP

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WILLIAM M. SHERNOFF  
EVANGELINE FISHER GARRIS  
JOEL A. COHEN  
Attorney for Plaintiff

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 600 South Indian Hill Boulevard, Claremont, California 91711.

On **January 18, 2006**, I served the foregoing document described as:

**PUT DOCUMENT NAME HERE**

on all interested parties in this action by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as follows:

**See Attached List**

**BY MAIL**

I caused such envelope to be deposited in the mail at Claremont, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date deposit for mailing in affidavit.

**BY PERSONAL SERVICE**

I caused to be delivered by hand to the above-listed addressees or to the addressees on the list attached hereto. A proof of service executed by the delivery person will be mailed under separate cover.

**BY OVERNIGHT MAIL/COURIER**

To expedite the delivery of the above-named document, said document was sent via overnight courier for next day delivery to the above-listed party.

**BY FACSIMILE ("FAX")**

In addition to the manner of proof of service indicated above, a copy was sent by FAX to the above-listed party.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of California that the above is true and correct.

Executed on **January 18, 2006**, at Claremont, California.

\_\_\_\_\_  
Secretary Name