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11 Attorneys for Defendant
 Anthem Blue Cross Life and Health Ins. Co.

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

15 BAY AREA SURGICAL MANAGEMENT,
 16 LLP, a limited liability company,

17 Plaintiff,

18 vs.

19 ANTHEM BLUE CROSS LIFE AND HEALTH
 20 INSURANCE COMPANY; and DOES 1-25,
 inclusive,

21 Defendants.

Case No.: CV 12-02123 LHK

**STIPULATED REQUEST FOR ORDER
 DISMISSING PLAINTIFF'S ERISA
 CLAIMS WITH PREJUDICE AND
 REMANDING PLAINTIFF'S SECOND
 AMENDED COMPLAINT TO STATE
 COURT**

Compl. Filed: February 21, 2012
 (Santa Clara County Superior
 Court, Case No. 112-CV-
 218474)

Trial Date: Not Yet Set

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

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1 This Stipulation is entered into between Plaintiff Bay Area Surgical Management LLP
2 (“BASM”) and Defendant Anthem Blue Cross Life and Health Insurance Company (“Anthem Blue
3 Cross Life and Health”) (collectively the “Parties”), through their undersigned counsel of record.

4 **RECITALS**

5 WHEREAS, BASM filed its First Amended Complaint in this action in the Superior Court of
6 California, County of Santa Clara, on February 17, 2012, and served Anthem Blue Cross Life and
7 Health on March 28, 2012;

8 WHEREAS, BASM alleged in its First Amended Complaint that Anthem Blue Cross Life
9 and Health underpaid BASM for a surgical procedure it performed on a patient (the “Patient”) who
10 is allegedly insured by Anthem Blue Cross Life and Health under an insurance policy (the “Benefits
11 Agreement”);

12 WHEREAS, BASM’s First Amended Complaint asserted claims against Anthem Blue Cross
13 Life and Health based on an alleged assignment to it from the Patient, of the Patient’s rights under
14 the Benefits Agreement;

15 WHEREAS, the Benefits Agreement is subject to the Employee Retirement Income Security
16 Act of 1974, as amended, 29 U.S.C. §§ 1001 *et. seq.* (“ERISA”);

17 WHEREAS, BASM’s First Amended Complaint therefore raised questions of federal law;

18 WHEREAS, Anthem Blue Cross Life and Health timely removed the original Complaint to
19 this Court on April 27, 2012;

20 WHEREAS, on May 7, 2012, Anthem Blue Cross Life and Health moved to dismiss
21 Plaintiff’s claims as preempted by ERISA under 29 U.S.C. § 1132, and as articulated by *Cedars-
22 Sinai Med. Ctr. v. Nat’l League of Postmasters of United States*, 497 F.3d 972, 978 (9th Cir. 2007),
23 and on various other state law grounds;

24 WHEREAS, BASM did not oppose Anthem Blue Cross Life and Health’s motion to dismiss,
25 and instead filed its Second Amended Complaint on May 18, 2012;

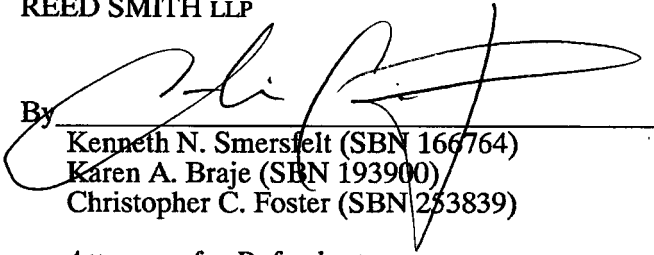
26 WHEREAS, BASM’s Second Amended Complaint asserts that BASM is now alleging
27 claims based only on an oral contract and the breach of other state law duties that exist directly
28 between Anthem Blue Cross Life and Health and BASM;

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IT IS SO STIPULATED.

DATED: June 27 2012.

REED SMITH LLP

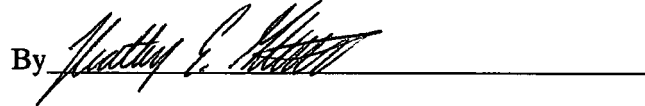
By 

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*Attorneys for Defendant
Anthem Blue Cross Life and Health Insurance
Company*

DATED: June 27, 2012.

LAW OFFICES OF NICOLAS LEZOTTE, P.C.

By 

Nicolas M. Lezotte (State Bar Number 257207)
Heather E. Gibson (State Bar Number
240938)

*Attorneys for Plaintiff
Bay Area Surgical Management LLP*

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12 UNITED STATES DISTRICT COURT
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15 BAY AREA SURGICAL MANAGEMENT,
 16 LLP, a limited liability company,

17 Plaintiff,

18 vs.

19 ANTHEM BLUE CROSS LIFE AND HEALTH
 20 INSURANCE COMPANY; and DOES 1-25,
 inclusive,

21 Defendants.

Case No.: CV 12-02123 LHK

**[PROPOSED] ORDER DISMISSING
 PLAINTIFF'S ERISA CLAIMS WITH
 PREJUDICE AND REMANDING
 PLAINTIFF'S SECOND AMENDED
 COMPLAINT TO STATE COURT**

Compl. Filed: February 21, 2012
 (Santa Clara County Superior
 Court, Case No. 112-CV-
 218474)

Trial Date: Not Yet Set

1 Before the Court is a Stipulated Request between the Parties, Plaintiff Bay Area Surgical
2 Management LLP (“BASM”) and Defendant Anthem Blue Cross Life and Health Insurance
3 Company (“Anthem Blue Cross Life and Health”). BASM’s state court First Amended Complaint
4 asserted claims against Anthem Blue Cross Life and Health based on an alleged assignment of rights
5 from a patient (the “Patient”) under the Benefits Agreement between the Patient and Anthem Blue
6 Cross Life and Health. BASM’s Second Amended Complaint purports to assert only claims that
7 exist directly between BASM and Anthem Blue Cross Life and Health, and not on any assignment of
8 rights to BASM by the Patient. BASM has moved to remand the case to state court, though the
9 Parties agree that the Benefits Agreement are subject to the Employee Retirement Income Security
10 Act of 1974, as amended, 29 U.S.C. §§ 1001 *et. seq.* (“ERISA”) and Anthem Blue Cross Life and
11 Health asserts that any claims by BASM against Anthem Blue Cross Life and Health based on an
12 assignment of rights under the Benefits Agreement are preempted by federal law.

13 Having considered the papers and **GOOD CAUSE APPEARING**, the Court hereby
14 **ORDERS** as follows:

15 (1) Plaintiff BASM’s claims against Anthem Blue Cross Life and Health are hereby
16 **DISMISSED WITH PREJUDICE**, to the extent the claims are based on any assignment of rights
17 from the Patient to BASM under the Benefits Agreement, on the basis of federal preemption as
18 provided by ERISA under 29 U.S.C. § 502, and as articulated in *Cedars-Sinai Med. Ctr. v. Nat’l*
19 *League of Postmasters of United States*, 497 F.3d 972, 978 (9th Cir. 2007).

20 (2) Plaintiff’s case is hereby remanded to the Superior Court of California, County of
21 Santa Clara.

22 (3) Anthem Blue Cross Life and Health shall have fourteen (14) days from the date of
23 this Order to file a responsive pleading to the Second Amended Complaint in state court.

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IT IS SO ORDERED. The Clerk shall close the file.

DATED: July 3, 2012.



The Honorable Lucy H. Koh
U.S. District Court Judge for the Northern District
of California