Brian S. King, #4610
Nicole T. Durrant, #8803
Brian S. King, Attorney at Law
336 South 300 East, Suite 200
Salt Lake City, UT 84111
Telephone: (801) 532-1739
Facsimile: (801) 532-1936
brian@briansking.com
Nicole@briansking.com

GLENN E. SOLOMON (Cal. State Bar No. 155674) (Pro Hac Vice)
E-Mail: gsolomon@health-law.com
ALEXANDRA N. THOMAS (Cal. State Bar No. 263387) (Pro Hac Vice)
E-Mail: athomas@health-law.com
HOOPER, LUNDY & BOOKMAN, INC.
1875 Century Park East, Suite 1600
Los Angeles, California 90067-2517
Telephone: (310) 551-8111
Facsimile: (310) 551-8181

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

C/HCA, INC.; BRIGHAM CITY COMMUNITY HOSPITAL, INC. DBA BRIGHAM CITY COMMUNITY HOSPITAL; COLUMBIA OGDEN MEDICAL CENTER, INC. DBA OGDEN REGIONAL MEDICAL CENTER; HOSPITAL CORPORATION OF UTAH DBA LAKEVIEW HOSPITAL; NORTHERN UTAH HEALTHCARE CORPORATION DBA ST. MARK'S HOSPITAL; TIMPANOGOS REGIONAL MEDICAL SERVICES INC. DBA TIMPANOGOS REGIONAL HOSPITAL; MOUNTAIN VIEW HOSPITAL, INC. DBA MOUNTAIN VIEW HOSPITAL; NORTHERN UTAH IMAGING, L.P. DBA MILLCREEK IMAGING; ST. MARK'S OUTPATIENT SURGERY CENTER; WASATCH ENDOSCOPY CENTER; BOUNTIFUL SURGERY CENTER	CIVIL NO. 2:09-CV-1100 TC **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ENTRY OF PRELIMINARY INJUNCTION**

LLC DBA LAKEVIEW ENDOSCOPY CENTER; and UTAH SURGERY CENTER, L.P. DBA SOUTH TOWNE SURGICAL CENTER. Plaintiffs. vs. REGENCE BLUE CROSS BLUE SHIELD OF UTAH, Defendant.	:

The parties, through their undersigned counsel, appeared and presented oral argument in the above captioned matter on December 29, 2009 at 1:00 p.m. Plaintiffs were represented by Glenn E. Solomon and Brian S. King, Defendant was represented by M. David Eckersley. Having considered the written materials submitted by the parties together with the oral argument presented at the hearing and being apprised in the premises, the Court enters the following Findings of Fact and Conclusions of Law and its Order.

The Court grants the injunctive relief requested by the Plaintiffs in their moving papers. While mandatory and prohibitory injunctions are disfavored, the Plaintiffs have demonstrated that the four factors under F.R.Civ.P. 65 and Tenth Circuit case law relating to preliminary injunctions weigh compellingly and heavily in their favor under the facts of this case.

First, there is a substantial likelihood that Plaintiffs will prevail on the merits of this case in their claims under the federal Lanham Act for violation of the Plaintiffs' respective trademarks. This is a Lanham Act case involving interpretation by the Court of a contract between the parties called the "Participating Hospital Agreement." The contract stipulates when and how the names of the various MountainStar hospitals and ambulatory surgical centers (collectively, the "MountainStar Facilities") may be used for certain health plan products of the

Defendant in which the MountainStar Facilities participate. The Plaintiffs have met each of the requirements for a preliminary injunction, as set forth below.

1. Plaintiffs Have Shown a Substantial Likelihood of Success on the Merits

The MountainStar Facilities have an unregistered common law trademark in the names by which those facilities hold themselves out to the public as dbas of various corporate or other business entities. As a matter of trademark law, the MountainStar Facilities can dictate how the names by which they hold themselves out to the public are used.

The contract between MountainStar and Regence is unambiguous. It establishes that the MountainStar Facilities are not participating providers in Defendant's new BlueOption plan, product or network. Moreover, to the extent that there is ambiguity in the contract, the only evidence before the Court as to the meaning of the contract terms has been provided by MountainStar and supports the conclusion that MountainStar does not participate in the BlueOption plan, product or network. Therefore, any statement or use by Regence of the hospital names or MountainStar marks indicating that MountainStar Facilities do participate in the BlueOption plan, product, or network is a misuse of the name or mark.

The Court finds that the six factors often used to evaluate trademark infringement under the Lanham Act, on balance, also support the finding of trademark infringement; although given the contractual relationship between the parties, the six factors are not necessarily applicable here. The first factor, the degree of similarity between the marks, is satisfied based on the undisputed fact that Regence has used the Plaintiffs' trademarks to market the BlueOption plan, product, or network. Indeed, the names used not only are similar, but are identical.

The second factor, the intent of the alleged infringer in adopting its mark, does not favor either party.

As to the third factor, evidence of actual confusion, no evidence has been presented to prove any actual confusion. However, this is not surprising or dispositive given that BlueOption is a relatively new plan, product, or network and will not be effective until January 1, 2010. While evidence of actual confusion would support a finding of trademark infringement for purposes of a preliminary injunction, the lack of actual confusion does support the opposite under these circumstances.

As to the fourth element, the relation in use and the manner of marketing between the goods or services marketed by the competing parties, this factor doesn't squarely apply under the facts of this case because the BlueOption plan, product, or network is clearly intertwined, rather than competing, with Plaintiffs' products.

As to the fifth factor, the degree of care likely to be exercised by purchasers, this likewise does not squarely apply under the facts of this case. The Court also believes that the public is generally careful about choosing their preferred health care provider products from health insurers. However, these products are complex and the care individuals take in choosing the preferred health care provider products highlights the need for clear, accurate communications regarding the identities of providers participating in products marketed by the Defendant. The Court believes that there is significant potential for confusion based on Defendant's erroneous identification of the MountainStar Facilities as being accessible as participating providers in the BlueOption plan, product, or network.

As to the sixth factor, the strength or weaknesses of the marks, the Court finds that the Plaintiffs' marks are strong and well established.

The Court finds and concludes that the actions of Regence in marketing and selling the MountainStar Facilities as participating providers in Regence's BlueOption plan, product, or network constitutes a Lanham Act violation.

2. Plaintiffs' Have Shown Irreparable Harm

Returning to the preliminary injunction factors outlined under F.R.Civ.P 65, specifically, the existence of irreparable harm, while there is no evidence before the Court of actual confusion yet, absence of evidence of actual confusion does not necessarily support a finding of no likelihood of confusion. Beer Nuts, Inc. v. Clover Club Foods Co., 805 F.2d 920, 928 (10th Cir. 1986). As noted above, the fact that the BlueOption product has been marketed and sold for a relatively short time and has not yet gone into effect suggests evidence of actual confusion may be difficult to present at this stage. However, common sense based on the evidence presented by the Plaintiffs establishes that continued marketing and sale of the BlueOption plan, product, or network by Regence as supposedly including the right to access the MountainStar Facilities as participating providers creates the likelihood of confusion. The Court finds that the Plaintiffs have carried their burden of showing irreparable harm based on the information presented in the papers filed with the Court. This likelihood of confusion would create irreparable injury to the Plaintiffs for the reasons stated by the Plaintiffs in their papers and at oral argument. The Court is not relying on any presumption of irreparable harm for this determination. The Court finds that when members of Regence's BlueOption plan, product, or network contact the MountainStar Facilities to schedule services and learn that the facilities are not participating providers in the BlueOption plan, product, or network, the members are substantially likely to be confused, irritated and unhappy with the MountainStar Facilities which will create inevitable loss of good

will to the Plaintiffs, regardless of the fact that the erroneous representation was made by Regence.

3. There Would Be Little or No Harm to Defendant From a Preliminary Injunction

As to the third consideration under F.R.Civ.P. 65, based on the materials submitted by the parties, the Court finds that the harm to Regence of entry of a preliminary injunction, if any, does not outweigh the harm to the Plaintiffs that would occur from not entering the preliminary injunction. Having found that there is a substantial likelihood that ultimately it will be determined that MountainStar Facilities do not participate in the BlueOption plan, product, or network, the Court finds that the loss to both parties, as well as to BlueOption members, is minimized by informing those members of the non-participation in the BlueOption plan, product, or network, sooner rather than later. Consequently, BlueOption members must be notified that, pending a final ruling in this matter, the MountainStar Facilities do not participate in the BlueOption plan, product, or network.

4. The Public Interest Strongly Favors the Preliminary Injunction

As to the fourth element of F.R.Civ.P. 65, the Court finds and concludes that the public interest weighs overwhelmingly in favor of entry of a preliminary injunction at this time. There is a strong public interest in members obtaining timely and accurate information about the identity of participating providers in Regence's BlueOption plan, product, or network. The public is harmed when told that a level of coverage exists under a product when that level of coverage does not actually exist.

In light of the foregoing findings and conclusions, the Court ORDERS:

1. Brokers with whom Regence has communicated about the BlueOption plan, product, or network must be informed orally, via the internet, and in writing, that the

MountainStar Facilities are not participating providers for members who select Regence's BlueOption plan, product, or network, and the brokers shall be directed to tell this corrective information to the employers, members and others whom the brokers have previously told otherwise.

2. This corrective notice also must also be posted to all websites utilized by Regence or its agents to provide information to brokers, employers, members and/or the public concerning the BlueOption plan, product, or network.

3. Regence must cease and desist from any representation that any of the MountainStar Facilities are participating providers for employers or members who select the BlueOption plan, product, or network.

4. Employers who have elected coverage through Regence's BlueOption plan, product, or network, and individuals covered by the BlueOption plan, product, or network, shall be informed that the MountainStar Facilities are not participating in the BlueOption plan, product, or network, and that there is a substantial likelihood that the MountainStar Facilities never will be participating in the BlueOption plan, product, or network.

5. The terms of this order are binding on both Regence and its brokers, as agents of Regence, and all other agents of Regence involved in the marketing and sale of the BlueOption plan, product, or network without limitation, to the extent applicable, officers, employees, agents, independent contractors, and call center representatives.

6. The written notice that shall be provided to the brokers, employers, members and others in writing and on the Defendant's website shall have the language in Attachment A hereto.

7. Defendant shall provide Plaintiffs' counsel with a list, in electronic format, of the names and addresses of (a) the brokers, employers and members with whom Defendant communicated about the BlueOption plan, product, or network; (b) any employers and members who have selected the BlueOption plan, product, or network already; and (c) any employers and members who happen to select the BlueOption plan, product, or network before the date on which the written notices required by this Order are sent.

8. Plaintiffs shall send the written notices to the brokers, employers and members that Regence identifies on the lists required above.

9. The Plaintiffs are required to post a $25,000 bond.

10. The seal otherwise in place for this proceeding is lifted as to this Order in light of the need for third parties to be provided notice of its terms.

DATED this 31st day of December, 2009.

Tena Campbell

U.S. District Judge Tena Campbell

Approved as to form:

/s/ M. David Eckersley
M. David Eckersley
Counsel for Regence

Attachment A

Brian S. King
Attorney at Law

Brian S. King, Esq.
Nicole T. Durrant, Esq.

336 South 300 East, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 532-1739
Toll Free: (866) 372-2322
Facsimile: (801) 532-1936
www.erisa-claims.com

Linda A. Purdy, Paralegal
Mary E. Wardlaw, Paralegal
Lucy A. Knorr, Paralegal

****** NOTICE ******

This communication is being sent pursuant to Court order as the result of a Preliminary Injunction signed on December 31, 2009, by Judge Tena Campbell of the United States District Court for the District of Utah, regarding BlueOption from Regence BlueCross BlueShield.

Under that Preliminary Injunction, it is necessary to inform you that, contrary to information that may have previously been provided to you, MountainStar and its Facilities are not participating providers for members who select BlueOption. Members who have selected, or are considering selecting, BlueOption will only be able to access the MountainStar Facilities as out-of-network providers pursuant to the new product's Category 3, and thus, will have exposure to pay the difference between what Regence pays these Facilities and their billed charges. The MountainStar Facilities include:

- Brigham City Community Hospital
- Ogden Regional Medical Center
- Lakeview Hospital
- St. Mark's Hospital
- Timpanogos Regional Hospital
- Mountain View Hospital
- Millcreek Imaging Center
- St. Mark's Outpatient Surgery Center
- Wasatch Endoscopy Center
- Lakeview Endoscopy Center
- South Towne Surgery Center

It is important to note that this only affects BlueOption. If a person wishes to access MountainStar Facilities with in-network provider benefits, they will have to select something that does include these Facilities as participating providers. You may view a copy of the entire Preliminary Injunction issued by Judge Campbell at [we will insert the appropriate website address].

[IN ADDITION, THE FOLLOWING TO BE INCLUDED FOR BROKER LETTERS ONLY]

The terms of the Preliminary Injunction also require that brokers, as agents for Regence, are

obligated to inform employers and individuals currently covered by BlueOption, or who may be considering BlueOption, that the MountainStar Facilities are not participating in BlueOption and there is a substantial likelihood that the MountainStar Facilities never will be participating in BlueOption.