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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

E.S., by and through her parents, R.S. and J.S.,
and JODI STERNOFF, both on their own
behalf, and on behalf of all similarly situated
individuals,

Plaintiffs,

v.

REGENCE BLUESHIELD; and CAMBIA
HEALTH SOLUTIONS, INC., f/k/a THE
REGENCE GROUP,

Defendants.

NO. 2:17-cv-1609

COMPLAINT
(CLASS ACTION)

[REDACTED]

I. PARTIES

1. *E.S.* Plaintiff E.S. is the six-year-old daughter and dependent of R.S. and J.S. and resides in King County, Washington. E.S. is insured under a Regence BlueShield insured health plan. E.S. is diagnosed with hearing loss.

2. *Jodi Sternoff.* Plaintiff Sternoff is an adult diagnosed with hearing loss who resides in King County, Washington. Sternoff is insured under a Regence BlueShield insured health plan.

1 3. **Regence BlueShield.** Regence BlueShield is an authorized health
2 carrier based in King County and is engaged in the business of insurance in the State of
3 Washington, including King County. Regence BlueShield is a Washington corporation
4 that does business in the State of Washington, including King County. Regence
5 BlueShield is a “health program or activity” that must comply with the Affordable Care
6 Act, Section 1557.

7 4. **Cambia Health Solutions, Inc., f/k/a The Regence Group.** Cambia
8 Health Solutions, Inc., f/k/a The Regence Group (“Cambia”) is the nonprofit sole
9 member and corporate owner of Regence BlueShield. Cambia is also the sole member
10 and owner of other authorized health carriers engaged in the business of insurance in
11 the State of Washington, including Regence BlueCross BlueShield of Oregon and
12 BridgeSpan Health. Based upon information and belief, Cambia is also a “health
13 program or activity” that must comply with the Affordable Care Act, Section 1557.

14 5. **Relationship between Regence BlueShield and Cambia.** Regence
15 BlueShield and Cambia are “alter egos.” See *McKinnon v. Blue Cross-Blue Shield of*
16 *Alabama*, 691 F. Supp. 1314, 1319 (1988), *aff’d*, 874 F.2d 820 (1989). Regence BlueShield
17 and the other authorized health carriers doing business in Washington that are wholly
18 owned and/or managed by Cambia use the same or similar standard contracts for
19 insured policies, and specifically, use the same or similar standard exclusions of
20 coverage for hearing examinations, programs or treatment for hearing loss, the same
21 standard definition of “medical necessity” and the same internal policies and procedures
22 for determining when treatment for hearing loss is excluded. For the purpose of this
23 Complaint, both Regence BlueShield and Cambia are referred to as a single defendant,
24 “Regence.”

II. JURISDICTION AND VENUE

1 6. This action arises under the Patient Protection and Affordable Care
2 Act (“Affordable Care Act” or “ACA”) §1557, 42 U.S.C. §18116.

3 7. Jurisdiction of this Court also arises pursuant to 28 U.S.C. §§1331,
4 1343.

5 8. Venue is proper under 28 U.S.C. §1391(b)(1) and (2), because, *inter*
6 *alia*, a defendant resides or may be found in this district and a substantial part of the
7 events giving rise to the claims occurred in King County.

III. NATURE OF THE CASE

9 9. Plaintiffs seek to end Regence’s standard discriminatory practice of
10 categorically excluding all benefits for treatment of hearing loss, except for cochlear
11 implants. Specifically, Regence’s insured health plans in Washington contain the
12 following benefit exclusion:

*We do not cover routine hearing examinations, programs or
treatment for hearing loss, including but not limited to non-
cochlear hearing aids (externally worn or surgically
implanted) and the surgery and services necessary to implant
them.*

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17 (emphasis added). (In this Complaint, the condition is referred hereafter to as “Hearing
18 Loss” and Regence’s exclusion as the “Hearing Loss Exclusion.”) Regence excludes
19 benefits for Hearing Loss even when the treatment is medically necessary to treat
20 qualified individuals with disabilities such as the named Plaintiffs. Regence applies its
21 Hearing Loss Exclusion even though it covers the same benefits for other health
22 conditions, including coverage of outpatient office visits and durable medical equipment
23 or prosthetic devices.

24 10. By categorically excluding insureds with Hearing Loss of all
25 medical treatment related to their disability (except for cochlear implants), Regence
26

1 engages in illegal disability discrimination. The Affordable Care Act prohibits
2 discrimination on the basis of disability by covered entities, including health insurers
3 like Regence. See 42 U.S.C. §18116. Specifically, Section 1557 provides that “an
4 individual shall not, on the ground prohibited under ... Section 504 of the Rehabilitation
5 Act of 1973 (29 U.S.C. §794) be excluded from participation in, *denied the benefits of* or
6 be subjected to discrimination under *any health program* or activity....” 42 U.S.C.
7 §18116(a) (emphasis added); 45 C.F.R. §92.101(a)(1); see also 45 C.F.R. §92.207(b)(2) (“A
8 covered entity shall not, in providing or administering health-related insurance or other
9 health related coverage ... have benefit designs that discriminate on the basis of ...
10 disability.”). As the federal regulators state, “an explicit, categorical (or automatic)
11 exclusion or limitation of coverage for all health services related to [race, gender, age or
12 disability] is unlawful on its face.” 81 Fed. Reg. 31429.

13 11. Regence is a covered “health program or activity” that must comply
14 with the Affordable Care Act’s §1557.

15 12. Regence violates §1557 and engages in illegal discrimination on the
16 basis of disability by designing its health plans to include a blanket Hearing Loss
17 Exclusion.

18 13. This lawsuit seeks remedies under the Affordable Care Act arising
19 out of Regence’s failure to comply with §1557. It seeks a court order declaring Regence’s
20 blanket exclusion of benefits for Hearing Loss void and unenforceable, enjoining
21 Regence from continuing to apply the Hearing Loss Exclusion and requiring corrective
22 notice to all Regence insureds concerning its required coverage of Hearing Loss. It also
23 seeks damages stemming from Regence’s deliberate discriminatory exclusion of
24 medically necessary care that, but for the application of its Exclusion, would otherwise
25 be covered.
26

IV. CLASS ALLEGATIONS

1 14. *Definition of Class.* The class consists of all individuals who:

- 2
3 (1) have been, are or will be insured under a health
4 insurance plan that has been, is or will be delivered,
5 issued for delivery, or renewed by (a) Regence; (b) any
6 affiliate of Regence; (c) predecessors or successors in
7 interest of any of the foregoing; and (d) all subsidiaries
8 or parent entities of any of the foregoing, at any time on
9 or after October 30, 2014; and
- 10 (2) have required, require or will require treatment for
11 Hearing Loss other than treatment associated with
12 cochlear implants.

13 15. *Size of Class.* The class of Regence insureds who have required,
14 require or will require treatment for Hearing Loss, excluding treatment associated with
15 cochlear implants, is expected to be so numerous that joinder of all members is
16 impracticable.

17 16. *Class Representatives E.S. and Sternoff.* Named plaintiffs E.S. and
18 Sternoff are enrollees in a Regence insured health plan in the State of Washington. Both
19 have Hearing Loss that requires treatment other than with cochlear implants. Both are
20 “qualified individuals with a disability” under the Affordable Care Act and Section 504
21 of the Rehabilitation Act. Both require outpatient office visits (such as to licensed
22 audiologists) and durable medical equipment and/or prosthetic devices (such as hearing
23 aids) to treat their Hearing Loss. Regence has denied both named Plaintiffs’ requests for
24 coverage of their hearing aids and outpatient office visits to their audiologists because
25 of Regence’s blanket Hearing Loss Exclusion. Plaintiffs’ claims are typical of the claims
26 of the other members of the class. Plaintiff E.S., by and through her parents, and Plaintiff
Sternoff, directly, will fairly and adequately represent the interests of the class.

17. *Common Questions of Law and Fact.* This action requires a
determination of whether Regence’s blanket Hearing Loss Exclusion violates the

1 requirements of the Affordable Care Act's §1557 and discriminates against Plaintiffs on
2 the basis of their disability, Hearing Loss. Adjudication of this issue will in turn
3 determine whether Regence may be enjoined from enforcing the Hearing Loss Exclusion,
4 and found liable under the Affordable Care Act for injunctive relief, classwide damages
5 and other relief.

6 18. *Regence Has Acted on Grounds Generally Applicable to the Class.*

7 Regence, by imposing a uniform, blanket exclusion of all coverage for Hearing Loss, has
8 acted on grounds generally applicable to the class, rendering declaratory relief
9 appropriate respecting the whole class. Certification is therefore proper under
10 FRCP 23(b)(2).

11 19. *Questions of Law and Fact Common to the Class Predominate Over*

12 *Individual Issues.* The claims of the individual class members are more efficiently
13 adjudicated on a classwide basis. Any interest that individual members of the class may
14 have in individually controlling the prosecution of separate actions is outweighed by the
15 efficiency of the class action mechanism. Upon information and belief, there has been
16 no class action suit filed against these defendants for the relief requested in this action.
17 This action can be most efficiently prosecuted as a class action in the Western District of
18 Washington, where Regence BlueShield has its principal place of business, does
19 business, and where E.S. and Sternoff reside. Issues as to Regence's conduct in applying
20 standard policies and practices towards all members of the class predominate over
21 questions, if any, unique to members of the class. Certification is therefore additionally
22 proper under FRCP 23(b)(3).

23 20. *Class Counsel.* Plaintiffs have retained experienced and competent
24 class counsel.

V. FACTUAL BACKGROUND

1 21. During the relevant time periods, E.S., Sternoff and members of the
2 class have been insured in one or more Regence insured plans.

3 22. Plaintiffs E.S., Sternoff and other members of the class have been
4 diagnosed with Hearing Loss, a physical impairment that limits a major life activity so
5 substantially as to require medical treatment. As a result, E.S., Sternoff and other
6 members of the class are “qualified individuals with a disability.” *See* 28 C.F.R. §39.103.

7 23. Plaintiffs E.S., Sternoff and other members of the class have
8 required, require and/or will require medical treatment for their Hearing Loss,
9 excluding treatment with cochlear implants.

10 24. Regence is a “health program or activity” part of which receives
11 federal financial assistance. 42 U.S.C. §18116; 45 C.F.R. §92.4. As a result, Regence is a
12 “covered entity” under the Affordable Care Act, §1557.

13 25. Regence provided assurances to the U.S. Department of Health and
14 Human Services that it complies with the requirements of §1557. *See* 45 C.F.R. §92.5.

15 26. Despite these assurances, Regence has designed, issued and
16 administered Washington health plans that exclude all benefits for Hearing Loss, except
17 for cochlear implants. Regence continues to do so, to date.

18 27. Based upon the Hearing Loss Exclusion, Regence has denied
19 coverage of medically necessary treatment and equipment for E.S., Sternoff and other
20 members of the class, solely because the requested treatment and equipment would treat
21 their Hearing Loss.

22 28. As a result of its deliberate discriminatory actions, Regence insureds
23 with Hearing Loss, like E.S. and Sternoff, do not receive coverage for medically necessary
24 outpatient office visits to audiologists or for medically necessary hearing aids, a type of
25 durable medical equipment or prosthetic device.

1 29. Regence excludes all coverage for outpatient office visits and
2 durable medical equipment to treat Hearing Loss, even though it covers outpatient office
3 visits, durable medical equipment and prosthetic devices for other medical conditions.

4 30. The application of Regence's Hearing Loss Exclusion denies
5 individuals with Hearing Loss the benefits and health coverage available to other
6 insureds, based solely on their disability, Hearing Loss.

7 31. As a result, Plaintiffs E.S., Sternoff and members of the class have
8 paid out-of-pocket for medically necessary treatment for their Hearing Loss, including
9 audiology examinations and hearing aids. Other class members have been forced to
10 forgo needed medical treatment due to Regence's conduct.

11 32. Plaintiff E.S. has pursued her administrative appeal rights under her
12 Regence health plan, to no avail. While any further administrative appeal would be
13 futile, no such appeal is required before this §1557 claim may be brought. *See* 45 C.F.R.
14 §92.301(a); 81 Fed. Reg. 31441.

15 **VI. CLAIM FOR RELIEF:**
16 **VIOLATION OF AFFORDABLE CARE ACT §1557, 42 U.S.C. §18116**

17 33. Plaintiffs re-allege all paragraphs above.

18 34. Section 1557, 42 U.S.C. §18116 provides that "an individual shall
19 not, on the ground prohibited under ... section 504 of the Rehabilitation Act of 1973 ...
20 be excluded from participation in, *denied the benefits of*, or be subjected to
21 discrimination under, any health program or activity, any part of which is receiving
22 Federal financial assistance...."

23 35. Defendants receive federal financial assistance and are therefore a
24 "covered entity" for purposes of Section 1557.

25 36. Plaintiffs are "qualified persons with a disability" under both
26 Section 504 and Section 1557.

1 37. Persons like E.S. and Sternoff who have hearing loss are
2 discriminated against by Regence because it applies the Hearing Loss Exclusion to deny
3 coverage of medically necessary audiological examinations, a type of out-patient office
4 visit, and coverage of medically necessary hearing aids, a type of durable medical
5 equipment or prosthetic device. Under the exclusion, only people with Hearing Loss, a
6 qualifying disability, are denied access to the benefits that they require. Out-patient
7 office visits and durable medical equipment/prosthetic devices are covered for many
8 other health conditions under Regence's policies.

9 38. Defendants have continued to impose the Hearing Loss Exclusion,
10 despite the warning from the U.S. Department of Health and Human Services that "[a]n
11 explicit, categorical (or automatic) exclusion or limitation of coverage for all health
12 services related to [a particular race, gender, age or disability] is unlawful on its face."
13 *See* 81 Fed. Reg. 31429.

14 39. By excluding coverage of all health care related to hearing loss,
15 (except for cochlear implants), Regence has discriminated, and continues to discriminate
16 against Plaintiffs and the class they seek to represent, on the basis of disability, in
17 violation of Section 1557.

18 VII. DEMAND FOR RELIEF

19 WHEREFORE, Plaintiffs request that this Court:

20 1. Certify this case as a class action; designate the named Plaintiffs as
21 class representatives; and designate SIRIANNI YOUTZ SPOONEMORE HAMBURGER, Eleanor
22 Hamburger and Richard E. Spoonemore, as class counsel;

23 2. Enter judgment on behalf of the Plaintiffs and the class due to
24 Regence's discrimination on the basis of disability;

1 3. Declare that Regence may not apply the blanket Hearing Loss
2 Exclusion and/or other contract provisions, policies or practices that wholly exclude or
3 impermissibly limit coverage of medically necessary treatment solely on the basis of
4 disability;

5 4. Enjoin Regence from applying the blanket Hearing Loss Exclusion
6 and/or other violations of the Affordable Care Act now and in the future;

7 5. Enter judgment in favor of Plaintiffs and the class for damages in an
8 amount to be proven at trial due to Regence’s violation of Section 1557 of the Affordable
9 Care Act;

10 6. Award Plaintiffs and the class their attorney fees and costs under 42
11 U.S.C. §1988; and

12 7. Award such other relief as is just and proper.

13 DATED: October 30, 2017.

14 SIRIANNI YOUTZ
15 SPOONEMORE HAMBURGER

16 /s/ Eleanor Hamburger
17 Eleanor Hamburger (WSBA #26478)

18 /s/ Richard E. Spoonemore
19 Richard E. Spoonemore (WSBA #21833)
20 701 Fifth Avenue, Suite 3650
21 Seattle, WA 98104
22 Tel. (206) 223-0303; Fax (206) 223-0246
23 Email: ehamburger@sylaw.com
24 rspoonemore@sylaw.com

25 Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
E.S., by and through her parents, R.S. and J.S., and JODI STERNOFF, both on their own behalf, and on behalf of all similarly situated individuals
(b) County of Residence of First Listed Plaintiff King
(c) Attorneys (Firm Name, Address, and Telephone Number)
Eleanor Hamburger and Richard E. Spoonemore
Sirianni Youtz Spoonemore Hamburger
701 Fifth Avenue, Suite 2560, Seattle, WA 98104, 206-223-0303

DEFENDANTS
REGENCE BLUESHIELD; and CAMBIA HEALTH SOLUTIONS, INC., f/k/a THE REGENCE GROUP
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
PROPERTY RIGHTS
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Patient Protection and Affordable Care Act §1557, 42 U.S.C. §18116
Brief description of cause:
Seeking injunctive and other remedies for discrimination based on disability

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE: October 30, 2017
SIGNATURE OF ATTORNEY OF RECORD: s/ Eleanor Hamburger (WSBA #26478)

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington



E.S., by and through her parents, R.S. and J.S.,
and JODI STERNOFF, both on their own behalf,
and on behalf of all similarly situated individuals,

Plaintiff(s)

v.

REGENCE BLUESHIELD; and CAMBIA HEALTH
SOLUTIONS, INC. f/k/a THE REGENCE GROUP,

Defendant(s)

Civil Action No. 2:17-cv-1609

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

REGENCE BLUESHIELD
c/o Corporation Service Company
300 Deschutes Way SW, Ste. 304
Tumwater, WA 98501

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Eleanor Hamburger
Richard E. Spoonemore
Sirianni Youtz Spoonemore Hamburger
701 Fifth Avenue, Suite 2560
Seattle, WA 98104

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington



E.S., by and through her parents, R.S. and J.S.,
and JODI STERNOFF, both on their own behalf,
and on behalf of all similarly situated individuals,

Plaintiff(s)

v.

Civil Action No. 2:17-cv-1609

REGENCE BLUESHIELD; and CAMBIA HEALTH
SOLUTIONS, INC. f/k/a THE REGENCE GROUP,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

CAMBIA HEALTH SOLUTIONS, INC.
f/k/a The Regence Group
c/o Corporation Service Company
300 Deschutes Way SW, Ste. 304
Tumwater, WA 98501

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Eleanor Hamburger
Richard E. Spoonemore
Sirianni Youtz Spoonemore Hamburger
701 Fifth Avenue, Suite 2560
Seattle, WA 98104

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Regence Blueshield Violates Affordable Care Act by Refusing to Cover Hearing Exams](#)
