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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

BRIAN PROBST,

Petitioner,

v.

**THE SUPERIOR COURT OF SAN
FRANCISCO COUNTY,**

Respondent;

**HEALTH NET OF CALIFORNIA,
INC.; HEALTH NET, INC.,**

Real Parties in Interest.

A133742

**(San Francisco County
Super. Ct. No. CGC11509624)**

THE COURT:*

Plaintiff and petitioner Brian Probst seeks writ relief from an order compelling him to arbitrate his claims against defendants and real parties in interest Health Net of California, Inc. and Health Net, Inc. We grant the requested relief, since the health plan enrollment form signed by plaintiff fails to comply with the disclosure requirements of the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act, Health & Saf. Code, § 1363.1, subdivision (b)),¹ rendering the arbitration agreement unenforceable.

* Before Simons, Acting P.J., Needham, J. and Bruiniers, J.

¹ All further statutory references are to the Health and Safety Code unless otherwise indicated.

BACKGROUND

In this putative class action, plaintiff alleges that defendants failed to adequately protect private personal and medical information from unauthorized disclosure to third parties.²

Defendants brought a motion to compel arbitration and to stay proceedings against plaintiff. Plaintiff opposed defendants' motion, arguing, among other things, that the arbitration clause failed to comply with the disclosure requirements of the Knox-Keene Act (§ 1363.1, subd. (b)). Respondent granted defendants' motion to compel arbitration, and stayed further proceedings on plaintiff's claims pending completion of the arbitration.

Since it is central to the issue analyzed in this opinion, we describe in some detail the health plan enrollment form signed by plaintiff.³

The enrollment form is two pages on standard letter-sized paper. The first page of the enrollment form contains four numbered sections bearing the following headings: "PERSONAL INFORMATION," "EMPLOYEE & FAMILY INFORMATION", "DO YOU OR ANY OF YOUR DEPENDENTS HAVE OTHER HEALTH CARE COVERAGE? IF YES, PLEASE COMPLETE THIS SECTION, INCLUDING MEDICARE," and "DECLINATION OF COVERAGE."⁴ In addition to the capitalized headings, the headings appear in white typeface in dark gray boxes stretching seven inches across the page. Beneath each heading are spaces for the enrollee to fill in

² An amended complaint added Bjorn Endresen as a plaintiff. Endresen is not a party to this writ petition. Currently pending is an appeal by defendants from an order denying their motion to compel Endresen to arbitrate his claims against them. (Case No. A133154.) The petition herein requests that we consolidate the instant petition with the appeal in case No. A133154. We deny that request.

³ The enrollment form in our record contains redactions. No party suggests that information pertinent to our review has been redacted. A copy of the enrollment form is attached as Appendix A to this opinion.

⁴ The heading and content of an additional numbered section are redacted.

the requested information, and various items require boxes to be checked. The declination of coverage section contains boldface type and ample spacing between each line of text.

The second page of the enrollment form contains two numbered sections bearing the following headings: “SELECTED COVERAGE” and “ACCEPTANCE OF COVERAGE.” These headings, like those appearing on the first page of the enrollment form, are printed in white typeface within dark gray boxes spanning seven inches of space across the page. The “SELECTED COVERAGE” section contains boxes to be checked, with more than half of the words printed in capitalized text, and ample spacing around each category of information requested. The “SELECTED COVERAGE” section occupies almost two-thirds of the upper portion of the second page.

The arbitration provision is contained on the second page of the form, as part of a group of disclosures appearing beneath the “ACCEPTANCE OF COVERAGE” heading. The “ACCEPTANCE OF COVERAGE” portion of the form occupies approximately one-third of the lower portion of the second page, and contains dense sections of text, in contrast to the remainder of the two-page enrollment form. The text within this section is broken up into two separate columns, with three subheadings. The font size and spacing between lines in the subheadings and related text varies, and some text appears slightly darker than other sections of text.

The first subheading in the “ACCEPTANCE OF COVERAGE” section, appearing wholly in the lefthand column, is entitled, and concerns, the “USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION.” Most of this provision (with the exception of a disclosure related to HIV tests) appears to be in the narrowest and perhaps smallest font when compared to the two other provisions in this section.

The second subheading, also contained entirely within the lefthand column, is entitled “ACKNOWLEDGEMENT AND AGREEMENT,” and requires enrollees to adhere to the terms of the plan contract or insurance policy and affirms that the

information on the application is complete. The font of this provision appears slightly darker and larger than that under the first subheading, and the spacing appears similar.

The third subheading in the “ACCEPTANCE OF COVERAGE” section is entitled “BINDING ARBITRATION AGREEMENT.” This provision appears on the twentieth line beneath the “ACCEPTANCE OF COVERAGE” title. Unlike the previous two disclosures, the arbitration disclosure is divided between the left-hand and right-hand columns. The font is slightly larger than the font used in the first and second disclosures, and there appears to be slightly more space between each line of text. The text in the left-hand column does not appear to be in bold print, while the text in the right-hand column appears to be a bit darker.

The arbitration disclosure reads as follows: “Subject to the terms of the Plan Contract or Insurance Policy (which may prohibit mandatory arbitration of certain disputes if the Plan Contract or Insurance Policy is subject to ERISA, 29 U.S.C. section 1001 et seq.), I, the applicant, understand and agree that any and all disputes or disagreements between me (including any of my enrolled family members or⁵ heirs or personal representatives) and Health Net regarding the construction, interpretation, performance or breach of the Health Net Plan Contract or Insurance Policy, or regarding other matters relating to or arising out of my Health Net membership, whether stated in tort, contract or otherwise, and whether or not other parties such as health care providers, or their agents or employees, are also involved, must be submitted to final and binding arbitration in lieu of a jury or court trial. I understand that, by agreeing to submit all disputes to final and binding arbitration, all parties, including Health Net, are giving up their constitutional right to have their dispute decided in a court of law before a jury. I also understand that disputes that I may have with Health Net involving claims for medical malpractice are also subject to final and binding arbitration. A more detailed

⁵ Column one ends after the word “or” and column two begins with the word “heirs.”

arbitration provision is included in the Plan Contract or Insurance Policy. My signature below indicates that I agree to submit any dispute to binding arbitration.”

Plaintiff’s signature and a handwritten date appears within a box beneath the foregoing text. A five-line definition section is beneath the signature box.

DISCUSSION

I. *Writ Review is Appropriate*

“[T]he preferred procedure in arbitration proceedings is to proceed with the arbitration and attack the intermediate rulings in connection with a petition to vacate or confirm the arbitrator’s award or on appeal from a judgment confirming the award. [Citations.]” (*International Film Investors v. Arbitration Tribunal of Directors Guild* (1984) 152 Cal.App.3d 699, 706.) However, this general rule is not without exceptions. As this court has recognized, writ review is warranted where, as here, noncompliance with section 1363.1 renders an arbitration agreement under which arbitration was compelled unenforceable. (*Zembsch v. Superior Court* (2006) 146 Cal.App.4th 153, 160-161 (*Zembsch*).)

II. *The Arbitration Disclosure is not “Prominently Displayed” as Required by the Knox-Keene Act*

As pertinent to this case, section 1363.1 provides: “Any health care service plan that includes terms that require binding arbitration to settle disputes and that restrict, or provide for a waiver of, the right to a jury trial shall include, in clear and understandable language, a disclosure that meets all of the following conditions: [¶] . . . [¶] (b) The disclosure . . . shall be prominently displayed on the enrollment form signed by each subscriber or enrollee.” We review de novo respondent’s determination on whether this statute is satisfied. (*Zembsch, supra*, 146 Cal.App.4th at p. 162.)

“ ‘Prominent’ is defined as ‘standing out or projecting beyond a surface or line,’ or ‘readily noticeable.’ ” (*Imbler v. PacifiCare of Cal., Inc.* (2002) 103 Cal.App.4th 567, 579 (*Imbler*).) “... [T]he word ‘prominent’— like its synonyms ‘noticeable,’ ‘remarkable,’ ‘outstanding,’ ‘conspicuous,’ ‘salient,’ and ‘striking’--means ‘attracting

notice or attention.’ [Citation.] More specifically, ‘prominent’ ‘applies to something commanding notice by standing out from its surroundings or background.’ [Citation.]” (*Burks v. Kaiser Foundation Health Plan, Inc.* (2008) 160 Cal.App.4th 1021, 1026 (*Burks*).

“By requiring that the notice be ‘prominently displayed,’ without dictating exactly how, the Legislature gave health plans ... the right to choose what typeface, format, headings, and/or other devices they would use to make the notice stand out from its surroundings.” (*Burks, supra*, 160 Cal.App.4th at p. 1028.) However, “[c]ourts have ‘concluded that strict compliance with section 1363.1 is required to enforce [an] arbitration provision’ in a health service plan. ‘[T]echnical violations’ of the statute ... ‘render [the] arbitration provision unenforceable’ regardless of whether the person enrolling in the health plan received some notice of the arbitration clause by reviewing the noncomplying provision.” (*Medeiros v. Superior Court* (2007) 146 Cal.App.4th 1008, 1015, fns. omitted.)

The “prominently displayed” requirement is not satisfied by an insurer’s compliance with the additional statutory requirement (found in § 1361.1, subd. (d))⁶ that the arbitration disclosure appear immediately above the signature line. (*Burks, supra*, 160 Cal.App.4th at p. 1028 [“ the legislative history supports the conclusion that by requiring prominence *in addition* to placement immediately above the signature line, the Legislature intended to require something more than placement to make the notice prominent”].)

Although each case must be decided on its unique facts, it is useful to review the manner in which other courts have applied the “prominently displayed” requirement.

In *Imbler*, the court concluded that the “prominently displayed” requirement was not met because “the disclosure sentence was written in the middle of the authorization

⁶ Section 1361.1, subdivision (d) requires: “In any contract or enrollment agreement for a health care service plan, the disclosure required by this section shall be displayed immediately before the signature line provided for the representative of the group contracting with a health care service plan and immediately before the signature line provided for the individual enrolling in the health care service plan.”

for the release of medical records and an authorization for payroll deduction of premiums. The disclosure was in the same font as the rest of the paragraph, and was not bolded, underlined or italicized. The disclosure sentence neither stood out nor was readily noticeable.” (*Imbler, supra*, 103 Cal.App.4th at p. 579.)

In *Burks*, the court rejected as inconsistent with principles of statutory construction Kaiser’s contention that the arbitration disclosure was “prominently displayed” by virtue of its placement immediately above the signature line. (*Burks, supra*, 160 Cal.App.4th at pp. 1027-1028.) Kaiser then argued that the disclosure was prominently displayed since the notice appeared in a paragraph under a solid horizontal border. (*Id.* at p. 1028.) The court found that the placement of the disclosure below that border or box “does little (if anything) to make the disclosure stand out from its surroundings,” given the plain, small typeface used, without any heading, and the fact that most of the form contained larger typeface, some of which was in bold or highlighted by a different colored background. (*Id.* at pp. 1028-1029.) The court so held, even though, unlike other reported cases, the arbitration disclosure did “ ‘not compete with any non-arbitration text for the applicant’s attention.’ ” (*Id.* at p. 1029.)

In *Malek v. Blue Cross of California* (2004) 121 Cal.App.4th 44 (*Malek*), the arbitration disclosure was preceded by the words “**ARBITRATION AGREEMENT**” (in capital letters and boldface type). (*Id.* at p. 51, fn. 2.) The court nevertheless found that the provision failed to meet the “prominently displayed” requirement, as “[t]he arbitration provision is in the same type size and font as provisions authorizing deductions and release of medical information. While the arbitration provision constitutes a separate numbered paragraph, it does not stand out and was not readily noticeable from these other provisions.” (*Id.* at p. 61.)

To similar effect is *Robertson v. Health Net of California, Inc.* (2005) 132 Cal.App.4th 1419 (*Robertson*). There, Division Two of this appellate district found that Health Net had not complied with the “prominently displayed” requirement, even though the title of the arbitration clause was in boldface (it read “**Arbitration Agreement**”). (*Id.* at p. 1423, fn. 3.) The court emphasized that “both the bolded title, as well as the text of

the disclosure itself, are printed in the same typeface as that used in the rest of the enrollment form.” (*Id.* at p. 1428.) The court stated that “[w]hile the disclosure here is somewhat more arresting than that in *Imbler* in that Health Net’s paragraph is, at least, separately stated and its title is in bold print, it is still not prominent as described in *Imbler*, and as required by the statute” since the provision was “some distance from the enrollees’ signature line,” the “provision is printed in the same font or typeface as the rest of the form,” and “only the title is in bolded type....” (*Id.* at p. 1429.)

In *Zembsch, supra*, 146 Cal.App.4th at pages 162-167, we held that Health Net’s arbitration disclosure did not satisfy the “prominently displayed” requirement. We explained: “Like the disclosure in *Robertson*, the disclosure before us is printed in the same font or typeface as most of the form; the disclosure heading appears to be in faint boldface type. [Citation.] The disclosure is the second of two single-spaced paragraphs of small, condensed type located at the bottom of the enrollment form. Neither the disclosure nor the preceding paragraph is indented, and the two paragraphs are not separated from each other by any lines or spacing. The disclosure is in the same font as the preceding paragraph, and it is ‘not bolded, underlined or italicized.’ [Citation.] In contrast, some of the text of the form is printed in boldface type, in all capitals or in larger fonts, so Health Net clearly could have made the text of the disclosure more prominent had it chosen to do so. The disclosure does not stand out from the remainder of the document and is not readily noticeable. [¶] The Health Net disclosure before us is *less* prominent than the disclosures discussed in [*Robertson*] and [*Malek*]. As is clear from the form attached as an appendix to the *Robertson* opinion, that disclosure paragraph was set off from the remainder of the text by blank lines before the first and after the last sentences. [Citation.] This spacing gives it greater prominence and makes it easier to read than the disclosure we are considering. The disclosure in *Malek* was preceded by the heading “**ARBITRATION AGREEMENT**” in clear, boldface type. [Citation.] In addition, the disclosure in *Malek* was contained in a separate numbered paragraph. [Citation.] Neither of these two distinguishing features is present here.” (*Zembsch*, at p. 165, fn. omitted.)

Guided by the foregoing authorities, we determine that the arbitration disclosure on plaintiff's enrollment form is not "prominently displayed" within the meaning of section 1363.1, subdivision (b). Put simply, the manner in which the arbitration disclosure was designed does not command attention to its existence.

Relative to the bulk of the provisions contained in the enrollment form, the arbitration provision is contained in a comparatively small and dense section of text that does not capture the reader's attention. As previously described, the first page and the first two-thirds of the second page of the enrollment form contain various provisions which stand out and are readily noticeable, including the sections governing personal, employee and family information, disclosure of other health care coverage, declination of coverage, and selected coverage. Those sections are preceded by headings appearing in white typeface in dark gray boxes stretching seven inches across the page. They also include boxes that are required to be checked, and generous spacing between individual questions and provisions.

In contrast, the arbitration disclosure is essentially buried on the lower one-third of the second page of the enrollment form. The arbitration disclosure appears within a crowded group of provisions appearing beneath the "ACCEPTANCE OF COVERAGE" heading. The small, narrow font used in this section is surrounded by narrow spacing, giving an overall compressed appearance and making it more difficult to read. While the font used in the arbitration disclosure appears to be somewhat larger and perhaps slightly darker than the other provisions in this section, and the line spacing somewhat greater, this is so by only the most minimal degree. The arbitration provision is not written in a *significantly* larger or bolder font, it is not italicized, underlined, or in all caps, and the spacing around the provision is not sufficiently large so as to highlight the provision and make it readily noticeable.

Furthermore, the arbitration disclosure is divided between two columns, unlike the other provisions appearing beneath the "ACCEPTANCE OF COVERAGE" heading. The breaking up of the disclosure between two columns hinders its readability, and serves to make the disclosure even less noticeable than the other provisions in this section.

Additionally, the arbitration disclosure contains extensive legalese and prefatory or conditional language, much of which is dependent upon a review of other documents. The arbitration provisions at issue in other cases discussed above are, by comparison, refreshingly brief. The excess verbiage and legalese in this case not only makes the arbitration provision far less readable, but definitively less prominent. Only the most fastidious (not to mention patient) reader would be able to glean the scope of the arbitration provision. In this respect, the disclosure does not meet the letter or spirit of section 1363.1's requirement that the disclosure be written "in clear and understandable language." Before the heart of the arbitration provision is even revealed, the reader is confronted with this language: "Subject to the terms of the Plan Contract or Insurance Policy (which may prohibit mandatory arbitration of certain disputes if the Plan Contract or Insurance Policy is subject to ERISA, 29 U.S.C. section 1001, et seq.)" This abstruse language is certainly not clear and understandable, and "[t]he confusion as to the extent of [plaintiff's] waiver undermines the fundamental purpose of the statute—to ensure a knowing waiver of the right to a jury trial. [Citation.]" (*Rodriguez v. Blue Cross of California* (2008) 162 Cal.App.4th 330, 340.)

It is true that the arbitration disclosure is preceded by a capitalized heading, "BINDING ARBITRATION AGREEMENT."⁷ However, an arbitration disclosure preceded by the words "Arbitration Agreement" in capital letters and boldface type is insufficient in and of itself to meet the prominence requirement of the statute. (*Zembsch, supra*, 146 Cal.App.4th at pp. 163-164, citing *Malek, supra*, 121 Cal.App.4th at p. 51, fn. 2.) Moreover, the placement of the arbitration disclosure immediately above the signature line is insufficient to satisfy the "prominently displayed" requirement. (*Burks, supra*, 160 Cal.App.4th at pp. 1027-1028.)

⁷ Defendants assert that this heading, in addition to being capitalized, is also in boldface type. It does not appear to us that the heading is darker than the text of the arbitration disclosure. Even so, this would not render the provision "prominently displayed." (*Zembsch, supra*, 146 Cal.App.4th at pp. 163-164; see also *Robertson, supra*, 132 Cal.App.4th at p. 1429.)

Defendants unpersuasively argue in a footnote that the arbitration disclosure, which they estimate to be in 10-point font, should be found in compliance with section 1363.1, since “[i]n a closely analogous statute referred to in Section 1363.1, the Legislature has determined that 10-point bold font is appropriate to put health care consumers on notice of a binding arbitration agreement. Code Civ. Proc. § 1295(b) (contract for medical services which contains provision for arbitration of any dispute as to professional negligence of a medical provider must include notice in at least 10-point bold red type).” Defendants are correct that section 1363.1, subdivision (c), refers to Code of Civil Procedure section 1295. However, the reference in section 1363.1, subdivision (c), is to Code of Civil Procedure section 1295, subdivision (a) (specifying the language to be used in arbitration provisions governing professional negligence of a health care provider), *not* subdivision (b) (requiring that a specified notice appear in at least 10-point bold red type). In any event, even if we were to apply the latter statute to this case, it cannot be said that defendants have met its requirements, since the arbitration disclosure is not in red type, and it is debatable whether the font meets the 10-point and boldface type requirements.

CONCLUSION

In enacting section 1363.1, subdivision (b), the Legislature plainly intended that arbitration disclosures in health care service plans be readily observable by the reader. While health plans have flexibility in selecting elements to give prominence to arbitration disclosures (*Burks, supra*, 160 Cal.App.4th at p. 1028), defendants did not achieve the required prominence in the enrollment form signed by plaintiff. It is apparent from reviewing other, nonarbitration related provisions of plaintiff’s enrollment form that defendants possessed the ability to make the arbitration disclosure prominent. (See *Zembsch, supra*, 146 Cal.App.4th at p. 165 [when measured against other portions of the form, “Health Net clearly could have made the text of the disclosure more prominent had it chosen to do so”].) However, it cannot reasonably be said in this case that the arbitration disclosure stands out, or is readily noticeable, conspicuous, or striking. (*Imbler, supra*, 103 Cal.App.4th at p. 579; *Burks, supra*, 160 Cal.App.4th at p. 1026.)

Consequently, the superior court erred in compelling plaintiff to arbitrate his claims against defendants. (*Zembsch, supra*, 146 Cal.App.4th at p. 168 [violation of section 1363.1 renders any arbitration agreement unenforceable].)⁸

DISPOSITION

In accordance with our notification to the parties that we might do so, we will direct issuance of a peremptory writ in the first instance. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180 (*Palma*).)⁹ Plaintiff's right to relief is obvious, and no useful purpose would be served by issuance of an alternative writ, further briefing, and oral argument. (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; see *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236-1237, 1240-1241; see also *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1240-1244 (*Brown*).)

Let a peremptory writ of mandate issue directing respondent superior court to vacate its September 15, 2011 order (filed on September 26, 2011) granting defendants' motion to compel arbitration and stay proceedings as to plaintiff, and to issue a new and different order denying that motion. This decision shall be final as to this court within five (5) court days. (Cal. Rules of Court, rule 8.490(b)(3).) Plaintiff shall recover his costs. (*Id.*, rule 8.493(a)(1)(A), (2).)

⁸ In light of our conclusion, it is unnecessary to address plaintiff's additional arguments.

⁹ While a writ petition could provide the requisite notice that a peremptory writ in the first instance may be issued (*Palma, supra*, 36 Cal.3d at p. 180), the petition on file herein did not request a peremptory writ in the first instance. Instead, the petition requested issuance of a "suggestive" *Palma* notice. (*Brown, supra*, 47 Cal.4th at pp. 1244-1247.) Given this, following our review of the parties' preliminary filings, we issued an order giving *Palma* notice and permitted the parties to file supplemental briefs in response to that notice.

APPENDIX A

MEDICAL ENROLLMENT AND CHANGE FORM

EMPLOYER NAME

(SECTIONS 1, 2, 3, 4 AND 6 ARE REQUIRED)
 IMPORTANT: PLEASE PRINT ALL SECTIONS IN BLACK INK, USING A BALL POINT PEN.

EFFECTIVE DATE

EMPLOYER GROUP NUMBER

1 PERSONAL INFORMATION

NAME Probst FIRST NAME Brian M.I. 1) MALE
 2) FEMALE

3 EMPLOYEE & FAMILY INFORMATION

	LAST NAME, FIRST NAME, M.I.	RESIDENCE ADDRESS, CITY, STATE, ZIP	DATE OF BIRTH	SOCIAL SECURITY # / MATRICULAR ID #
<input checked="" type="checkbox"/> SELF	<u>Probst, Brian</u>			
<input type="checkbox"/> SPOUSE <input type="checkbox"/> M <input type="checkbox"/> DOMESTIC PARTNER <input type="checkbox"/> F			MO DAY YR	
<input type="checkbox"/> SON <input type="checkbox"/> DAUGHTER			MO DAY YR	
<input type="checkbox"/> SON <input type="checkbox"/> DAUGHTER			MO DAY YR	
<input type="checkbox"/> SON <input type="checkbox"/> DAUGHTER			MO DAY YR	

4 DO YOU OR YOUR DEPENDENTS HAVE OTHER HEALTH CARE COVERAGE? **NO** PLEASE COMPLETE THIS SECTION INCLUDING MEDICARE.
 Please fill out the following information to receive proper credit for PREVIOUS COVERAGE, if immediately prior to becoming eligible for this plan, you or your dependents were covered under any public or private health care coverage (including Medical or individual coverage). According to federal law, your employer or FORMER CARRIER must provide you with a certificate that shows evidence of your prior coverage. We reserve the right to request a copy of this certificate.

	NAME	NAME AND ADDRESS OF OTHER INSURANCE CARRIER	PRIOR COVERAGE START DATE
<input checked="" type="checkbox"/> SELF			MO DAY YR
<input type="checkbox"/> SPOUSE <input type="checkbox"/> M <input type="checkbox"/> DOMESTIC PARTNER <input type="checkbox"/> F			MO DAY YR
<input type="checkbox"/> SON <input type="checkbox"/> DAUGHTER			MO DAY YR
<input type="checkbox"/> SON <input type="checkbox"/> DAUGHTER			MO DAY YR
<input type="checkbox"/> SON <input type="checkbox"/> DAUGHTER			MO DAY YR

5 DECLINATION OF COVERAGE (Complete this section if any coverage is to be declined by you or your eligible dependents)

Declining Medical coverage for: Self Spouse Dependent(s) Reason: Other group coverage Individual Coverage Other _____
 Domestic Partner Other group coverage by another group (i.e. spouse's employer)

The available coverages have been explained to me by my employer. I have been given the chance to apply for the available coverages. I have decided not to enroll myself and/or my dependent(s). By declining coverage I acknowledge that my dependents and I may have to wait to be enrolled until the next Open Enrollment period or qualifying event. Additionally, by signing below I certify that the reason I am declining coverage is accurate as indicated by the check marks above.

Note: If you decline coverage for yourself or an eligible dependent because of coverage under other health insurance, you may be eligible for special enrollment rights if you or your dependent lose eligibility for that coverage. Also, if you acquire a new dependent due to marriage, birth, adoption, or placement for adoption, you and your dependent may be eligible for special enrollment rights. You must request special enrollment within 30 days of the loss of coverage or acquisition of a new dependent.

Employee Signature [Signature] Date 8/29/2008
 (ONLY IF DECLINING COVERAGE; If signed in error, please cross out and initial)

2) SELECTED COVERAGE:

CHECK THE DESIRED PLAN AS OFFERED BY YOUR EMPLOYER:
MEDICAL PLAN (write the plan number next to the product)

- HMO _____
- HMO HRA _____
- HMO VARIABLE COPAY _____
- HMO SILVER NETWORK _____
- HMO Y MAS _____
- ELECTSM OPEN ACCESS _____
- ELECT (POS) _____
- EPO _____
- FLEX NET (Indemnity) _____
- PPO _____
- PPO HSA _____
- OUT-OF-STATE PPO (OOS PPO) _____
- SALUD CON HEALTH NET _____
- SELECT (POS) _____
- SELECT 3-TIER POS _____
- OTHER _____

REASON FOR CHANGE: REASON FOR APPLICATION:

- Plan change
- Change address/name
- Delete dependent (list names below)
- Other _____
- New hire
- Open Enrollment
- Loss of prior coverage date _____
- COBRA* effective date _____
- Add dependent
- Qualifying event _____
- Qualifying event date _____

COVERAGE TYPE	MEDICARE	MEDICARE CLAIM/HICH #	OVERAGE DEPENDENT TYPE	PARTICIPATING PHYSICIAN GROUP/PPG #	HEALTH NET PRIMARY CARE PHYSICIAN/PCP #	PHYSICIAN NAME (FIRST, LAST)	IS THIS YOUR CURRENT A.D.?
<input checked="" type="checkbox"/> Medical	<input type="checkbox"/> PART A <input type="checkbox"/> PART B <input type="checkbox"/> PART D		NOT APPLICABLE				
<input type="checkbox"/> Medical	<input type="checkbox"/> PART A <input type="checkbox"/> PART B <input type="checkbox"/> PART D		NOT APPLICABLE				<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/> Medical	<input type="checkbox"/> PART A <input type="checkbox"/> PART B <input type="checkbox"/> PART D		<input type="checkbox"/> Disabled <input type="checkbox"/> Full-time Student <input type="checkbox"/> Over 50% support				<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/> Medical	<input type="checkbox"/> PART A <input type="checkbox"/> PART B <input type="checkbox"/> PART D		<input type="checkbox"/> Disabled <input type="checkbox"/> Full-time Student <input type="checkbox"/> Over 50% support				<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/> Medical	<input type="checkbox"/> PART A <input type="checkbox"/> PART B <input type="checkbox"/> PART D		<input type="checkbox"/> Disabled <input type="checkbox"/> Full-time Student <input type="checkbox"/> Over 50% support				<input type="checkbox"/> YES <input type="checkbox"/> NO

PRIOR COVERAGE END DATE	REASON FOR ENDING COVERAGE	GROUP # / POLICY ID #	IS THIS YOUR OR YOUR DEPENDENT'S PRIMARY COVERAGE?	DOES IT COVER?	MEDICARE	MEDICARE CLAIM/HICH #	OVERAGE DEPENDENT TYPE
MO DAY YR			<input type="checkbox"/> YES <input type="checkbox"/> NO	MEDICAL: <input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> PART A <input type="checkbox"/> PART B <input type="checkbox"/> PART D		NOT APPLICABLE
MO DAY YR			<input type="checkbox"/> YES <input type="checkbox"/> NO	MEDICAL: <input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> PART A <input type="checkbox"/> PART B <input type="checkbox"/> PART D		NOT APPLICABLE
MO DAY YR			<input type="checkbox"/> YES <input type="checkbox"/> NO	MEDICAL: <input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> PART A <input type="checkbox"/> PART B <input type="checkbox"/> PART D		<input type="checkbox"/> DISABLED <input type="checkbox"/> FULL-TIME STUDENT <input type="checkbox"/> OVER 50% SUPPORT
MO DAY YR			<input type="checkbox"/> YES <input type="checkbox"/> NO	MEDICAL: <input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> PART A <input type="checkbox"/> PART B <input type="checkbox"/> PART D		<input type="checkbox"/> DISABLED <input type="checkbox"/> FULL-TIME STUDENT <input type="checkbox"/> OVER 50% SUPPORT
MO DAY YR			<input type="checkbox"/> YES <input type="checkbox"/> NO	MEDICAL: <input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> PART A <input type="checkbox"/> PART B <input type="checkbox"/> PART D		<input type="checkbox"/> DISABLED <input type="checkbox"/> FULL-TIME STUDENT <input type="checkbox"/> OVER 50% SUPPORT

3) ACCEPTANCE OF COVERAGE:

USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION: I acknowledge and understand that health care providers may disclose health information about me or my dependents to Health Net Entities. Health Net Entities may disclose this information for purposes of treatment, payment and health plan operations, including but not limited to, utilization management, quality improvement, disease or case management programs. Health Net's Notice of Privacy Practices is included in the evidence of coverage or certificate of insurance for coverage underwritten by Health Net Entities. I may also obtain a copy of this Notice on the web site of www.healthnet.com or through the Health Net Customer Contact Center. Authorization for use and disclosure of protected health information shall be valid for a period of 30 months from the date of my signature below.

California law prohibits an HIV test from being required or used by health insurance companies as a condition of obtaining health insurance coverage.

ACKNOWLEDGEMENT AND AGREEMENT: I understand and agree that by enrolling with or accepting services from the Health Net Entities, the SafeGuard Entities and/or the Fidelity Entities, I and any enrolled dependents are obligated to understand and abide by the terms, conditions and provisions of the Plan Contract or Insurance Policy. I have read and understand the terms of this Application and my signature below indicates that the information entered in this Application is complete, true and correct, and I accept these terms.

BINDING ARBITRATION AGREEMENT: Subject to the terms of the Plan Contract or Insurance Policy (which may prohibit mandatory arbitration of certain disputes if the Plan Contract or Insurance Policy is subject to ERISA, 29 U.S.C. section 1001, et seq.), I, the applicant, understand and agree that any and all disputes or disagreements between me (including any of my enrolled family members or

heirs or personal representatives) and Health Net regarding the construction, interpretation, performance or breach of the Health Net Plan Contract or Insurance Policy, or regarding other matters relating to or arising out of my Health Net membership, whether stated in tort, contract or otherwise, and whether or not other parties such as health care providers, or their agents or employees, are also involved, must be submitted to final and binding arbitration in lieu of a jury or court trial. I understand that, by agreeing to submit all disputes to final and binding arbitration, all parties, including Health Net, are giving up their constitutional right to have their dispute decided in a court of law before a jury. I also understand that disputes that I may have with Health Net involving claims for medical malpractice are also subject to final and binding arbitration. A more detailed arbitration provision is included in the Plan Contract or Insurance Policy. My signature below indicates that I agree to submit any dispute to binding arbitration.

x  8/20/2005
 EMPLOYEE SIGNATURE DATE

All references to "Health Net" herein include the affiliates and subsidiaries of Health Net which underwrite or administer the coverage to which this Enrollment Application applies. "Plan Contract" refers to the Health Net of California, Inc. Group Service Agreement and Evidence of Coverage; "Insurance Policy" refers to Health Net Life Insurance Company Group Policy and Certificate of Insurance.

White copy - Health Net Yellow copy - Group Pink copy - Member