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13
14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 **INDEPENDENT PHYSICAL**
17 **THERAPISTS OF CALIFORNIA,**
on behalf of itself and members,

18 **Plaintiff,**

19 **v.**

20 **ONE CALL MEDICAL, INC.,**
21 **D/B/A ONE CALL CARE**
22 **MANAGEMENT;**
ALIGN NETWORKS, INC.; and
DOES 1-10, inclusive,

23 **Defendants.**

Case No. 17-cv-00773-MMA (AGS)

FIRST AMENDED COMPLAINT FOR
VIOLATION OF THE UNFAIR
COMPETITION LAW (CAL. BUS. &
PROF. CODE § 17200, ET SEQ.) –
UNLAWFUL, UNFAIR AND
DECEPTIVE OR FRAUDULENT
BUSINESS ACTS AND PRACTICES

Jury Trial Demanded On All Claims So
Triable

24
25 Plaintiff Independent Physical Therapists of California, by and through the
26 undersigned attorneys, files this First Amended Complaint on behalf of itself and
27 its non-contracted members as described below against Defendant One Call
28 Medical, Inc. dba One Call Care Management, Align Networks, Inc. (hereafter

1 collectively “One Call” or “OCM”, except where otherwise indicated) and DOES
2 1-10, inclusive (hereafter collectively “Defendants”). Except as to the allegations
3 of Plaintiff’s experiences, which are based on personal knowledge, all other
4 allegations are based on information and belief and are formed based on an inquiry
5 reasonable under the circumstances. Such allegations are likely to have evidentiary
6 support after a reasonable opportunity for further investigation and discovery.

7 **NATURE OF THE ACTION**

8 1. This action arises out of Defendants’ uniform practice of soliciting
9 and receiving improper payments for the referral of healthcare services and
10 managing services provided to injured workers in California in ways that violate
11 numerous California laws designed to protect injured workers, including laws
12 requiring authorization or certification to engage in such conduct in California.

13 2. One Call, which is doing business in California as One Call Care
14 Management, is a for-profit “middleman” in California’s workers’ compensation
15 system. OCM operates as an unlicensed network broker, contracting, on the one
16 hand, with the payors of workers’ compensation services, including workers’
17 compensation insurers, self-insured employers and third party administrators, to
18 handle the scheduling and payment of treatment visits for injured workers, and, on
19 the other hand, with the health care professionals who provide health care services
20 to injured workers at the deeply discounted rates imposed by OCM. As set forth
21 below, OCM apparently operates in California without any license, certificate of
22 consent or other certification as a California workers’ compensation claims
23 administrator, third party administrator, or claims adjustor.

24 3. OCM has developed an opaque, unfair and illegal scheme whereby
25 OCM maximizes the compensation it receives from its payor clients by referring
26 injured workers to those of its contracted health care professionals who accede to
27 the deepest discount. This system is nothing like a traditional “Preferred Provider
28 Organization” (“PPO”) where the PPO contracts with health care providers,

1 payors let their beneficiaries choose to receive services from any of the health
2 care providers who contract with the PPO, and then the payors pay the claims
3 submitted by those contracted providers. OCM does not offer health care
4 professionals the opportunity to be listed in a directory. Rather, OCM solicits (or
5 extorts) deep discounts of a specified amount from its contracted health care
6 professionals as an inducement for it to send them a specified number of
7 additional referrals. Similarly, unlike traditional PPO arrangements, injured
8 workers are not free to select a care provider from among the contracted health
9 care professionals. Rather, OCM assigns injured workers to the provider of
10 OCM's choosing, thus further ensuring it maximizes its revenue by assigning
11 these injured workers to the providers who have acceded to the deepest discounts.
12 In doing so, OCM illegally provides them a preference in receiving such referrals.
13 The payment OCM receives from its workers' compensation payor clients for its
14 management services is tied to the number of referrals OCM makes and the size
15 of the discounts OCM obtains from its contracted health care professionals who
16 care for injured workers.

17 4. For all the treatment services a physical therapist may provide an
18 injured worker in a day, OCM generally pays its contracted physical therapists
19 significantly below what physical therapists would be paid under the 2017
20 California Official Medical Fee Schedule ("OMFS") for workers' compensation
21 treatment services, which for a typical physical therapy visit is at least \$135. The
22 OMFS is based on the Medicare Physician Fee Schedule ("PFS"), which is itself
23 maintained by the Centers for Medicare and Medicaid Services ("CMS") to reflect
24 the realistic cost of doing business for those health care professionals who are
25 providing care to Medicare beneficiaries.¹

26 ¹ After making a series of rate increases starting in 2014 that raised the OMFS rates
27 for physical therapy services by over 50% to reflect current market rates, as of
28 January 1, 2017, the OMFS rates for physical therapy services were increased by
another approximately 5%, thus further increasing the spread between what OCM
pays physical therapists and what OCM receives from its workers compensation

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

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

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

27 ///

28 _____ clients for the services those physical therapists provide.

1 8. OCM is able to sustain this practice because it controls a significant
2 majority of California's workers' compensation health care services in several
3 service lines, including physical therapy services, by virtue of its contracts with
4 the payors of workers' compensation services. Pursuant to these contracts, OCM
5 controls the scheduling of the treatment services for injured workers. Generally
6 speaking, physical therapists who do not contract with OCM have little or no
7 opportunity to provide workers' compensation services to injured workers.
8 Physical therapists who accede to contracts at the deepest discounts receive the
9 vast majority of referrals from OCM. OCM tells health care professionals
10 precisely how many referrals they have received, and how many more they would
11 receive if they increase the size of their discount by a specific amount. Because
12 OCM handles the scheduling of appointments for the vast majority of these
13 injured workers, and otherwise makes it difficult or impossible for the injured
14 workers or their primary treating physicians to schedule appointments themselves,
15 OCM is able to provide a preference by steering injured workers who need
16 physical therapy directly to those providers who capitulate to its demands.

17 9. By doing so, OCM has also interfered with the choice of employees in
18 selecting a health care professional of their choice and recommended by their
19 physician. In the case where a newly injured patient has been referred to another
20 health care professional by the treating physician rather than by an OCM
21 employee, OCM may contact the injured worker directly and reschedule them
22 with the health care professional of OCM's choosing – the one who has agreed to
23 the deepest discount.

24 10. OCM furthers the opacity of its activities and the harm caused by its
25 unduly low payment rates by failing to comply with many of the laws and
26 regulations that have been enacted in the last several years requiring that
27 employers and their agents accept electronic claims, acknowledge their receipt
28 electronically upon submission, process and pay those claims expeditiously,

1 provide prompt, clear explanations for any claim contest or denial, and abide by
2 the internal and external billing dispute mechanisms. As a result, physical
3 therapists continue to deal with all the billing and payment issues that have
4 plagued the workers' compensation system prior to the adoption of these laws,
5 including "lost claims" and payment delays. As of August 1, 2017, OCM further
6 proposes to improperly make more money and/or decrease physical therapist
7 payments by requiring them to accept payments by credit card (and an up to 3%
8 "processing fee") unless they can figure out how to opt out of this directive.

9 11. Because of these practices, injured workers find it difficult to access
10 the care they need, health care professionals are forced to bid against each other
11 and extorted to accept significantly below standard rates to obtain any referrals,
12 and payors pay inflated amounts to OCM because they may not be provided key
13 information about how much OCM pays the treating health care professionals.
14 Unduly low payment rates also force health care professionals to see more
15 patients in a day, spend less time with each patient, delegate work to less skilled
16 assistants, defer making capital investments in their practices, and seek
17 employment by hospitals or health systems, lessening the availability of such
18 professionals for direct contact, assessment and treatment. The prospective cap
19 created by OCM's programs that requires physical therapists who wish to be
20 preferred providers within the OCM network, and thus receive the most referrals,
21 to stay at or below the average utilization rate of all physical therapy practices in
22 California, without regard to the needs of their individual patient populations, also
23 creates significant harm. The gravity of the harms created by Defendants' conduct
24 thus not only affect Plaintiff and its members, but also injured workers. In the
25 short run, Defendants' conduct degrades the quality of medical services injured
26 workers receive; in the long run, it will exacerbate the access issues already
27 encountered by injured workers, driving up the costs of absenteeism and
28 ultimately the medical cost of services rather than acting in what are the injured

1 worker's best interests in the first instance. OCM is the primary party that benefits
2 as a result of these transactions, to the detriment of all others who are significantly
3 harmed as a result of such conduct.

4 12. Defendants' conduct violates California's Unfair Competition Law,
5 Cal. Bus. & Prof. Code § 17200, *et seq.* ("UCL"), as well as the numerous
6 California laws that prohibit Defendants from engaging in illegal payment
7 schemes, prohibiting referral systems for workers' compensation treatment
8 services that are directly tied to financial incentives, prohibiting Defendants from
9 operating without the required authorizations as a physician network service
10 provider, claims administrator or claims adjustor, and otherwise interfering with
11 the health care services being provided to injured workers by their physical
12 therapists. Such conduct is in violation of numerous laws as set forth in detail
13 below.

14 13. Defendants' conduct is continuing and will not be remedied absent the
15 relief sought herein by Plaintiff on behalf of itself and its non-contracted
16 members.

17 **PARTIES**

18 14. On personal knowledge, Independent Physical Therapists of
19 California ("IPTCA") is a California corporation with its principal place of
20 business located at 700 Garden View Court, Suite 103, Encinitas, California
21 92024-2478. IPTCA is a non-profit membership organization, with approximately
22 200 physical therapist members located throughout the State of California.
23 IPTCA's stated mission is to educate practicing physical therapists in order to
24 improve their clinical and business acumen, in addition to providing a body for
25 advocating for the interests of physical therapists in California. IPTCA actively
26 engages in the legislative, political and regulatory processes to carry out its
27 mission. Additionally, IPTCA regularly engages with government and private
28 health plans to advocate for the interests of its members and works to represent

1 members in discussions with numerous companies, including OCM and its
2 subsidiary companies, with respect to payment practices such as at issue in this
3 Complaint.

4 15. IPTCA brings this lawsuit in its capacity as an association, and also
5 on behalf of its members who are not contracted with Defendants and thus not
6 subject to any onerous arbitration agreements with them. Many of IPTCA's
7 members have lost business as a direct result of OCM's acts of unfair competition.
8 Plaintiff does not seek any individual relief greater or different than would benefit
9 its members or the public.

10 16. Defendant One Call Medical, Inc. is a New Jersey corporation that
11 lists with the California Secretary of State its principal place of business as being
12 located at 841 Prudential Drive, Suite 900, Jacksonville, Florida 32207, and is
13 registered to do business in California. It is regularly doing business in California
14 under the fictitious business name "One Call Care Management". OCM is
15 transacting business as an unlicensed workers' compensation provider network
16 broker in and from this State. OCM conducts activities in California directly and
17 through various divisions and subsidiaries operating here.

18 17. Defendant Align Networks, Inc. ("Align Networks") was acquired by
19 One Call Medical, Inc. in 2013 and is a Florida corporation. It is a subsidiary and
20 division of One Call Medical, Inc. Align Networks officially lists with the
21 California Secretary of State the same principal executive office listed above and
22 officers as does One Call Medical, Inc. It is the primary entity that offers and
23 enters into the contracts at issue herein.

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

1 19. Defendants' conduct described herein was undertaken or authorized
2 by Defendants' officers or managing agents, who were responsible for supervision
3 and operating decisions relating to the conduct at issue in this Complaint. The
4 conduct of these managing agents and individuals was undertaken on behalf of
5 Defendants. Defendants had advance knowledge of the actions and conduct of
6 these individuals, whose actions and conduct were ratified, authorized, and
7 approved by such managing agents. As set forth below, Defendants unjustly and
8 mutually profited as a result of this conduct, in violation of the laws detailed
9 herein. As a result of agreements, either express or implied, to engage in such
10 conduct, Defendants conspired and aided and abetted each other in violating the
11 laws set forth herein. Such conduct is on-going.

12 **JURISDICTION AND VENUE**

13 20. Plaintiff is a non-profit membership organization based in California.
14 Defendants transact significant business in California. This action was removed
15 by Defendants to this Court asserting this Court has jurisdiction over the parties
16 and over this action. Jurisdiction over Defendants is also proper because they have
17 purposely availed themselves of the privilege of conducting business activities in
18 California, are registered to conduct business in this State and because they
19 currently maintain systematic and continuous business contacts with this State
20 and/or base a significant amount of their operations here by managing the
21 treatment services for thousands of injured workers who are residents of this State
22 on behalf of numerous California workers' compensation insurers, self-insured
23 employers and third party administrators that do business with Defendants.

24 21. Venue is proper in this County because Plaintiff is based in this
25 County as are numerous of its members, Defendants maintain substantial
26 operations in this County, several workers' compensation insurers, self-insured
27 employers and third party administrators that hire Defendants either reside or did
28 business with Defendants in this County, Defendants engage in business in this

1 County, a significant part of the events or omissions giving rise to the claims at
2 issue occurred in this County, and Defendants entered into transactions and
3 received substantial profits from contracts with persons who reside in this County.

4 **PLAINTIFF'S STANDING**

5 22. On personal knowledge, IPTCA has standing to bring these claims in
6 its own capacity as it has been injured in fact and lost money or property as a
7 result of Defendants' wrongful conduct as described herein, including, without
8 limitation, by being forced to devote resources to help members deal with
9 Defendants' illegal practices, the loss of financial resources in investigating these
10 claims and diversion of staff time to investigate and attempt to resolve such
11 claims, and efforts taken by IPTCA to identify, combat and counteract the harm
12 caused by such conduct, consistent with its mission to do so. IPTCA also has
13 standing to act on behalf of its members because IPTCA's members have been
14 harmed by Defendants' conduct (although such members are not required to
15 participate individually to seek the prospective, injunctive and equitable relief
16 requested in this action); the interests IPTCA seeks to protect is germane to the
17 organization's purpose as set forth above; and a strong likelihood exists that
18 IPTCA's members will be harmed in the future. In addition to the redress it seeks
19 for its own injury, IPTCA seeks declaratory and injunctive relief on behalf of its
20 non-contracted members. Both IPTCA and these members have been harmed by
21 the egregious acts and practices of Defendants as set forth in this Complaint.

22 23. The IPTCA has lost money or property as a result of the practices
23 here at issue, and has expended considerable time and both financial and staff
24 resources to help IPTCA members regarding Defendants' practices, separate and
25 apart from this litigation. These efforts include, but are not limited to, retaining at
26 IPTCA's cost strategic consultants, technology specialists and experts, incurring
27 travel and meeting expenses, engaging in communications with members and
28 OCM representatives, and expending hundreds of hours of IPTCA leadership's

1 time in order to manage the complaints received from IPTCA members regarding
2 Defendants' alleged violations of state law, which IPTCA would have otherwise
3 expended in other ways to advance the mission of IPTCA set forth above.

4 24. By way of example, IPTCA has during the last several years devoted
5 significant resources of its Board members to assist its members in addressing
6 Defendants' improper practices as alleged in this Complaint. IPTCA has received
7 and responded to communications from multiple physical therapist members who
8 have been pressured to lower prices, been threatened with termination or
9 reductions in referrals, or have actually been terminated or otherwise lost patients
10 and business, all in a manner inconsistent with the California laws cited herein. In
11 many cases, patients have been steered away from their preferred physical therapy
12 providers who are members of the IPTCA during an episode of care simply
13 because their clinic is not the lowest cost provider that contracts with OCM. The
14 IPTCA leadership has thus been forced to expend significant time and resources
15 in investigation of and efforts to redress Defendants' wrongdoing.

16 25. IPTCA has also expended resources in communicating with and
17 educating its members about their rights and obligations as well as
18 communicating concerns regarding Defendants' practices with the California
19 Department of Insurance, the Senate Labor and Industrial Relations Committee,
20 numerous state legislators, and leadership of other healthcare professional
21 associations.

22 26. In addition, IPTCA members have been harmed by these practices, as
23 there are many cases where IPTCA members are not able to provide care for
24 California's injured workers at all because the only way to access a patient is to
25 contract with Defendants. Many IPTCA physical therapist members cannot afford
26 to sign, or have had terminated a contract with OCM because Defendants only
27 offered a payment rate well below the cost of doing business. In California, the
28 typical physical therapist outpatient provider could be expected to have a patient

1 mix of at least 20% Workers' Compensation patients. Many IPTCA members
2 have been limited to less than one to three percent as a result of Defendants'
3 practices.

4 27. As a further example of the resources IPTCA has been forced to
5 expend in an attempt to combat and counteract Defendants' practices, further
6 establishing its standing to assert such claims on behalf of both itself and its non-
7 contracted members, IPTCA spent significant resources dealing with several
8 insulting YouTube rap/dance videos posted on the Internet by employees of Align
9 Networks, a division and subsidiary of One Call Medical, Inc. since at least 2013,
10 mocking physical therapists and other rehabilitation providers. The videos
11 contained scenes where Align Networks' employees and executives were dressed
12 in tee shirts and gold necklaces with a dollar bill sign, some waving "Show me the
13 money" signs. One executive sitting at a desk with large piles of money,
14 eventually tossed stacks of money up in the air so that it would "rain" down upon
15 him. These videos, which were produced at Align Networks' headquarters in
16 Jacksonville, Florida (the same listed corporate offices as One Call Medical, Inc.),
17 remained published on-line for at least two years, and affected IPTCA and its
18 members by degrading the professionalism and value that physical therapists
19 deliver in patient care. Plaintiff believes Align Networks' management actively
20 participated in these videos as individuals who appear to be senior managers
21 played "starring" roles in the production. One senior manager was waving a sign
22 that said "Just sign the contract" during her cameo appearance. These videos were
23 finally pulled down after IPTCA leadership met directly with one of Align
24 Networks' national provider relations representatives in Colorado Springs,
25 Colorado, at IPTCA's own expense, having been unable to get OCM's and Align
26 Networks' attention to address this or other of the IPTCA's members' widespread
27 concerns. Although the videos were ultimately pulled down, none of IPTCA's
28 other concerns were resolved, necessitating this action.

FACTUAL SUMMARY

1
2 28. Employers are required to pay for their employees’ medical expenses
3 that result from any workplace injury or illness.

4 29. The Legislature has expressly directed courts to interpret statutes
5 within the Labor Code liberally, with the purpose of extending their benefits for
6 the protection of persons injured in the course of their employment, under Labor
7 Code § 3202.

8 30. California’s workers’ compensation system has undergone significant
9 changes over the last several years as a result of major pieces of legislation
10 including, but not limited to, Senate Bill 899 (Stats. 2004, ch. 34), Senate Bill 863
11 (Stats. 2012, ch. 363) and Senate Bill 542 (Stats. 2015, ch. 542). These legislative
12 changes gave the employer significant control over the treatment services received
13 by injured workers, including the injured worker’s selection of his or her primary
14 physician.

15 31. As a general matter, employers provide workers compensation
16 coverage for their employees either by purchasing insurance from workers’
17 compensation insurance carriers, or by self-insuring.

18 **A. IMPROPER INDUCEMENTS OFFERED AND PAYMENTS**
19 **COLLECTED BY OCM**

20 32. OCM generally does not solicit rate offers from health care
21 professionals. Rather, OCM dictates the rates it will pay in exchange for referring
22 patients to these professionals, and places physical therapists in one of four Tiers
23 for referral purposes based either in whole or in part based on the pricing they will
24 take. The difference between these tiers can be significant in terms of pricing,
25 with Tier 1 reimbursement levels being 20% lower than Tier 4 reimbursement
26 levels. Nothing in the approved OFMS schedule provides for the use of this type
27 of tiering process.

28 ///

1 33. Beginning as early as 2013 (soon after they were acquired by a large
2 hedge fund investment company), OCM representatives throughout California
3 have used form communications that make quite clear the impact of physical
4 therapists accepting (or not accepting) such rate reductions. These form
5 communications include statements such as the following:

- 6 • “Align Networks has identified your group as one with potential for
7 increased referrals with a more competitive rate. I found several things
8 that I believe can turn your referral numbers around. **The rates we
9 propose determine the amount of referral volume we are able to
10 funnel to your facility....** More referrals will offset what you think you
11 may be losing to the higher FS discount.”
- 12 • “I know that you all have the opportunity to move up higher on our map
13 of Providers and in return your office will be utilized more often for
14 sending our patients to if we can work on renegotiating one aspect of
15 your contract.... **Every competitor in your area has competitively
16 leveraged their daily rate to increase their likelihood of being utilized
17 more often by Align Networks.** [If you agree to a certain rate] you all
18 will have a much higher likelihood of being utilized more often by Align
19 Networks.
- 20 • “I know that if we renegotiate your daily maximum we can put you in a
21 much more competitive position. ... you will be the only Tier 3 in the
22 area, which will put you at the top of the Provider Map. **If you all want
23 to increase your likelihood of being utilized more often please let me
24 know.**
- 25 • “A Tier 1 provider is the option selected by our scheduling department.
26 This is for any prospective referral. Our referral sources include our
27 Insurance Carriers, the patient, referring MD, an employer and Attorney
28 (If applicable).... **A Tier 3 and Tier 4 provider does not see any**

1 **prospective referral volume....** So a Tier 3 or 4 provider is simply
2 securing their place within the market of managed care. Whereas a Tier 1
3 or 2 provider, is looking to generate an increase in revenue, through
4 increased prospective volume. **It all just depends on what your facility**
5 **is looking to do. We have plenty of business in the area and the**
6 **volume is there for the taking.”**

- 7 • In discussing a proposed rate increase by a physical therapist: “Please
8 note that this will bump your current status with Align from Tier 1 to a
9 Tier 3, **so it may affect the amount of referral volume you have been**
10 **receiving from us.”** (emphasis added).

11 In such communications OCM representatives routinely communicate the
12 contrasting rates imposed on various competing health care professionals in the
13 same geographic market to other professionals in an effort to convince them to
14 take a drastically lower payment rate in exchange for a preference in terms of a
15 specified increase in the number of referrals they will receive. Defendants’
16 representatives have gone so far in these communications as to state the number of
17 referrals that were recently made in a particular geographic area, how few went to
18 a particular physical therapist because of the rate they charged, how many went to
19 competitors in the area who accepted lower rates, and how many more would go to
20 the physical therapist if they agreed to reduce their rates by being able to move up
21 higher on the map of providers. Such statements make clear to physical therapists
22 who do not accede to the deepest discounts OCM demands but remain contracted
23 at higher rates that they will receive referrals only when OCM cannot refer the
24 injured worker to a practice that has contracted with it at a lower rate in the same
25 geographic area. Such claims also establish that OCM is representing its networks
26 are significantly larger than they actually are, since only a small number of
27 referrals, by their own admission, are sent to physical therapists in the lower tiers 3
28 and 4. Defendants thus are promoting the existence of a “phantom network”, since

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

13 34. Injured workers rarely refer themselves to physical therapists, nor are
14 they generally referred by their treating physicians; the vast majority of referrals
15 are controlled and made directly by OCM or by adjustors who have been directed
16 to primarily if not exclusively refer patients to OCM facilities. Even though
17 injured workers have the right to choose a new treating physician after 30 days if
18 they are dissatisfied with the physician assigned by their employer, they have no
19 such rights when it comes to their physical therapist.

20 35. OCM operates a company doing business as “Harbor Health Systems”
21 through OCM Coastal Acquisition Co., LLC, a related limited liability company
22 for which One Call Medical, Inc. is the sole listed member. In the listing of
23 physical therapists on the Harbor Health Systems Medical Provider Network
24 (“MPN”) provider directory for State Fund, the “State Fund MPN by Harbor
25 Health”, with limited exceptions, it only lists the name and phone number of
26 Align Networks or that of another physical therapist network, Cypress Care. Align
27 Networks is one of only three “physical therapy group practices” on the State
28 Fund MPN by Harbor Health website listed as providing physical therapy

1 services. Each Align Networks listing indicates a different address (presumably
2 that of a contracted physical therapy practice). However, these listings include the
3 same telephone number – that of Align Networks. Neither Align Networks nor
4 OCM is licensed to provide physician services, physical therapy services or any
5 other treatment services to injured workers. Defendants are prohibited from
6 providing or billing for physical therapy services in this manner under, *inter alia*,
7 Business and Professions Code §§ 2400, 2630 and 2694.

8 36. Neither a treating physician nor an injured worker can contact a
9 contracted physical therapist directly using this directory, as neither the name of
10 nor the phone number for the alleged contracted physical therapy practice appears
11 in this listing.² Thus, injured workers who search the directory for a convenient
12 physical therapist cannot make an appointment at that practice directly. Rather,
13 they must call the Align Networks phone number listed in the directory, at which
14 point they will be referred to a physical therapist by the Align Networks staff.

15 37. Pursuant to the OMFS, a physical therapist would typically receive at
16 least \$135 for all the treatment services a physical therapist may provide an
17 injured worker in a day.

18 38. The rates OCM pays physical therapists are significantly below the
19 OMFS rates; OCM rates have not increased despite the increases mandated for
20 these services by the OMFS over the last several years as set forth herein. The
21 OMFS rates for physical therapy services were increased again on January 1,
22 2017; OCM so far does not appear to have passed on any of that increase to its
23 contracted physical therapists; if anything, they have tried to get physical
24 therapists to agree to rates as low as half that amount in exchange for increased
25

26 ² IPTCA has also identified numerous instances where the addresses for the
27 purportedly contracted “physical therapy” practices included in the State Fund
28 MPN by Harbor Health provider directory belong to practices that do not or no
longer contract with Align Networks, provide something other than physical
therapy services (e.g., acupuncture, chiropractic, etc.), are no longer in business, or
do not belong to a health care provider of any sort (e.g., a florist shop).

1 referrals despite these increases in the OMFS rates in recent years – meaning that
2 Defendants have been further profiting despite the directive to utilize higher
3 payment schedules.

4 39. OCM is paid by workers’ compensation payors, at least in part, based
5 on the number of referrals it makes and the size of the discount it has obtained
6 from the health care providers it has contracted with to provide treatment services
7 to injured workers. The larger the discount it has negotiated, the larger the amount
8 it retains from the employer or insurer who ultimately pays for the services
9 provided to injured workers, with OCM keeping the “spread” between the
10 contracted rates between OCM and the payor on the one hand, and OCM and the
11 health care professional on the other. Because OCM is paid more when it refers
12 injured workers to specific contracted network providers based on this spread, the
13 amount it is paid increases with the size of the discounts it has negotiated. OCM
14 thus has a “financial interest” in its network providers, as defined by Labor Code
15 § 139.32(a)(1) that is tied to the illegal referrals described herein.

16 40. As is discussed below, neither One Call Medical, Inc. nor Align
17 Networks are “physician network service providers” as that term is defined under
18 the Labor Code. To the extent One Call Medical, Inc., either directly or through
19 Align Networks, is conducting business outside of an MPN as to which they are
20 authorized “physician network service providers,” it does so in violation of Labor
21 Code § 139.32(c). That subsection prohibits any interested party other than a
22 claims administrator or network services provider from “referring a person for
23 services provided by another entity, or to use services provided by another entity,
24 if the other entity will be paid for those services pursuant to Division 4
25 (commencing with Section 3200) and the interested party has a financial interest
26 in the other entity.” One Call Medical, Inc. and Align Networks have a financial
27 interest in each of these contracted health care professionals, and they are a
28 representative or agent of their employer, insurer and claims administrator clients

1 based on the contractual relationships described herein, and because they are
2 being paid pursuant to those contractual relationships. Although OCM Coastal
3 Acquisition Co., LLC is a “physician network service provider” as to its 29
4 MPNs, as explained in more detail below, it is not OCM Coastal Acquisition Co.,
5 LLC that makes these referrals. Thus, OCM Coastal Acquisition Co., LLC’s
6 status as a “physician network service provider” does not provide any protection
7 from liability to OCM.

8 41. Based on the practices described in this Complaint, OCM offers – and
9 delivers – a preference to those physical therapists who capitulate to the lowest
10 price, without regard to their quality of care or other relevant factor, and
11 concomitantly, OCM receives greater net compensation from its payor clients.
12 OCM solicits and obtains deeper discounts from these health care professionals in
13 exchange for more referrals, obtains discounts from health care professionals as
14 an “inducement” or “preference” for referrals, and to the extent it retains the
15 spread created from such discounts, OCM receives payments from the payors of
16 workers’ compensation claims as compensation for making those referrals that
17 increase the size of the discounts OCM negotiates in the form of the spread
18 described above, all in violation of Labor Code § 139.32(d).

19 42. In addition, Labor Code § 3215 provides: “Except as otherwise
20 permitted by law, any person acting individually or through his or her employees
21 or agents, who offers, delivers, receives, or accepts any rebate, refund,
22 commission, preference, patronage, dividend, discount or other consideration,
23 whether in the form of money or otherwise, as compensation or inducement for
24 referring clients or patients to perform or obtain services or benefits pursuant to
25 this division, is guilty of a crime.”

26 43. OCM demands deep discounts from physical therapists as an
27 inducement for the referral of injured workers for health care services. The larger
28 the discount OCM negotiates, the larger the amount it is able to retain in the form

1 of the spread described above. In doing so, OCM violates Labor Code § 3215 in
2 both its relationships with its workers' compensation insurers, self-insured
3 employers and third-party administrators and in its relationships with its
4 contracted physical therapists. From its payor clients, OCM "receives ... other
5 consideration ... as compensation ... for referring ... patients to ... obtain services
6 or benefits pursuant to this division" in the form of the spread it is able to
7 retain, in violation of Labor Code § 3215. To its contracted physical therapists,
8 OCM "receives [or] delivers ... [a] preference, discount or other consideration ...
9 as ... compensation or inducement for referring clients or patients to ... obtain
10 services or benefits pursuant to this division", also in violation of Labor Code
11 § 3215. Because OCM's contracts are proposed or entered into in violation of
12 these provisions of law, they may be void as against public policy and remediable
13 under the UCL.

14 44. In addition, OCM demands deep discounts from health care
15 professionals in return for the referral of injured workers for health care services.
16 Thus, OCM "knowingly solicits ... discount[s] ... as ... inducement for referring
17 patients to ... obtain [workers compensation] benefits" and "knowingly ...
18 receives ... other consideration ... as compensation ... for ... referring patients to
19 obtain medical or medical-legal services", in violation of Labor Code §
20 3820(b)(3).

21 45. Finally, as OCM operates as a for profit referral service, it is also
22 "operat[ing] ... a service that, for profit, refers ... patients to obtain medical ...
23 services", in violation of Labor Code § 3820(b)(4).

24 46. Because OCM directs its contracted providers to send their bills to
25 OCM and not to the ultimate workers' compensation payor insurer or self-insured
26 employer, and OCM itself bills its workers compensation payor clients for the
27 services contracted health care professionals provide to injured workers, OCM is
28 able to hide from its payor clients the amount of the spread it is able to retain

1 between what these clients pay OCM and what OCM pays its contracted health
2 care professionals.

3 47. By dictating the price of services to be charged by competing health
4 care professionals for the provision of treatment services to injured workers as an
5 agent of the competing purchasers of those services, OCM is able to set both the
6 rates multiple health care professionals receive and, separately and at a much
7 higher price, the rates multiple workers' compensation payers must pay for their
8 services. In so doing, Defendants' conduct constitutes acts of unfair competition
9 as set forth below.

10 **B. OCM's UNLICENSED ACTIVITIES**

11 48. The entity that administers workers' compensation coverage for an
12 employer is known as the "Claims Administrator." Specifically, the term "Claims
13 Administrator" means a self-administered insurer providing security for the
14 payment of compensation, a self-administered self-insured employer, or a third-
15 party administrator for a self-insured employer, insurer, legally uninsured
16 employer, or joint powers authority. 8 C.C.R. § 9785(a)(3).³ For purposes of
17 payment requirements, the term "Claims Administrator" means the person or
18 entity responsible for the payment of compensation for any of the following: a
19 self-administered insurer providing security for the payment of compensation, a
20 self-administered self-insured employer, a group self-insurer, an insured
21 employer, the director of the Department of Industrial Relations as administrator
22 for the Uninsured Employers Benefits Trust Fund (UEBTF) and for the
23 Subsequent Injuries Benefit Trust Fund (SIBTF), a third-party claims
24 administrator for a self-insured employer, insurer, legally uninsured employer,

25 ³ For purposes of the requirements applicable to utilization review, the term
26 "Claims Administrator" also includes any "other entity subject to Labor Code §
27 4610", which includes the California Insurance Guarantee Association, the director
28 of the Department of Industrial Relations as administrator for the Uninsured
Employers Benefits Trust Fund (UEBTF), as well as any utilization review
organization under contract to provide or conduct the claims administrator's
utilization review responsibilities. 8 C.C.R. § 9792.6(c).

1 group self-insurer, or joint powers authority, and the California Insurance
2 Guarantee Association (CIGA). 8 C.C.R. § 1(i).

3 49. Pursuant to Labor Code § 3702.1, no person, firm, or corporation can
4 act as a Claims Administrator and contract to administer claims of self-insured
5 employers in California unless they are themselves an insurer admitted to transact
6 workers' compensation insurance in California, or they have a certificate of
7 consent to administer self-insured employers' workers' compensation claims. A
8 separate certificate is required for each adjusting location operated by the Claims
9 Administrator. And Claims Administrators for self-insured employers must
10 estimate, in good faith and with the exercise of a reasonable degree of care, the
11 total accrued liability of the employer for the payment of compensation for the
12 employer's annual report to the director. No available public records Plaintiff has
13 been able to locate indicate either One Call Medical, Inc. or Align Networks, Inc.
14 is directly licensed or otherwise authorized to operate as a Claims Administrator
15 in California.

16 50. Unless the employee has pre-designated a personal physician, the
17 employer may select a treating physician during the first 30 days after a workplace
18 injury is reported. After 30 days from the date the injury is reported, the employee
19 may be treated by a physician or facility of his or her choice within a reasonable
20 geographic area, unless the employer has established an MPN. An MPN is a
21 network of providers, including physicians and other health care professionals,
22 created to provide medical treatment to injured employees. MPNs may be created
23 by self-insured employers, workers' compensation insurers or entities providing
24 physician network services. When the employer has established an MPN, the
25 employer or its representative arranges the initial medical evaluation and
26 treatment on behalf of the employee. Unless exempted by law or the employer, all
27 medical care for injured employees whose employer has an approved MPN will
28 be handled and provided through the MPN pursuant to Labor Code § 4616(a). The

1 MPN determines which locations are approved for physicians to provide treatment
2 under the MPN. 8 C.C.R. § 9767.3(4). Approved locations must be listed in an
3 MPN’s provider directory.

4 51. Except for an employer who has established a MPN or an employer
5 whose insurer has established an MPN, every employer is required to advise
6 employees in writing of their right to:

- 7 • Request a change of treating physician (one time only) if the original
8 treating physician is selected by the employer (Labor Code § 4601); and
- 9 • Be treated by a physician of his or her own choice after 30 days from
10 reporting an injury. 8 C.C.R. § 9782.

11 An employee who is within an MPN may change personal physicians as often as
12 he or she wants after the initial medical evaluation, but may only select from those
13 physicians who are members of the MPN.

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

23 53. Unlicensed network brokers such as OCM may become MPNs, but an
24 MPN cannot act as a Claims Administrator unless it is also a licensed workers’
25 compensation insurer or third-party administrator. OCM does not fall into either
26 category.

27 54. A complete, up-to-date list of MPNs is available at: [www.dir.ca.gov/
28 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

1 MPN.

2 55. OCM has identified Harbor Health Systems on its website as “A One
3 Call Care Management Company”. Harbor Health Systems is owned by OCM
4 Coastal Acquisition Co., LLC. OCM Coastal Acquisition Co., LLC, in turn,
5 currently owns 29 separate MPNs, having received approval for its first MPN,
6 “Harbor One” on May 21, 2014. OCM Coastal Acquisition Co., LLC added an
7 additional 8 MPNs in 2014, 12 MPNs in 2015, and 8 more MPNs in 2016, at least
8 as of October 4, 2016. However, neither OCM Coastal Acquisition Co., LLC nor
9 any of these MPNs appear to be licensed as a third party administrator in
10 California or otherwise authorized to act as Claims Administrators, as that term is
11 defined as set forth above⁴. Moreover, OCM continues to manage the delivery of
12 and handle claims for treatment services provided both inside and outside of these
13 MPNs. OCM Coastal Acquisition Co., LLC also does not appear to be licensed as
14 an insurance company, physician, physical therapist or health care provider, nor
15 have a “certificate of consent” to administer self-insured employers’ workers’
16 compensation claims, in California.

17 56. Physical therapists do not have any reasonable way of knowing
18 whether an injured worker is being referred within or outside of an MPN owned
19 by OCM Coastal Acquisition Co., LLC.

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

24
25 ⁴ It appears from the names of some of these MPNs that OCM Coastal Acquisition
26 Co., LLC is operating them in partnership with other entities, some of which may
27 be authorized to act as Claims Administrators; however there does not appear to be
28 an exception under the applicable law that authorizes OCM to act as an MPN or a
Claims Administrator through the activities or arrangements of OCM Coastal
Acquisition Co., LLC, or that would authorize OCM Coastal Acquisition Co., LLC
to act as a Claims Administrator by virtue of its business relationships with other
companies that are Claims Administrators.

1 Align Networks has developed a specialized workers' compensation
2 provider network of outpatient rehabilitation facilities that work as
3 partners with us to expedite scheduling and treatment of your injured
4 workers. Our program focuses on timely scheduling and
5 communication of rehabilitation results combined with a return to
6 work focus that is unique in the industry today. When we receive a
7 referral, we geographically match the patient to a convenient Align
8 Networks provider location and coordinate the requested service. The
9 end result is access to quality care, improved turnaround time in
10 scheduling and reporting, and cost savings that will benefit your
11 bottom line.

12 58. Align Networks includes the following on its website directed to
13 "Payors":

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

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

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

59. 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

1 exceed the clinical guideline trigger, then a courtesy clinical review is
2 automatically initiated by Align Networks. All providers are
3 benchmarked against our visit guidelines* and on the percent of cases
4 reviewed to maintain preferred status in our network.

5 *Clinical Review Recommendation*

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

11 *Clinical Savings*

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

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

22 60. OCM contracts with and pays physical therapists in California
23 through its Align Networks division—the same division whose employees
24 disseminated the YouTube video described above.

25 61. Neither One Call Medical, Inc. nor Align Networks appears to be
26 licensed as an insurance company in California, nor as a third party administrator.

27 62. Neither One Call Medical, Inc. nor Align Networks appears to have a
28 “certificate of consent” to administer self-insured employers’ workers’
compensation claims.

63. Neither One Call Medical, Inc. nor Align Networks is an “entity that
provides physician network services” as that term is defined under California law
as to the physical therapists or other health care professionals with which it
contracts, as neither One Call Medical, Inc. nor Align Networks directly own an
approved MPN. Although OCM Coastal Acquisition Co., LLC owns some
approved MPNs, OCM Coastal Acquisition Co., LLC does not appear to have any

1 direct contractual relationship with the physical therapists or other health care
2 professionals that contract with One Call Medical, Inc. or Align Networks.

3 64. Neither One Call Medical, Inc. nor Align Networks appear to be
4 certified as workers' compensation claims adjusters or medical-only claims
5 adjusters.

6 65. Neither One Call Medical, Inc. nor Align Networks are licensed as a
7 physician, physical therapist or other health care provider.

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

12 **C. OCM'S FAILURE TO COMPLY WITH BILLING AND**
13 **PAYMENT REQUIREMENTS**

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

23 68. Under California Labor Code § 4603.2, the explanation of review
24 must include all the following:

- 25 a. A statement of the items or procedures billed and the amounts
26 requested by the provider to be paid.
27 b. The amount paid.

28 ///

- 1 c. The basis for any adjustment, change, or denial of the item or
- 2 procedure billed.
- 3 d. The additional information required to make a decision for an
- 4 incomplete itemization.
- 5 e. If a denial of payment is for some reason other than a fee dispute, the
- 6 reason for the denial.
- 7 f. Information on whom to contact on behalf of the employer if a dispute
- 8 arises over the payment of the billing. The explanation of review shall
- 9 inform the medical provider of the time limit to raise any objection
- 10 regarding the items or procedures paid or disputed and how to obtain
- 11 an independent review of the medical bill pursuant to Section 4603.6.

12 69. California Labor Code §§ 4603.2 and 4603.6 establish extensive
13 procedures governing the handling of disputes over workers' compensation billing
14 and payment. Among other things, these laws provide a significant penalty on late
15 payments. A late payment must be paid at 15% more than the OFMS then in
16 effect, together with interest at the same rate as judgments in civil actions
17 retroactive to the date of receipt of the initial bill. Labor Code §§ 4603.2
18 (b)(1)(C)(2) and 4603.4 (d).

19 70. The regulations implementing these statutes, 8 C.C.R. § 9792.5.1, *et*
20 *seq.*, and the California Division of Workers' Compensation Medical Billing and
21 Payment Guide and the California Division of Workers' Compensation Electronic
22 Medical Billing and Payment Companion Guide adopted by those regulations,
23 further require that the claims administrator send electronic claims
24 acknowledgments and remittance advice (explanations of review).

25 71. OCM does not comply with these laws, thus significantly increasing
26 the administrative burden on physical therapists, significantly delaying and
27 reducing the payments they would otherwise receive and eliminating any ability
28 for Defendants' employer clients from auditing OCM's actual payment activities.

1 *et seq.*, including the acts and practices alleged herein.

2 77. A business practice is “unlawful” under the UCL if it is forbidden by
3 law, including state laws or regulations, and the violation of any law may serve as
4 the predicate for a violation of the “unlawful” prong of the UCL.

5 “Unlawful” Business Practices

6 78. Defendants’ conduct is unlawful under numerous California laws and
7 regulations, as set forth herein.

8 79. To the extent Defendants are conducting business outside of an MPN
9 as to which they are a “network service provider”, Defendants do so in violation
10 of Labor Code § 139.32(c), which prohibits any interested party other than a
11 claims administrator or network services provider from “referring a person for
12 services provided by another entity, or to use services provided by another entity,
13 if the other entity will be paid for those services pursuant to Division 4
14 (commencing with Section 3200) and the interested party has a financial interest
15 in the other entity.” OCM has a financial interest in each of these contracted
16 health care professionals and they are a representative or agent of their employer,
17 insurance and claims administrator clients based on the contractual relationships
18 described above. Neither One Call Medical, Inc. nor its Align Networks are
19 MPNs. Thus, OCM is not a “network service provider”, and its subsidiary
20 relationships do not provide this status to OCM.

21 80. Defendants’ conduct violates Labor Code § 139.32(d), which
22 prohibits any “interested party” from either:

23 a. Entering into an arrangement or scheme that the interested party
24 knows, or should know, has a purpose of ensuring referrals by the interested party
25 to a particular entity that, if the interested party directly made referrals to that
26 other entity, would be in violation of this section; or

27 b. Offering, delivering, receiving, or accepting any rebate, refund,
28 commission, preference, patronage, dividend, discount, or other consideration,

1 whether in the form of money or otherwise, as compensation or inducement to
2 refer a person for services.

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

14 82. Defendants’ conduct also violates Labor Code § 3215, which
15 provides:

16 Except as otherwise permitted by law, any person acting
17 individually or through his or her employees or agents, who offers,
18 delivers, receives, or accepts any rebate, refund, commission,
19 preference, patronage, dividend, discount or other consideration,
20 whether in the form of money or otherwise, as compensation or
21 inducement for referring clients or patients to perform or obtain
22 services or benefits pursuant to this division, is guilty of a crime.

23 83. OCM violates Labor Code § 3215 in both its relationships with its
24 workers’ compensation insurers, self-insured employers and third-party
25 administrators and in its relationships with its contracted health care professionals.
26 From its payor clients, OCM “... receives ... other consideration ... as
27 compensation ... for referring ... patients to ... obtain services or benefits pursuant
28 to this division” in the form of the spread it is able to retain, in violation of
Labor Code § 3215. To its contracted health care professionals, OCM “receives,
[or] delivers ... [a] preference, discount or other consideration ... as ...
inducement for referring clients or patients to ... obtain services or benefits

1 pursuant to this division”, also in violation of Labor Code § 3215.

2 84. Defendants’ conduct also violates Labor Code § 3820, which makes it
3 unlawful for any person who submits a workers’ compensation claim to:

- 4 (a) Knowingly solicit, receive, offer, pays or accept any rebate, referral,
5 commission, preference, discount or other consideration, monetary or
6 not, as compensation or inducement for soliciting or referring clients
7 or patients to obtain workers’ compensation benefits;
- 8 (b) Knowingly operate or participate in a service that, for profit, refers or
9 recommends clients or patients to obtain medical or medical-legal
10 services; or
- 11 (c) Knowingly assist or conspire with any person who engages in any of
12 the above.

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

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

24 87. Defendants’ conduct in managing the provision of physical therapy
25 services and paying the claims submitted by physical therapists for therapy
26 provided to injured workers on behalf of self-insured employers also violates
27 Labor Code § 3702.1, which requires that only an insurer authorized to transact
28 workers’ compensation insurance in California, or a third party administrator with

1 a certificate of consent to administer self-insured employers' workers'
2 compensation claims, can act as a Claims Administrator for self-insured
3 employers.

4 88. Defendants' conduct also violates Insurance Code § 11761, which
5 requires workers' compensation insurers, self-insured employers and third party
6 administrators to certify that everyone they contract with to review, adjust or pay
7 workers compensation medical bills is properly trained as a claims adjustor or
8 medical-only claims adjustor:

9 * * * *

10 (b) Every insurer shall certify to the commissioner that the
11 personnel employed by the insurer to adjust workers' compensation
12 claims, or employed for that purpose by any medical billing entity
13 with which the insurer contracts, meet the minimum standards
14 adopted by the commissioner pursuant to subdivision (a).

15 (c) For the purposes of this section, "medical billing entity"
16 means a third party that reviews or adjusts workers' compensation
17 medical bills for insurers.

18 (d) For the purposes of this section, "insurer" means an
19 insurer admitted to transact workers' compensation insurance in this
20 state, the State Compensation Insurance Fund, an employer that has
21 secured a certificate of consent to self-insure pursuant to subdivision
22 (b) or (c) of Section 3700 of the Labor Code, or a third-party
23 administrator that has secured a certificate of consent pursuant to
24 Section 3702.1 of the Labor Code.

25 89. The regulations implementing this section provide definitions for
26 "claims adjustor" and "medical-only claims adjustor", as follows:

27 California Code of Regulations, Title 10, Chapter 5, Subchapter 3,
28 Section 2592.01

(b) – "Claims adjuster" means a person who, on behalf of an
insurer, including an employee or agent of an entity that is not an
insurer, is responsible for determining the validity of a workers'
compensation claim.

* * *

(m) – "Medical-only claims adjuster" means a person who, on
behalf of an insurer, including an employee or agent of an entity that
is not an insurer, is responsible for determining the validity of
workers' compensation claims only involving medical workers'
compensation benefits, as defined under Article 2 (commencing with

1 Labor Code section 4600) of Chapter 2 of Part 2 of Division 4 of the
2 Labor Code. The medical-only claims adjuster may also establish
3 medical treatment reserves, approve and process medical benefits, and
4 negotiate settlement of medical benefit claims. “Medical-only claims
5 adjuster” also means a person who is responsible for the immediate
6 supervision of a medical-only claims adjuster but does not mean an
7 attorney representing the insurer or a person whose primary function
8 is clerical.

9
10 90. While OCM pays the medical claims of the health care professionals
11 to whom it refers patients, and thus is acting as a “medical-only claims adjustor”,
12 OCM is not publicly listed as being certified to perform this function. Thus, even
13 assuming OCM is even authorized to perform the services of a licensed third party
14 administrator, which Plaintiff contests, OCM’s claims adjusting activities violate
15 Insurance Code § 11761.

16 91. Defendants’ conduct in submitting bills for and collecting payments
17 for physical therapy services also violates Business and Professions Code
18 §§ 2400, 2630 and 2694, as Defendants are not licensed to practice physical
19 therapy.

20 92. Defendants’ claims handling and payment activities further violate the
21 entire system governing the electronic handling and payment of bills for workers’
22 compensation medical treatment. Defendants’ failure to accept electronic claims,
23 acknowledge their receipt electronically upon submission, process and pay those
24 claims expeditiously at no additional cost to the physical therapists, provide
25 prompt, clear explanations for any claim contest or denial, and abide by the
26 legally mandated internal and external billing dispute mechanisms violates Labor
27 Code §§ 4603.2, 4603.4 and 4603.6 and their implementing regulations, 8 C.C.R.
28 § 9792.5.1, *et seq.*

29 “Unfair” Business Practices

30 93. The acts and practices of Defendants as described above constitute
31 “unfair” business acts and practices. Plaintiff and its non-contracting members
32 have also suffered injury in fact and a loss of money or property as a result of

1 Defendants’ unfair business acts and practices as set forth in detail above, and will
2 continue to do so.

3 94. Defendants’ conduct does not benefit consumers or competition.
4 Indeed, the harm to consumers who are forced to utilize such services and to
5 competition in the form of health care professionals who are either forced to
6 accept unreasonable payments or forego providing such services altogether to a
7 significant number of consumers is significant, for the reasons set forth above.

8 95. Plaintiff, its members who have not contracted with Defendants and
9 the affected public could not have reasonably avoided the injury each of them
10 suffered, which injury is substantial.

11 96. The gravity of the consequences of Defendants’ conduct as described
12 above outweighs the justification, motive or reason therefor, is immoral, unethical
13 and unscrupulous, and offends established public policy that is tethered to
14 legislatively declared policies as set forth in the laws detailed above, or is
15 substantially injurious to the public, for the reasons set forth above.

16 97. The gravity of the harm attributable to those practices is substantial.
17 Discounts of the magnitude OCM demands can only be accommodated by
18 reducing the quality of the medical treatments that can be offered. With respect to
19 physical therapy services, that means patients must receive less direct supervision,
20 and more services must be delegated to assistants. For example, the blanket,
21 prospective cap created by OCM’s programs that requires physical therapists who
22 wish to be “preferred providers” within the OCM network and thus receive the
23 most referrals to stay at or below the average utilization rate of all physical
24 therapy practices in California, without regard to the needs of their individual
25 patient populations, adversely impacts injured workers and their right to necessary
26 medical care, and imposes the greatest harm on the most severely injured patients
27 with the greatest medical need. In addition, such conduct may compel some

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1 physical therapists to operate under contracts that may be void as against public
2 policy.

3 “Fraudulent” or “Deceptive” Business Practices

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

10 99. Defendants’ opaque contracting and patient referral scheme is also
11 likely to deceive both injured workers and workers’ compensation payors, as set
12 forth in detail above, into believing they are receiving services and making
13 payments consistent with what the law permits, when in fact they are being
14 charged pursuant to a series of contracts that may be void as against public policy,
15 and that OCM’s physical therapist “provider network” is significantly larger than
16 it actually is based on the tiering system Align claims to use in making physical
17 therapist patient referrals.

18 100. As a result of Defendants’ scheme, Defendants’ clients may have no
19 idea of the magnitude of the discounts Defendants offer or impose, or how little
20 Defendants are actually paying for the treatment services provided to injured
21 workers, and are reasonably likely be misled into believing that the treating
22 providers are receiving fair compensation and that these clients’ injured
23 employees are receiving optimal treatment for their injuries. They are also likely
24 unaware of the material fact that Defendants are illegally demanding unreasonably
25 large discounts as an inducement for the referral of these patients, and misled into
26 believing Defendants can lawfully conduct business in this State and have the
27 required authorizations to do so, when that may well not be the case.

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1 101. Defendants’ misrepresentations and omissions of fact as set forth
2 above were material and thus presumed to be a substantial factor in decisions to
3 utilize Defendants’ services, with the result that injured workers were forced to
4 receive services from underpaid physical therapists through a system that does not
5 properly operate in this State or pursuant to contracts that may be void as against
6 public policy.

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

14 **PRAYER FOR RELIEF**

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

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

22
23 **JURY DEMAND**

24 Plaintiff demands a trial by jury on all issues and causes of action so triable.

25 DATED: July 7, 2017

WHATLEY KALLAS, LLP

26 By: /s/ Alan M. Mansfield
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