

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): DENNIS J. HERRERA, City Attorney, SB #139669 DANNY CHOU, Chief of Complex Litigation, SB #180240 OWEN J. CLEMENTS, Chief of Special Litigation SB #141805 1390 Market Street, Seventh Floor San Francisco, CA 94102 TELEPHONE NO.: 415-554-3807 FAX NO.: 415-554-3985 ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY FILED SAN FRANCISCO COUNTY SUPERIOR COURT 2011 MAY 24 AM 1:08 DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		CASE NUMBER: CGC-11-511181 JUDGE: DEPT:
CASE NAME: PEOPLE v. BLUE CROSS OF CALIFORNIA, INC.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

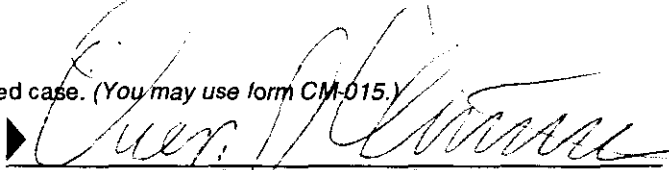
Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Two (2)
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: May 23, 2011

OWEN J. CLEMENTS
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BLUE CROSS OF CALIFORNIA, INC., d/b/a ANTHEM BLUE CROSS; ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE COMPANY; HEALTH NET OF CALIFORNIA, INC., and DOES 1-50

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through City Attorney Dennis J. Herrera

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

SAN FRANCISCO SUPERIOR COURT

CASE NUMBER:
(Número del Caso):

CGC-11-511181

400 McAllister Street
San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

DENNIS J. HERRERA, City Attorney, SB #139669 415-554-3807
OWEN J. CLEMENTS, Chief of Special Litigation, SB #141805
1390 Market Street, Seventh Floor
San Francisco, CA 94102

DATE:

MAY 24 2011

CLERK OF THE COURT

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

(SEAL)

RECEIVED
SAN FRANCISCO COUNTY
SUPERIOR COURT
JAN 24 AM 1:08
BY: _____ COURT
SERVING CLERK

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 DANNY CHOU, State Bar # 180240
Chief of Complex and Special Litigation
3 OWEN J. CLEMENTS, State Bar # 141805
Chief of Special Litigation
4 ROBERT A. BONTA, State Bar # 202668
Deputy City Attorney
5 Fox Plaza
1390 Market Street, Seventh Floor
6 San Francisco, California 94102-5408
Telephone: (415) 554-3807
7 Facsimile: (415) 554-3985
E-Mail: danny.chou@sfgov.org
8

9 Attorneys for Plaintiff THE PEOPLE
OF THE STATE OF CALIFORNIA

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED JURISDICTION

CGC-11-511181

15 THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through City
16 Attorney Dennis J. Herrera,

17 Plaintiff,

18 vs.

19 BLUE CROSS OF CALIFORNIA, INC., d/b/a
20 ANTHEM BLUE CROSS; ANTHEM BLUE
CROSS LIFE AND HEALTH INSURANCE
21 COMPANY; HEALTH NET OF
CALIFORNIA, INC., and DOES 1-50,

22 Defendants.

Case No. _____

**COMPLAINT FOR INJUNCTIVE RELIEF,
RESTITUTION, AND CIVIL PENALTIES
FOR VIOLATIONS OF BUSINESS AND
PROFESSIONS CODE SECTION 17200**

25 Plaintiff, the People of the State of California, acting by and through San Francisco City
26 Attorney Dennis Herrera, are informed and believe and allege as follows:
27
28

INTRODUCTION

1
2 1. The emergency health care system in California is in critical condition. The
3 demand for emergency care has been growing and is expected to continue to grow in the future.
4 Despite this growing demand, numerous emergency rooms throughout California have closed
5 since 1998. And in a recent evaluation of the emergency care environment in the United States
6 by the American College of Emergency Physicians, California ranked dead last among all states
7 in providing access to emergency care.

8 2. In order to continue to provide emergency health care services, the remaining
9 hospitals that provide those services depend on prompt and full payment by health insurers. This
10 is especially true for San Francisco General Hospital ("SFGH") – which provides the only
11 Level I trauma center for 1.5 million residents of the City and County of San Francisco
12 (the "City") and Northern San Mateo County, and provides the only psychiatric emergency
13 services center in the City.

14 3. Despite the critical need of SFGH and other public hospitals that provide
15 emergency care for prompt and full payment for their services, BLUE CROSS OF
16 CALIFORNIA, ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE COMPANY,
17 AND HEALTH NET (collectively, "DEFENDANTS") have systematically underpaid and
18 delayed payment of fees owed to SFGH and other public hospitals for emergency services.

19 4. The People of the State of California, acting by and through San Francisco City
20 Attorney Dennis J. Herrera ("THE PEOPLE") bring this action to redress this systematic
21 underpayment and delay in payment of hospital emergency room fees owed to SFGH and other
22 public hospitals by DEFENDANTS. Under State law, SFGH and other public hospitals have a
23 duty to provide emergency treatment to all patients who need it, regardless of the patient's ability
24 to pay. DEFENDANTS have a corresponding duty to reimburse SFGH and other public
25 hospitals based on the full amount charged for emergency medical treatment provided to
26 DEFENDANTS' insureds. DEFENDANTS violate this duty because they routinely refuse to
27 make payments based on the full amount of such charges, but instead make arbitrary Usual and
28 Customary Rate ("UCR") reductions to the bills they receive from SFGH and other public

1 County of San Francisco. SFGH is the cornerstone for the delivery of emergency medical care
2 in San Francisco. SFGH is a licensed general acute care hospital, which provides the only Level
3 I trauma center for 1.5 million residents of San Francisco and northern San Mateo County.
4 SFGH also provides the only psychiatric emergency services center in the City. SFGH receives
5 30 percent of all ambulance traffic, and provides 20 percent of all acute inpatient care in
6 San Francisco. SFGH's emergency department receives over 50,000 visits per year, 18 percent
7 of which result in admission. In addition, SFGH is a teaching hospital, which provides roughly a
8 third of UCSF's physician training.

9 14. The rates charged for treatment provided at SFGH, including emergency medical
10 treatment, are determined under state and local law. SFGH's rate scale for fiscal year 2008-2009
11 was derived directly from San Francisco's Health & Safety Code section 128 – an ordinance
12 duly enacted by the San Francisco Health Commission and the San Francisco Board of
13 Supervisors (the "Board"). Section 128 fixed "proper reasonable amounts" to be charged for
14 services furnished by SFDPH for the fiscal year beginning on July 1, 2008. Section 128
15 specifically listed rates for services at SFGH, Laguna Hospital, and other county health clinics.

16 15. In adopting San Francisco Health and Safety Code §128, the Board acted in
17 accordance with the authority granted to it under state law, and in particular California Health
18 and Safety Code §1473. That statute authorizes the Board of Supervisors for each county in
19 California to determine the rates to be charged to patients in its public hospitals.

20 16. In determining the "proper and reasonable" rates for services at SFGH in 2008
21 under Health and Safety Code section 128, the Board used information provided by Phase 2
22 Consulting. Phase 2 Consulting is a nationally-recognized health policy consulting firm with
23 extensive experience analyzing rates at major public hospitals. Phase 2 Consulting contracted
24 with the San Francisco Controller to carry out a comprehensive analysis of the rates at SFGH and
25 presented its findings to the San Francisco Health Commission in September 2007 and in May
26 2008. To arrive at its recommendations for reasonable rates to be charged by SFGH in 2008,
27 Phase 2 Consulting performed an in-depth analysis of many factors, including the historical rates
28

1 charged by SFGH, the costs born by SFGH for delivering services, the prevailing rates at other
2 public and private hospitals, and Medicare and Medi-Cal rates for comparable services.

3 17. The rates that SFGH charged for emergency medical treatment received by
4 DEFENDANTS' insured were proper and reasonable. These charges were derived from the
5 prevailing rate scale at SFGH for the given fiscal year, which were determined in accordance
6 with the procedures set forth above.

7 18. As of 2003, the Department of Managed Health Care regulations governing the
8 appropriate rate of reimbursement for non-contracted providers are articulated in 28 CCR
9 § 1300.71(a)(3). Prior to the adoption of 28 CCR § 1300.71(a)(3), a similar common law
10 standard applied, as articulated in *Gould v. Workers' Comp. Appeals Bd.*, 4 Cal. App. 4th 1059,
11 6 Cal. Rptr. 2d 228, 236 (Cal. Ct. App. 1992).

12 19. San Francisco has determined the reasonable and customary value for the health
13 care services it renders based upon statistically credible information in compliance with the
14 DMHC and common law standards. SFGH patient rates are published as San Francisco Health
15 Code § 128(a) and updated annually in accordance with San Francisco Health Code § 128(b) to
16 comply with DMHC regulations.

17 20. DEFENDANTS have not contracted with SFGH to establish reimbursement rates
18 for emergency services provided to their insureds by SFGH. DEFENDANTS are not entitled to
19 any contractual adjustments or discounts from the rates set by SFGH and other public hospitals
20 with whom DEFENDANTS do not contract.

21 21. Patients admitted to SFGH sign SFGH's Inpatient / Outpatient / Emergency Terms
22 and Conditions of Admission. One of the terms of patients' admission is their signature of an
23 "Agreement to Reimburse." Under paragraph I of that agreement, patients obligate themselves
24 "to pay the full costs of hospitalization as provided by applicable federal and state laws,
25 ordinances, resolutions, and orders of the City and County of San Francisco including, but not
26 limited to, San Francisco Municipal Code Part III, Chapter V, Article 3 (Health Code)."
27
28

1 22. Under the Terms and Conditions of Admission, patients also assign all of their rights to
2 collect insurance benefits relating to treatment at SFGH to SFGH and to the SFGH Medical Group.

3 In particular, patients agree to the following provision:

4 **K. Assignment of benefits:** The undersigned hereby assigns to [SFGH] and to any
5 Medical Group, physician, surgeon or dentist associated with [SFGH], and
6 authorizes payment directly to them, all insurance benefits for hospital services
7 and/or professional fees otherwise payable to or on behalf of the patient, but not to
8 exceed the regular rates and fees for services rendered to the patient.

9 23. DEFENDANTS have a duty to pay San Francisco the full amount of emergency
10 medical charges (less any applicable deductibles or co-pays) that San Francisco bills to patients
11 who are covered by DEFENDANTS. *Prospect Medical Group Inc. v. Northridge Emergency*
12 *Medical Group* (2009) 45 Cal. 4th 497 (*Prospect*) construed the Knox-Keene Act as applying to
13 claims made by non-contracting providers (such as SFGH) to Health Care Service Plans
14 regulated by the DMHC under Knox-Keene. BLUE CROSS and HEALTH NET are two such
15 plans. Under *Prospect*, SFGH generally cannot recover from emergency department patients
16 amounts that a Knox Keene Health Care Service Plan refuses to pay based on UCR reductions.
17 This prohibition is based on the concurrent duty of the Knox Keene Health Care Service Plan,
18 under Health and Safety Code section 1371.4, to pay the full reasonable value for emergency
19 medical services provided to their members. Although insurance provided by BLUE CROSS
20 LIFE is subject to the requirements of the Insurance Code, rather than the Knox Keene Act,
21 BLUE CROSS LIFE nevertheless has an implied in law duty to pay for the emergency medical
22 treatment provided to its insured based on the full costs of treatment charged by SFGH and other
23 public hospitals. DEFENDANTS therefore have a duty under the law, and under the terms of
24 their HMO plans or their PPO insurance policies, to make payments based on the full amount
25 charged by SFGH and other public hospitals.

26 24. In violation of this duty, DEFENDANTS have systematically denied full
27 coverage for SFGH's emergency room treatment of their insureds. DEFENDANTS regularly
28 refuse to reimburse SFGH for emergency medical treatment provided to their insureds at the
rates set forth in San Francisco Health and Safety Code section 128. THE PEOPLE are informed

1 and believe that DEFENDANTS instead maintain internal systems for indentifying the rate
2 which they will allow for the reimbursement for emergency medical care provided by SFGH and
3 other public hospitals. Based on information and belief, DEFENDANTS often set internal
4 maximums of "allowable expenses" for given treatments beyond which they will not reimburse
5 patients or pay healthcare providers. DEFENDANTS' internal rate schedules are either based on
6 inaccurate or erroneous information as to the costs and quality of medical services provided by
7 SFGH and other public hospitals, or DEFENDANTS intentionally manipulate their internal
8 systems to routinely underpay SFGH and other public hospitals for the medically necessary
9 services rendered to DEFENDANTS' insureds. In addition, DEFENDANTS have repeatedly
10 imposed arbitrary UCR reductions of specific percentages off of SFGH's charges, without regard
11 to the type or quality of the services provided by SFGH.

12 25. Regardless of the specific device used by DEFENDANTS to make payments
13 based on an amount that is less than the full amount of charges billed by SFGH and other public
14 hospitals, DEFENDANTS are not relieved of their duty to reimburse such hospitals based on the
15 entire amount billed.

16 26. DEFENDANTS have also failed to process claims submitted by SFGH and other
17 public hospitals promptly and fairly, as is required under California Law. BLUE CROSS and
18 HEALTH NET are Health Care Service Plans ("HCSPs") subject to the Knox-Keene Act, and
19 regulated by the DMHC. As such, they are required to follow the provisions of the Knox-Keene
20 Act and the DMHC's implementing regulations governing claims payment, provider disputes,
21 and unfair payment patters, including but not limited to California Health and Safety Code
22 Sections 1371 (setting forth time frames for HCSPs to respond to claims, and requiring HCSPs to
23 pay fifteen percent interest on certain late payments); 1371.1 (setting forth requirements for
24 notices of overpayment to providers); 1371.35 (setting forth time frame for reimbursing
25 completed claims) and 1371.37 (prohibiting HCSPs from engaging in unfair payment patterns);
26 and California Code of Regulations, title 28, sections 1300.71 and 1300.71.38. Instead of
27 complying with these provisions, BLUE CROSS and HEALTH NET have engaged in a
28

1 demonstrable and unjust pattern of payment delays and underpayment of claims submitted by
2 SFGH and other public hospitals.

3 27. On November 29, 2010, BLUE CROSS and the DMHC entered into a Letter Of
4 Agreement in DMHC Enforcement Matter Number 10-002. DMHC levied \$900,000 in
5 administrative penalties against BLUE CROSS for its failure to comply with the Knox-Keene
6 Act's claims and provider dispute provisions. As part of the Letter Of Agreement, DMHC
7 suspended \$400,000 of those penalties pending BLUE CROSS's demonstration of compliance,
8 during the DMHC's next financial examination, "with the claims payment and PDR [Provider
9 Dispute Resolution] provisions of the Knox-Keene Act for which the Plan [BLUE CROSS] has
10 acknowledged violations." This Letter Of Agreement was signed by BLUE CROSS President
11 Pam D. Kehaly on behalf of BLUE CROSS.

12 28. On January 25, 2011, HEALTH NET and the DMHC entered into a Letter Of
13 Agreement in DMHC Enforcement Matter Numbers 10-002, 07-330, 09-424 and 10-204.
14 DMHC levied \$750,000 in administrative penalties against HEALTH NET for its failure to
15 comply with the Knox-Keene Act's claims and provider dispute provisions. As part of the Letter
16 Of Agreement, DMHC suspended \$250,000 of those penalties pending HEALTH NET's
17 demonstration of compliance, during the DMHC's next financial examination with the claims
18 payment and provider dispute resolution provisions of the Knox-Keene Act. This Letter Of
19 Agreement was signed by HEALTH NET President Steven Sell on behalf of HEALTH NET.

20 29. BLUE CROSS LIFE is a traditional indemnity insurance company that is subject
21 to the California Insurance Code and regulated by the DOI. As such, BLUE CROSS LIFE is
22 required to follow the provisions of the Insurance Code and the DOI's implementing regulations
23 governing claims payment, provider disputes, and unfair payment patters, including but not
24 limited to California Insurance Code sections 790.03, 880 and 10123.13 and California Code of
25 Regulations, title 10, sections 2695.1 – 2695.7 and 2695.11 – 2695.12. Instead of complying
26 with these provisions, BLUE CROSS LIFE has engaged in a demonstrable and unjust pattern of
27 payment delays and under payment of claims submitted by SFGH and other public hospitals.
28

1 30. On February 22, 2010, the Legal Division of the DOI filed an Order to Show
2 Cause; Statement of Charges / Accusation; Notice of Monetary Penalty / Notice of Hearing
3 against BLUE CROSS LIFE. Based on the DOI's review of a limited number of BLUE CROSS
4 LIFE claims files from the period of January 1, 2006 through December 31, 2009, DOI found
5 1,308 separate violations of claims handling procedures mandated by the Insurance Code or DOI
6 regulations. These violations included, among other things, misrepresenting pertinent facts and
7 insurance policy provisions (Ins. Code § 790.03(h)(1)); failure to implement reasonable
8 standards for promptly processing claims (Ins. Code § 790.03(h)(3)); lack of good faith efforts to
9 effectuate prompt, fair and equitable settlements (Ins. Code § 790.03(h)(5)); failure to conduct
10 business in its own name (Ins. Code § 880); failure to reimburse claims within thirty days (Ins.
11 Code § 10123.13(a)); and failure to pay interest owed on claims (Ins. Code § 10123.13(b)-(c)).

12
13 **FIRST CAUSE OF ACTION FOR VIOLATION OF**
14 **BUSINESS AND PROFESSIONS CODE SECTION 17200**
15 **AGAINST BLUE CROSS and BLUE CROSS LIFE**

16 31. THE PEOPLE incorporate by reference paragraphs 1 through 30 inclusive.

17 32. California Business and Professions Code section 17200 prohibits any "unlawful,
18 unfair or fraudulent business act or practices." DEFENDANT BLUE CROSS and
19 DEFENDANT BLUE CROSS LIFE have engaged in unlawful, unfair and deceptive business
20 acts and practices in violation of section 17200. Such acts and practices include but are not
21 limited to the following:

22 a) DEFENDANT BLUE CROSS has repeatedly violated the Knox Keene
23 Act, including but not limited to Health and Safety Code section 1371.4, through the acts and
24 practices set forth in this Complaint, and therefore has engaged in a pattern of unlawful business
25 practices;

26 b) DEFENDANT BLUE CROSS has repeatedly violated the Knox-Keene
27 Act and DMHC regulations, including but not limited to California Health and Safety Code
28 sections 1371, 1371.1, 1371.35 and 1371.37, and California Code of Regulations, title 28,

1 sections 1300.71 and 1300.71.38, through the acts and practices set forth in this Complaint, and
2 therefore has engaged in a pattern of unlawful business practices;

3 c) DEFENDANT BLUE CROSS LIFE has repeatedly violated the Insurance
4 Code and DOI regulations concerning the processing of claims for payment and appeals from the
5 denials of such claim, including but not limited to California Insurance Code sections 790.03,
6 880 and 10123.13, and California Code of Regulations, title 10, sections 2695.1 – 2695.7 and
7 2695.11 – 2695.12, through the acts and practices set forth in this Complaint, and therefore has
8 engaged in a pattern of unlawful business practices;

9 d) DEFENDANT BLUE CROSS's and DEFENDANT BLUE CROSS
10 LIFE's practices as set forth in this complaint, relating to both the underpayment of claims made
11 by public hospitals for emergency medical treatment and dilatory claims processing practices,
12 constitute unfair business practices because they offend established public policy, and because
13 the harm they cause to patients and public hospitals in California greatly outweighs any benefits
14 associated with those practices; and

15 e) DEFENDANT BLUE CROSS's and DEFENDANT BLUE CROSS
16 LIFE's practices as set forth in this complaint, relating to both the underpayment of claims made
17 by public hospitals for emergency medical treatment and dilatory claims processing practices,
18 constitute deceptive business practices because they are likely to deceive patients and employees
19 of public hospitals in California,

20
21 **SECOND CAUSE OF ACTION FOR VIOLATION OF
BUSINESS AND PROFESSIONS CODE SECTION 17200**

22 **AGAINST HEALTH NET**

23 33. THE PEOPLE incorporate by reference paragraphs 1 through 30 inclusive.

24 34. California Business and Professions Code section 17200 prohibits any "unlawful,
25 unfair or fraudulent business act or practices." DEFENDANT HEALTH NET has engaged in
26 unlawful, unfair and deceptive business acts and practices in violation of section 17200. Such
27 acts and practices include but are not limited to the following:
28

1 a) Through its refusal to pay for the full reasonable value of emergency
2 medical treatment provided by SFGH and other public hospitals, as set forth above,
3 DEFENDANT HEALTH NET has repeatedly violated the Knox Keene Act, including but not
4 limited to Health and Safety Code section 1371.4, and therefore has engaged in a pattern of
5 unlawful business practices;

6 b) Through its claims handling acts and practices, as set forth above,
7 DEFENDANT HEALTH NET has repeatedly violated other provisions of the Health and Safety
8 Code and DMHC regulations, including but not limited to California Health and Safety Code
9 Sections 1371, 1371.1, 1371.35 and 1371.37, and California Code of Regulations, title 28,
10 sections 1300.71 and 1300.71.38, and therefore has engaged in a pattern of unlawful business
11 practices;

12 c) DEFENDANT HEALTH NET's practices as set forth in this complaint,
13 relating to both the underpayment of claims made by public hospitals for emergency medical
14 treatment and dilatory claims processing practices, constitute unfair business practices because
15 they offend established public policy, and because the harm they cause to patients and public
16 hospitals in California greatly outweighs any benefits associated with those practices; and

17 e) DEFENDANT HEALTH NET's practices as set forth in this complaint,
18 relating to both the underpayment of claims made by public hospitals for emergency medical
19 treatment and dilatory claims processing practices, constitute deceptive business practices
20 because they are likely to deceive patients and employees of public hospitals in California,
21

22 **PRAYER FOR RELIEF**

23 THE PEOPLE pray for judgment against DEFENDANTS, and each of them, as follows:

24 1. An order by which the Court enjoins the DEFENDANTS from performing or proposing
25 to perform any act of unfair competition in California;

26 2. An order that DEFENDANTS restore to California public hospitals, including SFGH,
27 all funds improperly withheld by DEFENDANTS, along with interest thereon as required by law;
28

1 3. An order that DEFENDANTS pay \$2,500.00 in civil penalties for each violation of
2 section 17200;

3 4. Costs of suit; and

4 5. For such further and additional relief as the Court deems proper.
5

6 Dated: May 23, 2011

7 DENNIS J. HERRERA
8 City Attorney
9 DANNY CHOU
10 CHIEF OF COMPLEX AND SPECIAL LITIGATION
11 OWEN J. CLEMENTS
12 CHIEF OF SPECIAL LITIGATION
13 ROBERT A. BONTA
14 DEPUTY CITY ATTORNEY

15 By:

16 
17 OWEN J. CLEMENTS

18 Attorneys for Plaintiff THE PEOPLE
19 OF THE STATE OF CALIFORNIA
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