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13
14 Attorneys for Plaintiffs

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF LOS ANGELES**

17 **BC 487670**

18 LOS ANGELES COUNTY MEDICAL
ASSOCIATION, a non-profit professional
19 association; CALIFORNIA MEDICAL
ASSOCIATION, a non-profit, incorporated
20 professional organization; SANTA CLARA
COUNTY MEDICAL ASSOCIATION, a
21 non-profit professional association;
VENTURA COUNTY MEDICAL
22 ASSOCIATION, a non-profit professional
association; PATIENT ONE, an individual;
23 VIPIN TANDON, M.D., an individual;
BRYANT J. LUM, M.D., an individual;
24 VENKAT AACHI, M.D., an individual;
RICHARD ABE, D.P.M., an individual;
25 NICHOLAS ABIDI, M.D., an individual;
MEHRYAR AMIRKIAI, D.P.M., an
26 individual; R.J. ANDREWS, M.D., an
individual; DOUGLAS BLATZ, M.D., an
27 individual; GORDON BRODY, M.D., an
individual; BART CAREY, M.D., an
28 individual; HECTOR CERVANTES, D.P.M.,


CASE NO.

COMPLAINT FOR:

1. UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200, *et seq.*;
2. FALSE ADVERTISING IN VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17500, *et seq.*;
3. FALSE ADVERTISING IN VIOLATION OF LANHAM ACT SECTION 43(A);
4. BREACH OF CONTRACT;
5. INTENTIONAL INTERFERENCE

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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JUL 03 2012

John A. Clarke, Executive Officer/Clerk
By  Deputy
Gmk/Order

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1 an individual; MICHAEL CLUCK, M.D., an
2 individual; JEFFREY COE, M.D., an
3 individual; KIM-PHUONG DANG, M.D., an
4 individual; EUGENE DELLAMAGGIORE,
5 M.D., an individual; MICHAEL
6 DILLINGHAM, M.D., an individual; JOSEPH
7 DONOHUE, M.D., an individual; JOHN
8 DUGGAN, M.D., an individual; RICHARD
9 ENG, M.D., an individual; DEBORAH
10 FREEHLING, M.D., an individual;
11 SHAHRAM S. GHOLAMI, M.D., an
12 individual; DONALD GOLDMAN, M.D., an
13 individual; NADINE GRAVEN, M.D., an
14 individual; JEFFREY GUTMAN, M.D., an
15 individual; DANIEL HABER, M.D., an
16 individual; LAWRENCE YU HWONG, M.D.,
17 an individual; SANAZ HARIRI, M.D., an
18 individual; ANDREW R. HARRISON,
19 D.P.M., an individual; RAYMOND HSIEH,
20 M.D., an individual; GRADY JETER, M.D.,
21 an individual; RONALD JOSEPH, M.D., an
22 individual; MARDI R. KARIN, M.D., an
23 individual; MARY KILKENNY, M.D., an
24 individual; NGUYEN KY, D.P.M., an
25 individual; JIN LEE, M.D., an individual;
26 EDWARD LITTLEJOHN, M.D., an
27 individual; HAN LO, M.D., an individual;
28 JUSTIN LU, M.D., an individual; MICHAEL
MARGOLIS, M.D., an individual; ROBERT
MCKEEN, M.D., an individual; REGINALD
V.S. MCCOY, M.D., an individual;
MATTHEW MINGRONE, M.D., an
individual; ANNU NAVANI, M.D., an
individual; EMEKA S. NCHEKWUBE, M.D.,
an individual; KONRAD NG, M.D., an
individual; JOAN OLOFF, D.P.M., an
individual; LAWRENCE OLOFF, D.P.M., an
individual; MARSHAL ROSARIO, M.D., an
individual; AMIR SAFFARIAN, M.D., an
individual; GARY SCHEINEN, D.P.M., an
individual; LEO SEMKIW, M.D., an
individual; J. ANTHONY SHAHEEN, M.D.,
an individual; SAMIR SHARMA, M.D., an
individual; KALLE STIDHAM, M.D., an
individual; MICHAEL WALL, M.D., an
individual; WILLIAM WALL, M.D., LANI
WARREN, M.D., an individual, JEFFREY W.
BIRNS, M.D., an individual; DAVID
AIZUSS, M.D., an individual; EVAN J.
BACHNER, M.D., an individual; BAY AREA
SURGICAL MANAGEMENT, LLC, a
California limited liability company; BAY
AREA SURGICAL GROUP, INC., a
California corporation; FOREST
AMBULATORY SURGICAL ASSOCIATES,

**WITH PROSPECTIVE ECONOMIC
ADVANTAGE;**

**6. NEGLIGENT INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE;**

7. SERVICES RENDERED; and

8. DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

Trial Date: None Set

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LP, a California limited partnership; LOS
ALTOS SURGERY CENTER, LP, a
California limited partnership; NATIONAL
AMBULATORY SURGERY CENTER, LLC,
a California limited liability company; SOAR
SURGERY CENTER, LLC, a California
limited liability company; and KNOWLES
SURGERY CENTER, LLC, a California
limited liability company; MEDICAL
FOREFRONT, LLC, a California limited
liability company; LUM EYE AND VISION
CENTER, dba VENTURA
OPHTHALMOLOGY MEDICAL GROUP, a
California medical corporation; SIMI
SURGERY CENTER, INC, a California
corporation;

Plaintiffs,

vs.

AETNA HEALTH OF CALIFORNIA, INC., a
California Corporation; AETNA LIFE
INSURANCE COMPANY, a Connecticut
corporation; AETNA HEALTH
MANAGEMENT, LLC, a Delaware limited
liability company; DOES 1-30, inclusive,

Defendants.

1 **INTRODUCTION**

2 1. Aetna Health of California, Inc., Aetna Life Insurance Company, and Aetna Health
3 Management, LLC (together, "Aetna") advertise and sell health insurance policies to individuals
4 representing that they can obtain their healthcare from any physician of their choice, including
5 out-of-network providers.

6 2. At the same time that it is selling these policies that allow out-of-network benefits,
7 Aetna is retaliating against patients who attempt to use their out-of-network benefits, physicians
8 who refer their patients to out-of-network providers, and surgery centers who are out-of-network.

9 3. Aetna retaliates against patients by making threatening telephone calls and sending
10 threatening letters if they attempt to use their out-of-network benefits, by not authorizing care at
11 out-of-network providers, and by grossly underpaying those out-of-network providers, and thereby
12 causing the patient to incur most of the healthcare costs.

13 4. Aetna retaliates against its contracted physicians by threatening to terminate their
14 contracts, and in many cases terminating their contracts, if they refer their patients who have out-
15 of-network benefits to out-of-network providers.

16 5. Aetna retaliates against out-of-network surgery centers by refusing to authorize
17 services for members who have out-of-network benefits, and by paying extremely low amounts of
18 reimbursement.

19 6. Aetna's conduct violates California law, is a breach of its contracts with its
20 physicians, interferes with the care physicians provide to their patients, and constitutes an unfair
21 business act and practice.

22 **PARTIES**

23 **Patient Plaintiff**

24 7. Patient One¹ is an individual who purchased medical insurance coverage from
25 _____
26 _____

27 ¹ The name of plaintiff Patient One has been withheld to protect the patient's confidential health
28 information. Patient One's identity information will be disclosed to Defendants and to this Court
(footnote continued)

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1 Aetna. Patient One purchased Preferred Provider Organization (“PPO”) coverage from Aetna that
2 provided coverage at both in-network and out-of-network facilities in or around 2007. Patient One
3 is referred to herein as the “Patient Plaintiff.”

4 **Medical Association Plaintiffs**

5 8. The California Medical Association (“CMA”) is a non-profit, incorporated
6 professional organization that represents over 35,000 physicians throughout the state of California
7 in all medical specialties and practice settings. For more than 150 years, CMA’s mission has been
8 to promote the art and science of medicine, the care and well-being of patients, the protection of
9 the public health, and the betterment of the medical profession. CMA supports its members and
10 carries out its mission through legislative, legal, regulatory, economic, and social advocacy. CMA
11 also regularly engages government and private health care plans to advocate for the interests of its
12 physician members, individually and collectively.

13 9. The Los Angeles County Medical Association (“LACMA”) is a non-profit
14 professional association that represents physicians throughout Los Angeles County in all medical
15 specialties and practice settings. LACMA’s purpose is to advocate quality healthcare for all
16 patients and to serve the professional interests of its physicians.

17 10. The Santa Clara County Medical Association (“SCCMA”) is a non-profit
18 professional association that represents physicians throughout Santa Clara County in all medical
19 specialties and practice settings. SCCMA’s mission is to promote and advocate for excellence in
20 the provision of quality, ethical health care; the health of the community; physicians’ personal,
21 social, and professional integrity and well-being; and the common goals of similar organizations.

22 11. The Ventura County Medical Association (“VCMA”) is a non-profit professional
23 association that represents physicians throughout Ventura County in all medical specialties and
24 practice settings. VCMA is dedicated to addressing local health issues of concern to patients and
25 to the medical profession, and to assist physicians in all aspects of their practices.

26
27 _____
28 on an as-needed basis and pursuant to a protective order.

1 12. The improper practices and wrongful conduct by Aetna as alleged herein have been
2 directed at, and have caused injury to, the physician members of CMA, LACMA, SCCMA, and
3 VCMA, who accordingly have claims against Aetna for the violations alleged in this complaint.
4 Such improper practices and wrongful conduct are directly contrary to the missions of CMA,
5 LACMA, SCCMA, and VCMA. CMA also has had to expend considerable time and resources to
6 help its members that would not have been spent but for Aetna's improper practices concerning
7 out-of-network ASCs, including, without limitation, devoting resources from its Center for
8 Economic Services to help members deal with Aetna's improper practices.

9
10 Physician Plaintiffs

11 13. Plaintiffs Vipin Tandon, M.D. ("Dr. Tandon"), Bryant J. Lum, M.D. ("Dr. Lum"),
12 Jeffrey Feinfeld, M.D. ("Dr. Feinfeld"), Roy Kim, M.D. ("Dr. Kim"), Ron Cooper, M.D. ("Dr.
13 Cooper"), Edward Diao, M.D. ("Dr. Diao"), Venkat Aachi, M.D. ("Dr. Aachi"), Richard Abe,
14 D.P.M. ("Dr. Abe"), Nicholas Abidi, M.D. ("Dr. Abidi"), Mehryar Amirikiai, D.P.M. ("Dr.
15 Amerikiai"), R.J. Andrews, M.D. ("Dr. Andrews"), Douglas Blatz, M.D. ("Dr. Blatz"), Gordon
16 Brody, M.D. ("Dr. Brody"), Bart Carey, M.D. ("Dr. Carey"), Hector Cervantes, D.P.M. ("Dr.
17 Cervantes"), Michael Cluck, M.D. ("Dr. Cluck"), Jeffrey Coe, M.D. ("Dr. Coe"), Kim-Phuong
18 Dang, M.D. ("Dr. Dang"), Eugene Dellamaggiore, M.D. ("Dr. Dellamaggiore"), Michael
19 Dillingham, M.D. ("Dr. Dillingham"), Joseph Donohue, M.D. ("Dr. Donohue"), Richard Eng,
20 M.D. ("Dr. Eng"), Deborah Freehling, M.D. ("Dr. Freehling"), Shahram S. Gholami, M.D. ("Dr.
21 Gholami"), Donald Goldman, M.D. ("Dr. Goldman"), Nadine Graven, M.D. ("Dr. Graven"),
22 Jeffrey Gutman, M.D. ("Dr. Gutman"), Daniel Haber, M.D. ("Dr. Haber"), Hossein Habibi, M.D.
23 ("Dr. Habibi"), Sanaz Hariri, M.D. ("Dr. Hariri"), Andrew R. Harrison, D.P.M. ("Dr. Harrison),
24 Raymond Hsieh, M.D. ("Dr. Hsieh"), Grady Jeter, M.D. ("Dr. Jeter"), Ronald Joseph, M.D. ("Dr.
25 Joseph"), Mardi R. Karin, M.D. ("Dr. Karin"), Mary Kilkenny, M.D. ("Dr. Kilkenny"), Nguyen
26 Ky, D.P.M., ("Dr. Ky"), Jin Lee, M.D. ("Dr. Lee"), Edward Littlejohn, M.D. ("Dr. Littlejohn"),
27 Han Lo, M.D. ("Dr. Lo"), Justin Lu, M.D. ("Dr. Lu"), Michael Margolis, M.D. ("Dr. Margolis"),
28 Robert McKeen, M.D. ("Dr. McKeen"), Reginald V.S. McCoy, M.D. ("Dr. McCoy"), Matthew
Mingrone, M.D. ("Dr. Mingrone"), Annu Navani, M.D. ("Dr. Navani"), Emeka S. Nchekwube,

1 M.D. ("Dr. Nchekwube"), Konrad Ng, M.D. ("Dr. Ng"), Joan Oloff, D.P.M. ("Dr. J. Oloff"),
2 Lawrence Oloff, D.P.M. ("Dr. L. Oloff"), Marshal Rosario, M.D. ("Dr. Rosario"), Amir Saffarian,
3 M.D. ("Dr. Saffarian"), Gary Scheinen, D.P.M. ("Dr. Scheinen"), Leo Semkiw, M.D. ("Dr.
4 Semkiw"), J. Anthony Shaheen, M.D. ("Dr. Shaheen"), Samir Sharma, M.D. ("Dr. Sharma"),
5 Kalle Stidham, M.D. ("Dr. Stidham"), Michael Wall, M.D. ("Dr. M. Wall"), William Wall, M.D.
6 ("Dr. W. Wall"), Rodney Wong, M.D. ("Dr. Wong"), Jeffrey W. Birns, M.D. ("Dr. Birns"), David
7 Aizuss, M.D. ("Dr. Aizuss") and Evan J. Bachner, M.D. ("Dr. Bachner") are all physicians who
8 are either (a) contracted with Aetna and have been threatened by Aetna that their contracts will be
9 terminated if they continue to refer their Aetna patients to out-of-network providers, or (b) have
10 had their contracts with Aetna terminated because they referred their Aetna patients to out-of-
11 network providers.

12 Surgery Center Plaintiffs

13 14. Bay Area Surgical Management, LLC ("Bay Area") is a family-run ASC provider
14 that manages several ASCs, an imaging center, and a medical laboratory in the San Francisco Bay
15 Area. These include Bay Area Surgical Group, Inc., ("BASG"), Forest Ambulatory Surgical
16 Associates, LP ("Forest"), Los Altos Surgery Center, LP ("Los Altos"), National Ambulatory
17 Surgery Center, LLC ("National"), SOAR Surgery Center, LLC ("SOAR"), and Knowles Surgery
18 Center, LLC ("Knowles") (collectively, the "Bay Area Surgery Centers"). The Bay Area Surgery
19 Centers are certified or accredited to provide outpatient surgical services.

20 15. Medical Forefronts is an ASC provider that manages San Francisco Surgery Center
21 and San Ramon Surgery Center, located in San Francisco and San Ramon, California,
22 respectively. These facilities are licensed by the California Department of Health Services to
23 provide general acute inpatient and outpatient services.

24 16. Lum Eye and Vision Center, dba Ventura Ophthalmology Medical Group
25 ("Ventura Ophthalmology") is an ASC located in Ventura, California. Ventura Ophthalmology is
26 licensed by the California Department of Health Services to provide general acute inpatient and
27 outpatient services.

28 17. Simi Surgery Center ("Simi") is an ASC located in Simi Valley, California. Simi is

1 licensed by the California Department of Health Services to provide general acute inpatient and
2 outpatient services.

3 18. Bay Area, Medical Forefronts, Ventura Ophthalmology, and Simi collectively are
4 referred to herein as the "ASC Plaintiffs." The ASC plaintiffs are all physician-owned, do not
5 have contracts with Aetna, and are considered "out-of network" providers.

6 **Defendants**

7 19. Plaintiffs are informed and believe that defendant Aetna Health of California, Inc.,
8 is a for-profit California corporation with its principal place of business in Walnut Creek,
9 California, and which does business throughout California. Plaintiffs are informed and believe
10 that Aetna Health of California, Inc. is a licensed health care service plan pursuant to the Knox-
11 Keene Act, Health and Safety Code Section 1340, *et seq.*

12 20. Plaintiffs are informed and believe that defendant Aetna Life Insurance Company is
13 a for-profit Connecticut corporation with its principal place of business in Hartford, Connecticut,
14 but which does business throughout California, and a health insurance company licensed by the
15 California Department of Insurance.

16 21. Plaintiffs are informed and believe that defendant Aetna Health Management, LLC,
17 is a for-profit Delaware limited liability company with its principal place of business in Hartford,
18 Connecticut, but which does business throughout California, and a health insurance company
19 licensed by the California Department of Insurance.

20 22. Plaintiffs do not know the true names and capacities, whether individual, associate,
21 or otherwise, of defendant DOES 1 through 30, and therefore designate those defendants by such
22 fictitious names. Each of the defendants sued herein as a DOE legally is responsible in some
23 manner for the events and happenings referred to and proximately caused the injuries suffered by
24 plaintiff. Plaintiffs will amend this complaint to allege the true names and capacities of these
25 DOES when the same becomes known to Plaintiffs.

26 23. Aetna Health of California, Inc., Aetna Life Insurance Company, Aetna Health
27 Management, LLC, and the DOE Defendants collectively are referred to herein as "Aetna."

28 24. Plaintiffs are informed and believe that at all relevant times each of the defendants

1 was the agent and employee of each of the remaining defendants, and in doing the things
2 hereinafter alleged was acting within the course and scope of such agency and employment.

3
4 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

5 **Aetna Policies Allowing Patients To Go Out-Of-Network**

6 25. Aetna markets and sells to the California public certain insurance policies that have
7 the benefit of allowing the individuals to obtain their healthcare services at out-of-network
8 healthcare providers. For example, on Aetna's website, it markets its Preferred Provider
9 Organization ("PPO") and Point of Service ("POS) policies as follows:

10 • "Advantages of a PPO include the flexibility of seeking care with an out-of-
11 network provider if so desired ..."

12 • "In a POS, you have greater freedom to see out-of-network providers than
13 with an HMO ..."

14 26. Many individuals, such as plaintiff Patient Doe, purchase PPO or POS policies
15 from Aetna so that they are not limited to the list of contracted or in-network providers, but rather
16 have the freedom to obtain their healthcare services at out-of-network providers.

17 27. Plaintiffs are informed and believe that Aetna has received hundreds of millions of
18 dollars in premium payments from the its members over the years for health insurance coverage
19 with out-of-network benefits.

20 28. Despite making tens of millions of dollars selling policies with out-of-network
21 benefits, Aetna has engaged in a campaign to retaliate against its members who attempt to use
22 their out-of-network benefits, and the physicians who refer those members to out-of-network
23 providers.

24
25 **Aetna's Retaliatory Action Against Members Who Use Out-of-Network Benefits**

26 29. Plaintiffs are informed and believe that Aetna has improperly threatened and taken
27 other actions against its members who have attempted to use their out-of-network benefits.

28 30. For example, Patient One obtained Aetna PPO coverage. Patient One specifically

1 purchased PPO coverage because he wanted the best medical care available for his family,
2 including the ability to receive out-of-network benefits. During the time of his coverage with
3 Aetna, Patient One saw Aetna-contracted physicians for several medical issues that he
4 experienced. These physicians referred Patient One to out-of-network surgery centers for further
5 treatment. In doing so, these physicians explained that although Patient One would pay more for
6 out-of-network care, he likely would be more comfortable at an out-of-network facility, where he
7 would be able to receive care from physicians whom he knew and would receive care more
8 quickly.

9 31. Patient One was more than willing to pay the additional out-of-pocket costs
10 associated with such out-of-network services. Aetna, however, repeatedly and inappropriately
11 attempted to discourage Patient One from using those benefits. For example, before receiving
12 physician-recommended out-of-network care at Los Altos, Patient One received a phone call from
13 Aetna wherein Aetna attempted to dissuade Patient One from using an out-of-network provider.
14 Approximately one year later, after receiving physician-recommended care at National, Patient
15 One received a letter from Aetna, stating that Patient One was “forewarned” that he was using out-
16 of-network providers. During the time of Patient One’s coverage with Aetna, he received many
17 similar letters from Aetna.

18 32. Approximately one year later, Patient One again sought to receive physician-
19 recommended care at an out-of-network provider. However, Aetna refused to authorize the
20 medically-necessary services at an out-of-network provider, and told Patient One that Aetna would
21 only pay for the services if Patient One had them performed at an in-network provider, despite the
22 fact that Patient One had purchased an Aetna policy that included out-of-network benefits. Fearful
23 of Aetna’s threat not to pay for out-of-network services, Patient One attempted to have these
24 medically-necessary services performed at an in-network provider, but he was forced to endure a
25 wait that compromised his health. Rather than risk further complications, Patient One—in
26 consultation with his physician—elected to have the services performed at an out-of-network
27 provider, where he was able to be seen immediately. Despite the fact that Patient One’s Aetna
28 policy included coverage for out-of-network care and that the services provided to Patient One

1 were medically necessary, Aetna has refused to pay for the care provided to Patient One on this
2 occasion. Ultimately, after three appeals by Patient One, Aetna paid approximately \$9,000 of the
3 total bill of \$70,000 for these services, and told Patient One that he was responsible for payment of
4 the balance. The vast majority of the \$70,000 bill for out-of-network services provided to Patient
5 One remains unpaid by Aetna.

6 7 Aetna's Retaliation Against Physicians

8 33. Aetna has entered into contracts with physicians to provide services to Aetna
9 members. The contracts between Aetna and these physicians do not require the physicians to refer
10 all Aetna patients – including those with out-of-network PPO and POS benefits – only to in-
11 network providers. In fact, the contracts explicitly recognize that some Aetna members have out-
12 of-network benefits.

13 34. Depending upon the circumstances of a particular patient, these physicians may
14 recommend to an Aetna member with PPO or POS benefits that he or she may prefer to have their
15 surgeries or other services at out-of-network ambulatory surgery centers ("ASCs"). It is often
16 easier and quicker to schedule surgeries at ASCs, patients receive more individualized care, and it
17 is more convenient for patients and their families.

18 35. Despite the fact that it sells policies which have the "advantage" to patients to have
19 their services at out-of-network providers, Aetna has engaged in a stratagem to retaliate against its
20 contracted physicians who recommend to their patients that they may want to have their surgeries
21 at out-of-network ASCs.

22 36. Aetna has sent letters to numerous physicians which contain the following, or
23 similar, language:

24 **Continued out-of-network ambulatory surgery referrals could cause a rate
25 adjustment or end your participation with Aetna – action required.**

26 Your Aetna agreement includes a requirement that you refer your Aetna patients to
27 in-network providers for covered services. Our records show that you have
28 repeatedly referred Aetna member to [name of surgery center] which is an out-of-
network surgery provider for covered services in circumstances where qualified
participating providers were readily available. We will continue to monitor you
referrals for Aetna members. Future unwarranted referrals to out-of-network

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1 providers may result in (1) amendment to your agreement which would include a
2 rate adjustment or (2) the end of your participation with us. (Emphasis in original)

3 37. The following Physician Plaintiffs have received these threatening letters: Drs.
4 Tandon, Feinfield, Kim, Cooper, Diao, Abidi, Amirkiai, Blatz, Cervantes, Cluck, Coe,
5 Dellamaggiore, Eng, Freehling, Goldman, Graven, Gutman, Haber, Habibi, Jeter, Kilkenny, Ky,
6 Lee, Littlejohn, Lo, Margolis, McKeen, Mingrone, Ng, J. Oloff, Saffarian, Scheinen, Shaheen, and
7 W. Wall.

8 38. Aetna, in fact, follows through on its threats. If these contracted physicians
9 continue to discuss treatment options with their patients which include obtaining their services at
10 out-of-network ASCs, and the patients choose to have their services at the out-of-network ASCs,
11 Aetna has either reduces the reimbursement or stopped paying the physicians.

12 39. For example, on February 2, 2012, Aetna sent SOAR a letter stating that it was
13 terminating "SOAR from Aetna's networks" because SOAR Group Physicians were referring
14 members to out-of-network providers.

15 40. Similarly, Dr. Diao referred some Aetna PPO patients to San Francisco Surgery
16 Center. San Francisco Surgery Center is an out-of-network ASC. On May 31, 2011, Aetna sent
17 Dr. Diao a letter stating that it was terminating him from Aetna's health benefit networks because
18 Dr. Diao had failed to heed warning letters "reminding [him] of [his] contractual obligations to
19 refer members to participating facilities and providers." Aetna's termination came despite the fact
20 that the Aetna members who received out-of-network care had out-of-network benefits and
21 requested and consented to out-of-network care.

22 41. Dr. Feinfield received a similar letter from Aetna on June 7, 2011, terminating his
23 participation in Aetna's network effective September 6, 2011 because "[a]fter repeated warnings,
24 [he] continue[d] to refer members to non-participating facilities in violation of . . . contract
25 provisions." Dr. Feinfield responded to Aetna on July 1, 2011 that its letter provided insufficient
26 notice for termination under the terms of Dr. Feinfield's contract with Aetna, and that the out-of-
27 network services that formed the purported basis for Dr. Feinfield's termination were, in fact,
28 approved by Aetna. Aetna's reply on July 26, 2011 acknowledged that its letter had provided

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1 insufficient notice of termination, and reissued Dr. Feinfeld's termination with an effective date
2 of January 26, 2012. Aetna also addressed Dr. Feinfeld's response that his actions did not breach
3 his contract with Aetna, which required that Dr. Feinfeld "render services to members only at
4 those inpatient, extended care, and ancillary service facilities which have been approved in
5 advance by company," since Aetna had pre-approved the out-of-network services at issue. Aetna
6 replied that,

7 Although your office and staff may have sought pre-certification for performing a
8 CPT code, generally such authorization is understood in the industry to mean only
9 that Aetna agrees the surgery (professional service) denoted by that CPT code is
10 medically necessary and a covered benefit. In general, absent any specific
11 discussion that you intended surgery to be performed at a non-contracted facility,
12 Aetna's pre-certification process does not result in a blanket approval that you may
13 perform surgery at any facility of your preference, or that the non-participating
14 facility charges associated with that procedure are a covered benefit.

15 Although Aetna has not yet followed through on its threat to terminate Dr. Feinfeld from its
16 provider network, Dr. Feinfeld fears that Aetna may do so at any time.

17 42. Aetna has terminated several other physicians in retaliation for them referring their
18 patients to out-of-network ASCs. The following additional Physician Plaintiffs have been
19 terminated from Aetna as a result of their referrals to out-of-network ASCs: Drs. Blatz, Cervantes,
20 Dillingham, Donohue, Gholami, Gutman, Lum, L. Oloff, Sharma, and M. Wall. The following
21 additional Physician Plaintiffs have been threatened with termination: Drs. Tandon, Kim, and
22 Cooper.

23 43. Plaintiffs are informed and believe that many more physicians have received these
24 threatening letters and/or have been terminated, and may amend this complaint to include those
25 physicians as plaintiffs.

26 California Law Prohibits Aetna's Conduct

27 44. Aetna's attempts to undercut the rights of its members enrolled in plans that offer
28 out-of-network benefits by threatening doctors with termination violates California Insurance
Code, Section 10133, the statute that permits insurers to establish PPO networks. Section 10133
makes clear that an insurer may not "in any manner. . .direct, participate in, or control the

1 selection of the hospital or health facility or physician or surgeon. .. from whom the insured
2 secures services or exercise medical ... judgment, except that an insurer may negotiate and enter
3 into contracts for alternative rates of payment with institutional providers, and offer the benefit of
4 these alternative rates to insureds who select those providers.” Cal. Ins. Code, §10133 (emphasis
5 added).

6 45. With regard to its point of service (“POS”) products, the Knox-Keene Act requires
7 plans like Aetna to “track out-of-network point-of-service utilization separately from in-network
8 utilization.” See Health & Safety Code § 1364.68(b). Nothing in the act permits Aetna to prohibit
9 POS enrollees’ use of their out-of-network benefits by terminating in-network doctors for referring
10 POS members to out-of-network providers. Health & Safety Code §§ 1364.60, *et seq.*

11 46. Furthermore, with regard to the administration of products that require licensing by
12 the Department of Managed Health Care, such as Aetna’s POS products, Aetna is required to
13 ensure that “medical decisions are rendered by qualified medical providers, unhindered by fiscal
14 and administrative management.” See Health & Safety Code § 1367(g). For these products Aetna
15 also must “furnish services in a manner providing continuity of care and ready referral of patients
16 to other providers at times as may be appropriate consistent with good professional practice.” See
17 *id.* § 1367(d).

18 47. Aetna’s practice of forbidding its POS enrollees from using out-of-network
19 providers, without concern for the patients’ specific medical needs and treating physicians clinical
20 determinations, violates these Health & Safety code provisions.

21 48. Aetna’s acts of retaliation against physicians have been directed at, and have
22 caused injury to, members of CMA, LACMA, SCCMA, and VCMA.

23 49. Aetna’s practice of forcing doctors to preclude Aetna patients with out-of-network
24 benefits from actually using those benefits constitutes a clinical gag clause in violation of
25 California Business and Professions Code Section 2056.1. Section 2056.1 provides in pertinent
26 part:

27 (a) **The purpose of this section is to provide protection against retaliation for**
28 **physicians** who advocate for medically appropriate health care for their patients
pursuant to *Wickline v. State of California* 192 Cal.App.3d 1630.

1 (b) It is the public policy of the State of California that a physician and surgeon be
2 encouraged to advocate for medically appropriate health care for his or her patients.
3 ...

4 (c) The application and rendering by any person of a **decision to terminate an**
5 **employment or other contractual relationship with, or otherwise penalize, a**
6 **physician and surgeon principally for advocating for medically appropriate**
7 **health care** consistent with that degree of learning and skill ordinarily possessed
8 by reputable physicians practicing according to the applicable legal standard of care
9 **violates the public policy of this state. No person shall terminate, retaliate**
10 **against, or otherwise penalize a physician and surgeon for that advocacy, nor**
11 **shall any person prohibit, restrict, or in any way discourage a physician and**
12 **surgeon from communicating to a patient information in furtherance of**
13 **medically appropriate health care. (Emphasis added.)**

14 50. Aetna's practices of retaliating against physicians who recommend to their patients
15 that they receive their health care services at out-of-network ASCs violates these California
16 statutes, interferes with the physician-patient relationship, and hinders medical decisions due to
17 fiscal considerations.

18 Physician Settlement Agreement

19 51. A number of years ago, Aetna and other health plans were sued as part of a
20 nationwide class action by physicians challenging their unlawful practices. As part of a 2003
21 Physician Settlement Agreement reached in the national class action, Aetna agreed to a "no gag
22 clause" requirement in its Provider Agreements. This requirement thereafter was expressly
23 incorporated by amendment into Aetna's agreements with physicians.

24 52. For example, Forest's Participating Physician, Physician Group and Physician
25 Organization Contract was amended by addendum in 2005 that included the following provision:

26 **No Gag Clauses.** Nothing contained in Participating Physician's agreement,
27 including but not limited to language concerning Proprietary Information, Non-
28 competition, Non-solicitation or Interference with Contractual Relations shall be
construed to prohibit or limit the free, open and unrestricted communication
between a Participating Physician and a Member regarding the nature of the
Member's medical conditions or treatment and provider options and the relative
risks and benefit of such options, whether or not such treatment is covered under
the Member's Plan, and any right to appeal any adverse decision by Company
regarding coverage of a treatment that has been recommended or rendered, and
Company shall not penalize or sanction a Participating Physician in any way
for engaging in any free, open and unrestricted communication with a
Member about any matters relevant to that particular member or for
advocating for any service on behalf of a Member.

1 (Addendum at ¶ 5 (emphasis in original).)

2 53. The language contained in this provision mirrors the language found in California
3 Business and Professions Code Section 2056.1.

4 54. Despite the fact that Aetna agreed to this “no gag clause” in the 2003 Physician
5 Settlement Agreement and thereafter expressly amended its provider agreements to include this
6 clause, Aetna has continued its illegal practice of restricting its members’ rights to use out-of-
7 network providers, has continued to threaten physicians who refer to out-of-network facilities, and
8 has refused to pay for out-of-network benefits for which its members expressly contracted.

9 **Aetna's Conduct Constitutes False Advertising**

10 55. California law prohibits unfair competition, including false advertising, under
11 Business and Professions Code §§ 17200 and 17500 *et seq.*

12 56. As alleged above, Aetna advertises its PPO and POS products as providing
13 members the "advantages" and "flexibility" of obtaining care at out-of-network providers.

14 57. What Aetna fails to disclose to members of the public and its members is that
15 Aetna has embarked on a stratagem of (a) retaliating against members for using their out-of-
16 network benefits, (b) retaliating against physicians for referring members to out-of-network ASCs,
17 and (c) retaliating against out-of-network ASCs.

18 58. Aetna advertising, therefore, constitutes misleading statements and false
19 advertising in violation of California Business and Professions Code §§17200 and 17500.

20 59. As a result of Aetna’s improper conduct out-of-network facilities have been
21 contacted by Aetna-contracted providers who are uncertain, confused, and frustrated about
22 whether they can continue to utilize out-of-network benefits. Similarly, Plaintiffs are informed
23 and believe that Aetna members are similarly confused and frustrated when they cannot obtain
24 covered services at out-of-network facilities.

25 60. Plaintiffs are informed and believe, and thereon allege, that Aetna’s improper
26 conduct has significantly harmed the business and reputation of out-of-network providers.

27 61. Plaintiffs have complained to Aetna about the situation, but Aetna has ignored
28 Plaintiffs’ attempts to reach a resolution of the dispute. Aetna’s position appears to be that it

1 simply can make up the terms of its Provider Agreements and member policies as it goes, without
2 regard to what it has contracted to provide, the rights of physicians and members, or the law.

3 62. Aetna continues to market and sell insurance products based on the representation
4 that enrollees of plans with out-of-network benefits may actually seek care at out-of-network
5 facilities, without disclosing the secret restrictions punishing members who seek those out-of-
6 network services, and doctors and ASCs who honor these benefits.

7 63. Aetna also continues to misrepresent to in-network providers that they may not
8 treat any Aetna patients at out-of-network facilities, even when the members have coverage for
9 out-of-network benefits.

10 64. Moreover, California Insurance Code Section 10123.12, Health and Safety Code
11 Section 1363, and 28 California Code of Regulations Section 1300.63 each require detailed
12 disclosures to insureds and enrollees about the services that are covered and excluded by the
13 policy and/or plan.

14 65. Plaintiffs are informed and believe that these problems are ongoing and will
15 continue into the future as additional members enroll in Aetna health insurance products.

16
17 **FIRST CAUSE OF ACTION**

18 **(Unfair Business Practices In Violation Of Business And Professions Code Section 17200)**

19 66. Plaintiffs reincorporate each of the above paragraphs.

20 67. Aetna has utilized unfair business acts and practices by, *inter alia*:

- 21 • Attempting to control, direct, and participate in the selection of health facilities
22 of its PPO members in violation of California Insurance Code § 10133;
23 • Failing to base determinations whether or not to authorize, modify, or deny
24 health care services for its POS and HMO members on “sound clinical
25 principles and processes” in violation of Health & Safety Code § 1363.5(b)(2);
26 and failing to ensure that medical decisions regarding its POS and HMO
27 members are unhindered by fiscal and administrative management, in violation
28 of Health & Safety Code § 1367(g);

- 1 • Engaging in fraudulent, misleading and deceptive advertising in violation of
- 2 California Business and Professions Code §§17200 and 17500; and
- 3 • Engaging in fraudulent, misleading and deceptive advertising in violation of
- 4 California Insurance Code Section 10123.12, Health and Safety Code Section
- 5 1363, and 28 California Code of Regulations Section 1300.63.

6

7 68. These unfair acts and practices are in violation of California Insurance Code, the

8 Knox-Keene Act, the regulations promulgated thereunder, and California's Unfair Competition

9 Law and False Advertising Law.

10 69. Aetna's conduct constitutes illegal, unfair and fraudulent business practices under

11 California Business and Professions Code, sections 17200, *et seq.*

12 70. Plaintiffs are informed and believe that Aetna will continue its ongoing unfair

13 business practices toward Plaintiffs (and others) if not enjoined from doing so.

14 71. Plaintiffs seek an injunction requiring Aetna to cease and desist its unfair business

15 practices as outlined herein.

16 72. Plaintiffs seek restitution of all amounts Aetna kept that otherwise would have been

17 paid out to Plaintiffs though the benefits vested yet deprived from members, in an amount to be

18 proved at trial, plus applicable statutory interest.

19

20 **SECOND CAUSE OF ACTION**

21 **(False Advertising In Violation Of Business And Professions Code Section 17500)**

22 73. Plaintiffs reincorporate each of the above paragraphs.

23 74. The foregoing actions of Aetna constitute the use of false and misleading

24 representations of material fact in commerce in connection with commercial advertising and

25 promotion of Aetna's products, in violation of Business And Professions Code Section 17500.

26 75. Through its advertising and marketing Aetna made and continues to make

27 numerous uniform, false, and misleading statements regarding Aetna members' rights to out-of-

28 network benefits and the actual ability of members to access out-of-network providers and

1 facilities.

2 76. Aetna was aware, or by the exercise of reasonable care should have been aware,
3 that its commercial representations were untrue or misleading.

4 77. As a proximate result of Aetna's above-described conduct, Plaintiffs have been
5 damaged in an amount to be proved at trial.

6 78. Plaintiffs are informed and believe that Aetna will continue its ongoing unfair
7 business practices toward Plaintiffs (and others) if not enjoined from doing so.

8 79. Plaintiffs seek an injunction requiring Aetna to cease and desist from using its
9 unfair business practices as outlined herein.

10 80. Plaintiffs seek restitution of an amount to be proved at trial, plus applicable
11 statutory interest.

12
13 **THIRD CAUSE OF ACTION**

14 **(For Breach of Contract—Physician and Patient Plaintiffs against all Defendants)**

15 81. Plaintiffs reincorporate each of the above paragraphs.

16 82. Plaintiffs are informed and believe that Aetna's Provider Agreements with the
17 Physician Plaintiffs do not prohibit referrals of Aetna members with policies that cover out-of-
18 network benefits to out-of-network providers. In fact, Plaintiffs are informed and believe that
19 Aetna's Provider Agreements explicitly assume that such referrals will occur, as these agreements
20 set out conditions for making out-of-network referrals. Moreover, Plaintiffs are informed and
21 believe that each Provider Agreement includes a "no gag clause" provision that prohibits Aetna
22 from interfering with patient care decisions.

23 83. Likewise, Plaintiffs are informed and believe that Aetna's policy with the Patient
24 Plaintiff does not prohibit use of out-of-network providers. Indeed, the purpose of a PPO policy
25 like that purchased by the Patient Plaintiff is to allow the member to use out-of-network providers,
26 at an agreed higher cost to the member.

27 84. The Physician and Patient Plaintiffs have at all times complied with all terms of the
28 provider agreements and the PPO member policy, except as prevented, excused, or futile based on

1 the conduct of Aetna.

2 85. Aetna has materially breached the Provider Agreements in a number of respects,
3 including without limitation by interfering with physicians' medical decisions, by threatening
4 physicians with termination of their Aetna in-network status for referring patients to out-of-
5 network providers, and by actually terminating physicians for this reason.

6 86. Aetna has breached the Patient Plaintiff's PPO member policy in a number of
7 respects, including without limitation by denying out-of-network benefits to Patient One, despite
8 the fact that he paid extra premium to Aetna out-of-network coverage.

9 87. As a direct and proximate result of Aetna's breaches, Plaintiffs have been damaged
10 in an amount to be proved at trial, and which continues to grow as Aetna's breaches continue.

11
12 **FOURTH CAUSE OF ACTION**

13 **(For Retaliation And Termination In Violation Of Public Policy -- Physician and Patient
14 Plaintiffs against all Defendants)**

15 88. Plaintiffs reincorporate each of the above paragraphs.

16 89. As alleged above, Section 2056.1 provides that "a decision to terminate .. [A]
17 contractual relationship with, or otherwise penalize, a physician and surgeon principally for
18 advocating for medically appropriate health care consistent with that degree of learning and skill
19 ordinarily possessed by reputable physicians practicing according to the applicable legal standard
20 of care violates the public policy of this state."

21 90. Aetna's practice of terminating physicians' contracts, and retaliating against them,
22 for advocating medically appropriate health care options to PPO and POS members, constitutes a
23 tort in violation of public policy.

24 91. Plaintiffs seek an injunction prohibiting Aetna from continuing to engage in such
25 unlawful conduct.

26 92. Moreover, some plaintiffs have received reduced reimbursement and/or have had
27 their contracts with Aetna terminated as a result of such violations of public policy. Accordingly,
28 as a direct and proximate result of Aetna's illegal conduct, plaintiffs have been damaged in

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1 amounts according to proof at trial.

2 93. Moreover, Aetna's conduct and violations of law has been outrageous, despicable,
3 intentional, malicious, and oppressive, justifying exemplary and punitive damages.

4
5 **FIFTH CAUSE OF ACTION**

6 **(Intentional Interference With Prospective Economic Advantage—ASC Plaintiffs Against
7 All Defendants)**

8 94. Plaintiffs reincorporate each of the above paragraphs.

9 95. A prospective economic relationship exists between out-of-network facilities and
10 Aetna members, as well as between out-of-network facilities and Aetna's in-network physicians,
11 both of which contain the probability of future economic benefits to out-of-network facilities that
12 have not been realized due to Aetna's misconduct. Plaintiffs are informed and believe that Aetna
13 in-network physicians want to refer patients to out-of-network facilities, but are discouraged from
14 doing so by Aetna's termination letters. The established track record before Aetna's actions show
15 that out-of-network facilities almost certainly would have received more Aetna members enrolled
16 in plans with out-of-network benefits absent the interference.

17 96. Aetna at all relevant times knew of the existence of the prospective economic
18 relationship between out-of-network facilities and patients enrolled in Aetna health plans, as well
19 as the existence of the prospective economic relationship between out-of-network facilities and
20 Aetna-contracted physicians. Indeed, Plaintiffs are informed and believe that the reason why
21 Aetna threatens to terminate doctors who refer members to out-of-network facilities is to reduce
22 the number of Aetna members using out-of-network facilities.

23 97. Aetna's misconduct alleged above is independently wrongful. It violates several
24 statues and regulations set forth above.

25 98. Aetna's interference has damaged Plaintiffs by (a) confusing actual and potential
26 patients who want to use out-of-network facilities; (b) diverting away potential patients enrolled as
27 members in Aetna's insurance products with coverage for out-of-network facilities; (c) threatening
28 physicians who would otherwise refer patients to out-of-network facilities; and (d) refusing to pay

1 for out-of-network care actually rendered to Aetna members with out-of-network coverage.

2 99. The foregoing conduct of Aetna is the result of willful and malicious or
3 intentionally deceptive conduct, or conduct that manifests a knowing and reckless indifference
4 toward, and disregard of, the rights of Plaintiffs. As a result, patients are not being referred to out-
5 of-network facilities, and patients who otherwise would have gone to out-of-network facilities are
6 not being authorized for medically necessary care that is otherwise covered by their Aetna health
7 insurance. Furthermore, Plaintiffs are informed and believe that patients are not seeking other
8 services at out-of-network facilities due to Aetna's interference. As a result, out-of-network
9 facilities are losing both the short term benefit of a patient obtaining services at the hospital, as
10 well as the long term prospect of repeat visits by patients based on the good will created when a
11 patient has a good experience and outcome at an out-of-network facility.

12 100. Aetna's wrongful acts were designed to interfere with out-of-network facilities'
13 prospective economic relationships with patients and physicians, and Aetna engaged in these
14 wrongful acts knowing that the interference was certain or substantially certain to occur as a result
15 of its actions.

16 101. Aetna's conduct has actually disrupted out-of-network facilities' relationships with
17 patients and physicians.

18 102. Aetna's conduct has in fact proximately caused damages to Plaintiffs in an amount
19 to be proved at trial.

20 103. Plaintiffs also seek an injunction prohibiting Aetna's ongoing conduct in interfering
21 with Plaintiffs' prospective economic advantage. Plaintiffs' legal remedies are inadequate in that
22 Aetna's conduct is ongoing and will continue to injure Plaintiffs, including out-of-network
23 facilities' reputation and business good will in the community. Repeated litigation to correct this
24 injury is inefficient for the parties and the Court.

25 104. The foregoing conduct of Aetna is the result of willful and malicious or
26 intentionally deceptive conduct, or conduct that manifests a knowing and reckless indifference
27 toward, and disregard of, the rights of Plaintiffs. Aetna knows that its members enrolled in plans
28 with out-of-network benefits have the right to seek care at out-of-network facilities. Nonetheless,

1 Aetna acted in conscious disregard of the rights of Plaintiffs, patients and their physicians.

2 Plaintiffs therefore are entitled to punitive damages.

3 **SIXTH CAUSE OF ACTION**

4 **(Negligent Interference With Prospective Economic Advantage—ASC Plaintiffs Against All Defendants)**

5 105. Plaintiffs reincorporate each of the above paragraphs.

6
7 106. A prospective economic relationship exists between out-of-network facilities and
8 Aetna members, as well as between out-of-network facilities and Aetna's in-network physicians,
9 both of which contain the probability of future economic benefits to Plaintiffs that have not been
10 realized due to Aetna's misconduct. Plaintiffs are informed and believe that Aetna in-network
11 physicians want to refer patients to out-of-network facilities, but are discouraged from doing so by
12 Aetna's termination letters. The established track record before Aetna's actions shows that out-of-
13 network facilities almost certainly would have received more Aetna members enrolled in plans
14 with out-of-network benefits absent the interference.

15 107. Aetna at all relevant times knew of the existence of the prospective economic
16 relationship between out-of-network facilities and patients enrolled in Aetna health plans, as well
17 as the existence of the prospective economic relationship between out-of-network facilities and
18 Aetna-contracted physicians. Indeed, Plaintiffs are informed and believe that the reason why
19 Aetna threatens to terminate doctors who treat members at out-of-network facilities is to reduce
20 the number of Aetna members using out-of-network facilities.

21 108. Aetna's misconduct alleged above is independently wrongful. It violates several
22 statues and regulations set forth above.

23 109. Aetna's interference has damaged Plaintiffs by (a) confusing actual and potential
24 patients who want to use out-of-network facilities; (b) diverting away potential patients enrolled as
25 members in Aetna's insurance products with coverage for out-of-network facilities; (c) threatening
26 physicians who would otherwise refer patients to out-of-network facilities; and (d) refusing to pay
27 for out-of-network care actually rendered to Aetna members with out-of-network coverage.

28 110. Aetna failed to exercise due care when it sent letters threatening termination to in-

1 network physicians, and thereby instructed these physicians and other providers to prohibit all
2 Aetna patients from seeking medically necessary care at out-of-network facilities. As a result,
3 patients are not being referred to out-of-network facilities, and patients who otherwise would have
4 gone to out-of-network facilities are not being authorized for medically necessary care.
5 Furthermore, patients are not electing to seek other services at out-of-network facilities due to
6 Aetna's conduct.

7 111. It was reasonably foreseeable that Aetna's wrongful acts would interfere with out-
8 of-network providers' prospective economic relationships with patients and physicians, and Aetna
9 engagement in these wrongful acts was negligent. Aetna knew or should have known that the
10 interference was certain or substantially certain to occur as a result of its actions, but nonetheless
11 failed to exercise reasonable care to avoid such disruption.

12 112. Aetna's conduct has actually disrupted out-of-network providers' relationships with
13 patients and physicians.

14 113. Aetna's conduct has in fact proximately caused damages to Plaintiffs in amounts to
15 be proved at trial.

16 114. Plaintiffs also seek an injunction prohibiting Aetna's ongoing conduct in interfering
17 with Plaintiffs' prospective economic advantage. Plaintiffs' legal remedies are inadequate in that
18 Aetna's conduct is ongoing and will continue to injure Plaintiffs, including out-of-network
19 facilities' reputation and business good will in the community. Repeated litigation to correct this
20 injury is inefficient for the parties and the Court.

21 **SEVENTH CAUSE OF ACTION**

22 **(For Declaratory Relief)**

23 115. Plaintiffs reincorporate each of the above paragraphs.

24 116. An actual and ongoing controversy now exists between Plaintiffs and Aetna
25 regarding the rights and duties of the parties.

26 117. Plaintiffs believe that Aetna has improperly acted in a manner that (a) confuses
27 actual and potential patients who want to use the ASC Plaintiffs' services; (b) diverts potential
28 patients enrolled as members in Aetna's insurance products away from out-of-network facilities;

1 (c) threatens the Physician Plaintiffs who would otherwise refer patients to out-of-network
2 facilities; and (d) refuses to pay for out-of-network care actually rendered to Aetna members, like
3 the Patient Plaintiff, with out-of-network coverage.

4 118. Specifically, Plaintiffs contend, and seek a declaration, that:

- 5 • Aetna’s in-network physicians can refer members with benefits covering
6 services at out-of-network facilities to such out-of-network facilities without
7 facing termination. This includes, without limitation, (a) PPO and indemnity
8 members; and (b) HMO/POS members and members of EPO products that
9 permit members to use out-of-network providers for emergency services, as
10 well as where Aetna lacks an adequate in-network alternative in the member’s
11 service area, or in any other situation where the Aetna plan product permits use
12 of a non-network facility.
- 13 • Aetna’s contracts with its in-network physicians do not prohibit these
14 physicians from referring members with benefits covering out-of-network
15 services from referring patients to out-of-network facilities.
- 16 • Any Aetna contract that restricts its in-network physicians from referring
17 members to out-of-network facilities for services covered by the terms of the
18 members’ plan are unenforceable as illegal.
- 19 • Aetna’s letters threatening to terminate contracted physicians for referring PPO
20 members to out-of-network facilities violates California Insurance Code §
21 10133 because they seek to control, direct, and participate in the selection of
22 health facilities of its members in a manner not allowed by the statute.
- 23 • Aetna’s letters threatening to terminate contracted physicians for referring
24 Aetna HMO members to out-of-network facilities regardless of medical
25 necessity violates Health & Safety Code § 1363.5(b)(2) because they make
26 clear that Aetna does not base determinations whether or not to authorize,
27 modify, or deny health care services for its POS and HMO members on “sound
28 clinical principles and processes” in violation of Health & Safety Code §

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1363.5(b)(2).

- Aetna’s letters threatening to terminate contracted physicians for allowing Aetna POS and HMO members to utilize their medical benefits violates Health & Safety Code § 1367(g) because they fail to ensure that medical decisions regarding its POS and HMO members are unhindered by fiscal and administrative management.
- Aetna’s practice of forcing doctors to preclude Aetna patients with out-of-network benefits from actually using those benefits constitutes a clinical gag clause in violation of Bus. & Prof. Code, § 2056, *et seq.*
- Aetna’s letters threatening to terminate contracted physicians for allowing Aetna members with benefits that would cover services at out-of-network facilities constitutes false, misleading, and deceptive advertising in violation of California Business and Professions Code §§17200, 17500.
- Aetna’s letters threatening to terminate contracted physicians constitutes misleading and deceptive advertising in violation of the Lanham Act.
- Aetna’s letters threatening to terminate contracted physicians constitute a breach of those physicians’ provider agreements.
- Aetna’s refusal to pay for out-of-network services provided to Aetna members who purchase coverage from Aetna for out-of-network benefits constitutes a breach of those members’ Aetna policies.

119. Aetna apparently does not believe that any of these practices are improper and apparently believes that it is allowed to engage in each of them.

120. Thus, Plaintiffs seek a declaration that each of these contentions above are correct, and that Aetna’s contrary contentions are incorrect.

WHEREFORE, Plaintiffs pray for judgment in their favor as follows:

1. An award of monetary damages, including recovery of Aetna's profits and the damages sustained by Plaintiffs arising from the acts of Aetna complained of herein, according to

1 proof;

2 2. For restitution of the reasonable value of the health care services provided by
3 Plaintiffs, and of the money and property that Plaintiffs have lost and that Aetna unjustly has
4 retained, in an amount to be proved at trial;

5 2. An award of treble monetary damages, according to proof, for violations of the
6 Lanham Act;

7 3. An award of punitive damages, according to proof, for Aetna's intentional
8 interference with certain Plaintiffs' prospective economic advantage;

9 4. An award of prejudgment interest from the date of each wrongful act and recovery
10 of Plaintiffs' attorneys fees and costs;

11 5. For injunctive relief against Aetna to require Aetna to:

12 (a) cease and desist from threatening physicians who refer patients to out-of-
13 network facilities when the members referred have benefits covering these
14 services;

15 (b) cease and desist from prohibiting members with out-of-network benefits from
actually using their benefits;

16 (c) send corrective notices to any of Aetna-contracted physicians who
17 already have received Aetna's threat letters, so that these physicians are
18 not further misled into thinking that their Provider Agreements preclude
referrals of PPO members to out-of-network providers;

19 (d) reinstate any Provider Agreements that were terminated for referring
20 Aetna members with out-of-network benefits to out-of-network
providers; and

21 (e) notify all members with out-of-network benefits who live or work in
22 California that they may use out-of-network facilities.

23 6. For declaratory relief of the rights and obligations of the parties on the disputes set
24 forth in the declaratory relief cause of action;

25 7. Costs, fees and expenses to the full extent permitted under the law, including
26 without limitation, attorneys fees and costs under the Lanham Act;

27 8. For all other relief that the Court deems appropriate.
28

1 DATED: July 3, 2012

HOOPER, LUNDY & BOOKMAN, P.C.

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By: *K. Markowski*

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KATHERINE M. MARKOWSKI
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

DATED: July 3, 2012

HOOPER, LUNDY & BOOKMAN, P.C.

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