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ORIGINAL FILED  
Superior Court Of California  
County Of Los Angeles

JUN 20 2014

Sherri R. Carter, Executive Officer/Clerk  
By: Judi Lara, Deputy

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES

13 SAMANTHA BERRYESSA COWART, an  
14 individual on behalf of herself and all others  
15 similarly situated,

16 Plaintiffs,

17 vs.

18 BLUE CROSS OF CALIFORNIA dba  
19 ANTHEM BLUE CROSS; and DOES 1  
20 through 100, inclusive,

21 Defendants.

Case No.:

BC 549438

**CLASS ACTION AS TO THIRD AND  
FOURTH CAUSES OF ACTION**

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

1. Breach of the Implied Covenant of Good Faith and Fair Dealing;
2. Breach of Contract;
3. Violations of Business & Professions Code Section 17200; and
4. Declaratory Relief.

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26 Plaintiff Samantha Berryessa Cowart, an individual, alleges with respect to her own acts  
27 and on information and belief with respect to all other matters:  
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1 **GENERAL ALLEGATIONS**

2 **1.**

3 **INTRODUCTION**

4 1. Plaintiff Samantha Berryessa Cowart brings this action to stop Anthem Blue Cross  
5 from unlawfully misleading its members regarding their coverage and which providers are in their  
6 network. Anthem recently issued member identification cards that incorrectly state that many  
7 members are in Preferred Provider Organization (“PPO”) plans when in fact they are enrolled in  
8 Exclusive Provider Organization (“EPO”) plans. In PPO plans, members have access to *a huge*  
9 *network of Anthem providers and the ability to obtain covered treatment from out-of-network*  
10 *providers*. Unlike PPO plans, in EPO plans, members only have access to *an extremely limited*  
11 *network of providers and no coverage for out-of-network providers.*<sup>1</sup> When the members provide  
12 their member identification cards to Anthem PPO providers, the providers render services  
13 believing that the members are in an Anthem PPO plan. As a result, members receive services  
14 from these providers only to have Anthem ultimately deny coverage on the ground that the  
15 providers are not in-network EPO providers. Thus, Anthem has wrongfully forced potentially  
16 thousands of their members to pay out of pocket for medical costs.

17 **2.**

18 **THE PARTIES**

19 2. Plaintiff Samantha Berryessa Cowart (“Samantha”) is currently and at all times  
20 relevant to the actions described in this complaint has contracted with Anthem for health  
21 insurance. She currently resides in California where she has resided at all times relevant to this  
22 action.

23 3. Defendant Blue Cross of California dba Anthem Blue Cross (“Anthem”) is, and at  
24 all relevant times was, a corporation duly organized and existing under and by virtue of the laws  
25 of the State of California and authorized to transact and transacting business in the State of  
26 California, with its headquarters in the County of Los Angeles.

27 4. The true names and capacities, whether individual, corporate, associate or

28 <sup>1</sup> EPO plans do cover emergency out-of-network services.

1 otherwise, of defendants named herein as Does 1 through 100, inclusive, are unknown to  
2 plaintiffs, who therefore sue said defendants by such fictitious names. Each of the defendants  
3 named herein as a Doe is responsible in some manner for the events and happenings hereinafter  
4 referred to, and some of plaintiff's damages as herein alleged were proximately caused by such  
5 defendants. Plaintiff will seek leave to amend this complaint to show said defendants' true names  
6 and capacities when the same have been ascertained.

7 5. At all times mentioned herein, each of the defendants was the agent or employee  
8 of each of the other defendants, or an independent contractor, or joint venturer, and in doing the  
9 things herein alleged, each such defendant was acting within the purpose and scope of said  
10 agency and/or employment and with the permission and consent of each other defendant.

11 **3.**

12 **FACTUAL BACKGROUND**

13 6. Samantha Berryessa Cowart ("Samantha") contracted with Anthem Blue Cross  
14 Life and Health Insurance Company ("ABCLHIC") to receive health insurance under a PPO  
15 policy for many years, in particular a "SMARTSENSEPLUS 6000 UPRX" policy, but on  
16 September 27, 2013, ABCLHIC sent her a letter informing her that it would not renew her policy  
17 for 2014 and that instead it would transfer her into another plan. Specifically, ABCLHIC wrote  
18 that it would move her to a new "CORE DIRECTACCESS – CAAO" plan because the new plan  
19 "includes the requirements of the new ACA laws and provides you with the health benefits you  
20 have come to count on by being an Anthem member. This plan will include coverage for doctors'  
21 visits, prescription drug coverage, emergency care and more."

22 7. On January 1, 2014, without sending out a new member identification card or  
23 Evidence of Coverage ("EOC"), Anthem enrolled Samantha in a CORE DIRECTACCESS –  
24 CAAO plan which unlike her old policy is not a PPO plan but is instead an EPO plan. In PPO  
25 plans, members have access to a huge network of Anthem providers and the ability to obtain  
26 treatment from out-of-network providers. Unlike PPO plans, in EPO plans, members only have  
27 access to an extremely limited network of providers and no coverage for out-of-network  
28

1 providers.<sup>2</sup>

2 8. Anthem did not give Samantha prior notice that the CORE DIRECTACCESS –  
3 CAAO plan is an EPO plan and not a PPO plan. Further, in February 2014, Anthem sent  
4 Samantha an insurance card for the CORE DIRECTACCESS – CAAO plan which indicates on  
5 the card that her plan is a PPO.

6 9. Samantha's old PPO plan card contains a briefcase with the letters PPO:  
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9

10 **Anthem.**   
11 Blue Cross

**SmartSense Plus 6000**

12 Member Name:  
13 **Samantha S Berryessa Cowa**

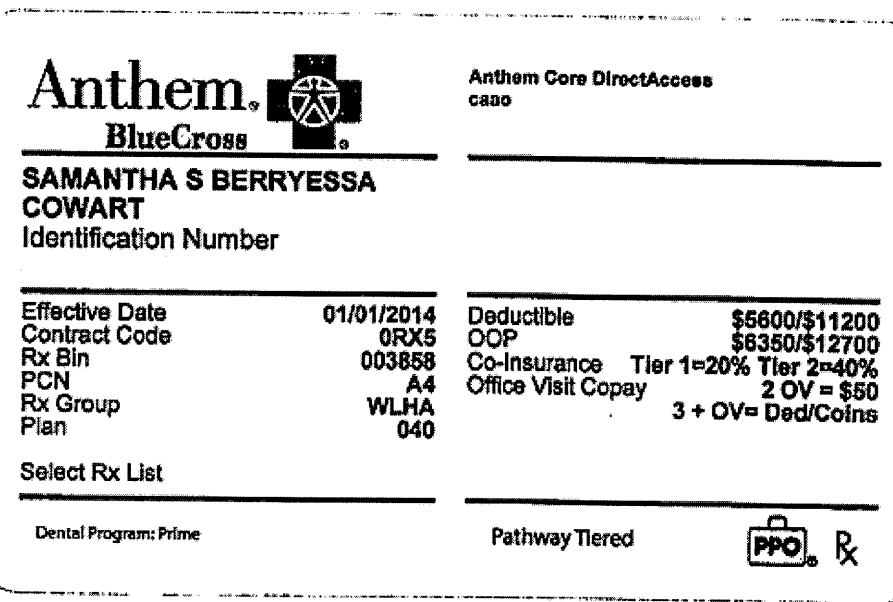
14 Member ID:

15 Contract Code: **01KJ**  
16 Effective Date: **05/01/2012**  
17 BIN: **610053**  
18 Plan: **040**

19  **Rx**

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26 <sup>2</sup> EPO plans do cover emergency services. An EPO is similar to a Health Maintenance  
27 Organization (“HMO”) in that an insured in an EPO must use in-network providers of that  
28 participate in the plan in order to receive covered care. Yet unlike an HMO, an EPO member  
does not need to select or contact a primary care physician for referrals to in-network specialists.

1 Samantha's new card contains the same briefcase with the letters PPO:



13 As evident above, both cards indicate that Samantha is a member of a PPO plan.

14 10. On April 7, 2014, Samantha visited a physician for medically necessary  
15 treatments. She showed her new insurance card, which lists the letters PPO, and inquired about  
16 whether the doctor accepted her insurance. Samantha was told that they accepted her insurance,  
17 and Samantha proceeded to receive services from the physician and a related laboratory.  
18 Unfortunately, neither the physician nor the laboratory is or were an actual in-network EPO  
19 provider. Anthem has refused to provide coverage for the services and laboratory fees, and as a  
20 result Samantha is liable for these costs.

21 11. Subsequently, Samantha has tried to find doctors who are within her EPO network  
22 to avoid such problems in the future. Samantha sought information regarding in-network  
23 providers using the doctor search feature on Anthem's website (www.anthem.com). When  
24 Samantha input her information to find a local in-network provider, she found a list of doctors.  
25 But Anthem misrepresented which providers are actually Anthem EPO contracted providers.

26 12. As a result of Anthem's failure to provide accurate information about its network  
27 providers and its misrepresentations, Samantha has been unable to seek the medical treatment  
28 which she needs and to which she is entitled under the terms of the plan for which she pays

1 monthly premiums.

2 4.

3 **CLASS ACTION ALLEGATIONS**

4 13. Plaintiff seeks certification of the class under California Code of Civil Procedure  
5 (“CCP”) § 382. An ascertainable class exists, and there are well-defined communities of interest  
6 among the class members.

7 **An Ascertainable Class Exists**

8 14. Based on the information of which she and her counsel are currently aware,  
9 Plaintiff Samantha Berryessa Cowart defines the putative class as follows:

10 All California residents who are members of any Anthem EPO plan to whom Anthem sent  
11 an insurance card on which the letters PPO are printed, who received services from an  
12 Anthem provider who accepts PPO insurance but not EPO insurance, and whose claims  
13 for service coverage Anthem denied on the ground that the service provider was not a  
14 network provider, at any time from inception of the applicable statute of limitations period  
15 until the final termination of this action (“call period”).

16 15. As used in the proposed class definition above, the terms “plan,” “treatment,”  
17 “coverage,” “members,” and “insured” in the definition of the class (above) have the same  
18 meanings as in the Anthem policies.

19 16. The identity of these subscribers and members is readily ascertainable from  
20 Anthem’s records.

21 17. The proposed class is limited to insured members who reside in California or who  
22 resided in California when they contracted with Anthem for their EPO plan. The proposed class  
23 does not include defendant, its officers, directors, and employees; any entity in which any  
24 defendant has a controlling interest, the defendants’ affiliates, legal representatives, attorneys,  
25 heirs or assigns; the defendants’ immediate families; any federal, state, or local government  
26 entity, any judge, justice, or judicial officer presiding over this matter, the members of their  
27 immediate families, and their judicial staffs; and any insured or subscribers whose coverage is  
28 subject to the provisions of the Employee Retirement Income Security Act (“ERISA”) or the

1 Federal Employees Health Benefit Act.

2 18. Plaintiff reserves her right to modify the definition of the proposed class based on  
3 information that she or her counsel learns through discovery.

4 **Common Questions of Fact & Law Predominate**

5 19. Common questions of fact and common questions of law predominate over  
6 individual questions of fact and individual questions of law. These common questions of fact and  
7 law include, but are not limited to, whether Anthem's practice of sending EPO members cards  
8 with "PPO" written on the cards and then subsequently not covering services that members  
9 received from Anthem providers that are not in the EPO network constitutes an unfair, unlawful  
10 or deceptive business practice.

11 **Plaintiff's Claims are Typical**

12 20. Plaintiff's claims are typical of those of the members of the class. Plaintiff and all  
13 members of the proposed class have sustained injury arising out of and caused by Anthem's  
14 common course of unlawful conduct.

15 **Plaintiff is an Adequate Representative**

16 21. Plaintiff will adequately represent the class. She has no interests that are in conflict  
17 with those of the class. In addition, she has retained counsel who has experience prosecuting  
18 consumer class actions; including consumer class actions against health insurance companies and  
19 health plans.

20 **Superiority of Class Treatment**

21 22. The class mechanism is superior to other procedures for resolving these claims.  
22 Upon information and belief: the class is too large to make joinder practicable. The plaintiffs  
23 estimate that the class will include hundreds and perhaps thousands of Anthem members. In  
24 addition, most if not all of the members of the class have claims that are limited in terms of their  
25 financial value. They have little incentive, if any, to prosecute their claims independently and  
26 would be unlikely to find counsel willing to represent them. The only practical mechanism for  
27 them to vindicate their rights in this instance is through class treatment of their claims.

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**FIRST CAUSE OF ACTION**

**(Breach of Implied Covenant of Good Faith and Fair Dealing)**

PLAINTIFF SAMANTHA BERRYESSA COWART, individually, FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS AND DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, ALLEGES:

23. Plaintiff incorporates by reference each and every paragraph of the General Allegations as though set forth in full in this cause of action.

24. At all times relevant to this complaint, plaintiff has contracted with Anthem to receive health plan coverage. In exchange for plaintiff's payment of premiums, Anthem issued health plan policies, the material terms of which include, without limitation, that Samantha was to have timely access to covered medically necessary treatment.

25. Defendants misinformed Samantha about her coverage and therefore which providers from which she could obtain services at an in-network covered rate. Samantha relied upon such misrepresentations and unknowingly sought treatment from non-EPO providers.

26. As a result, the out-of-network providers provided Samantha with treatment. Subsequently, Anthem denied coverage for those treatments on the basis that the treatment was out of network. Anthem's denials were in bad faith as they unreasonably withheld contract benefits.

27. Plaintiff is informed and believes and thereon alleges that defendants and Does 1-100, inclusive, have breached their duties of good faith and fair dealing owed to plaintiff by other acts or omissions of which plaintiff is presently unaware and which will be shown according to proof at the time of trial.

28. As a proximate result of the aforementioned unreasonable and bad faith conduct of defendants, including the bait and switch, plaintiff has suffered, and will continue to suffer in the future, damages under the plan contract, plus interest, and other economic and consequential damages, for a total amount to be shown at the time of trial.



1           29.     As a further proximate result of the unreasonable and bad faith conduct of  
2 defendants as alleged in this cause of action, plaintiff was compelled to retain legal counsel and  
3 expend costs in an effort to obtain the benefits due under the plan contract. Therefore, defendants  
4 as alleged in this cause of action are liable to plaintiff for those attorneys' fees and litigation costs  
5 reasonably necessary and incurred by plaintiff in order to obtain the plan benefits in a sum to be  
6 determined at trial.

7           30.     Defendants' conduct described herein was intended by the defendants to cause  
8 injury to plaintiff or was despicable conduct carried on by the defendants with a willful and  
9 conscious disregard of the rights of plaintiffs, or subjected plaintiff to cruel and unjust hardship in  
10 conscious disregard of plaintiff's rights, or was an intentional misrepresentation, deceit, or  
11 concealment of a material fact known to the defendants with the intention to deprive plaintiff of  
12 property, legal rights or to otherwise cause injury, such as to constitute malice, oppression or  
13 fraud under California Civil Code section 3294, thereby entitling plaintiffs to punitive damages in  
14 an amount appropriate to punish or set an example of defendants.

15           31.     Defendants' conduct described herein was undertaken by the corporate defendants'  
16 officers or managing agents, identified herein as DOES 1 through 100, inclusive, who were  
17 responsible for claims supervision and operations, underwriting, communications and/or  
18 decisions. The aforementioned conduct of said managing agents and individuals was therefore  
19 undertaken on behalf of the corporate defendants. Said corporate defendants further had advance  
20 knowledge of the actions and conduct of said individuals whose action and conduct were ratified,  
21 authorized, and approved by managing agents whose precise identities are unknown to plaintiff at  
22 this time and are therefore identified and designated herein as DOES 1 through 100.

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**SECOND CAUSE OF ACTION**

**(Breach of Contract)**

PLAINTIFF SAMANTHA BERRYESSA COWART, individually, FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS AND DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR BREACH CONTRACT, ALLEGES:

32. Plaintiff incorporates by reference each and every paragraph of the General Allegations as though set forth in full in this cause of action.

33. Defendant Anthem issued a health plan contract to Samantha, the material terms of which include, without limitation, that Samantha was to have timely access to medically necessary diagnosis, assessment, evaluation, care and treatment. A true and correct copy of Samantha’s contract is attached as Exhibit A.

34. Anthem breached its contractual duties owed to Samantha by performing the unlawful actions alleged above.

35. Plaintiff is informed and believes and thereon alleges that Anthem and Does 1-100, inclusive, have also breached their contractual duties owed to plaintiffs by other acts or omissions of which plaintiff is presently unaware and which will be shown according to proof at the time of trial.

36. As a proximate result of the aforementioned unreasonable and bad faith conduct of defendants, plaintiff has suffered, and will continue to suffer in the future, damages under the plan contract, plus interest, and other economic damages, for a total amount to be shown at the time of trial.

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7.

**THIRD CAUSE OF ACTION**

**(Violation of Business & Professions Code section 17200)**

PLAINTIFF SAMANTHA BERRYESSA COWART, individually and on behalf of others similarly situated, FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS AND DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR VIOLATIONS OF BUSINESS & PROFESSIONS CODE SECTION 17200, ALLEGE:

37. Plaintiff incorporates by reference each and every of the foregoing paragraphs as though set forth in full in this cause of action.

38. Defendants' conduct as alleged above, in misleading EPO plan members into obtaining coverage from non- EPO providers, and then denying coverage on the ground that the providers are not network providers, constitutes acts of unfair, unlawful, misleading, and fraudulent business practices as set forth in Business & Professions Code section 17200 et seq.

39. Plaintiff, and others similarly situated, have suffered an injury in fact and have lost money or property as the result of defendants' conduct. Plaintiff respectfully requests that the Court order any equitable relief deemed necessary by the Court including injunctive relief to stop the wrongful practices.

40. Plaintiff, and others similarly situated, request attorneys' fees under Code of Civil Procedure section 1021.5 and/or a common fund theory.

8.

**FOURTH CAUSE OF ACTION**

**(Declaratory Relief)**

PLAINTIFF SAMANTHA BERRYESSA COWART, individually and on behalf of others similarly situated, FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS AND DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR DECLARATORY RELIEF, ALLEGES:

41. Plaintiff and the Class hereby repeat and re-allege all preceding paragraphs and incorporate the same as though fully set forth herein.

1           42.     An actual controversy now exists between the parties regarding their rights and  
2 liabilities under Anthem’s EOCs. Plaintiff and the Class request a declaration that a) Anthem has  
3 violated the terms of Samantha and the Class members’ EOCs by denying claims for coverage of  
4 services at an in-network rate to Samantha and the Class members when the health care  
5 professional who provided the services was a PPO network provider but not an EPO in-network  
6 provider and b) Anthem improperly and unlawfully issued membership cards to EPO subscribers  
7 which included the letters “PPO” as such an action is and was likely to mislead the public,  
8 Samantha, and the Class members.

9           43.     Plaintiff and the Class request attorneys’ fees under Code of Civil Procedure  
10 section 1021.5 and/or under a common fund theory.

11  
12           WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as  
13 follows:

14           AS TO THE FIRST CAUSE OF ACTION:

- 15           1. For special and general damages according to proof at the time of trial;
- 16           2. For costs of suit incurred herein;
- 17           3. For exemplary damages;
- 18           4. For attorney’s fees; and
- 19           5. For such other and further relief as the Court deems just and proper.

20  
21           AS TO THE SECOND CAUSE OF ACTION:

- 22           6. For special and general damages according to proof at the time of trial;
- 23           7. For costs of suit incurred herein; and
- 24           8. For such other and further relief as the Court deems just and proper.

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26           AS TO THE THIRD CAUSE OF ACTION:

- 27           9. For injunctive relief according to proof at the time of trial;
- 28           10. For costs of suit incurred herein;

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11. For reasonable attorney's fees pursuant to Code of Civil Procedure section 1021.5;

and

12. For such other and further relief as the Court deems just and proper.

AS TO THE FOURTH CAUSE OF ACTION:

13. For declaratory relief; and

14. For reasonable attorney's fees pursuant to Code of Civil Procedure section 1021.5;

Dated this 20th day of June 2014, at Pasadena, California.

LAW OFFICES OF SCOTT C. GLOVSKY, APC

By: 

SCOTT C. GLOVSKY  
ARI DYBNIS  
Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury.

DATED: June 20, 2014

LAW OFFICES OF SCOTT C. GLOVSKY, APC

By:  \_\_\_\_\_

SCOTT C. GLOVSKY  
ARI DYBNIS  
Attorneys for Plaintiff

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