IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FRANCES KIRBY, AUDREY LOGAN, ASHLEY WALDMAN, JOHN DAVID MARKS, WANDA SILVA, TONYA BEACH, DAVID FROHMAN, and, individually and on behalf of all others similarly situated, Plaintiffs, v. ANTHEM, INC., BLUE CROSS AND BLUE SHIELD OF GEORGIA, INC., ANTHEM INSURANCE COMPANIES, INC., Defendants,	Case No.: 1:19-cv-00597-ELR **FIRST AMENDED COMPLAINT – CLASS ACTION** **DEMAND FOR JURY TRIAL**

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs Frances Kirby, Audrey Logan, Ashley Waldman, John David Marks, Wanda Silva, Tonya Beach, David Frohman, and ("Plaintiffs"), individually and on behalf of the Class defined below, allege the following against Defendants Anthem, Inc., Blue Cross and Blue Shield of Georgia, Inc. and Anthem Insurance Companies (collectively referred to as "Anthem") based upon personal knowledge with respect to themselves and on

information and belief derived from, among other things, investigations of counsel and review of public documents as to all other matters.

SUMMARY OF THE CASE

A. Anthem's misconduct puts its policyholders' lives at risk.

1. This is a case about how Anthem engaged in a health insurance coverage marketing scheme in Georgia during and after the 2019 Affordable Care Act open enrollment period ("Open Enrollment Period")[1]. Anthem's deceptive marketing scheme involved Anthem knowingly and intentionally making uniform material misrepresentations and omissions that falsely inflated the size of its physician and hospital network available to consumers who purchased Anthem's individual and family Pathway health insurance plan(s). Anthem lied to Georgia consumers and agents who sold Anthem's health insurance plans as well as state and federal regulators. Anthem falsely included physicians and health systems in its list of in-network providers knowing that those physicians and health systems such as the largest hospital system in Atlanta – Emory Healthcare ("Emory"), and Georgia's largest health system, WellStar Health System, Inc. ("WellStar") – did not accept Anthem's Pathway plans. Anthem also listed other physicians and health provider groups in the metro-Atlanta area, which are not exclusively in the

[1] The 2019 Affordable Care Act Open Enrollment Period extended from November 1, 2018 through December 15, 2018.

WellStar and Emory health systems, as in-network knowing that the physicians and groups did not accept Pathway health plans either. Anthem's scheme was designed to generate profits by misleading Georgia consumers purchasing individual and family health insurance policies[2] into believing at the time of sale that Georgia's largest and most popular healthcare systems such as Emory and WellStar were covered providers when Anthem knew that they were not in-network during 2019.

2. The harm caused by Anthem's scheme cannot be overstated. For example, Plaintiff Audrey Logan is 27 years old, is married to her husband Kenneth Matthew Logan, and the couple has a ten-month-old-daughter named Peyton. Ms. Logan suffers from post-partum cardiomyopathy and CPVT, a form of tachycardia. Ms. Logan has been under the care of a cardiologist since she was a child and learned late last year that she must have a heart transplant to survive. Prior to enrolling in her Anthem Pathway health care plan, Ms. Logan did her due diligence and confirmed on the Healthcare.gov and Anthem.com websites that her WellStar cardiologists were in-network providers covered under Anthem's insurance. Now, after the Open Enrollment period has closed, she learned that WellStar is not a covered provider under her Pathway insurance policy. In

[2] Consumers who are not eligible for group health insurance coverage through an employer may purchase individual and family health insurance.

addition, Emory is the only hospital in Georgia that can perform her heart transplant surgery. Anthem listed Emory as being in-network, even though it knew that it was not. In February 2019, Ms. Logan's cardiologist instructed her to schedule an appointment with Emory to perform the necessary testing in preparation for her heart transplant surgery. At that time, she learned that Emory did not accept her health insurance either, even though Anthem listed Emory as in-network. Ms. Logan's fight for Anthem to honor its promises and allow her to receive a heart transplant under the care of her longstanding WellStar cardiologist at Emory is a matter of life and death for her.

3. Plaintiff Ashley Waldman is 28 years old, is married to her husband Nicholas Waldman, is currently seven months pregnant, and is expecting a baby girl in May 2019. At the time of the Open Enrollment Period, Ms. Waldman was already receiving treatment from her OBGYN, Dr. Kevin Windom. Dr. Windom has hospital privileges only at WellStar Kennestone Hospital. Like Ms. Logan, Ashley Waldman confirmed on the Healthcare.gov and Anthem.com websites that her doctor was an in-network provider under Anthem's Pathway Health Care Plan. Now, after the Open Enrollment Period has closed, Ms. Waldman is at risk of having to switch to a new OBGYN with privileges at another hospital or pay out of pocket for her delivery and after care.

4. The other named Plaintiffs have serious medical conditions and need treatment by their specialists for their chronic and terminal problems, such as cancer, heart failure and spinal cord disorders. They too were misled by Anthem into believing that their doctors were in-network providers under Anthem's Pathway health plan.

5. To add insult to injury, each of the named Plaintiffs and Class Members within the last week received a letter from Anthem that states in pertinent part:

> **[Name of Member], need to see a specialist?**
>
> You'll have to get a referral.
>
> Your 2019 Member Contract incorrectly said you don't need a referral from your primary care doctor to see a specialist. Your plan **does** require a referral to see a specialist.
>
> That was our mistake, and we/re sorry for any confusion. The good news is that nothing changed with your benefits and you don't need to take any action. We're just making sure you have the right information.

("Anthem Letter") (bold in original). An example of the Anthem Letter is attached as Exhibit A.

6. As explained below, Anthem's Member Contract expressly prohibits Anthem from being able to unilaterally change a material term of the Member Contract, and yet they did it anyway, which is a violation of a material term of the Member Contract and a breach of contract under Georgia law. As explained

below, this breach of contract will undoubtedly create more harm to Plaintiffs and Class Members, delay treatment and force them to incur additional expenses as a result of having to seek a referral from their primary care physician, even though many of them are already under the care of a specialist.

B. Brief description of Anthem's deceptive marketing scheme.

7. Plaintiffs and Class Members enrolled with Anthem because the company represented that it would be covering services provided by WellStar, Emory and other health care providers.

8. Anthem knew at the time that it made the misrepresentations and omissions that consumers select their health insurance company based on whether the services of their existing health care provider would be covered by the insurance. As explained in more detail below, Anthem is the only health insurance provider in forty-four (44) mostly rural counties in Georgia. Providing those residents with access to WellStar and Emory would be important to them. Stated differently, excluding WellStar, Emory and other health care providers from Anthem's in-network coverage is a material fact and leaves Plaintiffs and Class Members without an adequate network of physicians and hospitals to receive care.

9. During the Open Enrollment Period, Anthem used uniform misrepresentations on its website as well as in its health insurance application and contract provided to Plaintiffs. Anthem tells prospective policyholders to use the

provider finder tool on its website, www.anthem.com as well as the government's website www.Healthcare.gov, to determine which physicians and providers are in-network for Anthem's health insurance plans. Anthem's physician finder tool which it's also provided to the United States Department of Human Health Services for use on the Healthcare.gov website has many inaccuracies and many of the providers listed do not accept Anthem's Pathway health plan. In addition, as part of the application process, Plaintiffs and others similarly situated were required by Anthem's uniform intake process to select primary care physicians, which included, WellStar, Emory and other doctors. Anthem then issued health insurance cards to Plaintiffs identifying their primary care physicians by name, all the while knowing that Anthem did not intend to include them as in-network providers.

10. After Plaintiffs paid health insurance premiums to Anthem, the Open Enrollment Period closed, and Plaintiffs were locked in to pay Anthem premiums until the next open enrollment period in November 2019, Plaintiffs and Class members discovered that their physicians are not covered by their Pathway health insurance plan. Plaintiffs are now expected to continue paying Anthem's premiums for a health insurance product that Plaintiffs would not have purchased had they known the truth, and if Plaintiffs want to continue using their existing WellStar,

Emory or other doctors, they will have to pay the full price for medical treatment, as if they did not have any health insurance at all.

11. Plaintiffs and Class Members have longstanding medical relationships with their doctors, including WellStar, Emory and other specialists, who treat them for long-term, chronic, serious medical problems such as cancer and heart conditions. Furthermore, WellStar and Emory are among the largest health care systems in Georgia, and WellStar is by far the most prominent health care system in northwest metro-Atlanta. According to its website:

> WellStar Health System is a non-profit system founded in 1993 providing comprehensive care in Metro Atlanta, Georgia, United States.
>
> At WellStar Health System, our momentum is sustained by the compassionate care delivered by the more than 20,000 team members at our 11 hospitals, more than 250 medical office locations, and our multiple outpatient facilities. And in 2017, our impact in the communities we serve was truly extraordinary.
>
> https://www.wellstar.org/community/documents/wellstar-community-benefits-report.pdf

As a result, Anthem's deceptive business practices of misrepresenting that WellStar, Emory and other health care providers would be in-network providers caused Plaintiffs to enroll with Anthem.

12. Anthem knew at the time that open enrollment began in November 2018 that WellStar, Emory and other health care providers would not be an in-network providers, as evidenced, for example, by the fact that WellStar recently

disclosed that Anthem terminated WellStar as an in-network provider in August 2018 and informed WellStar that it would not be an available in-network provider after February 4, 2019. Despite this fact, during the Open Enrollment Period, Anthem knowingly continued to represent to consumers the opposite.

13. Based on the allegations above and below, Plaintiffs and the putative Class Members are seeking to certify a Georgia class to hold Anthem responsible for the damage caused to them by Anthem's deceptive conduct as well as the breach of contract described above.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), the amount in controversy exceeds $5 million exclusive of interest and costs, there are more than 100 putative class members[3], and some of the Defendants have a different citizenship from Plaintiffs.

[3] Plaintiffs have a good faith basis to allege damages in excess of $5 million and that thousands of consumers in the State of Georgia have been damaged by Anthem's deceptive scheme. For example, in January 2018, multiple news outlets in the metro Atlanta market reported that thousands of consumers in northwest metro Atlanta were damaged by Anthem not including WellStar as an in-network provider. *See* Atlanta Journal Constitution article dated Jan. 19, 2019, entitled *Blow for ACA patients: Anthem/Blue Cross individuals lose Wellstar*, ("Thousands of Georgia Obamacare customers who just signed up for 2019 coverage with the state's biggest health insurance company are getting a surprise"), https://www.ajc.com/news/state--regional-govt--politics/blow-for-aca-patients-

15. This Court has personal jurisdiction over Anthem because the defendant companies regularly conduct business in Georgia and have sufficient minimum contacts with Georgia. Anthem also intentionally availed itself of this jurisdiction by marketing and selling health insurance products and services and by accepting and processing payments for those products and services within Georgia.

16. Venue is proper within this Court pursuant to 28 U.S.C. § 1391(b) because Defendant Blue Cross and Blue Shield of Georgia, Inc.'s principal place of business is in this District and a substantial part of the events, acts, and omissions giving rise to Plaintiffs' and Class Members' claims occurred in this District.

PARTIES

17. Plaintiff Frances Kirby is a resident of Georgia.

18. Plaintiff Audrey Logan is a resident of Georgia.

19. Plaintiff Ashley Waldman is a resident of Georgia.

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anthem-blue-cross-individuals-lose-wellstar/zvRZOKGmiYyVGo8S7YwrIL/. *See also* Marietta Daily Journal article dated Jan. 29, 2019, entitled *With five days left to negotiate, patients 'frustrated' as WellStar, Anthem near end of contract* ("This coming Monday, the day after the Super Bowl is played in Atlanta, thousands of Georgians who signed up for insurance exchange or individual coverage from Anthem will face much higher costs for using WellStar hospitals and physicians. Those providers will be out of network Feb. 4"), https://www.mdjonline.com/news/with-five-days-left-to-negotiate-patients-frustrated-as-wellstar/article_638faef6-23ef-11e9-8df5-0763a08b1fc0.html.

20. Plaintiff John David Marks is a resident of Georgia.

21. Plaintiff Wanda Silvan is a resident of Georgia.

22. Plaintiff Tonya Beach is a resident of Georgia.

23. Plaintiff David Frohman is a resident of Georgia.

24. Defendant Anthem, Inc. is an Indiana corporation with its principal place of business located at 120 Monument Circle, Indianapolis, Indiana 42604.

25. Defendant Blue Cross and Blue Shield of Georgia, Inc. is a Georgia corporation with its principal place of business located at 120 Monument Circle, Indianapolis, Indiana 42604.

26. Defendant Anthem Insurance Companies, Inc. is an Indiana corporation with its principal place of business located at 120 Monument Circle, Indianapolis, Indiana 42604.

27. At all times material, Defendants, individually and in concert with each other, operated, conducted, engaged in or carried on a business or business venture in Georgia. Defendants, individually and in concert with each other, committed tortious acts within Georgia. At or about the time of the injury to Plaintiffs and Class Members, Defendants, individually and in concert with each other, engaged in solicitation or service activities within the state of Georgia that caused injury to Plaintiffs. The injury occurred within Georgia and arose out of acts or omissions by Defendants inside and outside of Georgia. Furthermore, this

Court has personal jurisdiction over Defendants because one or more of them contracted to insure Plaintiffs within Georgia. Finally, Defendants engaged in substantial and not isolated activity within Georgia and could reasonably anticipated being haled into court in Georgia.

STATEMENT OF FACTS

A. Anthem is the largest health insurance provider in the State of Georgia.

28. Anthem, Inc. is a publicly traded company and according to its most recent Form 10-K, the company touts:

> We are one of the largest health benefits companies in the United States in terms of medical membership, serving 40.2 million medical members through our affiliated health plans as of December 31, 2017. […] In a majority of these service areas, we do business as Anthem Blue Cross, Anthem Blue Cross and Blue Shield, Blue Cross and Blue Shield of Georgia and Empire Blue Cross and Blue Shield or Empire Blue Cross. (emphasis added).
> …
>
> Overall, we seek to establish pricing and product designs to provide value for our customers while achieving an appropriate level of profitability for each of our customer categories balanced with the competitive objective to grow market share. […] We market our products through direct marketing activities and an extensive network of independents agents, brokers and retail partnerships for Individual and Medicare customers, and for certain local group customers with a smaller employee base. See Form 10-K, Anthem, Inc. (Dec. 2017).

29. Anthem holds itself out to independent agents, brokers and to its retail partnership partners as the largest and oldest health benefits provider in Georgia and claims that almost one-third of Georgia's population carries one of Anthem's

cards. Below is a chart showing how prevalent Anthem's Pathway HMO is in the State:

County	Only Provider	Plan Type
Morgan	Yes	Pathway HMO
Oglethorpe	Yes	Pathway HMO
Bartow	No	Pathway HMO
Cherokee	No	Guided Access HMO
Cobb	No	Guided Access HMO
Coweta	No	Pathway HMO
DeKalb	No	Guided Access HMO
Douglas	No	Guided Access HMO
Fayette	No	Guided Access HMO
Forsyth	No	Guided Access HMO
Fulton	No	Guided Access HMO
Gwinnett	No	Guided Access HMO
Henry	No	Guided Access
Hall	No	Pathway HMO
Hart	No	Pathway HMO
Lumpkin	No	Pathway HMO
Rabun	No	Pathway HMO
Stephens	No	Pathway HMO
Towns	No	Pathway HMO
Union	No	Pathway HMO
White	No	Pathway HMO
Atkinson	Yes	Pathway HMO
Johnson	Yes	Pathway HMO
Laurens	Yes	Pathway HMO
Crawford	Yes	Pathway HMO
Chattooga	No	Pathway HMO

Jasper	Yes	HMO Pathway HMO	Floyd	No	Pathway HMO
Lamar	No	Pathway HMO	Gilmer	No	Pathway HMO
Pike	No	Pathway HMO	Pickens	No	Pathway HMO
Carroll	Yes	Pathway HMO	Polk	No	Pathway HMO
Haralson	Yes	Pathway HMO	Berrien	Yes	Pathway HMO
Heard	Yes	Pathway HMO	Brooks	Yes	Pathway HMO
Burke	Yes	Pathway HMO	Clinch	Yes	Pathway HMO
Columbia	Yes	Pathway HMO	Colquitt	Yes	Pathway HMO
Emanuel	Yes	Pathway HMO	Cook	Yes	Pathway HMO
Glascock	Yes	Pathway HMO	Decatur	Yes	Pathway HMO
Jefferson	Yes	Pathway HMO	Early	Yes	Pathway HMO
Jenkins	Yes	Pathway HMO	Echols	Yes	Pathway HMO
Lincoln	Yes	Pathway HMO	Grady	Yes	Pathway HMO
McDuffie	Yes	Pathway HMO	Lanier	Yes	Pathway HMO
Richmond	Yes	Guided Access HMO	Lowndes	Yes	Pathway HMO
Taliaferro	Yes	Pathway HMO	Seminole	Yes	Pathway HMO
Warren	Yes	Pathway HMO	Thomas	Yes	Pathway HMO
Wilkes	Yes	Pathway HMO	Tift	Yes	Pathway HMO
Charlton	Yes	Pathway HMO	Turner	Yes	Pathway HMO

Ware	Yes	Pathway HMO	Baldwin	Yes	Pathway HMO
Upson	Yes	Pathway HMO	Hancock	Yes	Pathway HMO
Fannin	No	Pathway HMO	Washington	Yes	Pathway HMO
Banks	No	Pathway HMO	Wilkinson	Yes	Pathway HMO
Dawson	No	Pathway HMO			
Franklin	No	Pathway HMO			
Habersham	No	Pathway HMO			

30. As shown above, approximately forty-four (44) counties, many of them rural counties, rely solely on Anthem's Pathway HMO to provide health insurance coverage to its residents. It logically follows that the excluding WellStar and Emory, the two largest health systems in Georgia and other health care providers, is a material fact to each Plaintiff and all Class Members.

B. In 2017, Anthem left the individual and family health insurance marketplace in metro-Atlanta.

31. According to news reports in August of 2017, Anthem pulled out of the metro-Atlanta individual health insurance market citing federal uncertainty about the future of the Affordable Care Act. After intense negotiations with state regulators, Anthem continued to provide service in South Georgia counties where there was no other health insurance provider. *See* Atlanta Journal Constitution, *Blue Cross pulls back on Georgia coverage*, Aug. 7, 2017. The article goes on to

illustrate the frustration that Anthem's retreat from the metro-Atlanta market in 2017 caused residents of northwest metro-Atlanta. For example, Marc Morton, a Cobb County resident whose wife and daughter have pre-existing conditions and got their insurance at the time from Anthem on the exchange, was quoted:

> My wife was in a panic, he said. I looked at it and I thought, well this is just something that has to be overcome somehow. *Id*.

32. As a result of Anthem's departure from the northwest metro-Atlanta market in 2018, residents of the area who purchased individual health insurance policies had to switch during the 2018 Open Enrollment Period (November 1 - December 15, 2018) from Anthem to either Kaiser Permanente or Ambetter.

33. Both Kaiser and Ambetter had a much smaller network of physicians and medical facilities statewide than Anthem. For example, Ambetter, a health insurance company that previously only insured Medicaid patients, expanded into the individual coverage market in 2018, and while WellStar was a covered service provider, patients who may have been in need of specialized care, such as those with severe spinal injuries, were precluded from being able to go to nationally renowned health care facilities, such as The Shepherd Center in Atlanta. Anthem, on the other hand, provided coverage for treatment facilities such as The Shepherd Center.

34. It is therefore understandable that when Anthem announced that it was reentering the metro-Atlanta health care market during the 2019 Open Enrollment

Period, patients in need of individual health insurance looked at Anthem, with its more expansive network, as a preferred choice to the alternatives – i.e., Ambetter and Kaiser.

C. Anthem reintroduced itself as a health insurance provider to metro-Atlanta during the 2019 Open Enrollment Period.

35. Prior to the 2019 Open Enrollment Period beginning in November 2018, Anthem made the business decision to renter the metro-Atlanta health insurance market. As explained in the January 2, 2019 AJC article entitled *Sometimes, Georgia health care costs are a simple matter of location*, insurance companies such as Anthem reentered the market by narrowing their networks, striking better deals but with fewer hospitals and doctors.[4] The article states: "Consumers may wind up paying more money, having fewer choices or sometimes both. […] Experts study all those powerful forces, and they don't know how the consumer can get out of the middle." The article goes on the state:

> In 2017, Blue Cross Blue Shield of Georgia made a dramatic decision to pull out of metro-Atlanta. In 2018, it decided to come back, but not all the way: it returned to the entire metro region except for Clayton and Rockdale. It also stayed out of dozens of rural Georgia counties it initially proposed to enter after seeing competitors' proposals to do business there. *Id.*

36. Upon information and belief, Anthem engaged in the same type of sharp business practices described above in its dealings with WellStar to negotiate

[4] https://www.ajc.com/news/state--regional-govt--politics/sometimes-georgia-health-care-costs-are-simple-matter-location/y3SeqD68Kf9TewVE1IpbpL/

including WellStar as an Anthem in-network provider in its Pathway health plan. Presumably, after initially deciding to enter the metro-Atlanta market, after seeing competitors' proposals to do business with WellStar, Anthem terminated negotiations with WellStar and made the business decision that it was not going to include WellStar as an in-network provider during the pertinent coverage in 2019. After the Open Enrollment Period closed, WellStar disclosed that this occurred in a document that it published on its website, entitled *Update on Anthem/Blue Cross Blue Shield's affordable health care exchange plan*, which stated in pertinent part:

> In August 2018, Anthem/Blue Cross Blue Shield notified us that they were terminating WellStar as a participating provider in their Pathway product available through the Affordable Health Care Exchange. We immediately disputed this action, and are pursuing all contractual rights we have to resolve this issue. But it appears unlikely that WellStar will be participating past Feb. 4, 2019.
>
> We understand how difficult this is for patients who chose WellStar hospitals and physicians.
>
> And while WellStar normally notifies affected patients about a cancelled contract to permit them to make informed decisions about their healthcare needs, we were not able to notify Anthem/Blue Cross Blue Shield members of this change, as we do not have a listing of individuals who signed up for its Anthem plan. That is because Anthem/Blue Cross Blue Shield pulled out of the ACA health insurance exchange in metro Atlanta at the end of 2017. So WellStar had no metro Atlanta Pathway patients in 2018.
>
> See attached Exhibit B.

37. Despite the fact that Anthem informed WellStar in August 2018 that it would not be including WellStar as an in-network provider for its individual health

plans during the 2019 coverage period, Anthem never informed consumers of this fact and engaged in a deceptive marketing scheme to continue to list WellStar providers as in-network during the open enrollment period.

D. Anthem's scheme to falsely inflate the size of its in-network providers is not limited to WellStar, but also includes Emory Healthcare and other physician groups.

38. Anthem's scheme to mislead and fraudulently induce enrollees to pay premiums to use its provider network is not limited to WellStar, but also includes Emory Healthcare and other physician groups.

39. For example, Plaintiff Tonya Beach is a resident of Atlanta and in or around early December 2018, she began researching whether to stay with her current provider, Kaiser Permanente, or change to Anthem. Ms. Beach called Anthem and spoke to a representative who recommended that she enroll in Anthem's Bronze Pathway health plan. On or about the same date, the representative emailed her a list of providers, many of whom were Emory primary care physicians and OBGYN doctors. Because Ms. Beach had previously used Emory physicians, she enrolled in Anthem's Bronze Pathway health plan.

40. In January 2019, Ms. Beach began calling the Emory physicians on the list that Anthem provided her and she learned from those doctors offices that they did not accept her Anthem Pathway health plan.

41. Based upon investigation by Plaintiffs' counsel, Emory physicians and hospitals did not accept Anthem Pathways the prior year either and yet Anthem falsely listed Emory physicians and hospitals as being in-network on its website and on the Healthcare.gov website during the 2019 Open Enrollment Period, despite knowing that they were not in-network.

42. In addition, Plaintiff David Frohman began researching health insurance plans during the 2019 Open Enrollment Period. Mr. Frohman is in need of spinal surgery and he visited the Healthcare.gov website, which stated that Mr. Frohman's long-time spinal surgeon, Dr. Max Steuer and Polaris Spine and Neurosurgery were in-network under Anthem's Pathway health plan. During the Open Enrollment Period, Mr. Frohman also contacted and spoke with an Anthem representative to confirm this fact prior to enrolling in the Anthem Pathway health plan.

43. Relying on this information, Mr. Frohman enrolled in Anthem's Pathway health plan only to subsequently learn after the Open Enrollment Period closed that Dr. Steuer and Polaris have not accepted Anthem's Pathway health plan. Mr. Frohman was also told by Polaris that the medical group has previously complained to Anthem to take their names off the Anthem website.

E. Even though Anthem knew that WellStar, Emory and other health care providers were not or would not be in-network providers for its Pathway health insurance plan, Anthem continued to use its marketing materials disseminated to its agents as well as on its website to falsely represent that WellStar, Emory and other physicians and facilities were in-network providers for Anthem's Pathway health insurance plan.

44. As alleged above, Anthem states in its most recent Form 10-K that "we market our products through direct marketing activities [including on its website] and an extensive network of independents agents, brokers and retail partnerships for Individual and Medicare customers. See Anthem's Form 10-K, Dec. 2017.

45. Upon information and belief, prior to and during the open enrollment period beginning on November 1, 2018, Anthem disseminated uniform deceptive marketing materials to its independent agents that falsely represented that WellStar, Emory and other health care providers were going to be in-network health care providers in its Pathway health insurance plan.

46. Upon information and belief, prior to the end of the open enrollment period, which closed on December 15, 2018, Anthem did not inform its agent network that it had terminated WellStar and did not have relationships with Emory and other health care providers as in-network providers, and allowed their independent agents to provide the misinformation to consumers in order to deceive

them into purchasing the Pathway health insurance plan based on false information.

48. In addition, for Plaintiffs and Class Members who enrolled in Anthem's Pathway plan through Anthem's website, Anthem furthered its scheme by requiring new policyholders to select a primary care physician. Plaintiffs and Class Members therefore allowed by Anthem to select WellStar, Emory and other physicians as their primary care physicians, not telling them that those physicians were not in-network providers or would not be beyond February 4, 2019. Anthem went so far as to list those WellStar, Emory and other primary care physicians by name on some or all the Plaintiffs' health insurance cards, which not only furthered the deceptive marketing scheme, but also incorporated those out of network primary care physicians as part of the contract with Anthem.

F. Anthem violated applicable Federal regulations.

49. The Affordable Care Act and the federal regulations governing the health insurance exchange market provide for regulations designed to protect consumers from misleading marketing, including provisions that promote consumer transparency, adequate provider networks that are designed to protect consumers and ensure that all services within a network have sufficient providers in number and types and that provider networks provide necessary health treatments to patients without unreasonable delay.

50. Pursuant to the Affordable Care Act and its underlying regulations, Anthem falls within the definition of a "QHP issuer." As such, Anthem is required to comply with the statutory requirements of the Affordable Care Act, as well as the underlying federal regulations, including but not limited to 45 CFR § 156.230 (Network Adequacy Standards).

51. Subsection (a)(2) of 45 CRR § 156.230 states in pertinent part:

> (a) *General requirement.* Each QHP issuer that uses a provider network must ensure that the provider network consisting of in-network providers, as available to all enrollees, meets the following standards—
>
> […]
>
> (2) Maintains a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that all services will be accessible without unreasonable delay;
>
> […]
>
> (b) *Access to provider directory.* (1) A QHP issuer must make its provider directory for a QHP available to the Exchange for publication online in accordance with guidance from HHS and to potential enrollees in hard copy upon request. In the provider directory, a QHP issuer must identify providers that are not accepting new patients.

52. As alleged above and below, Anthem violated the above regulation because the true size of its network is not sufficient in number and type of providers to assure that all services will be accessible without unreasonable delay.

53. Subsection (b)(2) of 45 CFR § 156.230 states in pertinent part:

> (2) For plan years beginning on or after January 1, 2016, a QHP issuer must publish an up-to-date, accurate, and complete provider directory, including information on which providers are accepting new patients, the provider's location, contact information, specialty, medical group, and any institutional affiliations, in a manner that is easily accessible to plan enrollees, prospective enrollees, the State, the Exchange, HHS and OPM. A provider directory is easily accessible when— (emphasis added)
>
> […]
>
> (ii) If a health plan issuer maintains multiple provider networks, the general public is able to easily discern which providers participate in which plans and which provider networks.

54. Anthem violated 45 CFR § 156.230 (b)(2) because it failed to publish an up-to-date, accurate and complete provider directory, including information on which providers are accepting new patients in manner that is easily accessible to plan enrollees, i.e., Plaintiffs and Class Members, prospective enrollees, the State of Georgia, the Exchange, HHS and OPM. In addition, Anthem offered multiple provider networks but did not provide a directory was easy to discern or accessible to consumers.

55. Subsection (c) of 45 CFR § 156.230 states in pertinent part:

> (c) *Increasing consumer transparency.* A QHP issuer in a Federally-facilitated Exchange must make available the information described in paragraph (b) of this section on its Web site in an HHS specified format and also submit this information to HHS, in a format and manner and at times determined by HHS.

56. Anthem violated subsection (c) of 45 CFR § 156.230 because it failed to publish on its Anthem.com website an up-to-date, accurate and complete provider directory, including information on which providers are accepting new patients in manner that is easily accessible to plan enrollees, i.e., Plaintiffs and Class Members, prospective enrollees.

57. Subsection (d) of 45 CFR § 156.230 states in pertinent part:

> (d) *Provider transitions.* A QHP issuer in a Federally-facilitated Exchange must—
>
> (1) Make a good faith effort to provide written notice of discontinuation of a provider 30 days prior to the effective date of the change or otherwise as soon as practicable, to enrollees who are patients seen on a regular basis by the provider or who receive primary care from the provider whose contract is being discontinued, irrespective of whether the contract is being discontinued due to a termination for cause or without cause, or due to a non-renewal[.]

58. Anthem violated 45 CFR § 156.230(d)(1) because it failed to make a good faith effort to provide written notice of discontinuation of a provider 30 days prior to the effective date of the change or otherwise as soon as practicable, to enrollees who are patients who are seen on a regular basis by the provider or who receive primary care from the provider whose contract is being discontinued, irrespective of whether the contract is being discontinued due to a termination for cause or without cause, or due to a non-renewal.

F. Anthem has engaged in similar deceptive conduct in other parts of the United States.

59. Approximately four years ago, the State of California conducted an audit of Anthem/Blue Cross Blue Shield's networks and, according to an article published by Consumer Watchdog, the audits confirmed that Blue Shield and Blue Cross in California dramatically misrepresented the number of doctors available to consumers under new Obama health care plans.[5] According to the article, the audits found that at least 25% of physicians listed by Anthem/Blue Cross and Blue Shield of California were not taking patients enrolled in Obamacare plans or are no longer at the location listed by the companies. *Id.* A victim of this scheme is quoted describing their experience as follows:

> When my wife and I enrolled in our new Blue Shield health plan it was important to us that our long-time physicians were included in our plan's network. […] Before enrolling we confirmed through Blue Shield's website that our doctors were 'in-network' and we even called our doctors to double-check. It was only after we visited our doctors for routine check-ups that the bills started rolling in informing us for the first time that our doctors were in fact out of network and Blue Shield was only covering a fraction of the cost. Adding insult to injury, when we called Blue Shield to complain we experienced hold times of two to four hours each time we called. I feel Blue Shield is trying to get away with a blatant 'bait and switch' and I won't stand for it! *Id.*

[5] https://www.consumerwatchdog.org/newsrelease/state-audits-confirm-blue-shield-and-blue-cross-misled-consumers-about-doctors-available

60. Upon and information and belief, the class action lawsuits filed in California based on a similar deceptive scheme as here settled for approximately $23 million, and Anthem agreed to make business changes going forward to prevent future problems in California.

G. Anthem breached its contract with Plaintiffs and Class Members.

61. Anthem's contract with each of the Plaintiffs and Class Members is captioned as *Individual Member Contract*, which is contained within a booklet captioned *An owner's manual for your health benefits [-] What's covered, how it works, how much it costs*, which was provided to Plaintiffs and Class Members (the "Member Contract").

62. The Member Contract provides in pertinent part:

> **How to Find a Provider in the Network**
>
> […]
>
> You do not need a Referral to see a Specialty Care Physician. You can visit any Network Specialist including a behavioral health Provider without a referral from a Primary Care Physician.
>
> […]
>
> **Entire Contract and Changes**
>
> Your Application for Coverage, this document, any later applications, and any future attachments, additions, deletions, or other amendments will be the entire Contract. No change in this Contract is valid unless it is signed by the President of Anthem. No agent or employee of Anthem may change this Contract or declare any part of it invalid.

> Anthem has the right to amend this Contract at any time by giving You written notice of the amendment at least ninety days before the amendment takes effect. You must agree to the change in writing. However, this requirement of notice shall not apply to amendments which provide coverage mandated by the laws of the United States.

Member Contract, p. 92 (emphasis added).

63. In violation of its Member Contract, Anthem sent letters to Plaintiffs and Class Members dated February 21, 2019 (and perhaps others dates), which stated in pertinent part:

> **[Name of Member], need to see a specialist?**
>
> You'll have to get a referral.
>
> Your 2019 Member Contract incorrectly said you don't need a referral from your primary care doctor to see a specialist. Your plan **does** require a referral to see a specialist.
>
> That was our mistake, and we/re sorry for any confusion. The good news is that nothing changed with your benefits and you don't need to take any action. We're just making sure you have the right information.

("Anthem Letter") (bold in original).

64. The Anthem Letter was not signed by the President of Anthem.

65. Each of the Plaintiffs and, upon information and belief, each of the Class Members, received letter that was substantially the same as the Anthem Letter attached as Exhibit A.

66. The Anthem Letter was not approved in writing by any of the Plaintiffs or Class Members.

67. Anthem breached the Member Contract, and, in particular, Anthem breached the above-quoted provisions of the Anthem Contract, by sending the Anthem Letter to the Plaintiffs and Class Members.

68. The Anthem Letter itself evidences a breach of the Member Contract by Anthem.

69. In addition to constituting a breach of the Member Contract, the Anthem Letter is false and misleading in stating: "The good news is that nothing changed with your benefits."

70. Anthem knew that the above-quoted statement was false when it made the statement, and Anthem intended to mislead the Plaintiffs and Class Members and induce forbearance by making the false statement.

H. As a result of its scheme and breach of contract, Plaintiffs and Class Members are entitled to a special enrollment period.

71. The Affordable Care Act and underlying regulations provide for special enrollment periods to be created outside the normal Open Enrollment Period from November 1 to December 15 each year when certain triggering events enumerated in the regulations are present. As explained below, Plaintiffs and Class Members have been irreparably harmed by Anthem's marketing scheme and breach of contract and as a result, Plaintiffs and Class Members are seeking among other things, injunctive relief from the Court requiring that a special enrollment period be created pursuant to the following federal regulations.

72. 45 CFR §155.240 provides for a special enrollment period when certain enumerated triggering events occur, as follows:

> (a) *General requirements*—(1) *General parameters.* The Exchange must provide special enrollment periods consistent with this section, during which qualified individuals may enroll in QHPs and enrollees may change QHPs.
>
> (d) *Triggering events.* Subject to paragraphs (a)(3) through (5) of this section, as applicable, the Exchange must allow a qualified individual or enrollee, and, when specified below, his or her dependent, to enroll in or change from one QHP to another if one of the triggering events occur:
>
> […]
>
> (4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of the Exchange or HHS, its instrumentalities, or a non-Exchange entity providing enrollment assistance or conducting enrollment activities. For purposes of this provision, misconduct includes the failure to comply with applicable standards under this part, part 156 of this subchapter, or other applicable Federal or State laws as determined by the Exchange.

73. Plaintiffs and Class Members are entitled to the creation of a special enrollment period pursuant to 45 CFR § 155.420(d)(4), because Plaintiffs and Class Members in Anthem's Pathway health plan is unintentional, inadvertent or erroneous and is a result of an error, misrepresentation, misconduct, or inaction of an officer , employee or agent of the exchange or HHS, its instrumentalities, i.e., the Healthcare.gov website.

74. Subsection (d)(5) of 45 CFR § 155.420 states in pertinent part:

> (5) The enrollee or, his or her dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

75. Plaintiffs and Class Members are entitled to a special enrollment period pursuant to 45 CFR § 155.420(d)(5) because Plaintiffs and Class Members adequately demonstrated that Anthem substantially violated a material provision of its contract in relation to Plaintiffs and Class Members.

76. Subsection (d)(9) of 45 CFR § 155.420 states in pertinent part:

> (9) The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide;

77. Plaintiffs and Class Members are entitled to a special enrollment period pursuant to 45 CFR § 155.420 (d)(9) because the allegations above and below demonstrate that Plaintiffs and Class Members meet exceptional circumstances.

78. Subsection (d)(12) of 45 CFR § 155.420 states in pertinent part:

> (12) The qualified individual or enrollee, or his or her dependent, adequately demonstrates to the Exchange that a material error related to plan benefits, service area, or premium influenced the qualified individual's or enrollee's decision to purchase a QHP through the Exchange….

79. Plaintiffs and Class Members are entitled to a special enrollment period pursuant to 45 CFR § 155.420 (d)(12) because Plaintiffs' and Class Members' enrollment in Anthem's Pathway health plans were as a result of a material error related to plan benefits, service area, or premium influenced the Plaintiffs' and Class Members' decision to purchase Anthem's Pathway health plans.

PLAINTIFFS' EXPERIENCE

A. Plaintiff Audrey Logan was fraudulently induced into purchasing an Anthem Pathway health insurance plan.

80. Plaintiff Audrey Logan is 27 years old, married to her husband Kenneth Matthew Logan and the couple has a 10-month-old daughter named Peyton.

81. Audrey Logan suffers from post-partum cardiomyopathy and CPVT, a form of tachycardia. She was diagnosed with CPVT in May 2008 and cardiomyopathy in July 2018 after the birth of her daughter. Ms. Logan has been under the care of a cardiologist since May 2008. In 2013, when she aged out of her pediatric cardiologist's practice, Ms. Logan has been under the care of her current cardiologist, Dr. Cesar Egoavil, a WellStar cardiologist. Ms. Logan is also under the care of a cardiologist that specializes in heart failure, Dr. David Snipelisky, who is also a WellStar cardiologist.

82. In July 2018, Plaintiff Logan learned from her cardiologists that she will need a heart transplant should the medication she was on prove not to be effective. By the fall of 2018, it became clear that the medicine used to treat her heart failure disorder was not working and that a heart transplant was going to be necessary.

83. In and around November 2018, in preparation for and during the Affordable Care Act Open Enrollment Period, Plaintiff began researching health insurance plans. Ms. Logan researched available plans on healthcare.gov and anthem.com to see what plan best fit her critical medical needs.

84. At the time of the Open Enrollment Period, Plaintiff had group health insurance with Cigna through her husband's employer. However, even though covered her treatment for heart failure, the Cigna policy was expensive and as a result, Plaintiff researched whether a family plan through the Exchange would be a better fit.

85. Plaintiff reviewed the various health plans offered through the Exchange and believed that the Anthem Silver Pathways Guided Access HMO 2000 met her and her daughter's needs.

86. Based on the information provided to her on Healthcare.gov and Anthem's website, Plaintiff Logan enrolled in the Anthem Silver Pathway Guided Access HMO, which began on January 1, 2019 and ends on December 31, 2019.

87. In or around early February 2019, after the Open Enrollment Period was closed, Ms. Logan learned that WellStar was not an in-network provider under Plaintiff's Anthem Silver Pathway plan. She learned this important fact, while she was trying to get imaging tests performed by WellStar Imaging for her heart transplant surgery.

88. Ms. Logan subsequently learned from her cardiologist that her insurance would not cover her continued treatment, which will undoubtedly cause a lapse in her medical treatment and more importantly puts her life at risk.

89. In addition, in February 2019, Ms. Logan's cardiologist referred her to Emory Healthcare for the first appointment in connection with her anticipated heart transplant surgery. Emory Healthcare is the only health provider in the State of Georgia that performs heart transplants. During the scheduling of that appointment with Emory Healthcare, Plaintiff Logan learned that Emory did not accept her Pathway health insurance even though Anthem's website represents that Emory is in-network.

90. Ms. Logan is locked in with Anthem's Pathway X Guided Access HMO plan until the end of 2019. She is not allowed to switch mid-contract to another health insurance provider. Therefore, in order to maintain health insurance, she will have to remain with Anthem and continue to pay her monthly premiums

despite the fact that she will be unable to receive treatment from the providers Anthem misrepresented were in-network.

91. Needless to say, Ms. Logan would not have switched from Cigna to Anthem had Anthem not misrepresented that her health providers were in-network providers.

92. In addition to being fraudulently induced into enrolling with Anthem, Ms. Logan received a letter addressed to her from Anthem last week which is substantively identical to one attached as Ex. A. The letter memorializes that Anthem substantially violated several material provisions of its Contract with her, which breached her contract with Anthem and constitutes a triggering event for the creation of a special enrollment period pursuant to 45 CFR 155.420(d)(4)(5)(9) and (12).

B. Plaintiff Ashley Waldman was fraudulently induced into purchasing an Anthem Pathway health insurance plan.

93. Ashley Waldman is 28-years-old, married to her husband Nicholas Waldman and is currently seven months pregnant, expecting a girl in May 2019.

94. In and around November 2018, in preparation for and during the Affordable Care Act Open Enrollment Period, Ms. Waldman began researching health insurance plans. Ms. Waldman researched available plans on Healthcare.gov and anthem.com to see what plan best fit her family's needs. At the time of the Open Enrollment Period, Plaintiff had group health insurance with

Humana through her previous employer. Since she was no longer employed and her husband was/is self-employed, the Waldmans needed to purchase a family policy through the Exchange.

95. At the time of the Open Enrollment Period, Ms. Waldman was already receiving treatment from her OB/GYN, Dr. Kevin Windom. Dr. Windom has hospital privileges only at WellStar Kennestone Hospital. Ms. Waldman confirmed on the website(s) described above that Dr. Windom was listed an in-network physician.

96. Based on Healthcare.gov and Anthem's websites, Ms. Waldman enrolled her family in the Anthem Bronze Pathway Guided Access HMO, which began on January 1, 2019 and ends on December 31, 2019.

97. In or around early February 2019, after the Open Enrollment Period was closed, Ms. Waldman learned that while Dr. Windom is an in-network provider, WellStar Kennestone Hospital, the only hospital that Dr. Windom can use to deliver Plaintiff's child is not in-network. As a result, the costs associated with her delivery care at the hospital will not be covered by Plaintiff's Anthem Silver Pathway.

98. Because Ms. Waldman's OB/GYN only has hospital privileges with WellStar, she now must search for new medical specialist during the last trimester of her pregnancy and a change in her treating physician will undoubtedly cause a

lapse in her medical treatment while she conducts a search for in-network providers that she is comfortable with and who are taking new patients.

99. The number of OB/GYN specialists who are Anthem in-network providers are significantly less from the providers Anthem represented as in-network when Ms. Waldman was researching health insurance plans. In addition, the closest hospital that she has will have access to deliver her child is Northside-Atlanta, which is very far from her home. In contrast, WellStar's Kennestone Hospital is less than 10 miles from her home.

100. Ms. Waldman also believes that even after being seen by these new providers, like any new patient, she will endure medical testing and examinations, she has already undergone, in order that the new provider can get up to speed as to her medical conditions and formulate a treatment plan. This will cause unnecessary repetitive testing and additional delay in medical treatment.

101. Ms. Waldman will have to incur additional medical expenses as a result of the additional medical visits and testing she anticipates as a result of the switch to new providers.

102. Ms. Waldman is locked in with Anthem's Pathway X Guided Access HMO plan until the end of 2019. She is not allowed to switch mid-contract to another health insurance provider. Therefore, in order to maintain health insurance, she will have to remain with Anthem and continue to pay her monthly premiums

despite the fact that she will be unable to receive treatment from the providers Anthem misrepresented were in-network.

103. Ms. Waldman would not have purchased the Anthem plan had Anthem not misrepresented that WellStar was not going to be an in-network provider through the duration of her contract.

104. In addition, Ms. Waldman recently received a letter addressed to her from Anthem which is substantively identical to one attached as Ex. A. The letter memorializes that Anthem substantially violated several material provisions of its Contract with her, which breached her contract with Anthem and constitutes a triggering event for the creation of a special enrollment period pursuant to 45 CFR 155.420(d)(4)(5)(9) and (12).

C. Plaintiff Frances Kirby was fraudulently induced into purchasing an Anthem Pathway health insurance plan.

105. In and around November 2018, in preparation for and during the Affordable Care Act Open Enrollment Period, Frances Kirby began researching health insurance plans. She researched plans available in her area and learned that there were three companies, including Anthem, offering plans in Cobb County, Georgia. Ambetter, her health insurer for 2018, was also offering health insurance.

106. Ms. Kirby has had the same primary care physician, Dr. James Elsbree, a WellStar physician, for over twenty (20) years and sees him regularly for routine physicals and various health issues not requiring a specialist. In

addition, Ms. Kirby has several significant health issues which require nine (9) different specialists. The majority of these specialists are WellStar physicians. The primary factor in determining which health insurance plan Ms. Kirby would choose was whether her primary care physician and other specialists were in-network providers.

107. Prior to enrolling in any plan, Ms. Kirby visited Anthem's website and used the provider search tool to determine whether Dr. Elsbree and her other specialists were in-network. Identical to her 2018 coverage with Ambetter, Ms. Kirby's primary care and specialists were deemed in-network providers. Ms. Kirby then compared the overall general network of providers of Anthem with Ambetter and Anthem's representations made it appear as though the Anthem's network of providers was more expansive than Ambetter's.

108. Based upon Anthem's representations that her primary care physician and specialists were in-network and Anthem's representations that their in-network far surpassed Ambetter's in-network coverage, Ms. Kirby made the decision to switch from Ambetter to Anthem and enroll in Anthem's Gold Pathway X Guided Access HMO plan.

109. Ms. Kirby's Anthem plan does not provide coverage for out-of-network providers. However, Ms. Kirby was not concerned with this fact given her primary care provider and specialists were listed as in-network by Anthem.

110. As required by Anthem's application process, Ms. Kirby designated Dr. James Elsbree, a Wellstar Health Systems physician, as her primary care physician and Anthem approved this selection and placed Dr. Elsbree on her Anthem insurance card.

111. Ms. Kirby's Gold Pathway X Guided Access HMO plan began on January 1, 2019 and the contract ends on December 31, 2019.

112. On or about January 10, 2019, Ms. Kirby, while in Dr. Elsbree's office, was notified by Dr. Elsbree's staff that Anthem had terminated their relationship with WellStar and that Dr. Elsbree would not be considered an in-network provider as of February 4, 2019. It was at this point that Ms. Kirby also realized that if this information were true that the majority of her medical specialists would also not be considered in-network providers given that they too were WellStar providers.

113. Ms. Kirby had not received any notice from Anthem regarding their termination of WellStar and/or its providers as an in-network provider despite the fact that her primary care physician listed on her Anthem insurance card is a WellStar physician and many of the specialists that provide her with treatment are WellStar physicians as well.

114. Upon receiving the information from Dr. Elsbree's office, Ms. Kirby again used the provider search tool on Anthem's website and Dr. Elsbree was

listed as an in-network provider. She contacted Anthem with her confusion and frustration and was advised that Anthem's internal computer information differed from the information that Anthem provided consumers through its website and provider search tool.

115. While Anthem failed to adequately notify Ms. Kirby that Wellstar Health System would no longer be considered in-network, Ms. Kirby was able to confirm her fears through a press release from WellStar, attached as Exhibit 1, which explained that Anthem had terminated Wellstar Health System as a participating in-network provider for the Pathway product available through the Affordable Health Care Exchange.

116. Because Ms. Kirby's primary care physician and several of her specialists are WellStar providers, Ms. Kirby will now have to search for a new primary care physician and several new medical specialists. This will assuredly cause a lapse in Ms. Kirby's medical treatment while she conducts a search for in-network providers that she is comfortable with and who are taking new patients.

117. The number of specialists who are Anthem in-network providers are significantly less from the providers Anthem represented as in-network when Ms. Kirby was researching health insurance plans. In addition, the majority of specialists in Ms. Kirby's area are WellStar Health System physicians. This will

make finding a specialist in Ms. Kirby's area more difficult. Given Ms. Kirby's health, traveling will put an additional strain on her health.

118. Further, Ms. Kirby anticipates that once she selects new providers, she will experience a significant delay in being able to be seen by these providers given she is a new patient. In her experience, new patients may not be able to get in with a specialist for an initial visit for a couple of months or more. Further, obtaining Ms. Kirby's complete medical records from all of her providers, which include examinations over the years and numerous test and lab results, some going back twenty (20) years, may prove extraordinarily difficult and may take significant time especially since any new providers will not be Wellstar Health System providers who have easy electronic access to Wellstar records. All of this will cause an undue delay in medical treatment for Ms. Kirby and her various medical issues. Any delay in medical treatment for Ms. Kirby may significantly worsen her medical conditions and may require additional and likely serious medical treatment.

119. Ms. Kirby also believes that even after being seen by these new providers, like any new patient, she will likely endure medical testing and examinations that she has already undergone, so that the new provider can get up to speed as to her medical conditions and formulate a treatment plan. This will cause unnecessary repetitive testing and additional delay in medical treatment.

120. Ms. Kirby will also have to incur additional medical expenses as a result of the additional medical visits and testing she anticipates as a result of the switch to new providers.

121. Ms. Kirby has also had to endure hospitalizations for her medical conditions. WellStar is the only hospital in Cobb County, Georgia. With WellStar terminated as an in-network provider, Ms. Kirby will have to travel outside her area to another county should she require future hospitalizations.

122. Ms. Kirby is locked in with Anthem's Gold Pathway X Guided Access HMO plan until the end of 2019. She is not allowed to switch mid-contract to another health insurance provider. Therefore, in order to maintain health insurance, she will have to remain with Anthem and continue to pay her monthly premiums despite the fact that she will be unable to receive treatment from the providers Anthem misrepresented were in-network.

123. Ms. Kirby would not have switched from Ambetter to Anthem had Anthem not misrepresented that her health providers and the only hospital in her area were Anthem in-network providers.

124. In addition, Ms. Kirby recently received a letter addressed to her from Anthem which is substantively identical to one attached as Ex. A. The letter memorializes that Anthem substantially violated several material provisions of its Contract with her, which breached her contract with Anthem and constitutes a

triggering event for the creation of a special enrollment period pursuant to 45 CFR 155.420(d)(4)(5)(9) and (12).

D. Plaintiff John David Marks was fraudulently induced into purchasing an Anthem Pathway health insurance plan.

125. In and around November 2018, after receiving a renewal letter from his existing Ambetter health insurance provider, Plaintiff Marks began researching health insurance plans on the Affordable Care Act website, www.healthcare.gov. Plaintiff Marks researched plans available in his area and learned that there were three companies, including Anthem, offering health service plans in Cobb County, Georgia. Ambetter, his health insurer for 2018, was also offering health service plans.

126. Plaintiff Marks was diagnosed with prostate cancer in October 2016. Since that time, he has received medical treatment by WellStar specialists for his cancer. In addition, Mr. Marks has long term cardiac problems including having had a heart attack and being diagnosed with atrial fibrillation in 2004, and has been under cardiac care with WellStar specialists since then. A primary reason that Plaintiff chose to enroll with Anthem was that his specialists were in-network providers and the premiums advertised by Anthem were approximately $200 per month less expensive than his Ambetter policy.

127. Prior to enrolling in any plan, in November 2018, Mr. Marks visited Anthem's website and used the provider search tool to determine whether his

primary care physician and his specialists and hospitals were in-network. Mr. Marks confirmed on Anthem's website that his primary care physician and specialists were included as in-network providers.

128. Based upon Anthem's representations that his primary care physician and specialists were in-network, Mr. Marks made the decision to switch from Ambetter to Anthem and enroll in Anthem's Bronze Pathway X Guided Access HMO plan.

129. Mr. Marks' Anthem plan does not provide coverage for out-of-network providers. However, he was not concerned with this fact given his primary care provider and specialists were listed as in-network by Anthem.

130. Mr. Mark's Bronze Pathway X Guided Access HMO plan began on January 1, 2019 and the contract ends on December 31, 2019.

131. On February 5, 2019, Mr. Marks had a scheduled visit with his WellStar urologist in connection with monitoring his prostate cancer. During the last week of January 2019, however, Mr. Marks spoke with his urologist's office to confirm that they were in-network with Anthem. When he told them that he had just switched to Anthem Pathway, the office informed him that Anthem terminated their relationship with WellStar and that the urologist's office would not accept Anthem's insurance after February 4, 2019. As a result, Mr. Marks was forced to cancel his appointment. It was at this point that Mr. Marks also realized that if this

information were true that the majority of his medical specialists would also not be considered in-network providers given that they too were WellStar providers.

132. Because Mr. Marks specialists are WellStar providers, Mr. Marks will now have to search for new medical specialists. This will assuredly cause a lapse in Mr. Marks' medical treatment while he conducts a search for in-network providers that he is comfortable with and who are taking new patients.

133. The number of specialists who are Anthem in-network providers are significantly less from the providers Anthem represented as in-network when Mr. Marks was researching health insurance plans. In addition, the vast majority of specialists in Mr. Marks' area are WellStar physicians. In addition, Mr. Marks has determined that the closest hospital that he has access to is in mid-town Atlanta, over 25 miles from his home, which is extremely concerning given that he has heart problems and may require a closer hospital like WellStar's that is only five miles from his home.

134. Further, Mr. Marks anticipates that once he selects new providers, he will experience a significant delay in being able to be seen by these providers given he is a new patient. In his experience, new patients may not be able to get in with a specialist for an initial visit for a couple of months or more. This will cause an undue delay in medical treatment for Mr. Marks and his various medical issues.

135. Mr. Marks also believes that even after being seen by these new providers, like any new patient, he will likely endure medical testing and examinations, he has already undergone, in order that the new provider can get up to speed as to his medical conditions and formulate a treatment plan. This will cause unnecessary repetitive testing and additional delay in medical treatment.

136. Mr. Marks will also have to incur additional medical expenses as a result of the additional medical visits and testing he anticipates as a result of the switch to new providers.

137. Mr. Marks has also had to endure hospitalizations for his medical conditions. WellStar Health System is the only hospital in Cobb County, Georgia. With WellStar Health Systems terminated as an in-network provider, Mr. Marks will have to travel to mid-town Atlanta area should he require future hospitalizations.

138. Mr. Marks is locked in with Anthem's Bronze Pathway X Guided Access HMO plan until the end of 2019. He is not allowed to switch mid-contract to another health insurance provider. Therefore, in order to maintain health insurance, he will have to remain with Anthem and continue to pay his monthly premiums despite the fact that he will be unable to receive treatment from the providers Anthem misrepresented were in-network.

139. Mr. Marks would not have switched from Ambetter to Anthem had Anthem not misrepresented that his health providers and the only hospital in his area were Anthem in-network providers.

140. In addition, Mr. Marks recently received a letter addressed to her from Anthem which is substantively identical to one attached as Ex. A. The letter memorializes that Anthem substantially violated several material provisions of its Contract with her, which breached her contract with Anthem and constitutes a triggering event for the creation of a special enrollment period pursuant to 45 CFR 155.420(d)(4)(5)(9) and (12).

E. Plaintiff Wanda Silva was fraudulently induced into purchasing an Anthem Pathway health insurance plan.

141. In and around November 2018, in preparation for and during the Affordable Care Act Open Enrollment Period, Wanda Silva began researching individual health insurance plans and used a health insurance consultant to research and recommend the best health insurance plan to meet her needs. At the time of the Open Enrollment Period, Plaintiff Wanda Silva had health insurance through Ambetter but was interested in changing to Anthem because it purported to have a larger network of healthcare providers, specifically WellStar physicians and hospitals.

142. Plaintiff Silva has several health problems that require treatment from specialists. At the time of the Open Enrollment Period, Ms. Silva had and

continues to have long standing patient relationships with her primary care physician and multiple WellStar specialists including but not limited to her OB/GYN and urologist. A primary reason that Plaintiff chose to enroll with Anthem was that her primary care doctor and specialists were in-network WellStar providers.

143. During the Open Enrollment Period, Ms. Silva's health insurance consultant provided Plaintiff with written documentation from Anthem representing that Ms. Silva's WellStar physicians were in-network.

144. Based on the materials that were provided to her as well as other similar information on Anthem's website and her conversations with the health insurance consultant, Plaintiff Silva enrolled in the Anthem Silver Pathway Guided Access HMO 3000 plan., which began on January 1, 2019 and ends on December 31, 2019.

145. In or around February 2019, after the Open Enrollment Period was closed, Ms. Silva learned that WellStar was not an in-network provider under Plaintiff's Anthem Silver Pathway plan.

146. Because Ms. Silva's specialists are WellStar providers, she will now have to search for new medical specialists, which will assuredly cause a lapse in her medical treatment while she conducts a search for in-network providers that she is comfortable with and who are taking new patients.

147 The number of specialists who are Anthem in-network providers are significantly less from the providers Anthem represented as in-network when Ms. Silva was researching health insurance plans. In addition, the closest hospital that she has access to is very far from her home, which is extremely concerning given that she has health problems that may require a closer hospital like WellStar's that is less than five miles from her home.

148. Further, Ms. Silva anticipates that once she selects new providers, she will experience a significant delay in being able to be seen by these providers given she is a new patient. Also, because of Anthem's scheme, Plaintiff will be forced to spend time away from running her business causing additional damage.

149. Ms. Silva also believes that even after being seen by these new providers, like any new patient, she will likely endure medical testing and examinations that she has already undergone, in order that the new provider can get up to speed as to her medical conditions and formulate a treatment plan. This will cause unnecessary repetitive testing and additional delay in medical treatment.

150. Ms. Silva will also have to incur additional medical expenses as a result of the additional medical visits and testing she anticipates as a result of the switch to new providers.

151. Ms. Silva is locked in with Anthem's Silver Pathway X Guided Access HMO plan until the end of 2019. She is not allowed to switch mid-contract

to another health insurance provider. Therefore, in order to maintain health insurance, she will have to remain with Anthem and continue to pay her monthly premiums despite the fact that she will be unable to receive treatment from the providers Anthem misrepresented were in-network.

152. Ms. Silva would not have switched from Ambetter to Anthem had Anthem not misrepresented that her health providers and the only hospital in her area were Anthem in-network providers.

153. In addition to being fraudulently induced into enrolling with Anthem, Ms. Silva received a letter addressed to her from Anthem which is substantively identical to one attached as Ex. A. The letter memorializes that Anthem substantially violated several material provisions of its Contract with her, which breached her contract with Anthem and constitutes a triggering event for the creation of a special enrollment period pursuant to 45 CFR 155.420(d)(4)(5)(9) and (12).

F. Plaintiff Tonya Beach was fraudulently induced into purchasing an Anthem Pathway health insurance plan.

154. In and around early December 2018, in preparation for and during the Affordable Care Act Open Enrollment Period, Tonya Beach began researching health insurance plans. At the time of the Open Enrollment Period, Plaintiff Tonya Beach had health insurance through Kaiser Permanente but was interested in

changing to Anthem because it purported to include physicians and hospitals in the Emory Healthcare system.

155. On or about December 11, 2018, Ms. Beach called Anthem and spoke to a representative to find out which Pathway plan was best for her, e.g. Gold, Silver or Bronze. During that call, the Anthem representative convinced Ms. Beach that the Pathway X Bronze plan was the best fit for her needs. That same day, the Anthem representative emailed Ms. Beach two lists consisting of primary care physicians and Obstetrician-gynecologist (OB/GYN) physicians that were affiliated with Emory Healthcare and all of them were identified as in-network.

156. Based on the materials that were provided to her as well as other similar information on Anthem's website and her conversation with the Anthem representative, Plaintiff Tonya Beach enrolled in the Anthem Bronze Pathway X plan, which began on January 1, 2019 and ends on December 31, 2019.

157. In or around mid-January 2019, after the Open Enrollment Period was closed, Plaintiff Tonya Beach began contacting the physicians on the lists provided to her to select her new primary care physician and OB-GYN and learned from their respective offices that none of the physicians affiliated with Emory Healthcare accepted her health insurance.

158. Anthem knew at the time that they sent the lists of physicians to Ms. Beach that Emory did not accept her health insurance plan and failed to disclose

this material fact to her. Instead, Anthem sent the lists of physicians to her knowing that it contained material misrepresentations about the scope of its in-network healthcare providers.

159. Ms. Beach would not have switched from Kaiser Permanente to Anthem had Anthem not misrepresented that physicians and hospitals affiliated with Emory Healthcare were in-network providers.

160. In addition to being fraudulently induced into enrolling with Anthem, Plaintiff Tonya Beach received a letter addressed to her from Anthem which is substantively identical to one attached as Ex. A. The letter memorializes that Anthem substantially violated several material provisions of its Contract with her, which breached her contract with Anthem and constitutes a triggering event for the creation of a special enrollment period pursuant to 45 CFR 155.420(d)(5).

G. Plaintiff David Frohman was fraudulently induced into purchasing an Anthem Pathway health insurance plan.

161. In and around December 1, 2018, Plaintiff Frohman began researching health insurance plans for the coming year. At that time, Mr. Frohman had health insurance with Kaiser Permanente.

162. In or around 2006, Plaintiff Frohman became symptomatic from and was then diagnosed with multi-level cervical spine disease. In subsequent years his cervical spine deteriorated and, by the end of 2018, Plaintiff Frohman believed that a follow-up consultation with his long-time spinal neurosurgeon was warranted.

Plaintiff Frohman has been a long-time patient of neurosurgeon Dr. Max Steuer, who is currently a neurosurgeon with Polaris Spine and Neurosurgery ("Polaris").

163. On or about December 1, 2018, Mr. Frohman visited the Healthcare.gov exchange website to carefully research his health insurance plan options for the coming year, and then select his 2019 health insurance plan.

164. Relying on representations made within the Anthem Blue Cross listed plan options on the Healthcare.gov website, which stated that Dr. Max Steuer and Polaris were specifically listed as in-network providers under the Anthem Blue Cross plan, Mr Frohman selected it. Mr. Frohman already had Dr. Max Steuer and Polaris as part of his Kaiser HMO in-network medical plan during 2018 and would not have left Kaiser if he had known that Dr. Max Steuer and Polaris were not part of the Anthem Blue Cross HMO plan as represented by them at the time of Mr. Frohman's selection and purchase.

165. Mr. Frohman’s Anthem plan does not provide coverage for out-of-network providers.

166. Mr. Frohman’s Anthem Silver Pathway X Guided Access HMO plan began on January 1, 2019, and his current contract will end on December 31, 2019.

167. On Monday, January 14, 2019, and approximately two weeks after Mr. Frohman had enrolled and purchased the Anthem Silver Pathway X Guided Access HMO plan through Healthcare.gov, Mr. Frohman specifically made a point

of calling Anthem. He did this to conduct extra due diligence on his part, and independently confirm that Dr. Max Steuer and Polaris were indeed in-network within his Anthem plan, before scheduling any appointments with them. Mr. Frohman then received confirmation from the Anthem representative during the phone call that Dr. Max Steuer and Polaris were indeed in-network with Anthem, independently confirming what Anthem had represented at the time of Mr. Frohman's selection and purchase.

168. In or around January 25, 2019, Mr. Frohman scheduled a consultation with neurosurgeon Dr. Max Steuer at Polaris for evaluation of his spinal problems described above. During Mr. Frohman's consultation with Dr. Steuer of February 26, 2019, Dr. Steuer urgently recommended that Plaintiff have an immediate cervical spine operation because he was at serious risk of having his spinal cord compromised should his neck region suffer any trauma (as from a car accident, for example), and becoming permanently paralyzed as a result.

169. During that same appointment, Plaintiff Frohman learned that Dr. Steuer and Polaris were not in-network under Plaintiff's Anthem policy, despite the fact that as of the date that Mr. Frohman purchased his Anthem policy, both Dr. Steuer and Polaris Spine and Neurosurgery were represented by Anthem as being in-network with them.

170. Should Mr. Frohman now wish to follow Dr. Steuer's advice to have spinal surgery, Mr. Frohman must pay for an initial surgery of approximately $25,000.00 completely out of his own pocket. Dr. Steuer has also concluded that additional spinal surgeries may be required, which Mr. Frohman would likewise have to pay for out of pocket health care expenses. Mr. Frohman is therefore potentially facing unwarranted and additional out of pocket expenses that are clearly Anthem's responsibility under Mr. Frohman's policy with them, should he elect to move forward with Dr. Steuer's recommended spinal surgeries.

171. As having to pay for spinal surgeries out of pocket is not an option for Mr. Frohman, he must now search for new medical specialists. This will assuredly cause a lapse in his medical treatment and inability to obtain affordable and potentially life-saving surgery, while he conducts a search for legitimate in-network Anthem provider that he is comfortable with and, most critically, who will even accept new patients.

172. The number of specialists who are Anthem in-network providers are significantly less than the providers Anthem represented as in-network when Mr. Frohman carefully researched health insurance plans during the 2019 Open Enrollment Period.

173. Further, Mr. Frohman anticipates that once he selects a new neurosurgeon, he will experience a significant delay in being able to be seen by

them as a new patient. In his experience, new patients may not be seen by a specialist for an initial visit for a number of months or more. This will cause an undue delay in medical treatment for Mr. Frohman and his potentially life-threatening medical issues.

174. Mr. Frohman also believes that both as a new patient, and due to the complexity of his case, he will likely have to endure extensive medical testing and examinations previously completed, in order that the new provider can educate themselves as to his medical conditions and formulate a treatment plan.

175. Mr. Frohman will thus have to incur additional medical expenses, as a result of said additional medical visits and testing he anticipates as a result of the switch to a new provider.

176. Mr. Frohman is locked-in with Anthem's Silver Pathway X Guided Access HMO plan until the end of 2019. He is not allowed to switch mid-contract to another health insurance provider. Therefore, in order to maintain health insurance, he must remain with Anthem and continue to pay his monthly premium, despite the fact that he is unable to receive treatment from providers Anthem misrepresented were in-network at Mr. Frohman's time of purchase.

177. Mr. Frohman would not have switched from Kaiser Permanente to Anthem had Anthem not misrepresented that Dr. Max Steuer and Polaris were in-

network Anthem providers for 2019, as they still remain a part of his former Kaiser network that he could have thus chosen instead of Anthem for 2019.

178. In addition to being fraudulently induced into enrolling with Anthem, Mr. Frohman received a letter addressed to him from Anthem which is substantively identical to one attached as Ex. A. The letter memorializes that Anthem substantially violated several material provisions of its Contract with Plaintiff, which constitutes a breach of contract by Anthem and constitutes a triggering event for the creation of a special enrollment period pursuant to 45 CFR 155.420(d)(4)(5)(9) and (12).

CLASS ACTION ALLEGATIONS

179. Plaintiffs bring this action on behalf of themselves and all others similarly situated as members of a proposed class ("Class") initially defined as:

> All Georgia residents who purchased an individual or family Pathway health insurance plan(s) from one or more of the Defendants during the time period of November 1, 2018 through December 15, 2018.

180. Excluded from the Class are Defendant's employees, officers, directors; Defendant's legal representatives, successors, and assigns; any entity in which Defendant has a controlling interest; any Judge to whom the litigation is assigned and all of members of the Judge's immediate family; and all persons who timely and validly request exclusion from the Class.

181. This action had been brought as a class action, and may properly be maintained, pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure and case law thereunder.

A. Plaintiffs Meet the Prerequisites of Rule 23(b)(3)

1. Numerosity of the Class

182. The Class is so numerous that individual joinder of class members is impracticable. As explained above, recent news reports by reputable media outlets such as the Marietta Daily Journal and the Atlanta Journal Constitution demonstrate that thousands of Georgia residents as a result of Anthem's deceptive scheme. The precise number of class members and their identities and addresses are unknown to Plaintiffs at this time, but such number, identity and address of each class member, can be readily ascertained from Defendants' records. Class members may be notified of the pendency of this action by mail, supplemented (if deemed necessary of appropriate by the Court) by published notice.

2. Existence and Predominance of Common Questions of Fact and Law

183. There is a well-defined community of interest in common questions of law and fact that exists as to all members of the Class. These questions predominate over the questions affecting only individual Class members. These common legal and factual questions include:

a. Whether Anthem's provider list for its covered plans were inaccurate;

b. Whether inaccuracies in Anthem's provider lists misled Plaintiffs and Class Members;

c. Whether Anthem engaged in uniform deceptive marketing practices, including but not limited to direct marketing online to consumers and marketing to independent agents/brokers;

d. Whether Anthem breached its contract and the implied covenant of good faith and fair dealing with Plaintiffs and Class Members by providing prospective and current members with inaccurate provider lists;

e. Whether Anthem breached its contract with Plaintiffs and Class Members by unilaterally changing material term(s) to require Plaintiffs and Class Members to seek a referral from a primary care physician to a specialist;

f. Whether Anthem breached its contract with Plaintiffs and Class Members by sending the letter attached as Exhibit A to Plaintiffs and Class Members;

g. Whether Anthem's wrongful conduct damaged Plaintiffs and class members; and

h. Whether Plaintiffs and class members are entitled to damages, injunctive relief (e.g., an open enrollment period) and equitable relief.

3. Typicality of Claims

184. Plaintiffs' claims are typical of the Class. Plaintiffs, like other class members, were told by Anthem's website and the information on Heathcare.gov that their providers would be covered in-network, when in fact their providers were out of network. Plaintiffs' and other class members' claims therefore arise from a common course of conduct by Defendants and are based on the same legal theories.

185. In addition, Plaintiffs breach of contract claim is typical of the Class. Plaintiffs and Class Members all had a Member Contract with Anthem that expressly stated that they did not have to seek a referral from a primary care physician to seek treatment from a specialist. Plaintiffs and Class Members received the same letter from Anthem informing them that Anthem unilaterally violated material terms of the Member Contract by changing the term and requiring Plaintiffs and Class Members to obtain a referral, which breaches multiple sections of the Member Agreement.

4. Adequacy of Representation

186. Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interest of the Class, and they have retained counsel competent and experienced in complex class action litigation. The

interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

5. Superiority of the Class Action

187. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by class members are likely to exceed millions of dollars. However, while the damages suffered by each individual class member are significant, they are small in comparison to the burden and expense of individual prosecution. Without the class action device, it would be virtually impossible for class members individually to obtain effective redress for the wrongs done to them.

188. Furthermore, even if the class members themselves could afford such individual litigation of class members' claims, the court system could not. Individualized litigation presents a potential for inconsistent and contradictory judgments. Individualized litigation would involve thousands of separate actions, increasing the delay and expense to all parties and to the court system. By contrast, the class action device presents fewer management difficulties, requiring only a single adjudication of the complex legal and factual issues in this dispute, thereby providing the benefits of economy of scale, and comprehensive supervision by a single court.

189. Plaintiffs and their counsel know of no difficulties which will be encountered in the management of this case which would preclude it being maintained as a class action.

B. Plaintiffs Meet the Prerequisites of Rule 23(b)(2)

190. The injunctive relief is dispositive of the interests of other Class Members and avoids the risk of inconsistent adjudication. Plaintiffs ask this Court to create a special enrollment period to allow Plaintiffs and Class Members to switch out of their Pathway health plans so that they can purchase health insurance from another provider. In addition, Plaintiffs ask this Court to impose the equitable relief of specific performance to require Anthem to abide by the terms of Plaintiffs' and Class Members' Member contracts and permit Plaintiffs to seek treatment from specialists without first having the obtain a referral from a primary care physician. Finally, Plaintiffs ask this Court to uphold a uniform standard of conduct towards all customers moving forward that complies with all federal and state regulations.

191. This is dispositive of the interests of all Class Members who remain Anthem customers, not Plaintiffs alone. And if this claim for injunctive relief is not adjudicated in a class action and Anthem faces a different lawsuit from another customer, Anthem would face varying, incompatible standards of conduct.

CAUSES OF ACTION

COUNT I
BREACH OF CONTRACT AGAINST DEFENDANTS BLUE CROSS AND BLUE SHIELD OF GEORGIA, INC. AND ANTHEM, INC.

192. Plaintiffs restate and reallege Paragraphs 1 through 191 as if fully set forth herein.

193. Defendants Blue Cross and Blue Shield of Georgia, Inc. and/or Anthem, Inc have a contractual relationship with Plaintiffs and Class members, which is embodied in its Member Contract.

194. An essential term of Defendants' Member Contracts with Plaintiffs and Class Members is that WellStar, Emory and others would be an in-network providers.

195. Anthem breached its Member Contract with Plaintiffs.

196. Plaintiffs and Class Members have been and will be damaged by Defendants' conduct.

197. In addition, Defendant Anthem breached the Member Contract by sending Plaintiffs and Class Members the Anthem Letter, which purported to require them to get a referral in order to see a specialist, when the Member Contract provided that no such referral was needed.

198. Further, Anthem breached the Member Contract by purporting to make changes therein without obtaining the prior written approval of the Plaintiffs

and Class Members and without having the changes signed by the President of Anthem, when the Member Contract provided that no changes could be made without such prior written approval and without the signature of the President of Anthem.

COUNT II
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING AGAINST DEFENDANTS BLUE CROSS AND BLUE SHIELD OF GEORGIA, INC. AND ANTHEM, INC.

199. Plaintiffs restate and reallege Paragraphs 1 through 191 as if fully set forth herein.

200. In the event that Defendants somehow did not breach its express Member Contract with Plaintiffs and the proposed Class Members, it breached its implied contract with those same proposed Class Members.

201. A covenant of good faith and fair dealing is implied in every contract, including Defendants' Member Contracts with Plaintiffs and Class Members.

202. Where a contract vests one party with discretion, the duty of good faith and fair dealing applies, and the party exercising the discretion must do so in a manner that satisfies the objectively reasonable expectations of the other party. A party may not perform an agreement in a manner that would frustrate the basic purpose of the agreement or deprive the other party of its rights and benefits under the agreement.

203. It was objectively reasonable under the circumstances for Plaintiffs and Class Members to expect that the doctors and facilities represented to them by Anthem as being in-network would in fact be in-network. Otherwise, it would make no sense to use the Anthem Pathway plan.

204. It was objectively reasonable under the circumstances for Plaintiff and Class Members to expect that Anthem would not, without prior notice, terminate its relationship with providers that it represented to Plaintiffs and Class members were in-network and refuse to cover charges for services provided by such providers to the Plaintiffs and Class members.

205. Anthem's conduct alleged herein is inconsistent with the reasonable expectations of Plaintiffs and Class Members and is inconsistent with what an objectively reasonably consumer would have expected under the circumstances.

206. Anthem has acted in a manner that frustrates the basic purpose of its contracts with the Plaintiff and Class Members and has deprived Plaintiffs and Class Members of the benefits and rights to which they are entitled under their contracts with Anthem.

207. As a result of Defendants' misconduct, Plaintiffs and Class Members have been damaged in an amount to be determined at trial.

COUNT III
FRAUD

208. Plaintiffs restate and reallege Paragraphs 1 through 191 as if fully set forth herein.

209. Anthem made material representations and/or material omissions to Plaintiffs and Class Members in connection with the sale of its health insurance product.

210. Anthem knew its misrepresentations and omissions made to Plaintiffs and Class Members were false and/or it was reckless with respect to the same.

211. Anthem intended for Plaintiffs and Class members to rely on its misrepresentations and/or omissions.

212. Plaintiffs and Class Members were unaware of the inaccuracies in Anthem's misrepresentations at the time they signed up for Anthem's Pathway plan and selected their providers from Anthem's provider lists.

213. Anthem, moreover, engaged in a "bait and switch" with regard to its inaccurate provider lists—representing that WellStar, Emory and other providers were in-network when it knew that that they were not in-network.

214. Plaintiffs and Class Members justifiably relied on Anthem's misrepresentations and omissions and had they known the truth, they would not have enrolled in Anthem's Pathway plan.

215. As a direct and proximate result of Anthem's misconduct, Plaintiffs and Class Members have been damaged in an amount to be proven at trial.

COUNT IV
FRAUDULENT CONCEALMENT

216. Plaintiffs restate and reallege Paragraphs 1 through 191 as if fully set forth herein.

217. Anthem knowingly failed to disclose to Plaintiffs and Class Members material facts (and affirmatively concealed those facts), namely that Anthem's provider lists were inaccurate.

218. Anthem was under a duty to disclose all material facts in connection with selling its health insurance to consumers. Anthem had a duty to disclose, among other things, that it had terminated its relationship with WellStar, Emory and other providers prior to the open enrollment period beginning on November 1, 2018.

219. Anthem's omissions were material to Plaintiffs' and Class Members' decision in selecting Anthem as a health insurance provider that included WellStar, Emory and others as in-network providers.

220. Plaintiffs and Class Members justifiably relied on Anthem's omission of material facts. Had Plaintiffs and Class Members known the truth they would not have purchased health insurance from Anthem.

221. As a direct and proximate result of Anthem's misconduct, Plaintiffs and Class Members have been damaged in an amount to be proven at trial.

COUNT V
NEGLIGENCE PER SE

222. Plaintiffs restate and reallege Paragraphs 1 through 191 as if fully set forth herein.

223. Defendants had a duty to comply with the Network Adequacy Standards contained in 45 CFR § 156.230.

224. Defendants violated 45 CFR § 156.230.

225. The purpose of 45 CFR § 156.230 is to protect consumers like the Plaintiffs and Class Members by providing that each QHP issuer that uses a provider network must ensure that the provider network consisting of in-network providers, as available to all enrollees, meet certain standards, including but not limited to requiring QHP issuers to publish an up-to-date, accurate, and complete provider directory.

226. Plaintiffs and Class members were harmed as a result of Defendants' violation of 45 CFR § 156.230.

227. Plaintiffs and Class members fall within the class of persons that 45 CFR §156.230 was intended to protect.

228. The harm or injury suffered by the Plaintiffs and Class Members as a result of Defendants' violation of 45 CFR § 156.230 was the same harm that 45 CFR § 156.230 was intended to guard against.

229. Defendants' violation of 45 CFR § 156.230 is capable of having a causal connection between it and the damage or injury inflicted.

COUNT VI
NEGLIGENCE

230. Plaintiffs restate and reallege Paragraphs 1 through 191 as if fully set forth herein.

231. Defendants had a duty, or obligation, recognized by law, requiring the them to conform to a certain standard of conduct, for the protection of others against unreasonable risks including, among other things articulated above, the legal duty to conform to the common law standard of care to ensure that the provider network consisting of in-network providers, as available to all enrollees, meet certain standards, including but not limited to requiring QHP issuers to publish an up-to-date, accurate, and complete provider directory.

232. Defendants thereby owed a legal duty to the Plaintiffs and Class Members.

233. Defendants failed to conform to the standard required and thereby breached the applicable standard of care.

234. There is a reasonable close causal connection between Defendants' conduct and the resulting injury to Plaintiffs and Class Members.

235. Plaintiffs and Class Members suffered actual loss or damage.

COUNT VII
CONSTRUCTIVE TRUST

236. Plaintiffs restate and reallege Paragraphs 1 through 191 as if fully set forth herein.

237. A constructive trust is a trust implied whenever the circumstances are such that the person holding legal title to property, either from fraud or otherwise, cannot enjoy the beneficial interest in the property without violating some established principle of equity. O.C.G.A. § 53-12-132(a).

238. To the extent that Plaintiffs or Class Members paid premiums to any Defendant after Defendants' violation of the Network Adequacy Standards of 45 CFR § 156.230, fraud and other circumstances alleged herein, it would be inequitable for Defendants to enjoy the beneficial interest in said premium payments.

239. Therefore, Plaintiffs and Class Members are entitled to an order impressing a constructive trust upon all premium payments made by Plaintiffs and Class Members to any Defendant after Defendants violated the Network Adequacy Standards of 45 CFR § 156.230 by, among other things, failing to publish an up-to-date, accurate, and complete provider directory.

COUNT VIII
UNJUST ENRICHMENT

240. Plaintiffs restate and incorporate as if fully set forth herein the allegations contained in Paragraphs 1-191.

241. Plaintiffs and Class Members have an interest, both equitable and legal, in the health insurance coverage provided by Anthem that they purchased. Plaintiffs and Class Members conferred payments to Anthem for their health insurance coverage.

242. Anthem was benefitted from Plaintiffs and Class Members.

243. As a result of Anthem's wrongful conduct as alleged in this Complaint, Anthem has been unjustly enriched at the expense of, and to the detriment of, Plaintiffs and Class Members.

244. Anthem's unjust enrichment is traceable to and resulted directly and proximately from the conduct alleged herein.

245. Under the common law doctrine of unjust enrichment, it is inequitable for Anthem to be permitted to retain the benefits it received, and is still receiving without justification, from Plaintiffs and Class Members in an unfair and unconscionable manner. Anthem's retention of such benefits under circumstances making it inequitable to do so constitutes unjust enrichment.

246. The benefit conferred upon, received, and enjoyed by Anthem was not conferred officiously or gratuitously, and it would be equitable and unjust for Anthem to retain the benefit.

247. Anthem is therefore liable to Plaintiffs and Class Members for restitution in the amount of the benefit conferred on Anthem as a result of its wrongful conduct.

COUNT IX
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

248. Plaintiffs restate and incorporate as if fully set forth herein the allegations contained in Paragraphs 1-191.

249. Under the Declaratory Judgment Act, 28 U.S.C. §2201, et seq., this Court is authorized to enter a judgment declaring the rights and legal relations of the parties and grant further necessary relief. Furthermore, this Court has broad authority to restrain acts, such as here, that are tortious or violate the terms of the federal statutes and regulations described in the Complaint.

250. An actual controversy has arisen in the wake of the allegations described above regarding Anthem's present and prospective common law and other duties.

251. Plaintiffs continue to suffer injury as a result of the conduct alleged herein and remain at imminent risk that further damages will occur in the future.

252. Pursuant to its authority under the Declaratory Judgment Act, this Court should enter a judgment declaring, among other things, the following:

a. Anthem continues to owe a legal duty to ensure that the provider network consisting of in-network providers, as available to all enrollees, meet certain standards, including but not limited to requiring QHP issuers to publish an up-to-date, accurate, and complete provider directory;

b. specific performance directing Anthem cover all Plaintiffs' and Class Members' claims arising out of treatment, goods and/or other services provided by, and/or to be provided by, WellStar, Emory and other health care providers, as in-network providers available to policyholders in Anthem's Pathway health plan;

c. creating and offering to Plaintiffs and Class Members a special enrollment period as provided in 45 CFR § 155.240 for Plaintiffs and Class Members;

d. enjoining Anthem from unilaterally changing the terms of its Member Contract with Plaintiffs and Class Members retroactively requiring them to obtain a referral from a primary care physician before seeking treatment from a specialist

253. If an injunction is not issued, Plaintiffs will suffer irreparable injury, and lack an adequate legal remedy.

254. The hardship to Plaintiffs if an injunction does not issue exceeds the hardship to Anthem if an injunction is issued.

255. Issuance of the requested injunction will not disserve the public interest. To the contrary, such an injunction would benefit the public by preventing the misconduct alleged above.

COUNT X
ATTORNEY'S FEES AND EXPENSES

256. Plaintiffs restate and incorporate as if fully set forth herein the allegations contained in Paragraphs 1-191.

257. Pursuant to O.C.G.A. §13-6-11 and other provisions of Georgia law, Plaintiffs are entitled to recover reasonable attorney's fees and expenses of litigation by reasons of Defendants' bad faith and stubborn litigiousness which has caused Plaintiffs to incur unnecessary trouble and expense.

COUNT XI
PUNITIVE DAMAGES

258. Plaintiffs restate and incorporate as if fully set forth herein the statements contained in Paragraphs 1- 191.

259. Pursuant to O.C.G.A. §51-12-5.1, Plaintiffs are entitled to recover punitive damages from Defendants on the basis that Defendants' actions showed

willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the court grant Plaintiffs and all Class Members the following relief against the Defendants:

A. An order certifying the proposed plaintiff class herein pursuant to Rule 23 of the Federal Rules of Civil Procedure, and appointing Plaintiffs and their counsel of record to represent the Class;

B. An order that Defendants be permanently enjoined from its improper activities and practices described above;

C. An award of damages to Plaintiffs and Class members resulting from Defendants' wrongful conduct;

D. Restitution of all moneys, fees and interest paid by Plaintiffs and Class members because of Defendants' unfair, unlawful or fraudulent business practices complained of herein;

E. Disgorgement by Defendants of all profits and compensation emanating from the unfair, unlawful or fraudulent business practices complained of herein;

F. An award of any additional damages, consequential and incidental damages and costs suffered by Plaintiffs and Class members of the class because of Defendants' wrongful conduct;

G. An order of specific performance directing Defendants to cover all Plaintiffs' and Class Members' claims arising out of treatment, goods and/or other services provided by, and/or to be provided by, WellStar, Emory and other health care providers, as in-network providers available to policyholders in Anthem's Pathway health plan;

H. An order enjoining Defendants to create and offer to Plaintiffs and Class Members a special enrollment period as provided in 45 CFR § 155.240 for Plaintiffs and Class Members;

I. An order enjoining Anthem from unilaterally changing the terms of its Member Contract with Plaintiffs and Class Members retroactively requiring them to obtain a referral from a primary care physician before seeking treatment from a specialist;

J. An order impressing a constructive trust upon all premium payments made by Plaintiffs and Class Members to any Defendant after Defendants violated the Network Adequacy Standards of 45 CFR § 156.230 by, among other things, failing to publish an up-to-date, accurate, and complete provider directory;

K. Prejudgment interest;

L. Attorney's fees, costs of suit, including expert witness fees; and

M. Such other and further legal and equitable relief, including exemplary damages, as his Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury on all matters so triable.

Dated: March 4, 2019

By: */s/ Jason Doss*

Jason R. Doss
Georgia Bar No. 227117

THE DOSS FIRM, LLC
The Brumby Building
127 Church Street, Suite 220
Marietta, GA 30060
Telephone: (770) 578-1314
jasondoss@dossfirm.com

Attorneys for Plaintiffs and the Proposed Class

EXHIBIT A

Anthem

Anthem Blue Cross and Blue Shield
PO BOX 659806
San Antonio, TX 78265-9106

P-3 T53 *******AUT0**5-DIGIT 30127 UM0024377

John Marks
[redacted]

February 21, 2019

John, need to see a specialist?

You'll have to get a referral.

Plan Details

Member ID
[redacted]

Your 2019 Member Contract incorrectly said you don't need a referral from your primary care doctor to see a specialist. Your plan **does** require a referral to see a specialist.

That was our mistake, and we're sorry for any confusion. The good news is that nothing changed with your benefits and you don't need to take any action. We're just making sure you have the right information.

Your updated 2019 Member Contract with the correct language is on **anthem.com**.

Need help? Call the Member Services number on your ID card.

- Your Anthem service team

EOCREFSPL 01/19

EXHIBIT B

WELLSTAR

UPDATE ON ANTHEM/BLUE CROSS BLUE SHIELD'S AFFORDABLE HEALTH CARE EXCHANGE PLAN

Anthem

WellStar has been terminated as a provider by Anthem/Blue Cross Blue Shield in their Pathways healthcare exchange plan. This does not affect patients who have employer-provided or individual Medicare Advantage healthcare through Anthem/Blue Cross Blue Shield.

You may have seen reports that WellStar is no longer covered by Anthem/Blue Cross Blue Shield's Pathways plan, available through the Affordable Health Care Exchange. We would like to provide some facts around this matter.

In August 2018, Anthem/Blue Cross Blue Shield notified us that they were terminating WellStar as a participating provider in their Pathways product available through the Affordable Health Care Exchange. We immediately disputed this action, and are pursuing all contractual rights we have to resolve this issue. But it appears unlikely that WellStar will be participating past Feb. 4, 2019.

We understand how difficult this is for patients who choose WellStar hospitals and physicians.

And while WellStar normally notifies affected patients about a cancelled contract to permit them to make informed decisions about their healthcare needs, we were not able to notify Anthem/Blue Cross Blue Shield members of this change, as we do not have a listing of individuals who signed up for this Anthem plan. That is because Anthem/Blue Cross Blue Shield pulled out of the ACA health insurance exchange in metro Atlanta at the end of 2017. So WellStar had no metro Atlanta Pathways patients in 2018.

Please note that this in no way affects patients who have employer-provided or individual Medicare Advantage healthcare through Anthem/Blue Cross Blue Shield. WellStar's overall contract with Anthem/Blue Cross Blue Shield remains intact. All WellStar patients covered under Anthem/Blue Cross Blue Shield products, other than Pathways, will continue to have access to the entire WellStar Health System.

If you have questions about your Affordable Health Care Exchange coverage through Anthem/Blue Cross Blue Shield, you can call the customer service number on the back of your ID card.

Additionally, patients can contact the following agencies to express network concerns with Healthcare Exchange Products:

- Healthcare.gov's Customer Service at (800) 318-2596; and or
- The Georgia State Insurance Commissioner Consumer Services at (404) 656-2070
- Consumer Complaint Process or OCI Contact Us.

WellStar continues to participate in the Ambetter HIE product.