

1 Leslie Halligan, District Court Judge
2 Fourth Judicial District
3 Missoula County Courthouse
4 200 West Broadway Street
5 Missoula, MT 59802-4292
6 (406) 258-4771
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8 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

9 THE DEPOT, INC., a Montana
10 Corporation, UNION CLUB BAR, INC.,
11 a Montana Corporation, TRAIL HEAD,
12 INC., a Montana Corporation, on
13 behalf of themselves and all those
14 similarly situated,

15 Plaintiffs,

16 v.

17 CARING FOR MONTANANS, INC.
18 F/K/A BLUE CROSS AND BLUE
19 SHIELD OF MONTANA, INC., HEALTH
20 CARE SERVICE CORP., and JOHN
21 DOES I-X,

22 Defendants.

Dept. No. 1
Cause No. DV-16-521

**RULE 23 CLASS
CERTIFICATION ORDER**

23 In accordance with Rule 23 of the Montana Rules of Civil Procedure
and pursuant to the Court's opinion issued on June 29, 2020, the Court
ORDERS:

1. Class Certification. Civil Action No. DV-16-521, *Depot, et. al,*
v. Caring for Montanans, Inc. et al., shall be maintained as a class action

1 under Rule 23(b)(3), Mont. R. Civ. Pro., on behalf of the following class of
2 plaintiffs:

3 All Montana employers that purchased insurance under a
4 "Montana Chamber Choices" group insurance arrangement
5 and who made premium payments that included charges—that
6 were set and/or communicated to Plaintiffs and the Class
7 during negotiations and before each plan existed—where the
8 charges were in excess of the medical premium (the charge for
9 the health insurance itself) and were added into the billed
10 premium to make payments to the Montana Chamber Choices
11 Trust and/or the Montana Chamber of Commerce or its
12 affiliates (including third party consultants and the Chamber
13 Choices Trust), or to purchase other insurance products, within
14 the applicable limitations periods.

15 The grounds for class certification, including analysis of all relevant Rule 23
16 factors, are set forth in the Court's June 29, 2020 Order Granting Plaintiffs'
17 Motion for Class Clarification (Doc. 75) and are expressly incorporated
18 herein.

19 **2. Class Representative; Class Counsel.** The Depot, Inc., Union
20 Club Bar, and Trail Head, Inc. are designated as class representatives and
21 attorneys John Morrison and John Heenan are designated as counsel for the
22 class.

23 **3. Class Claims, Issues, and Defenses.** Plaintiffs claim that
Caring for Montanans, Inc. (hereinafter "CFM") (formerly known as Blue
Cross and Blue Shield of Montana, Inc.) and Health Care Service
Corporation (hereinafter "HCSC") (doing business as Blue Cross and Blue

1 Shield of Montana), negligently and in bad faith, added amounts to the
2 premiums charged to employers for Chamber Choices health insurance in
3 order to pay illegal kickbacks to the Montana Chamber of Commerce in
4 return for its cooperation and help marketing this health insurance product.
5 Plaintiffs also claim that CFM and HCSC negligently misrepresented and
6 concealed material facts about this practice and were unjustly enriched from
7 it. Plaintiffs claim CFM and HCSC acted with actual malice, as defined in §
8 27-1- 221, MCA, entitling the class to reasonable punitive damages as well.
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10 Plaintiffs further allege CFM and HCSC negotiated directly with
11 individual Chamber Choices employer groups and their agents in the
12 enrollment and renewal process; CFM and HCSC underwrote individual
13 employer groups in the Chamber Choices program, placing them in rating
14 tiers each year based on claims history and other factors; Chamber Choices
15 financial documents expressly state that health insurance premiums were
16 paid directly to CFM or HCSC based on the plans selected by the employer,
17 that these premiums included administrative fees that were remitted by
18 HCSC to third-party consultants, other service providers, and the Chamber
19 Choices trust, and that CFM and HCSC added some of the excess premium
20 revenue to its reserves; CFM and HCSC sent annual renewal packets and
21 monthly premium bills directly to the employer subscribers to Chamber
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1 Choices (except in 2008-09 when HealthServe sent the bills for them); CFM
2 and HCSC chose to agree to include charges for the administrative fees paid
3 to the Chamber and for other insurance products and whether and how to
4 disclose those charges on the bill; individual employers were free to and did
5 come and go from Chamber Choices based on their negotiations with CFM
6 and HCSC; the Montana Chamber of Commerce negotiated overall annual
7 rate increases for the program with CFM and HCSC, and the amounts that
8 would be added to the premiums for the administrative fees and other
9 products, but was not otherwise involved in the annual underwriting and
10 negotiations between HCSC and the employers and their agents.
11

12 Defendants CFM and HCSC deny the allegations and claim: the
13 individual employer groups who were the participants in the Montana
14 Chamber Choices program had a trust relationship with the Montana
15 Chamber Choices Trust, and not with either CFM or HCSC; the Trust and/or
16 the Montana Chamber of Commerce established the requirements that Trust
17 participants purchase insurance products in addition to health insurance and
18 pay an association fee as conditions for participation in the Chamber Choices
19 program; the Trust and/or Chamber negotiated the rates that CFM charged
20 for its insurance products directly with CFM, which did not negotiate with any
21 employers in the Chamber Choices Trust Group Insurance Arrangement; the
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1 Trust and/or the Chamber negotiated the premiums for other insurance
2 products and set the association fee to be paid by each employer group; the
3 Trust solicited participation and renewal in the Chamber Choices program;
4 CFM, and later HCSC, provided all benefits to the employees of Chamber
5 Choices participants in accordance with the terms and conditions of their
6 respective benefits purchased; Chamber Choices provided all benefits to
7 employees of Chamber Choices participants in accordance with the terms
8 and conditions of their respective benefits provided and purchased; Neither
9 CFM nor HCSC retained any funds paid by the employers except for those
10 monies which equaled the amount charged for the provided health insurance
11 products; the Trust and/or Chamber was responsible for payment of fees and
12 charges incurred by employers for products or services not provided by CFM,
13 and, later, HCSC; until HealthServe took over as the billing, eligibility and
14 renewal agent for the Trust, CFM itemized on its bill the amount charged for
15 health insurance for each employer in the Chamber Choices GIA and the
16 association fee, if any was charged; HCSC did not solicit participation or
17 renewal by employer groups in the Chamber Choices program; the Trust
18 and/or the Chamber disclosed the requirements that employer groups
19 participating in the Chamber Choices program also had to purchase other
20 insurance coverages and pay an association fee; beginning in January 2012,
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1 CFM and later HCSC, after July 31, 2013, sent itemized invoices to employer
2 participants which specifically set forth the cost of the health insurance
3 premium, the premiums for each additional insurance coverage required by
4 the Trust, and the association fee; numerosity cannot be established
5 sufficiently as against HCSC since it did not set any rates for insurance
6 products during the Chamber Choices program, as all rates for health
7 insurance were set by CFM. CFM and HCSC incorporate their affirmative
8 defenses from their respective Answers as if fully set forth here.
9

10 Issues affecting the class that will be decided in the class action
11 include: (1) Whether Defendants embedded in the Chamber Choices
12 premium, that was charged to Plaintiffs and members of the Class,
13 surcharges in excess of the medical premium to generate revenue to make
14 unlawful payments; (2) Whether this practice constituted negligence or bad
15 faith and/or resulted in unjust enrichment to Defendants; (3) Whether
16 Defendants misrepresented or concealed material facts about this practice
17 in their communications with Plaintiffs and the class during the negotiations
18 in the same material way for all members of the class such that it constituted
19 negligent misrepresentation; (4) Whether HCSC is liable for any alleged
20 wrongful acts which occurred prior to HCSC's acquisition of the insurance
21 book of insurance business from CFM; (5) What amount of money will
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1 compensate Plaintiffs and the Class members for any overpayments; (6)
2 Whether Defendants acted with malice as defined in Mont. Code Ann. § 27-
3 1-221; and (7) If Defendants acted with malice, what amount of punitive
4 damages is appropriate.

5 **4. Identification of Class Members.** CFM and HCSC have in their
6 possession information pertinent to the identity of class members. Therefore,
7 by September 18, 2020, CFM and HCSC must produce to the Court and
8 class counsel the names, addresses, email addresses and other contact
9 information they possess for all Montana employers that purchased
10 insurance from either Defendant under a "Chamber Choices" insurance
11 policy and who made premium payments that included charges—that were
12 set and/or communicated to Plaintiffs and the Class during negotiations and
13 before each plan existed—where the charges were in excess of the medical
14 premium (the charge for the health insurance itself) and were added into the
15 billed premium.
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18 **5. Notice.** The Court hereby approves the individual notice,
19 appended below as Exhibit 1, and approves the publication notice, appended
20 below as Exhibit 2. Class counsel, with CFM and HCSC cooperation, will
21 accomplish having the individual notices mailed, and the publication notice
22 reasonably published. Notice shall be mailed and published by October 15,
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1 2020. Class members shall have 45 days from the mailing of the notice to
2 opt out as provided in the notice.

3 **6. List of Class Members.** By December 11, 2020, class counsel
4 must file with the Clerk a list of all class members and a list of the employers
5 who opted out of the Class.

6 DATED this 1st day of September, 2020.

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9 Leslie Halligan
10 District Court Judge

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12 cc: John Morrison, Esq.
13 John Heenan, Esq.
14 Stefan Wall, Esq. / Michael David McLean, Esq.
15 Stanley Kaleczyc, Esq. / Kimberly Beatty, Esq. / M. Christy McCann, Esq.
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POSTCARD, SIDE ONE

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

The Depot, Union Club Bar and Trail Head, Inc. v. Caring for Montanans, Inc. and Health Care Service Corp.,

Cause No. DV-16-521

NOTICE OF PENDENCY OF CLASS ACTION LAWSUIT

On June 29, 2020, the Montana Fourth Judicial District Court certified a class action against Caring for Montanans, Inc. (CFM), formerly known as Blue Cross and Blue Shield of Montana, Inc., and Health Care Service Corp. (HCSC), now doing business in Montana as Blue Cross Blue Shield of Montana.

What is the case about? The case, *The Depot, Union Club Bar and Trail Head, Inc. v. Caring for Montanans, Inc. and Health Care Service Corp.*, alleges that CFM and HCSC Blue Cross and Blue Shield of Montana, negligently and in bad faith, added amounts to the premiums charged to employers for Chamber Choices health insurance in order to pay illegal kickbacks to the Montana Chamber of Commerce in return for its cooperation and help marketing this health insurance product. Plaintiffs seek to require CFM and HCSC to repay the overcharges to the Chamber Choices subscribers and also seek reasonable punitive damages. CFM and HCSC deny Plaintiffs' allegations and ask that Plaintiffs recover nothing. CFM and HCSC contend that the Montana Chamber of Commerce and the Montana Chamber Choices Trust disclosed to employers they were required to (a) purchase all coverages and services offered by the program and (b) pay an association fee as a condition to obtain Chamber Choices health insurance through the Chamber Choices program; CFM and HCSC also contend the Montana Chamber and/or the Trust — not CFM or HCSC — negotiated such additional coverages and premium amounts and determined the amount of the association fee; and, CFM and HCSC only invoiced, collected, and remitted these amounts at the direction of the Montana Chamber and the Trust to them.

Who's included? You may be a member of the Class if: (1) You purchased "Chamber Choices" insurance from the Montana Chamber Trust; (2) within the applicable statute of limitations; and (3) paid premiums for the Chamber Choices coverage.

What are my options? If you want to stay in the case, you do not need to do anything. If you do not want to participate in this case or want to file your own case, you must mail a letter to Depot v. CFM Case Administrator, c/o KCC, PO Box 43205, Providence, RI 02940-3205, stating that you want to be excluded from The Depot v. CFM and HCSC class action. Be sure to include your name and address and sign the letter. **Your request to be excluded must be postmarked by [45 days from date of mailing.]** If you do not exclude yourself from this case, you will be legally bound by the decisions of the Court and the final outcome of the lawsuit. If you exclude yourself, you will not participate in any favorable result from the litigation but will retain all rights relating to any claims you may have. Additional information concerning the lawsuit and an exclusion request form ('Opt-Out') are available at www.DepotClassAction.com.

Do I need to hire a lawyer? The Court has appointed attorneys John Morrison of Morrison Sherwood Wilson Deola, PLLP (Helena, MT) and John Heenan of Heenan & Cook (Billings, MT) to represent the Class. You may, but are not required to, enter an appearance through an attorney in this case at your own expense.

LEGAL NOTICE

If you purchased a Chamber Choices health insurance policy from Blue Cross and Blue Shield of Montana, a pending class action may affect your rights.

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