

COPY

No. S218497

In the Supreme Court of the State of California

CENTINELA FREEMAN EMERGENCY MEDICAL ASSOCIATES, ET AL.,
Plaintiffs and Appellants,

SUPREME COURT
FILED

vs.

OCT 16 2014

HEALTH NET OF CALIFORNIA, INC., ET AL.,
Defendants and Respondents.

Frank A. McGuire Clerk
Deputy

**MOTION FOR JUDICIAL NOTICE
DECLARATION OF MARGARET M. GRIGNON**

After An Opinion By The Court Of Appeal
Second Appellate District, Division Three, No. B238867

Appeal From A Judgment Of Dismissal Following Demurrer
Los Angeles County Superior Court, Case No. BC415203
Honorable John Shepard Wiley

Service on the Attorney General and the Los Angeles District Attorney
Required by Bus. & Prof. Code § 17209 and
Cal. Rules of Court, rule 8.29(a) and (b)

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I.

MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code section 452, and California Rules of Court, Rule 8.252, the Health Plans¹ request that this Court take judicial notice of the documents set forth in the Health Plans' request for judicial notice filed in the trial court. (1 AA 153-165.) These documents are the following:

1. Ex. 1 — A true and correct copy of California Senate Rules Committee, Floor Analysis of S.B. 260 (1999-2000 Reg. Session). (2 AA 177-180.)

2. Ex. 2 — A quarterly financial survey that was posted on the Department of Managed Health Care's ("DMHC") public website for the quarter ending September 30, 2005, and based upon data self-reported by Risk Bearing Organizations ("RBOs") to the DMHC.² (2 AA 181-186.)

¹ The "Health Plans" are Respondents and Defendants Health Net of California, Inc., Blue Cross of California dba Anthem Blue Cross, PacifiCare of California, California Physicians' Service dba Blue Shield of California, Cigna HealthCare of California, Inc., Aetna Health of California, Inc., and SCAN Health Plan.

² The quarterly financial surveys referenced in this motion for judicial notice can be accessed via the DMHC website, <http://www.dmhc.ca.gov/>. (Department of Managed HealthCare, Financial Surveys Received,

Continued on next page.

3. Ex. 3 — A quarterly financial survey that was posted on the DMHC’s public website for the quarter ending March 31, 2011, and based upon data self-reported by RBOs to the DMHC. (2 AA 187-191.)

4. Ex. 4 — A true and correct copy of a printout from the website of the DMHC concerning the DMHC’s obligation to collect and analyze RBO’s financial statements on a quarterly and an annual basis in order to “closely monitor the financial solvency of RBOs in order to keep this important component of the managed care system strong.” (2 AA 192-193.)

5. Ex. 5 — A true and correct copy of an excerpt from the DMHC’s Public Rulemaking File for Title 28, Adopting Sections 1300.75.4.2, et al., Data Collection Disclosure Language, Grading/Reviewing and Corrective Actions for Risk Bearing Organizations 2004-0100. (2 AA 194-196.)

6. Ex. 6 — A quarterly financial survey that was posted on the DMHC’s public website for the quarter ending June 30, 2007, and based upon data self-reported by RBOs to the DMHC. (2 AA 197-201.)

Continued from previous page.

< <http://wpso.dmhc.ca.gov/ProviderReports/fsreceived.aspx> > (as of Oct. 15, 2014).)

7. Ex. 7 — The Fiscal Year End report for 2007 that was posted on the DMHC's public website and summarizing survey data received by the DMHC from the RBOs directly. (2 AA 202-209.)

8. Ex. 8 — A true and correct copy of a letter dated February 28, 2008 from Michelle Yamanaka, Supervising Examiner, at the DMHC. (2 AA 210-213.)

9. Ex. 9 — A quarterly financial survey that was posted on the DMHC's public website for the quarter ending March 31, 2008, and based upon data self-reported by RBOs to the DMHC. (2 AA 214-219.)

10. Ex. 10 — A quarterly financial survey that was posted on the DMHC's public website for the quarter ending June 30, 2008, and based upon data self-reported by RBOs to the DMHC. (2 AA 220-225.)

11. Ex. 11 — A quarterly financial survey that was posted on the DMHC's public website for the quarter ending September 30, 2008, and based upon data self-reported by RBOs to the DMHC. (2 AA 226-230.)

12. Ex. 12 — A quarterly financial survey that was posted on the DMHC's public website for the quarter ending

December 31, 2008, and based upon data self-reported by RBOs to the DMHC. (2 AA 231-235.)

13. Ex. 13 — The Fiscal Year End report for 2008 that was posted on the DMHC's public website and summarizing survey data received by the DMHC from the RBOs directly. (2 AA 236-242.)

14. Ex. 14 — A quarterly financial survey that was posted on the DMHC's public website for the quarter ending March 31, 2009, and based upon data self-reported by RBOs to the DMHC. (2 AA 243-247.)

15. Ex. 15 — A quarterly financial survey that was posted on the DMHC's public website for the quarter ending June 30, 2009, and based upon data self-reported by RBOs to the DMHC. (2 AA 248-252.)

16. Ex. 16 — A quarterly financial survey that was posted on the DMHC's public website for the quarter ending September 30, 2009, and based upon data self-reported by RBOs to the DMHC. (2 AA 253-257.)

17. Ex. 17 — A true and correct copy of an e-mail from Michelle Yamanaka, Supervising Examiner at the DMHC dated July 17, 2008. (2 AA 258-261.)

18. Exs. 18-A through 18-F, which are true and correct copies of orders to the Health Plans issued by the DMHC on or about December 2, 2009. (2 AA 262-301.)

19. Exs. 19-A through 19-F, which are true and correct copies of orders to various Health Plans issued by the DMHC on or about April 22, 2010. (2 AA 302-344.)

20. Exs. 20A through 20-E, which are true and correct copies of orders to various Health Plans issued by the DMHC on or about May 19, 2010. (2 AA 345-380.)

21. Ex. 21, a true and correct copy of an order issued to PacifiCare of California issued by the DMHC on or about May 13, 2010. (2 AA 381-383.)

II.

MEMORANDUM OF POINTS AND AUTHORITIES

Exhibits 1-21 can be classified into four types of judicially noticeable documents.

A. Legislative And Regulatory History Materials

Exhibit 1 is the text of the California Senate Rules Committee, Floor Analysis of S.B. 260 (1999-2000 Reg. Session). It is subject to judicial notice under Evidence Code section 452,

subdivision (c) as an official act of the Legislature. (See *In re S.B.* (2004) 32 Cal.4th 1287, 1296, fn. 3 [taking notice of legislative bill and analysis by Assembly Committee on Judiciary]; *Syngenta Crop Protection, Inc. v. Helliker* (2006) 138 Cal.App.4th 1135, 1163, fn. 10 [taking notice of analysis of proposed bill by Senate Rules Committee].)

Exhibit 4 is a printout from the DMHC's website stating that the purpose of the DMHC's regulations at 28 C.C.R. § 1300.75.4.8 is to "enable [] the DMHC to closely monitor the financial solvency of RBOs [risk bearing organizations] in order to keep this important component of the managed care system strong." It is subject to judicial notice under Evidence Code section 452, subdivision (c) as an official act of the DMHC. (*In re N.M.* (2008) 161 Cal.App.4th 253, 268, fn. 9 [taking judicial notice of information on Department of Social Services website].)

Exhibit 5 contains an excerpt of the official written rationale provided by the DMHC in support of its adoption of the RBO solvency regulations. These comments are included in the DMHC's Public Rulemaking File for this regulation. Judicial notice of this document is proper under Evidence Code section 452, subdivisions (c) and (h). (See *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 8-9, fns. 4-5 [taking judicial notice of city manager memorandum to mayor and city council recommending adoption of resolution].)

B. DMHC Periodic Reports On RBO Compliance With Financial Benchmarks

Exhibits 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, and 16 contain periodic financial survey data self-reported by the RBOs, compiled and analyzed by the DMHC for timeframes between 2005 and 2011. Judicial notice of these reports is proper because the acts of the DMHC in accepting and compiling these reports, analyzing them, and posting the data to the DMHC's website are official acts of an agency of the State of California. (Evid. Code § 452, subd. (c); *In re N.M.*, *supra*, 161 Cal.App.4th at p. 268, fn. 9; *People ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 38, fn. 3 (*Colonia Chiques*).) Further, a court may properly take judicial notice of reports prepared by a government agency. (Evid. Code § 452, subd. (c) [court may take judicial notice of official acts of State executive departments]; *Bhatt v. Department of Health Services for State* (2005) 133 Cal.App.4th 923, 929 [court may take judicial notice of reports prepared by government agency].)

It is also beyond reasonable dispute, and indeed plaintiffs have never disputed, that La Vida notified the DMHC of its failures to meet grading criteria during 2007-2009. (Evid. Code § 452, subd. (h).)

Moreover, these items were available on the DMHC's website and properly subject to judicial notice for that reason as well. (*In re N.M.*, *supra*, 161 Cal.App.4th at p. 268, fn. 9 [taking

judicial notice of information contained on State Department of Social Services on the California government website]; *Colonia Chiques, supra*, 156 Cal.App.4th at p. 38 [taking judicial notice of statement contained on Police Department's website].)

C. Written Communications From DMHC

Exhibits 8 and 17 are copies of written communications the Health Plans received from the DMHC. Judicial notice of these communications is proper as these are official acts of the DMHC. (Evid. Code § 452, subd. (c) [court may take judicial notice of official acts of State executive departments]; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 607-608 [taking judicial notice of Department of Insurance letters as official acts].)

D. Orders Issued By The DMHC

Exhibits 18, 19, 20, and 21 are copies of orders issued by the DMHC. These orders are properly subject to judicial notice under Evidence Code section 452, subdivision (c) as official acts of the DMHC. (See *People ex rel. Orloff v. Pacific Bell* (2003) 31 Cal.4th 1132, 1143, fn. 4 [taking judicial notice of decision of state agency]; *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518 [records, reports, and orders of administrative agencies are "official acts" of which a court may take judicial notice].)

III.
CONCLUSION

For the foregoing reasons, this Court should take
judicial notice of Exhibits 1-21.

DATED: October 15, 2014.

REED SMITH LLP

By Margaret M. Grignon
Margaret M. Grignon
Attorneys for *Blue Cross of
California dba Anthem Blue
Cross*

DATED: October 15, 2014.

CROWELL & MORING, LLP

By _____
William Albert Helvestine
Attorneys for *Health Net of
California Inc.*

DATED: October 15, 2014.

By _____
Jennifer Salzman Romano
Attorneys for *UHC of California
f/k/a Pacificare of California*

III.
CONCLUSION

For the foregoing reasons, this Court should take judicial notice of Exhibits 1-21.

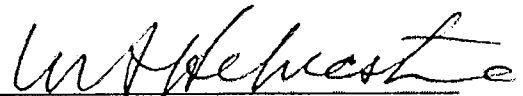
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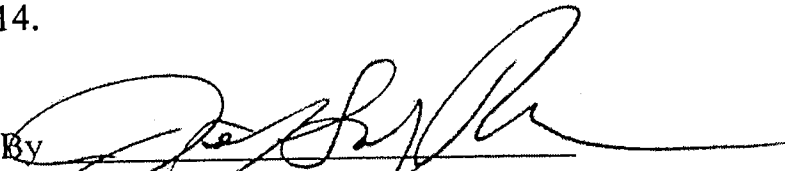
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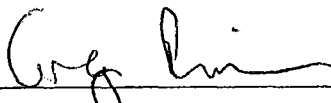
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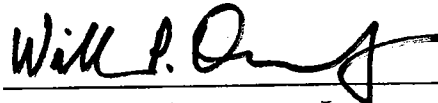
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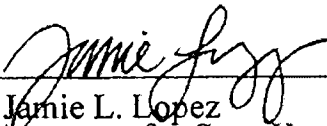
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By  _____

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California, Inc.*

DATED: October 15, 2014.

GONZALEZ SAGGIO & HARLAN LLP

By  _____
Jamie L. Lopez
Attorneys for *Scan Health Plan*

DECLARATION OF MARGARET M. GRIGNON

I, MARGARET M. GRIGNON, declare:

1. I am an attorney at law licensed to practice before the courts of the State of California. I am a partner of the law firm of Reed Smith LLP, counsel to Blue Cross of California dba Anthem Blue Cross.

2. By this motion, the Health Plans seeks judicial notice of Exhibits 1-21 as identified and discussed in the motion accompanying this declaration. Although the Health Plans requested judicial notice of these exhibits in the trial court, the trial court did not rule on the Health Plans' request.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 15, 2014, in Los Angeles, California.


Margaret M. Grignon

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 355 South Grant Avenue, Suite 2900, Los Angeles, CA 90071-1514. On October 15, 2014, I served the following document(s) by the method indicated below:

**OPENING BRIEF ON THE MERITS
FILED CONCURRENTLY WITH
MOTION FOR JUDICIAL NOTICE**

- by transmitting via facsimile on this date from fax number +1 213 457 8080 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 PM and was reported complete and without error. The transmission report was properly issued by the transmitting fax machine. The transmitting fax machine complies with Cal.R.Ct 2003(3).
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- [BY E-MAIL] by transmitting via email to the parties indicated at the email addresses listed below:
- (BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION) Based on a court order and agreement of the parties to accept service by e-mail or electronic transmission, I provided the documents listed above electronically to the Lexis Nexis website and thereon to those parties on the Service List maintained by that website by submitting an electronic version of the documents to Lexis Nexis. If the documents are provided to Lexis Nexis by 5:00 p.m., then the documents will be deemed served on the date that it was provided to Lexis Nexis.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 15, 2014, at Los Angeles, California.


Rebecca R. Rich

Centinela Freeman Emergency Medical Associates. V. Health Net of California, Inc., et al.
Supreme Court Case No. S218497
Court of Appeal, Second Appellate District, Division Three, Case No. B238867
(Los Angeles Superior Court Case No. BC415203)

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<p>Court of Appeal Second Appellate District, Division Three 300 South Spring Street Second Floor, North Tower Los Angeles, CA 90013-1213</p>	<p>Case No. B238867</p>
<p>Consumer Law Section Los Angeles District Attorney 210 West Temple Street, Suite 1800 Los Angeles, CA 90012-3210 Tel: (213) 974-3512</p>	<p>Served pursuant to Bus. & Prof. Code § 17209 and Cal. Rules of Court 8.29(a) and (b)</p>
<p>Appellate Coordinator Office of the Attorney General Consumer Law Section 300 South Spring Street Los Angeles, CA 90013 Tel: (213) 897-2000</p>	<p>Served pursuant to Bus. & Prof. Code § 17209 and Cal. Rules of Court 8.29(a) and (b)</p>