

FILED

2009 JUL 30 PM 4: 10

BY _____
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
NL

1 DARON L. TOOCH (State Bar No. 137269)
KIM WOROBEK (State Bar No. 220035)
2 **HOOPER, LUNDY & BOOKMAN, INC.**
1875 Century Park East, Suite 1600
3 Los Angeles, California 90067-2517
Telephone: (310) 551-8111
4 Facsimile: (310) 551-8181
E-Mail: dtoocho@health-law.com

5 Attorneys for METHODIST HOSPITAL
6 OF SOUTHERN CALIFORNIA

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
9

10 METHODIST HOSPITAL OF
11 SOUTHERN CALIFORNIA, a
California public benefit corporation,

12 Plaintiff,

13 vs.

14 BLUE CROSS OF CALIFORNIA, dba
15 ANTHEM BLUE CROSS, a California
corporation; ANTHEM BLUE CROSS
16 LIFE AND HEALTH INSURANCE
COMPANY, a California corporation;
17 BCBSM, INC. dba BLUE CROSS
AND BLUE SHIELD OF
18 MINNESOTA, a Minnesota
corporation; EMPIRE
19 HEALTHCHOICE ASSURANCE,
INC., doing business as EMPIRE
20 BLUE CROSS BLUE SHIELD, a New
York corporation; HEALTH CARE
21 SERVICE CORPORATION dba BLUE
CROSS AND BLUE SHIELD OF
22 ILLINOIS, dba BLUECROSS BLUE
SHIELD OF TEXAS, dba
23 BLUECROSS BLUESHIELD OF
NEW MEXICO, dba BLUECROSS
24 BLUESHIELD OF OKLAHOMA, an
Illinois corporation; ANTHEM BLUE
25 CROSS BLUE SHIELD
HEALTHCARE PLAN OF GEORGIA,
26 INC., a Georgia corporation; ROCKY
MOUNTAIN HOSPITAL AND
27 MEDICAL SERVICE, INC. dba
ANTHEM BLUE CROSS AND BLUE
28 SHIELD, a Colorado corporation;
COMMUNITY INSURANCE

CASE NO. **CV09-5612**
COMPLAINT FOR:

- 1. VIOLATIONS OF ERISA (29 U.S.C. § 1132(a)(1)(B))
- 2. VIOLATIONS OF ERISA (29 U.S.C. § 1132(a)(3))
- 3. VIOLATIONS OF RICO (18 U.S.C. § 1964(c))
- 4. INTENTIONAL INTERFERENCE WITH CONTRACT

[And Demand for Jury Trial]

HOOPER, LUNDY & BOOKMAN, INC.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

H/s
20

HOOPER, LUNDY & BOOKMAN, INC.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 COMPANY dba ANTHEM BLUE
2 CROSS AND BLUE SHIELD OF
3 OHIO, an Ohio corporation; ANTHEM
4 HEALTH PLANS OF VIRGINIA,
5 INC. dba ANTHEM BLUE CROSS
6 AND BLUE SHIELD OF VIRGINIA, a
7 Virginia corporation; HORIZON
8 HEALTHCARE SERVICES, INC., a
9 New Jersey corporation; LABORERS
10 HEALTH AND WELFARE TRUST
11 FOR SOUTHERN CALIFORNIA;
12 UNITED FOOD AND COMMERCIAL
13 WORKERS UNION AND FOOD
14 EMPLOYERS TRUST FUND;
15 MACY'S INC.; NATIONAL
16 AUTOMATIC SPRINKLER
17 INDUSTRY WELFARE FUND; LOS
18 ANGELES COUNTY FIRE
19 FIGHTERS LOCAL 1014 HEALTH
20 AND WELFARE PLAN; OPERATING
21 ENGINEERS HEALTH AND
22 WELFARE FUND; NORTHROP
23 GRUMMAN HEALTH PLAN;
24 TEAMSTERS AND FOOD
25 EMPLOYERS SECURITY TRUST
26 FUND; UNITED TRANSPORTATION
27 UNION - METROPOLITAN
28 TRANSPORTATION AUTHORITY
TRUST FUND; FOOD EMPLOYERS
& BAKERY & CONFECTIONARY
WORKERS BENEFIT FUND OF
SOUTHERN CALIFORNIA;
SOUTHERN CALIFORNIA IBEW-
NECA HEALTH PLAN AND TRUST
FUND; SOUTHERN CALIFORNIA
UFCW UNIONS AND DRUG AND
GENERAL SALES EMPLOYERS
TRUST FUNDS dba SOUTHERN
CALIFORNIA DRUG BENEFIT
FUND; NATIONAL ELEVATOR
INDUSTRY HEALTH BENEFIT
PLAN; and DOES 1 to 10

Defendants.

Plaintiff Methodist Hospital of Southern California ("Methodist Hospital") complains and alleges against defendants as follows:

///

///

INTRODUCTION

1
2 1. In recent years, the written hospital contracts proposed by Blue Cross
3 of California and Anthem Blue Cross Life and Health Insurance Co. (collectively
4 “Blue Cross”) have included such low rates and have become so onerous and one-
5 sided in favor of Blue Cross, that many hospitals, like Methodist Hospital, have
6 determined that they cannot afford to enter into such written contracts with Blue
7 Cross. As a result, the number of hospitals, which have become “non-contracted” or
8 “out-of-network” with Blue Cross, has increased. Methodist Hospital’s written
9 contract with Blue Cross of California (“BCC”), which allowed other Blue Cross
10 entities and payors to access its rates, terminated effective December 31, 2007.

11 2. After hospitals’ written contracts with BCC have terminated, the
12 hospitals, including Methodist Hospital, have continued to provide emergency and
13 non-emergency services to members of self-insured employee benefit plans and out-
14 of-state Blue Cross entities for whom Blue Cross provides administrative services.
15 In reimbursing hospitals for providing such non-contracted care, Blue Cross, on
16 behalf of these self-insured plans and out-of-state Blue Cross entities, has drastically
17 underpaid hospitals for the medically necessary services they have provided. Blue
18 Cross has used two flawed databases or systems to determine unilaterally what
19 amounts hospitals should charge for their services. For services rendered outside of
20 California, Blue Cross has represented to Methodist Hospital that its uses a database
21 owned by Ingenix to pay claims of non-contracting providers. The Ingenix database
22 has been the subject of hearings by the United States Congress, investigations and
23 actions filed by the New York Attorney General, and class actions filed by other
24 health care providers.

25 3. For services provided in California, Blue Cross has represented to
26 Methodist Hospital that its utilizes an internal database to develop a “fee table” for
27 each geographic region, and then uses this provider fee table to calculate what it
28 believes the hospital’s charges should be.

1 4. Methodist Hospital is informed and believes that Blue Cross' systems
2 for paying out-of-network claims are flawed and do not accurately reflect each
3 California hospital's charges, and/or Blue Cross improperly manipulates the data in
4 the systems to calculate incorrect and inappropriately low amounts in paying
5 hospital claims.

6 5. Methodist Hospital has a stellar reputation and provides high quality of
7 care. Even though it is a leading hospital in Southern California, Methodist
8 Hospital's charges are on average significantly lower than competing hospitals in
9 the same geographic region. Compared to other hospitals in its area, and compared
10 to other hospitals that have comparable reputations and provide a similar quality of
11 services, Methodist Hospital's charges are relatively low.

12 6. Methodist Hospital, like all hospitals, is legally obligated to provide
13 emergency care to all individuals who present at Methodist Hospital's emergency
14 department with potentially life-threatening situations, including members of self-
15 insured plans and out-of-state Blue Cross entities for whom Blue Cross provides
16 administrative services. After a patient's emergency condition has stabilized,
17 Methodist Hospital has called Blue Cross to determine whether defendants wanted
18 to transfer the patient to another in-network hospital, or whether defendants instead
19 authorized Methodist Hospital to provide the post-stabilization services to the
20 member.

21 7. In most cases, Blue Cross, on behalf of the self-insured plans and out-
22 of-state Blue Cross entities, or in agreement with the self-insured plans and out-of-
23 state Blue Cross entities, chose not to transfer their post-stabilization patients from
24 Methodist Hospital to other in-network hospitals, and authorized Methodist Hospital
25 to provide the post-stabilization care. At the time that Blue Cross and/or the other
26 defendants made such decisions, they knew what Methodist Hospital charged for its
27 services. Accordingly, because defendants chose not to transfer their post-
28 stabilization patients to other hospitals, they are required to pay Methodist

1 Hospital's charges. If defendants wanted to pay a lower rate, they could have, and
2 should have, transferred their members to in-network hospitals.

3 8. In its letters authorizing the post-stabilization care, Blue Cross typically
4 included the following language: "You have chosen to receive services from a
5 provider that is a non-participating network provider. Your services could result in
6 significant out-of-pocket expenses."

7 9. This statement is false and misleading in that these patients did not
8 "choose" to receive their emergency care and post-stabilization care at a non-
9 participating provider. The patients were rushed to the nearest available emergency
10 room (in this case, Methodist Hospital) at the time of their life-threatening accident
11 or illness, and Blue Cross and/or the other defendants chose not to transfer these
12 patients to an in-network provider after stabilization occurred.

13 10. Defendants' payments to Methodist Hospital for substantially similar
14 emergency and post-stabilization services have ranged from 0% to 100% of
15 Methodist Hospitals charges. For many claims, defendants have paid the claims at
16 56.8% of Methodist Hospital's charges; yet for other claims for similar hospital
17 service, defendants have paid the claims at wildly different low-ball percentages off
18 Methodist Hospital's charges. The majority of defendants' payments are not
19 reasonable reimbursement for non-contracted claims.

20 11. The failure and refusal of defendants to fairly and appropriately
21 compensate Methodist Hospital for the healthcare services it provided to defendants'
22 members or insureds constitutes a violation of defendants' duties to their members
23 and beneficiaries under the Employee Retirement Income Security Act ("ERISA"),
24 and exposes those members and beneficiaries to liability for their underpaid
25 healthcare services.

26 12. Defendants also have violated the Racketeer Influenced and Corrupt
27 Organizations Act ("RICO") in that they have committed mail fraud and wire fraud
28 in connection with their scheme to underpay Methodist Hospital by, among other

1 things, using mail and interstate wire services to send false and misleading
 2 information concerning their reimbursement of Methodist's claims, as well as the
 3 defendants' basis for determining UCR rates.

4 JURISDICTION AND VENUE

5 13. This Court has subject matter jurisdiction over this action pursuant to
 6 28 U.S.C. § 1331, because the action arises under the laws of the United States;
 7 pursuant to 18 U.S.C. § 1964(c), because the action concerns violations of RICO;
 8 pursuant to 29 U.S.C. § 1332, because the action seeks to enforce rights under
 9 ERISA; and pursuant to 28 U.S.C. § 1367, because the State law claims are so
 10 related to the federal claims that they form part of the same case or controversy.

11 14. This Court is the proper venue for this action pursuant to 28 U.S.C. §
 12 1391(b), and 18 U.S.C. § 1965, because a substantial part of the events or omissions
 13 giving rise to the claims alleged herein occurred in this Judicial District, and because
 14 one or more of the Defendants conducts a substantial amount of business in this
 15 Judicial District.

16 THE PARTIES

17 15. Methodist Hospital is, and at all relevant times was, a California
 18 nonprofit public benefit corporation organized and existing under the laws of
 19 California, with its principal place of business in Arcadia, California. Methodist
 20 Hospital is, and at all relevant times was, a hospital and health care provider
 21 licensed and in good standing under the laws of the California.

22 Blue Cross Defendants

23 16. Methodist Hospital is informed and believes that defendant Blue Cross
 24 of California ("BCC") is a corporation duly organized and existing under the laws of
 25 the State of California and is authorized to transact, and is in fact transacting, the
 26 business of insurance in California. Methodist Hospital also is informed and
 27 believes that BCC does business as Anthem Blue Cross. Methodist Hospital is
 28 informed and believes that BCC's principal place of business is in Thousand Oaks,

1 California.

2 17. Methodist Hospital is informed and believes that defendant Anthem
3 Blue Cross Life and Health Insurance Co. ("BC Life") is a corporation duly
4 organized and existing under the laws of the State of California and is authorized to
5 transact, and is in fact transacting, the business of insurance in California.
6 Methodist Hospital is informed and believes that BC Life's principal place of
7 business is in Thousand Oaks, California.

8 **Blue Card Defendants**

9 18. Methodist is informed and believes that defendant BCBSM, Inc., doing
10 business as Blue Cross and Blue Shield of Minnesota, is a corporation duly
11 organized and existing under the laws of the State of Minnesota, with its principal
12 place of business in St. Paul, Minnesota. Methodist is informed and believes that
13 Blue Cross and Blue Cross of Minnesota transacts business in California, and has
14 members that receive medical services in California.

15 19. Methodist is informed and believes that defendant Empire
16 HealthChoice Assurance, Inc., doing business as Empire Blue Cross Blue Shield, is
17 a corporation duly organized and existing under the laws of the State of New York,
18 with its principal place of business in Middletown, New York. Methodist is
19 informed and believes that Empire HealthChoice Assurance, Inc. transacts business
20 in California, and has members that receive medical services in California.

21 20. Methodist is informed and believes that defendant Methodist is
22 informed and believes that defendant Health Care Service Corporation, doing
23 business as BlueCross BlueShield of Illinois and doing business as BlueCross Blue
24 Shield of Texas, doing business as BlueCross BlueShield of New Mexico, doing
25 business as BlueCross BlueShield of Oklahoma is a corporation duly organized and
26 existing under the laws of the State of Illinois, with its principal place of business in
27 Chicago, Illinois. Methodist is informed and believes that Health Care Service
28 Corporation transacts business in California, and has members that receive medical

HOOPER, LUNDY & BOOKMAN, INC.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

HOOPER, LUNDY & BOOKMAN, INC.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 services in California.

2 21. Methodist is informed and believes that defendant Anthem Blue Cross
3 and Blue Shield of Healthcare Plan of Georgia is a corporation duly organized and
4 existing under the laws of the State of Georgia, with its principal place of business
5 in Atlanta, Georgia. Methodist is informed and believes that Anthem Blue Cross
6 and Blue Shield of Georgia transacts business in California, and has members that
7 receive medical services in California.

8 22. Methodist is informed and believes that defendant Rocky Mountain
9 Hospital and Medical Services, Inc., doing business as Anthem Blue Cross and Blue
10 Shield and HMO Colorado, Inc. ("Rocky Mountain") is a corporation duly
11 organized and existing under the laws of the State of Colorado, with its principal
12 place of business in Denver, Colorado. Methodist is informed and believes that
13 Rocky Mountain transacts business in California, and has members that receive
14 medical services in California.

15 23. Methodist is informed and believes that defendant Community
16 Insurance Company dba Anthem Blue Cross and Blue Shield of Ohio is a
17 corporation duly organized and existing under the laws of the State of Ohio, with its
18 principal place of business in Ohio. Methodist is informed and believes that
19 Anthem Blue Cross and Blue Shield of Ohio transacts business in California, and
20 has members that receive medical services in California.

21 24. Methodist is informed and believes that defendant Anthem Health
22 Plans of Virginia, Inc. doing business as Anthem Blue Cross and Blue Shield of
23 Virginia is a corporation duly organized and existing under the laws of the State of
24 Virginia, with its principal place of business in Virginia. Methodist is informed and
25 believes that Anthem Blue Cross and Blue Shield of Virginia transacts business in
26 California, and has members that receive medical services in California.

27 25. Methodist is informed and believes that defendant Horizon Healthcare
28 Services, Inc., doing business as Horizon Blue Cross and Blue Shield of New Jersey

1 is a corporation duly organized and existing under the laws of the State of New
 2 Jersey, with its principal place of business in Newark, New Jersey. Methodist is
 3 informed and believes that Horizon Blue Cross and Blue Shield of New Jersey
 4 transacts business in California, and has members that receive medical services in
 5 California.

6 26. DOES 1 through 50 are insurance companies with a principal place of
 7 business in a State other than California. Methodist is informed and believes that
 8 DOES 1 through 50 transact business in California, and have members that receive
 9 medical services in California.

10 27. The defendants described in Paragraph 18 through 26 are collectively
 11 referred to herein as the "Blue Card Defendants."

12 **Self-Insured Defendants:**

13 28. Methodist is informed and believes that defendant Laborers Health and
 14 Welfare Trust for Southern California is a corporation duly organized and existing
 15 under the laws of the State of California, with a principal place of business in El
 16 Monte, California. Methodist is informed and believes that Laborers Health and
 17 Welfare Trust for Southern California transacts business in California, and has
 18 members that receive medical services in California.

19 29. Methodist is informed and believes that defendant Southern California
 20 United Food & Commercial Workers Unions and Food Employers Trust Fund
 21 ("UFCW") is an entity of unknown type duly organized and existing under the laws
 22 of California, with a principal place of business in Cypress, California. Methodist is
 23 informed and believes that UFCW transacts business, including operating a self-
 24 insured insurance plan, in California, and has members that receive medical services
 25 in California.

26 30. Methodist is informed and believes that defendant Macy's Inc., doing
 27 business as Macy's Stores of California, is a corporation duly organized and existing
 28 under the laws of the State of Delaware with its principal place of business in

1 Cincinnati, Ohio, and that Macy's Inc. is licensed as a corporation in California.
 2 Methodist is informed and believes that Macy's, Inc. transacts business in
 3 California, and has members that receive medical services in California.

4 31. Methodist is informed and believes that defendant National Automatic
 5 Sprinkler Industry Welfare Fund is an entity of unknown type duly organized and
 6 existing under the laws of the State of California, with its principal place of business
 7 in Landover, Maryland. Methodist is informed and believes that National
 8 Automatic Sprinkler Industry Welfare Fund transacts business in California, and has
 9 members that receive medical services in California.

10 32. Methodist is informed and believes that defendant Los Angeles County
 11 Fire Fighters Local 1014 Health and Welfare Plan is an entity of unknown type duly
 12 organized and existing under the laws of the State of California, with its principal
 13 place of business in Pasadena, California. Methodist is informed and believes that
 14 Los Angeles County Fire Fighters Local 1014 Health and Welfare Plan transacts
 15 business in California, and has members that receive medical services in California.

16 33. Methodist is informed and believes that defendant Operating Engineers
 17 Health and Welfare Fund is an entity of unknown type duly organized and existing
 18 under the laws of the State of California, with its principal place of business in
 19 Pasadena, California. Methodist is informed and believes that the Operating
 20 Engineers Health and Welfare Fund transacts business in California, and has
 21 members that receive medical services in California.

22 34. Methodist is informed and believes that defendant Northrop Grumman
 23 Health Plan is a corporation duly organized and existing under the laws of the State
 24 of California, with its principal place of business in Los Angeles, California.
 25 Methodist is informed and believes that Northrop Grumman Health Plan transacts
 26 business in California, and has members that receive medical services in California.

27 35. Methodist is informed and believes that defendant Teamsters and Food
 28 Employers Security Trust Fund is an entity of unknown type duly organized and

1 existing under the laws of the State of California, with its principal place of business
 2 in Alhambra, California. Methodist is informed and believes that the Teamsters and
 3 Food Employers Security Trust Fund transacts business in California, and has
 4 members that receive medical services in California.

5 36. Methodist is informed and believes that defendant United
 6 Transportation Union – Metropolitan Transportation Authority Trust Fund is an
 7 entity of unknown type duly organized and existing under the laws of the State of
 8 California, with its principal place of business in Irwindale, California. Methodist is
 9 informed and believes that the United Transportation Union – Metropolitan
 10 Transportation Authority Trust Fund transacts business in California, and has
 11 members that receive medical services in California.

12 37. Methodist is informed and believes that defendant Food Employers &
 13 Bakery & Confectionary Workers Benefit Fund of Southern California is an entity
 14 of unknown type duly organized and existing under the laws of the State of
 15 California, with its principal place of business in Covina, California. Methodist is
 16 informed and believes that Food Employers & Bakery & Confectionary Workers
 17 Benefit Fund of Southern California transacts business in California, and has
 18 members that receive medical services in California.

19 38. Methodist is informed and believes that defendant Southern California
 20 IBEW-NECA Health Plan Trust Fund is an entity of unknown type duly organized
 21 and existing under the laws of the State of California, with its principal place of
 22 business in Commerce, California. Methodist is informed and believes that
 23 Southern California IBEW-NECA Health Plan Trust Fund transacts business in
 24 California, and has members that receive medical services in California.

25 39. Methodist is informed and believes that defendant Southern California
 26 UFCW Unions and Drug & General Sales Employers Trust Funds, doing business
 27 as Southern California Drug Benefit Fund (“Southern California Drug Benefit
 28 Fund”), is an entity of unknown type duly organized and existing under the laws of

HOOPER, LUNDY & BOOKMAN, INC.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 the State of California, with its principal place of business in Los Angeles,
2 California. Methodist is informed and believes that Southern California Drug
3 Benefit Fund transacts business in California, and has members that receive medical
4 services in California.

5 40. Methodist is informed and believes that defendant National Elevator
6 Industry Health Benefit Plan is an entity of unknown type duly organized and
7 existing under the laws of the State of Pennsylvania, with its principal place of
8 business in Newtown Square, Pennsylvania. Methodist is informed and believes
9 that National Elevator Industry Health Benefit Plan transacts business in California,
10 and has members that receive medical services in California.

11 41. DOES 51 through 100 are self-insured plans and other entities
12 financially liable for health care services provided to their members or insureds at
13 Methodist.

14 42. The defendants described in Paragraph 28 through 41 are collectively
15 referred to herein as the "Self-Insured Defendants."

16 43. Methodist Hospital does not know the true names or capacities,
17 whether individual, corporate, associate, or otherwise, of defendant DOES 1 through
18 100, and therefore designates those defendants by such fictitious names. Each of the
19 defendants sued herein as a DOE is legally responsible in some manner for the
20 events and happenings referred to and proximately caused the injuries suffered by
21 plaintiff. Methodist Hospital will amend this complaint to allege the true names and
22 capacities of these DOES when the same becomes known to Methodist Hospital.

23 44. Methodist Hospital is informed and believes that BCC and/or BC Life
24 are the agents of each other, and of the Blue Card Defendants, Self-Insured
25 Defendants, and DOES 1 through 100, and have actual or ostensible authority, on
26 each others' behalf, and on behalf of the Blue Card Defendants, the Self-Insured
27 Defendants, and DOES 1 through 100 for: certifying or authorizing Methodist
28 Hospital's provision of services to members; receiving Methodist Hospital's claims;

1 pricing the claims; processing and administering the claims and appeals; approving
2 or denying the claims; directing each other as to whether and/or how to pay the
3 claims; issuing remittance advices and explanations of benefits; and in many
4 instances making payment.

5 45. Methodist Hospital is informed and believes that at all relevant times
6 each of the defendants was the agent of each of the remaining defendants, and in
7 doing the things hereinafter alleged was acting within the course and scope of such
8 agency.

9 FACTUAL BACKGROUND

10 46. Until December 31, 2007, Methodist Hospital had a written provider
11 agreement with BCC pursuant to which Methodist Hospital provided inpatient and
12 outpatient medical services to members of BCC, and Blue Cross paid Methodist
13 Hospital for such services. Other payors, such as BC Life, the Blue Card
14 Defendants, and the Self-Insured Defendants, had the right to access the BCC
15 provider agreement and pay Methodist Hospital the rates set forth in that agreement.

16 47. Effective January 1, 2008, the written contract was terminated.
17 Thereafter, Methodist Hospital continued to provide medically necessary emergency
18 and non-emergency health care services to patients who had their health insurance
19 with Defendants.

20 48. Under the federal Emergency Medical Treatment and Active Labor Act
21 ("EMTALA"), Social Security Act § 1867(a), and California Health and Safety
22 Code § 1317, Methodist Hospital has a statutory duty to provide emergency services
23 and care to all patients who present themselves at its emergency department with
24 potentially life-threatening conditions without regard to the patients' ability to pay
25 or their possession of insurance benefits.

26 49. Methodist Hospital is informed and believes that Defendants' plans or
27 policies with their members or insureds require them to pay for emergency medical
28 care.

1 50. Methodist Hospital provided the medically necessary care required by
2 Defendants' members or insureds.

3 51. After providing the medically necessary emergency care to the patients
4 and stabilizing their medical condition, Methodist Hospital called Blue Cross to
5 inform it that a Blue Cross member or insured had received emergency care. For
6 those patients who needed post-stabilization care, Methodist Hospital asked Blue
7 Cross if it wanted to transfer the patient or whether it authorized the post-
8 stabilization care.

9 52. As alleged above, in almost every case where a patient required post-
10 stabilization care, Defendants decided not to transfer the member to a Blue Cross
11 contracted hospital, but instead authorized Methodist Hospital to provide the post-
12 stabilization care to the member or insured.

13 53. At the time that Defendants chose not to transfer the post-stabilization
14 patients to in-network providers, Defendants knew, or should have known, what
15 Methodist Hospital charged for its services. Methodist Hospital, like all California
16 hospitals, annually provides a list of all of its charges (called a "Charge Description
17 Master" or "CDM") to the California Office of Statewide Health Planning and
18 Development ("OSHPD"), and OSHPD posts all California hospitals' CDMs on its
19 website. In addition, Defendants had received, and were continuously receiving,
20 Methodist Hospital's claims which set forth the rates that Methodist Hospital
21 charged for its various services. Furthermore, Methodist is informed and believes
22 that Blue Cross compiles a proprietary database of hospitals' charges, including the
23 charges of Methodist. In each of these ways, Defendants had actual and/or
24 constructive notice of Methodist's charges. If Defendants did not want to pay the
25 rates that Methodist hospital charged for its services, Defendants could have, and
26 should have, transferred the post-stabilization patients to hospitals that had contracts
27 with Blue Cross. Having chosen not to transfer the patients to in-network hospitals,
28 Defendants are required to pay Methodist Hospital at the rates it charges for its

1 services.

2 54. After providing treatment, as directed by Defendants, Methodist
3 Hospital sent the claim information to Blue Cross for payment.

4 55. Defendants have failed to reimburse Methodist Hospital properly for
5 health care services (both emergency and non-emergency services) provided to their
6 members or insureds.

7 56. As stated above, Defendants in some cases paid Methodist Hospital at
8 100% of its billed charges. Defendants' payment of 100% of Methodist's billed
9 charges is not in dispute. In many other cases, however, Defendants either paid
10 Methodist Hospital's claims at 56.80% of its billed charges, or some other
11 percentage ranging from 0% to 100% of its billed charges.

12 57. In letters to Methodist Hospital and the patients, Defendants represent
13 that they use charge data from hospitals in each geographic region to calculate
14 customary and reasonable charges medical service category provided by hospitals.

15 58. Methodist Hospital is informed and believes that the systems and
16 methodology used by Defendants to calculate customary and reasonable rates is
17 flawed and erroneous, and that they do not accurately or appropriately determine the
18 reasonable charges for each hospital.

19 59. Methodist Hospital has a stellar reputation and provides high quality
20 medical care to its patients. Nevertheless, Methodist Hospital's charges are well
21 below the charges of other hospitals in its geographic area. Compared to other
22 hospitals in its area, and compared to other hospitals that have comparable
23 reputations and provide a similar quality of services, Methodist Hospital's charges
24 are relatively low.

25 60. Given that Methodist Hospital's charges are, for most service
26 categories, lower than the market average in its geographic region, they are, by
27 definition, reasonable compared to the other hospitals in its geographic region,
28 particularly given that Methodist Hospital is considered to be a higher quality

HOOPER, LUNDY & BOOKMAN, INC.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 hospital than many of the other hospitals in its geographic region. If Methodist
 2 Hospital's charges are compared to similarly qualified hospitals in California, its
 3 charges would be substantially lower than the market average.

4 61. Accordingly, Defendants' determination to pay Methodist Hospital's
 5 charges at any amount less than 100% of its full billed charges, including but not
 6 limited to 56.80% or lower, is a false and erroneous calculation of reasonable and
 7 customary rates.

8
 9 **FIRST CLAIM FOR RELIEF**

10 **Enforcement Under 29 U.S.C. § 1132(a)(1)(B)**
 11 **For Failure To Pay ERISA Plan Benefits**

12 62. The allegations of the prior paragraphs of the Complaint are hereby
 13 repeated as if fully set forth herein.

14 63. This claim is alleged by Methodist Hospital for relief in connection
 15 with claims for treatment rendered to patients covered by a health benefits plan
 16 governed by ERISA. This is a claim to recover benefits, enforce rights and clarify
 17 rights to benefits under 29 U.S.C. § 1132(a)(1)(B).

18 64. Methodist Hospital has standing to pursue these claims as an assignee
 19 of its patients' benefits under health benefit plans governed by ERISA (the "ERISA
 20 plans").

21 65. Methodist Hospital was entitled to reimbursement under the ERISA
 22 plans that the defendants insure, sponsor, fund and/or administer. Defendants
 23 breached their plan provisions for benefits by underpaying Methodist Hospital the
 24 out-of-network benefits covered by the ERISA plans. Defendants' breaches
 25 included, among other things, the misuse of the Blue Cross claims payment systems
 26 to both calculate UCR and reduce other benefits paid to Methodist Hospital for its
 27 services.

28 66. For certain Blue Card Defendants and Self-Insured Defendants, Blue

1 Cross has the responsibility to decide benefit appeals and/or have been given
2 authority, responsibility and discretion with regard to benefits decisions. Upon
3 information and belief, Blue Cross misused its claims systems and engaged in other
4 improper methods to both calculate UCR and reduce other benefits paid by the other
5 Defendants to Methodist Hospital for its services.

6 67. Where the Defendants act as a fiduciary or exercise benefits discretion,
7 or determine final benefit appeals, the Defendants are liable for underpaid benefits
8 to Methodist Hospital.

9 68. Methodist Hospital has exhausted all administrative remedies available
10 to it, and/or further administrative efforts would be futile and meaningless.

11 Defendants have routinely failed to process claims submitted by Methodist Hospital
12 in a manner consistent with ERISA regulations. Among other things, as alleged
13 above, Defendants have refused to provide sufficient explanation concerning their
14 benefits determinations, including information concerning the flawed Blue Cross
15 systems; defendants have employed policies designed to unduly inhibit and hamper
16 the appeal of claims submitted by Methodist Hospital, including through their
17 systematic reliance on flawed data; and Defendants have refused Methodist
18 Hospital's efforts to become sufficiently acquainted with the terms of the ERISA
19 plan, as well as Defendants' true method of determining UCR, thereby rendering the
20 administrative appeal a futile and meaningless endeavor.

21 69. By reason of the foregoing, Methodist Hospital is entitled to past due
22 benefits, future benefits, declaratory relief, prejudgment interest, and attorneys' fees.
23 The Court should order Defendants to calculate past and future benefits without
24 resort to Blue Cross' flawed systems, but rather based on Methodist Hospital's
25 billed charges or some other proper method for calculating UCR.

HOOPER, LUNDY & BOOKMAN, INC.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

HOOPER, LUNDY & BOOKMAN, INC.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- failing to disclose with specificity the reasons for the adverse determinations with respect to appeal requests;
- failing to promptly act on appeal submissions;
- failing to provide a review that did not defer to the initial adverse benefit determination, which was based on the flawed Blue Cross systems or some other improper method for determining reimbursement;
- refusing to acknowledge the claimant status of nonparticipating hospital as assignee of the plan participants or beneficiaries.

76. Defendants' failure to comply with the procedural requirements of ERISA, the Secretary of Labor's implementing regulations, the terms of ERISA plans, and/or the federal common law results in the administrative remedies of Methodist Hospital being deemed exhausted. *See* 29 C.F.R. § 2560.503-1(l). Furthermore, the administrative remedies of Methodist Hospital are exhausted for the reasons alleged above, including, but not limited to, the fact that Defendants relied on the invalid Blue Cross systems for determining payment to Methodist as a nonparticipating hospital.

77. By reasons of the foregoing, Methodist Hospital is entitled to a declaration by this Court that Defendants' actions as alleged herein are in violation of their duties and obligations under ERISA, and an injunction requiring Defendants to comply with their duties and obligations under ERISA, including calculating past and future benefits without resort to the flawed Blue Cross systems, but rather based on the Methodist Hospital's billed charges or some other proper method for calculating UCR.

///
///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CLAIM FOR RELIEF
Violations Of 18 U.S.C. § 1962(c)
Based On Predicate Acts Of Mail And Wire Fraud

78. The allegations of the prior paragraphs of the Complaint are hereby repeated as if fully set forth herein.

The Enterprise

79. Defendants carried out their scheme to defraud Methodist Hospital through the conduct of an association-in-fact enterprise within the meaning of 18 U.S.C. § 1961(4), comprised of BCC, BC Life, the Blue Card Defendants, the Self-Insured Defendants, and the DOE defendants (the "Enterprise").

80. The Enterprise has and continues to have an ascertainable structure and function separate and apart from the pattern of racketeering activity in which defendants have engaged. The members of the Enterprise function as a structured and continuous unit, and performed roles consistent with this structure, including legitimate business activities. However, the Defendants used the Enterprise to carry out the fraudulent and unlawful activities alleged herein, including, but not limited to, collecting flawed data from other members of the Enterprise for the Blue Cross systems for calculating out-of-network UCR rates and using the flawed Blue Cross systems to calculate UCR in a manner that facilitated underpaying Methodist Hospital for services it rendered to plan members and insureds.

81. The Enterprise provided the Defendants with a system or vehicle by which they could obtain flawed data for the Blue Cross systems, use the database to manipulate and reduce payments to Methodist Hospital for out-of-network services, and make false representations to Methodist Hospital and the members or insureds concerning the reimbursement rates for the services Methodist Hospital provided. Defendant Blue Cross benefited specifically by enhancing its ability to earn fees through the use of its systems for the other Defendants. All Defendants benefited by reducing the amounts the paid to Methodist Hospital for its services.

HOOPER, LUNDY & BOOKMAN, INC.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 82. The Defendants used the Blue Cross systems in a manner directly at
2 odds with their intended use. Blue Cross knew that the other Defendants were using
3 it to improperly determine UCR, and did nothing to stop it. Indeed, defendant Blue
4 Cross promoted the Blue Cross systems as a cost-saving mechanism, provided
5 extensive support to its customers, including vouching for the flawed data being
6 used to price claims. These actions were taken in furtherance of Blue Cross' effort
7 to understate UCR amounts for its benefit, and for the benefit of the Enterprise as a
8 whole.

9 83. Blue Cross collection of inadequate, incomplete, flawed and/or
10 "scrubbed" data for the Blue Cross systems benefited Blue Cross and the other
11 Defendants, as well as the Enterprise as a whole. Blue Cross knew that the flawed
12 data it had in its systems would be used to create false databases for pricing UCR for
13 out-of-network services received by their members, as well as members and
14 insureds of other Defendants.

15 84. The Defendants are "persons" within the meaning of 18 U.S.C. §
16 1961(3) who conducted, participated in, operated, managed and/or controlled the
17 affairs of the Enterprise through a pattern of racketeering activity, in violation of 18
18 U.S.C. § 1962(c).

19 85. The Defendants participated in the conduct of the Enterprise for the
20 purpose of shifting the costs of medical treatment from the Defendants to the plan
21 members and to providers. The Enterprise's orchestrated use of the invalid Blue
22 Cross systems, which allowed the Defendants to reduce payments based on
23 miscalculated UCR, discouraged the use of out-of-network providers, and created
24 the appearance of legitimacy for the reductions to out-of-network benefits. Despite
25 their mutual knowledge that the Blue Cross data did not correctly determine UCR,
26 the Defendants and other members of the Enterprise defended the Blue Cross data,
27 and relied on defendant Blue Cross to provide support in defense of UCR
28 determinations, including in administrative challenges brought by Methodist

1 Hospital. In turn, the Enterprise as a whole benefited from the systematic reduction
 2 of UCR costs, at the expense of patients and providers. The Enterprise would not
 3 have realized its goals absent the Defendants' participation in the Enterprise.

4 **Predicate Acts of Mail and Wire Fraud**

5 86. Section 1961(1) of RICO provides that "racketeering activity" includes
 6 any act indictable under 18 U.S.C. § 1341 (relating to mail fraud) and 18 U.S.C. §
 7 1343 (relating to wire fraud). 18 U.S.C. § 1961(1)(B). As set forth below, the
 8 Defendants have and continue to engage in conduct violating each of these laws to
 9 effectuate their scheme to underpay Methodist Hospital.

10 87. In addition, in order to make their scheme effective, each of the
 11 Defendants sought to and did aid and abet the other Defendants in violating the
 12 above laws within the meaning of 18 U.S.C. § 2. As a result, their conduct is
 13 indictable under 18 U.S.C. §§ 1341 and 1343 on this additional basis.

14 88. For the purpose of executing and/or attempting to execute the above
 15 described fraudulent scheme to underpay Methodist Hospital for services rendered
 16 to Defendants' members and insureds, by means of false pretenses, representations
 17 or promises in connection with determining UCR, the Defendants, in violation of 18
 18 U.S.C. § 1341, placed in post offices and/or in authorized repositories matter and
 19 things to be sent or delivered by the Postal Service, caused matter and things to be
 20 delivered by commercial interstate carrier, and received matter and things from the
 21 Postal Service or commercial interstate carriers, including, but not limited to,
 22 Explanations of Benefits, Remittance Advices, authorizations, correspondence,
 23 payments, reports, data, statements, and plan materials.

24 89. For the purpose of executing and/or attempting to execute the above
 25 described fraudulent scheme to underpay Methodist Hospital for services rendered
 26 to plan members and insureds, by means of false pretenses, representations or
 27 promises in connection with determining UCR, the Defendants, in violation of 18
 28 U.S.C. § 1343, transmitted and received by interstate wire, matter and things which

1 include, but are not limited to, Explanations of Benefits, Remittance Advices, oral or
 2 electronic representations of out-of-network benefits, pre-authorizations and other
 3 service approvals, correspondence, payment summaries, reports, data, statements,
 4 faxes, and plan materials.

5 90. The fraudulent matter and things sent by Defendants via the Postal
 6 Service, commercial carrier, wire or other interstate electronic media include, but
 7 are not limited to:

- 8 a) material containing false and misleading information concerning the
 9 Defendants' basis for determining UCR rates, even though the Defendants
 10 knew that they had determined UCR by using the flawed Blue Cross
 11 systems;
 12 b) material which concealed or failed to disclose that Defendants would and
 13 did use the invalid techniques and methodology described above to
 14 deprive Methodist Hospital of payment, including the use of systems that
 15 were based on inadequate data and lacked required data fields essential for
 16 evaluating or calculating UCR rates for Methodist Hospital;
 17 c) material containing false and misleading data representations that the Blue
 18 Cross Systems accurately and appropriately calculated UCR rates for
 19 Methodist Hospital's services;
 20 d) material constituting explanations for payments made or denied by
 21 Defendants, but which, in fact, fail to reveal and/or actively conceal the
 22 true reasons that payments had been denied, diminished, delayed, or
 23 otherwise adjusted from the request for payment as submitted by
 24 Methodist Hospital;
 25 e) materials containing false and misleading representations that Defendants
 26 would pay Methodist Hospital for the covered, medically necessary out-of-
 27 network services it provided to the plan members;
 28 f) materials containing false and misleading representations that Defendants'
 members or insureds chose to receive their emergency and non-emergency
 services at an out-of-network hospital; and
 g) false representations that Defendants had authorized care at Methodist
 Hospital on an in-network basis.

91. Other matter and things sent through or received from the Postal
 Service, commercial carrier or interstate wire transmission by Defendants included
 information or communications in furtherance of or necessary to effectuate the
 scheme.

1 therefore constitute a “pattern of racketeering activity” as defined in 18 U.S.C. §
2 1961(5).

3 97. There are too many examples of Defendants’ predicate acts to detail
4 individually in this complaint without being cumulative. However, the following
5 are illustrative examples of predicate acts committed by Defendants in furtherance
6 of their fraudulent scheme.

7 a. Patient A presented at Methodist Hospital’s emergency
8 department in April, 2008. The patient had difficulty breathing, had a severe
9 migraine, and pain in the neck. Methodist Hospital called Blue Cross to inform
10 Blue Cross that a Blue Cross member or insured had presented for treatment at the
11 emergency department and that the patient needed post-stabilization care.
12 Methodist Hospital verified the patient was a Blue Cross PPO member. Blue Cross
13 chose not to transfer the patient, but instead authorized six days of inpatient
14 treatment. The letter authorizing the care states: “You have chosen to receive
15 services from a provider that is a non-participating network provider. Your services
16 could result in significant out-of-pocket expenses.” The total charges for Methodist
17 Hospital’s services were \$55,696.53. Blue Cross paid \$3,480 (6%) on the claim.
18 Methodist Hospital appealed the claim. On June 26, 2008, Blue Cross responded in
19 a letter to Methodist Hospital and Patient A that the claim supposedly was paid
20 correctly. The letter stated:

21 Anthem Blue Cross Life and Health Insurance CO received a provider
22 dispute regarding the above referenced matter.

23 Upon careful review of this dispute, we have determined that the initial
24 decision is being upheld for the following reason(s):

25 The claim was processed correctly in accordance with plan benefits of
26 \$580 per day for non par [non-participating provider]. Based upon our
27 researched [sic], the claim will remain as processed.

28 * * *

Please note that this letter serves to inform you that this decision is final
and all levels of Anthem Blue Cross Life and Health Insurance CO
appeal process have been exhausted.

1 Blue Cross therefore priced this claim on the grounds that the patient chose to
 2 receive treatment at a non-contracted hospital, even though this is not true. The
 3 patient was presumably rushed to the nearest emergency room because she believed
 4 her life or health was in immediate jeopardy, and it was Blue Cross who chose not
 5 to transfer the patient to a participating provider after her emergency condition had
 6 been stabilized.

7 b. Patient B presented at Methodist Hospital's emergency
 8 department in January 2008, with contusions on his head. Patient B presented a
 9 Blue Cross PPO member identification card. Methodist Hospital billed total charges
 10 of \$180.00. On March 28, 2008, Methodist called Blue Cross and was informed that
 11 Blue Cross had authorized the emergency services and approved the claim. The
 12 Remittance Advice from Defendant UFCW, with Blue Cross' address, indicates that
 13 the Allowed Amount was \$102.24 (56.8%) on the claim. Methodist Hospital
 14 appealed the claim. On September 15, 2008, Blue Cross responded in a letter to
 15 Methodist Hospital and Patient B that the claim supposedly was paid correctly. The
 16 letter stated:

17 This is a follow-up to our previous letter dated 05/08/08, regarding
 18 your Provider Dispute for the date(s) of service.

19 We have reviewed the above services and have determined that the
 20 claim was processed correctly according to the services billed and your
 21 contract with Anthem Blue Cross Life and Health Insurance CO. The
 22 claim was processed correctly at \$102.24 based on the negotiated rate
 23 under NCND NONPAR CA INST PRICING effective 01/01/08.

24 * * *

25 We appreciate the time you have taken to express your concerns and
 26 regret any inconvenience or difficulty that you may have encountered.

27 Please note that this letter serves to inform you that this decision is final
 28 and all levels of Anthem Blue Cross Life and Health Insurance CO
 appeal process have been exhausted.

This letter is false and misleading in that it represents that there is a contract
 between Methodist Hospital and Blue Cross, when the contract had been terminated.
 Moreover, the letter indicates that the rates Blue Cross approved and UFCW paid

1 were negotiated, when they were not.

2 c. For example, Patient C presented at Methodist Hospital's
 3 emergency department in January 2008, with a potentially life-threatening
 4 condition. The admitting diagnosis was acute renal failure. Methodist Hospital
 5 called Blue Cross to inform Blue Cross that a Blue Cross member had presented for
 6 treatment at the emergency department and that the patient need post-stabilization
 7 care. Methodist Hospital verified the patient was a Blue Cross PPO member. Blue
 8 Cross chose not to transfer the patient, but instead authorized 12 days of inpatient
 9 care. The letter authorizing the care states: "You have chosen to receive services
 10 from a provider that is a non-participating network provider. Your services could
 11 result in significant out-of-pocket expenses." Blue Cross' eligibility information
 12 reflected that Patient C's inpatient benefits were 80% for non-participating
 13 providers. The total charges for Methodist Hospital's services were \$91,242.04.
 14 Blue Cross paid \$32,142.76 (35%) on the claim. Methodist Hospital appealed the
 15 claim. On June 24, 2008, Blue Cross responded in a letter to Methodist Hospital
 16 and Patient C that the claim was paid correctly. The letter stated:

17 This letter is in reference to your Provider Dispute which we received
 18 on April 2, 2008, in which you assert, that the claim was underpaid.
 19 Expected payment is at 100% of billed charges. You have indicated
 20 that you are a non contracted facility and no discounted/disallowed
 21 amount applies.

22 Anthem Blue Cross Life and Health Insurance CO has reviewed the
 23 claim you are disputing, and based upon the information you provided
 24 concludes that the claim was appropriately paid based upon the
 25 "reasonable and customary value" of the services rendered. When
 26 Anthem Blue Cross Life and Health Insurance CO bases its
 27 compensation on customary and reasonable allowable amounts to non-
 28 contracted providers who provide approved covered services and/or
 emergency services to enrollees, it uses the methodology referenced
 below.

Allowed amounts are determined by Anthem Blue Cross Life and
 Health Insurance CO, utilizing an internal database of claims submitted
 by California providers, both participating and non-participating, for
 services provided within the state of California. As one of the largest
 plans in California, this database encompasses claims submitted by
 approximately 64,000 unique Tax submitted provider claims. This data
 is used to develop a provider fee table for each of Anthem Blue Cross
 Life and Health Insurance CO geographic regions.

1 Anthem Blue Cross Life and Health Insurance CO then uses this
 2 provider fee table to calculate, for each procedural category recognized
 3 in Current Procedural Terminology ("CPT") coding, the 75th percentile
 4 of provider charges. The sum of the 75th percentile charges for each
 5 CPT code in a CPT coding category is divided by the sum of the unit
 6 values to yield the conversion factor for each procedure category and in
 7 each geographic region. For a particular CPT code, Anthem Blue
 8 Cross Life and Health Insurance CO uses a unit value multiplied by a
 9 conversion factor algorithm for the calculation of customary and
 10 reasonable.

11 For services rendered outside of California, Anthem Blue Cross Life
 12 and Health Insurance CO utilizes a nationally recognized and accepted
 13 database program, such as Ingenix, for the creation of conversion
 14 factors.

15 We appreciate the time you have taken to express your concerns and
 16 regret any inconvenience or difficulty that you may have encountered.

17 Please note that this letter serves to inform you that this decision is final
 18 and all levels of Anthem Blue Cross Life and Health Insurance CO
 19 appeal process have been exhausted.

20 98. This letter contains false and misleading information. First, it asserts
 21 that Blue Cross had correctly calculated the reasonable and customary value of
 22 Methodist Hospital's services, when that is not true. Second, the explanation
 23 provided by Blue Cross is vague, confusing, does not make sense, and fails to
 24 apprise Methodist Hospital how the payment on the claim was calculated. For
 25 example, the calculation of the payment is apparently based on CPT codes.
 26 Inpatient hospital claims, such as the claim for Patient A, are not based on CPT
 27 codes. CPT codes are generally used for physician services. Moreover, it is unclear
 28 why Blue Cross uses the 75th percentile of provider charges. It is unclear what Blue
 Cross' geographic regions are, what the "unit values" are, or what the "conversion
 factor algorithm" is. It is unclear how Blue Cross determined it would pay 32% of
 Methodist's charges on the claim for Patient C based on its database. Finally,
 because Methodist Hospital's charges are, for most service categories, much lower
 than the market average in its geographic area, Blue Cross' calculation that 35% of
 Methodist's charges on the claim for Patient C is the "the reasonable and customary
 value" of Methodist's services cannot be accurate.

1 reasonable and customary rates for Methodist Hospital's non-contracted services
2 were higher than what they reported to the patients. The Defendants intentionally
3 misrepresented the reasonable and customary rates for Methodist Hospital's non-
4 contracted services, and thus intentionally and fraudulently instructed the patients to
5 breach their written and implied contracts with Methodist Hospital by paying less
6 than the appropriate co-pay or deductible for Methodist Hospital's services.

7 104. The Defendants knew that the interference was certain or substantially
8 certain to occur as a result of their actions.

9 105. The defendants' conduct has actually disrupted Methodist Hospital's
10 relationship with the patients, including but not limited to inducing their breach of
11 the written and implied contracts.

12 106. The defendants' conduct has in fact and proximately caused damages to
13 Methodist Hospital in amounts to be proved at trial. The damages sought by
14 Methodist Hospital in this Claim are not the ERISA benefits of the patients, but
15 rather the difference between what the patients actually paid Methodist Hospital in
16 co-payments and deductibles, based upon the low UCR rates calculated by
17 Defendants, and the amounts patients would have paid Methodist Hospital in co-
18 payments and deductibles had Defendants accurately and appropriately calculated
19 the UCR rates for Methodist Hospital's services.

20 107. The Defendants' conduct was willful, oppressive and fraudulent.
21 Methodist Hospital therefore is entitled to punitive damages.

22 **WHEREFORE**, Methodist Hospital prays for judgment against defendants
23 as follows:

24 1. For compensatory damages in an amount to be proved at trial, plus all
25 applicable interest allowed at law;

26 2. For restitution in an amount to be proved at trial, plus all applicable
27 interest allowed at law;

28 3. For declaratory relief;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 4. For all attorneys' fees and costs incurred in bringing this action, to the extent recoverable by law;
- 5. For punitive damages; and
- 6. For such other relief as the Court deems just and appropriate.

DATED: July 30, 2009

HOOPER, LUNDY & BOOKMAN, INC.

By: 
 DARON L. TOOCH
 Attorneys for Plaintiff METHODIST
 HOSPITAL OF SOUTHERN CALIFORNIA

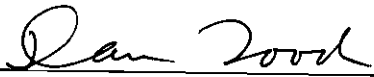
HOOPER, LUNDY & BOOKMAN, INC.
 1875 CENTURY PARK EAST, SUITE 1600
 LOS ANGELES, CALIFORNIA 90067-2517
 TEL: (310) 551-8111 • FAX: (310) 551-8181

DEMAND FOR JURY TRIAL

1
2 Plaintiff Methodist Hospital of Southern California demands a jury trial for all claims so
3 triable.

4 DATED: July 30, 2009

HOOPER, LUNDY & BOOKMAN, INC.

6 By: 
7 DARON L. TOOCH
8 Attorneys for Plaintiffs

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
HOOPER, LUNDY & BOOKMAN, INC.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself) METHODIST HOSPITAL OF SOUTHERN CALIFORNIA, a California public benefit corporation,

DEFENDANTS BLUE CROSS OF CALIFORNIA, doing business as ANTHEM BLUE CROSS, [SEE ATTACHMENT FOR ADDITIONAL DEFENDANTS]

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Attorneys (If Known)

Daron L. Tooch (SBN 137269)

Hooper, Lundy & Bookman, Inc.

1875 Century Park East, Suite 1600

Los Angeles, CA 90067

tel: (310) 551-8111 fax: (310) 551-8181

II. BASIS OF JURISDICTION (Place an X in one box only.)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

Grid for Basis of Jurisdiction and Citizenship of Principal Parties with checkboxes for U.S. Government Plaintiff/Defendant, Federal Question, Diversity, and various citizenship options.

IV. ORIGIN (Place an X in one box only.)

Grid for Origin of Case with checkboxes for Original Proceeding, Removed from State Court, Remanded from Appellate Court, Reinstated or Reopened, Transferred from another district, Multi-District Litigation, and Appeal to District Judge from Magistrate Judge.

V. REQUESTED IN COMPLAINT: JURY DEMAND: [X] Yes [] No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: [] Yes [X] No

[X] MONEY DEMANDED IN COMPLAINT: \$ over \$1 million

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

VII. NATURE OF SUIT (Place an X in one box only.)

Large grid for Nature of Suit with categories: OTHER STATUTES, CONTRACT, REAL PROPERTY, TORTS PERSONAL INJURY, TORTS PERSONAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE / PENALTY, LABOR, and SOCIAL SECURITY.

CV09-5612

FOR OFFICE USE ONLY: Case Number:

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s):

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- A. Arise from the same or closely related transactions, happenings, or events; or
 - B. Call for determination of the same or substantially related or similar questions of law and fact; or
 - C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 - D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or e also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	[fill in once caption is done]

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Daron L. Tooch Date July 29, 2009
 Daron L. Tooch

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

ATTACHMENT TO CIVIL COVER SHEET

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(continued) ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE COMPANY, a California corporation; BCBSM, INC. dba BLUE CROSS AND BLUE SHIELD OF MINNESOTA, a Minnesota corporation; EMPIRE HEALTHCHOICE, ASSURANCE, INC., doing business as EMPIRE BLUE CROSS BLUE SHIELD, a New York corporation; HEALTH CARE SERVICE CORPORATION dba BLUE CROSS AND BLUE SHIELD OF ILLINOIS, dba BLUECROSS BLUE SHIELD OF TEXAS, dba BLUECROSS BLUESHIELD OF NEW MEXICO, dba BLUECROSS BLUESHIELD OF OKLAHOMA, an Illinois corporation; ANTHEM BLUE CROSS BLUE SHIELD HEALTHCARE PLAN OF GEORGIA, INC., a Georgia corporation; ROCKY MOUNTAIN HOSPITAL AND MEDICAL SERVICE, INC. dba ANTHEM BLUE CROSS AND BLUE SHIELD, a Colorado corporation; COMMUNITY INSURANCE COMPANY dba ANTHEM BLUE CROSS AND BLUE SHIELD OF OHIO, an Ohio corporation; ANTHEM HEALTH PLANS OF VIRGINIA, INC. dba ANTHEM BLUE CROSS AND BLUE SHIELD OF VIRGINIA, a Virginia corporation; HORIZON HEALTHCARE SERVICES, INC., a New Jersey corporation; LABORERS HEALTH AND WELFARE TRUST FOR SOUTHERN CALIFORNIA; UNITED FOOD AND COMMERCIAL WORKERS UNION AND FOOD EMPLOYERS TRUST FUND; MACY'S INC.; NATIONAL AUTOMATIC SPRINKLER INDUSTRY WELFARE FUND; LOS ANGELES COUNTY FIRE FIGHTERS LOCAL 1014 HEALTH AND WELFARE PLAN; OPERATING ENGINEERS HEALTH AND WELFARE FUND; NORTHROP GRUMMAN HEALTH PLAN; TEAMSTERS AND FOOD EMPLOYERS SECURITY TRUST FUND; UNITED TRANSPORTATION UNION - METROPOLITAN TRANSPORTATION AUTHORITY TRUST FUND; FOOD EMPLOYERS & BAKERY & CONFECTIONARY WORKERS BENEFIT FUND OF SOUTHERN CALIFORNIA; SOUTHERN CALIFORNIA IBEW-NECA HEALTH PLAN AND TRUST FUND; SOUTHERN CALIFORNIA UFCW UNIONS AND DRUG AND GENERAL SALES EMPLOYERS TRUST FUNDS dba SOUTHERN CALIFORNIA DRUG BENEFIT FUND; NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN; and DOES 1 to 10

HOOPER, LUNDY & BOOKMAN, INC.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181