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8 Attorneys for Plaintiff COLUMBIA CASUALTY COMPANY

9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

<p>11 COLUMBIA CASUALTY COMPANY</p> <p>12 Plaintiff,</p> <p>13 v.</p> <p>14 COTTAGE HEALTH SYSTEM</p> <p>15 Defendant.</p>	<p>16 Case No.: 2:16-cv-3759</p> <p>17 COMPLAINT FOR DECLARATORY JUDGMENT, RESCISSION AND REIMBURSEMENT OF DEFENSE AND SETTLEMENT PAYMENTS</p>
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18 Plaintiff COLUMBIA CASUALTY COMPANY (hereinafter “Columbia”) by and
19 through its attorneys, as and for Complaint against Defendant, hereby allege as follows:

20 **INTRODUCTION**

21 1. Pursuant to 28 U.S.C. § 2201, Columbia brings this action for Declaratory
22 Judgment, Rescission and for Reimbursement of Defense and Settlement Payments made by
23 Columbia on behalf of its insured.

24 2. This matter arises out of a data breach that resulted in the release of electronic
25 private healthcare patient information stored on network servers owned, maintained and/or
26 utilized by defendant COTTAGE HEALTH SYSTEM (“Cottage”).

27 3. Cottage operates a network of hospitals located in Southern California,
28 including Santa Barbara Cottage Hospital, Goleta Valley Cottage Hospital and Santa Ynez
Valley Cottage Hospital (collectively, the “Hospitals.”)

1 4. Following the data breach, a class action lawsuit was commenced against
2 Cottage in which the plaintiffs asserted claims against Cottage and others based on its alleged
3 breach of California's Confidentiality of Medical Information Act ("CMIA"), California Civil
4 Code §56, *et seq.* A settlement has been reached in the class action lawsuit for the amount of
5 \$4.125 million.
6

7 5. Columbia incurred substantial defense costs and data breach response expenses
8 on Cottage's behalf and funded the \$4.125 million class action settlement, subject to a
9 complete reservation of rights.

10 6. The data breach is also the subject of an ongoing investigation conducted by the
11 California Department of Justice regarding Cottage's potential violations of the federal Health
12 Insurance Portability and Accountability Act ("HIPAA.")
13

14 7. Columbia issued a liability policy to Cottage providing claims made coverage
15 for the October 1, 2013 to October 1, 2014 policy period.
16

17 8. Columbia seeks a declaration that it is not obligated to provide Cottage with a
18 defense or indemnification in connection with any and all claims stemming from the data
19 breach at issue.

20 9. Columbia also seeks a declaration that the liability policy issued to Cottage was
21 issued in reliance upon material misrepresentations and/or omissions of fact and that,
22 consequently, Columbia is entitled to rescind the policy as void *ab initio*.
23

24 10. Columbia also seeks a declaration of its entitlement to reimbursement in full
25 from Cottage for any and all attorney's fees or related costs or expenses Columbia has paid or
26 will pay in connection with the data breach and the defense and settlement of the class action
27 lawsuit and any related proceedings and an award of damages consistent with such declaration.
28

PARTIES, JURISDICTION AND VENUE

1
2 11. Columbia is a corporation organized and existing under the laws of the State of
3 Illinois and having its principal place of business located at CNA Plaza, Chicago, Illinois.
4 Columbia is in the business of providing and underwriting insurance. Columbia is, and at all
5 times relevant to this Complaint was, duly authorized to transact business in the State of
6 California.
7

8 12. Upon information and belief, Cottage is a California organization with its
9 principal place of business located at 400 West Pueblo Street, Santa Barbara, California 93105.

10 13. This litigation is a civil action over which this Court has original diversity
11 jurisdiction pursuant to 28 U.S.C. §1332(a)(2) based on diversity of the parties and the amount
12 in controversy.
13

14 14. The amount in controversy in this matter exceeds \$75,000. Columbia seeks a
15 declaration that it is not obligated to provide coverage to Cottage for any portion of a \$4.125
16 million class action settlement, as well as additional potential regulatory liability, and seeks
17 reimbursement of the settlement amount along with defense costs and data breach response
18 expenses described more fully herein.
19

20 15. The insurance contract between Columbia and Cottage that is the subject of this
21 declaratory judgment action was issued to Cottage in this District. Further, the alleged acts and
22 omissions on the part of Cottage that precipitated the claims for which coverage is sought took
23 place in this District. Therefore, venue is proper in this District pursuant to 28 U.S.C. § 1391.
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FACTUAL BACKGROUND

A. The Underlying Action

16. On or about January 27, 2014, a proposed class action was commenced in California Superior Court, Orange County styled Kenneth Rice, et al. v. INSYNC, Cottage Health System, et al., Case No. 30-2014-00701147-CU-NP-CJC (the “Underlying Action”).

17. The complaint alleged that between October 8, 2013 and December 2, 2013, confidential medical records of approximately 32,500 of Cottage’s Hospitals’ patients that were stored electronically on Cottage’s servers were disclosed to the public via the internet.

18. The complaint alleged that the breach occurred because Cottage and/or its third-party vendor, INSYNC Computer Solution, Inc. (“INSYNC”), stored medical records on a system that was fully accessible to the internet but failed to install encryption or take other security measures to protect patient information from becoming available to anyone who “surfed” the internet.

19. The complaint alleged that Cottage violated its nondelegable duties under CMIA and HIPAA to maintain the security of its patients’ confidential medical records and to detect and prevent data breaches on its system that would allow such information to become available to the public through the internet.

20. On or about December 24, 2014, the Court in the Underlying Action granted the class representative’s motion for Preliminary Approval of Proposed Class Action Settlement. The proposed settlement involves creation of a \$4.125 million settlement fund for payments to approximately 50,917 Settlement class members, along with related expenses and attorneys’ fees.

1 21. Upon information and belief, INSYNC does not maintain sufficient liquid assets
2 to contribute towards the proposed settlement fund and does not maintain liability insurance
3 that applies with respect to the privacy claims asserted in the Underlying Action.

4 22. Columbia incurred more than \$168,000 in defense costs and funded the \$4.125
5 million settlement of the Underlying Action on behalf of Cottage, subject to a complete
6 reservation of rights, including the right to seek reimbursement of any funds paid or advanced
7 on Cottage's behalf pending a resolution of the instant coverage dispute.

8 23. Columbia also incurred more than \$860,000 in breach and crisis response
9 expenses on Cottage's behalf, which included attorneys' fees, costs associated with notifying
10 individuals potentially affected by the breach and the costs of retaining forensics experts to
11 inspect Cottage's systems and identify the causes of the breach, subject to complete reservation
12 of rights to recoup such expenses from Cottage.
13
14

15 **B. The California Department of Justice Investigation**

16 24. The data breach alleged in the Underlying Action is also the subject of a
17 pending investigation by the California Department of Justice ("DOJ") (the "DOJ
18 Proceeding"). The DOJ Proceeding will determine whether Cottage complied with its
19 obligations under HIPAA and any other pertinent state and federal laws and may potentially
20 result in the imposition of fines, sanctions or penalties.
21

22 **C. The Columbia Policy**

23 25. Columbia issued a "NetProtect360" claims-made liability policy to Cottage in
24 effect from October 1, 2013 through October 1, 2014, under policy number 425565140-02 (the
25 "Columbia Policy").
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27
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by someone for whose Wrongful Act the Insured is legally responsible;...

* * *

B. Expense Coverages

1. Breach Response Expense

The Insurer will reimburse the Insured Entity for Breach Response Expenses (up to the Breach Response Expenses limit of insurance and in excess of the Breach Response Event Expenses deductible) incurred within twelve months of the date that the Insured reports a Security Breach Notice Law Event.

2. Crisis Management Expense

The Insurer will reimburse the Insured Entity for Crisis Management Expenses (up to the Crisis Management Expenses limit of insurance and in excess of the Crisis Management Event Expenses deductible) incurred within twelve months of the date that the Insured reports a Public Relations Event.

29. The Columbia Policy contains the following relevant exclusion:

Whether in connection with any First Party Coverage or any Liability Coverage, the Insurer shall not be liable to pay any Loss:

* * *

O. Failure to Follow Minimum Required Practices

based upon, directly or indirectly arising out of, or in any way involving:

1. Any failure of an Insured to continuously implement the procedures and risk controls identified in the Insured's application for this Insurance and all related information submitted to the Insurer in conjunction with such application whether orally or in writing;
2. Failure to follow (in whole or part) any Minimum Required Practices that are listed in Minimum Required Practices Endorsement; or
3. The Insured's failure to meet any service levels, performance standards or metrics;

1 Item 3 above shall apply only to Insureds whose services
2 are required to satisfy service levels, performance standards
3 or metrics.

4 This exclusion shall not apply to:

- 5 1. an Insured Person's negligent circumvention of
6 controls; or
- 7 2. an Insured Person's intentional circumvention of
8 controls where such circumvention was not authorized
9 by the Insured;

10 30. The Columbia Policy contains a "Healthcare Amendatory Endorsement" that
11 modifies the "Failure to Follow Minimum Required Practices" exclusion as follows:

- 12 2. Exclusion O. Failure to Follow Minimum Required Practices,
13 the last subsection that starts with "This exclusion shall not
14 apply to . . ." is deleted in its entirety and replaced with the
15 following:

16 This exclusion shall not apply to:

- 17 1. an Insured Person's negligent circumvention of controls; or
- 18 2. an Insured Person's intentional circumvention of controls
19 where such circumvention was not authorized by the
20 Insured;
- 21 3. Insured Entity's upgrade or replacement of any procedure
22 or control in item 1 above if the upgraded or replacement
23 procedure or control is at least as effective as the one it
24 replaces.

25 31. The Columbia Policy contains the following relevant conditions:

26 I. Application

- 27 1. The Insureds represent and acknowledge that the
28 statements contained on the Declarations and in the
Application, and any materials submitted or required to be
submitted therewith (all of which shall be maintained on
file by the Insurer and be deemed attached to and
incorporated into this Policy as if physically attached), are
the Insured's representations, are true and: (i) are the basis
of this Policy and are to be considered as incorporated into
and constituting a part of this Policy; and (ii) shall be

1 deemed material to the acceptance of this risk or the hazard
2 assumed by the Insurer under this Policy. This Policy is
3 issued in reliance upon the truth of such representations.

4 2. This Policy shall be null and void if the Application
5 contains any misrepresentation or omission:

6 a. made with the intent to deceive, or

7 b. which materially affects either the acceptance of the
8 risk or the hazard assumed by the Insurer under the
9 Policy.

10 * * *

11 Q. Minimum Required Practices

12 The Insured warrants, as a condition precedent to coverage
13 under this Policy, that is shall:

14 1. follow the Minimum Required Practices that are listed in
15 the Minimum Required Practices endorsement as a
16 condition of coverage under this policy, and

17 2. maintain all risk controls identified in the Insured's
18 Application and any supplemental information provided by
19 the Insured in conjunction with Insured's Application for
20 this Policy.

21 32. The Columbia Policy contains the following relevant definitions:

22 Application means all signed applications for this Policy and for
23 any policy in an uninterrupted series of policies issued by the
24 Insurer or any affiliate of the Insurer of which this Policy is a
25 renewal or replacement. Application includes any materials
26 submitted or required to be submitted therewith. An affiliate of the
27 Insurer means an entity controlling, controlled by or under
28 common control with the Insurer.

* * *

Damages means civil awards, settlements and judgments... which
the Insureds are legally obligated to pay as a result of a covered
Claim. Damages shall not include:

* * *

B. criminal, civil, administrative or regulatory relief, fines or
penalties;

* * *

- D. injunctive or declaratory relief;
- E. matters which are uninsurable as a matter of law; or

* * *

Notwithstanding the foregoing paragraph, Damages shall include... punitive, exemplary and multiplied damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages.

* * *

Privacy Regulation Proceeding means a civil, administrative or regulatory proceeding against an Insured by a federal, state or foreign governmental authority alleging violation of any law referenced under the definition of Privacy Injury or a violation of a Security Breach Notice Law.

D. The Columbia Policy Application

33. As part of the application submitted in connection with the Columbia Policy, Cottage completed and submitted a “Risk Control Self Assessment” in which it made the following relevant representations:

- 4. Do you check for security patches to your systems at least weekly and implement them within 30 days? ● Yes
- 5. Do you replace factory default settings to ensure your information security systems are securely configured? ● Yes
- 6. Do you re-assess your exposure to information security and privacy threats at least yearly, and enhance your risk controls in response to changes? ● Yes
- 11. Do you outsource your information security management to a qualified firm specializing in security or have staff responsible for and trained in information security? ● Yes
- 12. Whenever you entrust sensitive information to 3rd parties do you...
 - a. contractually require all such 3rd parties to protect this information with safeguards at least as good as your own ● Yes
 - b. perform due diligence on each such 3rd party to ensure that their safeguards for protecting sensitive information meet your

standards (e.g. conduct security/privacy audits or review findings of independent security/privacy auditors) • Yes

c. Audit all such 3rd parties at least once per year to ensure that they continuously satisfy your standards for safeguarding sensitive information? • Yes

d. Require them to either have sufficient liquid assets or maintain enough insurance to cover their liability arising from a breach of privacy or confidentiality. • Yes

13. Do you have a way to detect unauthorized access or attempts to access sensitive information? • Yes

23. Do you control and track all changes to your network to ensure it remains secure? • Yes

34. Upon information and belief, Cottage provided false responses to the foregoing questions when applying for coverage from Columbia.

35. Cottage's application for the Columbia Policy contains the following "Warranty":

Applicant hereby declares after inquiry, that the information contained herein and in any supplemental applications or forms required hereby, are true, accurate and complete, and that no material facts have been suppressed or misstated. Applicant acknowledges a continuing obligation to report to the CNA Company to whom this Application is made ("the Company") as soon as practicable any material changes...all such information, after signing the application and prior to issuance of this policy, and acknowledges that the Company shall have the right to withdraw or modify any outstanding quotations and/or authorization or agreement to bind the insurance based upon such changes.

Further, Applicant understands and acknowledges that:

* * *

2) If a policy is issued, the Company will have relied upon, as representations, this application, any supplemental applications and any other statements furnished to this Company in conjunction with this application.

3) All supplemental applications, statements and other materials furnished to the Company in conjunction with this application are hereby incorporated by reference into this application and made a part thereof.

1 4) This application will be the basis of the contract and will be
2 incorporated by referenced into and made a part of such policy.

3 36. As noted above, the Columbia Policy’s “Application” condition memorializes
4 Cottage’s acknowledgement that the representations made in the application were true, were
5 the basis upon which the Columbia Policy was issued, were incorporated by reference within
6 the Columbia Policy and were “material to the acceptance of this risk or the hazard assumed by
7 the Insurer under this Policy. This Policy is issued in reliance upon the truth of such
8 representations.”
9

10 37. Columbia justifiably relied on the foregoing representations in determining
11 whether to issue the Columbia Policy under the terms provided and in determining the
12 appropriate premium to be charged.

13 **E. Claim Investigation**

14 38. Columbia was originally notified of the data breach issue on December 3, 2013.
15 By letter dated January 29, 2014, Columbia acknowledged receipt of the claim and reserved its
16 rights under the Columbia Policy. Specifically, Columbia explained that the liability coverage
17 provided under the Columbia Policy had not been triggered because Cottage had not yet
18 received a demand for monetary damages or notice of a potential regulatory fine associated
19 with the data breach and advised Cottage to provide immediate notice upon receipt of any such
20 claim. Columbia also reserved rights under the Columbia Policy’s Breach Response Expense
21 coverage part and assigned counsel to assist Cottage in the breach response process, subject to
22 a reservation of rights to assert coverage defenses that arose during Columbia’s claim
23 investigation.
24

25 39. Columbia was then notified of the Underlying Action on January 29, 2014. By
26 letter dated February 20, 2014, Columbia supplemented its reservation of rights to address the
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1 claims asserted in the Underlying Action. Based on the allegations in the complaint in the
2 Underlying Action, Columbia reserved the right to disclaim coverage pursuant to the Columbia
3 Policy's "Failure to Follow Minimum Required Practices" exclusion, among other grounds.

4 40. Columbia thereafter issued further supplemental reservation of rights letters on
5 July 9, 2014, addressing Cottage's deductible and coinsurance obligations under the Columbia
6 Policy's Breach Response Expense coverage, and September 17, 2014, addressing additional
7 and/or alternative coverage defenses that became apparent as its claim investigation proceeded.
8

9 41. Columbia's claim and coverage investigation revealed that Cottage made a
10 number of material misrepresentations in the "Risk Control Self Assessment" portion of the
11 application. By way of example, although Cottage had represented that it "replace[s] factory
12 default settings to ensure [its] information security systems are securely configured," Columbia
13 learned of the existence of factory default system configuration settings on Cottage's system
14 that allowed for anonymous access that had been in place since the server's operating system
15 was first installed. Columbia also learned of the prevalence of default or missing password
16 requirements throughout Cottage's network which left its network susceptible to unauthorized
17 access.
18
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20 42. Although Cottage represented that it checked for "security patches for [its]
21 systems at least weekly and implement them within 30 days," Columbia learned that Cottage's
22 system utilized software that was outdated and obsolete to such a degree that security patches
23 were no longer even available, much less implemented.
24

25 43. Although Cottage represented that it was equipped to "detect unauthorized
26 access or attempts to access sensitive information" and that it "track[ed] changes to [its]
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1 network to ensure it remains secure,” Columbia learned that Cottage did not maintain any
2 vulnerability scanner for its system.

3 44. Columbia also learned that Cottage had no enterprise-wide threat management
4 program and no risk management framework in place prior to the breach, that Cottage did not
5 regularly conduct risk assessments and that whatever security policies that were in place were
6 inadequate and were reviewed once every three years. Cottage had represented to Columbia
7 that it re-assessed its exposure to information security and privacy threats “at least yearly” and
8 that it enhanced its risk controls as necessary.
9

10 45. Although Cottage represented that it “enforce[s] a company policy governing
11 security, privacy and acceptable use of company property that must be followed by anyone
12 who accesses your network or sensitive information in your care,” Columbia learned that
13 Cottage did not actually have formal written privacy policies in place at the time of the breach
14 and Cottage began drafting and implementing such policies only after the breach.
15

16 46. Although Cottage represented that outsourced its information security
17 management to a qualified firm, that Cottage performed due diligence with respect to third-
18 parties entrusted with sensitive information, audited such third-parties yearly to ensure the
19 adequacy of their safeguards and required such third-parties to maintain sufficient assets or
20 insurance coverage to respond in the event of a data breach, upon information and belief, the
21 data breach at issue was contributed to by Cottage’s third-party vendor INSYNC, which lacked
22 the assets or insurance necessary to contribute towards the settlement of the Underlying
23 Action. When requested, Cottage failed or refused to provide evidence of its due diligence as
24 respects its retention of INSYNC or evidence of any audits of INSYNC’s safeguards or
25 policies.
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1 47. Columbia's investigation revealed that the breach was not caused by "an
2 Insured Person's" negligent or intentional but unauthorized circumvention of controls, or by
3 Cottage's "upgrade or replacement" of any of the procedures or risk controls described in the
4 application but, rather, by the complete absence of any such risk controls in the first instance.

5 48. Since Columbia's coverage investigation was on-going, prior to funding the
6 \$4.125 million settlement of the Underlying Action, Columbia advised Cottage that its
7 agreement to fund the settlement was made subject to a full and complete reservation of rights
8 under the Columbia Policy and applicable law to disclaim coverage and seek reimbursement in
9 full from Cottage for any and all amounts paid towards settlement of the Underlying Action,
10 along with any and all attorney's fees or related costs and breach response expenses Columbia
11 has paid or will pay in connection with the breach.
12

13 49. Following its agreement to fund the settlement of the Underlying Action
14 pursuant to a reservation of rights, Columbia attempted to conduct negotiations with Cottage to
15 explore whether a global resolution of the coverage issues could be reached. This effort was
16 unsuccessful.
17

18 50. In light of the Columbia Policy's alternative dispute resolution ("ADR")
19 provision, which required participation in either non-binding mediation or arbitration prior to
20 the commencement of suit, Columbia also proposed that the parties participate in mediation or
21 arbitration. Cottage advised that it would not participate in arbitration and that mediation
22 would be futile because Cottage would not agree to Columbia's settlement parameters.
23

24 51. Accordingly, counsel for Columbia advised counsel for Cottage of Columbia's
25 intent to proceed with the commencement of litigation and forwarded counsel a courtesy copy
26
27
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1 of its declaratory judgment complaint. Counsel for Cottage did not object or respond to
2 Columbia's continued efforts to discuss a possible expedited resolution of the matter.

3 **F. The Prior Declaratory Judgment Action**

4 52. On May 7, 2015, Columbia commenced an action against Cottage in the District
5 Court for the Central District of California (Case No.: 2:15-cv-03432) seeking a declaration
6 that it is not obligated to provide Cottage with a defense or indemnification in connection with
7 any claims stemming from the data breach at issue, as well as a declaration of its entitlement to
8 reimbursement of all amounts Columbia advanced in connection with the data breach.
9

10 53. On June 18, 2015, Cottage moved to dismiss the action for lack of subject
11 matter jurisdiction pursuant to the Columbia Policy's ADR provision.
12

13 54. By order dated July 17, 2015, the Court granted Cottage's motion dismissing
14 the action without prejudice pending the parties' participation in the ADR process.

15 55. The parties subsequently participated in mediation of this matter on February
16 12, 2016, which was unsuccessful.
17

18 56. More than sixty (60 days) have elapsed since the termination of said mediation.
19 As such, Columbia has satisfied the Columbia Policy's ADR provision and may proceed with
20 the instant action.

21 57. A dispute remains concerning the existence and scope of any obligation on the
22 part of Columbia to Cottage under the Columbia Policy in connection with the claims at issue
23 in the Underlying Action and the DOJ Proceeding.
24

25 58. Columbia seeks declaration that coverage under the Columbia Policy does not
26 apply to the data breach at issue, that Columbia has no duty to defend or indemnify Cottage in
27 the Underlying Action or the DOJ Proceeding.
28

1 59. Additionally, in light of certain facts discovered during the course of
2 Columbia's claim investigation, Cottage made certain material misrepresentations and/or
3 omissions of fact when applying for coverage under the Columbia Policy rendering the policy
4 void *ab initio* and subject to rescission. Columbia seeks a declaration of its entitlement to same.
5

6 60. Therefore, an actual and justiciable controversy exists regarding the nature and
7 scope of the insurance coverage potentially owed to Cottage.

8 **FIRST CAUSE OF ACTION**

9 **(Declaratory Relief)**

10 61. Columbia repeats, reiterates and realleges each and every allegation of the
11 preceding paragraphs as if set forth herein, verbatim and fully at length.
12

13 62. The Columbia Policy contains an exclusion entitled "Failure to Follow
14 Minimum Required Practices" that precludes coverage for any loss based upon, directly or
15 indirectly arising out of, or in any way involving "[a]ny failure of an Insured to continuously
16 implement the procedures and risk controls identified in the Insured's application for this
17 Insurance and all related information submitted to the Insurer in conjunction with such
18 application whether orally or in writing."
19

20 63. Upon information and belief, the data breach at issue in the Underlying Action
21 and the DOJ Proceeding was caused as a result of File Transfer Protocol settings on Cottage's
22 internet servers that permitted anonymous user access, thereby allowing electronic personal
23 health information to become available to the public via Google's internet search engine.
24

25 64. Upon information and belief, the data breach at issue in the Underlying Action
26 and the DOJ Proceeding was caused by Cottage's failure to continuously implement the
27 procedures and risk controls identified in its application, including, but not limited to, its
28

1 failure to replace factory default settings and its failure to ensure that its information security
2 systems were securely configured, among other things.

3 65. Upon information and belief, the data breach at issue in the Underlying Action
4 and the DOJ Proceeding was caused by Cottage's failure to regularly check and maintain
5 security patches on its systems, its failure to regularly re-assess its information security
6 exposure and enhance risk controls, its failure to have a system in place to detect unauthorized
7 access or attempts to access sensitive information stored on its servers and its failure to control
8 and track all changes to its network to ensure it remains secure, among other things.

9
10 66. Upon information and belief, the data breach at issue in the Underlying Action
11 and the DOJ Proceeding did not arise from "an Insured Person's negligent circumvention of
12 controls; an Insured Person's intentional circumvention of controls where such circumvention
13 was not authorized by the Insured; [or] Insured Entity's upgrade or replacement of any
14 procedure or control in item 1 above if the upgraded or replacement procedure or control is at
15 least as effective as the one it replaces" within the meaning of the exceptions to the Failure to
16 Follow Minimum Required Practices exclusion set forth in the Columbia Policy's Healthcare
17 Amendatory Endorsement.
18

19
20 67. Accordingly, Columbia is entitled to a declaration that coverage under the
21 Columbia Policy does not apply to the data breach at issue, that Columbia is not obligated to
22 defend or indemnify Cottage in connection with the Underlying Action or the DOJ Proceeding
23 and that coverage for the claims and potential damages at issue in the Underlying Action and
24 the DOJ Proceeding is precluded pursuant to the Columbia Policy's Failure to Follow
25 Minimum Required Practices exclusion.
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SECOND CAUSE OF ACTION

(Declaratory Relief)

1
2
3 68. Columbia repeats, reiterates and realleges each and every allegation of the
4 preceding paragraphs as if set forth herein, verbatim and fully at length.

5
6 69. The Columbia Policy’s insuring agreement for a Privacy Regulation Proceeding
7 applies with respect to Cottage’s liability for “Damages and Claim Expenses resulting from
8 any Privacy Regulation Proceeding.”

9
10 70. The term “Damages” is defined under the Columbia Policy to mean “civil
11 awards, settlements and judgments... which the Insureds are legally obligated to pay as a result
12 of a covered Claim,” but does not include “criminal, civil, administrative or regulatory relief,
13 fines or penalties.”

14
15 71. The DOJ Proceeding will determine whether Cottage complied with its
16 obligations under HIPAA and any other pertinent state and federal laws and may result in the
17 imposition of civil, administrative or regulatory relief, fines or penalties against Cottage.

18
19 72. Accordingly, Columbia is entitled to a declaration that it is not obligated to
20 defend or indemnify Cottage in connection with the DOJ Proceeding as any sanctions imposed
21 or other relief awarded or in the DOJ Proceeding would not involve covered Damages under
22 the Columbia Policy.

THIRD CAUSE OF ACTION

(Declaratory Relief)

23
24
25 73. Columbia repeats, reiterates and realleges each and every allegation of the
26 preceding paragraphs as if set forth herein, verbatim and fully at length.
27
28

1 79. Columbia repeats, reiterates and realleges each and every allegation of the
2 preceding paragraphs as if set forth herein, verbatim and fully at length

3 80. Upon information and belief, Cottage made misrepresentations and/or omissions
4 of material fact concerning its data breach risk controls when applying for coverage under the
5 Columbia Policy.
6

7 81. Upon information and belief, Cottage misrepresented the fact that it replaced
8 factory default settings to ensure that its information security systems were securely
9 configured.
10

11 82. Upon information and belief, Cottage misrepresented the facts that it regularly
12 checked and maintained security patches on its systems, that it regularly re-assessed its
13 information security exposure and enhanced risk controls, that it had a system in place to detect
14 unauthorized access or attempts to access sensitive information stored on its servers and that it
15 controlled and tracked all changes to its network to ensure it remains secure, among other
16 things.
17

18 83. Upon information and belief, Cottage made misrepresentations regarding the
19 firm or other third parties to which Cottage outsourced its information security management,
20 the degree of due diligence Cottage exercised with respect to said third party's safeguards and
21 audits performed regarding the same, among other things.
22

23 84. Cottage made the foregoing misrepresentations and/or omissions of material
24 fact with the full knowledge and expectation that Columbia would rely on said representations,
25 which were a material and critical part of Columbia's consideration of the risk and
26 determination to issue the Columbia Policy under the terms provided and for the premium
27 charged.
28

1 85. Columbia justifiably relied on the representations made in Cottage's insurance
2 application in determining whether to issue the Columbia Policy under the terms provided and
3 in determining the appropriate premium to be charged.

4 86. If the true facts had been known, Columbia would not have issued the Columbia
5 Policy and/or would not have provided coverage under the same terms or with respect to the
6 hazard resulting in the claims at issue.

7
8 87. Therefore, Columbia is entitled to a declaration that the Columbia Policy is
9 rescinded and void *ab initio*. Columbia also is entitled to an Order permitting it to return to
10 Cottage the premium paid in connection with the Columbia Policy.

11
12 **FIFTH CAUSE OF ACTION**

13 **(Reimbursement of Defense, Expense and Settlement Payments)**

14 88. Columbia repeats, reiterates and realleges each and every allegation of the
15 preceding paragraphs as if set forth herein, verbatim and fully at length.

16 89. Columbia agreed to incur breach response expenses on Cottage's behalf, to
17 participate in Cottage's defense in the Underlying Action and to fund the \$4.125 million
18 settlement of the Underlying Action subject to a complete reservation of rights, including the
19 right to seek reimbursement of any funds paid or advanced on Cottage's behalf pending a
20 resolution of the instant coverage dispute.

21
22 90. To the extent that the Columbia Policy does not provide coverage for the data
23 breach at issue and the claims asserted in the Underlying Action and/or to the extent that the
24 Columbia Policy is subject to rescission, Columbia is entitled to reimbursement from Cottage
25 for the full amount of the \$4.125 million Columbia paid in settlement of the Underlying
26 Action, along with any and all defense costs, attorney's fees or related costs and data breach
27
28

1 response expenses incurred by Columbia on Cottage's behalf, pursuant to Blue Ridge Ins. Co.
2 v. Jacobsen, 25 Cal 4th 489 (2001); See also Axis Surplus Ins. Co. v. Reinoso, 208 Cal App
3 4th 181 (Cal Ct App 2012).

4 **WHEREFORE**, Plaintiff, Columbia Casualty Company, prays for the following relief:

- 5 (a) For a declaration that Columbia is not obligated to provide Cottage with coverage
6 for any costs or breach response expenses incurred in connection with the data
7 breach at issue or any damages awarded, sanctions imposed or any other relief
8 directed in the Underlying Action and the DOJ Proceeding;
- 9 (b) For a declaration that Columbia is not obligated to provide Cottage with coverage
10 for any defense costs or claim expenses incurred in connection with the
11 Underlying Action and the DOJ Proceeding;
- 12 (c) For a declaration that the Columbia Policy is rescinded and void *ab initio* and
13 permitting Columbia to return to Cottage the premium paid in connection with the
14 Columbia Policy;
- 15 (d) For a declaration that Cottage is obligated to reimburse Columbia for any and all
16 sums Columbia paid on Cottage's behalf in connection with the Underlying
17 Action, along with any and all defense costs, attorney's fees or related costs or
18 expenses incurred by Columbia on Cottage's behalf, including, but not limited to,
19 the \$4.125 million settlement, related defense costs exceeding \$168,000 and data
20 breach response expenses exceeding \$860,000;
- 21 (e) For an award of Columbia's attorneys' fees and costs pursuant to law; and
- 22 (f) For such other relief as is just and equitable herein.

23 Dated: May 31, 2016

24 CARROLL, McNULTY & KULL LLC

25 BY: /s/ Matthew T. Walsh
26 Matthew T. Walsh, Esq.
27 Attorneys for Plaintiff
28 100 North Riverside Plaza, Suite 2100
Chicago, Illinois 60606
(312) 800-5000 (tel.)
(312) 800-5010 (fax)
mwalsh@cmk.com

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Columbia Casualty Company	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) Cottage Health System
(b) County of Residence of First Listed Plaintiff <u>Cook County, IL</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant <u>Santa Barbara, CA</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Carroll, McNulty & Kull LLC 100 North Riverside Plaza, Suite 2100 Chicago, Illinois 60606 Telephone: (312) 800-5000	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.)

<input type="checkbox"/> 1. U.S. Government Plaintiff	<input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2. U.S. Government Defendant	<input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	<input type="checkbox"/> 6. Multi-District Litigation
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V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ \$4.125 million

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Declaratory Judgment pursuant to 28 U.S.C. §2201 and Reimbursement of Defense and Settlement Payments.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input checked="" type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	TORTS	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	PERSONAL INJURY	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Fed. Employers' Liability	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 350 Motor Vehicle	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 444 Accommodations	<input type="checkbox"/> 740 Railway Labor Act	
		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 790 Other Labor Litigation	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<p>QUESTION A: Was this case removed from state court?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.</p>	<p align="center">STATE CASE WAS PENDING IN THE COUNTY OF:</p> <p><input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo</p> <p><input type="checkbox"/> Orange</p> <p><input type="checkbox"/> Riverside or San Bernardino</p>	<p align="center">INITIAL DIVISION IN CACD IS:</p> <p align="center">Western</p> <p align="center">Southern</p> <p align="center">Eastern</p>
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<p>QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "no," skip to Question C. If "yes," answer Question B.1, at right.</p>	<p>B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.?</p> <p><i>check one of the boxes to the right</i> →</p>	<p><input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Continue to Question B.2.</p>
<p>B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)</p> <p><i>check one of the boxes to the right</i> →</p>	<p><input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.</p>	

<p>QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "no," skip to Question D. If "yes," answer Question C.1, at right.</p>	<p>C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.?</p> <p><i>check one of the boxes to the right</i> →</p>	<p><input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Continue to Question C.2.</p>
<p>C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)</p> <p><i>check one of the boxes to the right</i> →</p>	<p><input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.</p>	

QUESTION D: Location of plaintiffs and defendants?	A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<p>D.1. Is there at least one answer in Column A?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "yes," your case will initially be assigned to the SOUTHERN DIVISION.</p> <p>Enter "Southern" in response to Question E, below, and continue from there.</p> <p>If "no," go to question D2 to the right. →</p>	<p>D.2. Is there at least one answer in Column B?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "yes," your case will initially be assigned to the EASTERN DIVISION.</p> <p>Enter "Eastern" in response to Question E, below.</p> <p>If "no," your case will be assigned to the WESTERN DIVISION.</p> <p>Enter "Western" in response to Question E, below. ↓</p>
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QUESTION E: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	Western

QUESTION F: Northern Counties?

Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? Yes No

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court? NO YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed in this court? NO YES

If yes, list case number(s): _____

Civil cases are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): /s/ Matthew T. Walsh

DATE: May 30, 2016

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))