

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Master Case No.: 00-1334-MD-MORENO
Tag-Along Case No.: 02-22027-CIV-MORENO

IN RE: MANAGED CARE LITIGATION

THE AMERICAN DENTAL ASSOCIATION, on
its own behalf and in an associational capacity on
behalf of its members, and FRANK S. ARNOLD,
D.M.D., DAVID W. RICHARDS, D.D.C., and
JAMES SWANSON, D.D.S., individually and on
behalf of all others similarly situated

Plaintiffs,

vs.

WELLPOINT HEALTH NETWORK, INC. and
BLUE CROSS OF CALIFORNIA,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION,
GRANTING DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT**

THE MATTER was referred to the Honorable Edwin G. Torres, United States Magistrate Judge for a Report and Recommendation on Defendant's Renewed Motion for Summary Judgment Based on Failure to Exhaust Administrative Remedies (**D.E. No. 43**). The Magistrate Judge filed a Report and Recommendation (**D.E. No. 92**) on **January 19, 2011**. The Court has reviewed the entire file and record. The Court has made a *de novo* review of the issues that the objections to the Magistrate Judge's Report and Recommendation present, and being otherwise fully advised in the premises, it is

ADJUDGED that United States Magistrate Judge Edwin G. Torres's Report and

Recommendation (D.E. No. 92) is **AFFIRMED** and **ADOPTED**. Accordingly, it is

ADJUDGED that:

(1) Defendants' Renewed Motion for Summary Judgment Based on Failure to Exhaust Administrative Remedies (D.E. No. 42) is **GRANTED**. After a *de novo* review of the record, Court agrees with Judge Torres that Plaintiffs failed to appeal in writing within the parameters set forth by the health care plan and that Plaintiffs' failure to appeal is not excused because they have not satisfied the requirements for showing futility. Therefore, summary judgment is hereby entered in favor of Defendants and against Plaintiffs on Count I of the Complaint.

(2) As Count I was the only count that had not been dismissed after this Court affirmed and adopted Magistrate Judge Torres' Report and Recommendation (D.E. No. 52) recommending dismissal of all of Plaintiffs' state law claims based on preemption by ERISA, this case (Case No. 02-22027-CIV-MORENO) is **CLOSED** and all pending motions are **DENIED** as moot.

DONE AND ORDERED in Chambers at Miami, Florida, this 5th day of February, 2011.



FEDERICO A. MORENO
CHIEF UNITED STATES DISTRICT JUDGE

Copies provided to:

United States Magistrate Judge Edwin G. Torres

Counsel of Record