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7 *Attorney for Plaintiffs*

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

11 **NEW HAMPSHIRE INSURANCE COMPANY;)**
12 **GRANITE STATE INSURANCE COMPANY;)**
13 **ILLINOIS NATIONAL INSURANCE CO.; AIG)**
14 **ASSURANCE COMPANY; THE INSURANCE)**
15 **COMPANY OF THE STATE OF PENNSYLVANIA;)**
16 **AMERICAN HOME ASSURANCE COMPANY;)**
17 **COMMERCE AND INDUSTRY INSURANCE)**
18 **COMPANY; AIU INSURANCE COMPANY; AIG)**
19 **SPECIALTY INSURANCE COMPANY; AIG)**
20 **PROPERTY CASUALTY COMPANY, f/k/a)**
21 **CHARTIS PROPERTY CASUALTY COMPANY;)**
22 **NATIONAL UNION FIRE INSURANCE)**
23 **COMPANY OF PITTSBURGH, PA.; and)**
24 **LEXINGTON INSURANCE COMPANY.)**

25 **Plaintiffs,)**

26 **v.)**

27 **No. 17-cv-1923**

28 **JURY TRIAL DEMANDED**

29 **HEALTHSMART PACIFIC, INC., a California)**
30 **Corporation; HEALTHSMART PACIFIC, INC.,)**
31 **d/b/a PACIFIC HOSPITAL OF LONG BEACH, a)**
32 **California Corporation; LONG BEACH PAIN)**
33 **CENTER MEDICAL CLINIC, INC., a California)**
34 **Corporation; INTERNATIONAL IMPLANTS LLC,)**
35 **a California Corporation; INTERNATIONAL)**
36 **IMPLANTS, LLC, f/k/a SI VENTURE PARTNERS,)**
37 **LLC, a California Corporation; MICHAEL D.)**
38 **DROBOT, SR., an individual; MICHAEL R.)**
39 **DROBOT, JR., an individual; INDUSTRIAL)**
40 **PHARMACY MANAGEMENT LLC, a California)**

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1 Corporation; INDUSTRIAL PHARMACY)
2 MANAGEMENT LLC f/k/a CALIFORNIA)
3 PHARMACY MANAGEMENT LLC, a California)
4 Corporation; LONG BEACH PRESCRIPTION)
5 PHARMACY, a California Corporation; COASTAL)
6 EXPRESS PHARMACY, INC. , a California)
7 Corporation; MEDS MANAGEMENT GROUP LLC,)
8 a California Corporation; PACIFIC SPECIALTY)
9 PHYSICIAN MANAGEMENT, INC., a California)
10 Corporation; FIRST MEDICAL MANAGEMENT,)
11 INC., a California Corporation; PAUL RICHARD)
12 RANDALL, an individual; PLATINUM MEDICAL)
13 GROUP, INC., a California Corporation; LINDA)
14 MARTIN, an individual; DANIEL CAPEN, an)
15 individual; DANIEL CAPEN, M.D., A)
16 PROFESSIONAL CORPORATION, a California)
17 Corporation; SOUTHWESTERN ORTHOPEDIC)
18 MEDICAL CORPORATION d/b/a DOWNEY)
19 ORTHOPEDIC MEDICAL GROUP, a California)
20 Corporation; SOUTHWESTERN ORTHOPEDIC)
21 MEDICAL CORPORATION d/b/a CHANNEL)
22 ISLANDS ORTHOPEDIC, a California Corporation;)
23 WESTLAKE SURGICAL MEDICAL)
24 ASSOCIATES, INC., a California Corporation;)
25 ISHMAEL SILVA, an individual; HEALTHPOINTE)
26 MEDICAL GROUP, INC., a California)
27 Corporation; NATIONAL INTRAOPERATIVE)
28 MONITORING, f/k/a WEST OCEAN UNION)
MEDICAL, a California Corporation; SOUTHWEST)
HOSPITAL DEVELOPMENT GROUP, INC., a)
former California Corporation; STARBASE, INC., a)
California Corporation; LOKESH S. TANTUWAYA,)
an individual; DR. LOKESH S. TANTUWAYA,)
M.D., INC., a California Corporation; and DOES 1-)
60.

Defendants.

1 **Plaintiffs, New Hampshire Insurance Company; Granite State Insurance Company;**
2 **Illinois National Insurance Co.; AIG Assurance Company; The Insurance Company of the**
3 **State of Pennsylvania; American Home Assurance Company; Commerce and Industry**
4 **Insurance Company; AIU Insurance Company; AIG Specialty Insurance Company; AIG**
5 **Property Casualty Company, f/k/a Chartis Property Casualty Company; National Union**
6 **Fire Insurance Company of Pittsburgh, PA.; and Lexington Insurance Company**
7 (collectively Plaintiffs) complain of Defendants as follows:

8 **PARTIES AND JURISDICTION**

- 9 1. **New Hampshire Insurance Company** is an Illinois corporation with its principal
10 place of business in New York.
- 11 2. **Granite State Insurance Company** is an Illinois corporation with its principal
12 place of business in New York.
- 13 3. **Illinois National Insurance Co.** is an Illinois corporation with its principal place
14 of business in New York.
- 15 4. **AIG Assurance Company** is an Illinois corporation with its principal place of
16 business in New York.
- 17 5. **The Insurance Company of the State of Pennsylvania** is an Illinois corporation
18 with its principal place of business in New York.
- 19 6. **American Home Assurance Company** is a New York corporation with its
20 principal place of business in New York.
- 21 7. **Commerce and Industry Insurance Company** is a New York corporation with
22 its principal place of business in New York.
- 23 8. **AIU Insurance Company** is a New York corporation with its principal place of
24 business in New York.
- 25 9. **AIG Specialty Insurance Company** is an Illinois corporation with its principal
26 place of business in New York.
- 27 10. **AIG Property Casualty Company, f/k/a Chartis Property Casualty Company**
28 is a Pennsylvania corporation with its principal place of business in New York.

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1 11. **National Union Fire Insurance Company of Pittsburgh, PA.**, is a Pennsylvania
2 corporation with its principal place of business in New York.

3 12. **Lexington Insurance Company** is a Delaware corporation with its principal
4 place of business in Massachusetts.

5 13. The Plaintiffs in this action incurred losses as a result of the Defendants'
6 fraudulent acts, and are referred to collectively herein as the "Insurers."

7 14. **Healthsmart Pacific, Inc. ("Healthsmart")** is a California corporation with its
8 principal place of business in California.

9 15. **Healthsmart Pacific, Inc. d/b/a Pacific Hospital of Long Beach (along with**
10 **Healthsmart, "Pacific Hospital")** was a California corporation with its principal place of
11 business in California. Upon information and belief, Pacific Hospital's assets were sold to
12 College Health Enterprises in or about October 2013.

13 16. **Long Beach Pain Center Medical Clinic, Inc. ("Long Beach Pain")** is a
14 California corporation with its principal place of business in California. Upon information and
15 belief, Long Beach Pain had a physical location at 2760 Pacific Avenue, Long Beach, California
16 and was associated with Pacific Hospital.

17 17. **International Implants, LLC and International Implants, LLC f/k/a SI**
18 **Venture Partners LLC ("International Implants")** is a California corporation with its
19 principal place of business in California.

20 18. Insurers are informed and believe and thereon allege that defendant **Michael D.**
21 **Drobot, Sr. ("Drobot Sr.")** is a resident of California. Drobot Sr. owned and operated Pacific
22 Hospital, which was the epicenter of a massive fraudulent scheme run by Defendants and their
23 co-conspirators through numerous associated companies through November 2013. ("Pacific
24 Hospital Fraud").

25 19. Insurers are informed and believe and thereon allege that defendant **Michael R.**
26 **Drobot, Jr. ("Drobot Jr.")** is a resident of California. Defendants Drobot Sr. and Drobot Jr. are
27 referred to collectively herein as "Drobot Defendants."
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20. **Industrial Pharmacy Management LLC and Industrial Pharmacy Management LLC f/k/a California Pharmacy Management LLC (“IPM”)** is a California corporation registered with its principal place of business in California. Prior to 2007, IPM operated as California Pharmacy Management (“CPM”).

21. **Long Beach Prescription Pharmacy (“LBPP”)** is a California corporation with its principal place of business in California.

22. **Coastal Express Pharmacy, Inc. (“CEP”)** is a California corporation with its principal place of business in California.

23. **Meds Management Group LLC (“MMG”)** is a California corporation with its principal place of business in California.

24. **Pacific Specialty Physician Management, Inc. (“PSPM”)** is a California corporation with its principal place of business in California.

25. **First Medical Management, Inc. (“FMM”)** is a California corporation with its principal place of business in California.

26. Insurers are informed and believe and thereon allege that defendant **Paul Richard Randall (“Randall”)** is a resident of California. Upon information and belief, Randall operated as a healthcare “marketer” through several companies, including Summit Medical Group (“Summit Medical”) and Platinum Medical Group.

27. **Platinum Medical Group, Inc. (“Platinum Medical”)** is a California corporation with its principal place of business in California. Upon information and belief, Platinum Medical has been suspended or forfeited by the Franchise Tax Board.

28. Insurers are informed and believe and thereon allege that defendant **Linda Martin (“Martin”)** is a resident of California.

29. Insurers are informed and believe and thereon allege that defendant **Daniel Capen (“Capen”)** is a resident of California. At all relevant times, he was a doctor conducting business and performing surgeries in and around Los Angeles County, California. Upon information and belief, Capen referred patients for surgeries in exchange for illegal kickback

1 payments funded through an elaborate fraudulent overbilling scheme directed at Insurers and
2 participated in a pharmaceutical overbilling scheme directed at Insurers.

3 30. **Daniel Capen, M.D., A Professional Corporation (“Capen, M.D.”)**, is a
4 California corporation with its principal place of business in California. Upon information and
5 belief, Capen, M.D. referred patients for surgeries in exchange for illegal kickback payments
6 funded through an elaborate fraudulent overbilling scheme directed at Insurers and participated
7 in a pharmaceutical overbilling scheme directed at Insurers.

8 31. **Southwestern Orthopedic Medical Corporation d/b/a Downey Orthopedic**
9 **Medical Group and Southwestern Orthopedic Medical Corporation d/b/a Channel Islands**
10 **Orthopedic (collectively, “Southwestern”)** is a California corporation with its principal place
11 of business in California. Upon information and belief, Southwestern referred patients for
12 surgeries in exchange for illegal kickback payments funded through an elaborate fraudulent
13 overbilling scheme directed at Insurers and participated in a pharmaceutical overbilling scheme
14 directed at Insurers.

15 32. **Westlake Surgical Medical Associates, Inc. (“Westlake”)** is a California
16 corporation with its principal place of business in California. Upon information and belief,
17 Westlake referred patients for surgeries in exchange for illegal kickback payments funded
18 through an elaborate fraudulent overbilling scheme directed at Insurers and participated in a
19 pharmaceutical overbilling scheme directed at Insurers.

20 33. Insurers are informed and believe and thereon allege that defendant **Ismael Silva**
21 **(“Silva”)** is a resident of California. At all relevant times, he was a doctor conducting business
22 and performing surgeries in and around Los Angeles County and Orange County, California.
23 Upon information and belief, Silva referred patients for surgeries in exchange for kickbacks
24 funded through an elaborate fraudulent overbilling scheme directed at Insurers and participated
25 in a pharmaceutical overbilling scheme directed at Insurers.

26 34. **Healthpointe Medical Group, Inc. (“Healthpointe”)** is a California corporation
27 with its principal place of business in California. Upon information and belief, Healthpointe
28 referred patients for surgeries in exchange for kickbacks funded through an elaborate fraudulent

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1 overbilling scheme directed at Insurers and participated in a pharmaceutical overbilling scheme
2 directed at Insurers.

3 35. **National Intraoperative Monitoring, f/k/a West Ocean Union Medical**
4 **(“National Intraoperative”)** is a California corporation with its principal place of business in
5 California. Upon information and belief, National Intraoperative referred patients for surgeries in
6 exchange for illegal kickback payments funded through an elaborate fraudulent overbilling
7 scheme directed at Insurers and participated in a pharmaceutical overbilling scheme directed at
8 Insurers.

9 36. **Southwest Hospital Development Group, Inc. (“Southwest Hospital”)** was a
10 California corporation with its principal place of business in California. Upon information and
11 belief, Southwest Hospital referred patients for surgeries in exchange for illegal kickback
12 payments funded through an elaborate fraudulent overbilling scheme directed at Insurers and
13 participated in a pharmaceutical overbilling scheme directed at Insurers.

14 37. **Starbase, Inc. (Starbase”)** is a California corporation with its principal place of
15 business in California. Upon information and belief, Starbase received illegal kickback payments
16 funded through an elaborate fraudulent overbilling scheme directed at Insurers.

17 38. Insurers are informed and believe and thereon allege that defendant **Lokesh S.**
18 **Tantuwaya (“Tantuwaya”)** is a resident of California. Upon information and belief, Tantuwaya
19 referred patients for surgeries in exchange for kickbacks funded through an elaborate fraudulent
20 overbilling scheme directed at Insurers.

21 39. **Dr. Lokesh S. Tantuwaya, M.D., Inc. (“Tantuwaya, M.D.”)** is a California
22 Corporation with its principal place of business in California. Upon information and belief,
23 Tantuwaya, M.D. referred patients for surgeries in exchange for kickbacks funded through an
24 elaborate fraudulent overbilling scheme directed at Insurers.

25 40. Above are just a few of the conspirators and tortfeasors who participated in the
26 fraud alleged here and/or that are liable for Plaintiffs’ loss and damages. Plaintiffs are ignorant
27 of the names, capacities and conduct of Defendants sued herein as **Does 1 through 60** and
28 therefore sue such Defendants as fictitious names Does 1 through 60 pursuant to California Code

1 of Civil Procedure Sec. 474. Plaintiffs will amend this complaint to allege the true names of
2 these defendants once they are ascertained.

3 41. This Court has jurisdiction over this case pursuant to 28 USC § 1332 as there is
4 complete diversity of citizenship between the Plaintiffs and Defendants and the amount in
5 controversy exceeds \$75,000.

6 42. Venue is proper in this district and division pursuant to 28 USC § 1391 because a
7 substantial portion of the events or omissions giving rise to the claims herein occurred in this
8 district and division.

9 **FACTS**

10 43. Insurers provided workers compensation insurance in California. When a covered
11 employee suffered an on-the-job injury, Insurers ensured that the injured worker received proper
12 medical treatment by a provider. The provider billed Insurers for the procedures performed or
13 medicine supplied under the appropriate workers' compensation guidelines.

14 44. Defendants conspired to subvert this process and defraud Insurers in connection
15 with the submission and collection of fraudulent insurance bills for medical services, medical
16 hardware, and medications. Through two connected enterprises, Defendants and their co-
17 conspirators engaged in an elaborate kickback scheme designed to exploit the workers'
18 compensation system and defraud Insurers out of millions of dollars. The scheme involved
19 overbilling for medical hardware supplied by co-conspirators' businesses, and the exchange of
20 kickbacks for referring patients to Pacific Hospital and associated facilities.

21 45. The kickback scheme was carried out through a complex web of interconnected
22 businesses and individuals.

23 46. Pacific Hospital, Long Beach Pain and International Implants (collectively, the
24 "Surgical Defendants") were owned and operated by the Drobot Defendants. The Drobot
25 Defendants owned and operated IPM (which had operated as CPM until 2007), LBPP, CEP and
26 MMG (collectively, the "Pharmaceutical Defendants"). The Surgical Defendants and
27 Pharmaceutical Defendants were connected through Defendants PSPM and FFM (the
28 "Administrative Defendants"), which were also owned and controlled by the Drobot Defendants.

1 Unbeknownst to Insurers, Pacific Hospital was the epicenter of a fraudulent scheme run by
2 Drobot Defendants through the Surgical Defendants, the Pharmaceutical Defendants, the
3 Administrative Defendants and their co-conspirators through November 2013 (the “Pacific
4 Hospital Fraud”).

5 47. Drobot, Sr., was criminally charged for the Pacific Hospital Fraud in *United*
6 *States v. Michael D. Drobot*, 14-cr-00034. On February 20, 2014, Drobot, Sr. pleaded guilty and
7 admitted in his plea agreement that a) “Beginning in or around 1998 and continuing through in or
8 around November 2013, he conspired with dozen of doctors, chiropractors, marketers, and others
9 to pay kickbacks in return for those persons to refer thousands of patients to Pacific Hospital for
10 spinal surgeries and other medical services;” b) “To help generate the monies for the kickback
11 payments, defendant used a co-schemer’s company or his own company . . . to fraudulently
12 inflate the price of medical hardware purchased by Pacific Hospital to be used in the spinal
13 surgeries . . . ”; and c) “In paying the kickbacks, inflating the medical hardware costs, and
14 submitting the resulting claims for spinal surgeries and medical services, defendant and his co-
15 conspirators acted with the intent to defraud workers’ compensation insurance carriers . . . ”
16 These illegal kickback payments were concealed from Insurers and others through “bogus
17 contracts under which the kickback recipients purported to provide services to [Drobot Sr.]’s
18 companies to justify the kickback payments.” These purported services “were, in fact, generally
19 not provided to Pacific Hospital or were provided at highly inflated prices. The compensation to
20 the kickback recipients was actually based on the number and type of surgeries they referred to
21 the hospital.”

22 48. Many of these kickbacks were facilitated by Defendant Randall, who pleaded
23 guilty in *United States v. Randall*, Case No. 12-cr-00023. Randall admitted in his plea agreement
24 that his company, Platinum Medical “paid kickbacks to physicians for referring workers’
25 compensation patients for toxicology tests. Specifically, Platinum [Medical] paid physicians
26 \$150 to \$200 for each test performed, which was in addition to the professional component of
27 the test that the physician would bill to the workers’ compensation insurance.” Randall also
28 admitted in a March 9, 2016 deposition that he negotiated contractual agreements between

1 Drobot Sr. and physicians to provide compensation for those doctors performing spinal surgeries
2 at Pacific Hospital. He testified that there were “many” such agreements entered into between
3 Drobot Sr. and doctors for compensation for spine surgeries at Pacific Hospital.

4 49. Defendant Martin also pleaded guilty to charges associated with the Pacific
5 Hospital Fraud in *United States v. Linda Martin*, Case No. 16-cr-00014. Martin admitted in her
6 plea agreement that she “conspired with Drobot, other hospital employees, dozens of doctors,
7 chiropractors, marketers, and others to pay kickbacks in return for referral of hundreds of
8 patients to Pacific Hospital for spinal surgeries and other medical services paid for primarily
9 through the California Workers’ Compensation System (“SWCS”) and the Federal Employees’
10 Compensation Act (“FECA”).” The compensation paid was “based on the number and type of
11 surgeries they referred to [Pacific Hospital].” Martin also admitted that “[t]o channel the
12 kickback payments, the co-conspirators often used Drobot’s company Pacific Specialty
13 Physician Management, Inc. (“PSPM”). In addition the co-conspirators used Drobot’s own
14 company, International Implants . . . for medical hardware to be used in spinal surgeries in order
15 to obtain a larger kickback payment for each surgery.”

16 50. Martin worked as a marketer for Pacific Hospital. As a marketer, Martin recruited
17 chiropractors, physicians, additional marketers and others to “refer workers’ compensation
18 patients to Pacific Hospital for spinal surgeries, other types of surgeries, toxicology, and other
19 services, to be paid through FECA and CWCS.” These kickback payments were “conceal[ed]
20 from workers’ compensation insurance carriers and patients” through “bogus contracts . . . under
21 which the kickback recipients purported to provide services to, or receive services from,
22 Drobot’s companies to justify the kickback payments.” The services and other items in these
23 “bogus contracts” were provided at inflated prices, if provided at all. Martin admitted that Pacific
24 Hospital billed workers’ compensation insurance carriers approximately \$225 million in claims
25 for several thousand spinal surgeries billed to workers’ compensation carriers. Approximately
26 \$9.5 to \$25 million was paid for kickbacks related to these surgeries.

27 51. Drobot Jr.’s role in the conspiracy included operating the Pharmaceutical
28 Defendants, which were used to generate additional funds for the Pacific Hospital Fraud. Drobot

1 Jr. admitted in a plea agreement entered in *United States v. Michael R. Drobot*, Case No. 15-cr-
2 00155 that “the hospital kickback scheme operated as follows: Drobot Senior and other co-
3 conspirators offered to pay kickbacks to doctors, chiropractors, marketers and others . . . in return
4 for their referring workers’ compensation patients to Pacific Hospital for spinal surgeries, other
5 types of surgeries, magnetic resonance imaging, toxicology, durable medical equipment, and
6 other services which would be paid through [workers’ compensation programs].” The kickbacks
7 were typically \$15,000 per lumbar fusion surgery and \$10,000 per cervical fusion surgery,
8 provided that the surgeon used in the surgery hardware supplied by the specified distributor.

9 52. Drobot Jr. also admitted in his plea agreement that kickbacks were concealed
10 from workers’ compensation insurance carriers through “bogus contracts under which the
11 kickback recipients purported to provide services to Drobot Senior’s companies to justify the
12 kickback payments. The services and other items of value discussed in those contracts were, in
13 fact, generally not provided to Pacific Hospital or the other companies, or were provided at
14 highly inflated prices. The compensation to the kickback recipients was actually based on the
15 number and type of surgeries they referred to the hospital.” Drobot Jr. admitted that the “bogus
16 contracts” included “collection agreements, option agreements, research and development
17 agreements, lease and rental agreements, marketing agreements, and management agreements.”

18 53. According to Drobot Jr.’s plea agreement in *United States v. Michael R. Drobot*,
19 Case No. 15-cr-00155, the Pharmaceutical Defendants contracted with doctors and chiropractors
20 to manage in-house pharmaceutical dispensaries located in doctors’ and chiropractors’ offices.
21 Under the terms of many of the contracts entered into by the parties, the doctor received either
22 the net monthly collections of the dispensary after paying to the Pharmaceutical Defendants a
23 percentage-based management fee, or a fixed monthly amount secured by the dispensary’s future
24 collections. The contracts typically provided that the Pharmaceutical Defendants would advance
25 nearly all costs associated with the dispensary, including if necessary, the purchase of
26 prescription drugs, and the salaries of pharmacy technicians who staffed the dispensary, with the
27 doctors ultimately responsible for any shortfalls if the amounts collected were less than the
28 amounts advanced. Drobot Jr. also admitted in his plea agreement that CPM (which was, based

1 on California Secretary of State records, merged with IPM in or about 2007) was used to
2 “facilitate kickback arrangements.”

3 54. Upon information and belief, the Pharmaceutical Defendants pressured doctors to
4 make available and prescribe certain promoted medications on which they could make a larger
5 anticipated profit for worker's compensation patients. The doctors were, upon information and
6 belief, pressured to prescribe these medications through relevant contract language, higher
7 reimbursement rates for the Drobot-preferred medications, and/or through the Drobots’ offers to
8 increase or maintain a doctor's guaranteed monthly payment if they prescribed certain
9 medications. Upon information and belief, the Drobots also induced doctors who contracted with
10 the Pharmaceutical Defendants to use ancillary products and services including toxicology,
11 magnetic resonance imaging, and Lanx spinal hardware in order to generate increased revenue.

12 **DEFENDANTS’ KNOWING AGREEMENT AND PARTICIPATION IN THE PACIFIC**
13 **HOSPITAL FRAUD**

14 55. The allegations in this section relate to Defendants Capen, Capen, M.D.,
15 Southwestern, and Westlake (collectively “Capen Defendants”); Defendants Silva, Healthpointe,
16 National Intraoperative, Southwest Hospital, and Starbase (collectively “Silva Defendants”); and
17 Defendants Tantuwaya and Tantuwaya, M.D. (collectively “Tantuwaya Defendants”).
18 (Collectively, these defendants are referred to herein as the “Doctor Defendants”).

19 56. The Doctor Defendants conspired with the Drobot Defendants, Surgical
20 Defendants, Pharmaceutical Defendants and Administrative Defendants to knowingly facilitate
21 the Pacific Hospital fraud in order to receive kickbacks. Upon information and belief, the
22 Defendants (among other things) allowed their names and signatures to be used in bills submitted
23 to the Insurers and provided the medical services and pharmaceuticals underlying the bills to the
24 Insurers with knowledge of the nature of their and their co-conspirators’ activities and with the
25 intent to facilitate those illegal activities.

26 **I. CAPEN DEFENDANTS**

27 57. Drobot Sr. admitted in his plea agreement that from “in or around 1998 and
28 continuing through in or around November 2013, he conspired with dozen of doctors,

1 chiropractors, marketers, and others to pay kickbacks in return for those persons to refer
2 thousands of patients to Pacific Hospital for spinal surgeries and other medical services.”

3 58. Upon information and belief and Insurers’ billing records, the Capen Defendants
4 referred at least 250 patients for services at Pacific Hospital and Long Beach Pain during this
5 time period. Upon information and belief, these referrals include instances in which the Capen
6 Defendants referred patients to Pacific Hospital and its related entities for surgeries in exchange
7 for illegal kickback payments and these surgeries involved the use of medical hardware illegally
8 marked-up and billed to insurance companies.

9 59. Documents produced by Pacific Hospital Fraud co-conspirators IPM, PSMP
10 and/or International Implants (also referred to as “I2”) demonstrate that Capen, either directly or
11 through Capen, M.D., received monthly “reimbursement” in the amount of \$10,137.90 from May
12 through September 2008, totaling \$50,689.50. By November 2009, International Implants
13 records reflect that “per surgery,” Capen was receiving \$5,833 as a “monthly payment” and
14 \$8,333 as a “management fee.” Between January and June 2010, the co-conspirator records
15 demonstrate that Capen performed 32 “Qualifying Fusions” for the Pacific Hospital Fraud,
16 resulting in a \$440,000 payment due.

17 60. Upon information and belief, Capen was paid \$2,434,211.06 through a
18 “management agreement” with CPM, after CPM billed over \$8 million for pharmaceutical drugs
19 that CPM had obtained for less than \$500,000. Upon information and belief, Capen wrote over
20 30,000 prescriptions in 2006, averaging over 123 prescriptions per day in March 2006 alone.
21 Upon information and belief, in addition to the “management agreement” payments, CPM
22 “loaned” Capen \$115,000 to cover “Air Charter Expenses,” \$55,463 in “advancements” and
23 \$21,000 for “other reductions.”

24 61. In addition to receiving funds through pharmaceuticals billed to insurers at
25 inflated prices and surgical kickbacks, Capen also, upon information and belief, benefitted from
26 the Pacific Hospital Fraud as an investor. Upon information and belief, Capen, during the course
27 of the Pacific Hospital Fraud, obtained a 10 percent interest in Abrazos Healthcare, Inc.
28 (“Abrazos”), a company which was either the sole or a majority shareholder of Pacific Hospital.

1 62. Insurers were not aware and could not have reasonably discovered the Capen
2 Defendants' involvement in the Pacific Hospital Fraud prior to the 2015 public filing of a
3 complaint by another insurer because the evidence cited in support of the complaint was not
4 publicly available. Prior to mid-2015, Insurers had no reason to believe that the Capen
5 Defendants had any involvement in the fraud alleged herein.

6 **II. SILVA DEFENDANTS**

7 63. Drobot Sr. admitted in his plea agreement that from "in or around 1998 and
8 continuing through in or around November 2013, he conspired with dozen of doctors,
9 chiropractors, marketers, and others to pay kickbacks in return for those persons to refer
10 thousands of patients to Pacific Hospital for spinal surgeries and other medical services."

11 64. Upon information and belief and Insurers' billing records, the Silva Defendants
12 referred over 100 patients for services at Pacific Hospital and Long Beach Pain during this time
13 period.

14 65. Upon information and belief, Silva, through Healthpointe and Starbase, referred
15 patients to Pacific Hospital and its related entities for surgeries in exchange for illegal kickback
16 payments and these surgeries involved the use of medical hardware illegally marked-up and
17 billed to insurance companies. Upon information and belief, Starbase operated as an implant
18 distributor for the medical hardware used in the Pacific Hospital Fraud. Upon information and
19 belief, Silva also operated through his companies National Intraoperative and Southwest
20 Hospital.

21 66. Documents produced by Pacific Hospital Fraud co-conspirators including PSPM,
22 IPM and International Implants document numerous payments to Silva and Starbase. PSPM
23 records list Silvia and Starbase as having a PSPM "contract" dated October 1, 2007 and explain
24 that the "original agreement set \$25,000 due on 15th day of month." A financial summary of
25 IPM accounts from on or about April 2008 explains that "\$25k for Starbase (Silva) is written out
26 of CPM Management." Another financial record lists 17 payments to Silva totaling over
27 \$370,000 between June 2008 and August 2010.

28

1 67. Insurers were not aware and could not have reasonably discovered the Silva
2 Defendants' involvement in the Pacific Hospital Fraud prior to the 2015 public filing of a
3 complaint by another insurer because the evidence cited in support of the complaint was not
4 publicly available. Prior to mid-2015, Insurers had no reason to believe that the Silva Defendants
5 had any involvement in the fraud alleged herein.

6 **III. TANTUWAYA DEFENDANTS**

7 68. Drobot Sr. admitted in his plea agreement that from "in or around 1998 and
8 continuing through in or around November 2013, he conspired with dozen of doctors,
9 chiropractors, marketers, and others to pay kickbacks in return for those persons to refer
10 thousands of patients to Pacific Hospital for spinal surgeries and other medical services."

11 69. Upon information and belief and Insurers' billing records, the Tantuwaya
12 Defendants referred at least 10 patients for services at Pacific Hospital and Long Beach Pain
13 during this time period.

14 70. Upon information and belief, Tantuwaya performed spinal surgeries at Pacific
15 Hospital using hardware ordered from International Implants and other co-conspirators. Upon
16 information and belief, Tantuwaya received kickbacks for the surgeries and for using
17 International Implants hardware.

18 71. In a deposition, Defendant Randall testified that he negotiated Tantuwaya's
19 compensation for doing surgeries at Pacific Hospital and that these funds were paid pursuant to
20 contractual agreements. According to records produced in another litigation, Tantuwaya had a
21 \$70,000 "option" contract dated March 1, 2010, pursuant to which PSPM was to make payments
22 to Tantuwaya "due on the 15th day of each succeeding month until aggregate pmts equal
23 \$15,000,000." December 2010 PSPM records list his year-to-date payments as \$510,000.
24 January 2012 PSPM records list total payments to Tantuwaya from 2009-2012 as \$943,900.
25 December 2012 PSPM records list total payments to Tantuwaya as \$1,453,900.

26 72. Records produced in the another action also demonstrate \$1,147,000 in payments
27 to MD Aviation from 2009-2012. MD Aviation LLC is a California Corporation on which
28

1 Tantuwaya was listed as a manager and registered agent before the company was suspended by
2 the Franchise Tax Board for failure to meet tax requirements.

3 73. Insurers were not aware and could not have reasonably discovered the Tantuwaya
4 Defendants' involvement in the Pacific Hospital Fraud prior to the 2015 public filing of
5 documents in other litigation against Tantuwaya because this evidence was not publicly
6 available. Prior to mid-2015, Insurers has no reason to believe that the Tantuwaya Defendants
7 had any involvement in the fraud alleged herein.

8 **INSURERS AND THEIR CLAIMS PROCESS**

9 74. Insurers, among other things, provide insurance policies to employers, under
10 which medical treatment and compensation benefits are provided to employees who are injured
11 or become ill during the course of employment or due to employment-related injury.

12 75. Insurers pay medical providers for medical services provided to covered workers,
13 including spinal implants, other spinal surgeries, and a wide variety of other procedures. Insurers
14 also pay medical providers for prescription drugs supplied to injured workers.

15 76. In order to receive reimbursement from Insurers for medical services, providers
16 submit documentation to Insurers. Insurers do not knowingly pay for fraudulent bills, including:
17 (a) bills for office visits or medical services not provided; (b) bills for unnecessary medical
18 services; (c) bills that are the product of a provider's employment of runners, cappers, or steerers
19 to solicit or obtain patients for the medical provider; (d) bills involving illegal kickbacks; (e) bills
20 that are "upcoded"; (f) bills that are "unbundled"; and (g) bills that are artificially inflated.
21 Insurers do not knowingly reimburse unlicensed providers or entities, or those who engage in
22 illegal activity such as kickbacks, which are violations of the California Labor and Insurance
23 Codes. Insurers also attempts to adhere to all California guidelines and regulations on costs.

24 77. Insurers are generally required to pay all bills within a relatively short statutory
25 period of time pursuant to the California Labor Code and attendant regulations, or face large
26 penalties, with some exceptions. As such, Insurers have a limited ability to review each bill and
27 corresponding claim prior to paying within the requisite time period. The schemes described in
28 this Complaint are not readily apparent upon the face of the bills, and Defendants and their co-

1 conspirators have actively sought to conceal their various schemes. This, along with the sheer
2 volume of bills Insurers process on a daily basis makes detection of this fraudulent behavior
3 extremely difficult. Defendants and their co-conspirators knew this and took advantage of it,
4 purposefully overwhelming the system to maximize their chances of getting their fraudulently
5 inflated bills reimbursed.

6 78. Insurers have paid at least \$60 million for services rendered in connection with
7 the Pacific Hospital Fraud pursuant to workers' compensation policies.

8 **FIRST CAUSE OF ACTION**

9 **BUSINESS & PROFESSIONS CODE § 17200 VS. ALL DEFENDANTS**

10 79. Insurers incorporate by reference the allegations in paragraphs 1 through 78 of
11 this Complaint as though fully set forth herein.

12 80. Defendants' schemes involving fraudulent misrepresentations and omissions to
13 Insurers constitute unlawful, unfair, or fraudulent business acts and practices, under what is
14 commonly known as the California Unfair Competition Law ("UCL"), California Bus. & Prof.
15 Code §§ 17200 *et seq.*

16 81. Each Defendant violated Section 17200's prohibition against engaging in an
17 unlawful, unfair, or fraudulent business act or practice through conduct that violates Insurers'
18 right to fair business dealings, as described herein. Through their unfair and improper practices,
19 Insurers suffered injury by virtue of Defendants' billing.

20 82. Defendants further violated Section 17200's prohibition against engaging in an
21 unlawful act or practice through conduct that violates, among other things:

22 • California Lab. Code §§ 139.3, 3215, 3820, directly or by aiding and abetting and
23 conspiring with each other to enter into illegal fee-splitting arrangements and exchanging
24 monetary incentives for referrals of patients for clinical laboratory, diagnostic imaging goods,
25 pharmacy goods, evaluations, and consultations, among other services and treatments;

26 • California Bus. & Prof. Code §§ 650, 652, and 652.5, directly or by aiding and
27 abetting violations of Defendants and other physicians, by entering into illegal fee-splitting
28 arrangements and by exchanging monetary incentives to refer patients, to prescribe and dispense

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1 particular drugs or provide particular services, and to use particular devices, hardware, implants,
2 or equipment from specified suppliers;

3 • California Insurance Code §§ 750 and 1871.4 and Penal Code §§ 549 and 550, by
4 presenting and negotiating false or fraudulent claims and by offering, delivering, receiving
5 and/or accepting any rebate, refund, commission, or other consideration, as compensation or
6 inducement to or from any person for the referral or procurement of clients or patients to Pacific
7 Hospital and for receiving any rebate, refund, commission or other consideration for using
8 specific medical devices in surgeries performed by Defendants to facilitate the submission of
9 fraudulent insurance claims to Insurers for reimbursement; or soliciting, accepting, or referring
10 any business to or from the Pacific Hospital Fraud with the knowledge that, or with reckless
11 disregard for whether, the Defendant for or from whom the solicitation or referral was made, or
12 the individual or entity who was solicited or referred, intended to violate Section 550 of the
13 Penal Code or Section 1871.4 of the Insurance Code;

14 • In addition to being unlawful and fraudulent, each of Defendants' schemes to
15 defraud Insurers constituted unfair business acts and practices under § 17200.

16 83. Defendants' unfair and unlawful practices were performed in California.

17 84. Insurers have suffered injury to their business and property as a direct and
18 proximate result of Defendants' unfair and unlawful practices.

19 85. Defendants have fraudulently received millions of dollars from Insurers as a
20 direct and proximate result of their unfair and unlawful practices. Defendants have been unjustly
21 enriched, and it would be inequitable to allow Defendants to retain the monies they obtained
22 from Insurers through fraud or other unfair practices. Disgorgement should be awarded so as to
23 achieve substantial justice between the parties.

24
25 **WHEREFORE**, Insurers pray that this Court grant judgment in their favor and against
26 the Defendants and for the entry of an order requiring Defendants to pay restitution, disgorge all
27 their ill-gotten gains and all such other relief as the Court deems just and proper.
28

SECOND CAUSE OF ACTION

UNJUST ENRICHMENT VS. DOCTOR DEFENDANTS AND DOES 1-60

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3 86. Insurers incorporate by reference the allegations in paragraphs 1 through 85 of
4 this Complaint as though fully set forth herein.

5 87. As detailed above, the Capen Defendants, Silva Defendants, Tantuwaya
6 Defendants and Does 1 through 60 defrauded Insurers, through the submission of fraudulent bills
7 and related documents which included bills for surgeries performed using illegally inflated
8 medical devices, bills for inflated pharmaceutical drugs and services for which Defendants were
9 provided illegal kickback payments.

10 88. Insurers have ownership of and right to possess their funds which they were
11 fraudulently induced to dispense due to Defendants' illegal conduct.

12 89. The Capen Defendants, Silva Defendants, Tantuwaya Defendants and Does 1
13 through 60 have retained the monies dispensed to them as a result of their participation in the
14 Pacific Hospital Fraud.

15 90. The Capen Defendants, Silva Defendants, Tantuwaya Defendants and Does 1
16 through 60, through their fraudulent schemes described above, deprived Insurers of their funds
17 and property.

18 91. Insurers, as victims of fraud, sustained losses of their funds and property as a
19 result of the fraudulent schemes perpetrated by the Capen Defendants, Silva Defendants,
20 Tantuwaya Defendants and Does 1 through 60.

21 92. By reason of the foregoing, Insurers have been damaged and demand judgment
22 against the Capen Defendants, Silva Defendants, Tantuwaya Defendants and Does 1 through 60
23 in an amount to be determined at the trial of this action.

24
25 **WHEREFORE**, Insurers pray that this Court grant judgment in their favor and against
26 the Capen Defendants, Silva Defendants, Tantuwaya Defendants and Does 1 through 60, award
27 them damages in an amount to be proven at trial and for all such other relief as the Court deems
28 just and proper.

THIRD CAUSE OF ACTION

FRAUD VS. DOCTOR DEFENDANTS AND DOES 1-60

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3 93. Insurers incorporate by reference the allegations in paragraphs 1 through 92 of
4 this Complaint as though fully set forth herein.

5 94. As detailed above, the Capen Defendants, Silva Defendants, Tantuwaya
6 Defendants and Does 1 through 60, with the full knowledge and personal participation of their
7 co-conspirators in the Pacific Hospital Fraud, caused Insurers to be invoiced for medical services
8 obtained as the result of kickback payments.

9 95. The Capen Defendants, Silva Defendants, Tantuwaya Defendants and Does 1
10 through 60 knew the representations contained in the invoices and related documents were false
11 when made or made the representations with reckless disregard of their falsity, intending that
12 Insurers rely on these representations.

13 96. Insurers relied on the veracity of the invoices and paid the invoices submitted by
14 or caused to be submitted which contained 1) false representations indicating that the medical
15 devices used in surgeries were priced within legal guidelines; 2) fraudulently inflated
16 pharmaceutical drugs and 3) material omissions that the medical services were induced by
17 kickbacks which only the co-conspirators knew and that Insurers could not have discovered.

18 97. The Capen Defendants, Silva Defendants, Tantuwaya Defendants and Does 1
19 through 60 knew their representations and omissions were material and that Insurers would not
20 have paid the claims had they known the medical services, pharmaceuticals and devices were
21 fraudulently inflated and the product of illegal kickbacks.

22 98. As a result of the fraudulent acts of the Capen Defendants, Silva Defendants,
23 Tantuwaya Defendants and Does 1 through 60, Insurers have suffered damages.

24
25 **WHEREFORE**, Insurers pray that this Court grant judgment in their favor and against
26 the Capen Defendants, Silva Defendants, Tantuwaya Defendants and Does 1 through 60, award
27 them damages in an amount to be proven at trial and for all such other relief as the Court deems
28 just and proper.

FOURTH CAUSE OF ACTION

CONSPIRACY VS. DOCTOR DEFENDANTS AND DOES 1 THROUGH 60

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3 99. Insurers incorporate by reference the allegations in paragraphs 1 through 98 of
4 this Complaint as though fully set forth herein.

5 100. As detailed above, the Capen Defendants, Silva Defendants, Tantuwaya
6 Defendants and Does 1 through 60 agreed with other co-conspirators in the Pacific Hospital
7 Fraud to 1) perform surgeries at Pacific Hospital using specific medical devices in exchange for
8 receiving illegal kickback payments; 2) refer patients for surgeries to Pacific Hospital, Long
9 Beach Pain or other co-conspirators in exchange for illegal kickback payments; and 3) submit or
10 cause to be submitted invoices to Insurers for payment of said surgeries without disclosing the
11 illegal kickback payments, with full knowledge of the unlawful purpose of this scheme.

12 101. The Capen Defendants, Silva Defendants, Tantuwaya Defendants and Does 1
13 through 60 knew that Insurers would rely on the truth of the invoices and other documents
14 submitted by or caused to be submitted by the Defendants when issuing disbursements for these
15 invoices.

16 102. Insurers in fact relied on the truth of the invoices and other documents submitted
17 by or caused to be submitted by the Defendants; Insurers issued payments to the Pacific Hospital
18 Fraud which was then used to fund the illegal kickback payments. Insurers would not have made
19 these payments had they known the medical services were fraudulently inflated and funded by
20 illegal kickback payments.

21 103. Insurers have been damaged by Defendants' fraud.

22
23 **WHEREFORE**, Insurers pray that this Court grant judgment in their favor and against
24 the Capen Defendants, Silva Defendants, Tantuwaya Defendants and Does 1 through 60, award
25 them damages in an amount to be proven at trial and for all such other relief as the Court deems
26 just and proper.

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RESERVATION OF RIGHTS

Insurers reserve the right to seek leave of Court to amend their complaint as additional facts become known to them through discovery and the course of this litigation.

JURY DEMAND

Plaintiff Insurers demand a trial by jury on all issues so triable.

Dated: October 31, 2017

Respectfully submitted,

GORDON & REES, LLP

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