

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PACIFIC RECOVERY SOLUTIONS, et al.,
Plaintiffs,
v.
CIGNA BEHAVIORAL HEALTH, INC., et
al.,
Defendants.

Case No. [5:20-cv-02251-EJD](#)

**ORDER DENYING MOTION TO
CONSOLIDATE**

Re: Dkt. No. 63

This case is one of three related cases pending before the Court in which a Cigna entity is alleged to have reneged on its agreement to reimburse mental health provider claims at the usual, customary, and reasonable (“UCR”) rates. Cigna Behavioral Health, Inc. (“Cigna”) moves to consolidate this case, hereinafter referred to as “*Pacific Recovery*,” with *Summit Estate, Inc. v. Cigna Health and Life Insurance Co.*, No. 20cv4697 EJD (“*Summit*”), pursuant to Federal Rule of Civil Procedure 42(a). Dkt. No. 63. Plaintiffs in the *Pacific Recovery* case, Pacific Recovery Solutions, Miriam Hamideh, Bridging the Gaps, Inc., and Summit Estate Inc. (“Plaintiffs”) filed an opposition. Dkt. No. 65. Cigna filed a reply. Dkt. No. 68. The motion is scheduled for hearing on February 11, 2021. The Court finds it appropriate to take the motion under submission for decision without oral argument pursuant to Civil Local Rule 7-1(b) and General Order 72. For the reasons stated below, the Court will deny Cigna’s motion.

Case No. [5:20-cv-02251-EJD](#)

1 **I. BACKGROUND¹**2 **A. *Summit*, Case No. 20cv4697**

3 Summit Estate, Inc. (“Summit”) initiated the *Summit* action against Cigna Health and Life
4 Insurance Company (“Cigna Health and Life”) in July of 2020. This lawsuit encompasses only the
5 claims and patients that were the subject of a prior lawsuit entitled *Summit Estate v. Cigna*, No.
6 17cv3871 LHK, that the parties agreed to dismiss, subject to a tolling agreement, so that they
7 could engage in efforts to reprocess medical insurance coverage claims for substance abuse
8 treatment for ten patients. Compl. ¶¶ 4-5. The Complaint alleges that within the past two years,
9 Summit took steps to verify available benefits for substance abuse for the patients and was advised
10 through telephone communications that Cigna Health and Life would pay for treatment at the
11 UCR rates. *Id.* ¶ 6. In reasonable reliance on Cigna Health and Life’s representations and
12 agreements, Summit provided services to the ten patients. *Id.* ¶ 7. Cigna Health and Life breached
13 their agreements by refusing to pay Summit at the UCR rates and paying instead a different and
14 significantly lower amount for treatment. *Id.* ¶ 8. Summit further alleges that at the time benefits
15 were verified, Cigna Health and Life was using and planning on using a third-party repricing
16 company to make unreasonably low claim payments and/or to negotiate lower claim payments
17 after the fact. *Id.* Based on the foregoing, Summit asserts claims for “Breach of Contract-Pre-
18 Admission Oral Agreement”; intentional misrepresentation; negligent misrepresentation;
19 fraudulent concealment; negligent failure to disclose; promissory estoppel; and breach of implied
20 contract.

21 **B. *Pacific Recovery*, Case No. 20cv2251**

22 Plaintiffs in *Pacific Recovery* are a group of four out-of-network behavioral health care
23 providers that provide Intensive Outpatient Program treatment (“IOP”) in the United States.
24 Compl. at 4, ¶¶ 67-70. Pacific Recovery Solutions d/b/a Westwind Recovery (“Westwind”), is
25 a California Limited Liability Company and a duly licensed behavioral health treatment provider

26 _____
27 ¹ The Background is a brief summary of the allegations in the *Summit* and *Pacific Recovery*
operative complaints.

1 with a primary place of business in Los Angeles, CA. *Id.* ¶ 68. Miriam Hamideh PhD Clinical
2 Psychologist Inc. d/b/a PCI Westlake Centers (“PCI Westlake”), is a California corporation and a
3 duly licensed behavioral health treatment provider with a primary place of business in Westlake
4 Village, CA. *Id.* ¶ 69. Bridging the Gaps, Inc. (“BTG”), is Virginia corporation and a duly licensed
5 behavioral health treatment provider with a primary place of business in Winchester, VA. *Id.* ¶ 70.
6 Summit Estate Inc. d/b/a Summit Estate Outpatient, is a California corporation and duly licensed
7 behavioral health treatment provider with a primary place of business in Saratoga, CA 95070. *Id.* ¶
8 70. They seek to represent a class of similarly situated providers against Cigna, a Minnesota
9 corporation with its principal place of business in Eden Prairie, MN, and Viant, Inc. (“Viant”), a
10 third-party “repricer” incorporated in Nevada with its principle place of business in Naperville, IL.
11 *Id.* ¶¶ 1, 18, 71-72.

12 Prior to providing treatment to patients insured by Cigna, Plaintiffs confirmed with Cigna
13 during an initial Verification of Benefits (“VOB”) call that the patient had active coverage and
14 benefits for out of network IOP treatment services. *Id.* ¶¶ 3, 22, 30. For all the insurance claims at
15 issue, Cigna represented that the claims would be paid at a percentage of the UCR rates, which
16 Cigna would calculate by using either Cigna’s “Maximum Reimbursable Charge” (“MRC”) I or II
17 methodologies. *Id.* ¶¶ 9-12. Alternatively, Cigna would arrive at the UCR rates “based on rates
18 charged by similar providers in a similar geographic area.” *Id.* ¶ 12. During the VOB call, none of
19 the Plaintiffs were told by Cigna that their claims could be subject to third-party pricing by Viant.
20 *Id.* ¶ 36. Rather, Plaintiffs specifically asked and were told that a patient’s claims were not subject
21 to third party repricing. *Id.* ¶¶ 233-34.

22 In reliance upon Cigna’s representations, Plaintiffs agreed to treat Cigna’s insured and
23 timely submitted bills on industry standard forms and in keeping with industry practices. *Id.* ¶¶ 12,
24 140, 142. Pursuant to contract, patients were responsible for paying Plaintiffs the difference
25 between the amount Plaintiffs billed and the amount Cigna reimbursed. *Id.* ¶¶ 157, 161, 243.

26 Contrary to Cigna’s representations, Cigna did not pay at the UCR rates. *Id.* ¶ 18. Instead,
27 Cigna engaged Viant to negotiate reduced reimbursements with IOP treatment providers. *Id.*

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1 Cigna sent claims to Viant via an Electronic Data Interchange (“EDI”), which included a “repriced
2 rate” that represented the maximum that Viant was authorized to negotiate with providers. *Id.* ¶
3 112. After Viant received the EDI, it sent providers a proposed payment for claims at reduced
4 reimbursement rates. *Id.* ¶ 114. These reduced reimbursement rates are not derived from a
5 calculation of the UCR rates, notwithstanding Viant’s representations to the contrary. *Id.* ¶¶ 18,
6 46, 116. Nor are they set based on the insured’s plan terms or language. *Id.* ¶¶ 43-44. Rather,
7 Plaintiffs allege on information and belief that the reduced reimbursement rates represent the
8 lowest payment amount that a Viant representative convinced a provider to accept and are
9 “arbitrary, capricious and unreasonably low.” *Id.* ¶¶ 97, 117. At no point have Cigna or Viant
10 disclosed their pricing methodologies. *Id.* ¶¶ 175, 246. Viant only tells Plaintiffs that pricing is
11 determined by a “proprietary database.” *Id.* ¶ 254-55.

12 At the time Viant made its offers to Plaintiffs, it also sent a “patient advocacy letter”
13 (“PAD” letter) to the patient, claiming to represent the patient in a negotiation to reduce the billed
14 amount. *Id.* ¶ 118. Viant, however, does not have patient authorization to negotiate billed charges
15 on behalf of patients. *Id.* ¶ 235.

16 Cigna then paid the claims at issue at the reduced Viant rate, which often resulted in
17 patients left to pay for more than ninety percent of their care. *Id.* ¶ 19. Cigna and Viant allegedly
18 “collude[d] to illegally withhold these out-of-network benefits” to avoid paying tens, and
19 sometimes hundreds, of thousands of dollars per patient and to drive out-of-network providers out
20 of business. *Id.* ¶¶ 20, 41. The amounts that should have been paid to health care providers were
21 allegedly unjustly retained and used to pay a “kick-back” to Viant. *Id.* ¶ 20.

22 Every claim at issue in *Pacific Recovery* is for IOP behavioral health treatment for which
23 Cigna failed to pay at the UCR rates. *Id.* ¶¶ 21, 164. Coverage for the underlying medical
24 treatment is not in dispute; only the amount to be paid for the covered treatment is in dispute. *Id.* ¶
25 32. Plaintiffs do not have contractual relationships with Cigna or Viant. *Id.* ¶¶ 87, 94. Plaintiffs
26 did not agree to the reduced rates arrived at by Viant. *Id.* ¶¶ 19, 152-53, 241. When Plaintiffs or
27 patients contacted Cigna to dispute or challenge Viant’s reimbursement rates, Cigna refused to

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1 handle or process the claim. *Id.* ¶ 120. Plaintiffs ultimately had no choice but to “balance bill”
 2 their patients for the amounts that they were owed as a result of Cigna’s underpayment. *Id.* ¶ 161.
 3 If Plaintiffs did not “balance bill,” Cigna would assert that Plaintiffs waived patient responsibility
 4 and therefore, Cigna had no further obligation to pay any additional amounts on claims. *Id.* ¶ 247-
 5 48, 259. For all the claims at issue in *Pacific Recovery*, Plaintiffs’ patients were unable to pay
 6 Cigna’s shortfall. *Id.* ¶ 181.

7 Westwind has treated more than 10 patients for whom claims for payment of IOP
 8 services were repriced by Viant. *Id.* ¶ 194. Viant’s repricing resulted in partial payments that, in
 9 sum, averaged only 11% of billed charges. *Id.* ¶ 197. Westwind has not been paid the remaining
 10 89% of the billed amounts owed. *Id.* Westwind estimates that it has been underpaid by at least
 11 \$177,317.45. *Id.* ¶ 198.

12 PCI Westlake has treated more than 9 Cigna patients for whom claims for payment of IOP
 13 services were repriced by Viant. *Id.* ¶ 201. Viant’s pricing resulted in partial payments that, in
 14 sum, averaged only 14% of billed charges. *Id.* ¶ 204. PCI Westlake has not been paid the
 15 remaining 86% of the billed amounts owed. *Id.* PCI Westlake estimates that it has been underpaid
 16 by at least \$238,108.22. *Id.* ¶ 205.

17 BTG has treated more than 21 patients for whom claims for payment of IOP services were
 18 repriced by Viant. *Id.* ¶ 208. Viant’s pricing resulted in partial payments that, in sum, averaged
 19 only 14% of billed charges. *Id.* ¶ 211. BTG has not been paid the remaining 86% of the billed
 20 amounts owed. *Id.* BTG estimates that it has been underpaid by at least \$736,998.47. *Id.* ¶ 212.

21 Summit Estate Inc. d/b/a Summit Estate Outpatient has treated more than 10 Cigna patients
 22 for whom claims for payment of IOP services were repriced by Viant. *Id.* ¶ 215. Viant’s pricing
 23 resulted in partial payments that, in sum, averaged only 15% of billed charges. *Id.* ¶ 218. Summit
 24 has not been paid the remaining 85% of the billed amounts owed. *Id.* Summit Estate Inc. d/b/a
 25 Summit Estate Outpatient estimates that it has been underpaid by at least \$325,000.00. *Id.* ¶ 219.²

26
 27 ² The Complaint alleges that Summit Estate Inc. d/b/a Summit Estate Outpatient has been
 “overpaid” by at least \$325,000.00. *Id.* ¶ 219. The Court assumes that “overpaid” is a

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