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20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF SAN FRANCISCO

CGC-18-569362

22 CALIFORNIA CHIROPRACTIC
23 ASSOCIATION, on behalf of itself and its
24 members,

25 Plaintiff

26 vs.

27 ONE CALL MEDICAL, INC., D/B/A ONE
28 CALL CARE MANAGEMENT; ALIGN
NETWORKS, INC; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.

COMPLAINT FOR VIOLATION OF
CALIFORNIA BUSINESS &
PROFESSIONS CODE SECTIONS 17200
et. seq.

ENDORSED
FILED
San Francisco County Superior Court
AUG 31 2018
CLERK OF THE COURT
BY: ROSSALY DE LA VEGA
Deputy Clerk

1 Plaintiff California Chiropractic Association (“Cal Chiro” or “Plaintiff”), by and through
2 the undersigned attorneys, files this Complaint against Defendant One Call Medical, Inc. dba
3 One Call Care Management, Align Networks, Inc., collectively “One Call” or “OCM,” except
4 where otherwise indicated) and DOES 1-10, inclusive (hereafter collectively “Defendants”) on
5 behalf of itself and its members who are not contracted with OCM.

6 As further set forth below, Plaintiff’s non-contracting members have lost, and continue
7 to lose, patients and income, and continue to have patients diverted as a result of OCM’s illegal
8 conduct as a “middleman” in California’s workers’ compensation system.

9 Except as to the allegations of Plaintiff’s experiences, which are based on personal
10 knowledge, all other allegations are based on information and belief and are formed based on an
11 inquiry reasonable under the circumstances.

12 NATURE OF THE ACTION

13 1. This action arises out of Defendants’ unlawful, unfair, and fraudulent business
14 practice of soliciting and receiving improper payments for the referral of healthcare services and
15 managing services provided to injured workers in California in a multitude of ways that violate
16 numerous California laws. These laws are specifically designed to protect injured workers,
17 including laws requiring authorization or certification to engage in such conduct in California.

18 2. One Call, which is doing business in California as One Call Care Management, is
19 known in the industry as a “cost containment” firm. In essence, One Call is nothing more than a
20 for-profit “middleman” in California’s workers’ compensation system. OCM operates as an
21 unlicensed network broker, contracting, on the one hand, with the payors of workers’
22 compensation services, including workers’ compensation insurers, self-insured employers and
23 third party administrators, to handle the scheduling and payment of treatment visits for injured
24 workers, and, on the other hand, with the health care professionals who provide health care
25 services to injured workers at the deeply discounted rates imposed by OCM. As set forth below,
26 OCM apparently operates in California without any license, certificate of consent or other
27 certification as a California workers’ compensation claims administrator, third party
28 administrator, or claims adjustor in violation of numerous California laws.

1 3. As alleged herein, OCM has developed an unfair, deceptive, and illegal system
2 whereby OCM maximizes the compensation it receives from its payor clients by referring
3 injured workers to those of its contracted health care professionals who acquiesce to the deepest
4 discounts. This system is nothing like a traditional “Preferred Provider Organization” (“PPO”)
5 where the PPO contracts with health care providers, and the payors let their beneficiaries choose
6 to receive services from any of the health care providers who contract with the PPO, and then
7 the payors pay the claims submitted by those contracted providers.

8 4. OCM does not offer health care professionals the opportunity to be listed in a
9 directory. Rather, OCM solicits (or extorts) deep discounts of a specified amount from its
10 contracted health care professionals as an inducement for it to send them more referrals.
11 Similarly, unlike traditional PPO arrangements, injured workers are not simply free to select a
12 health care provider from among the contracted health care professionals. Rather, OCM assigns
13 injured workers to the provider of OCM’s choosing, thus further ensuring it maximizes its
14 revenue by assigning these injured workers to the providers who have acquiesced to the deepest
15 discounts.

16 5. As a direct result, OCM illegally provides a preference to providers in receiving
17 such referrals. The payment OCM receives from its workers’ compensation payor clients for its
18 management services is tied to the number of referrals OCM makes and the size of the discounts
19 OCM obtains from its contracted health care professionals who care for injured workers.

20 6. For all the treatment services a chiropractor may provide an injured worker in a
21 day, OCM generally pays its contracted chiropractors significantly below what chiropractors
22 would be paid under the 2018 California Official Medical Fee Schedule (“OMFS”) for workers’
23 compensation treatment services, which for a typical chiropractic visit ranges from
24 approximately \$120 to \$135. The OMFS is based on the Medicare Physician Fee Schedule
25 (“PFS”), which is itself maintained by the Centers for Medicare and Medicaid Services
26 (“CMS”) to reflect the realistic cost of doing business for those health care professionals who
27 are providing care to Medicare beneficiaries.

28

1 7. OCM's payor clients do not directly pay health care professionals' claims.
2 Rather, OCM pays these claims and pockets whatever difference there is between what OCM is
3 paid by payors and what OCM pays these professionals, creating a direct financial incentive to
4 make referrals to the providers who have acquiesced to the deepest discounts. For example,
5 assume OCM agrees to provide all the services one of its client's injured workers need for 10%
6 less than the OMFS for workers' compensation treatment services; that is, the client agrees to
7 pay OCM 90% of the OMFS for workers' compensation treatment services for treatment
8 services needed by its employees and insureds. If OCM then pays its contracted chiropractor
9 50% of the OMFS, OCM would retain 40% of the OMFS for its management services – nearly
10 as much as the chiropractor received for the provided chiropractic treatment. Thus, the larger the
11 discount OCM obtains from contracted health care professionals, the greater the amount of
12 compensation OCM retains from the employer or insurer who ultimately pays for the treatment
13 services provided to injured workers. As such, OCM's financial incentive is both clear, and
14 illegal.

15 8. OCM's clients do not have access to OCM's provider contracts nor to copies of
16 bills which these healthcare professionals submit to OCM for payment. Indeed, OCM forbids
17 health care professionals from including the contracted rate on their bills. Thus, OCM's clients
18 may likely not know how much of the money these clients have paid that OCM is retaining and
19 not passing on.

20 9. OCM's scheme has allowed it to reduce payments to health care professionals,
21 including chiropractors, below the reasonable costs of providing the chiropractic services
22 needed by injured workers for optimum recovery, while at the same time providing no
23 transparency to its employer clients with respect to OCM's contracts with health care
24 professionals or the amounts these healthcare professionals submit to OCM for payment.

25 10. OCM is able to sustain this practice because it controls a significant majority of
26 California's workers' compensation health care services in several service lines, including
27 chiropractic services, by virtue of its contracts with the payors of workers' compensation
28 services. Pursuant to these contracts, OCM controls the scheduling of the treatment services for

1 injured workers.

2 11. Generally speaking, chiropractors not contracted with OCM, have limited access,
3 to provide workers' compensation services to injured workers. Chiropractors who acquiesce to
4 OCM contracts, with the steepest discounts, receive the vast majority of referrals from OCM.
5 OCM expresses to chiropractors, the higher the discount they are willing to accept, the greater
6 the number of referrals they will receive. OCM handles the scheduling of appointments for the
7 vast majority of these injured workers, and otherwise makes it difficult or impossible for the
8 injured workers or their primary treating physicians to schedule appointments themselves. Thus,
9 OCM is benefited by steering injured workers who require chiropractic treatment services,
10 directly to those providers who capitulate to its demands.

11 12. By doing so, OCM has also interfered with the choice of employees in selecting a
12 health care professional of their choice and recommended by their physician. In the case where
13 a newly injured patient has been referred to another health care professional by the treating
14 physician rather than by an OCM employee, OCM may contact the injured worker directly and
15 reschedule them with the health care professional of OCM's choosing – the one who has agreed
16 to the deepest discount.

17 13. OCM further exacerbates its unduly low payment rates by failing to comply with
18 many of the laws and regulations that have been enacted in the last several years requiring that
19 employers and their agents accept electronic claims, acknowledge their receipt electronically
20 upon submission, process and pay those claims expeditiously, provide prompt, clear
21 explanations for any claim contest or denial, and abide by the internal and external billing
22 dispute mechanisms. As a result, chiropractors continue to deal with all the billing and payment
23 issues that have plagued the workers' compensation system prior to the adoption of these laws,
24 including "lost claims" and payment delays. Also, OCM has initiated a payment policy by credit
25 card (*e.g.*, Visa). The provider who accepts this type of payment is then further burdened with
26 up to 3% or more fees at their bank to conduct this activity. This further reduces reimbursement
27 for the services rendered to below 50% of the OFMS.

28

1 14. Because of these practices, injured workers find it difficult to access the care they
2 need, health care professionals are forced to bid against each other and extorted to accept
3 significantly below standard rates to obtain any referrals, and payors pay inflated amounts to
4 OCM because they may not be provided key information about how much OCM pays the
5 treating health care professionals.

6 15. Unduly low payment rates also force health care professionals to see more
7 patients in a day, spend less time with each patient, delegate work to less skilled assistants, defer
8 making capital investments in their practices, and seek employment by hospitals or health
9 systems, lessening the availability of such professionals for direct contact, assessment and
10 treatment. The prospective cap created by OCM's programs that requires chiropractors who
11 wish to be preferred providers within the OCM network, and thus receive the most referrals, to
12 stay at or below the average utilization rate of all chiropractic practices in California, without
13 regard to the needs of their individual patient populations, also creates significant harm. The
14 gravity of the harms created by Defendants' conduct thus not only affect Plaintiff and its
15 members, but also injured workers. In the short run, Defendants' conduct degrades the quality of
16 medical services injured workers receive; in the long run, it will exacerbate the access issues
17 already encountered by injured workers, driving up the costs of absenteeism and ultimately the
18 medical cost of services rather than acting in what are the injured worker's best interests in the
19 first instance. OCM is the primary party that benefits as a result of these transactions, to the
20 detriment of all others who are significantly harmed as a result of such conduct.

21 16. Defendants' conduct violates California's Unfair Competition Law, Cal. Bus. &
22 Prof. Code §§ 17200, *et seq.* ("UCL"), as well as the numerous California laws that prohibit
23 Defendants from engaging in illegal payment schemes, prohibiting referral systems for workers'
24 compensation treatment services that are directly tied to financial incentives, prohibiting
25 Defendants from operating without the required authorizations as a physician network service
26 provider, claims administrator or claims adjustor, and otherwise interfering with the health care
27 services being provided to injured workers by their chiropractors. Such conduct is in violation of
28 numerous laws as set forth in detail below.

1 17. Defendants' conduct is continuing and will not be remedied absent the relief
2 sought herein by Plaintiff on behalf of itself and its non-contracted members.

3 18. A similar action against these same Defendants was brought on behalf of
4 physical therapists and their representative membership organization in California and was
5 resolved. Nevertheless, Defendants continue to perpetuate the same misconduct alleged herein
6 with respect to chiropractors.

7 **PARTIES**

8 19. On personal knowledge, California Chiropractic Association ("Cal Chiro" is a
9 California corporation with its principal place of business located at 1451 River Park Drive,
10 Sacramento, California 95815. Cal Chiro is a non-profit membership organization, with
11 approximately 2,200 chiropractor members located throughout the State of California. Cal
12 Chiro's stated mission is to position chiropractors to improve the quality of life of all
13 Californians. In doing so, Cal Chiro has a multi-pronged approach. Cal Chiro seeks to provide
14 its members with services and programs designed to effectively represent chiropractors before
15 state government, communicate to chiropractors the latest clinical and governmental news
16 affecting their practices and patients, offer products and services through partners and others to
17 positively impact patient treatment, and enhance the public's knowledge of benefits of
18 chiropractic treatment. Cal Chiro actively engages in the legislative, political and regulatory
19 processes to carry out its mission. Additionally, Cal Chiro regularly engages with government
20 and private health plans to advocate for the interests of its members and works to represent
21 members in discussions with numerous companies, including OCM and its subsidiary
22 companies, with respect to payment practices such as at issue in this Complaint.

23 20. Cal Chiro brings this lawsuit in its capacity as an association, and on behalf of its
24 members who are not contracted with Defendants and thus not subject to any onerous arbitration
25 agreements with them. Many of Cal Chiro's members have lost business as a direct result of
26 OCM's acts of unfair competition. Plaintiff does not seek any individual relief greater or
27 different than would benefit its members or the public.
28

1 21. Defendant One Call Medical, Inc. is a New Jersey corporation that lists with the
2 California Secretary of State its principal place of business as being located at 841 Prudential
3 Drive, Suite 900, Jacksonville, Florida 32207, and is registered to do business in California but
4 has no registered address in California. It is regularly doing business in California under the
5 fictitious business name “One Call Care Management.” OCM is transacting business as an
6 unlicensed workers’ compensation provider network broker in and from this State. OCM
7 conducts activities in California directly and through various divisions and subsidiaries
8 operating here.

9 22. Defendant Align Networks, Inc. (“Align Networks”) was acquired by One Call
10 Medical, Inc. in 2013 and is a Florida corporation. It is a subsidiary and division of One Call
11 Medical, Inc. Align Networks officially lists with the California Secretary of State the same
12 principal executive office listed above and officers as does One Call Medical, Inc. It is the
13 primary entity that offers and enters into the contracts at issue herein.

14 23. The true names, roles and/or capacities of Defendants named as DOES 1 through
15 10, inclusive, are currently unknown to Plaintiff and, therefore, are named as Defendants under
16 fictitious names as permitted by the rules of this Court. Plaintiff will identify their true identities
17 and involvement in the wrongdoing at issue if and when they become known.

18 24. Defendants’ conduct described herein was undertaken or authorized by
19 Defendants’ officers or managing agents, who were responsible for supervision and operating
20 decisions relating to the conduct at issue in this Complaint. The conduct of these managing
21 agents and individuals was undertaken on behalf of Defendants. Defendants had advance
22 knowledge of the actions and conduct of these individuals, whose actions and conduct were
23 ratified, authorized, and approved by such managing agents. As set forth below, Defendants
24 unjustly and mutually profited as a result of this conduct, in violation of the laws detailed
25 herein. As a result of agreements, either express or implied, to engage in such conduct,
26 Defendants conspired and aided and abetted each other in violating the laws set forth herein.
27 Such conduct is on-going.

28

1 **JURISDICTION AND VENUE**

2 25. Plaintiff is a non-profit membership organization based in California. Defendants
3 transact significant business in California. Jurisdiction over Defendants is proper because they
4 have purposely availed themselves of the privilege of conducting business activities in
5 California, are registered to conduct business in this State and because they currently maintain
6 systematic and continuous business contacts with this State and/or base a significant amount of
7 their operations here by managing the treatment services for thousands of injured workers who
8 are residents of this State on behalf of numerous California workers' compensation insurers,
9 self-insured employers and third party administrators that do business with Defendants.

10 26. Venue is proper in this County because numerous of its members are located here,
11 Defendants maintain substantial operations in this County, several workers' compensation
12 insurers, self-insured employers and third party administrators that hire Defendants either reside
13 or did business with Defendants in this County, Defendants engage in business in this County, the
14 events or omissions giving rise to the claims at issue occurred in this County, and Defendants
15 entered into transactions and received substantial profits from contracts with persons who reside
16 in this County. Further, venue is proper in this Court because Defendants are citizens of Florida
17 and have their principal place of business in Florida, and because they have not filed a Statement
18 of Information with the California Secretary of State designating a county in California which
19 they maintain a principal place of business in accordance with California Corporations Code
20 section 2105(a)(3). Thus, Defendants have no right to any particular venue and Plaintiff may file
21 this complaint in any county in California. *See Hardin v. San Jose City Lines*, 103 Cal. App. 2d
22 688, 689 (1951); *see also, Easton v. Sup.Ct. (Schneider Bros., Inc.)*, 12 Cal. App. 3d 243, 246-
23 247 (1970). Cal. Code Civ. P. §§ 395 and 395.5.

24 **STANDING**

25 27. On personal knowledge, Cal Chiro has standing to bring these claims in its own
26 capacity as it has been injured in fact and lost money or property as a result of Defendants'
27 wrongful conduct as described herein, including, *inter alia*, by being forced to divert and devote
28 valuable resources to help members deal with Defendants' illegal, unfair and fraudulent

1 practices, the loss of financial resources in investigating these claims and diversion of staff time
2 to investigate and attempt to resolve such claims, and efforts taken by Cal Chiro to identify,
3 combat and counteract the harm caused by such conduct, consistent with its mission to do so.
4 Resources that could otherwise have been spent on fulfilling the organization's goals were, and
5 are being, diverted to address the policy alleged herein.

6 28. Cal Chiro also has standing to act on behalf of its members because Cal Chiro's
7 members have been harmed by Defendants' conduct (although such members are not in any
8 way required to participate individually to seek the prospective, injunctive and equitable relief
9 requested in this action); the interests Cal Chiro seeks to protect are highly relevant to the
10 organization's purpose as set forth above; and a strong likelihood exists that Cal Chiro's
11 members will be harmed in the future. In addition to the specific redress it seeks for its own
12 injury, Cal Chiro seeks declaratory and injunctive relief on behalf of its members who are not
13 contracted with OCM. Both Cal Chiro and these members have been harmed by the wrongful
14 acts and practices of Defendants as set forth in this Complaint.

15 29. Cal Chiro has lost money or property as a result of the practices set forth herein
16 and has expended considerable time as well as both financial and staff resources to help Cal
17 Chiro's members regarding Defendants' practices, separate and apart from this litigation. These
18 efforts include, but are not limited to, retaining legislative analysts, incurring travel and
19 meeting expenses, engaging in communications with members, and expending numerous
20 valuable hours of Cal Chiro's leadership's time in order to manage the complaints received from
21 Cal Chiro members regarding Defendants' alleged violations of state law, which Cal Chiro
22 would have otherwise expended in other ways to advance the mission of Cal Chiro set forth
23 above.

24 30. Cal Chiro has, during the last several years, devoted significant resources of its
25 Board members to assist its members in addressing Defendants' improper practices as alleged in
26 this Complaint. Cal Chiro has received and responded to communications from multiple
27 professional chiropractor members who have been pressured to lower prices, been threatened
28 with termination or reductions in referrals, or have actually been terminated or otherwise lost

1 patients and business, all in a manner in contravention with the California laws cited herein. In
2 many cases, patients have been steered away from their preferred chiropractor providers who
3 are members of the California Chiropractic Association during a session of care simply because
4 their clinic is not the lowest cost provider that contracts with OCM. The Cal Chiro leadership
5 has thus been forced to expend significant time and resources in investigation of and efforts to
6 redress Defendants' wrongdoing.

7 31. Cal Chiro has also expended resources in communicating with and educating its
8 members about their rights and obligations as well as communicating concerns regarding
9 Defendants' practices with the Division of Workers' Compensation as the only oversight
10 committee agency in the State of California, the Senate Labor and Industrial Relations
11 Committee, numerous state legislators, and leadership of other healthcare professional
12 associations.

13 32. In addition, Cal Chiro members have been harmed by these practices, as there are
14 many cases where Cal Chiro members are not able to provide care for California's injured
15 workers at all because the only way to access a patient is to contract with Defendants. Many Cal
16 Chiro chiropractor members cannot afford to sign or have had to terminate a contract with OCM
17 because Defendants only offered a payment rate well below the cost of doing business. In
18 California, the typical chiropractor outpatient provider could be expected to have a patient mix
19 of approximately 10% to 40% Workers' Compensation patients.

20 33. Cal Chiro has been forced to expend significant resources in an attempt to
21 combat and counteract Defendants' practices, further establishing its standing to assert such
22 claims on behalf of both itself and its non-contracted members. Cal Chiro spent significant
23 resources dealing with complaints relating to disputes with OCM. However, Cal Chiro's
24 concerns were not resolved, necessitating this action.

25 **DEFENDANTS' ILLEGAL REFERRAL SCHEME**

26 **VIOLATES CALIFORNIA LAW**

27 34. Employers are required to pay for their employees' medical expenses that result
28 from any workplace injury or illness. Employers generally provide workers compensation

1 coverage for their employees either by purchasing insurance from workers' compensation
2 insurance carriers, or by self-insuring. As a result of major pieces of legislation including, but
3 not limited to, Senate Bill 899 (Stats. 2004, ch. 34), Senate Bill 863 (Stats. 2012, ch. 363) and
4 Senate Bill 542 (Stats. 2015, ch. 542), the employer has significant control over the treatment
5 services received by injured workers, including the injured worker's selection of his or her
6 primary physician.

7 35. As described above, OCM has capitalized on this process by offering and
8 providing a preference to those health care professionals who agree to the lowest prices, without
9 regard to their quality of care or other relevant factor, and as a result, retaining greater net
10 compensation from its payor clients. OCM solicits deeper discounts from these health care
11 professionals in exchange for more referrals; obtains discounts from health care professionals as
12 an "inducement" or "preference" for referrals; and to the extent it retains the spread created
13 from such discounts, OCM receives payments from the payors of workers compensation claims
14 as compensation for making those referrals that increase with the size of the discounts OCM
15 negotiates in the form of the spread described above, all in violation of California law.

16 36. California Labor Code § 139.32(c) provides, in relevant part, that "it is unlawful
17 for an interested party other than a claims administrator or a network service provider to refer a
18 person for services provided by another entity, or to use services provided by another entity, if
19 the other entity will be paid for those services . . . and the interested party has a financial interest
20 in the other entity."

21 37. Neither OCM nor Align Networks are "physician network services providers" as
22 that term is defined under the Labor Code. To the extent One Call Medical, Inc., either directly
23 or through Align Networks, is conducting business outside of an MPN as to which they are
24 authorized "physician network service providers," it does so in violation of Labor Code §
25 139.32(c). Although OCM Coastal Acquisition Co., LLC is a "physician network service
26 provider" as to its MPNs, as explained in more detail below, through a company doing business
27 as "Harbor Health Systems" and the Harbor Health Systems Medical Provider Network, it is not
28 OCM Coastal Acquisition Co., LLC that makes the referrals. Thus, OCM Coastal Acquisition

1 Co., LLC’s status as a “physician network service provider” does not provide any protection
2 from liability to OCM.

3 38. Neither OCM nor Align Networks is a claims administrator under the Labor
4 Code. The entity that administers workers’ compensation coverage for an employer is known as
5 the “Claims Administrator.” Specifically, the term “Claims Administrator” means a self-
6 administered insurer providing security for the payment of compensation, a self-administered
7 self-insured employer, or a third-party administrator for a self-insured employer, insurer, legally
8 uninsured employer, or joint powers authority. 8 C.C.R. § 9785(a)(3). For purposes of payment
9 requirements, the term “Claims Administrator” means the person or entity responsible for the
10 payment of compensation for any of the following: a self-administered insurer providing
11 security for the payment of compensation, a self-administered self-insured employer, a group
12 self-insurer, an insured employer, the director of the Department of Industrial Relations as
13 administrator for the Uninsured Employers Benefits Trust Fund (UEBTF) and for the
14 Subsequent Injuries Benefit Trust Fund (SIBTF), a third-party claims administrator for a self-
15 insured employer, insurer, legally uninsured employer, group self-insurer, or joint powers
16 authority, and the California Insurance Guarantee Association (CIGA). 8 C.C.R. § 1(i).

17 39. Pursuant to Labor Code § 3702.1, no person, firm, or corporation can act as a
18 Claims Administrator and contract to administer claims of self-insured employers in California
19 unless they are themselves an insurer admitted to transact workers’ compensation insurance in
20 California, or they have a certificate of consent to administer self-insured employers’ workers’
21 compensation claims. A separate certificate is required for each adjusting location operated by
22 the Claims Administrator. And Claims Administrators for self-insured employers must estimate,
23 in good faith and with the exercise of a reasonable degree of care, the total accrued liability of
24 the employer for the payment of compensation for the employer’s annual report to the director.
25 No available public records Plaintiff has been able to locate indicate either One Call Medical,
26 Inc. or Align Networks, Inc. is directly licensed or otherwise authorized to operate as a Claims
27 Administrator in California.

28

1 40. As described above, OCM and Align Networks have a financial interest in the
2 payor of the services as defined by Labor Code § 139.32(a)(1) in that OCM's compensation is
3 based in whole or in part on the volume or value of the services provided as a result of referrals.
4 One Call Medical, Inc. and Align Networks have a financial interest in each of these contracted
5 health care professionals, and they are a representative or agent of their employer, insurer and
6 claims administrator clients based on the contractual relationships described herein, and because
7 they are being paid pursuant to those contractual relationships.

8 41. OCM does not generally solicit rate offers from health care professionals. Rather,
9 OCM dictates the rates it will pay in exchange for referring patients to these professionals, and
10 places chiropractors in one of four Tiers for referral purposes based either in whole or in part
11 based on the pricing they will take. The difference between these tiers can be significant in
12 terms of pricing, with Tier 1 reimbursement levels being 20% lower than Tier 4 reimbursement
13 levels. Nothing in the approved OFMS schedule provides for the use of this type of tiering
14 process.

15 42. OCM representatives routinely communicate the contrasting rates imposed on
16 various competing health care professionals in the same geographic market to other
17 professionals in an effort to convince them to take a drastically lower payment rate in exchange
18 for a preference in terms of a specified increase in the number of referrals they will receive. It
19 has been OCM's practice to state the number of referrals that were recently made in a particular
20 geographic area, how few went to a particular chiropractor because of the rate they charged,
21 how many went to competitors in the area who accepted lower rates, and how many more would
22 go to the chiropractor if they agreed to reduce their rates by being able to move up higher on the
23 map of providers. Such statements make clear to chiropractors who do not accede to the deepest
24 discounts OCM demands but remain contracted at higher rates that they will receive referrals
25 only when OCM cannot refer the injured worker to a practice that has contracted with it at a
26 lower rate in the same geographic area.

27 43. Such claims also establish that OCM is representing its networks are significantly
28 larger than they actually are, since only a small number of referrals, by their own admission, are

1 sent to chiropractors in the lower tiers 3 and 4. Defendants thus are promoting the existence of a
2 “phantom network,” since while they claim they have thousands of contracted chiropractors in
3 their network, by referring patients primarily to tier 1 or 2 level designated chiropractors, in fact
4 their network is significantly smaller. Defendants have used that tiering system to extort
5 chiropractors to accept ever lower rates. Being that OCM is the largest player in this industry
6 and may be required by some companies to be used in order to get any referral business at all,
7 chiropractors have few options if they wish to treat patients with workers compensation-related
8 injuries. Having successfully used this strategy over the last several years, Defendants have been
9 able to, and continue to, skew the entire payment range provided to chiropractors to be
10 significantly below the OMFS rates, claiming such rates are in effect for the indefinite future
11 absent separate agreement. This skewed system impacts the rates of both contracted and non-
12 contracted chiropractors.

13 44. Pursuant to the OMFS, a chiropractor would typically receive payment ranging
14 from approximately \$120 to \$135 for all the treatment services a chiropractor may provide an
15 injured worker in a day.

16 45. The rates OCM pays chiropractors are significantly below the OMFS rates; OCM
17 rates have not increased despite the increases mandated for these services by the OMFS over the
18 last several years as set forth herein. The OMFS rates for chiropractic services were increased
19 again on January 1, 2017; OCM so far does not appear to have passed on any of that increase to
20 its contracted chiropractors; if anything, they have tried to get chiropractors to agree to rates as
21 low as half that amount in exchange for increased referrals despite these increases in the OMFS
22 rates in recent years – meaning that Defendants have been further profiting despite the directive
23 to utilize higher payment schedules.

24 46. Based on statutes endowing employers with near total control of medical care,
25 injured workers rarely refer themselves to chiropractors, nor are they generally referred by their
26 treating physicians; the vast majority of referrals are controlled and made directly by OCM or
27 by adjustors who have been directed to primarily if not exclusively refer patients to OCM
28 facilities. Injured workers searching for a convenient chiropractor cannot make an appointment

1 at that practice directly. Rather, they must call the Align Networks phone number listed in the
2 directory, at which point they will be referred to a chiropractor by the Align Networks staff.
3 Even though injured workers have the right to choose a new primary treating physician after 30
4 days if they are dissatisfied with the physician assigned by their employer, OCM misleads
5 injured workers into believing they have no such rights when it comes to their chiropractors.

6 47. Because OCM directs its contracted providers to send their bills to OCM and not
7 to the ultimate workers' compensation payor insurer or self-insured employer, and OCM itself
8 bills its workers compensation payor clients for the services contracted health care professionals
9 provide to injured workers, OCM is able to hide from its payor clients the amount of the spread
10 it is able to retain between what these clients pay OCM and what OCM pays its contracted
11 health care professionals.

12 48. By dictating the price of services to be charged by competing health care
13 professionals for the provision of treatment services to injured workers as an agent of the
14 competing purchasers of those services, OCM is able to set both the rates multiple health care
15 professionals receive and, separately and at a much higher price, the rates multiple workers'
16 compensation payers must pay for their services. In so doing, Defendants' conduct constitutes
17 acts of unfair competition as set forth herein. In sum, OCM is paid by workers' compensation
18 payors, at least in part, based on the number of referrals it makes and the size of the discount it
19 has obtained from the health care providers it has contracted with to provide treatment services
20 to injured workers. The larger the discount it has negotiated, the larger the amount it retains
21 from the employer or insurer who ultimately pays for the services provided to injured workers,
22 with OCM keeping the "spread" between the contracted rates between OCM and the payor on
23 the one hand, and OCM and the health care professional on the other. Because OCM is paid
24 more when it refers injured workers to specific contracted network providers based on this
25 spread, the amount it is paid increases with the size of the discounts it has negotiated. OCM thus
26 has a "financial interest" in its network providers, as defined by Labor Code § 139.32(a)(1) that
27 is tied to the illegal referrals described herein.
28

1 49. Further, OCM's conduct violates Labor Code § 139.32(d) which states that it is
2 unlawful for an interested party to enter into an arrangement or scheme that the interested party
3 knows, or should know, has a purpose of ensuring referrals by the interested party to a particular
4 entity that, if the interested party directly made referrals to that other entity, would be in
5 violation of this section; and that it is unlawful for an interested party to offer, deliver, receive,
6 or accept any rebate, refund, commission, preference, patronage, dividend, discount, or other
7 consideration whether in the form of money or otherwise, as compensation or inducement to
8 refer a person for services.

9 50. As described above, OCM offers and provides a preference to those chiropractic
10 health care professionals who agree to the lowest price, without regard to their quality of care or
11 other relevant factor, and as a result retains greater net compensation from its payor clients.
12 OCM solicits deeper discounts from these health care professionals in exchange for more
13 referrals, obtains discounts from health care professionals as an "inducement" or "preference"
14 for referrals, and to the extent it retains the spread created from such discounts, OCM receives
15 payments from the payors of workers compensation claims as compensation for making those
16 referrals that increase with the size of the discounts OCM negotiates in the form of the spread
17 described above, all in violation of Labor Code § 139.32(d).

18 51. Defendants' conduct also violates Labor Code § 3215, which provides that
19 "Except as otherwise permitted by law, any person acting individually or through his or her
20 employees or agents, who offers, delivers, receives, or accepts any rebate, refund, commission,
21 preference, patronage, dividend, discount or other consideration, whether in the form of money
22 or otherwise, as compensation or inducement for referring clients or patients to perform or
23 obtain services or benefits pursuant to this division, is guilty of a crime."

24 52. OCM violates Labor Code § 3215 in both its relationships with its workers'
25 compensation insurers, self-insured employers and third-party administrators and in its
26 relationships with its contracted health care professionals. From its payor clients, OCM "...
27 receives ... other consideration ... as compensation ... for referring ... patients to ...obtain
28 services or benefits pursuant to this division" in the form of the spread it is able to retain, in

1 violation of Labor Code § 3215. To its contracted health care professionals, OCM “receives,
2 [or] delivers ... [a] preference, discount or other consideration ... as ... inducement for referring
3 clients or patients to ... obtain services or benefits pursuant to this division ...”, also in
4 violation of Labor Code § 3215.

5 53. Defendants’ alleged misconduct also violates Labor Code § 3820, which makes it
6 unlawful for any person who submits a workers’ compensation claim to: (a) knowingly solicit,
7 receive, offer, pays or accept any rebate, referral, commission, preference, discount or other
8 consideration, monetary or not, as compensation or inducement for soliciting or referring clients
9 or patients to obtain workers’ compensation benefits; (b) knowingly operate or participate in a
10 service that, for profit, refers or recommends clients or patients to obtain medical or medical-
11 legal services; or (c) knowingly assist or conspire with any person who engages in any of the
12 above.

13 54. As alleged above, OCM demands deep discounts from health care professionals
14 as an inducement for the increased referral of injured workers for health care services in specific
15 geographic areas. OCM is paid based on the number of referrals and the size of the discount it
16 negotiates. Thus, OCM “knowingly solicits ... discount[s] ... as ... inducement for referring
17 patients to ... obtain [workers compensation] benefits” and “knowingly ... receives ... other
18 consideration ... as compensation ... for ... referring patients to obtain medical or medical-legal
19 services”, in violation of Labor Code § 3820(b)(3).

20 55. In addition, as OCM operates as a for profit referral service, it is also
21 “operat[ing] ... a service that, for profit, refers ... patients to obtain medical ... services”, in
22 violation of Labor Code § 3820(b)(4).

23 **UNLICENSED CLAIMS ADMINISTRATOR AND ADJUSTER ACTIVITIES**

24 56. Defendants’ conduct in managing the provision of chiropractic services and
25 paying the claims submitted by chiropractors for therapy provided to injured workers on behalf
26 of self-insured employers also violates California law.

27 57. Unless the employee has pre-designated a personal physician, the employer may
28 select a treating physician during the first 30 days after a workplace injury is reported. After 30

1 days from the date the injury is reported, the employee may be treated by a physician or facility
2 of his or her choice within a reasonable geographic area, unless the employer has established an
3 MPN. An MPN is a network of providers, including physicians and other health care
4 professionals, created to provide medical treatment to injured employees. MPNs may be created
5 by self-insured employers, workers' compensation insurers or entities providing physician
6 network services. When the employer has established an MPN, the employer or its
7 representative arranges the initial medical evaluation and treatment on behalf of the employee.
8 Unless exempted by law or the employer, all medical care for injured employees whose
9 employer has an approved MPN will be handled and provided through the MPN pursuant to
10 Labor Code § 4616(a). The MPN determines which locations are approved for physicians to
11 provide treatment under the MPN. 8 C.C.R. § 9767.3(4). Approved locations must be listed in
12 an MPN's provider directory.

13 58. Except for an employer who has established a MPN or an employer whose
14 insurer has established an MPN, every employer is required to advise employees in writing of
15 their right to: (1) Request a change of treating physician (one time only) if the original treating
16 physician is selected by the employer (Labor Code § 4601); and (2) Be treated by a physician of
17 his or her own choice after 30 days from reporting an injury. 8 C.C.R. § 9782.

18 59. An employee who is within an MPN may change personal physicians as often as
19 he or she wants after the initial medical evaluation but may only select from those physicians
20 who are members of the MPN.

21 60. An "entity that provides physician network services," as referenced in Labor
22 Code § 4616(a), means a legal entity employing or contracting with physicians and other
23 medical providers or contracting with physician networks to deliver medical treatment to injured
24 workers on behalf of one or more insurers, self-insured employers, the Uninsured Employers
25 Benefits Trust Fund, the California Insurance Guaranty Association, or the Self-Insurers
26 Security Fund, and that meet the requirements of Labor Code §§ 4616, *et seq.*, and
27 corresponding regulations, including 8 C.C.R. § 9767.1(a)(7). It may include, but is not limited
28 to, Claims Administrators.

1 61. Unlicensed network brokers such as OCM may become MPNs, but an MPN
2 cannot act as a Claims Administrator unless it is also a licensed workers' compensation insurer
3 or third-party administrator. OCM does not fall into either category.

4 62. A complete, up-to-date list of MPNs is available at: [www.dir.ca.gov/
5 dwc/mpn/DWC_MPN_Main.html](http://www.dir.ca.gov/dwc/mpn/DWC_MPN_Main.html). OCM is not separately listed as an authorized MPN.

6 63. OCM has identified Harbor Health Systems on its website as "A One Call Care
7 Management Company." Harbor Health Systems is owned by OCM Coastal Acquisition Co.,
8 LLC. OCM Coastal Acquisition Co., LLC, in turn, has owned at least 29 separate MPNs, having
9 received approval for its first MPN, "Harbor One" on May 21, 2014. OCM Coastal Acquisition
10 Co., LLC added an additional 8 MPNs in 2014, 12 MPNs in 2015, and 8 more MPNs in 2016,
11 as of October, 2016. However, neither OCM Coastal Acquisition Co., LLC nor any of these
12 MPNs appear to be licensed as a third-party administrator in California or otherwise authorized
13 to act as Claims Administrators, as that term is defined as set forth above. Moreover, OCM
14 continues to manage the delivery of and handle claims for treatment services provided both
15 inside and outside of these MPNs. OCM Coastal Acquisition Co., LLC also does not appear to
16 be licensed as an insurance company, physician, chiropractor or health care provider, nor have a
17 "certificate of consent" to administer self-insured employers' workers' compensation claims, in
18 California.

19 64. Chiropractors do not have any reasonable way of knowing whether an injured
20 worker is being referred within or outside of an MPN owned by OCM Coastal Acquisition Co.,
21 LLC.

22 65. Align Networks is identified as a "Division of One Call Care Management." In
23 describing its operations in terms that appear to describe the conduct of a Claims Administrator,
24 Align Networks focuses on outpatient rehabilitation services for injured workers. As stated on
25 its website:

26
27 Align Networks has developed a specialized workers' compensation provider network of
28 outpatient rehabilitation facilities that work as partners with us to expedite scheduling
and treatment of your injured workers. Our program focuses on timely scheduling and

1 communication of rehabilitation results combined with a return to work focus that is
2 unique in the industry today. When we receive a referral, we geographically match the
3 patient to a convenient Align Networks provider location and coordinate the requested
4 service. The end result is access to quality care, improved turnaround time in scheduling
5 and reporting, and cost savings that will benefit your bottom line.

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66. Align Networks includes the following on its website directed to “Payers”:

Align Networks works quickly to get your patients into therapy promptly at a therapy facility that is close to their home or work and convenient to their schedule. Prompt initiation of care is associated with facilitating healing, reducing clinical complications and a faster return to work!

In addition to extensive administrative management, we also have an in-depth Clinical Review Process. Align Networks utilizes an Expert Clinical Advisory Panel consisting of experienced, industry leading licensed clinicians to proactively review and manage our referrals. Through outcomes-based provider selection and peer clinical reviews, Align Networks is able to reach non-contentious resolution of therapy within appropriate visit utilization guidelines for the majority of referrals.

To schedule therapy for an injured worker, simply call, fax, email us or enter the referral on our fast online referral form.

67. Align Networks also includes the following description of its “Clinical Services” on its website:

Clinical Review Process

The objective of Align Networks’ clinical review process is to monitor therapy utilization through peer to peer communication that identifies lack of progress or compliance for each case managed by Align Networks, providing both quality and cost monitoring for our customers.

Guideline Application

At the time of referral, workers’ compensation-specific guidelines* are used to establish a visit count guideline based on the specific injury and create a systematic clinical trigger for each referral.

The provider is advised of the visits count guidelines at the time of initial referral. If a provider requests additional visits that will exceed the clinical guideline trigger, then a courtesy clinical review is automatically initiated by Align Networks.

All providers are benchmarked against our visit guidelines* and on the percent of cases reviewed to maintain preferred status in our network.

1 ***Clinical Review Recommendation***

2 When a review is complete, a ‘Clinical Review Summary’ is completed, including the
3 reviewer’s clinical recommendation. Final authorization or denial is the decision of the
4 adjuster or case manager. Align Networks will also send the clinical report to the doctor
5 for review and revised orders as requested by payer.

6 ***Clinical Savings***

7 Align Networks focuses on clinical outcomes. We track average number of visits per
8 episode of care and other clinical metrics to ensure superior outcomes and provider
9 management. The Align Networks clinical model ensures the most appropriate care is
10 delivered, optimizing return to work outcomes.

11 Align Networks’ clinical process gives payers the information needed to determine when
12 therapy is not working, preventing unnecessary utilization and costs. It also allows for
13 additional therapy to occur on individual cases where it is shown to be clinically
14 beneficial.

15 68. OCM contracts with and pays chiropractors in California through its Align
16 Networks division.

17 69. Neither One Call Medical, Inc. nor Align Networks appears to be licensed as an
18 insurance company in California, nor as a third-party administrator.

19 70. On information and belief, neither One Call Medical, Inc. nor Align Networks
20 appears to have a “certificate of consent” to administer self-insured employers’ workers’
21 compensation claims.

22 71. On information and belief, neither One Call Medical, Inc. nor Align Networks is
23 an “entity that provides physician network services” as that term is defined under California law
24 as to the chiropractor or other health care professionals with which it contracts, as neither One
25 Call Medical, Inc. nor Align Networks directly own an approved MPN. Although OCM Coastal
26 Acquisition Co., LLC owns some approved MPNs, OCM Coastal Acquisition Co., LLC does
27 not appear to have any direct contractual relationship with the chiropractors or other health care
28 professionals that contract with One Call Medical, Inc. or Align Networks.

 72. Neither One Call Medical, Inc. nor Align Networks appear to be certified as
 workers’ compensation claims adjusters or medical-only claims adjusters.

 73. Neither One Call Medical, Inc. nor Align Networks are licensed as a physician,
 chiropractor or other health care provider.

1 74. Defendants’ conduct in managing the provision of chiropractic services and
2 paying the claims submitted by chiropractors for therapy provided to injured workers on behalf
3 of self-insured employers also violates Labor Code § 3702.1, which requires that only an insurer
4 authorized to transact workers’ compensation insurance in California, or a third party
5 administrator with a certificate of consent to administer self-insured employers’ workers’
6 compensation claims, can act as a Claims Administrator for self-insured employers.

7 75. Defendants’ conduct also violates Insurance Code § 11761, which requires
8 workers’ compensation insurers, self-insured employers and third-party administrators to certify
9 that everyone they contract with to review, adjust or pay workers compensation medical bills is
10 properly trained as a claims adjustor or medical-only claims adjustor. While OCM pays the
11 medical claims of the health care professionals to whom it refers patients, and thus is acting as a
12 “medical-only claims adjustor”, OCM is not publicly listed as being certified to perform this
13 function. Thus, even assuming OCM is even authorized to perform the services of a licensed
14 third-party administrator, which Plaintiff contests, OCM’s claims adjusting activities violate
15 Insurance Code § 11761.

16 76. In not maintaining the required licenses, authorizations or certificates of consent,
17 Defendants are violating numerous California laws as set forth in this Complaint, including,
18 *inter alia*, Business and Professions Code §§ 2400, 2630 and 2694, Labor Code § 3702.1 and
19 Insurance Code § 11761.

20 **BILLING AND PAYMENT VIOLATIONS**

21 77. Defendants’ conduct in submitting bills for and collecting payments for
22 chiropractic services also violates Business and Professions Code §§ 2400, 2630 and 2694, as
23 Defendants are not licensed to practice as chiropractors.

24 78. Defendants’ claims handling and payment activities further violate the entire
25 system governing the electronic handling and payment of bills for workers’ compensation
26 medical treatment. Defendants’ failure to accept electronic claims, acknowledge their receipt
27 electronically upon submission, process and pay those claims expeditiously at no additional cost
28 to the chiropractors, provide prompt, clear explanations for any claim contest or denial, and

1 abide by the legally mandated internal and external billing dispute mechanisms violates Labor
2 Code §§ 4603.2, 4603.4 and 4603.6 and their implementing regulations, 8 C.C.R. §§ 9792.5.1,
3 *et seq.*

4 79. Under California Labor Code § 4603.4, since 2012 if not earlier, employers and
5 their agents must accept electronic claims for the payment of medical services provided to
6 injured workers. In addition, payment of any uncontested amount for medical treatment
7 provided or prescribed by the treating physician, whether selected by the employee or
8 designated by the employer, must be made within 15 working days after electronic receipt of an
9 itemized electronic bill for services and at no additional cost to the payee. In addition, the payor
10 must provide an explanation of review, which explains the payment, as well as any portion of
11 the payment which is contested or denied.

12 80. Under California Labor Code § 4603.2, the explanation of review must include
13 all the following:

14 a. A statement of the items or procedures billed and the amounts requested by the
15 provider to be paid.

16 b. The amount paid.

17 c. The basis for any adjustment, change, or denial of the item or procedure billed.

18 d. The additional information required to make a decision for an incomplete
19 itemization.

20 e. If a denial of payment is for some reason other than a fee dispute, the reason for
21 the denial.

22 f. Information on whom to contact on behalf of the employer if a dispute arises
23 over the payment of the billing. The explanation of review shall inform the medical provider of
24 the time limit to raise any objection regarding the items or procedures paid or disputed and how
25 to obtain an independent review of the medical bill pursuant to Section 4603.6.

26 81. California Labor Code §§ 4603.2 and 4603.6 establish extensive procedures
27 governing the handling of disputes over workers' compensation billing and payment. Among
28 other things, these laws provide a significant penalty on late payments. A late payment must be

1 paid at 15% more than the OFMS then in effect, together with interest at the same rate as
2 judgments in civil actions retroactive to the date of receipt of the initial bill. Labor Code §§
3 4603.2 (b)(1)(C)(2) and 4603.4 (d).

4 82. The regulations implementing these statutes, 8 C.C.R. §§ 9792.5.1, *et seq.*, and
5 the California Division of Workers' Compensation Medical Billing and Payment Guide and the
6 California Division of Workers' Compensation Electronic Medical Billing and Payment
7 Companion Guide adopted by those regulations, further require that the claims administrator
8 send electronic claims acknowledgments and remittance advice (explanations of review).

9 83. OCM does not comply with these laws, thus significantly increasing the
10 administrative burden on chiropractors, significantly delaying and reducing the payments they
11 would otherwise receive and eliminating any ability for Defendants' employer clients from
12 auditing OCM's actual payment activities.

13 84. To make matters worse, as of August 1, 2017, OCM claims chiropractors (unless
14 they can figure out how to opt out) use a system where they only receive payments by credit
15 card (*e.g.*, Visa OCM Account), subjecting them to an up to 3% or more merchant processing
16 fee. The result of this payment banking requirement, further decreases the net payment to
17 chiropractors. Defendants further profit and/or shift the cost of compliance with the new prompt
18 pay regulations on to the chiropractors, contrary to such regulatory requirements.

19 CAUSE OF ACTION

20 **Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)** 21 **Unlawful, Unfair, and Deceptive or Fraudulent Business Acts and Practices**

22
23 85. Plaintiff incorporates by reference each of the preceding paragraphs as though
24 fully set forth herein.

25 86. Plaintiff brings this claim on its own behalf and on behalf of its members who
26 have not contracted with Defendants, as set forth above.

27 87. As a result of Defendants' acts and practices in violation of Business and
28 Professions Code §§ 17200, *et seq.* ("UCL"), Plaintiff has suffered injury in fact and lost money

1 or property as set forth above. In addition, as a result of the acts alleged herein, Plaintiff's non-
2 contracting members have been injured in fact and lost money or property as a result of
3 Defendants' acts and practices, as they have lost and continue to lose patients and continue to
4 have patients diverted to providers who have been forced to accept unreasonably low rates from
5 OCM, pursuant to contracts that by law may be void as against public policy to the extent they
6 are proposed and entered into in violation of law, and through the efforts they have had to
7 expend combatting Defendants' conduct, and will continue to do so.

8 88. The UCL defines unfair competition to include any unlawful, unfair or fraudulent
9 or deceptive business act or practice. Defendants have committed acts of unfair competition
10 proscribed by Business and Professions Code §§ 17200, *et seq.*, including the acts and practices
11 alleged herein.

12 89. A business practice is "unlawful" under the UCL if it is forbidden by law,
13 including state laws or regulations, and the violation of any law may serve as the predicate for a
14 violation of the "unlawful" prong of the UCL. Defendants' conduct is unlawful under numerous
15 California laws and regulations, as set forth herein.

16 90. The acts and practices of Defendants as described above constitute "unfair"
17 business acts and practices. Plaintiff and its non-contracting members have also suffered injury
18 in fact and a loss of money or property as a result of Defendants' unfair business acts and
19 practices as set forth in detail above and will continue to do so.

20 91. Defendants' conduct does not benefit consumers or competition. Indeed, the
21 harm to consumers who are forced to utilize such services and to competition in the form of
22 health care professionals who are either forced to accept unreasonable payments or forego
23 providing such services altogether to a significant number of consumers is significant, for the
24 reasons set forth above.

25 92. Plaintiff, its members who have not contracted with Defendants and the affected
26 public could not have reasonably avoided the injury each of them suffered, which injury is
27 substantial.
28

1 93. The gravity of the consequences of Defendants’ conduct as described above
2 outweighs the justification, motive or reason therefor, is immoral, unethical and unscrupulous,
3 and offends established public policy that is tethered to legislatively declared policies as set
4 forth in the laws detailed above, or is substantially injurious to the public, for the reasons set
5 forth above.

6 94. The gravity of the harm attributable to those practices is substantial. Discounts of
7 the magnitude OCM demands can only be accommodated by reducing the quality of the medical
8 treatments that can be offered. With respect to chiropractic services, that means patients must
9 receive less direct supervision, and more services must be delegated to assistants. For example,
10 the blanket, prospective cap created by OCM’s programs that requires chiropractors who wish
11 to be “preferred providers” within the OCM network and thus receive the most referrals to stay
12 at or below the average utilization rate of all chiropractic practices in California, without regard
13 to the needs of their individual patient populations, adversely impacts injured workers and their
14 right to necessary medical care, and imposes the greatest harm on the most severely injured
15 patients with the greatest medical need. In addition, such conduct may compel some
16 chiropractors to operate under contracts that may be void as against public policy.

17 95. The acts and practices of Defendants as described above also constitute
18 “fraudulent” or “deceptive” business practices as that term is used in Business & Professions
19 Code §§ 17200, *et seq.* Plaintiff and its non-contracting members have suffered injury in fact
20 and a loss of money or property as a result of Defendants’ deceptive or fraudulent business acts
21 and practices as set forth in detail above, and will continue to do so.

22 96. Defendants’ obfuscated contracting and patient referral scheme is also likely to
23 deceive both injured workers and workers’ compensation payors, as set forth in detail above,
24 into believing they are receiving services and making payments consistent with what the law
25 permits, when in fact they are being charged pursuant to a series of contracts that may be void as
26 against public policy, and that OCM’s chiropractor “provider network” is significantly larger
27 than it actually is based on the tiering system Align claims to use in making chiropractic patient
28 referrals.

1 97. As a result of Defendants’ scheme, Defendants’ clients may have no idea of the
2 magnitude of the discounts Defendants offer or impose, or how little Defendants are actually
3 paying for the treatment services provided to injured workers and are reasonably likely be
4 misled into believing that the treating providers are receiving fair compensation and that these
5 clients’ injured employees are receiving optimal treatment for their injuries. They are also likely
6 unaware of the material fact that Defendants are illegally demanding unreasonably large
7 discounts as an inducement for the referral of these patients and misled into believing
8 Defendants can lawfully conduct business in this State and have the required authorizations to
9 do so, when that may well not be the case.

10 98. Defendants’ conduct and omissions of fact as set forth above were material and
11 thus presumed to be a substantial factor in decisions to utilize Defendants’ services, with the
12 result that injured workers were forced to receive services from underpaid chiropractors through
13 a system that does not properly operate in this State or pursuant to contracts that may be void as
14 against public policy.

15 99. Defendants’ acts of unfair competition as set forth above present a continuing
16 threat and will persist and continue to do so unless and until this Court issues appropriate
17 injunctive and declaratory relief, including a declaration whether the contracts offered and
18 imposed by Defendants in violation of the above laws are void as against public policy. In
19 addition, Plaintiff may be entitled to equitable relief according to proof at time of trial. Plaintiff
20 also seeks attorneys’ fees and costs pursuant to, *inter alia*, C.C.P. § 1021.5.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, individually and on behalf of its non-contracted members as
23 set forth above, prays for relief as follows to the extent permitted by law:

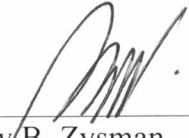
- 24 1. Injunctive and declaratory relief;
- 25 2. Other equitable relief;
- 26 3. Attorneys’ fees and costs pursuant to, *inter alia*, C.C.P. § 1021.5; and
- 27 4. Such other and further relief as the Court may deem appropriate.

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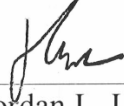
Dated: August 31, 2018

Respectfully submitted,
LAW OFFICES OF ZEV B. ZYSMAN, APC

By: 
Zev B. Zysman

Dated: August 31, 2018

Respectfully submitted,
CAPSTONE LAW APC

By: 
Jordan L. Lurie
Tarek H. Zohdy
Cody R. Padgett
Trisha K. Monesi

Attorneys for Plaintiff California Chiropractic
Association