

1 Scott C. Glovsky, Bar No. 170477
Email: sglovsky@scottglovskylaw.com
2 Ari Dybnis, Bar No. 272767
Email: adybnis@scottglovskylaw.com
3 LAW OFFICES OF SCOTT GLOVSKY, APC
4 1100 E. Green Street, Suite 200
Pasadena, CA 91106
5 Website: www.scottglovsky.com
6 Telephone: (626) 243-5598
Facsimile: (866) 243-2243

7 Attorneys for Plaintiff
8
9
10
11

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

DEC 29 2017

Sherri R. Carter, Executive Officer/Clerk
By M. Soto, Deputy
Moses Soto

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

14
15 JOSE NUNEZ, an individual,

16 Plaintiff,

17 vs.

18 HEALTH NET, INC.; HEALTH NET
19 COMMUNITY SOLUTIONS, INC.;
20 ANGELES IPA, INC.; and DOES 1 through
100, inclusive,

21 Defendants.
22
23
24
25

Case No.: BC 688713

COMPLAINT AND DEMAND FOR JURY TRIAL

1. Breach of Contract;
2. Breach of Implied Covenant;
3. Violation of Civil Code § 3428;
4. Negligence

26 Plaintiff Jose Nunez, as an individual, alleges based on his personal knowledge with
27 respect to his own acts and on information and belief with respect to all other matters:
28

1 **GENERAL ALLEGATIONS**

2 **1.**

3 **INTRODUCTION**

4 1. Health Net and the medical group with which it contracted to provide plaintiff
5 Jose Nunez ("Jose") with medical care, Angeles IPA, failed to provide plaintiff with timely and
6 medically necessary treatment violating their legal and contractual obligations. Specifically,
7 plaintiff needed urgent eye surgery and each time he had set up the surgery with in-network
8 providers, defendants would deny coverage for the surgery and shift plaintiff to a new doctor or
9 refuse coverage for the doctor's surgical center. Defendants' actions caused a nearly three month
10 delay. As a result of the delay, Jose is now permanently blind in one eye a result that was
11 completely avoidable had defendants not delayed care.

12 2. Jose's problems getting care from Health Net is not an isolated occurrence but part of
13 a larger systemic issue. Health Net knows and knew that it did not have sufficient specialists and
14 surgical centers within it and its medical groups' provider networks. In March of 2017, Medi-Cal
15 performed an audit and found that Health Net "did not maintain an adequate number of specialists
16 within its network." It also found that "member grievances on referral for services and availability
17 of appointments with specialists were among the highest complaints." By keeping its network
18 small, Health Net has been able to record billion dollar profits for insurance plans like Jose's.
19 However, because of insufficient provider network, Jose and other members have been unable to
20 get medically necessary care in a timely fashion leading to severe injuries which in Jose's
21 circumstance has meant total and irreparable blindness in one eye.

22
23 **2.**

24 **THE PARTIES**

25 3. Plaintiff Jose Nunez ("Jose") is a member of a Health Net health service plan
26 contract (Member ID Number: 91336982E). At all times relevant to this action, Jose has resided
27 in the county of Los Angeles. As a result of defendants' actions, one of his eyes is permanently
28 blind.

1 4. Defendant Angeles IPA (“Angeles”) is, and at all relevant times was, a medical
2 corporation duly organized and existing under and by virtue of the laws of the State of California
3 and authorized to transact and transacting business in the State of California, with its headquarters
4 in the County of Los Angeles. It is a professional medical corporation engaged in the business of
5 acting as a capitated provider of health care services.

6 5. Defendant Health Net, Inc. is, and at all relevant times was, a corporation duly
7 organized and existing under and by virtue of the laws of the State of Delaware, and authorized to
8 transact and transacting business in the State of California. Health Net, Inc., a Woodland Hills,
9 California-based publicly traded company, is one of the nation’s largest healthcare providers,
10 providing healthcare coverage to millions of Americans nationwide.

11 6. Defendant Health Net Community Solutions, Inc. is, and at all relevant times was,
12 a corporation duly organized and existing under and by virtue of the laws of the State of
13 California and authorized to transact and transacting business in the State of California, with its
14 headquarters in the County of Los Angeles.

15 7. Plaintiff alleges that there exists, and at all times mentioned existed, a unity of
16 interest and ownership between defendants Health Net, Inc. and Health Net Community
17 Solutions, Inc. such that any individuality and separateness between them has ceased, and
18 defendant Health Net, Inc. is the alter ego of defendant Health Net Community Solutions, Inc. in
19 that Health Net Community Solutions, Inc. is, and at all times herein mentioned was, a mere shell,
20 instrumentality, and conduit through which defendant Health Net, Inc. carried on its business in
21 the State of California. As a result, Health Net, Inc. and Health Net Community Solutions, Inc.
22 are collectively referred to herein as “Health Net.”

23 8. Adherence to the fiction of the separate existence of defendant Health Net, Inc. as
24 an entity distinct from Health Net Community Solutions, Inc. would permit an abuse of the
25 corporate privilege and would promote injustice by protecting defendant Health Net, Inc. from
26 prosecution for the wrongful acts committed by it under the name Health Net Community
27 Solutions, Inc.

28 9. Additionally, plaintiff is informed and believes that defendants, in a joint venture

1 to provide the services that are the subject of this lawsuit, were employees of Health Net, Inc.
2 Plaintiff is also informed and believes that many of the policies and practices that were utilized in
3 connection with the requests for benefits that are the subject of this lawsuit were those of Health
4 Net, Inc.

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

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

16
17 **3.**

18 **FACTUAL BACKGROUND**

19 12. At all relevant times, Jose Nunez ("Jose") has been covered under a health care
20 plan issued by Health Net. The material terms of the Health Net plan require it to provide timely
21 assessment, diagnosis and medically necessary treatment to Jose.

22 13. In or about mid-August of 2016, Jose had an appointment with his eye surgeon,
23 Dr. Khaled Tawansy, to prepare for a retina eye operation on one of his eyes. Jose had previously
24 sought care from Dr. Tawansy because Dr. Tawansy was an in-network physician. However,
25 shortly before the visit, Dr. Tawansy's office called Jose to inform him that his insurance was no
26 longer covering his visits with Dr. Tawansy and that he would need to contact it to find a new
27 doctor to perform the planned surgery.

28 14. On or about August 11, 2016, Jose called both Angeles IPA and Health Net to

1 request a new specialist who could perform the medically necessary retina surgery. He was given
2 only one name as a referral but when he followed up with that doctor, he learned that the doctor
3 was a cataract specialist and told Jose that he needs a retina specialist for his surgery.

4 15. The cataract specialist referred him to Dr. Sandeep Khanna who scheduled the
5 surgery for August 31, 2016. On August 30, 2016, defendants denied approval for the hospital at
6 which the surgery was to take place.

7 16. Both Jose and Dr. Khanna's office contacted defendants multiple times for
8 approval for Dr. Khanna's surgery on Jose's eye but were told that the surgery was not a priority
9 and the approval was being delayed. Jose and Dr. Khanna continued to contact defendants
10 through August, September and October of 2016.

11 17. In or about mid-November of 2016, defendants finally approved the surgery and
12 the surgery proceeded on November 28, 2016, nearly three months since it would have been
13 provided absent defendants' delays.

14 18. As a result of defendants' failure to provide Jose with the medically necessary
15 services that he needed and access to a competent and qualified surgeon who could provide such
16 services in a timely manner, Jose has suffered complete blindness in one eye. Further,
17 defendants' actions have caused Jose to suffer from severe anxiety and emotional distress.

18
19 **FIRST CAUSE OF ACTION**

20 **(Breach of Contract)**

21 PLAINTIFF JOSE NUNEZ, FOR A FIRST CAUSE OF ACTION AGAINST
22 DEFENDANT HEALTH NET AND DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF
23 THEM, FOR BREACH OF CONTRACT, ALLEGES:

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

26 20. In exchange for periodic payments, defendant Health Net entered into a written
27 contract to provide health care coverage to plaintiff. The material terms of this contract include,
28 without limitation, that plaintiff was to have timely access to coverage for medically necessary

1 diagnosis, assessment, evaluation, care and treatment and that defendant would provide such
2 services. This includes coverage for specialists and referral care.

3 21. In the contract, Health Net also agreed to provide Jose with specialist care when he
4 needs care that his primary care physician cannot provide and to do so in a timely manner.

5 22. Health Net breached these terms by: a) failing to authorize or otherwise arrange for
6 treatment, whether the providers were in or outside of Jose's network, after being advised by
7 plaintiff of his urgent condition; b) failing to authorize the proper referral to a specialist or
8 otherwise arrange for treatment, and thereby comply with its requirement to provide timely
9 specialist care; c) failing to authorize the proper referral to a specialist or otherwise arrange for
10 treatment, and thereby fulfill its promise to provide timely specialist care, despite knowledge that
11 Angeles was not fulfilling its duty and treatment obligations under the plan and Health Net's
12 knowledge that Angeles was not authorizing plaintiff's needed treatment.

13 23. As a proximate cause of defendant's breach, Jose has suffered physical injury,
14 economic loss, and emotional distress, all in a sum to be proven at trial.

15
16 **SECOND CAUSE OF ACTION**

17 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

18 PLAINTIFF JOSE NUNEZ, FOR A SECOND CAUSE OF ACTION AGAINST
19 DEFENDANT HEALTH NET AND DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF
20 THEM, FOR BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING,
21 ALLEGES:

22 24. Plaintiff incorporates by reference each and every of the foregoing paragraphs as
23 though set forth in full in this cause of action.

24 25. Plaintiff was covered under the terms of a health plan with Health Net, as alleged
25 herein. Implied into this and every other health plan contract, is an implied duty of good faith and
26 fair dealing.

27 26. Defendant has breached its duty of good faith and fair dealing to Jose Nunez in the
28 following respects:

- 1 a. Unreasonably delaying coverage for a covered service;
- 2 b. Failing to authorize or otherwise arrange for treatment, whether the
- 3 providers were in or out-of-network, after being advised by plaintiff of his
- 4 urgent condition;
- 5 c. Unreasonably failing to give at least as much consideration to plaintiff's
- 6 interests and welfare in the investigation and handling of his claims as it
- 7 gave its own interests;
- 8 d. Unreasonably engaging in a pattern and practice of failing to give at least
- 9 as much consideration to its members' interests and welfare in the
- 10 investigation and handling of his claims as it gave its own interests;
- 11 e. Unreasonably and in bad faith compelling plaintiff to litigate to recover
- 12 benefits due to him;
- 13 f. Failing to authorize the proper referral to a specialist or otherwise arrange
- 14 for treatment, and thereby fulfill its promise to provide timely specialist
- 15 care, despite knowledge that Health Net was not fulfilling its duty and
- 16 treatment obligations under the plan and Health Net's knowledge that
- 17 Health Net was not authorizing plaintiff's needed treatment.

18 27. Plaintiff is informed and believes and thereon alleges that defendant and Does 1-

19 100, inclusive, have breached their duties of good faith and fair dealing owed to plaintiff by other

20 acts or omissions of which plaintiff is presently unaware and which will be shown according to

21 proof at the time of trial.

22 28. As a proximate result of the aforementioned unreasonable and bad faith conduct of

23 defendants, plaintiff has suffered, and will continue to suffer in the future, damages under the

24 plan contract, plus interest, physical injury damages, and other economic and consequential

25 damages, for a total amount to be shown at the time of trial.

26 29. As a further proximate result of the unreasonable and bad faith conduct of

27 defendants as alleged in this cause of action, plaintiff was compelled to retain legal counsel and

28 expend costs in an effort to obtain the benefits due under the plan contract. Therefore, defendants

1 as alleged in this cause of action are liable to plaintiff for those attorneys' fees and litigation costs
2 reasonably necessary and incurred by plaintiff in order to obtain the plan benefits in a sum to be
3 determined at trial.

4 30. Defendant's conduct described herein was intended by the defendants to cause
5 injury to plaintiff or was despicable conduct carried on by the defendants with a willful and
6 conscious disregard of the rights of plaintiff, or subjected plaintiff to cruel and unjust hardship in
7 conscious disregard of plaintiff's rights, or was an intentional misrepresentation, deceit, or
8 concealment of a material fact known to the defendants with the intention to deprive plaintiff of
9 property, legal rights or to otherwise cause injury, such as to constitute malice, oppression or
10 fraud under California Civil Code section 3294, thereby entitling plaintiff to punitive damages in
11 an amount appropriate to punish or set an example of defendants.

12 31. Defendant's conduct described herein was undertaken by the corporate defendants'
13 officers or managing agents, identified herein as DOES 1 through 100, inclusive, who were
14 responsible for claims supervision and operations, underwriting, communications and/or
15 decisions. The aforementioned conduct of said managing agents and individuals was therefore
16 undertaken on behalf of the corporate defendants. Said corporate defendants further had advance
17 knowledge of the actions and conduct of said individuals whose action and conduct were ratified,
18 authorized, and approved by managing agents whose precise identities are unknown to plaintiff at
19 this time and are therefore identified and designated herein as DOES 1 through 100.

20
21 **THIRD CAUSE OF ACTION**

22 **(Violation of Civil Code Section 3428)**

23 **PLAINTIFF JOSE NUNEZ, FOR A THIRD CAUSE OF ACTION AGAINST**
24 **DEFENDANTS AND DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR**
25 **VIOLATION OF CIVIL CODE SECTION 3428, ALLEGES:**

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

28 33. Defendants failed to exercise ordinary care to arrange for the provision of

1 medically necessary health care services to Jose Nunez. Defendants also failed to promptly
2 authorize treatment, whether the providers were in or out of plaintiff's network, after plaintiff
3 advised them of his urgent condition.

4 34. Defendants knew or should have known of the substantial harm that would result if
5 plaintiff's treatment was delayed. Defendant also failed to exercise ordinary care by relying on
6 Health Net to authorize the proper referral to a specialist.

7 35. Defendants' delay in authorizing treatment for Jose's injury caused him substantial
8 harm.

9 36. There was no "independent medical review" process or any other administrative or
10 internal remedy for plaintiff to exhaust as there was no such process that applied to defendants'
11 delay in authorizing the necessary services that plaintiff sought. Additionally, plaintiff made
12 numerous complaints to Health Net and Angeles. At no time did either suggest that any
13 independent review process was available to address the delay plaintiff was encountering or
14 attempt to remedy the delays through expedited review. Further, even if an independent review
15 process existed, and plaintiff used it, the process would not have been completed by the time
16 plaintiff suffered the substantial harm referenced above.

17 37. As a proximate cause of defendants' acts, plaintiff has suffered permanent injury,
18 economic harm, and emotional distress.

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

27 39. Defendants' conduct described herein was undertaken by the corporate defendants'
28 officers or managing agents, identified herein as DOES 1 through 100, inclusive, who were

1 responsible for claims supervision and operations, underwriting, communications and/or
2 decisions. The aforementioned conduct of said managing agents and individuals was therefore
3 undertaken on behalf of the corporate defendants. Said corporate defendants further had advance
4 knowledge of the actions and conduct of said individuals whose action and conduct were ratified,
5 authorized, and approved by managing agents whose precise identities are unknown to plaintiff at
6 this time and are therefore identified and designated herein as DOES 1 through 100.

7
8 **FOURTH CAUSE OF ACTION**

9 **(Negligence)**

10 PLAINTIFF JOSE NUNEZ, FOR A FOURTH CAUSE OF ACTION AGAINST
11 DEFENDANTS AND DOES 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, FOR
12 NEGLIGENCE, ALLEGES:

13 40. Plaintiff incorporates by reference each and every paragraph of the General
14 Allegations as though set forth in full in this cause of action.

15 41. Defendants owed plaintiff a duty of care which includes a duty to provide him
16 with medically necessary coverage and access to treatment in a reasonable period of time as they
17 had promised to him they would.

18 42. Defendants breached this duty by failing to provide Jose with coverage and timely
19 access to an ophthalmological specialist qualified to provide Jose with the diagnosis, surgery and
20 treatment that he needed.

21 43. As a result of defendants' breaches, Jose missed the time period in which he could
22 receive necessary eye surgery and Jose has suffered permanent physical injury, economic harm,
23 and suffered emotional distress.

24
25
26 WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as
27 follows:

28 AS TO THE FIRST CAUSE OF ACTION:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1. For special and general damages according to proof at the time of trial;
- 2. For costs of suit incurred herein; and
- 3. For such other and further relief as the Court deems just and proper.

AS TO THE SECOND CAUSE OF ACTION:

- 4. For special and general damages according to proof at the time of trial;
- 5. For punitive damages;
- 6. For costs of suit incurred herein; and
- 7. For such other and further relief as the Court deems just and proper.

AS TO THE THIRD CAUSE OF ACTION:

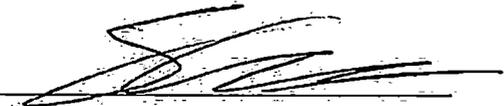
- 8. For special and general damages according to proof at the time of trial;
- 9. For punitive damages;
- 10. For costs of suit incurred herein; and
- 11. For such other and further relief as the Court deems just and proper.

AS TO THE FOURTH CAUSE OF ACTION:

- 12. For special and general damages according to proof at the time of trial;
- 13. For costs of suit incurred herein; and
- 14. For such other and further relief as the Court deems just and proper.

Dated this 29th day of December 2017, at Pasadena, California.

LAW OFFICES OF SCOTT C. GLOVSKY

By: 

SCOTT C. GLOVSKY
ARI DYBNIS
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: December 29, 2017

LAW OFFICES OF SCOTT GLOVSKY, APC

By: 

SCOTT C. GLOVSKY
ARI DYBNIS
Attorneys for Plaintiff