IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NORTH CYPRESS MEDICAL CENTER OPERATING CO., LTD. AND NORTH CYPRESS MEDICAL CENTER OPERATING COMPANY GP, LLC.,	§	
Plaintiffs,	§	
V.	§	**CIVIL ACTION NO. 4:09-CV-02556**
CIGNA HEALTHCARE AND CONNECTICUT GENERAL LIFE INSURANCE COMPANY,	§	
Defendants.	§	

DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED ORIGINAL COMPLAINT, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

ANSWER

Defendants CIGNA Healthcare, Connecticut General Life Insurance Co. ("CGLIC") and CIGNA Healthcare of Texas, Inc. ("CHT") (CGLIC and CHT constituting "CIGNA" and CGLIC, CHT, and CIGNA Healthcare constituting "Defendants"), by and through their undersigned attorney, hereby answer Plaintiffs' Second Amended Complaint as follows:

PARTIES

1. Defendants admit the allegations of paragraph 1.

2. Defendants admit the allegations of paragraph 2.

3. Defendants deny the allegations of paragraph 3, except admit that attorneys for Connecticut General Life Insurance Co. have appeared in this action on behalf of "CIGNA Healthcare." Defendants state that "CIGNA Healthcare" is not a separate corporate entity but rather a registered service mark owned by CIGNA Intellectual property.

4. Defendants admit the allegations of the first sentence of paragraph 4, except deny that Connecticut General Life Insurance Co. ("CGLIC") is a plan administrator. Defendants deny the allegations of the second sentence of paragraph 4, except admit that CGLIC has appeared in this action.

5. Defendants admit the allegations of the first sentence of paragraph 5, except deny that CIGNA Healthcare of Texas ("CHT") is a plan administrator. Defendants deny the allegations of the second sentence of paragraph 5, except admit that CHT has appeared in this action and may be served by serving its registered agent CT Corporation System.

JURISDICTION AND VENUE

6. Defendants state that no response is required to paragraph 6 because it alleges only legal conclusions.

7. Defendants state that no response is required to paragraph 7 because it alleges only legal conclusions.

INTRODUCTION

8. Defendants state that no response is required to paragraph 8 because it alleges only legal conclusions.

9. Defendants admit the allegations of the first sentence of paragraph 9, except deny that CGLIC is a plan administrator. Defendants admit the allegations of the second, third, and fourth sentences of paragraph 9. Defendants deny the allegations of the fifth sentence of paragraph 9, except admit that CIGNA is required to process benefits for out-of-network and emergent ("ER") care as provided in the terms of its plans.

10. Defendants state that no response is required to the first, second, and third sentences of paragraph 10 because they allege only legal conclusions; Defendants otherwise admit that CIGNA plans set forth how benefits will be paid and respectfully refer the Court to those plans. Defendants admit the allegations of the fourth sentence of paragraph 10. Defendants deny the allegations of the fifth sentence of paragraph 10, except admit that some plans provide members with out-of-network benefits.

11. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 11. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of the second sentence of paragraph 11, except state that no response is required to the allegation that Plaintiffs are a beneficiary as this is the statement of a legal conclusion. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of the third sentence of paragraph 11. Defendants state that no response is required to the fourth sentence of paragraph 11 because it alleges only legal conclusions.

APPLICABLE FACTS

Background:

12. Defendants state that no response is required to the first sentence of paragraph 12 because it alleges only legal conclusions, except deny that CIGNA is a plan administrator.

Defendants deny the allegations of the second sentence of paragraph 12, but admit that CHT directly insures HMO plans.

13. Defendants state that no response is required to paragraph 13 because it alleges only legal conclusions; Defendants otherwise admit that CIGNA plans set forth how benefits will be paid and respectfully refer the Court to those plans.

14. Defendants admit the allegations of the first sentence of paragraph 14. Defendants admit the allegations of the second sentence of paragraph 14, except deny that CIGNA is a plan administrator. Defendants state that no response is required to the third sentence of paragraph 14 because it alleges only legal conclusions.

15. Defendants admit the allegations of the paragraph 15, except deny that CIGNA is a plan administrator.

16. Defendants state that no response is required to paragraph 16 because it alleges only legal conclusions; Defendants otherwise admit that CIGNA has entered into ASO agreements and refer the Court to those agreements.

17. Defendants deny the allegations of paragraph 17, except admit that certain ASO agreements provide that CIGNA can receive fees for administering certain cost-containment programs.

18. Defendants state that no response is required to paragraph 18 because it alleges only legal conclusions; Defendants otherwise admit that CIGNA has entered into ASO agreements and refers the Court to those agreements.

19. Defendants deny the allegations of paragraph 19.

20. Defendants deny the allegations of paragraph 20.

21. Defendants state that no response is required to paragraph 21 because it alleges only legal conclusions, except state that they lack information or knowledge sufficient to form a belief as to the truth of the allegation that CIGNA members sign assignments to NCMC.

Improper Claims Determinations:

22. Defendants admit the allegations of paragraph 22.

23. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 23. Defendants deny the allegations of the second sentence of paragraph 23, except admit that on or around January 3, 2007 NCMC sent CIGNA a letter; Defendants respectfully refer the Court to that letter for its true and complete meaning and effect. Defendants deny the allegations of the third sentence of paragraph 23, except admit that on or around February 1, 2007 NCMC sent CIGNA a letter; Defendants respectfully refer the Court to that letter for its true and complete meaning and effect. Defendants deny the allegations of the fourth sentence of paragraph 23.

24. Defendants deny the allegations of paragraph 24, except admit that CIGNA processed benefit claims for out-of-network services provided by NCMC in accordance with the terms of the relevant plans.

25. Defendants deny the allegations of the first sentence of paragraph 25. Defendants deny the allegations of the second sentence of paragraph 25, except admit that one CIGNA employees sometimes used the word "approach" in emails and documents discussing NCMC and one employee used the word "targeted" in an email discussing NCMC. Defendants deny the allegations of sentence 25(a), except admit that CIGNA discussed the possibility of clients with MRC1 plans adopting MRC2 plans. Defendants deny the allegations of sentence 25(b), except admit that CIGNA's Special Investigations Unit investigated NCMC for fee-forgiving. Defendants deny the allegations of sentence 25(c), except admit that it did terminate certain providers in its network for making out-of-network referrals. Defendants deny the allegations of sentence 25(d), except admit that CIGNA contemplated a "pay-the-member" program that it did not implement, and state that they lack information or knowledge sufficient to form a belief as to the truth of the allegation that NCMC receives assignments from all of its patients.

26. Defendants deny the allegations of the first sentence of paragraph 26. Defendants deny the allegations of the second sentence of paragraph 26, except admit that one CIGNA employee used the term "bring hospital to the table" in an email discussing NCMC. Defendants deny the allegations of the third sentence of paragraph 26, except admit that CIGNA formed an interdisciplinary team to discuss NCMC. Defendants deny the allegations of the fourth sentence of paragraph 26, except admit that members of its SIU and its Legal Department were involved in certain aspects of the interdisciplinary team.

27. Defendants deny the allegations of the first and second sentences of paragraph 27. Defendants deny the allegations of the third sentence of paragraph 27, except admit that its SIU ultimately proposed a "fee forgiving" protocol for processing claims for services provided by NCMC based on evidence that NCMC was engaged in fee-forgiving. Defendants state that no response is required the fourth and fifth sentences of paragraph 27 because they allege only legal conclusions; Defendants otherwise deny the allegations, except admit that CIGNA plans set forth how benefits will be paid and respectfully refer the Court to those plans.

28. Defendants deny the allegations of the first sentence of paragraph 28, except admit that CIGNA's SIU did investigate NCMC for fee-forgiving. Defendants deny the allegations of the second sentence of paragraph 28, except admit that CIGNA's SIU sent letters to approximately 60 CIGNA members who had received services from NCMC; Defendants respectfully refer the Court to those letters for their true and complete meaning and effect. Defendants deny the allegations of the third and fourth sentences of paragraph 28, except admit that CIGNA sent letters to patients who received services at NCMC and the responses indicated that NCMC was engaged in fee-forgiving. Defendants deny the allegations of the fifth sentence of paragraph 28. Defendants deny the allegations of the sixth sentence of paragraph 28, except admit that began drafting a letter to NCMC on or around July, 2008 which was sent to NCMC on November 10, 2008; Defendants respectfully refers the Court to that letter for its true and complete meaning and effect.

29. Defendants deny the allegations of the first sentence of paragraph 29. Defendants deny the allegations of the second sentence of paragraph 29, except admit that one CIGNA employee stated in or around November 2008 that it was her personal belief that CIGNA had "come too far" to delay implementing a fee-forgiving protocol against NCMC. Defendants deny the allegations of the third sentence of paragraph 29. Defendants deny the allegations of the fourth sentence of paragraph 29, except admit that CIGNA did not implement a "pay-the-member" policy regarding NCMC. Defendants deny the allegations of the fifth sentence of paragraph 29, but admit that one CIGNA employee stated in an email that the fee-forgiving protocol would result in reimbursements for services provided by NCMC being "drastically reduced." Defendants deny the allegations of the sixth sentence of paragraph 29, but admit that one CIGNA employee stated during her deposition that she understood payments to NCMC would be drastically reduced. Defendants deny the allegations of the seventh sentence of paragraph 29, but admit that CIGNA implemented a fee-forgiving protocol regarding some benefit claims for services provided by NCMC and refer the Court to that protocol. Defendants deny the allegations of the eighth and ninth sentences of paragraph 29, except admit that some benefit claims for services provided by NCMC were referred to CIGNA's SIU. Defendants deny the allegations of the tenth sentence of paragraph 29, except admit that some CIGNA employeeS referred to payments made pursuant to CIGNA's fee forgiving protocol as "partial payments." Defendants deny the allegations of the eleventh sentence of paragraph 29, except admit that one CIGNA employee wrote an email that stated in part "[t]he goal is to get the out of network physicians and facilities contracted, and let's hope this effort gets their attention quickly to avoid the individual getting caught in the middle;" Defendants respectfully refer the Court to that email. Defendants deny the allegations of the twelfth sentence of paragraph 29, except admit that a CIGNA employee sent an email on or around December 23, 2008 that stated in part "continue applying SIU processing rules to ALL claims at this point;" Defendants respectfully refer the Court to that email.

30. Defendants deny the allegations of the first sentence of paragraph 30. Defendants deny the allegations of the second sentence of paragraph 30. Defendants deny the allegations of the third sentence of paragraph 30, except admit that one CIGNA employee wrote an email on or around February 18, 2009 that stated in part "spend at North Cypress Medical Center has come down from $2 million/month to $200 thousand/month so all of our hard work is paying off and the pressure is being felt by the physicians in the area as well as NCMC, which is a good thing;" Defendants respectfully refer the Court to that email.

31. Defendants deny the allegations of paragraph 31.

32. Defendants admit that CIGNA enters into ASO agreements with some clients and respectfully refer the Court to those agreements; Defendants otherwise deny the allegations of the first sentence of paragraph 32. Defendants deny the allegations of the second and third sentences of paragraph 32.

33. Defendants deny the allegations of the first sentence of paragraph 33, except that on or around July 20, 2009, NCMC sent CIGNA a letter regarding an opinion by the Office of the Inspector General and respectfully refer the Court to that letter and to that opinion. Defendants deny the allegations of the second sentence of paragraph 33. Defendants state that no response is required to the third sentence of paragraph 33 because it alleges only legal conclusions. Defendants state that no response is required to the fourth sentence of paragraph 33 because it alleges only legal conclusions; Defendants otherwise lack information or knowledge sufficient to form a belief as to the truth of the allegations. Defendants state that no response is required to the fifth and sixth sentences of paragraph 33 because they allege only legal conclusions. Defendants state that no response is required to the seventh sentence of paragraph 33 because it alleges only legal conclusions; Defendants otherwise deny the allegations. Defendants deny the allegations of the eighth sentence of paragraph 33, except admit that Kenneth Faustine, the former head of CIGNA's SIU, wrote an email stating in part that "this is not illegal in Texas;" Defendants respectfully refer the Court to that email. Defendants deny the allegations of the ninth sentence of paragraph 33.

34. Defendants deny the allegations of the first sentence of paragraph 34, except admit that the following language appears in many of its MRC1 plans: "Covered Expenses will not include, and no payment will be made … for charges which you are not obligated to pay or for which you are not billed or for which you would not have been billed except that they were covered under this plan[.]" Defendants deny the allegations of the second sentence of paragraph 34, except admit that CIGNA relied in part on the plan language quoted above in developing its fee-forgiving protocol. Defendants deny the allegations of the third, fourth, fifth, sixth, and seventh sentences of paragraph 34. Defendants deny the allegations of the eighth sentence of paragraph 34, except admit that Mary Ellen Cisar, who is a manager of CIGNA's SIU, testified that she could not offer a definition of the language "charges … for which you would not have been billed except that they were covered under this plan" other than the language itself.

35. Defendants state that no response is required to the allegations of paragraph 35, as it alleges only legal conclusions; Defendants otherwise deny the allegations, except admit that CIGNA plans set forth how benefits will be paid and respectfully refer the Court to those plans

36. Defendants deny the allegations of paragraph 36, except (a) admit that CIGNA processed benefit claims for services provided to some of its members by NCMC and that under its fee-forgiving protocol it sometimes paid amounts less than the charges stated by NCMC; and (b) state that no response is required to the allegation regarding the law's requirements for prompt payment as it alleges only a legal conclusion.

37. Defendants state that no response is required to the first and second sentences of paragraph 37 as they allege only legal conclusions. Defendants deny the allegations of the third sentence of paragraph 37, except admit that some of CIGNA's plan members have received ER services from NCMC. Defendants deny the allegations of the fourth sentence of paragraph 37, except admit that CIGNA applies its fee-forgiving protocol to ER claims arising under its MRC1 plans. Defendants deny the allegations of the fifth sentence of paragraph 37, except admit that NCMC has requested copies of the plans of some CIGNA members that received services from

NCMC. Defendants deny the allegations of the sixth sentence of paragraph 37, except admit that CIGNA has not provided copies of a plan to NCMC unless NCMC has provided written authorization from the member. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of the seventh sentence of paragraph 37, except state that no response is required to the allegation regarding NCMC's legal obligations to provide emergent care services as it alleges only legal conclusions. Defendants deny the allegations of the eighth sentence of paragraph 37. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of the ninth sentence of paragraph 37. Defendants state that no response is required to the tenth and eleventh sentences of paragraph 37 because they allege only legal conclusions; otherwise denied.

38. Defendants state that no response is required to paragraph 38 because it alleges only legal conclusions; otherwise denied.

"Plaintiffs' Prompt Pay Discount":

39. Defendants deny the allegations of the first sentence of paragraph 39, except admit that CIGNA has implemented a fee-forgiving protocol that has reduced reimbursements to some CIGNA plan members for services provided by NCMC based upon evidence that NCMC is engaged in fee-forgiving. Defendants deny the allegations of the second sentence of paragraph 39, except admit that CIGNA's health plan generally require members to pay premiums and to pay other amounts to providers in some instances. Defendants deny the allegations of the third sentence of paragraph 39, except state that no response is required to its allegations regarding CIGNA's legal duties and responsibilities as that alleges only a legal conclusion.

40. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations paragraph 40.

41. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations paragraph 41.

42. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations paragraph 42.

43. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations paragraph 43.

44. Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations of the first, second, and third sentences of paragraph 44. Defendants state that no response is required to the fourth sentence of paragraph 44 because it alleges only legal conclusions.

45. Defendants state that no response is required to paragraph 45 because it alleges only legal conclusions; Defendants otherwise admit that CIGNA plans set forth how benefits will be paid and respectfully refer the Court to those plans, and deny that CIGNA is a plan administrator.

46. Defendants state that no response is required to paragraph 46 because it alleges only legal conclusions; Defendants otherwise admit that CIGNA plans set forth how benefits will be paid and respectfully refer the Court to those plans.

47. Defendants state that no response is required to the first sentence of paragraph 47 because it alleges only legal conclusions; Defendants otherwise deny the allegations. Defendants deny the allegations of the second sentence of paragraph 47, except (a) CIGNA has implemented a fee-forgiving protocol that has reduced reimbursements to some CIGNA plan members for services provided by NCMC based upon evidence that NCMC is engaged in fee-forgiving; and (b) state that no responses are required to the allegations regarding the appropriateness of CIGNA's conduct or regarding Medicare's rules regarding "prompt pay discounts" as they are legal conclusions. Defendants state that no response is required to the third sentence of paragraph 47 because it alleges only legal conclusions. Defendants state that no response is required to the fourth sentence of paragraph 47 because it alleges only legal conclusions; Defendants otherwise deny the allegations. Defendants state that no response is required to the fifth sentence of paragraph 47 because it alleges only legal conclusions.

48. Defendants state that no response is required to paragraph 48 because it alleges only legal conclusions.

49. Defendants state that no response is required to paragraph 49 because it alleges only legal conclusions; Defendants otherwise Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations.

50. Defendants state that no response is required to paragraph 50 because it alleges only legal conclusions; Defendants otherwise deny the allegations.

Document Requests/Civil Penalties:

51. Defendants state that no response is required to paragraph 51 because it alleges only legal conclusions.

52. Defendants state that no response is required to paragraph 52 because it alleges only legal conclusions.

53. Defendants state that no response is required to paragraph 53 because it alleges only legal conclusions.

54. Defendants deny the allegations of the first sentence of paragraph 54, except admit that NCMC has requested copies of the plans of some CIGNA members that received services from NCMC. Defendants deny the allegations of the second sentence of paragraph 54, except admit that CIGNA has not provided copies of member plans to NCMC unless NCMC has provided written authorization from the members. Defendants state that no response is required to the third and fourth sentences of paragraph 54 because they allege only legal conclusions.

Breach of "Discount Agreements":

55. Defendants deny the allegations of the first sentence of paragraph 55, except admit that CGLIC has agreements with National Health Benefits Corporation (''NHBC'') and Viant to price certain benefit claims under some circumstances. Defendants deny the allegations of the second and third sentences of paragraph 55, except admit that NHBC and Viant have

entered into some contracts with NCMC regarding the payment of certain claims for services provided by NCMC to CIGNA plan members and refer to those contracts for their contents.

56. Defendants deny the allegations of the first sentence of paragraph 56, except admit that CIGNA has applied its fee-forgiving protocol to some benefit claims for which NHBC or Viant have signed contracts with NCMC. Defendants state that no response is required to the second sentence of paragraph 56 because it alleges only legal conclusions; Defendants otherwise deny the allegations.

COUNT l
CIGNA'S FAILURE TO COMPLY WITH GROUP PLANS IN VIOLATION OF ERISA: PROVIDER'S CLAIMS AS ASSIGNEE

57. Defendants repeat and reallege their response to paragraphs 1 through 56 as if fully set forth herein.

58. Defendants state that no response is required to paragraph 58 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

59. Defendants state that no response is required to paragraph 59 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

60. Defendants state that no response is required to paragraph 60 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

61. Defendants state that no response is required to paragraph 61 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

62. Defendants state that no response is required to paragraph 62 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

63. Defendants state that no response is required to paragraph 63 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

COUNT 2
CIGNA'S BREACH OF FIDUCIARY DUTIES UNDER ERISA

64. Defendants repeat and reallege their response to paragraphs 1 through 63 as if fully set forth herein.

65. Defendants state that no response is required to paragraph 65 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

66. Defendants state that no response is required to paragraph 66 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

67. Defendants state that no response is required to paragraph 67 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

68. Defendants state that no response is required to paragraph 68 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

69. Defendants state that no response is required to paragraph 69 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

70. Defendants state that no response is required to paragraph 70 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

71. Defendants state that no response is required to paragraph 71 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

72. Defendants state that no response is required to paragraph 72 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

73. Defendants state that no response is required to paragraph 73 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

COUNT 3
CIGNA'S FAILURE TO PROVIDE
FULL AND FAIR REVIEW UNDER ERISA

74. Defendants repeat and reallege their response to paragraphs 1 through 73 as if fully set forth herein.

75. Defendants state that no response is required to paragraph 75 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

76. Defendants state that no response is required to paragraph 76 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

77. Defendants state that no response is required to paragraph 77 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

COUNT 4
CIGNA'S VIOLATIONS OF CLAIMS
PROCEDURE VIOLATIONS UNDER ERISA

78. Defendants repeat and reallege their response to paragraphs 1 through 77 as if fully set forth herein.

79. Defendants state that no response is required to paragraph 79 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations, except admit that CIGNA processed benefit claims for out-of-network services provided by NCMC in accordance with the terms of the relevant plans

80. Defendants state that no response is required to paragraph 80 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

81. Defendants state that no response is required to paragraph 81 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

82. Defendants state that no response is required to paragraph 82 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

COUNT 5
REQUEST FOR INFORMATION

83. Defendants repeat and reallege their response to paragraphs 1 through 82 as if fully set forth herein.

84. Defendants state that no response is required to paragraph 84 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

COUNT 6
BREACH OF CONTRACT

85. Defendants repeat and reallege their response to paragraphs 1 through 84 as if fully set forth herein.

86. Defendants state that no response is required to paragraph 86 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

COUNT 7
VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)

87. Defendants repeat and reallege their response to paragraphs 1 through 86 as if fully set forth herein.

88. Defendants state that no response is required to paragraph 88 as it states only legal conclusions and arguments and as the Court has dismissed NCMC's claims alleging violations of RICO; Defendants otherwise deny the allegations.

89. Defendants state that no response is required to paragraph 89 as it states only legal conclusions and arguments and as the Court has dismissed NCMC's claims alleging violations of RICO; Defendants otherwise deny the allegations.

90. Defendants state that no response is required to paragraph 90 as it states only legal conclusions and arguments and as the Court has dismissed NCMC's claims alleging violations of RICO; Defendants otherwise deny the allegations.

COUNT 8
RULE 54(c) RELIEF

91. Defendants repeat and reallege their response to paragraphs 1 through 90 as if fully set forth herein.

92. Defendants state that no response is required to paragraph 92 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

COUNT 9
DAMAGES

93. Defendants repeat and reallege their response to paragraphs 1 through 92 as if fully set forth herein.

94. Defendants state that no response is required to paragraph 94 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

COUNT 10
ATTORNEY'S FEES

95. Defendants repeat and reallege their response to paragraphs 1 through 94 as if fully set forth herein.

96. Defendants state that no response is required to paragraph 96 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

COUNT 11
PUNITIVE/EXEMPLARY DAMAGES

97. Defendants repeat and reallege their response to paragraphs 1 through 96 as if fully set forth herein.

98. Defendants state that no response is required to paragraph 98 as it states only legal conclusions and arguments; Defendants otherwise deny the allegations.

AFFIRMATIVE DEFENSES

CIGNA asserts the following affirmative defenses to Plaintiffs' claims:

First Affirmative Defense

1. Plaintiffs fail to state claims upon which relief can be granted.

Second Affirmative Defense

2. Plaintiffs lack standing.

Third Affirmative Defense

3. Plaintiffs' ERISA claims are barred by failure to exhaust administrative remedies.

Fourth Affirmative Defense

4. Plaintiffs' ERISA claims are barred because CIGNA complied with its plans.

Fifth Affirmative Defense

5. Plaintiffs' beach-of-contract claims are barred because CIGNA complied with the relevant contracts.

Sixth Affirmative Defense

6. Plaintiffs' claims are barred by unclean hands.

Seventh Affirmative Defense

7. Plaintiffs' claims are barred by laches.

Eighth Affirmative Defense

8. Plaintiffs are estopped from seeking any recovery from Defendants.

Ninth Affirmative Defense

9. Plaintiffs have not suffered any damages; alternatively, Plaintiffs have suffered only damages caused by their own conduct.

Tenth Affirmative Defense

10. Plaintiffs waived any claims they may have had against Defendants.

Eleventh Affirmative Defense

11. Plaintiffs' claims violate public policy.

Twelfth Affirmative Defense

12. Plaintiffs' claims are barred by the applicable statutes of limitations.

Thirteenth Affirmative Defense

13. Plaintiffs are barred from seeking punitive damages under ERISA, as that statute does not permit recovery of punitive damages.

Fourteenth Affirmative Defense

14. Plaintiffs' claims, insofar as they arise under state law, are preempted by ERISA.

Fifteenth Affirmative Defense

15. Plaintiffs' claims are barred because of Plaintiffs' fraudulent conduct set forth with particularity in Defendants' Counterclaims.

Reservation Of Rights

Defendants reserve the right to assert additional defenses as may be warranted by future discovery or investigation in this action.

COUNTERCLAIMS

Defendants-Counterclaimants Connecticut General Life Insurance Co. ("CGLIC") and CIGNA Healthcare of Texas, Inc. ("CHT") (together, "CIGNA" or "Counterclaim Plaintiffs") as and for their verified Counterclaims against Plaintiffs-Counterclaim Defendants North Cypress Medical Center Operating Co., Ltd. ("NCMC Co."), North Cypress Medical Center Operating Company GP, LLC ("NCMC LLC") (together, "NCMC"), Dr. Robert A. Behar ("Behar"), and as-yet Unidentified Defendants (together, "Counterclaim Defendants") allege as follows:

INTRODUCTION

1. This action arises from an ongoing scheme by NCMC to defraud CIGNA through a practice known as "fee forgiving."

2. After NCMC provides facility services to CIGNA plan members, it sends claim forms to CIGNA listing phony "charges" for those services. The charges are phony because NCMC does not collect, and never intends to collect, the full amounts that it puts on the forms; it intends to collect much less, if anything at all. But NCMC intends for CIGNA to process benefits based on the full amount of these phony charges, which CIGNA did for nearly two years. Because NCMC's phony "charges" were grossly inflated, so too were CIGNA's benefit payments. As a result, NCMC received millions of dollars to which it was not entitled.

3. CIGNA health plans reimburse their members for certain healthcare costs, defined in the plans as "covered expenses." When a CIGNA plan member receives medical services, CIGNA determines what part of their cost is considered for coverage by the plan, known as the "allowed amount." The patient is responsible for paying part of this allowed amount and the plan pays the rest. While there are different types of patient responsibility (including deductibles, benefit limits, and co-payments), one of the most important is co-insurance, which is a percentage of the allowed amount for covered expenses that the member must pay out of his own pocket.

4. Co-insurance is critical to keeping health care affordable. When a CIGNA plan member visits a doctor who participates in CIGNA's provider network, the doctor charges a rate

previously negotiated with CIGNA. But when a plan member visits a doctor outside of that network, like NCMC, the provider can charge whatever it wants. To sensitize members to the true costs of their out-of-network care, CIGNA plans require them to pay a higher level of co-insurance for out-of-network services than for in-network services. This encourages members to use providers in CIGNA's network in the normal course, and to go to non-participating providers only when they are willing to shoulder a greater portion of the cost.

5. NCMC's so-called business model wrecks these incentives. Instead of collecting the co-insurance from CIGNA plan members that their plans require them to pay, NCMC waives those payments. NCMC tells CIGNA plan members that it will bill them as if they were seeing an in-network provider, eliminating any financial difference to the member between using NCMC and using another provider in CIGNA's network. On top of this, NCMC offers these plan members over-the-top "hotel-like accommodations," unlike those in any traditional hospital, including "all private patient suites with upscale room accommodations, including trim, flat screen televisions, private baths, and wireless internet."

6. Put simply, the member stays at the Ritz-Carlton, but pays like he is staying at a cheap motel (if the member is billed anything at all) -- with NCMC billing CIGNA for the difference. After treating the member, NCMC submits a claim form to CIGNA listing its billed "charges" for the service. But these "charges" are fraudulent. NCMC never intends to receive them in full, because it has waived all (or almost all) of the portion of the charges that the patient is responsible for paying under the patient's CIGNA plan, including co-insurance. Rather, it expects to receive only a payment from CIGNA and (perhaps) a nominal amount from the member.

7. Because CIGNA's plans cover only charges that its members are actually required to pay, the plans are not required to cover the amounts that NCMC waived. But NCMC does not tell CIGNA what its true charges are. Rather, it sends CIGNA claim forms listing false, grossly inflated "charges" that it never intended to collect in full, intending for CIGNA to base its reimbursement on that phony, inflated amount.

8. Because NCMC's "charges" are so high, the plan's payment, which was a percentage of those charges, would usually be large enough that NCMC would profit handsomely even without collecting anything from the member. It did not need to collect the member's co-insurance to make money; and, of course, it was by waiving the co-insurance that NCMC induced the member to go to NCMC in the first place.

9. Thus, while patients who were CIGNA plan members were paying NCMC nothing at all, or were paying as if the services were in-network, CIGNA was still paying NCMC as if they were out-of-network.

10. Not surprisingly, when members learned they could receive care in a resort-like atmosphere for nothing or close to it, they were eager to sign up. After all, they were not paying their share of the true costs of these services as required under their plans.

11. The result was that out-of-network costs skyrocketed. The effect of these out-of-control costs had a disproportionate effect on businesses in the Houston area. Many of CIGNA's plans are structured such that the payments made to providers like NCMC come directly from the employer providing the healthcare plan to its employees. That is, while CIGNA processes payments and sends money to NCMC, the dollars spent making payments to NCMC often come from the budgets of companies and organizations whose employees go to NCMC for care.

12. CIGNA became aware that local employers were suffering as a result of ever-increasing out-of-network reimbursements and investigated NCMC's practices. After gathering evidence of NCMC's fraud, CIGNA put a stop to it, implementing a fee-forgiving protocol that reduced payments to NCMC accordingly. But during 2007 and most of 2008 -- before the protocol was implemented -- CIGNA paid millions of dollars to NCMC that it was not obliged to pay. The dollars spent often came directly from local employer's budgets.

13. To this day, NCMC continues to send CIGNA fraudulent claim forms, listing charges that it has no intention of ever fully collecting.

14. CIGNA now files its Counterclaims, asking this Court to (1) order NCMC to repay the funds that CIGNA's plans paid to NCMC due to its fraud; and (2) enjoin NCMC from

submitting such fraudulent claims in the future. CIGNA brings these Counterclaims as compulsory counterclaims, pursuant to Federal Rule of Civil Procedure 13(a).

THE PARTIES

15. Counterclaim Plaintiff Connecticut General Life Insurance Co. ("CGLIC") is a Connecticut corporation with its principal place of business in Connecticut.

16. CIGNA Healthcare of Texas, Inc. ("CHT") is a Texas Corporation with its principal place of business in Texas.

17. On information and belief, North Cypress Medical Center Operating Co., Ltd. ("NCMC Co.") is a Texas limited partnership doing business in Texas.

18. On information and belief, North Cypress Medical Center Operating Company GP, LLC ("NCMC LLC") is a Texas limited liability company doing business in Texas.

19. On information and belief, Counterclaim Defendant Dr. Robert A. Behar is an individual who resides in Houston, Texas and may be served at 5406 American Beauty Court, Houston, TX 77041.

20. On information and belief, the as yet Unidentified Defendants are individuals who reside in or near Houston, Texas.

21. CIGNA joins Behar and the as yet Unidentified Defendants as required parties pursuant to Federal Rule of Civil Procedure 19. In the alternative, CIGNA requests leave to join Behar and the Unidentified Defendants as parties pursuant to Federal Rule of Civil Procedure 20.

JURISDICTION AND VENUE

22. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because several of Plaintiffs' claims arise under the laws of the United States. The Court has jurisdiction over CIGNA's claims pursuant to 28 U.S.C. § 1367 because the state and common law claims alleged herein are so related to the federal claims that that they form part of the same case or controversy. Plaintiffs' claims and CIGNA's counterclaims raise issues of fact and law that are largely the same, *res judicata* would bar a subsequent suit on CIGNA's claims absent CIGNA's counterclaims, substantially the same evidence will support or refute Plaintiff's claims as well as

CIGNA's counterclaims, and there is an obvious logical relationship between Plaintiffs' claims and CIGNA's counterclaims.

23. Venue is proper for this action pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Counterclaim Plaintiffs' claims occurred in this judicial district, or alternatively because Counterclaim Plaintiffs and Counterclaim Defendants transact business in this judicial district and/or reside in this district.

FACTUAL BACKGROUND

CIGNA and its Plans

24. CIGNA is a global health service company that offers a broad range of integrated health care and related plans and services.

25. CGLIC offers preferred provider organization (PPO) or Point of Service (POS) plans. Most of these plans are funded by the employers who sponsor them and CIGNA serves as the plans' claims administrator; they are known as "administrative services only" or "ASO" plans. The plan documents authorize CIGNA to recover any overpayments made by the plans on the plans' behalf.

26. CHT offers health maintenance organization (HMO) plans issued in Texas. These HMO plans are funded and administered by CHT.

27. Most of the plans at issue here offer members the choice of receiving services either from health care providers in CIGNA's network or from providers outside of that network.

28. If a member receives an in-network service from a participating provider, the plan pays the amount agreed to in the provider's network contract and the member pays any applicable co-insurance, co-payments, and deductibles. CIGNA contracts with these participating providers to pay them fixed rates for the services that they provide to CIGNA members; in return, CIGNA creates incentives for its members to use these providers. These arrangements benefit employers and plan members (by reducing overall health care costs) and also benefit participating providers (by ensuring them a source of patients).

29. If a member receives an out-of-network service from a non-participating provider (or "nonpar"), however, the provider can charge whatever it likes for its services -- and nonpar rates are often higher than contracted rates. To make out-of-network benefits an affordable option for the employers' sponsoring them, CIGNA's plans contain various financial incentives for members to choose participating providers and to share the costs of out-of-network services.

30. One of the key ways in which CIGNA's plans allocate out-of-network costs between employees and employers is through co-insurance -- a percentage of the amount that the plan covers (or "allows") that the member is required to pay towards the cost of that service. The co-insurance that members must pay towards out-of-network services is usually much higher than the co-insurance they must pay (if any) towards in-network services.

31. This co-insurance requirement underlies the entire concept of out-of-network benefits. It sensitizes members to the true costs of out-of-network services, ensuring that if a member receives such a service he is willing to pay a greater portion of that expense out of his own pocket. If patients did not share in these costs, then they would have no financial incentive to moderate their demand for out-of-network services or to consider the higher costs of any particular out-of-network provider, leading to increased costs for the plan.

32. Eliminating patients' responsibility to pay more towards out-of-network services also undermines CIGNA's ability to offer quality in-network services. If there is no financial difference to plan members between participating and non-participating providers, then they have no financial incentive to prefer providers in CIGNA's network. And without the stream of patients that this incentive produces, providers will have a reduced incentive to join CIGNA's network, leaving that network less robust, and stripping employers of the ability to offer health care in an affordable way.

33. In part to ensure that members receiving out-of-network services pay their required co-insurance, and that non-participating providers do not waive it, CIGNA's plans state that they do not cover costs that the member is not obligated to pay, for which the member is not

billed, or for which the member would not have been billed except for the fact the charges are covered by his plan.

NCMC and its Fraud

34. NCMC is a medical facility that does not participate in CIGNA's network. It opened it doors in January 2007 and advertises its state-of-the-art medical care.

35. Even more heavily, NCMC advertises its "5-star atmosphere" and "5-star service." "From the moment you walk in the door," NCMC's website promises, "you will experience our commitment to personal, comfortable service." It tells potential patients that NCMC "features all private rooms with upscale, hotel-like accommodations. All rooms have luxurious private baths, flat-screen televisions and wireless internet access."

36. There's more. NCMC also features "an upscale restaurant specialized in Mediterranean-influenced, New American cuisine," which one can experience through "private dining in a sophisticated event room" or by "quick delivery to patients[.]" Indeed, while the homepage of NCMC's website features ten photographs, only one is of a doctor; eight are of NCMC's facilities and another is of a patient in a plush terrycloth robe lounging on a bed while chatting on a cell phone, surfing the Internet on a laptop, and lifting the cover off of what one presumes is a "Mediterranean-influenced, New American" meal.

37. These luxurious accommodations are designed to entice as many individuals into inquiring about NCMC's services as possible.

38. When a CIGNA plan member approaches NCMC about receiving services there, NCMC's staff tells him that, although NCMC is outside of CIGNA's provider network, the member will not have to pay for an out-of-network service. Rather, NCMC tells the member that it will bill him as if NCMC was an in-network provider.

39. And the primary way in which NCMC allows CIGNA plan members to pay "as if they were in-network" is by waiving the co-insurance that their plans require them to pay towards the cost of NCMC's services. Rather, NCMC tells CIGNA plan members that it will only collect the co-payments that they would have to make if they received the services on an

in-network basis: if they pay these amounts reasonably soon, then NCMC will not charge them anything else. This, NCMC says, is a "prompt pay discount."

40. In fact, NCMC's policy is a mechanism for committing fraud.

41. After it treats a CIGNA plan member, NCMC sends a claim form to CIGNA that lists its purported "charges" for its services; charges that were much more than those of comparable facilities. But NCMC never had any intention or expectation of collecting the full amount of this "charge." Rather, it intended to collect only the insurance company's payment plus whatever small amount (if any) it had asked the member to pay. The amounts that NCMC listed on its claim forms were, therefore, fraudulent.

42. By waiving the member's responsibility, NCMC severely compromised the ability of CIGNA and its customers to control the cost of health care services for its members.

43. Here is an illustrative example. Say that a CIGNA plan provides that if a member receives an out-of-network service, he must pay the first 20 percent of the provider's charge as co-insurance and the plan will cover the remaining 80 percent. When that member called up NCMC, he was told that NCMC's "standard" charge for the service was, say, $10,000. Absent NCMC's fraud, and assuming that no deductibles or other limits apply, if the member received the service from NCMC, he would have had to pay $2,000 and the plan would then cover $8,000. But NCMC told the patient that it would waive his $2,000 co-insurance, which of course induced the member to be treated there. NCMC then sent CIGNA a bill stating that its charge for the service was $10,000, and CIGNA paid $8,000 to NCMC (as the member's purported assignee). Because NCMC never expected or intended to collect the $10,000, when it told CIGNA that this was its true "charge," to induce the plan into paying it a higher amount than it otherwise would have, NCMC committed fraud.

44. CIGNA does not just have illustrations of NCMC's fraud; it has evidence. CIGNA's Special Investigations Unit interviewed several plan members about their experiences with NCMC. These interviews confirmed that NCMC never collected the full amounts that

CIGNA members were responsible for paying under their plans, while it billed CIGNA as if it were. Here are some specific examples:

a. On or around March 2007 through April 2008, NCMC provided services to a member of CIGNA's Cypress-Fairbanks Independent School District plan. NCMC sent CIGNA claim forms listing $22,394.14 as its charges for these services. Based on these false representations, the plan allowed $22,286.20 and CIGNA paid $14,760.98 to NCMC. While the plan required the member to pay $7,525.22, NCMC never billed or collected this amount from the member.

b. On or around August 2007 and February 8, 2008, NCMC provided services to a member of CIGNA's Cypress-Fairbanks Independent School District plan. NCMC sent CIGNA claim forms listing $90,967.90 as its charges for these services. Based on these false representations, the plan allowed $90,531.19 and CIGNA paid $84,984.74 to NCMC. While the plan required the member to pay $5,546.45, NCMC only billed and collected $100 from the member.

45. In November 2008, CIGNA sent NCMC a letter that laid out the results of its SIU's investigation. CIGNA said it would impose a "fee-forgiving protocol" on future NCMC-related benefit claims unless NCMC provided evidence of its real charges and that NCMC was collecting required co-insurance from plan members. NCMC never provided any such evidence. Instead, it filed the current lawsuit against CIGNA.

46. While CIGNA's fee-forgiving protocol has shut down the effects of NCMC's fraudulent scheme going forward, it cannot make up for the nearly two years of payments that NCMC induced CIGNA's plans into making from January 2007 through November 2008. During that time, CIGNA's plans paid millions of dollars directly to NCMC that they were not obliged to pay based on fraudulent "charges" that NCMC never collected or intended to collect.

47. Because most of the CIGNA plans at issue are ASO plans, and funded directly by the companies that sponsor them, the vast majority of these costs was borne by companies and organizations located in Houston. Pursuant to Rule 17 of the Federal Rules of Civil Procedure, CGLIC brings the claims below against Counterclaim Defendants on behalf of these ASO plans regarding those plans. CHT brings the claims on its own behalf regarding its HMO plans.

FIRST CAUSE OF ACTION
(Fraud)
(Against NCMC, Behar, and Unidentified Defendants)

48. Counterclaim Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 47 above as if fully set forth herein.

49. Under Texas law, a party commits fraud if: (1) it made a material representation that was false; (2) it knew the representation was false or made it recklessly as a positive assertion without any knowledge of its truth; (3) it intended to induce another party to act upon the representation; and (4) the other party actually and justifiably relied upon the representation and thereby suffered injury.

50. NCMC submitted benefit claim forms to CIGNA falsely stating "charges" for its services that were higher than the actual amounts that NCMC required CIGNA's plan members to pay for those services; each time it did so, NCMC made a material misrepresentation to CIGNA that was false.

51. Which NCMC submitted these forms, it knew that the "charges" stated on them were higher than the actual amounts that it required CIGNA's plan members to pay for the services; thus, each time NCMC submitted a form, it knew that the form contained a false representation.

52. When NCMC submitted these forms, it intended for CIGNA to process benefits for the services listed on them based upon NCMC's falsely-stated "charges" for the services, not upon the actual amounts that NCMC required CIGNA's plan members to pay for the services; thus, each time it submitted a form, NCMC intended to induce CIGNA to act upon its false representations in the form.

53. Based upon the forms submitted by NCMC, from approximately January 3, 2007 until approximately November 17, 2008, CIGNA processed benefits for services provided by NCMC to its members based upon the falsely-stated "charges" stated on the forms submitted by NCMC; thus, each time CIGNA processed a claim based upon a falsely-stated charge, it actually and justifiably relied upon NCMC's false representation and thereby suffered injuries.

54. Behar directed, participated in, and profited from this fraudulent scheme. Behar, who is Chief Executive Officer of the North Cypress Medical Center hospital and is Chairman of the Board of Directors of NCMC LLC, is the founder of NCMC. Behar directed NCMC and its employees to send claim forms to CIGNA that listed "charges" that Behar knew to be fraudulent, for the purpose of inducing CIGNA to process benefits based on those charges. Behar financially benefitted from the benefit payments that CIGNA's plans made based upon those fraudulent representations.

55. Other Unidentified Defendants also directed, participated in, and profited from this fraudulent scheme. These Unidentified Defendants were involved in the creation and implementation of NCMC's "discount" policy, and either sent or directed others to send claim forms to CIGNA that listed charges that they knew to be fraudulent, for the purpose of inducing CIGNA to process benefits based on those charges. These Unidentified Defendants benefitted from the benefit payments that CIGNA's plans made based upon those fraudulent representations.

56. As a result of NCMC's fraud, CIGNA has been injured in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Negligent Misrepresentation)
(Against NCMC)

57. Counterclaim Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 56 above as if fully set forth herein.

58. Under Texas law, a party commits negligent misrepresentation if it (1) makes a representation in the course of its business, or in a transaction in which it has a pecuniary interest; (2) supplies false information for the guidance of others in their business; (3) did not exercise reasonable care or competence in obtaining or communicating the information; and (4) another party suffers pecuniary loss by justifiably relying on the communication.

59. NCMC submitted benefit claim forms to CIGNA regarding services that it provided to CIGNA plan members; NCMC did so in the course of its business and had a

pecuniary interest in the outcome of how CIGNA processed benefits for those services, as any benefits for those services were paid directly to NCMC.

60. In submitting benefit claim forms to CIGNA, NCMC falsely stated "charges" for its services that were higher than the actual amounts that NCMC required CIGNA's plan members to pay for those services; NCMC supplied this false information to guide CIGNA in processing benefits for those services.

61. In submitting benefit claim forms to CIGNA, NCMC did not identify the actual amounts that NCMC required CIGNA's plan members to pay for those services, only falsely-stated "charges" that were higher than these amounts; in so doing, NCMC failed to exercise reasonable care or competence in communicating information regarding its charges to CIGNA.

62. Based upon the forms submitted by NCMC, from approximately January 3, 2007 to approximately November 17, 2008, CIGNA processed benefits for services provided by NCMC to its members based upon the falsely-stated "charges" stated on the forms submitted by NCMC; thus, each time CIGNA processed a claim based upon a falsely-stated charge, it suffered a pecuniary loss because it justifiably relied on NCMC's communication.

63. As a result of NCMC's fraud, CIGNA has been injured in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Unjust Enrichment)
(Against NCMC)

64. Counterclaim Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 63 above as if fully set forth herein.

65. Under Texas law, one may recover based on unjust enrichment if another party has obtained a benefit from one by fraud, duress, or the taking of an undue advantage.

66. CIGNA's plans are required to cover some portion of the actual charges for services that plan members receive from out-of-network providers like NCMC. CIGNA's plans are not required to cover amounts that members are not billed, are not obligated to pay, or for which they would not have been billed if they did not have insurance.

67. NCMC submitted benefit claim forms to CIGNA falsely stating "charges" for services that were higher than the actual amounts that NCMC required CIGNA's plan members to pay for those services. Based on these forms, from approximately January 3, 2007 to approximately November 17, 2008, CIGNA processed benefits for services provided by NCMC to CIGNA plan members based upon these falsely-stated "charges." CIGNA paid these benefits directly to NCMC.

68. When CIGNA paid benefits to NCMC that CIGNA's plan were not obligated to cover, NCMC obtained a benefit from CIGNA by NCMC's fraud in falsely stating "charges" for its services that were higher than the actual amounts that NCMC required CIGNA's plan members to pay for those services

69. As a result, NCMC has been unjustly enriched, and CIGNA has been injured in an amount to be determined at trial.

REQUEST FOR PERMANENT INJUNCTION
(Against NCMC)

70. Should CIGNA's claims against Counterclaim Defendants succeed on the merits, a permanent injunction is proper, because there will be immediate and irreparable harm if NCMC continues to submit fraudulent claims to CIGNA and CIGNA has no adequate remedy at law, greater injury will result from denying the injunction than from its being granted, and the injunction will not disserve the public interest.

WHEREFORE, CIGNA respectfully requests judgment in its favor and against Counterclaim Defendants:

(a) permanently enjoining NCMC from submitting any benefit claim form to CIGNA that states any charge for a service provided to a CIGNA plan member that is anything other than the actual amount that NCMC requires the member to pay for that service;

(b) adjudging Counterclaim Defendants liable to CIGNA for compensatory damages, in an amount to be determined at trial;

(c) awarding CIGNA its costs and attorneys fees;

(d) awarding CIGNA damages, costs, and attorneys fees; and

(e) awarding CIGNA such other and further relief as the Court deems just and proper.

DATED this 17th day of November, 2011.

Respectfully submitted,

/s/ Alan W. Harris
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