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13
14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN DIEGO – NORTH COUNTY**

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. 37-2017-00008817-CU-BT-NC

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

UNLIMITED CIVIL CASE
“IMAGED FILE”

Jury Trial Demanded On All Claims So
Triable

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

1 “OCM”, except where otherwise indicated) and DOES 1-10, inclusive (hereafter
2 collectively “Defendants”). Except as to the allegations of Plaintiff’s experiences,
3 which are based on personal knowledge, all other allegations are based on
4 information and belief and are formed based on an inquiry reasonable under the
5 circumstances. Such allegations are likely to have evidentiary support after a
6 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 health care professionals submit to OCM for payment.
18 Indeed, OCM forbids health care professionals from including the contracted rate
19 on their bills. Thus, OCM’s clients may likely not know how much of the money
20 these 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.

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

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

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

1 under the fictitious business name “One Call Care Management”. OCM is
2 transacting business as an unlicensed workers’ compensation provider network
3 broker in and from this State. OCM conducts activities in California directly and
4 through various divisions and subsidiaries operating here.

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

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

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

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1 Defendants' illegal practices, the loss of financial resources in investigating these
2 claims and diversion of staff time to investigate and attempt to resolve such
3 claims, and efforts taken by IPTCA to identify, combat and counteract the harm
4 caused by such conduct, consistent with its mission to do so. IPTCA also has
5 standing to act on behalf of its members because IPTCA's members have been
6 harmed by Defendants' conduct (although such members are not required to
7 participate individually to seek the prospective, injunctive and equitable relief
8 requested in this action); the interests IPTCA seeks to protect is germane to the
9 organization's purpose as set forth above; and a strong likelihood exists that
10 IPTCA's members will be harmed in the future. In addition to the redress it seeks
11 for its own injury, IPTCA seeks declaratory and injunctive relief on behalf of its
12 non-contracted members. Both IPTCA and these members have been harmed by
13 the egregious acts and practices of Defendants as set forth in this Complaint.

14 23. The IPTCA has lost money or property as a result of the practices
15 here at issue, and has expended considerable time and both financial and staff
16 resources to help IPTCA members regarding Defendants' practices, separate and
17 apart from this litigation. These efforts include, but are not limited to, retaining at
18 IPTCA's cost strategic consultants, technology specialists and experts, incurring
19 travel and meeting expenses, engaging in communications with members and
20 OCM representatives, and expending hundreds of hours of IPTCA leadership's
21 time in order to manage the complaints received from IPTCA members regarding
22 Defendants' alleged violations of state law, which IPTCA would have otherwise
23 expended in other ways to advance the mission of IPTCA set forth above.

24 24. By way of example, IPTCA has during the last several years devoted
25 significant resources of its Board members to assist its members in addressing
26 Defendants' improper practices as alleged in this Complaint. IPTCA has received
27 and responded to communications from multiple physical therapist members who
28 have been pressured to lower prices, been threatened with termination or

1 reductions in referrals, or have actually been terminated or otherwise lost patients
2 and business, all in a manner inconsistent with the California laws cited herein. In
3 many cases, patients have been steered away from their preferred physical therapy
4 providers who are members of the IPTCA during an episode of care simply
5 because their clinic is not the lowest cost provider that contracts with OCM. The
6 IPTCA leadership has thus been forced to expend significant time and resources
7 in investigation of and efforts to redress Defendants' wrongdoing.

8 25. IPTCA has also expended resources in communicating with and
9 educating its members about their rights and obligations as well as
10 communicating concerns regarding Defendants' practices with the California
11 Department of Insurance, the Senate Labor and Industrial Relations Committee,
12 numerous state legislators, and leadership of other healthcare professional
13 associations.

14 26. In addition, IPTCA members have been harmed by these practices, as
15 there are many cases where IPTCA members are not able to provide care for
16 California's injured workers at all because the only way to access a patient is to
17 contract with Defendants. Many IPTCA physical therapist members cannot afford
18 to sign, or have had terminated a contract with OCM because Defendants only
19 offered a payment rate well below the cost of doing business. In California, the
20 typical physical therapist outpatient provider could be expected to have a patient
21 mix of at least 20% Workers' Compensation patients. Many IPTCA members
22 have been limited to less than one to three percent as a result of Defendants'
23 practices.

24 27. As a further example of the resources IPTCA has been forced to
25 expend in an attempt to combat and counteract Defendants' practices, further
26 establishing its standing to assert such claims on behalf of both itself and its non-
27 contracted members, IPTCA spent significant resources dealing with several
28 insulting YouTube rap/dance videos posted on the Internet by employees of Align

1 Networks, a division and subsidiary of One Call Medical, Inc. since at least 2013,
2 mocking physical therapists and other rehabilitation providers. The videos
3 contained scenes where Align Networks' employees and executives were dressed
4 in tee shirts and gold necklaces with a dollar bill sign, some waving "Show me the
5 money" signs. One executive sitting at a desk with large piles of money,
6 eventually tossed stacks of money up in the air so that it would "rain" down upon
7 him. These videos, which were produced at Align Networks' headquarters in
8 Jacksonville, Florida (the same listed corporate offices as One Call Medical, Inc.),
9 remained published on-line for at least two years, and affected IPTCA and its
10 members by degrading the professionalism and value that physical therapists
11 deliver in patient care. Plaintiff believes Align Networks' management actively
12 participated in these videos as individuals who appear to be senior managers
13 played "starring" roles in the production. One senior manager was waving a sign
14 that said "Just sign the contract" during her cameo appearance. These videos were
15 finally pulled down after IPTCA leadership met directly with one of Align
16 Networks' national provider relations representatives in Colorado Springs,
17 Colorado, at IPTCA's own expense, having been unable to get OCM's and Align
18 Networks' attention to address this or other of the IPTCA's members' widespread
19 concerns. Although the videos were ultimately pulled down, none of IPTCA's
20 other concerns were resolved, necessitating this action.

21 **FACTUAL SUMMARY**

22 28. Employers are required to pay for their employees' medical expenses
23 that result from any workplace injury or illness.

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

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

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

11 **A. IMPROPER INDUCEMENTS OFFERED AND PAYMENTS**
12 **COLLECTED BY OCM**

13 32. OCM generally does not solicit rate offers from health care
14 professionals. Rather, OCM dictates the rates it will pay in exchange for referring
15 patients to these professionals. OCM routinely communicates the contrasting rates
16 imposed on various competing health care professionals in the same geographic
17 market to other competing professionals in an effort to convince them to take a
18 drastically lower payment rate in exchange for a preference in terms of a specified
19 increase in the number of referrals they will receive.

20 33. Physical therapists who do not accede to the deepest discounts OCM
21 demands but remain contracted at higher rates receive referrals only when OCM
22 cannot refer the injured worker to a practice that has contracted with it at a lower
23 rate in the same geographic area.

24 34. Injured workers rarely refer themselves to physical therapists, nor are
25 they generally referred by their treating physicians; the vast majority of referrals
26 are controlled and made directly by OCM. Even though injured workers have the
27 right to choose a new treating physician after 30 days if they are dissatisfied with
28 the physician assigned by their employer, they have no such rights when it comes

1 to their physical therapist.

2 35. OCM operates a company doing business as “Harbor Health Systems”
3 through OCM Coastal Acquisition Co., LLC, a related limited liability company
4 for which One Call Medical, Inc. is the sole listed member. In the listing of
5 physical therapists on the Harbor Health Systems Medical Provider Network
6 (“MPN”) provider directory for State Fund, the “State Fund MPN by Harbor
7 Health”, with limited exceptions, it only lists the name and phone number of
8 Align Networks or that of another physical therapist network, Cypress Care. Align
9 Networks is one of only three “physical therapy group practices” on the State
10 Fund MPN by Harbor Health website listed as providing physical therapy
11 services. Each Align Networks listing indicates a different address (presumably
12 that of a contracted physical therapy practice). However, these listings include the
13 same telephone number – that of Align Networks. Neither Align Networks nor
14 OCM is licensed to provide physician services, physical therapy services or any
15 other treatment services to injured workers. Defendants are prohibited from
16 providing or billing for physical therapy services in this manner under, *inter alia*,
17 Business and Professions Code §§ 2400, 2630 and 2694.

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

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

4 38. The rates OCM pays physical therapists are significantly below the
5 OMFS rates; OCM rates have not increased despite the increases mandated for
6 these services by the OMFS over the last several years as set forth herein. The
7 OMFS rates for physical therapy services were increased again on January 1,
8 2017; OCM so far does not appear to have passed on any of that increase to its
9 contracted physical therapists.

10 39. OCM is paid by workers' compensation payors, at least in part, based
11 on the number of referrals it makes and the size of the discount it has obtained
12 from the health care providers it has contracted with to provide treatment services
13 to injured workers. The larger the discount it has negotiated, the larger the amount
14 it retains from the employer or insurer who ultimately pays for the services
15 provided to injured workers, with OCM keeping the "spread" between the
16 contracted rates between OCM and the payor on the one hand, and OCM and the
17 health care professional on the other. Because OCM is paid more when it refers
18 injured workers to specific contracted network providers based on this spread, the
19 amount it is paid increases with the size of the discounts it has negotiated. OCM
20 thus has a "financial interest" in its network providers, as defined by Labor Code
21 § 139.32(a)(1) that is tied to the illegal referrals described herein.

22 40. As is discussed below, neither One Call Medical, Inc. nor Align
23 Networks are "physician network service providers" as that term is defined under
24 the Labor Code. To the extent One Call Medical, Inc., either directly or through
25 Align Networks, is conducting business outside of an MPN as to which they are
26 authorized "physician network service providers," it does so in violation of Labor
27 Code § 139.32(c). That subsection prohibits any interested party other than a
28 claims administrator or network services provider from "referring a person for

1 services provided by another entity, or to use services provided by another entity,
2 if the other entity will be paid for those services pursuant to Division 4
3 (commencing with Section 3200) and the interested party has a financial interest
4 in the other entity.” One Call Medical, Inc. and Align Networks have a financial
5 interest in each of these contracted health care professionals, and they are a
6 representative or agent of their employer, insurer and claims administrator clients
7 based on the contractual relationships described herein, and because they are
8 being paid pursuant to those contractual relationships. Although OCM Coastal
9 Acquisition Co., LLC is a “physician network service provider” as to its 29
10 MPNs, as explained in more detail below, it is not OCM Coastal Acquisition Co.,
11 LLC that makes these referrals. Thus, OCM Coastal Acquisition Co., LLC’s
12 status as a “physician network service provider” does not provide any protection
13 from liability to OCM.

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

25 42. In addition, Labor Code § 3215 provides: “Except as otherwise
26 permitted by law, any person acting individually or through his or her employees
27 or agents, who offers, delivers, receives, or accepts 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 for
2 referring clients or patients to perform or obtain services or benefits pursuant to
3 this division, is guilty of a crime.”

4 43. OCM demands deep discounts from physical therapists as an
5 inducement for the referral of injured workers for health care services. The larger
6 the discount OCM negotiates, the larger the amount it is able to retain in the form
7 of the spread described above. In doing so, OCM violates Labor Code § 3215 in
8 both its relationships with its workers’ compensation insurers, self-insured
9 employers and third-party administrators and in its relationships with its
10 contracted physical therapists. From its payor clients, OCM “receives ... other
11 consideration ... as compensation ... for referring ... patients to ... obtain services
12 or benefits pursuant to this division” in the form of the spread it is able to
13 retain, in violation of Labor Code § 3215. To its contracted physical therapists,
14 OCM “receives [or] delivers ... [a] preference, discount or other consideration ...
15 as ... compensation or inducement for referring clients or patients to ... obtain
16 services or benefits pursuant to this division”, also in violation of Labor Code
17 § 3215. Because OCM’s contracts are proposed or entered into in violation of
18 these provisions of law, they may be void as against public policy and remediable
19 under the UCL.

20 44. In addition, OCM demands deep discounts from health care
21 professionals in return for the referral of injured workers for health care services.
22 Thus, OCM “knowingly solicits ... discount[s] ... as ... inducement for referring
23 patients to ... obtain [workers compensation] benefits” and “knowingly ...
24 receives ... other consideration ... as compensation ... for ... referring patients to
25 obtain medical or medical-legal services”, in violation of Labor Code §
26 3820(b)(3).

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1 payment requirements, the term “Claims Administrator” means the person or
2 entity responsible for the payment of compensation for any of the following: a
3 self-administered insurer providing security for the payment of compensation, a
4 self-administered self-insured employer, a group self-insurer, an insured
5 employer, the director of the Department of Industrial Relations as administrator
6 for the Uninsured Employers Benefits Trust Fund (UEBTF) and for the
7 Subsequent Injuries Benefit Trust Fund (SIBTF), a third-party claims
8 administrator for a self-insured employer, insurer, legally uninsured employer,
9 group self-insurer, or joint powers authority, and the California Insurance
10 Guarantee Association (CIGA). 8 C.C.R. § 1(i).

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

24 50. Unless the employee has pre-designated a personal physician, the
25 employer may select a treating physician during the first 30 days after a workplace
26 injury is reported. After 30 days from the date the injury is reported, the employee
27 may be treated by a physician or facility of his or her choice within a reasonable
28 geographic area, unless the employer has established an MPN. An MPN is a

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

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

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

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

22 52. An "entity that provides physician network services", as referenced
23 in Labor Code § 4616(a), means a legal entity employing or contracting with
24 physicians and other medical providers or contracting with physician networks to
25 deliver medical treatment to injured workers on behalf of one or more insurers,
26 self-insured employers, the Uninsured Employers Benefits Trust Fund, the
27 California Insurance Guaranty Association, or the Self-Insurers Security Fund,
28 and that meet the requirements of Labor Code § 4616, *et seq.*, and corresponding

1 regulations, including 8 C.C.R. § 9767.1(a)(7). It may include, but is not limited
2 to, Claims Administrators.

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

7 54. A complete, up-to-date list of MPNs is available at: [www.dir.ca.gov/
8 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
9 MPN.

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

23 ///

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 have a “certificate of consent” to administer self-insured employers’ workers’
2 compensation claims, in California.

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

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

10 Align Networks has developed a specialized workers’ compensation
11 provider network of outpatient rehabilitation facilities that work as
12 partners with us to expedite scheduling and treatment of your injured
13 workers. Our program focuses on timely scheduling and
14 communication of rehabilitation results combined with a return to
15 work focus that is unique in the industry today. When we receive a
16 referral, we geographically match the patient to a convenient Align
17 Networks provider location and coordinate the requested service. The
18 end result is access to quality care, improved turnaround time in
19 scheduling and reporting, and cost savings that will benefit your
20 bottom line.

21 58. Align Networks includes the following on its website directed to
22 “Payors”:

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

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

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

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

1 *Clinical Review Process*

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

5 *Guideline Application*

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

9 The provider is advised of the visits count guidelines at the
10 time of initial referral. If a provider requests additional visits that will
11 exceed the clinical guideline trigger, then a courtesy clinical review is
12 automatically initiated by Align Networks. All providers are
13 benchmarked against our visit guidelines* and on the percent of cases
14 reviewed to maintain preferred status in our network.

12 *Clinical Review Recommendation*

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

16 *Clinical Savings*

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

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

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

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

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1 69. As a result of Defendants’ acts and practices in violation of Business
2 and Professions Code § 17200, *et seq.* (“UCL”), Plaintiff has suffered injury in
3 fact and lost money or property as set forth above. In addition, as a result of the
4 acts alleged herein, Plaintiff’s non-contracting members have been injured in fact
5 and lost money or property as a result of Defendants’ acts and practices, as they
6 have lost and continue to lose patients and continue to have patients diverted to
7 providers who have been forced to accept unreasonably low rates from OCM,
8 pursuant to contracts that by law may be void as against public policy to the
9 extent they are proposed and entered into in violation of law, and through the
10 efforts they have had to expend combatting Defendants’ conduct, and will
11 continue to do so.

12 70. The UCL defines unfair competition to include any unlawful, unfair
13 or fraudulent or deceptive business act or practice. Defendants have committed
14 acts of unfair competition proscribed by Business and Professions Code § 17200,
15 *et seq.*, including the acts and practices alleged herein.

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

19 “Unlawful” Business Practices

20 72. Defendants’ conduct is unlawful under numerous California laws and
21 regulations, as set forth herein.

22 73. To the extent Defendants are conducting business outside of an MPN
23 as to which they are a “network service provider”, Defendants do so in violation
24 of Labor Code § 139.32(c), which prohibits any interested party other than a
25 claims administrator or network services provider from “referring a person for
26 services provided by another entity, or to use services provided by another entity,
27 if the other entity will be paid for those services pursuant to Division 4
28 (commencing with Section 3200) and the interested party has a financial interest

1 in the other entity.” OCM has a financial interest in each of these contracted
2 health care professionals and they are a representative or agent of their employer,
3 insurance and claims administrator clients based on the contractual relationships
4 described above. Neither One Call Medical, Inc. nor its Align Networks are
5 MPNs. Thus, OCM is not a “network service provider”, and its subsidiary
6 relationships do not provide this status to OCM.

7 74. Defendants’ conduct violates Labor Code § 139.32(d), which
8 prohibits any “interested party” from either:

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

13 b. Offering, delivering, receiving, or accepting any rebate, refund,
14 commission, preference, patronage, dividend, discount, or other consideration,
15 whether in the form of money or otherwise, as compensation or inducement to
16 refer a person for services.

17 75. As described above, with respect to physical therapists, OCM offers
18 and provides a preference to those health care professionals who agree to the
19 lowest price, without regard to their quality of care or other relevant factor, and as
20 a result retains greater net compensation from its payor clients. OCM solicits
21 deeper discounts from these health care professionals in exchange for more
22 referrals, obtains discounts from health care professionals as an “inducement” or
23 “preference” for referrals, and to the extent it retains the spread created from such
24 discounts, OCM receives payments from the payors of workers compensation
25 claims as compensation for making those referrals that increase with the size of
26 the discounts OCM negotiates in the form of the spread described above, all in
27 violation of Labor Code § 139.32(d).

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1 76. Defendant’s conduct also violates Labor Code § 3215, which
2 provides:

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

10 77. OCM violates Labor Code § 3215 in both its relationships with its
11 workers’ compensation insurers, self-insured employers and third-party
12 administrators and in its relationships with its contracted health care professionals.
13 From its payor clients, OCM “...receives... other consideration ... as
14 compensation ... for referring ... patients to ... obtain services or benefits pursuant
15 to this division” in the form of the spread it is able to retain, in violation of
16 Labor Code § 3215. To its contracted health care professionals, OCM “receives,
17 [or] delivers ... [a] preference, discount or other consideration ... as ...
18 inducement for referring clients or patients to ... obtain services or benefits
19 pursuant to this division”, also in violation of Labor Code § 3215.

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

- 22 (a) Knowingly solicit, receive, offer, pays or accept any rebate, referral,
23 commission, preference, discount or other consideration, monetary or
24 not, as compensation or inducement for soliciting or referring clients or
25 patients to obtain workers’ compensation benefits;
- 26 (b) Knowingly operate or participate in a service that, for profit, refers or
27 recommends clients or patients to obtain medical or medical-legal
28 services; or
- (c) Knowingly assist or conspire with any person who engages in any of
the above.

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1 (c) For the purposes of this section, “medical billing entity”
2 means a third party that reviews or adjusts workers' compensation
medical bills for insurers.

3 (d) For the purposes of this section, “insurer” means an
4 insurer admitted to transact workers' compensation insurance in this
5 state, the State Compensation Insurance Fund, an employer that has
6 secured a certificate of consent to self-insure pursuant to subdivision
7 (b) or (c) of Section 3700 of the Labor Code, or a third-party
8 administrator that has secured a certificate of consent pursuant to
9 Section 3702.1 of the Labor Code.

10 83. The regulations implementing this section provide definitions for
11 “claims adjuster” and “medical-only claims adjuster”, as follows:

12 California Code of Regulations, Title 10, Chapter 5, Subchapter
13 3, Section 2592.01

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

18 * * *

19 (m) – “Medical-only claims adjuster” means a person who, on
20 behalf of an insurer, including an employee or agent of an entity that
21 is not an insurer, is responsible for determining the validity of
22 workers' compensation claims only involving medical workers'
23 compensation benefits, as defined under Article 2 (commencing with
24 Labor Code section 4600) of Chapter 2 of Part 2 of Division 4 of the
25 Labor Code. The medical-only claims adjuster may also establish
26 medical treatment reserves, approve and process medical benefits, and
27 negotiate settlement of medical benefit claims. “Medical-only claims
28 adjuster” also means a person who is responsible for the immediate
supervision of a medical-only claims adjuster but does not mean an
attorney representing the insurer or a person whose primary function
is clerical.

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

85. Defendants’ conduct in submitting bills for and collecting payments
for physical therapy services also violates Business and Professions Code

1 §§ 2400, 2630 and 2694, as Defendants are not licensed to practice physical
2 therapy.

3 “Unfair” Business Practices

4 86. The acts and practices of Defendants as described above constitute
5 “unfair” business acts and practices. Plaintiff and its non-contracting members
6 have also suffered injury in fact and a loss of money or property as a result of
7 Defendants’ unfair business acts and practices as set forth in detail above, and will
8 continue to do so.

9 87. Defendants’ conduct does not benefit consumers or competition.
10 Indeed, the harm to consumers who are forced to utilize such services and to
11 competition in the form of health care professionals who are either forced to
12 accept unreasonable payments or forego providing such services altogether to a
13 significant number of consumers is significant, for the reasons set forth above.

14 88. Plaintiff, its members who have not contracted with Defendants and
15 the affected public could not have reasonably avoided the injury each of them
16 suffered, which injury is substantial.

17 89. The gravity of the consequences of Defendants’ conduct as described
18 above outweighs the justification, motive or reason therefor, is immoral, unethical
19 and unscrupulous, and offends established public policy that is tethered to
20 legislatively declared policies as set forth in the laws detailed above, or is
21 substantially injurious to the public, for the reasons set forth above.

22 90. The gravity of the harm attributable to those practices is substantial.
23 Discounts of the magnitude OCM demands can only be accommodated by
24 reducing the quality of the medical treatments that can be offered. With respect to
25 physical therapy services, that means patients must receive less direct supervision,
26 and more services must be delegated to assistants. For example, the blanket,
27 prospective cap created by OCM’s programs that requires physical therapists who
28 wish to be “preferred providers” within the OCM network and thus receive the

1 most referrals to stay at or below the average utilization rate of all physical
2 therapy practices in California, without regard to the needs of their individual
3 patient populations, adversely impacts injured workers and their right to necessary
4 medical care, and imposes the greatest harm on the most severely injured patients
5 with the greatest medical need. In addition, such conduct may compel some
6 physical therapists to operate under contracts that may be void as against public
7 policy.

8 “Fraudulent” or “Deceptive” Business Practices

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

15 92. Defendants’ opaque contracting and patient referral scheme is also
16 likely to deceive both injured workers and workers’ compensation payors, as set
17 forth in detail above, into believing they are receiving services and making
18 payments consistent with what the law permits, when in fact they are being
19 charged pursuant to a series of contracts that may be void as against public policy.

20 93. As a result of Defendants’ scheme, Defendants’ clients may have no
21 idea of the magnitude of the discounts Defendants offer or impose, or how little
22 Defendants are actually paying for the treatment services provided to injured
23 workers, and are reasonably likely be misled into believing that the treating
24 providers are receiving fair compensation and that these clients’ injured
25 employees are receiving optimal treatment for their injuries. They are also likely
26 unaware of the material fact that Defendants are illegally demanding unreasonably
27 large discounts as an inducement for the referral of these patients, and misled into
28 believing Defendants can lawfully conduct business in this State and have the

1 required authorizations to do so, when that may well not be the case.

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

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

15 **PRAYER FOR RELIEF**

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

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

23
24 **JURY DEMAND**

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

26 DATED: March 13, 2017

WHATLEY KALLAS, LLP

27 By: S/Catherine I. Hanson
28 Catherine I. Hanson (Of Counsel)

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