

DECLARATION OF JOHN CLABAUGH
PURSUANT TO 28 U.S.C. § 1746

I, John Clabaugh, hereby declare as follows:

1. My name is John Clabaugh. I live in Nebraska and am over eighteen years of age. I have personal knowledge of the facts stated in this declaration, and if called as a witness, I could and would competently testify to these same facts.

2. I am employed by Blue Cross and Blue Shield of Nebraska ("BCBSNE") as a Senior Security Cyber Threat Analyst. One of my responsibilities in this role is to investigate the online misuse or misappropriation of BCBSNE's trade name or trademarks. To conduct these investigations, my colleagues in BCBSNE's Cyber Threat Intelligence ("CTI") program and I regularly conduct Internet searches for the BCBSNE name and related terms.

3. In June 2017, the CTI program discovered a business listing within Google Maps for "Blue Cross & Blue Shield of NE" that had a location pin set in the middle of a residential neighborhood in Omaha. This listing was discovered when CTI conducted a Google map search for BCBS of Nebraska. The business listing provided a website (bluecross.com – which is the official Blue Cross Blue Shield Association-owned page), a phone number that was not actually associated with BCBSNE, and business hours.

4. After discovering this listing, I called the phone number and the individual who answered claimed that he was a representative of BCBSNE and asked if I wanted a health plan. I did not engage with the person who answered the phone, but simply hung up.

5. I conducted additional Internet searches on the phone number listed in the Google Maps entry and discovered a Manta page for BCBSNE that was not owned or controlled by BCBSNE. Manta is a service for smaller business helping with search optimization and business listings. While the phone number on this site is the same as the Google Maps listing, it had a

different physical address. It listed 8313 Spring St Omaha, NE 68124 as its address; however, that location is a strip mall containing a Douglas County Probation office. The URL for the website was: <http://www.manta.com/c/mh1cbk9/blue-cross-blue-shield>. The website, which is no longer active, had been created in March 2017.

6. My colleague and I then called the phone number again. My colleague pretended to be a consumer interested in purchasing health insurance and I listened to the call. The person who answered identified himself as Michael. Michael sounded like the same person who had answered my previous call. My colleague informed Michael that he was looking for health insurance. Michael asked for personal information, (name, date of birth, address), and asked how much my colleague wanted to pay for coverage. My colleague answered Michael's questions using information we fabricated for purposes of this call. Michael said that he was transferring us to speak to another representative. When my colleague asked him whom he would be speaking with, Michael said "Simple Health."

7. The individual with whom my colleague spoke with next introduced himself as Saul. Saul asked the same basic questions that Michael had asked, including whom we were looking to insure. My colleague told Saul that he needed to insure himself and his fiancé. My colleague further explained that his fiancé was pregnant, so he would soon need to insure the baby as well. He indicated that he was seeking a full health plan with a premium between \$250 and \$300 per month. Saul was typing as my colleague was talking. Saul then offered a few health plans with a couple of different insurance companies, claiming that each could meet our needs. One of the insurance companies that Saul named was "BCBS," which I understood to mean Blue Cross Blue Shield.

8. Ultimately, Saul told my colleague that he had found a health insurance plan that cost only \$150/month. I know from my employment with BCBSNE that it would be impossible to provide major medical health insurance for a family of two or three at a cost of \$150 a month. At this point, my colleague told Saul that he would have to think about the options offered, and would call back at a later time.

9. After the phone call, I conducted online research regarding Simple Health, and discovered dozens of negative online reviews and a very poor rating from the Better Business Bureau.

10. I shared the findings of this investigation with others at BCBSNE. BCBSNE reported the fake internet listings to the Nebraska Department of Insurance and Nebraska Attorney General's Office. On July 10, 2017, the Nebraska Attorney General's Office published an online consumer alert warning consumers "scam artists based in Florida are posing as Blue Cross and Blue Shield of Nebraska ('BCBSNE'). The scam artists are using fake Google and Manta listings bearing Blue Cross's logo and web address, along with bogus physical addresses in Omaha."

11. BCBSNE also contacted Simple Health directly about the fake Internet listings. In July 2017, through its counsel, Simple Health sent to BCBSNE a summary of its investigation of the listings. According to Simple Health, the telephone number from these listings connected to Health Insurance Services, a d/b/a of Simple Insurance Leads, through an affiliate advertiser identified simply as "Jenya" located in Gujarat, India. Simple Insurance Leads paid Jenya to direct calls to Simple Health.

12. In its response to BCBSNE, Simple Health indicated that the fake listings violated its agreement with Jenya, and prompted the issuance of a cease and desist letter instructing Jenya

to take down the listings. Simple Health attached a copy of the July 18, 2017 cease and desist letter to the correspondence from its counsel. The cease and desist letter was sent on behalf of both Simple Health Plans, LLC and Simple Insurance Leads, LLC. The letter was signed by "C. Girouard," with the title of Chief Compliance Officer.

13. In its response to BCBSNE, Simple Health also indicated that from January 1, 2017 through the time of their response in July 2017, Simple Insurance Leads had received over 1,000,000 calls generated by its "partners and internal marketing teams."

I state under penalty of perjury that the foregoing statement is true and correct.

Executed on November 2, 2017.



John Clabaugh