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11 Attorneys for Plaintiffs

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

14 ASHLEY SUMMERS, an individual on  
15 behalf of herself and all others similarly  
16 situated,

17 Plaintiffs,

18 vs.

19 CALIFORNIA PHYSICIANS' SERVICES  
20 dba BLUE SHIELD OF CALIFORNIA; and  
21 DOES 1 through 100, inclusive,

22 Defendants.  
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CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

AUG 17 2018

Sherri R. Carter, Executive Officer/Clerk of Court

By: Brittney Smith, Deputy

Case No.: **BC 717338**

**CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

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

1 Plaintiff Ashley Summers, an individual, alleges with respect to her own acts and on  
2 information and belief with respect to all other matters:

3 **GENERAL ALLEGATIONS**

4 1.

5 **INTRODUCTION**

6 1. Plaintiff Ashley Summers ("Ashley") brings this action to stop California  
7 Physicians' Services dba Blue Shield of California ("Blue Shield") from improperly cancelling  
8 members' health plans in violation of contract and law. Ashley lives with multiple significant  
9 medical conditions and depends upon health care coverage to get the medication and regular  
10 treatment with the specialists that she needs to manage her conditions. Despite Ashley making  
11 timely payments to cover her monthly health plan premiums, Blue Shield cancelled her coverage  
12 outside of open enrollment leaving her without insurance and without treatment and medication  
13 for four months.

14 2. Ashley's cancellation is not an isolated experience. Blue Shield systematically  
15 cancels members' health service plans purportedly for non-payment when the members are  
16 current on their premium payments and does so without providing proper notice. Because  
17 members cannot enroll for a new plan outside of the open enrollment period, once Blue Shield  
18 improperly cancels the members' coverage the members are stuck either with no insurance or  
19 costly short term health plans that often only offer inadequate benefits. Blue Shield has known  
20 for years that it is systematically cancelling members without cause yet it has not corrected its  
21 system.

22 3. Plaintiff also represents a subclass of individuals who like herself incurred health  
23 care costs for which Blue Shield would and should have provided coverage had it not improperly  
24 cancelled their health plan. As a result, Ashley and others similarly situated have lost their  
25 existing health plans and have suffered substantial monetary injury and other injuries.

26 //

27 //

28 //



**THE PARTIES**

4. Plaintiff Ashley Summers ("Ashley") is currently residing and at all times relevant to the actions resided in Los Angeles, California. She was a Blue Shield member for a number of years up until in or about March of 2017 when Blue Shield cancelled her plan without proper cause or notice. She currently resides in Los Angeles, California where she has resided at all times relevant to this action.

5. Defendant California Physicians' Services dba Blue Shield of California ("Blue Shield") is, and at all relevant times was, a corporation duly organized and existing under and by virtue of the laws of the State of California and authorized to transact and transacting business in the State of California, with its headquarters in the County of Los Angeles.

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

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

**FACTUAL BACKGROUND**

8. Ashley Summers has contracted with Blue Shield for years. Under the material terms of her contract, Blue Shield is to provide her with coverage for medically necessary health care in exchange for monthly premiums. In order to pay her monthly premiums, Ashley would



1 initiate payment with her bank, and then the amount would be withdrawn and given to Blue  
2 Shield. Ashley paid her premiums through March 2018.

3 9. Health care coverage is particularly important to Ashley because she lives with  
4 rheumatoid arthritis and fibromyalgia which require her to take numerous medications and see  
5 multiple specialists regularly to keep symptoms managed and prevent a worsening of her  
6 conditions. Ashley has kept Blue Shield coverage for years because all of the specialists that she  
7 sees are Blue Shield physicians.

8 10. In or about February of 2018, Ashley went to pick up prescription medication yet  
9 the pharmacist told her that she could not fill the prescription because Ashley was not covered by  
10 the Blue Shield plan. Ashley called Blue Shield to inquire as to what happened and Blue Shield  
11 informed her that she had been cancelled due to delinquent payments. Ashley was stunned as she  
12 could not understand how she could be delinquent on payment when she had paid through her  
13 bank. Further, pursuant to California law and Blue Shield's contract, Blue Shield was required to  
14 provide Ashley with notice of cancellation with time to allow her to address the cancellation.  
15 Yet, Blue Shield had not sent Ashley any notice of cancellation.

16 11. The Blue Shield agent told Ashley that her plan could be reinstated if she made an  
17 additional payment yet could not explain why she had been shown to be delinquent in Blue  
18 Shield's system. Shortly after the call, Ashley made the payment to Blue Shield. She was then  
19 stunned upon receiving a letter on or about March 27, 2018 wherein Blue Shield wrote to inform  
20 her that her plan had been cancelled as of March 4, 2018 "per your request." Ashley had never  
21 requested cancellation and Blue Shield had again failed to provide requisite notice before  
22 cancelling her plan.

23 12. Ashley submitted a grievance in which she requested reinstatement yet on or about  
24 April 25, 2018, Blue Shield sent her a letter denying the grievance. Blue Shield incorrectly stated  
25 that Ashley was behind on a premium payment due in February of 2018.

26 13. On or about May 18, 2018, Ashley contacted the Department of Managed Health  
27 Care ("DMHC"), the California agency tasked with regulating managed healthcare plans such as  
28 the one to which Ashley had been a member. The DMHC sent a complaint to Blue Shield and on



1 or about May 19, 2018 sent Ashley a letter wherein it offered to reinstate her plan but only if she  
2 had paid \$2,381.30 which constituted premiums for the past months for which Blue Shield  
3 provided no coverage and a future month's premium.

4 14. As a result of Blue Shield's wrongful cancellation, Ashley was without insurance  
5 between March, April, May and June. She was unable to get all of her expensive yet medically  
6 necessary medication and see specialists for medically necessary consultations and treatments.  
7 Without the medication and treatment, she suffered physical injury, emotional distress and  
8 incurred out of pocket expenses for some of the medication. By the time that Blue Shield sent its  
9 letter in May, Ashley could not afford to make the balloon payment that Blue Shield requested  
10 and so she was without insurance.

11 4.

12 **CLASS ACTION ALLEGATIONS**

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

16 **An Ascertainable Class Exists**

17 16. Based on the information of which she and her counsel are currently aware,  
18 Plaintiff Ashley Summers defines the putative class as follows:

19 All California residents who are members of any Blue Shield health plan that Blue Shield  
20 cancelled for nonpayment without proper basis and notice for doing so at any point in the  
21 four years preceding the filing of this lawsuit.

22  
23 17. Plaintiff Ashley Summers also defines the putative subclass as follows:

24 All members of the putative class who after Blue Shield cancelled their health plan, they  
25 incurred health care costs that Blue Shield absent the cancellation would have been  
26 obligated to cover under the terms of their health plans.

27  
28 18. As used in the proposed class definition above, the terms "plan," "coverage,"

1 "members," and "insured" in the definition of the class (above) have the same meanings as in the  
2 Blue Shield policies.

3 19. The identity of the putative classes' subscribers and members is readily  
4 ascertainable from Blue Shield's records.

5 20. The proposed class is limited to insured members who reside in California or who  
6 resided in California when they contracted with Blue Shield. The proposed class does not include  
7 defendant, its officers, directors, and employees; any entity in which any defendant has a  
8 controlling interest, the defendants' affiliates, legal representatives, attorneys, heirs or assigns; the  
9 defendants' immediate families; any federal, state, or local government entity, any judge, justice,  
10 or judicial officer presiding over this matter, the members of their immediate families, and their  
11 judicial staffs; and any insured or subscribers whose coverage is subject to the provisions of the  
12 Employee Retirement Income Security Act ("ERISA") or the Federal Employees Health Benefit  
13 Act.

14 21. Plaintiff reserves her right to modify the definition of the proposed class based on  
15 information that she or her counsel learns through discovery.

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

17 22. Common questions of fact and common questions of law predominate over  
18 individual questions of fact and individual questions of law. These common questions of fact and  
19 law include, but are not limited to, whether Blue Shield's cancellation of health plan coverage for  
20 nonpayment without evidence of nonpayment constitutes a breach of contract and an unfair  
21 business practice.

22 **Plaintiff's Claims are Typical**

23 23. Plaintiff's claims are typical of those of the members of the class. Plaintiff and all  
24 members of the proposed class have sustained injury arising out of and caused by Blue Shield's  
25 common course of unlawful conduct.

26 **Plaintiff is an Adequate Representative**

27 24. Plaintiff will adequately represent the class. She has no interests that are in conflict  
28 with those of the class. In addition, she has retained counsel who has experience prosecuting



1 consumer class actions; including consumer class actions against health insurance companies and  
2 health plans.

3 **Superiority of Class Treatment**

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

11  
12 5.

13 **FIRST CAUSE OF ACTION**

14 **(Breach of Contract)**

15 PLAINTIFF ASHLEY SUMMERS, individually and on behalf of all similarly situated,  
16 FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT AND DOES 1 THROUGH 100,  
17 INCLUSIVE, AND EACH OF THEM, FOR BREACH CONTRACT, ALLEGES:

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

20 27. Defendant Blue Shield issued a health insurance contract to Ashley and others  
21 similarly situated, the material terms of which include, without limitation, that Ashley and the  
22 putative class members were to have timely access to medically necessary diagnosis, assessment,  
23 evaluation, care and treatment.

24 28. Blue Shield breached its contractual duties owed to Ashley and the putative class  
25 members by canceling their health insurance coverage without providing proper notice and  
26 without a basis under the terms of the contract and California law.

27 29. Plaintiff is informed and believes and thereon alleges that Blue Shield and Does  
28 1-100, inclusive, have also breached their contractual duties owed to plaintiffs by other acts or

1 omissions of which plaintiff is presently unaware and which will be shown according to proof at  
2 the time of trial.

3 30. As a proximate result of the aforementioned breach of contract by defendants,  
4 plaintiff and others similarly situated have suffered, and will continue to suffer in the future,  
5 damages under the plan contract, plus interest, and other economic damages, for a total amount to  
6 be shown at the time of trial. Plaintiff and the other members of the putative class also have lost  
7 their health service plans and seek an injunction directing Blue Shield to reinstate their policies.

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

10  
11 6.

12 **SECOND CAUSE OF ACTION**

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

14 PLAINTIFF ASHLEY SUMMERS, individually and on behalf of others similarly  
15 situated, FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT AND DOES 1  
16 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR VIOLATIONS OF BUSINESS &  
17 PROFESSIONS CODE SECTION 17200, ALLEGES:

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

20 33. Defendants' conduct as alleged above, in cancelling insureds' contracts without  
21 providing notice and cancelling plans for nonpayment without any proper basis, constitutes acts  
22 of unfair business practices as set forth in Business & Professions Code section 17200 et seq.

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

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



**THIRD CAUSE OF ACTION****(Declaratory Relief)**

PLAINTIFF ASHLEY SUMMERS, individually and on behalf of others similarly situated, FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT AND DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR DECLARATORY RELIEF, ALLEGES:

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

37. An actual controversy now exists between the parties regarding their rights and liabilities under Blue Shield's insurance policies. Plaintiff and the Class request a declaration that Blue Shield has violated the terms of Ashley and the Class members' insurance policies by cancelling health care coverage without providing proper notice and without a basis under the terms of their policies.

38. Plaintiff and the Class request attorneys' fees under Code of Civil Procedure section 1021.5 and/or under a common fund theory.

**FOURTH CAUSE OF ACTION****(Breach of Implied Covenant of Good Faith and Fair Dealing)**

PLAINTIFF ASHLEY SUMMERS, individually and on behalf of others similarly situated, FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, ALLEGE:

39. Plaintiffs incorporate by reference each and every paragraph of the General Allegations as though set forth in full in this cause of action.

40. In exchange for plaintiffs' payments of premiums, Blue Shield issued a health care

1 policy, the material terms of which include, without limitation, that plaintiff Ashley Summers was  
2 to have timely access to coverage for medically necessary diagnosis, assessment, evaluation, care  
3 and treatment. The putative subclass members each were members of health care policies that  
4 had the same material terms.

5 41. Notwithstanding defendant's legal and contractual obligations, defendant  
6 cancelled the health care plans of Ashley and all persons similarly situated without a proper basis  
7 and without proper notice. Ashley and the members of the putative sub class then incurred health  
8 care costs for which defendant refused to provide coverage despite a legal and contractual  
9 obligation to do so.

10 42. Therefore, by refusing to provide timely benefits, defendant not only breached its  
11 contracts, but also acted unreasonably and subjected itself to bad faith liability. As a consequence  
12 of defendant's unreasonable and wrongful refusal to pay, plaintiff and those similarly situated  
13 suffered economic injuries. Plaintiff Ashley Summers also suffered severe emotional distress  
14 and physical injury because of defendant's refusals to abide by its contractual and legal  
15 obligations.

16 43. In addition, Defendant, and each of them, breached its duty of good faith and fair  
17 dealing under its health care plan with Ashley and its plans with those similarly situated as  
18 follows:

- 19 (a) Unreasonably denying benefits under the Plan;
- 20 (b) Unreasonably delaying benefits due under the Plan;
- 21 (c) Unreasonably refusing to cover critically necessary services;
- 22 (d) Unreasonably failing to adequately investigate the request for benefits;
- 23 (e) Unreasonably failing and refusing to give at least as much consideration to  
24 plaintiffs' interests as they gave to their own interests; and
- 25 (f) Unreasonably engaging in the practice of preventing Plan members from using  
26 covered services, in order to save money.

27 44. Plaintiff and those similarly situated are informed and believe and thereon allege  
28 that defendant and Does 1-100, inclusive, have breached their duties of good faith and fair dealing



1 owed to plaintiffs by other acts or omissions of which plaintiffs are presently unaware and which  
2 will be shown according to proof at the time of trial.

3 45. As a proximate result of the aforementioned unreasonable and bad faith conduct of  
4 defendants, plaintiff and others similarly situated have suffered, and will continue to suffer in the  
5 future, damages under the plan contract, plus interest, and other economic and consequential  
6 damages, for a total amount to be shown at the time of trial.

7 46. As a further proximate result of the aforementioned wrongful conduct of defendant  
8 as alleged in this cause of action, plaintiff Ashley Summers has suffered anxiety, worry, and  
9 mental and emotional distress, all to plaintiff's general damage in a sum to be determined at the  
10 time of trial.

11 47. As a further proximate result of the unreasonable and bad faith conduct of  
12 defendants as alleged in this cause of action, plaintiffs were compelled to retain legal counsel and  
13 expend costs in an effort to obtain the benefits due under the plan contract. Therefore, defendants  
14 as alleged in this cause of action are liable to plaintiffs for those attorneys' fees and litigation  
15 costs reasonably necessary and incurred by plaintiffs in order to obtain the plan benefits in a sum  
16 to be determined at trial.

17 48. Defendants' conduct described herein was intended by the defendants to cause  
18 injury to plaintiffs or was despicable conduct carried on by the defendants with a willful and  
19 conscious disregard of the rights of plaintiffs, or subjected plaintiffs to cruel and unjust hardship  
20 in conscious disregard of plaintiffs' rights, or was an intentional misrepresentation, deceit, or  
21 concealment of a material fact known to the defendants with the intention to deprive plaintiffs of  
22 property, legal rights or to otherwise cause injury, such as to constitute malice, oppression or  
23 fraud under California Civil Code section 3294, thereby entitling plaintiffs to punitive damages in  
24 an amount appropriate to punish or set an example of defendants.

25 49. Defendants' conduct described herein was undertaken by the corporate defendants'  
26 officers or managing agents, identified herein as DOES 1 through 100, inclusive, who were  
27 responsible for claims supervision and operations, underwriting, communications and/or  
28 decisions. The aforementioned conduct of said managing agents and individuals was therefore

1 undertaken on behalf of the corporate defendants. Said corporate defendants further had advance  
2 knowledge of the actions and conduct of said individuals whose action and conduct were ratified,  
3 authorized, and approved by managing agents whose precise identities are unknown to plaintiffs  
4 at this time and are therefore identified and designated herein as DOES 1 through 100.

5  
6 WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as  
7 follows:

8  
9 AS TO THE FIRST CAUSE OF ACTION:

- 10 1. For special and general damages according to proof at the time of trial;  
11 2. For attorney's fees;  
12 3. For costs of suit incurred herein; and  
13 4. For such other and further relief as the Court deems just and proper.

14  
15 AS TO THE SECOND CAUSE OF ACTION:

- 16 5. For injunctive relief according to proof at the time of trial;  
17 6. For costs of suit incurred herein;  
18 7. For reasonable attorney's fees pursuant to Code of Civil Procedure section 1021.5;

19 and

- 20 8. For such other and further relief as the Court deems just and proper.

21  
22 AS TO THE THIRD CAUSE OF ACTION:

- 23 9. For declaratory relief; and  
24 10. For reasonable attorney's fees pursuant to Code of Civil Procedure section 1021.5;

25  
26 AS TO THE FOURTH CAUSE OF ACTION:

- 27 11. For special and general damages according to proof at the time of trial;  
28 12. For punitive damages;



1 13. For attorney's fees and litigation costs;

2  
3 Dated this 17th day of August 2018, at Pasadena, California.

4  
5 LAW OFFICES OF SCOTT GLOVSKY, APC

6  
7 By: 

8 SCOTT C. GLOVSKY

9 ARI DYENIS

10 Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: August 17, 2018

LAW OFFICES OF SCOTT GLOVSKY, APC

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

SCOTT C. GLOVSKY  
ARI DYBNIS  
Attorneys for Plaintiff