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Attorney for Plaintiffs
CALIFORNIA PHYSICIANS' SERVICE D/B/A
BLUE SHIELD OF CALIFORNIA and BLUE
SHIELD OF CALIFORNIA LIFE & HEALTH
INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CALIFORNIA PHYSICIANS' SERVICE
D/B/A BLUE SHIELD OF CALIFORNIA and
BLUE SHIELD OF CALIFORNIA LIFE &
HEALTH INSURANCE COMPANY,

Plaintiffs,

vs.

HOMELAND INSURANCE COMPANY OF
NEW YORK and DOES 1 through 100,
inclusive,

Defendants.

Case No.

COMPLAINT

**(1) BREACH OF CONTRACT (DUTY TO
DEFEND)**

**(2) BREACH OF IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

JURY TRIAL DEMANDED

1 Plaintiffs California Physicians' Service d/b/a Blue Shield of California ("BSC") and Blue
2 Shield of California Life & Health Insurance Company ("BS Life") (together, "Blue Shield" or
3 "Plaintiffs") allege as follows:

4 1. This lawsuit arises out of Homeland Insurance Company of New York's
5 ("Homeland") failure to defend Blue Shield against a series of related lawsuits brought by
6 hospitals, all of which are part of the Prime Healthcare hospital system and under the common
7 ownership of Prime Healthcare Services, Inc. (the "Prime Hospitals").

8 2. In 2013, a single law firm representing four different Prime hospitals brought four
9 virtually identical lawsuits against BSC alleging that BSC was systematically underpaying for out-
10 of-network emergency care provided by those hospitals to BSC members ("the 2013 Actions").

11 3. BSC timely reported the lawsuits to Homeland under the errors and omissions
12 liability insurance policy Blue Shield had purchased from Homeland ("the Policy").

13 4. The trial court approved Blue Shield's petition for coordination, noting that each of
14 the four complaints was "based on identical fact patterns."

15 5. In 2017, the same law firm, again representing the same four hospitals, brought a
16 single lawsuit on the same legal and factual basis as the 2013 Actions, but now naming BS Life as
17 a defendant ("the 2017 Action"). BS Life again timely reported the lawsuit to Homeland, noting
18 that it was related to the 2013 Actions.

19 6. The trial court presiding over the coordinated 2013 Actions agreed that it was
20 appropriate to coordinate the 2017 Action into the coordinated 2013 Actions, finding that the
21 allegations in the 2017 Action "mirror[ed] the allegations made" in the 2013 Actions. The
22 coordinated case was subsequently consolidated by stipulation of the parties and approved by the
23 court (together, "the Consolidated Prime Hospital Cases").

24 7. Homeland agreed to defend Blue Shield against claims like those made in the
25 Consolidated Prime Hospital Cases.

26 8. Yet, when Plaintiffs tendered the Consolidated Prime Hospital Cases to Homeland
27 for a defense after Plaintiffs satisfied their self-insured retention, Homeland denied coverage,
28 forcing Plaintiffs to incur millions in defense fees and costs defending themselves.

9. Homeland's denial rested on its contention that none of the Consolidated Prime Hospital Cases are **Related Claims**, and thus that Plaintiffs were required to satisfy a \$3 million self-insured retention for each lawsuit before Homeland had a duty to defend. Homeland also asserted that Plaintiffs did not comply with their reporting obligations under the Policy.

10. In fact, however, the Consolidated Prime Hospital Cases easily met the standard for “related” claims under the Policy, and thus should have been treated as a single “Claim” for which Plaintiffs only needed to satisfy one \$3 million retention. Plaintiffs also complied with their reporting obligations. Homeland’s denial was thus factually and legally without support, unreasonable, and in bad faith, as more fully set forth below.

THE PARTIES

11. BSC is a non-profit mutual benefit corporation with its principal place of business in Oakland, California.

12. BS Life is a wholly-owned subsidiary of BSC with its principal place of business in Oakland, California.

13. Blue Shield is informed and believes, and on that basis alleges, that Homeland is an insurance company incorporated in New York and with its principal place of business in Minnesota, and is in the business of issuing insurance policies nationwide, including in California.

JURISDICTION AND VENUE

14. This court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a)(1), in that the matter in controversy exceeds the sum of \$75,000 exclusive of interest and costs and is between citizens of different states.

15. Homeland is subject to personal jurisdiction in this Court because it entered into a contract to insure BSC and BS Life in California, and Homeland's performance under that contract is at issue in this case. Fed. R. of Civ. Proc. 4(k)(1)(a); Cal. Code of Civ. Proc. § 410.10(a).

16. Venue is proper in this district pursuant to 28 U.S.C. §§1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred within this district. BSC and BS Life are not-for-profit corporations with their principal places of business in Oakland,

1 California, and Homeland issued the insurance policy at issue to Plaintiffs at their prior principal
2 place of business in San Francisco, California. Cal. Code of Civ. Proc. § 395.

3 INTRADISTRICT ASSIGNMENT

4 17. Intradistrict assignment to the Oakland Division is proper because a substantial part
5 of the events or omissions giving rise to Plaintiffs' claims occurred in Alameda County. BSC and
6 BS Life are corporations with their principal places of business in Oakland, California, and
7 Homeland owed their obligations to Plaintiffs there. Thus, Homeland breached its obligations to
8 Plaintiffs in Alameda County.

9 BACKGROUND

10 **A. The Homeland Policy**

11 18. Homeland issued a Managed Care Errors and Omissions Liability Policy, Policy
12 No. MCR-6111-13 to BSC as Named Insured, adding BS Life and other Named Insureds by
13 Endorsement No. 1 to the Policy. A copy of the Policy, including Endorsements, is attached as
14 **Exhibit A**. Plaintiffs paid all premiums due under the Policy, and otherwise satisfied all
15 conditions precedent.

16 19. The Policy covered **Claims** made and reported from January 1, 2013 to January 1,
17 2014. (Bolded terms are defined in the Policy).

18 20. In the Policy, Homeland agreed to "pay on **your** behalf **Damages** and **Claim**
19 **Expenses** in excess of the Retention that **you** are legally obligated to pay as a result of a **Claim**
20 for: . . . an act, error, or omission, or series of acts, errors, or omissions, committed or allegedly
21 committed by **you** or on **your** behalf in the performance of a **Managed Care Activity**."

22 21. As to the defense of **Claims**, Homeland agreed that Plaintiffs "have the right and
23 duty to defend a covered **Claim** until the Retention for the **Claim** is exhausted. . . ." However,
24 "[u]pon exhaustion of the Retention with respect to a covered **Claim**, [Homeland] assume[s] the
25 right and duty to defend the **Claim**"

26 22. The Retention for each **Claim** is \$3,000,000.

27 23. The Policy also provides that "[a]ll **Related Claims** will constitute a single **Claim**
28 regardless of: (A) the number, identity, or addition of parties, theories of liability, or requests for

1 relief; (B) the number or timing of the **Related Claims**, even if the **Related Claims** were made in
2 more than one policy period; or (C) whether the **Related Claims** are asserted in a class action or
3 otherwise. All **Related Claims** will be treated as a single **Claim** made when the earliest of the
4 **Related Claims** was first made against you”

5 24. The Policy defines “**Related Claims**” to mean “all **Claims** based upon or arising
6 out of the same or related acts, errors, omissions, or course of conduct or the same or related series
7 of acts, errors, omissions, or course of conduct.”

8 25. The Policy’s reporting provision requires that, “[i]f, during the Policy Period . . . ,
9 any **Claim** is first made against you, as condition precedent to any right to coverage under this
10 Policy, you must give us written notice of the **Claim** as soon as practicable thereafter”

11 **B. The Prime Hospital Lawsuits**

12 26. In February and March of 2013, four Prime hospitals brought lawsuits against BSC
13 in California state courts where those hospitals were located—*Prime Healthcare Services-Shasta,*
14 *LLC vs. California Physicians’ Service, et al.*, Superior Court, California, Shasta County, Case
15 No. 176938 (“Shasta Action”); *Prime Healthcare Services-Montclair, LLC vs. California*
16 *Physicians’ Service*, Superior Court, California, San Bernardino County, Case No.
17 CIVRS1301287 (“Montclair Action”); *Alvarado Hospital LLC vs. California Physicians’ Service,*
18 Superior Court, California, San Diego County, Case No. 37-2013-00034420-CU-MC-CTL
19 (“Alvarado Action”); and *Veritas Health Services, Inc. d/b/a Chino Valley Medical Center vs.*
20 *California Physicians’ Service*, Superior Court, California, San Bernardino County, Case No.
21 CIVRS1301970 (“Chino Action”).

22 27. It is clear that the 2013 Actions were “**Related Claims**” within the meaning of the
23 Policy.

24 28. Each of the 2013 Actions was brought by the same law firm, and each used
25 virtually identical language to describe BSC’s alleged acts, errors and omissions.

26 29. The allegations were also virtually identical: The Prime Hospitals alleged that BSC
27 implicitly requested that each hospital treat BSC enrollees in need of emergency care; that the
28 hospital provided emergency medical services to BSC enrollees; that BSC had an obligation to

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