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17
18 **IN THE SUPERIOR COURT
19 FOR THE COUNTY OF LOS ANGELES**

20 LISA SNOW, on behalf of herself and on
21 behalf of all others similarly situated,

22 *Plaintiff,*

23 v.

24 TEMECULA VALLEY EMERGENCY
25 PHYSICIANS, INC.

26 *Defendant.*

Case No.:

218TCV22374

**Class Action Complaint for Violations of
the Knox-Keene Health Care Service Plan
Act of 1975, Health & Safety Code § 1340 *et*
seq and the California Unfair Competition
Law, Business & Professions Code § 17200
*et seq.***

27 **INTRODUCTION**

28 1. This case arises from the Defendant Temecula Valley Emergency Physicians, Inc.'s
(TVEP) unlawful and unfair balance billing in violation of the Knox-Keene Health Care Service Plan
Act of 1975, Health & Safety Code § 1340 *et seq.* and the resulting violations of California Unfair
Competition Law, Business & Professions Code § 17200 *et seq.*

2. "Balance billing" occurs when emergency room doctors and health insurers disagree as
to the appropriate charge for a patient's medical care, and "the emergency room doctors directly bill

1 the *patient* for the difference between the bill submitted and the payment received” from the insurer.
2 *Prospect Med. Grp. v. Northridge Emergency Med. Grp.* (2009) 45 Cal. 4th 497, 501 [emphasis in
3 original].

4 3. In light of the Knox-Keene Act’s “clear legislative policy not to place patients in the
5 middle of billing disputes,” California law makes clear that “[b]alance billing is not permitted.” *Id.* at
6 507.

7 4. Nonetheless, Plaintiff Lisa Snow was balance billed by Defendant TVEP on two
8 occasions for a combined \$2,712, which she was forced to pay under protest. Both times, her health
9 insurer determined that TVEP’s charges were unreasonable, and instead of disputing that point
10 through appropriate channels, TVEP chose to bill Plaintiff directly.

11 5. Plaintiff brings this action against TVEP, individually and on behalf of all others
12 similarly situated, for equitable relief under the California Unfair Competition Law, Business &
13 Professions Code § 17200 *et seq.*

14 **PARTIES**

15 5. Plaintiff Lisa Snow is a resident of Temecula, California.

16 6. Defendant Temecula Valley Emergency Physicians, Inc. is a California corporation
17 engaged in the business of providing emergency medical services. Its principal place of business is
18 located at 898 N. Pacific Coast Highway, Suite 600, El Segundo, CA 90245.

19 **JURISDICTION & VENUE**

20 7. Plaintiff brings a private cause of action pursuant to the California Unfair Competition
21 Law, Business & Professions Code § 17200 *et seq.*

22 8. Defendant Temecula Valley Emergency Physicians is a California corporation subject
23 to this Court’s general jurisdiction.

24 9. Venue is proper in the Los Angeles County Superior Court because the Defendant’s
25 principal place of business is located therein.

1 **FACTUAL ALLEGATIONS**

2 **I. Background**

3 10. Plaintiff is a member of a health insurance plan administered by BlueCross BlueShield
4 of Tennessee. She is assigned Member ID number 9079*****, and her Group ID number is 82***.

5 11. Temecula Valley Hospital is an in-network provider under the Plan, but Defendant
6 TVEP is a separate entity, operating out of the same building, that is nevertheless out-of-network
7 under the Plan.

8 12. Before she obtained emergency medical services from TVEP, Plaintiff was never made
9 aware that TVEP was out-of-network.

10 **II. Plaintiff's Medical Emergencies**

11 **A. June 30, 2020**

12 13. On June 30, 2020, Plaintiff went to the Temecula Valley Hospital for emergency
13 medical attention following a car crash.

14 14. After receiving treatment, Plaintiff paid her \$150.00 copay.

15 15. According to Plaintiff's medical records, TVEP determined that its services were worth
16 a total of \$18,640.00, and it filed a claim for that amount with Blue Cross.

17 16. On November 25, 2020, Plaintiff received a bill from TVEP stating that Blue Cross had
18 refused to pay the full amount charged for TVEP's services, and she was now obligated to pay
19 \$1,323.00 out of pocket.

20 **B. August 26, 2020**

21 17. On August 26, 2020, Plaintiff again went to Temecula Valley Hospital for medical
22 attention because she was experiencing symptoms of vertigo.

23 18. Plaintiff was once again directed to the emergency room for treatment.

24 19. Plaintiff, once again, was treated by TVEP. According to Plaintiff's medical records,
25 TVEP determined that its services were worth \$10,575.00, and it filed a claim directly with Blue
26 Cross.

27 20. On November 12, 2020, Plaintiff received a bill stating that Blue Cross had refused to
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1 pay the full amount charged for TVEP's services yet again, and as a result, she was obligated to pay
2 TVEP \$1,389.00 out of pocket.

3 **III. TVEP's Billing Dispute with Blue Cross**

4 21. Plaintiff first attempted to resolve this matter by submitting a complaint to Blue Cross.

5 22. Blue Cross responded to Plaintiff's complaint on December 15, 2020. It stated that
6 "[w]hen you see a provider outside of your network during an emergency, we cover up to the
7 maximum allowable charge as if they were in network. But the out-of-network provider may still
8 charge you for anything that goes above that charge, since we don't have a contract with them to stop
9 it."

10 23. Blue Cross further stated that it had called TVEP and asked them to "write off the extra
11 amount, but they didn't agree."

12 24. Plaintiff then filed a Level I grievance with BlueCross BlueShield of Tennessee, which
13 she submitted on December 20, 2020.

14 25. Blue Cross responded to Plaintiff's Level I grievance on March 11, 2021, stating that a
15 committee had reviewed Plaintiff's grievance and "upheld the denial of benefits for the services
16 because the provider is under investigation and we cannot apply your plan benefits to any claims from
17 them while the investigation is ongoing."

18 26. Blue Cross's letter further indicated that Plaintiff had exhausted all required
19 administrative remedies.

20 27. Plaintiff, very much under protest, was forced to pay her combined \$2,712.00 balance
21 to TVEP in order to avoid substantial harm to her credit, and she therefore has suffered serious
22 financial harm as a result of Defendant's conduct.

23 28. Therefore, Blue Cross and TVEP disputed the appropriate bill for Plaintiff's emergency
24 services.

25 29. Instead of resolving the matter with Blue Cross, however, TVEP directly billed the
26 disputed amount to Plaintiff.

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1 **IV. Plaintiff's Most Recent Medical Emergency**

2 30. On March 4, 2021, Plaintiff fell hard on her wrist.

3 31. Plaintiff, fearing that her wrist was broken, again went to the Temecula Valley Hospital
4 for emergency care.

5 32. Now aware of the possibility that she could be forced to pay for any emergency
6 services out of pocket, despite her insurance, Plaintiff asked the nurse who initially reviewed her
7 injury to ensure that she only received treatment from doctors who were "in-network providers" under
8 her insurance plan.

9 33. The nurse was not aware of how to do such a thing and told Plaintiff to consult with a
10 hospital administrator who was responsible for handling issues related to health insurance.

11 34. The emergency room doctor then consulted with Plaintiff.

12 35. When the doctor walked through the door, Plaintiff first asked him whether he was an
13 "in-network provider" under her insurance plan.

14 36. The doctor did not answer Plaintiff's question. Plaintiff, however, needing emergency
15 medical care, permitted him to examine her.

16 37. Afterwards, Plaintiff conferred with the hospital's insurance administrator.

17 38. The insurance administrator recorded Plaintiff's information, and Plaintiff asked
18 whether she had been treated by an "in-network provider."

19 39. The insurance administrator said that she had no idea how to answer Plaintiff's
20 question and told Plaintiff to contact the billing department "tomorrow."

21 40. Of course, "tomorrow" was far too late to change whether Plaintiff had, in fact,
22 received treatment from an in-network, rather than an out-of-network, provider.

23 41. Despite her best efforts, Plaintiff *could not even choose* whether she received treatment
24 from an in- or out-of-network provider.

25 42. TVEP's billing policies are unfair and undermine the policies underlying the Knox-
26 Keene Act.

27 43. Moreover, TVEP's policies are likely to subject Plaintiff, and patients like her, to
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1 balance billing in the future.

2 44. Plaintiff now seeks relief on behalf of herself and all others similarly situated for
3 Defendant's unlawful and unfair billing practices.

4 **CLASS ALLEGATIONS**

5 45. Under Calif. Code of Civ. P. § 382, Plaintiff seeks certification of a class to proceed
6 against Defendant TVEP, defined as follows:

7 Any person (1) who received emergency medical care from Defendant
8 Temecula Valley Emergency Physicians, (2) for which their health
9 insurer declined to fully cover Defendant's bill, and (3) thereafter was
10 directly billed by Defendant for the unpaid balance.

11 46. Excluded from the Class are Defendant's employees, officers, directors, legal
12 representatives, successors and wholly or partly owned subsidiaries or affiliated companies; class
13 counsel and their employees; and the judicial officers and their immediate family members and
14 associated court staff assigned to this case.

15 **A. The Class is ascertainable.**

16 47. TVEP maintains records of claims it submits to insurers and bills it sends to patients.
17 Those bills state whether the insurer provided full coverage. Those records will identify the Class
18 Members.

19 **B. The Class is sufficiently numerous.**

20 48. The proposed Class is so numerous that individual litigation would be impracticable.

21 49. Based on publicly available data provided by California Department of Health and
22 Human Services, there were over 15 million people admitted to California emergency departments
23 between 2012 and 2019 alone.¹
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25 _____
26
27 ¹ The data can be downloaded by visiting *Hospital Emergency Department – Encounters by*
28 *Facility*, CAL. HEALTH & HUMAN SERVS. (last updated Oct. 13, 2020),

1 50. The Journal of the American Medical Association has reported that 21–30% of visits to
2 a California emergency department result in a “surprise bill” from an out-of-network provider—bills
3 which the authors note “expose patients to higher cost-sharing when they use services and may lead to
4 balance billing—in which health care providers bill patients directly, often at an unexpectedly higher
5 rate.”²

6 51. The Class therefore includes hundreds or even thousands of individuals.

7 **C. The Class constitutes a well-defined community of interest.**

8 52. The proposed class constitutes a well-defined community of interest, as demonstrated
9 by the predominance of common issues, the typicality of Plaintiff’s claims to those of the Class, and
10 the adequacy of Plaintiff and her counsel as representatives of the Class.

11 53. *Predominance.* This case presents questions of law and fact common to all class
12 members, which predominate over individualized issues. Those common questions include:

- 13 i. Whether the Knox-Keene Act prohibits balance billing;
- 14 ii. Whether TVEP engaged in balance billing by directly billing patients for
15 amounts their health insurers refused to cover;
- 16 iii. Whether balance billing is unfair within the meaning of California’s Unfair
17 Competition Law;
- 18 iv. Whether the Class was injured as a result of TVEP’s misconduct;
- 19 v. Whether the appropriate remedy for the Class’s injuries include restitution,
20 disgorgement, a declaratory judgment, an injunction, or other equitable relief.

21 54. *Typicality.* Plaintiff is a member of the proposed class because she received emergency
22 medical care from TVEP, her health insurer declined to cover the full amount of TVEP’s bill, and

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24
25 [https://data.chhs.ca.gov/dataset/hospital-emergency-department-encounters-by-](https://data.chhs.ca.gov/dataset/hospital-emergency-department-encounters-by-facility/resource/eb592e95-d6bd-4ec7-9493-840978188c88)
26 [facility/resource/eb592e95-d6bd-4ec7-9493-840978188c88.](https://data.chhs.ca.gov/dataset/hospital-emergency-department-encounters-by-facility/resource/eb592e95-d6bd-4ec7-9493-840978188c88)

27 ² Karen Pollitz, et al., *US Statistics on Surprise Medical Billing*, J. AM. MED. ASSOC. NETWORK
(Feb. 11, 2020), <https://jamanetwork.com/journals/jama/fullarticle/2760721>.

1 TVEP subsequently billed the disputed amount to her directly. Consequently, Plaintiff's claims are
2 typical of the class she seeks to represent.

3 55. *Adequacy.* Plaintiff is an adequate class representative. She seeks relief for all members
4 of the class and will put the interests of the class as a whole ahead of her individual interests. She has
5 no conflicts of interest with any other member of the class. Additionally, Plaintiff has retained
6 experienced counsel who have successfully prosecuted class actions in California courts, as well as
7 state and federal court throughout the country.

8 **D. A class action is superior to individually litigating Class members' claims.**

9 56. Class-wide adjudication will produce substantial benefits for the Court and for litigants
10 because joinder of all individual Class members is impracticable and inefficient, particularly when
11 compared to the relatively small amount-in-controversy for most individual Class members.

12 57. Moreover, the prosecution of separate actions by individual Class members would
13 create a risk of inconsistent or varying adjudications. As a result, class-wide adjudication presents
14 fewer management difficulties, conserves judicial resources and the parties' resources, and protects the
15 rights of each Class member.

16 **CAUSE OF ACTION**

17 **Violations of the Unlawful Competition Act, Business and Professions Code § 17200 *et seq.***

18 58. Plaintiff incorporates by reference all preceding allegations.

19 59. Bus. & Prof. Code § 17200 states, in relevant part, that:

20 [U]nfair competition shall mean and include any unlawful, unfair or fraudulent business
21 act or practice and unfair, deceptive, untrue or misleading advertising and any act
22 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of
23 the Business and Professions Code.

24 60. Under the Knox-Keene Act, "[b]alance billing is not permitted." *Prospect*, 45 Cal. 4th
25 at 507.

26 61. "Balance billing" occurs when emergency room doctors and health insurers disagree as
27 to the appropriate charge for a patient's medical care, and "the emergency room doctors directly bill
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1 the *patient* for the difference between the bill submitted and the payment received” from the insurer.
2 *Prospect*, 45 Cal. 4th at 501 [emphasis in original].

3 62. Plaintiff received emergency medical care from Defendant.

4 63. Defendant had a dispute with Plaintiff’s health insurer over the reasonable value of the
5 emergency medical services it provided to Plaintiff.

6 64. Instead of resolving that dispute with the health insurer, Defendant billed the disputed
7 amount to Plaintiff.

8 65. Defendant’s acts, conduct and practices, as alleged herein, were thus unlawful under
9 the Knox-Keene Health Care Service Plan Act of 1975, Health & Safety Code § 1340 *et seq.*

10 66. Defendant’s acts, conduct, and practices are also unfair, in that they offend the policy
11 declared in the Knox-Keene Act and its implementing regulations and cause substantial harm to
12 patients with no significant benefit to the public.

13 67. Specifically, the Knox-Keene Act declares “clear legislative policy not to place patients
14 in the middle of billing disputes.” *Prospect*, 45 Cal. 4th at 507.

15 68. Balance billing necessarily places patients in the middle of billing disputes.

16 69. The injury to Plaintiff and Class members greatly outweighs any alleged countervailing
17 benefit to consumers or competition under all of the circumstances, and served no purpose but to
18 mislead the public and enrich TVEP improperly.

19 70. There were reasonably available alternatives to further TVEP’s legitimate business
20 interests, other than the conduct described herein.

21 71. Because Defendant violated the unfair competition law, Bus. & Prof. Code §§ 17200, *et*
22 *seq.*, an action under Bus. & Prof. Code § 17206 is proper and necessary to prevent Defendant from
23 continuing to engage in improper practices.

24 72. As a result of Defendant’s unlawful and unfair business practices, Plaintiff and all
25 others similarly situated have suffered an injury-in-fact and have lost money or property. Pursuant to
26 California Bus. and Prof. Code § 17203, Plaintiff and Class members are therefore entitled to equitable
27 relief, including restitution of all monies paid to or received by Defendant; disgorgement of all profits
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1 accruing to Defendant because of its unfair and improper business practices; a permanent injunction
2 enjoining Defendant's unlawful and unfair business activities; and any other equitable relief the Court
3 deems proper.

4 **PRAYER FOR RELIEF**

5 Plaintiff, individually and on behalf of all others similarly situated, demands:

- 6 a. certification of the proposed Class;
7 b. appointment of the Plaintiff's counsel as class counsel;
8 c. a declaration that TVEP's billing practices are wrongful, unfair, unconscionable and in
9 violation of California law;
10 d. an order enjoining TVEP's unlawful conduct;
11 e. restitution and disgorgement of all profits wrongfully obtained;
12 f. an award to Plaintiff and the Class of all damages, including attorneys' fees and
13 reimbursement of litigation expenses, recoverable under applicable law;
14 g. such other relief as this Court deems just and equitable.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff demands a jury trial on all applicable claims.

17 DATED: 6-9-21

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