

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 GRANTING DEFENDANTS’
MOTIONS TO DISMISS**

Re: Dkt. Nos. 39, 42

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.¹ Presently before the Court are separate motions to dismiss brought by Defendants Cigna Behavioral Health, Inc. (“Cigna”) and Viant, Inc. (“Viant”). Dkt. Nos. 39, 42. Plaintiffs filed oppositions (Dkt. Nos. 50-51) and Defendants filed reply briefs (Dkt. Nos. 52-53). The Court finds it appropriate to take the motions under submission for decision without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons discussed below, the Court will grant Defendants’ motions to dismiss.

I. BACKGROUND²

Plaintiffs are a group of four out-of-network (“OON”) behavioral health care providers that provide Intensive Outpatient Program treatment (“IOP”) in the United States. Compl. at 4, ¶¶ 67-

¹ The other cases are *Summit Estate, Inc. v. Cigna Health and Life Ins. Co.*, No. 20-cv-4697 EJD, and *RJ v. Cigna Behavioral Health, Inc.*, No. 20-cv-2255 EJD.

² The Background is a brief summary of the allegations in the Corrected Class Action Complaint (hereinafter “Complaint”). See Dkt. No. 6.

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

13 Prior to providing treatment to patients insured by Cigna, Plaintiffs confirmed with Cigna,
 14 during an initial Verification of Benefits (“VOB”) call that the patient had active coverage and
 15 benefits for OON IOP treatment services. *Id.* ¶¶ 3, 22, 30. For all the insurance claims at issue,
 16 Cigna represented that the claims would be paid at a “percentage of the” UCR rates³, which Cigna
 17 would calculate by using either Cigna’s “Maximum Reimbursable Charge” (“MRC”) I or II
 18 methodologies. *Id.* ¶¶ 3, 9-12. Alternatively, Cigna would arrive at the UCR rates “based on rates
 19 charged by similar providers in a similar geographic area.” *Id.* ¶ 12. During the VOB call, none
 20 of the Plaintiffs were told by Cigna that their claims could be subject to third-party pricing by
 21 Viant. *Id.* ¶ 36. Rather, Plaintiffs specifically asked and were told that a patient’s claims were not
 22 subject to third party repricing. *Id.* ¶¶ 233-34.

23 _____
 24 ³ Elsewhere, Plaintiffs allege that Cigna promised it would “pay rates based upon UCR” (*id.* ¶ 18);
 25 communicated and represented that Plaintiffs would be reimbursed at the UCR (*id.* ¶¶ 22, 99); told
 26 Plaintiffs that benefits were paid at UCR rates (*id.* ¶¶ 30, 137); verified that claims will be
 27 paid/reimbursed at UCR rates (*id.* ¶¶ 135, 146); represented that it would pay providers at the
 UCR rate (*id.* ¶157); routinely represented that benefits were available at a UCR rate (*id.* ¶ 171);
 and represented that benefits were determined based on the UCR rate (*id.* ¶ 174).

1 In reliance upon Cigna's representations, Plaintiffs agreed to treat Cigna's insured and
2 timely submitted bills on industry standard forms and in keeping with industry practices. *Id.* ¶¶ 3,
3 12, 138-40, 142. These claim forms indicated that Plaintiffs are assignees of the member benefits.
4 *Id.* ¶ 139. Pursuant to contract, patients were responsible for paying Plaintiffs the difference
5 between the amount Plaintiffs billed and the amount Cigna reimbursed. *Id.* ¶¶ 157, 161, 243.

6 Contrary to Cigna's representations, Cigna did not pay at the UCR rates. *Id.* ¶ 18. Instead,
7 Cigna engaged Viant to negotiate reduced reimbursements with IOP treatment providers. *Id.*
8 Cigna sent claims to Viant via an Electronic Data Interchange ("EDI"), which included a "repriced
9 rate" that represented the maximum that Viant was authorized to negotiate with providers. *Id.* ¶
10 112. After Viant received the EDI, it sent providers a proposed payment for claims at reduced
11 reimbursement rates. *Id.* ¶ 114. These reduced reimbursement rates are not derived from a
12 calculation of the UCR rates, notwithstanding Viant's representations to the contrary. *Id.* ¶¶ 18,
13 46, 116. Nor are they set based on the insured's plan terms or language. *Id.* ¶¶ 43-44. Rather,
14 Plaintiffs allege on information and belief that the reduced reimbursement rates represent the
15 lowest payment amount that a Viant representative convinced a provider to accept and are
16 "arbitrary, capricious[,] and unreasonably low." *Id.* ¶¶ 97, 117. At no point have Cigna and Viant
17 disclosed their pricing methodologies. *Id.* ¶¶ 175, 246. Viant only tells Plaintiffs that pricing is
18 determined by a "proprietary database." *Id.* ¶ 254-55.

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

23 Cigna then paid the claims at issue at the reduced Viant rate, which often resulted in
24 patients being left to pay for more than ninety percent of their care. *Id.* ¶ 19. Cigna and Viant
25 allegedly "collude[d] to illegally withhold these [OON] benefits" to avoid paying tens, and
26 sometimes hundreds, of thousands of dollars per patient and to drive [OON] providers out of
27 business. *Id.* ¶¶ 20, 41. The amounts that should have been paid to health care providers were

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1 allegedly unjustly retained and used to pay a “kick-back” to Viant. *Id.* ¶ 20.

2 Every claim at issue is for IOP behavioral health treatment for which Cigna failed to pay at
3 the UCR rates. *Id.* ¶¶ 21, 164. Coverage for the underlying medical treatment is not in dispute;
4 only the amount to be paid for the covered treatment is in dispute. *Id.* ¶ 32. Plaintiffs do not have
5 contractual relationships with Cigna or Viant. *Id.* ¶¶ 87, 94. Plaintiffs did not agree to the reduced
6 rates arrived at by Viant. *Id.* ¶¶ 19, 152-53, 241. When Plaintiffs or patients contacted Cigna to
7 dispute or challenge Viant’s reimbursement rates, Cigna refused to handle or process the claim.
8 *Id.* ¶ 120. Plaintiffs ultimately had no choice but to “balance bill” their patients for the amounts
9 that they were owed as a result of Cigna’s underpayment. *Id.* ¶ 161. If Plaintiffs did not “balance
10 bill,” Cigna would assert that Plaintiffs waived patient responsibility and therefore, Cigna had no
11 further obligation to pay any additional amounts on claims. *Id.* ¶ 247-48, 259. For all the claims
12 at issue, Plaintiffs’ patients were unable to pay Cigna’s shortfall. *Id.* ¶ 181.

13 Westwind has treated more than 10 patients for whom claims for payment of IOP
14 services were repriced by Viant. *Id.* ¶ 194. Prior to the admission of these patients, Westwind
15 verified the patient had active coverage by contacting Cigna. *Id.* Cigna’s representative stated
16 that “the patient’s benefits paid 70-90% of UCR for [OON] IOP services until the patients’ out of
17 pocket cost sharing responsibilities had been met.” *Id.* “Once these amounts, which included the
18 patient’s deductible and con-insurance, were met, Cigna would pay claims at 100% of UCR.” *Id.*
19 Further, Cigna told Westwind that Viant would not be involved in pricing the patient claims. *Id.* ¶
20 195. Based upon these representations, Westwind admitted the patients into IOP treatment. *Id.* ¶
21 194. “In practically every instance, to assure payment at the maximum amount of 100% of UCR,
22 all patients satisfied their out of pocket cost-sharing responsibilities soon upon admission to
23 treatment, so all claims should have been paid at 100% of UCR.” *Id.* “Westwind and Cigna
24 understood that UCR rates were traditionally equivalent to 100% of Westwind’s billed charges.”
25 *Id.* ¶ 196. Viant’s repricing resulted in partial payments that, in sum, averaged only 11% of billed

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1 charges. *Id.* ¶ 197.⁴ Westwind has not been paid the remaining 89% of the billed amounts owed.
 2 *Id.* Westwind estimates that it has been underpaid by at least \$177,317.45. *Id.* ¶ 198.

3 PCI Westlake has treated more than 9 Cigna patients for whom claims for payment of IOP
 4 services were repriced by Viant. *Id.* ¶ 201. PCI Westlake contacted Cigna prior to admission of
 5 these patients and was given the same information as Westwind. *Id.* ¶¶ 201-03. Viant's pricing
 6 resulted in partial payments that, in sum, averaged only 14% of billed charges. *Id.* ¶ 204. PCI
 7 Westlake has not been paid the remaining 86% of the billed amounts owed. *Id.* PCI Westlake
 8 estimates that it has been underpaid by at least \$238,108.22. *Id.* ¶ 205.

9 BTG has treated more than 21 patients for whom claims for payment of IOP services were
 10 repriced by Viant. *Id.* ¶ 208. BTG contacted Cigna prior to admission of these patients and was
 11 given the same information as the other Plaintiffs. *Id.* ¶¶ 208-10. Viant's pricing resulted in
 12 partial payments that, in sum, averaged only 14% of billed charges. *Id.* ¶ 211. BTG has not been
 13 paid the remaining 86% of the billed amounts owed. *Id.* BTG estimates that it has been underpaid
 14 by at least \$736,998.47. *Id.* ¶ 212.

15 Summit Estate Inc. d/b/a Summit Estate Outpatient has treated more than 10 Cigna patients
 16 for whom claims for payment of IOP services were repriced by Viant. *Id.* ¶ 215. Summit Estate
 17 Inc. d/b/a Summit Estate Outpatient contacted Cigna prior to admission of these patients and was
 18 given the same information as the other Plaintiffs. *Id.* ¶¶ 215-17. Viant's pricing resulted in
 19 partial payments that, in sum, averaged only 15% of billed charges. *Id.* ¶ 218. Summit has not
 20 been paid the remaining 85% of the billed amounts owed. *Id.* Summit Estate Inc. d/b/a Summit
 21 Estate Outpatient estimates that it has been underpaid by at least \$325,000.00. *Id.* ¶ 219.⁵

22 _____
 23 ⁴ Cigna interprets the Complaint as alleging that Cigna underpaid OON claims by not paying them
 24 at full billed charges. Reply at 1. Plaintiffs deny alleging that Cigna is required to pay 100% of
 25 providers' charges and accuse Cigna of mischaracterizing the Complaint. Opp'n to Cigna's Mot.
 26 at 1. The allegations in the Complaint speak for themselves. Plaintiffs repeatedly allege that
 27 Plaintiffs and Cigna "understood that UCR rates were traditionally equivalent to 100% of
 28 [Plaintiffs'] billed charges." *Id.* ¶¶ 196, 203, 210, 217.

⁵ 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
 typographical error.

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