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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
Plaintiff,

v.

PROVIDENCE HEALTH &
SERVICES-WASHINGTON; SWEDISH
HEALTH SERVICES; AND SWEDISH
EDMONDS,
Defendants.

NO.

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF UNDER THE
CONSUMER PROTECTION ACT,
RCW 19.86

I. INTRODUCTION

The State of Washington, by and through its attorneys Robert W. Ferguson, Attorney General, and Audrey Udashen, Assistant Attorney General, brings this action against Providence Health & Services-Washington, Swedish Health Services and Swedish Edmonds (collectively Defendants) for their violations of the Consumer Protection Act, RCW 19.86. The claims for relief alleged herein arise from Defendants' failure to disclose their exclusive use of CellNetix Labs LLC ("CellNetix") for pathology treatment to patients while CellNetix was an out-of-network provider with Premera Blue Cross ("Premera").

II. JURISDICTION AND VENUE

2.1 This Complaint is filed and these proceedings are instituted under the provisions of the Consumer Protection Act, RCW 19.86.

2.2 The violations alleged in this Complaint have been committed in whole or in part

1 in King County, Washington, by Defendants named herein.

2 **III. PARTIES**

3 **A. Plaintiff**

4 3.1 Plaintiff is the State of Washington.

5 3.2 The Attorney General is authorized to commence this action by RCW 19.86.080
6 and RCW 19.86.140. The Attorney General may seek restitution, injunctive relief and civil
7 penalties in an action brought under RCW 19.86.080 and RCW 19.86.140.

8 **B. Defendants**

9 3.3 Providence Health & Services-Washington (“Providence”) is a not-for profit
10 healthcare system headquartered in Renton, Washington. Providence operates multiple hospitals
11 in Western Washington, including Providence Centralia, Providence St. Peter in Olympia,
12 Providence Regional Medical Center in Everett, and a large clinical system.

13 3.4 Swedish Health Services and Swedish Edmonds (“Swedish”) are not-for profit
14 health providers based in King County. Swedish operates five hospital campuses (First Hill,
15 Cherry Hill, Ballard, Edmonds and Issaquah), ambulatory care centers, and a network of primary-
16 care and specialty clinics in King County.

17 3.5 Providence and Swedish (“Defendants”) affiliated in 2012.

18 **IV. FACTS**

19 4.1 Swedish and Providence’s Western Washington facilities contract with CellNetix
20 to provide pathology services to their patients on an exclusive basis.

21 4.2 CellNetix’s provider contract with Premera was terminated in January 2015.
22 While CellNetix was out of Premera’s network, it did not have access to patients’ insurance
23 benefit information and could bill Premera-insured patients at its full retail-rates, instead of the
24 lower rates in-network providers are obligated to accept.

25 4.3 Premera insures many of Defendants’ patients.

26 4.4 Defendants received notice of CellNetix’s termination from Premera’s network

1 from both Premera and CellNetix.

2 4.5 In one of these notices, Premera explained that it was providing notice of
3 CellNetix's termination to hospitals that were "high utilizers" of CellNetix because hospitals
4 choose which pathology lab to use in their patients' care and patients are often "not even aware
5 of where their lab or pathology tests are sent."

6 4.6 Defendants' personnel warned of the consequences of Defendants' continued use
7 of CellNetix while it was out of Premera's network.

8 4.7 In a January 5, 2015 email, a Swedish executive warned that "patients don't really
9 have a choice of using CellNetix or not when they come to Swedish so they will not be happy if
10 they get a bill for the out-of-network difference."

11 4.8 Defendants' personnel urged their leadership to disclose their exclusive use of
12 CellNetix to their Premera-insured patients while CellNetix was out-of-network with Premera.

13 4.9 Rather than provide this notice to patients, Defendants relied on CellNetix's
14 representation that it would temporarily refrain from submitting its claims to Premera for
15 reimbursement while it negotiated with Premera to be reinstated in its network.

16 4.10 When Premera and CellNetix's negotiations broke down, CellNetix began to
17 submit out-of-network, retail-rate bills to Defendants' Premera-insured patients.

18 4.11 Patients who received out-of-network bills from CellNetix submitted complaints
19 to Defendants.

20 4.12 A Providence staff member, who received a bill from CellNetix for his own
21 treatment at a Providence facility, submitted a complaint in August 2015. The staff member
22 explained that he was "learning the hard way that CellNetix is out of network for Premera,"
23 which was "not disclosed to me when I came in for surgery." He observed that "we need to have
24 a disclosure policy about this when patients come into the hospital."

25 4.13 In a December 9, 2015 email that was forwarded to clinical directors at Swedish,
26 a financial counselor wrote that CellNetix "is becoming a major issue for patients" and that "one

1 of the most voiced complaints from our patients beyond their bill is that they were not informed
2 of the out-of-network issue.” She recommended that Defendants post a sign explaining that their
3 “contracted provider for lab services, CellNetix Pathology and Lab, is not an in-network provider
4 for Premera Blue Cross,” which could lead to greater out-of-pocket costs for patients.

5 4.14 In a complaint submitted to Swedish, a Premera-insured patient indicated that she
6 assumed that “only Premera Network contracted providers could participate in my care or that I
7 would be given informed consent and choice about the likelihood of substantial additional costs.”

8 4.15 Defendants did not adopt the staff members’ or patient’s suggestions.

9 4.16 Defendants’ contracts with CellNetix expired while CellNetix was still out of
10 Premera’s network. Defendants renewed their CellNetix contracts in October 2015 and January
11 2016 without renegotiating the exclusivity provision.

12 4.17 CellNetix was reinstated in Premera’s network in February 2016.

13 4.18 While CellNetix was out of Premera’s network, it transmitted out-of-network
14 retail-rate bills to 6,469 of Defendants’ Premera-insured patients.

15 4.19 Patients made substantial payments towards these bills.

16 **V. CLAIM FOR VIOLATION OF THE CONSUMER PROTECTION ACT,**
17 **RCW 19.86.020**

18 5.1 Plaintiff realleges paragraphs 1.1 through 4.19 and incorporates them as if fully
19 set forth herein.

20 5.2 Defendants engaged in unfair and deceptive conduct in trade or commerce
21 affecting numerous Washington consumers by failing to disclose their exclusive use of CellNetix
22 to their Premera-insured patients while CellNetix was an out-of-network provider with Premera.

23 5.3 The conduct described in paragraphs 1.1 through 5.2 constitutes unfair and
24 deceptive acts or practices in trade or commerce in violation of RCW 19.86.020 and is contrary
25 to the public interest.

26 5.4 These acts or practices occurred in trade or commerce, specifically the provision

1 of and payment for medical services by Washington residents.

2 5.5 These practices affected the public interest because they impacted numerous
3 Washington consumers. These practices constituted a pattern of conduct that Defendants
4 committed in the course of business and of which there is a real and substantial potential for
5 repetition.

6 **VI. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, STATE OF WASHINGTON, prays that this Court grant the
8 following relief:

9 6.1 That the Court adjudge and decree that Defendants have engaged in the conduct
10 complained of herein.

11 6.2 That the Court adjudge and decree that the conduct complained of in the
12 Complaint constitutes unfair or deceptive acts or practices and unfair methods of competition in
13 violation of the Consumer Protection Act, RCW 19.86.

14 6.3 That the Court issue a permanent injunction enjoining and restraining Defendants
15 and their representatives, successors, assigns, officers, agents, servants, employees, and all other
16 persons acting or claiming to act for, on behalf of, or in active concert or participation with
17 Defendants from continuing or engaging in the unlawful conduct complained of herein.

18 6.4 That the Court assess civil penalties, pursuant to RCW 19.86.140, of up to \$2,000
19 per violation against Defendants for each and every violation of RCW 19.86.020 alleged herein.

20 6.5 That the Court make such orders pursuant to RCW 19.86.080, as it deems
21 appropriate to provide for restitution to consumers of money or property acquired by Defendants
22 as a result of the conduct complained of herein.

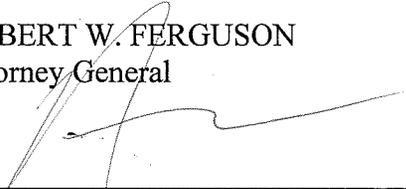
23 6.6 That the Court order such other relief as it may deem just and proper to fully and
24 effectively dissipate the effects of the conduct complained of herein, or which may otherwise
25 seem proper to the Court.

26 //

1 DATED this 28th day of March, 2018.

2 Presented by:

3 ROBERT W. FERGUSON
4 Attorney General



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6 AUDREY UDASEN, WSBA #42868
7 Assistant Attorney General
8 Attorneys for Plaintiff State of Washington
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