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11 TERRY J. LARUE

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES

15 BC 566095

16 TERRY J. LARUE,

17)
18) Plaintiff,

19 v.

20)
21) HEALTH NET OF CALIFORNIA, INC.;
22) ACCOUNTABLE HEALTH CARE IPA, A
23) PROFESSIONAL MEDICAL
24) CORPORATION; and DOES 1 through 100,
25) inclusive,

26)
27) Defendants.
28)

CASE NO.:

COMPLAINT FOR:

- 1) BREACH OF CONTRACT;
2) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING;
3) VIOLATION OF CIVIL CODE
SECTION 3428;
4) FRAUD;
5) NEGLIGENT MISREPRESENTATION
6) NEGLIGENCE

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ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

DEC 09 2014

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

1 Plaintiff alleges:

2 **INTRODUCTION**

3 1. This lawsuit arises out of Defendant Health Net of California, Inc.'s ("Health Net")
4 failure to provide necessary medical services for Plaintiff under an Affordable Care Act ("ACA")
5 health plan. Health Net actively marketed its new ACA plans to capture increased market share
6 and profit with respect to the hundreds of thousands of California consumers who would be taking
7 advantage of the ACA's open enrollment period. Health Net advertised, and promised in its
8 contracts, that it would provide accessible and affordable health care for new members, including
9 the services of specialists when required. In its rush for profit, however, Health Net failed to
10 establish adequate provider networks that could deliver the promised care. When Plaintiff
11 seriously injured his left hand and requested treatment by a specialist, Health Net and its
12 designated medical group failed to respond in a timely fashion. When they did respond, they sent
13 Plaintiff to a series of doctors who admitted they could not provide the necessary treatment
14 leading to further delays. By the time Plaintiff was able to secure treatment—seven weeks after his
15 injury—the condition of his left hand had deteriorated to the point where he was left with a
16 permanent and disabling injury.

17 **PARTIES**

18 2. Plaintiff Terry J. LaRue is a resident of Los Angeles County.

19 3. Health Net is a health care service plan licensed to do business in California and
20 located in Woodland Hills, California.

21 4. Defendant Accountable Health Care, IPA, A Professional Medical Corporation
22 ("Accountable") is a professional medical corporation engaged in the business of acting as a
23 capitated provider of health care services.

24 5. Plaintiff alleges that at all times relevant herein, each of the Defendants was the
25 agent, joint venturer, associate, servant and/or employee of each of the other Defendants, and in
26 connection with the action hereinafter alleged, was acting within the scope of such agency,
27
28

1 employment and/or relationship, and each Defendant ratified each and every act, omission and
2 thing done by each and every other Defendant named herein.

3 6. Plaintiff is unaware of the true names and capacities of Defendants DOES 1
4 through 100, inclusive, and therefore sue these defendants by such fictitious names. Plaintiff will
5 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff alleges
6 on information and belief that each of the Doe Defendants is responsible or liable in some manner
7 to Plaintiff for the conduct alleged in this Complaint and that Plaintiff's damages as herein alleged
8 were proximately caused by those Doe Defendants.

9 **FACTUAL ALLEGATIONS**

10 7. With the implementation of the ACA on the horizon, Health Net developed a plan
11 to maximize its market share and profit arising out of the sale of health plans in California. Health
12 Net knew that hundreds of thousands of new customers in California would be buying health
13 coverage given the ACA's open enrollment period and mandatory nature. Health Net sought to
14 capitalize on this opportunity by actively marketing its new ACA plans and its ability to provide
15 accessible and affordable care under those plans.
16

17 8. Health Net, however, did not set up adequate networks of physicians and other
18 providers to fulfill the promises it was making of accessible and affordable health care. This was
19 particularly true for Health Net's HMO plans that required enrollees to use a restricted set of
20 network physicians and other providers in order to receive care. Health Net oversold its products
21 with full knowledge that it did not have a sufficient number of physicians and other providers to
22 provide the benefits it was promising to consumers.

23 9. One ACA plan Health Net has offered is the CommunityCare HMO Plan. As
24 Health Net states on its website:

25 Our Health Net of California, Inc. CommunityCare plans are HMO plans. You get
26 health care benefits at a set cost. You also have your choice of local, expert doctors.
27 These two features bring together value and quality for you.

28 Health Net CommunityCare HMO makes getting health care easy. You have one
main doctor called a primary care physician. You can choose any doctor from our

1 CommunityCare network as your primary care physician.

2 Your doctor helps you stay healthy, and takes care of you when you are sick. You
3 always call or see your doctor first.

4 If you need other services, your doctor will help you get them. For example, if you
5 need to see a specialist, your doctor will refer you to one. If you need to go to the
6 hospital, your doctor will arrange it for you.

7 10. Plaintiff became covered under a Health Net IFP CommunityCare HMO plan
8 effective May 1, 2014. Plaintiff was assigned Accountable as his medical group and Dr. Birinder
9 Brara as his primary care physician.

10 11. Health Net had a pre-existing business relationship with Accountable. Health Net
11 entered into managed care agreements with Accountable whereby Health Net shifted the risk of
12 providing covered services to Accountable by paying it as a capitated provider. Health Net paid a
13 set, per-member amount to Accountable and Accountable, in return, agreed to provide health care
14 services to the Health Net members assigned to it. Expenses incurred to treat the members were
15 borne by Accountable.

16 12. In July of 2012 the Department of Managed Health Care issued Cease and Desist
17 Orders against Accountable, Health Net and other health plans based upon Accountable's illegal
18 use of non-physicians who made "medical necessity" determinations in favor of denying treatment
19 and saving Accountable money. Health Net agreed to a Consent Order with the Department that,
20 *inter alia*, required Health Net to take all actions necessary and appropriate to assure that
21 Accountable did not engage in the illegal acts complained of. Despite Accountable's actions, and
22 Health Net's responsibility for those actions, Health Net entered into managed care agreements
23 with Accountable for Health Net's new ACA plans, including Plaintiff's IFP CommunityCare
24 HMO plan. Under these agreements, Health Net delegated to Accountable the primary function of
25 authorizing referrals to specialists.

26 13. Under Plaintiff's plan, Health Net promised to provide health coverage for
27 treatment of illnesses and injuries suffered by Plaintiff. Health Net agreed to provide "Specialists
28 and Referral Care." The contract states: "you may need care that the Primary Care Physician

1 cannot provide. At such times you will be referred to a Specialist or other health care provider for
2 that care.” Health Net further agreed that “[y]our Primary Care Physician is your main doctor who
3 makes sure you get the care you need when you need it” and that “[y]our Primary Care Physician
4 will send you to a Specialist.”

5 14. On May 5, 2014, while he was in Colorado working as freelance professional
6 action sports videographer, Plaintiff fell and injured his left hand. He sustained a “Bennett’s
7 fracture,” that is, a fracture of the base of the first metacarpal bone which extends into the
8 carpometacarpal joint.

9 15. The failure to properly recognize and treat a Bennett’s fracture will result in an
10 unstable, painful, arthritic carpometacarpal joint with diminished range of motion. The
11 carpometacarpal joint of the thumb allows a wide range of motion while maintaining stability for
12 grasp and pinch. Thus, the failure to properly recognize and treat the Bennett fracture will result in
13 a hand with greatly diminished overall function.

14 16. After injuring his hand, Plaintiff went to an emergency room at a hospital in
15 Denver, Colorado. He was diagnosed with a Bennett’s fracture and referred to an orthopedic
16 surgeon to perform surgery the following day. The next day, however, Plaintiff was informed that
17 the surgeon would not accept his Health Net coverage. Plaintiff immediately returned home to
18 seek medical attention.

19 17. On May 7 Plaintiff contacted Health Net and advised that he urgently needed
20 surgery for his severely injured left hand. Health Net made no arrangements for the surgery and
21 instead advised Plaintiff that he must first see his primary care physician, Dr. Brara, before he
22 could see a surgeon. Plaintiff contacted Dr. Brara’s office and was given an appointment for the
23 next day.

24 18. On May 8 Dr. Brara advised Plaintiff that he needed to see an orthopedic surgeon.
25 Plaintiff was told that a referral to a specialist would be made. However, no referral was
26 forthcoming despite Plaintiff’s requests to Dr. Brara, Accountable, and Health Net.
27
28

1 19. On May 10 Plaintiff complained to Health Net about his urgent need to see a
2 specialist and the lack of a referral. Health Net personnel advised him to go to an emergency room
3 for evaluation. Plaintiff did so and was seen by Dr. Ryan DellaMaggiora at Cedars Sinai Medical
4 Center that day. Dr. DellaMaggiora advised Plaintiff that he needed surgery right away to obtain
5 an optimal outcome for his hand. Plaintiff advised Health Net about his visit with Dr.
6 DellaMaggiora and his need for surgery but received no referral.
7

8 20. On May 12 Health Net advised Plaintiff that Accountable did not have sufficient
9 information to provide a referral to a specialist. Health Net advised that it would contact Dr. Brara
10 and request a referral to a specialist.
11

12 21. On May 13 Plaintiff had telephone conversations with various Health Net
13 representatives. "Edgar A.," a Health Net "Appeals and Grievances Case Coordinator," advised
14 Plaintiff that Health Net had reported his prior complaint regarding lack of a specialist referral to
15 Accountable and that Accountable advised that it had arranged a referral to Dr. John Plut. Later
16 that day, Dr. Brara's office advised Plaintiff he had an appointment that afternoon with Dr. Plut.
17

18 22. At the May 13 appointment Dr. Plut confirmed that Plaintiff had a "displaced intra-
19 articular Bennett's fracture." Dr. Plut advised Plaintiff, however, that he was not a hand surgeon.
20 He advised Plaintiff that he needed surgery by a hand surgeon on an urgent basis to give him the
21 best chance of having a non-arthritic base of the thumb. Dr. Plut communicated this urgent need to
22 Dr. Brara.
23

24 23. On May 14 Dr. Brara's office completed an Accountable Treatment Authorization
25 Form for a referral to Dr. Jeffrey Weil. At the top of the form are the handwritten words "Urgent
26
27
28

1 Stat¹.” Handwriting in the lower portion of the form states “[i]his is urgent needs to see hand
2 surgeon.” Accountable authorized a referral to Dr. Weil for that same day. Plaintiff was then
3 notified of the appointment.
4

5 24. At the May 14 appointment Dr Weil confirmed Plaintiff’s diagnosis but advised
6 that none of the hospitals where he could perform surgery were contracted with Health Net.
7 Plaintiff again complained to Dr. Brara’s office about the lack of a referral to a specialist who
8 could treat him.

9 25. On May 16 Dr. Brara’s office completed an Accountable Treatment
10 Authorization Form for an “Urgent Stat” referral to a “hand surgeon that will do surgery with
11 contracted hospital.” The form also states that Plaintiff was seen by hand surgeon Dr. Weil but
12 that Dr. Weil “was not contracted with places where he operates.”
13

14 26. Plaintiff made repeated inquiries to employees at Dr. Brara’s office about a referral
15 to a hand surgeon but was advised that they had been unsuccessful in securing such a referral
16 through Accountable, despite the urgent nature of Plaintiff’s condition.
17

18 27. On May 20 Accountable authorized a referral to Dr. Charles Alexander. Plaintiff
19 received an appointment with Dr. Alexander on May 27. Plaintiff complained that this
20 appointment was too far out and that he was not being treated for his urgent condition.
21

22 28. On May 27 Dr. Alexander examined Plaintiff and noted: “[Plaintiff’s] callus is
23 probably significantly firm, and he would require taking down that callus and having internal
24 fixation. This needs to be done as quickly as possible.” But Dr. Alexander advised Plaintiff that he
25 also was not a hand surgeon and that Plaintiff needed a hand surgeon for his surgery.
26
27

28 _____
¹ “Stat” is a common medical abbreviation for urgent or rush. It is from the Latin word *statim*, meaning
“immediately.”

1 35. Plaintiff entered into a written contract with Health Net, as alleged herein.

2 36. The essential terms of the contract are that Plaintiff agreed to pay premiums and, in
3 return, Health Net promised to provide health coverage for the treatment of illnesses and injuries
4 suffered by Plaintiff. *Inter alia*, Health Net agreed to provide “Specialists and Referral Care.” The
5 contract states that: “you may need care that the Primary Care Physician cannot provide. At such
6 times you will be referred to a Specialist or other health care provider for that care.” Health Net
7 further agreed that “[y]our Primary Care Physician is your main doctor who makes sure you get
8 the care you need when you need it” and that “[y]our Primary Care Physician will send you to a
9 Specialist.”
10
11

12 37. Health Net breached these terms and other express and implied terms of its contract
13 with Plaintiff by: a) failing to establish an adequate network of physicians, hospitals, and other
14 providers that would allow for the prompt and proper treatment of Plaintiff’s Bennett’s fracture; b)
15 failing to authorize treatment, whether the providers were inside or outside of Plaintiff’s network,
16 after being advised by Plaintiff of his urgent/emergent condition; c) violating Health & Safety
17 Code section 1367.01(h)(2) by knowing of and participating in the delay of treatment of Plaintiff’s
18 Bennett’s fracture as described herein; d) relying on Accountable to authorize the proper referral
19 to a specialist when Health Net knew of Accountable’s history of elevating its financial interests
20 over patients’ need for care and Accountable’s delay in authorizing Plaintiff’s treatment; and e)
21 other acts Plaintiff is presently unaware of.
22
23

24 38. As a proximate result of said acts, Plaintiff has suffered injury and disability, great
25 physical and mental stress, pain, and shock to his nervous system, great emotional distress,
26 humiliation and anxiety, loss of income and earning capacity, and economic loss, all to his damage
27 in a sum to be proven at the time of trial.
28

1 within the meaning of Civil Code section 3294. Said acts were authorized, ratified and performed
2 by officers and managing agents of Health Net.

3
4 **THIRD CAUSE OF ACTION**
(Violation of Civil Code Section 3428 Against Health Net and Accountable and Does 1-100)

5 44. Plaintiff hereby repeats and realleges Paragraphs 1 through 43 and incorporates the
6 same as though fully set forth herein.

7 45. Civil Code section 3428 provides in relevant part:

8 [A] health care service plan or managed care entity shall have a duty of ordinary care to
9 arrange for the provision of medically necessary health care service to its subscribers and
10 enrollees, where the health care service is a benefit provided under the plan, and shall be
11 liable for any and all harm legally caused by its failure to exercise that ordinary care when
both of the following apply:

12 (1) The failure to exercise ordinary care resulted in the denial, delay, or
13 modification of the health care service recommended for, or furnished to, a
subscriber or enrollee.

14 (2) The subscriber or enrollee suffered substantial harm.

15 46. Subsection (b) of the statute defines "substantial harm" as loss of life, loss or
16 significant impairment of limb or bodily function, significant disfigurement, severe and chronic
17 physical pain, or significant financial loss."

18 47. Health Net and Accountable failed to exercise ordinary care to arrange for the
19 provision of medically necessary health care services to Plaintiff. Health Net and Accountable
20 failed to arrange for a network of providers under Plaintiff's health plan that could promptly
21 provide him with necessary services for his urgent/emergent condition. Health Net and
22 Accountable also failed to promptly authorize treatment, whether the providers were within or
23 outside of Plaintiff's network, after they were advised of Plaintiff's urgent/emergent condition.
24 Health Net and Accountable knew or should have known of the substantial harm that would result
25 to Plaintiff if treatment was delayed. Health Net also failed to exercise ordinary care by relying on
26
27
28

1 Accountable to authorize the proper referral to a specialist when Health Net knew of
2 Accountable's history of elevating its financial interests over patients' need for care and
3 Accountable's delay in authorizing Plaintiff's treatment.
4

5 48. As alleged herein, Health Net and Accountable's delay in authorizing treatment of
6 Plaintiff's Bennett's fracture caused Plaintiff substantial harm.

7 49. There was no "independent medical review" process for Plaintiff to exhaust
8 because there was no such process that applied to defendants' delay in authorizing the necessary
9 services. Defendants never denied that Plaintiff was entitled to a referral. Additionally, Plaintiff
10 made numerous complaints to Health Net that Health Net relayed to Accountable. At no time did
11 Health Net or Accountable suggest that any independent review process was available to address
12 the delay Plaintiff was encountering or attempt to remedy the delays through expedited review.
13 Rather, Health Net advised that it had communicated with Accountable and that Accountable was
14 making a referral. Finally, even if an independent review process existed, and Plaintiff used it, the
15 process would not have been completed by the time Plaintiff suffered the substantial harm
16 referenced above.
17

18 50. As a proximate result of said acts, Plaintiff has suffered injury and disability, great
19 physical and mental stress, pain, and shock to his nervous system, great emotional distress,
20 humiliation and anxiety, loss of income and earning capacity, and economic loss, all to his damage
21 in a sum to be proven at the time of trial.
22

23 51. The aforementioned acts were done maliciously, fraudulently and oppressively
24 within the meaning of Civil Code section 3294. Said acts were authorized, ratified and performed
25 by officers and managing agents of Health Net and Accountable.
26
27

28 **FOURTH CAUSE OF ACTION**
(Fraud Against Health Net and Does 1 through 100)

1 **FOURTH CAUSE OF ACTION**
2 **(Fraud Against Health Net and Does 1 through 100)**

3 52. Plaintiff hereby repeats and realleges Paragraphs 1 through 51 and incorporates the
4 same as though fully set forth herein.

5 53. Under Plaintiff's plan, Health Net agreed to provide "Specialists and Referral
6 Care." The contract states that: "you may need care that the Primary Care Physician cannot
7 provide. At such times you will be referred to a Specialist or other health care provider for that
8 care." Health Net further agreed that "[y]our Primary Care Physician is your main doctor who
9 makes sure you get the care you need when you need it" and that "[y]our Primary Care Physician
10 will send you to a Specialist."

11 54. At the time it made these representations, Health Net knew they were false or
12 recklessly made the representations without regard for their truth, because Health Net knew
13 neither or it nor Accountable had an adequate network in place for Plaintiff's IFP CommunityCare
14 HMO plan.

15 55. Health Net made these representations with the intention of inducing Plaintiff to act
16 in reliance on these representations in the manner herein alleged, or with the expectation that the
17 Plaintiff would so act. As stated above, Health Net oversold its new ACA contracts pursuant to its
18 plan to increase its market share and profit. Health Net promised accessible and affordable care
19 without having adequate networks in place to deliver that care.
20

21 56. Plaintiff purchased his Health Net plan because he believed Health Net's
22 representations to be true. Plaintiff relied on these representations and paid premiums as herein
23 alleged. Had Plaintiff known that Health Net did not have adequate networks in place to fulfill the
24 promises it was making, Plaintiff would not have purchased his Health Net plan.

25 57. As alleged above, the delay in treating Plaintiff's Bennett's fracture resulted from
26 Health Net's failure to create and utilize a network that could fulfill promises made.

27 58. As a proximate result of said acts, Plaintiff has suffered injury and disability, great
28 physical and mental stress, pain, and shock to his nervous system, great emotional distress,

1 humiliation and anxiety, loss of income and earning capacity, and economic loss, all to his damage
2 in a sum to be proven at the time of trial.

3 59. The aforementioned acts were done maliciously, fraudulently and oppressively
4 within the meaning of Civil Code section 3294. Said acts were authorized, ratified and performed
5 by officers and managing agents of Health Net.
6

7 **FIFTH CAUSE OF ACTION**
8 **(Negligent Misrepresentation Against Health Net and Does 1-100)**

9 60. Plaintiff hereby repeats and realleges Paragraphs 1 through 59 and incorporates the
10 same as though fully set forth herein.

11 61. The representations made by Health Net, as alleged herein, were made negligently
12 and carelessly. Health Net should have known that neither it nor Accountable had an adequate
13 network in place for Plaintiff's IFP CommunityCare HMO plan.
14

15 62. As a proximate result of said acts, Plaintiff has suffered loss of premiums paid out
16 of pocket, insurance benefits, great physical and mental stress, pain and shock to her nervous
17 system, great emotional distress, humiliation and anxiety, and economic loss, including attorneys
18 fees and costs of suit, all to her damage in a sum to be proven at the time of trial.
19

20 **SIXTH CAUSE OF ACTION**
21 **(Negligence Against Accountable and Does 1-100)**

22 63. Plaintiff hereby repeats and realleges Paragraphs 1 through 62 and incorporates the
23 same as though fully set forth herein.

24 64. In accepting its role as Plaintiff's "medical group" under Plaintiff's coverage with
25 Health Net, Accountable assumed the duty of authorizing treatment when necessary for Health Net
26 members. This duty included the responsibility to act immediately on requests where treatment
27 was required to be authorized on an urgent/emergent basis. Additionally, Accountable had an
28 obligation under Health & Safety Code section 1367.01(h)(2) to expedite the authorization of

1 services with the proper providers so as to ensure that Plaintiff received adequate care for his
2 urgent/emergent condition.

3 65. Accountable breached its obligations by failing to authorize treatment in a timely
4 manner as herein alleged.
5

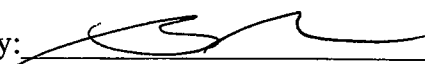
6 66. As a proximate result of said acts, Plaintiff has suffered loss of premiums paid out
7 of pocket, insurance benefits, great physical and mental stress, pain, and shock to her nervous
8 system, great emotional distress, humiliation and anxiety, and economic loss, including attorneys
9 fees and costs of suit, all to her damage in a sum to be proven at the time of trial.
10

11 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 12 1. Special and consequential damages in an amount to be proven at the time of trial,
13 including interest;
14 2. General damages in an amount to be proven at the time of trial;
15 3. Punitive damages in an amount appropriate to punish or set an example of Defendants;
16 4. Costs of suit incurred herein; and
17 5. For such other and further relief as the Court deems just and proper.
18

19 DATED: December 9, 2014

GIANELLI & MORRIS
KERN LAW GROUP

20
21
22 By: 
23 ROBERT S. GIANELLI
24 ADRIAN J. BARRIO
25 Attorneys for Plaintiff
26
27
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