

VENTURA
SUPERIOR COURT
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D.C.M./TRACK ASSIGNMENT
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11 **IN THE SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF VENTURA – EAST COUNTY DIVISION**

56-2010-00368587-CU-BT-SIM

13 **MARY FELLER and RANDY FREED,**

Case No.

14 **Plaintiffs,**

CLASS ACTION COMPLAINT

15 **v.**

**Violations of Unfair Competition Law,
Business and Professions Code § 17200**

16 **BLUE CROSS OF CALIFORNIA,**
17 **d/b/a ANTHEM BLUE CROSS,**

**Common Counts and Unjust
Enrichment/Common Law Restitution**

18 **Defendant.**

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20
21 Plaintiffs, by their attorneys, bring this action on behalf of themselves and all others
22 similarly situated against Blue Cross of California dba Anthem Blue Cross (hereafter “Blue
23 Cross”, “Anthem Blue Cross” or “Defendant”). Plaintiffs allege the following on information and
24 belief, except as to those allegations which pertain to the named Plaintiffs:

25 **NATURE OF THE ACTION**

26 1. Plaintiffs bring this action to challenge Blue Cross’s manipulation of blocks of
27 health insurance business¹ with the intention of illegally decreasing policy benefits to plan

28 ¹ As set forth in Health & Safety Code § 1367.15(b), “block of business” means individual plan

1 enrollees while escalating the premiums they must pay. The impact of Blue Cross’s practice of
2 closing blocks of business is known as a “Death Spiral.” Blue Cross’s conduct violates Section
3 1367.15 of the Health & Safety Code, which mandates that, in order to close a block of business,
4 health care service plans [regulated by the Department of Managed Health Care] (“health plans”)
5 must either (1) pool the experience of the individuals in the closed block with the experience of
6 those enrollees in open blocks of business in order to calculate premium rates, or (2) offer plan
7 enrollees in closed blocks of business alternative plan contracts with comparable benefits. Blue
8 Cross’s dissemination of misleading information in order to evade these statutory protections also
9 violates Section 1367.15. Blue Cross’s conduct is unlawful, unfair and fraudulent, and therefore
10 violates California Business & Professions Code § 17200, *et seq.*

11 2. Plaintiffs bring this action on behalf of themselves and on behalf of a class of
12 California residents who are currently enrolled in an individual Anthem Blue Cross plan contract
13 or who were enrolled in an individual Anthem Blue Cross plan contract within four years prior to
14 the date of class certification in this action and currently reside in California.

15 3. Plaintiffs further seek an order of this Court enjoining Blue Cross’s continued
16 violations. Plaintiffs also seek restitution and disgorgement of premiums collected from
17 policyholders in violation of California laws.

18 **THE PARTIES**

19 4. Plaintiff Mary Feller is a resident of San Rafael, California. Ms. Feller was an
20 enrollee in an individual Anthem Blue Cross health insurance plan contract subject to Health &
21 Safety Code § 1367.15 that was closed to new members as of September 25, 2009.

22 5. Plaintiff Randy Freed is a resident of Goleta, California. Mr. Freed was an
23 enrollee in an individual Anthem Blue Cross health insurance plan contract subject to Health &
24 Safety Code § 1367.15 that was closed to new members as of September 25, 2009.

25 6. Defendant Blue Cross of California (“Blue Cross”) is a corporation duly organized
26 and existing under the laws of the State of California with its principal place of business located

27
28 contracts or plan contracts sold to employer groups with fewer than two eligible employees as
defined in subdivision (b) of Section 1357, with distinct benefits, services, and terms.

1 in Thousand Oaks, California, and is authorized to transact and is transacting the business of
2 providing health insurance in this state.

3 **JURISDICTION AND VENUE**

4 7. This Court has jurisdiction of this action under Article VI, section 10 of the
5 California Constitution and section 410.10 of the Code of Civil Procedure. Jurisdiction is also
6 proper under Business & Professions Code section 17200 *et seq.*

7 8. This Court has jurisdiction over Blue Cross of California, a resident of the State of
8 California.

9 9. Jurisdiction over Blue Cross is also proper because Blue Cross has purposely
10 availed itself of the privilege of conducting business activities in California and because Blue
11 Cross currently maintains systematic and continuous business contacts with this State, and has
12 many thousands of policyholders who are residents of this State and who do business with Cross.

13 10. Plaintiffs do not assert any claims arising under the laws of the United States of
14 America. The amount in controversy in this action does not exceed \$74,999 with respect to each
15 Plaintiff's claim and the claim of each class member. Moreover, all class members are currently
16 residents of the State of California.

17 11. Venue is proper in this Court because Plaintiff Randy Freed and many Class
18 Members did business with Blue Cross in this County, Blue Cross engaged in business in this
19 County, and because Blue Cross received substantial profits from policyholders who reside in this
20 County.

21 **STATUTORY AND REGULATORY SCHEME**

22 12. Since 1993, California has regulated health insurance industry practices that result
23 in what is known as a "Death Spiral" of one or more individual plan contracts with distinct
24 benefits, services and terms (a "block of business").

25 13. "Death Spiral" refers to a practice in which a health plan announces that it is
26 closing a book of business (i.e., will no longer offer a certain type of plan contract to new
27 enrollees, or has priced that plan contract to make it uncompetitive), and raises the rates paid by
28 those remaining in the now closed block of business until they can no longer afford coverage.

1 The health plan thus effectively directs healthier individuals – both new and current enrollees – to
2 switch to other coverage, with different and reduced benefits that is more profitable for the health
3 plan. However, the enrollees with pre-existing conditions who were barred by the plan’s
4 underwriting guidelines from switching to a new coverage are trapped in the closed block. Over
5 time, rates increase dramatically for those who retain the older coverage, as they become older
6 and more likely to file claims. Eventually, many enrollees are priced out of coverage and
7 frequently left uninsured.

8 14. Acting in response to the deleterious impact of the “Death Spiral” practices
9 utilized by health plans doing business in California, the California legislature passed AB 1743 in
10 1993.

11 15. The legislative committee analysis states that the purpose of AB 1743 was:

12 [T]o address the problems experienced by people who have health coverage under
13 “closed” plans and find themselves subjected to spiraling rate increases. An
14 insurer closes a block of business by no longer offering that particular policy form
15 or contract to new applicants. Since insurers generally require medical
16 underwriting before accepting an applicant for coverage, those persons covered
17 under closed plans, who happen to have pre-existing conditions, find themselves
18 locked into the closed plan....Over time, only unhealthy people are left in the
19 closed plan, which leads to even higher rates. Insurer practices in this regard have
20 been termed the “death spiral.” Because rates inevitably increase to the point at
21 which a policyholder can no longer afford coverage.

22 Assembly Committee on Insurance, Hearing on AB 1743 (Margolin), Committee Analysis, p. 1-
23 2, April 20, 1993.

24 16. AB 1743 was codified as Section 1367.15 of the Health & Safety Code.

25 17. Section 1367.15 of the Health & Safety Code applies to “individual health care
26 service plan contracts” and to “plan contracts sold to employer groups, with fewer than two
27 eligible employees...covering hospital, medical, or surgical expenses which is issued, amended,
28 delivered, or renewed on or after January 1, 1994.” (Health & Safety Code § 1367.15(a).)

18 18. A “closed block of business” is defined as “a block of business for which a health
19 care service plan ceases to actively offer or sell new plan contracts.” (Health & Safety Code
20 Section 1367.15(b).) The statute also identifies those situations in which a block of business will
21 be presumed closed.

1 19. Section 1367.15(c) contains the requirements for closing a block of business:

2 No block of business shall be closed by a health care service plan unless (1) the
3 plan permits an enrollee to receive health care services from any block of business
4 that is not closed and which provides comparable benefits, services, and terms,
5 with no additional underwriting requirement, or (2) the plan pools the experience
6 of the closed block of business with all appropriate blocks of business that are not
7 closed for the purpose of determining the premium rate of any plan contract within
8 the closed block, with no rate penalty or surcharge beyond that which reflects the
9 experience of the combined pool.

10 20. The statute also prohibits the dissemination of misleading information: “No health
11 care service plan shall offer or sell any contract, or provide misleading information about the
12 active or closed status of a block of business, for the purpose of evading this section.” (Health &
13 Safety Code § 1367.15(g).)

14 **BLUE CROSS’S UNLAWFUL CONDUCT**

15 21. Blue Cross’s practices with regard to closing blocks of business violate Section
16 1367.15 of the Health & Safety Code.

17 22. First, Blue Cross does not offer enrollees in closed blocks the option to enroll in
18 plan contracts with comparable benefits, services, and terms. Instead, Blue Cross offers coverage
19 with higher deductibles and/or lesser benefits, often for increased premiums. Accordingly,
20 enrollees receive lesser benefits than those to which they are statutorily entitled.

21 23. Second, Blue Cross does not properly pool the experience of those in the closed
22 plan with the experience of persons in appropriate blocks of business that are not closed when
23 determining the premiums for the closed blocks of business. This results in higher premiums for
24 closed blocks of business than permitted by law.

25 24. Third, Blue Cross disseminates misleading information to enrollees and potential
26 enrollees for the purpose of evading the statutory requirements. Blue Cross provides misleading
27 and incomplete information about the types of coverage that are available from blocks of business
28 that are not closed to enrollees whose coverage blocks are closed. Blue Cross only offers lower
benefit coverage without additional underwriting, and does not provide enrollees the option of
receiving coverage with similar deductible amounts and coverage benefits as those provided by

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1 the closed block. As a result, Blue Cross is using block closures to push enrollees with
2 pre-existing health conditions into lower benefit or higher premium plan contracts.

3 **FACTUAL ALLEGATIONS REGARDING PLAINTIFFS**

4 *Plaintiff Mary Feller*

5 25. Plaintiff Mary Feller has been enrolled in an individual Anthem Blue Cross PPO
6 Share \$1000 plan contract for several years.

7 26. Ms. Feller's husband, Gordon Feller, is also an insured under the plan contract.

8 27. Ms. Feller's plan contract is subject to Health & Safety Code § 1367.15.

9 28. In September 2009, Ms. Feller received a letter from James E. Oatman, Vice
10 President and General Manager of the Individual West Region of Anthem Blue Cross. The letter
11 referenced 233A70559 PPO Share \$1000/1393 and informed Ms. Feller that Anthem Blue Cross
12 had determined that her "PPO Share \$1000 will no longer be sold *to new members* as of
13 September 25, 2009." The letter also stated:

14 **There is no action required on your part.**

15 Rest assured that you and your family members may stay with your plan. *You are*
16 *not required to move to another plan.* Your plan will remain active, and you will
17 be able to add eligible family members to your current plan, as long as you
continue to submit your premium payments as they become due.

18 The changing of the status of your PPO Share \$1000 to a closed health plan does
19 give you a one-time opportunity to switch to any Anthem Blue Cross Individual
20 health plan with **no underwriting required**. If you are looking to change your
21 benefits, you have between now and December 1, 2009 to request the change to
22 any Anthem Blue Cross Individual health plan. Please keep in mind that if you
23 switch to another plan, you will not be able to switch back to your PPO Share
24 \$1000 in the future.

25 (Emphasis in original.)

26 29. The claims in this letter were material to them, since moving to a plan contract that
27 required underwriting would likely result in the Fellers being denied coverage altogether, or at
28 best, being offered new coverage at a much higher price.

30. Following Ms. Feller's receipt of the September 2009 letter, Ms. Feller contacted
Anthem Blue Cross numerous times to make inquiries regarding the plan contracts that were

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1 available without underwriting. The information that Ms. Feller received was both confusing and
2 conflicting.

3 31. Ms. Feller was informed by representatives of Anthem Blue Cross in November
4 2009 that the only plan contracts available to her without underwriting would be downgrades in
5 comparison to her current coverage. During these conversations, Anthem Blue Cross
6 representatives tried to convince her to switch to one of these “downgraded” plan contracts. The
7 coverage offered to Ms. Feller had higher out of pocket expenses, increased deductibles and/or
8 higher pharmacy deductibles than Ms. Feller’s current PPO \$1000 coverage.

9 32. Ms. Feller was informed that she could not switch to any coverage regulated by the
10 Department of Insurance.

11 33. A Blue Cross representative conceded in a telephone conversation with Ms. Feller
12 that the correspondence is not clear regarding the plan contracts that are available without
13 underwriting and that Blue Cross is aware of the confusing nature of the letter.

14 34. Ms. Feller also talked with a representative who explained that Blue Cross was
15 closing the PPO Share 1500 and the PPO Share 2500.

16 35. The Blue Cross representative assured Ms. Feller that she did not need to make a
17 decision that day about switching because all of the plan contracts available to her were
18 considered downgrades and she could switch at any time. These options included the PPO Basic,
19 the PPO Saver and the Right Plan PPO 40.

20 36. Ms. Feller also talked with another Blue Cross representative in November 2009
21 who indicated that Ms. Feller’s current plan is one of Blue Cross’s best plans.

22 37. This representative assured Ms. Feller that she can always move to the Right Plan
23 PPO 40 or to the PPO Share 3500 or PPO Share 5000 without underwriting. In fact, the
24 representative suggested that it was probably in Ms. Feller’s best interest not to switch until after
25 the first of the year since she had met her deductible for 2009.

26 38. Ms. Feller ultimately decided to remain in the closed PPO Share \$1000 plan
27 contract rather than switch to another plan contract. Ms. Feller was never informed that retaining

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1 the PPO Share \$1000 plan contract would result in increased premiums and was not informed that
2 Blue Cross would decrease her options for alternative coverage without notice.

3 39. On January 27, 2010, however, Ms. Feller received another letter from
4 Mr. Oatman informing her that the rates on her Anthem Blue Cross plan contract would increase
5 39%: “As of March 1, 2010, the monthly rate on your PPO Share 1000 will change from
6 \$1,193.00 to \$1,658.00.” The letter suggested that although Anthem Blue Cross had customarily
7 only adjusted rates every 12 months, more frequent adjustment “may now be required.”
8 Ms. Feller was also told that she could switch to a PPO Share \$1500 plan contract with a monthly
9 premium of \$1,550 “with no medical underwriting review.” In addition to the 50% increase in
10 the deductible, the letter indicated that Anthem Blue Cross “will be making benefit changes
11 and/or clarifications” to Ms. Feller’s current health benefit plan contract.

12 40. Ms. Feller contacted the “Customer Service Team” via the toll free number listed
13 in the January 27, 2010 letter to find out more about her options for coverage without
14 underwriting.

15 41. During a call with another Blue Cross representative who only identified himself
16 as Chris, Ms. Feller was told that the PPO Share 1500 plan contract would only be available
17 without underwriting until the end of February 2010. As Ms. Feller indicated on the call, the PPO
18 Share 1500 plan contract is more expensive than she can afford.

19 42. Ms. Feller was informed that no comparable \$1000 deductible plan contracts were
20 available.

21 43. She was told she could not switch to a PPO \$5000 because that plan contract was
22 regulated by the Department of Insurance.

23 44. Ms. Feller explained that she had previously talked with another representative
24 who had told her she could switch to the Right Plan PPO 40 at any time. Chris responded that the
25 representatives had been given new guidelines and that plan was no longer available without
26 underwriting.

27 45. Other than the PPO Share 1500 Plan, Ms. Feller was told that her only option was
28 to switch to a PPO Share 3500 or PPO Share 7500 plan contract. The PPO Share 3500 plan

1 contract differs from her current coverage in terms of the deductible, the out of pocket amount
2 and with regard to drug coverage. Chris agreed that both the PPO Share 3500 and the PPO Share
3 7500 plan contracts are considered downgrades from Ms. Feller's current coverage.

4 46. Ms. Feller also discovered that two "comparable" plan contracts a Blue Cross
5 representative mentioned as being available to her in February 2010 are not comparable to her
6 coverage in many ways including a \$4 million lifetime payout cap as compared to the \$5 million
7 lifetime payout cap in her existing coverage.

8 47. On February 3, 2010, Ms. Feller received a form document from Anthem Blue
9 Cross that purported to respond to Ms. Feller's inquiries and stated, "The plans you are able to
10 switch to with no Medical Underwriting are PPO SHARE 3500 & PPO SHARE 7500."

11 48. Plaintiff Mary Feller has been injured in fact and lost money or property by Blue
12 Cross's unlawful conduct in that Blue Cross has never offered Ms. Feller comparable coverage in
13 accordance with Section 1367.15 of the Health & Safety Code. As a result of Blue Cross's
14 conduct, Ms. Feller has spent hours dealing with these issues and will pay significantly higher
15 premiums and/or receive significantly reduced coverage. Blue Cross has not made comparable
16 coverage available to her without underwriting. Blue Cross's calculation of the increased
17 premiums for Ms. Feller's coverage is not in accordance with California law. Absent injunctive
18 relief, Ms. Feller's harm will not only continue unabated but, in all likelihood, Ms. Feller's
19 injuries will continue to escalate, possibly to the point that Ms. Feller is forced to significantly
20 decrease her coverage or is, in fact, forced to forego coverage altogether.

21 ***Plaintiff Randy Freed***

22 49. Plaintiff Randy Freed is a policyholder in an individual Anthem Blue Cross Health
23 insurance plan with a PPO Share \$1500 plan contract.

24 50. Mr. Freed's wife, Donna Freed, is also an insured under the plan contract.

25 51. Until February 1, 2010, the Freed's daughter, Abbey Jordana Freed, was also an
26 insured under the plan contract.

27 52. Mr. Freed has maintained the plan contract for several years.

28 53. Mr. Freed's plan contract is subject to Health & Safety Code § 1367.15.

1 54. In September 2009, Randy Freed received a letter from James E. Oatman, Vice
2 President and General Manager of the Individual West Region of Anthem Blue Cross. The letter
3 referenced 490A62387 PPO Share \$1500/7889 and informed Mr. Freed that Anthem Blue Cross
4 had determined that his “PPO Share \$1500 will no longer be sold *to new members* as of
5 September 25, 2009.” The letter also stated:

6 **There is no action required on your part.**

7 Rest assured that you and your family members may stay with your plan. *You are*
8 *not required to move to another plan.* Your plan will remain active, and you will
9 be able to add eligible family members to your current plan, as long as you
10 continue to submit your premium payments as they become due.

11 The changing of the status of your PPO Share \$1500 to a closed health plan does
12 give you a one-time opportunity to switch to any Anthem Blue Cross Individual
13 health plan with **no underwriting required**. If you are looking to change your
14 benefits, you have between now and December 1, 2009 to request the change to
15 any Anthem Blue Cross Individual health plan. Please keep in mind that if you
16 switch to another plan, you will not be able to switch back to your PPO Share
17 \$1500 in the future.

18 (Emphasis in original.)

19 55. Mr. Freed was never informed that retaining his PPO Share 1500 plan contract
20 would result in increased premiums.

21 56. Since September 2009, Ms. Freed has had numerous conversations with Anthem
22 Blue Cross representatives.

23 57. When Ms. Freed would contact Anthem Blue Cross she was frequently transferred
24 and put on hold.

25 58. During these conversations, Ms. Freed was provided conflicting and misleading
26 information regarding Anthem Blue Cross plan contracts and regarding her options.

27 59. Ms. Freed has also spent a significant amount of time on-line researching Anthem
28 Blue Cross plan contracts.

 60. However, none of the Anthem Blue Cross plan contracts that the Freeds
considered between September 2009 and December 2009 were comparable to their existing plan
contract. Instead, all of the plans offered included higher deductibles and/or provided lesser
benefits.

1 61. On January 26, 2010, Mr. Freed received another letter from Mr. Oatman
2 informing him that the rates on his Anthem Blue Cross coverage would increase 33%: “As of
3 March 1, 2010, the monthly rate on your PPO Share 1500 will change from \$1,249.00 to
4 \$1,662.00.” The letter suggested that although Anthem Blue Cross had customarily only adjusted
5 rates every 12 months, more frequent adjustment may now be required.

6 62. The letter also indicated that Mr. Freed had the option of remaining in his current
7 coverage or switching to a PPO Share 2500 plan with monthly premiums of \$1403.00 “with no
8 medical underwriting review.”

9 63. The letter invited Mr. Freed to contact Anthem Blue Cross if he wanted to view
10 other available options.

11 64. On February 2, 2010, the Freeds removed their daughter from the plan contract in
12 order to decrease the premiums on their plan contract.

13 65. On February 2, as suggested by a Blue Cross representative, the Freeds also
14 applied for an Anthem Blue Cross Life and Health Insurance SmartSense 500 plan contract that
15 required underwriting. However, on February 4, Mr. Freed received a letter from Sue Vranau,
16 Individual Services, Anthem Blue Cross Life and Health Insurance Company, informing him that
17 their application had been denied, citing pre-existing conditions and the couple’s prescription
18 medications.

19 66. After their application was denied, Ms. Freed talked with Tracey Stevens at
20 Anthem Blue Cross membership. Mr. Stevens indicated that the Freeds’ best option was to
21 switch to the PPO Share 2500. At that time, Ms. Freed was told that the \$2500 deductible was a
22 family deductible. Based on Mr. Stevens’ recommendation, the Freed decided to switch to the
23 PPO Share 2500 plan contract.

24 67. On February 7, 2010, Mr. and Ms. Freed sent the following correspondence to
25 Anthem Blue Cross:

26 Effective March 1, 2010, our Anthem Blue Cross Individual PPO Share 1500
27 policy premium for Randy, 55, Donna, 55 and our daughter, 19, is being raised
28 from \$1249.00 per month to \$1662.00 per month with the possibility of more
frequent increases in the future. These more frequent increases are solely in the

1 control of Anthem Blue Cross. In the mean time, our covered benefits are
2 becoming more and more restrictive.

3 Anthem has given us the option of changing to a higher deductible, but the PPO
4 Share 2500 monthly premium is \$1403.00, still higher than our current premium
5 with fewer benefits and the possibility of more frequent rate increases. The
6 coverage is less, making our health expenses even higher.

7We have had Anthem Blue Cross coverage for over 10 years, and our only
8 feasible and affordable choice is to convert to a less comprehensive policy with
9 Anthem Blue Cross that does not really meet our needs, and by removing my
10 daughter from our policy completely. With the cost of health care today, Anthem
11 Blue Cross is placing my family in jeopardy of facing a life-changing financial
12 crisis, now and in the future.

13 68. On February 10, 2010 Ms. Freed spoke with Steven Wright, an agent at Anthem
14 Blue Cross, regarding changing their plan contract to the PPO Share 2500 plan and to confirm
15 that the change was made. The policy change requested had not been made by Anthem Blue
16 Cross, so Mr. Wright then forwarded the necessary documents for effecting the change.

17 69. At that time, Mr. Wright explained that the \$2500 deductible applied individually
18 to each insured and that the deductible for both the Freeds would therefore be \$5000. He
19 indicated that once they changed to the \$2500 deductible, they could never change back to the
20 \$1500 deductible.

21 70. The PPO Share 2500 plan contract offered by Anthem Blue Cross has lesser
22 benefits than their PPO Share \$1500 plan and was scheduled to become effective March 1, 2010.
23 With removal of their daughter from their plan contract and with the changes in deductibles and
24 coverage, the premiums for the PPO Share 2500 would be \$1162 per month.

25 71. On February 14, 2010, the Freeds sent a fax to Individual Membership Services
26 stating, *inter alia*, the following:

27 Due to the February 13, 2010, decision of Anthem Blue Cross to postpone the
28 March 1, 2010, rate increase [on our policy] until May 1, 2010, I am rescinding my
request to change to the PPO Share 2500 Plain which was to take effect March 1,
2010.

72. Plaintiff Randy Freed has been injured in fact and lost money or property by Blue
Cross's unlawful conduct in that Blue Cross has never offered Mr. Freed comparable coverage in
accordance with Section 1367.15 of the Health & Safety Code. As a result of Blue Cross's

1 conduct, Mr. Freed has spent hours dealing with these issues and will pay significantly higher
2 premiums and/or receive significantly reduced coverage. Blue Cross has not made comparable
3 coverage available to him without underwriting. Blue Cross's calculation of the increased
4 premiums for Mr. Freed's coverage is not in accordance with California law. Absent injunctive
5 relief, Ms. Freed's harm will not only continue unabated but, in all likelihood, Mr. Freed's
6 injuries will continue to escalate, possibly to the point that Mr. Freed is forced to significantly
7 decrease his coverage or is, in fact, forced to forego coverage altogether.

8 **CLASS ALLEGATIONS**

9 73. This action is brought on behalf of the Plaintiffs individually and on behalf of all
10 other similarly situated current California residents pursuant to Code of Civil Procedure § 382.
11 Plaintiffs seek to represent the following class:

12 All current California residents who are enrolled in an individual Anthem Blue
13 Cross Health Plan or who have been enrolled in an individual Anthem Blue Cross
14 Health Plan within four years prior to the date of the filing of this action.

15 74. The proposed Class is composed of thousands of persons dispersed throughout the
16 State of California. The precise number and identity of Class members are unknown to Plaintiffs
17 but can be obtained from Blue Cross's records.

18 75. Common questions of law and fact predominate over any individualized questions.
19 Common legal and factual questions include the following:

20 (a) Whether Blue Cross's conduct violates Section 1367.15 of the Health &
21 Safety Code;

22 (b) Whether Blue Cross engaged in an unlawful, unfair, fraudulent, misleading
23 or deceptive business act or practice with regard to closed blocks of business;

24 (c) Whether Plaintiffs and Class Members are entitled to restitution; and

25 (d) Whether Plaintiffs and Class Members are entitled to an Order enjoining
26 Blue Cross from future violations.

27 76. Plaintiffs' claims are typical of the claims of the Class.

28 77. Plaintiffs are willing and prepared to serve the Court and the proposed Class in a
representative capacity. Plaintiffs will fairly and adequately protect the interests of the Class and

1 have no interests adverse to or which conflict with the interests of the other members of the Class.

2 78. The self-interests of the Plaintiffs are co-extensive with and not antagonistic to
3 those of absent Class members. The Plaintiffs will undertake to represent and protect the interests
4 of absent Class members.

5 79. The Plaintiffs have engaged the services of counsel indicated below who are
6 experienced in complex class litigation, will adequately prosecute this action, and will assert and
7 protect the rights of and otherwise represent the Plaintiffs and absent Class members.

8 80. A class action is superior to other available means for the fair and efficient
9 adjudication of this controversy. The damages suffered by individual Class members are small
10 compared to the burden and expense of individual prosecution of the complex and extensive
11 litigation needed to address Blue Cross's conduct. Individualized litigation presents a potential
12 for inconsistent or contradictory judgments. By contrast, a class action presents far fewer
13 management difficulties; allows the hearing of claims that might otherwise go unaddressed; and
14 provides the benefits of single adjudication, economies of scale, and comprehensive supervision
15 by a single court.

16 81. Blue Cross has acted or refused to act on grounds generally applicable to the Class,
17 thereby making appropriate final and injunctive relief with respect to the Members of the Class as
18 a whole.

19 **FIRST CAUSE OF ACTION**

20 **Violation of Business & Professions Code § 17200 *et seq.* –**

21 **Unlawful Business Acts and Practices**

22 82. Plaintiffs incorporate by reference each of the preceding paragraphs as though
23 fully set forth herein.

24 83. California Business & Professions Code § 17200 *et seq.* prohibits acts of “unfair
25 competition” which is defined by Business & Professions Code § 17200 as including “any
26 unlawful, unfair or fraudulent business act or practice....”

27 84. Blue Cross's conduct, as described above, constitutes unlawful business acts and
28 practices.

1 85. Blue Cross has violated and continue to violate Business & Professions Code §
2 17200's prohibition against engaging in "unlawful" business acts or practices, by, *inter alia*,
3 violating Section 1367.15 of the Health & Safety Code as set forth herein.

4 86. In relevant part, Section 1367.15 of the Health & Safety Code requires that upon
5 closing a block of business, a health care service plan must pool the closed block of business with
6 open blocks of business in order to calculate premiums or must offer comparable alternative plan
7 contracts that can be accessed without underwriting.

8 87. Moreover, under Section 1367.15, a healthcare service plan must not disseminate
9 misleading information for the purpose of evading the statutory protections enacted to protect
10 consumers such as Plaintiffs who are enrolled in blocks of business that are closed.

11 88. Blue Cross has violated Section 1367.15 by failing to offer enrollees comparable
12 alternative plan contracts and by failing to pool the closed blocks of business with open blocks of
13 business.

14 89. Blue Cross has also violated Section 1367.15 by disseminating misleading
15 information regarding closed books of business, regarding comparable coverage and regarding
16 premium increases.

17 90. Plaintiffs and class members have been injured by Blue Cross's unlawful business
18 acts and practices by, *inter alia*, spending hours dealing with these issues and either paying or
19 being told they will need to pay increased premiums and/or by receiving lesser benefits.

20 91. As a result of Blue Cross's violations of the UCL, Plaintiffs and Class members
21 are entitled to equitable relief in the form of full restitution of all monies paid for illegally
22 increased premiums and/or for premiums paid for decreased benefits and disgorgement of the
23 profits derived from Blue Cross's unlawful business acts and practices.

24 92. Plaintiffs also seek an order enjoining Blue Cross from continuing its unlawful
25 business practices and from such future conduct.

26 93. THEREFORE, Plaintiffs pray for relief as set forth below.

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28 ///

1 113. Plaintiffs and the Class conferred upon Blue Cross economic benefits in the form
2 of revenues and profits from increased premiums or from providing decreased benefits. Blue
3 Cross accepted or retained these economic benefits with awareness that Plaintiffs and the Class
4 had improperly paid increased premiums and/or had received improperly reduced benefits.

5 114. Allowing Blue Cross to retain the benefits conferred by Plaintiffs and the Class
6 under these circumstances is unjust and inequitable.

7 115. As a result of Blue Cross's unjust enrichment, Plaintiffs and the Class have
8 suffered harm and thus seek an order for disgorgement and restitution of Blue Cross's revenues,
9 profits and other benefits from improperly increased premiums and/or improperly decreased
10 benefits.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for relief
13 as follows:

14 1. An Order certifying this as a Class and appointing Plaintiffs and their counsel to
15 represent the Class;

16 2. An Order awarding Plaintiff and the Class restitution and/or disgorgement and
17 such other equitable relief as the Court deems proper;

18 3. An Order enjoining Blue Cross from future violations of Section 1367.15 of the
19 Health & Safety Code;

20 4. An Order awarding Plaintiffs and the Class pre-judgment and post-judgment
21 interest;

22 5. An Order awarding Plaintiffs' attorneys' fees, expert witness fees and other costs;
23 and

24 6. An Order awarding such other and further relief as may be just and proper.

25 **JURY DEMAND**

26 Plaintiffs demand a trial by jury on all issues so triable.

27 DATED: February 26, 2010

THE CONSUMER LAW GROUP

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