

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**ANDREA PETERSON**

**CIVIL ACTION**

**VERSUS**

**NO. 13-933**

**WELLPOINT, INC., ET AL**

**SECTION N (1)**

**ORDER AND REASONS**

The Court, having considered the complaint, the record, the applicable law, the Magistrate Judge's Report and Recommendation (Rec. Doc. 55), the Center for Restorative Breast Surgery's Motion in Objection to the Magistrate's Report and Recommendation (Rec. Doc. 63), and Plaintiff's Objections to Magistrate Report Recommendations (Rec. Doc. 70), hereby approves the Magistrate Judge's Report and Recommendation (Rec. Doc. 55) and adopts it as its opinion.

In its objection (Rec. Doc. 63), the Center for Restorative Breast Surgery, LLC (the "Center") raises numerous factual arguments which, if established and not controverted, might be grounds for summary judgment. However, on a motion to dismiss pursuant to Rule 12(b)(6), the Court is limited to the plaintiff's allegations and must draw all reasonable inferences in the plaintiff's favor. Under this standard, the Court agrees with the Magistrate Judge that plaintiff has stated a claim for breach of contract against the Center. As for the Center's alternative argument that plaintiff's claims should be dismissed without prejudice as premature due to her failure to present them first to a medical review panel pursuant to La. Rev. Stat. § 40:1299.47, the Court does not

consider this argument, for it was not raised in the Center's motion to dismiss. If the Center wishes to proceed with this argument, it must present it through a proper motion.

The plaintiff raises many additional facts in her objections to the report and recommendation (Rec. Doc. 70). However, they extend to matters far beyond the subject matter of the complaint and do not establish any error in the Magistrate Judge's analysis.

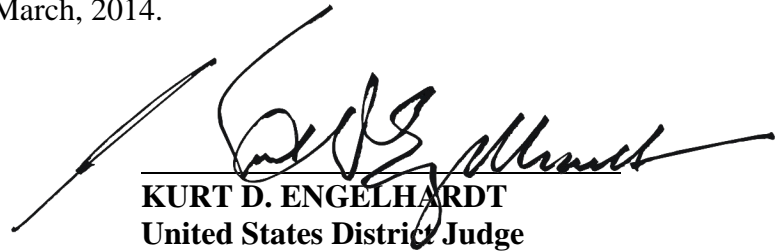
Accordingly,

**IT IS ORDERED** that:

- 1) Defendant, Center for Restorative Breast Surgery's Motion in Objection to the Magistrate's Report and Recommendation (**Rec. Doc. 63**) is hereby **DENIED**;
- 2) Plaintiff's Objections to Magistrate Report Recommendations (**Rec. Doc. 70**) are hereby **OVERRULED**;
- 3) The motions of the defendants, Centers for Medicare & Medicaid Services, WellPoint, Inc., Empire HealthChoice Assurances, Inc., whose trade name is Empire BlueCross BlueShield, and Blue Cross and Blue Shield Association to dismiss the complaint of the plaintiff, Andrea Peterson (**Rec. Docs. 29, 32 and 37**) are hereby **GRANTED**, and the plaintiff's claims against (a) Centers for Medicare & Medicaid Services, (b) WellPoint, Inc., (c) Empire HealthChoice Assurances, Inc., (d) Empire BlueCross BlueShield, and (e) Blue Cross and Blue Shield Association are hereby **DISMISSED**; and
- 4) The motion of the defendant, Center for Restorative Breast Surgery, LLC, to dismiss (**Rec. Doc. 19**) is hereby **DENIED IN PART**, in that it is denied as to Ms. Peterson's

cause of action for breach of contract, and **GRANTED IN PART**, in that it is granted as to all other claims.

New Orleans, Louisiana, this 21<sup>st</sup> day of March, 2014.



**KURT D. ENGELHARDT**  
**United States District Judge**

**Clerk to serve Andrea Petersen:**  
**ajnpeterson@gmail.com**