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10 BLUE SHIELD OF CALIFORNIA

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN FRANCISCO

13 LINDA LEHMAN, on behalf of herself
14 and all others similarly situated and the
15 general public,

16 Plaintiff,

17 vs.

18 BLUE SHIELD OF CALIFORNIA, a
19 California foundation, and DOES 1
20 THROUGH 10,

21 Defendants.

Case No. CGC-03-419349

**DEFENDANT BLUE SHIELD OF
CALIFORNIA'S ANSWER TO
PLAINTIFF'S UNVERIFIED FIRST
AMENDED COMPLAINT**

Action Filed: April 11, 2003
Trial Date: September 19, 2005

22 Defendant Blue Shield of California ("Blue Shield") answers Plaintiff Linda Lehman's
23 ("Plaintiff") First Amended Complaint (the "Complaint") as follows:

24 **GENERAL DENIAL**

25 Pursuant to California Code of Civil Procedure section 431.30(d), Blue Shield denies,
26 generally and specifically, each and every allegation contained in the Complaint, and the whole
27 thereof.

28 Blue Shield also denies, generally and specifically, that Plaintiff or the putative class have
been damaged in any amount, or at all, by reason of any alleged wrongful act or omission by Blue
Shield.

1 Blue Shield further denies, generally and specifically, that Plaintiff or the putative class
2 are entitled to punitive damages in any amount, or at all, by reason of any alleged wrongful act or
3 omission by Blue Shield.

4 **AFFIRMATIVE DEFENSES**

5 As separate and distinct affirmative defenses to the Complaint, Blue Shield alleges as
6 follows:

7 **FIRST AFFIRMATIVE DEFENSE**

8 (Failure to State a Cause of Action)

9 The Complaint fails to state sufficient facts to constitute a cause of action against Blue
10 Shield.

11 **SECOND AFFIRMATIVE DEFENSE**

12 (Failure to Mitigate)

13 Plaintiff and members of the putative class have failed to mitigate their alleged damages
14 (if any), and any recovery by Plaintiff and the members of the putative class must be diminished
15 or barred by reason thereof.

16 **THIRD AFFIRMATIVE DEFENSE**

17 (Statute of Limitations)

18 The Complaint is barred, in whole or in part, by the applicable statute of limitations,
19 including but not limited to Sections 337 and 343 of the California Code of Civil Procedure and
20 Section 17208 of the Business & Professions Code.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 (Conformance with Laws and Regulations)

23 All conduct and activities of Blue Shield alleged in the Complaint conformed to statutes,
24 government regulations and industry standards existing at the time(s) alleged in the Complaint.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 (Justification and Privilege)

27 The actions of Blue Shield, respecting the subject matters alleged in the Complaint and
28 alleged causes of action, and each of them, were undertaken in good faith, with the absence of

1 malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further the
2 sole purpose of engaging in and continuing its business. By reason thereof, Plaintiff is barred, in
3 whole or in part, from recovery on the Complaint.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 (Estoppel)

6 Plaintiff and the members of the putative class are estopped from asserting any cause of
7 action against Blue Shield because of their own acts and omissions.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 (Waiver)

10 The recovery of Plaintiff and the members of the putative class in this action is barred
11 because they have waived any claim that they might have had against Blue Shield.

12 **EIGHTH AFFIRMATIVE DEFENSE**

13 (No Malice, Oppression or Fraud)

14 Plaintiff and the putative class' claims for punitive or exemplary damages are barred in
15 that Plaintiff and the putative class have failed to plead facts sufficient to support claims of
16 malice, oppression or fraud.

17 **NINTH AFFIRMATIVE DEFENSE**

18 (Unjust Enrichment)

19 The Complaint, and the alleged causes of action, and each of them, are barred because
20 relief sought by Plaintiff would, if granted, unjustly enrich Plaintiff.

21 **TENTH AFFIRMATIVE DEFENSE**

22 (Primary Jurisdiction)

23 The Complaint and alleged causes of action, and each of them, are barred, in whole or in
24 part (or in the alternative are required to be stayed), pursuant to the doctrine of primary
25 jurisdiction.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 (Regulatory Authorization)

28 The Complaint and alleged causes of action, and each of them, state no cause of action

1 against Blue Shield because the conduct alleged in the Complaint was known by, and approved
2 by, the regulatory agencies that have jurisdiction over Blue Shield.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 (Lawful Conduct)

5 The Complaint and alleged causes of action, and each of them, are barred because Blue
6 Shield's conduct was, at all times relevant to the Complaint, authorized by applicable law.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 (Acts of Third Parties-Causation)

9 The persons on whose behalf Plaintiff purports to act's damages, if any, were caused
10 solely, directly and proximately by the acts or omissions of third parties, not by any acts or
11 omissions by Blue Shield, its agents or employees. These other persons are solely responsible for
12 any damages caused thereby.

13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 (Acts of Third Parties-Appportionment)

15 The acts and/or omissions of independent third parties contributed to the damages
16 complained of in the Complaint, if any there be. Blue Shield is entitled to a judicial
17 determination of fault of those third parties and to a reduction of damages, if any, awarded to
18 Plaintiff in proportion to that fault.

19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 (Conduct Not Unfair)

21 The Complaint and alleged causes of action, and each of them, are barred because Blue
22 Shield's practices as alleged are not "unfair" within the meaning of Business and Professions
23 Code section 17200.

24 **SIXTEENTH AFFIRMATIVE DEFENSE**

25 (Conduct Not Unlawful)

26 The Complaint and alleged causes of action, and each of them, are barred because Blue
27 Shield's practices as alleged are not "unlawful" within the meaning of Business and Professions
28 Code section 17200.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(Conduct Not Fraudulent)

The Complaint and alleged causes of action, and each of them, are barred because Blue Shield’s practices as alleged are not “fraudulent” within the meaning of Business and Professions Code section 17200.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Absence of Scierter)

The Complaint and alleged causes of action, and each of them, are barred, in whole or in part, because Blue Shield acted without *scierter*.

NINETEENTH AFFIRMATIVE DEFENSE

(Reasonable Conduct)

Blue Shield acted as might be reasonably expected of health care service plan, acting under similar circumstances.

TWENTIETH AFFIRMATIVE DEFENSE

(Not Arbitrary Or Capricious)

The Complaint and alleged causes of action, and each of them, are barred, in whole or in part, because Blue Shield’s conduct was not arbitrary or capricious.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Allege Facts Sufficient to Recover Punitive Damages)

Plaintiff and the putative class are precluded from recovering punitive damages, either in whole or in part, from Blue Shield under the applicable provisions of law, including but not limited to California Civil Code Section 3294 and the California and the United States Constitutions.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

Without conceding that Plaintiff will prevail on the merits of any cause of action, Plaintiff and the putative class have a plain, common, adequate and speedy remedy at law, as alleged in the Complaint; as a result thereof, any and all equitable claims alleged herein,

1 including but not limited to, those based on injunctive relief and restitutionary relief, are barred.

2 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

3 (No Irreparable Harm)

4 Without conceding that Plaintiff has sustained any damages as alleged in the Complaint, if
5 any such damages were sustained by Plaintiff or the individuals Plaintiff purports to represent,
6 such damages are barred because neither Plaintiff nor the individuals she purports to represent
7 suffered irreparable harm.

8 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

9 (Claims Moot -- Injunction)

10 No grounds exist for injunctive relief, because, among other reasons, there is no ongoing
11 allegedly wrongful conduct to enjoin.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 (No Entitlement to Injunctive Relief)

14 Plaintiff is precluded from obtaining injunctive relief under the applicable provisions of
15 law, including but not limited to California Civil Code sections 3422 and 3423.

16 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

17 (Lack of damages)

18 Plaintiff has not suffered any damages as a result of any actions taken by Blue Shield or
19 its agents, and Plaintiff is thus barred from asserting any cause of action against Blue Shield.

20 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

21 (No Injury)

22 The conduct alleged by Plaintiff did not injure, harm or damage Plaintiff, or any of the
23 individuals upon whose behalf Plaintiff purports to act and/or seeks relief.

24 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

25 (No Restitution On Behalf of Non-Parties)

26 Plaintiff is not entitled to recover restitution on behalf of non-parties.

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TWENTY-NINTH AFFIRMATIVE DEFENSE

(No Ascertainable Representative Action)

Plaintiff cannot proceed in a representative capacity because she cannot establish an appropriate representative class.

THIRTIETH AFFIRMATIVE DEFENSE

(No Substantial Benefit to Litigants or Court)

Plaintiff cannot proceed in a representative capacity because Plaintiff cannot establish that substantial benefits will accrue to the litigants or the Court through a representative action.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(No Entitlement to Attorney's Fees)

Plaintiff has failed to plead sufficient facts to support her claim for attorney's fees.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Right to Assert Additional Affirmative Defenses)

Blue Shield expressly reserves and does not waive its right to assert such other and further defenses as may be available at trial.

WHEREFORE, Blue Shield prays that this Court enter judgment:

1. That Plaintiff and every member of the putative class take nothing by way of their Complaint;
2. That Blue Shield be awarded judgment in its favor against Plaintiff and members of the putative class;
3. For its costs of suit incurred herein, including reasonable attorneys' fees; and
4. Such other relief as the Court may deem just and proper.

Dated: March 25, 2005

MANATT, PHELPS & PHILLIPS, LLP

By: _____
 Andrew H. Struve
Attorneys for Defendant
 BLUE SHIELD OF CALIFORNIA

1 PROOF OF SERVICE

2 I, Sue Battle, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On March 25, 2005, I
6 served a copy of the within document(s):

7 **DEFENDANT BLUE SHIELD OF CALIFORNIA'S ANSWER TO
8 PLAINTIFF'S UNVERIFIED FIRST AMENDED COMPLAINT**

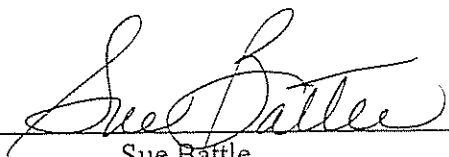
- 9 by transmitting via facsimile the document(s) listed above to the fax number(s) set
10 forth below on this date before 5:00 p.m.
- 11 by placing the document(s) listed above in a sealed envelope with postage thereon
12 fully prepaid, in the United States mail at Los Angeles, California addressed as set
13 forth below.
- 14 by placing the document(s) listed above in a sealed _____ envelope and
15 affixing a pre-paid air bill, and causing the envelope to be delivered to a
16 _____ agent for delivery.

17 A. J. De Bartolomeo, Esq.	Norman E. Siegel, Esq.
18 Eric H. Gibbs, Esq.	Stueve, Helder & Siegel, LLP
19 Rosemary M. Rivas, Esq.	330 West 47th Street, Suite 250
20 Girard, Gibbs & De Bartolomeo, LLP	Kansas City, MO 64112
21 601 California Street, Suite 1400	
22 San Francisco, CA 94108	

23 I am readily familiar with the firm's practice of collection and processing correspondence
24 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
25 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
26 motion of the party served, service is presumed invalid if postal cancellation date or postage
27 meter date is more than one day after date of deposit for mailing in affidavit.

28 I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.

Executed on March 25, 2005, at Los Angeles, California.



Sue Battle

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