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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CALIFORNIA CHIROPRACTIC
ASSOCIATION, on behalf of itself and
its members,

Plaintiff,

vs.

MEDRISK, LLC; MEDRISK
HOLDCO, LLC; and DOES 1 through
10, inclusive,

Defendants.

CASE NO. '19CV2040 LAB BLM

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

1 Plaintiff California Chiropractic Association (“Cal Chiro” or “Plaintiff”), by
2 and through the undersigned attorneys, files this Complaint against Defendants
3 MedRisk, LLC and MedRisk Holdco, LLC (hereafter collectively “MedRisk,”
4 except where otherwise indicated) and DOES 1-10, inclusive (hereafter collectively
5 “Defendants”) on behalf of itself and its members.

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

9 **NATURE OF THE ACTION**

10 1. This action arises out of Defendants’ unlawful, unfair, and fraudulent
11 business practice of acting as an illegal, for-profit “middleman” in California’s
12 workers’ compensation system. MedRisk solicits and receives improper payments
13 for the referral of healthcare services and managing services provided to injured
14 workers in California in a multitude of ways that violate numerous California laws.
15 These laws are specifically designed to protect injured workers, including laws
16 requiring authorization or certification to engage in such conduct in California.

17 2. MedRisk is known in the industry as a “cost containment” firm. In
18 fact, MedRisk operates as an unlicensed network broker, contracting, on the one
19 hand, with the payors of workers’ compensation services, including workers’
20 compensation insurers, self-insured employers and third party administrators, to
21 handle the scheduling and payment of treatment visits for injured workers, and, on
22 the other hand, with the health care professionals who provide health care services
23 to injured workers at the deeply discounted rates imposed by MedRisk. As set forth
24 below, MedRisk apparently operates in California without any license, certificate
25 of consent or other certification as a California workers’ compensation claims
26 administrator, third party administrator, or claims adjustor in violation of numerous
27 California laws.

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

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

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

22 6. Further, MedRisk’s payor clients do not directly pay health care
23 professionals’ claims. Rather, MedRisk pays these claims and pockets whatever
24 difference there is between what MedRisk is paid by payors and what MedRisk pays
25 these professionals, creating a direct financial incentive to make referrals to the
26 providers who have acquiesced to the deepest discounts. For example, assume
27 MedRisk agrees to provide all the services one of its client’s injured workers need
28 for 10% less than the OMFS for workers’ compensation treatment services; that is,

1 the client agrees to pay MedRisk 90% of the OMFS for workers' compensation
2 treatment services for treatment services needed by its employees and insureds. If
3 MedRisk then pays its contracted chiropractor 50% of the OMFS, MedRisk would
4 retain 40% of the OMFS for its management services – nearly as much as the
5 chiropractor received for the provided chiropractic treatment. Thus, the larger the
6 discount MedRisk obtains from contracted health care professionals, the greater the
7 amount of compensation MedRisk retains from the employer or insurer who
8 ultimately pays for the treatment services provided to injured workers. As such,
9 MedRisk's financial incentive is both clear, and illegal.

10 7. MedRisk's clients do not have access to MedRisk's provider contracts
11 nor to copies of bills which these healthcare professionals submit to MedRisk for
12 payment. Indeed, MedRisk forbids health care professionals from including the
13 contracted rate on their bills. Thus, MedRisk's clients may likely not know how
14 much of the money these clients have paid that MedRisk is retaining and not passing
15 on.

16 8. Moreover, MedRisk does not reimburse providers as required or pass
17 on to providers any increases in reimbursements for services provided. For all the
18 treatment services a chiropractor may provide an injured worker in a day, MedRisk
19 generally pays its contracted chiropractors significantly below what chiropractors
20 would be paid under the California Official Medical Fee Schedule ("OMFS") for
21 workers' compensation treatment services, which for a typical chiropractor is
22 approximately \$135. The OMFS is based on the Medicare Physician Fee Schedule
23 ("PFS"), which is itself maintained by the Centers for Medicare and Medicaid
24 Services ("CMS") to reflect the realistic cost of doing business for those health care
25 professionals who are providing care to Medicare beneficiaries.

26 9. MedRisk's scheme has allowed it to reduce payments to health care
27 professionals, including chiropractors, below the reasonable costs of providing the
28 chiropractic services needed by injured workers for optimum recovery, while at the

1 same time providing no transparency to its employer clients with respect to
2 MedRisk's contracts with health care professionals or the amounts these healthcare
3 professionals submit to MedRisk for payment.

4 10. MedRisk is able to sustain this practice because it controls a significant
5 market share of California's workers' compensation health care services in several
6 workers' compensation service lines, including chiropractic service, by virtue of its
7 contracts with the payors of workers' compensation services. Pursuant to these
8 contracts, MedRisk controls the scheduling of the treatment services for injured
9 workers.

10 11. Generally speaking, chiropractors not contracted with MedRisk, have
11 limited access~~;~~ to provide workers' compensation services to injured workers.
12 Chiropractors who acquiesce to MedRisk contracts, with the steepest discounts,
13 receive the vast majority of referrals from MedRisk. MedRisk expresses to
14 chiropractors, the higher the discount they are willing to accept, the greater the
15 number of referrals they will receive. MedRisk handles the referral and initial
16 scheduling of appointments for the vast majority of these injured workers, and
17 otherwise makes it difficult or impossible for the injured workers, their attorney, or
18 their primary treating physicians to schedule appointments themselves. Thus,
19 MedRisk is benefited by steering injured workers who require chiropractic
20 treatment services, directly to those providers who capitulate to its demands.

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

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1 13. MedRisk further exacerbates its unduly low payment rates by failing
2 to comply with many of the laws and regulations that have been enacted in the last
3 several years requiring that employers and their agents accept electronic claims,
4 acknowledge their receipt electronically upon submission, process and pay those
5 claims expeditiously, provide prompt, clear explanations for any claim contest or
6 denial, and abide by the internal and external billing dispute mechanisms. As a
7 result, chiropractors continue to deal with all the billing and payment issues that
8 have plagued the workers' compensation system prior to the adoption of these laws,
9 including "lost claims" and payment delays.

10 14. Because of these practices, injured workers find it difficult to access
11 the care they need, health care professionals are forced to bid against each other and
12 are extorted to accept significantly below standard rates to obtain any referrals or
13 opt out and thus are unable to see workers compensation patients as a significant
14 part of their patient mix , and payors pay inflated amounts to MedRisk because they
15 may not be provided key information about how much MedRisk pays the treating
16 health care professionals.

17 15. Unduly low payment rates also force health care professionals to see
18 more patients in a day, spend less time with each patient, delegate work to less
19 skilled support personnel, defer making capital investments in their practices, and
20 seek employment by hospitals or health systems, lessening the availability of such
21 professionals for direct contact, assessment and treatment. The prospective cap
22 created by MedRisk's programs that requires chiropractors who wish to be preferred
23 providers within the MedRisk network, and thus receive the most referrals, to stay
24 at or below the average utilization rate of all chiropractic practices in California,
25 without regard to the needs of their individual patient populations, also creates
26 significant harm. The gravity of the harms created by Defendants' conduct thus not
27 only affect Plaintiff and its members, but also injured workers. In the short run,
28 Defendants' conduct degrades the quality of medical services injured workers

1 receive; in the long run, it will exacerbate the access issues already encountered by
2 injured workers, driving up the costs of absenteeism and ultimately the medical cost
3 of services rather than acting in what are the injured worker's best interests in the
4 first instance. MedRisk is the primary party that benefits as a result of these
5 transactions, to the detriment of all others who are significantly harmed as a result
6 of such conduct.

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

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

18 **PARTIES**

19 18. On personal knowledge, California Chiropractic Association ("Cal
20 Chiro") is a California corporation with its principal place of business located at
21 1451 River Park Drive, Sacramento, California 95815. Cal Chiro is a non-profit
22 membership organization, with approximately 2,200 chiropractor members located
23 throughout the State of California. Cal Chiro's stated mission is to position
24 chiropractors to improve the quality of life of all Californians. In doing so, Cal
25 Chiro has a multi-pronged approach. Cal Chiro seeks to provide its members with
26 services and programs designed to effectively represent chiropractors before state
27 government, communicate to chiropractors the latest clinical and governmental
28 news affecting their practices and patients, offer products and services through

1 partners and others to positively impact patient treatment, and enhance the public’s
2 knowledge of benefits of chiropractic treatment. Cal Chiro actively engages in the
3 legislative, political and regulatory processes to carry out its mission. Additionally,
4 Cal Chiro regularly engages with government and private health plans to advocate
5 for the interests of its members and works to represent members in discussions with
6 numerous companies, including MedRisk and its subsidiary companies, with
7 respect to payment practices such as at issue in this Complaint.

8 19. Cal Chiro brings this lawsuit in its capacity as an association, and on
9 behalf of its members. As further set forth below, Plaintiff’s members have lost,
10 and continue to lose, patients and income, and continue to have patients diverted as
11 a result of MedRisk’s illegal conduct as a “middleman” in California’s workers’
12 compensation system. Plaintiff does not seek any individual relief greater or
13 different than would benefit its members.

14 20. Defendant MedRisk, LLC is company organized under the laws of
15 Delaware with its principal place of business as being located at 2701 Renaissance
16 Boulevard, King of Prussia, Pennsylvania 19406, and is registered to do business in
17 California but has no registered address in California. On information and belief,
18 MedRisk, LLC is transacting business as an unlicensed workers’ compensation
19 provider network broker in and from this State. Moreover, on information and
20 belief, MedRisk, LLC conducts activities in California directly and through various
21 divisions and subsidiaries operating here.

22 21. Defendant MedRisk Holdco, LLC is company organized under the
23 laws of Delaware with its principal place of business as being located at 2701
24 Renaissance Boulevard, King of Prussia, Pennsylvania 19406, and is registered to
25 do business in California but has no registered address in California. On information
26 and belief, MedRisk Holdco, LLC is transacting business as an unlicensed workers’
27 compensation provider network broker in and from this State.

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1 22. The true names, roles and/or capacities of Defendants named as DOES
2 1 through 10, inclusive, are currently unknown to Plaintiff and, therefore, are named
3 as Defendants under fictitious names as permitted by the rules of this Court. Plaintiff
4 will identify their true identities and involvement in the wrongdoing at issue if and
5 when they become known.

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

17 **JURISDICTION AND VENUE**

18 24. The Southern District of California has personal jurisdiction over the
19 Defendants named herein because Defendants transact significant business in
20 California. Specifically, jurisdiction over Defendants is proper because they have
21 purposely availed themselves of the privilege of conducting business activities in
22 California, are registered to conduct business in this State and because they
23 currently maintain systematic and continuous business contacts with this State
24 and/or base a significant amount of their operations here by managing the treatment
25 services for thousands of injured workers who are residents of this State on behalf
26 of numerous California workers' compensation insurers, self-insured employers
27 and third party administrators that do business with Defendants, and therefore,
28 rendering the exercise of jurisdiction by California courts and the application of

1 California law to the claims of the Plaintiff permissible under traditional notions of
2 fair play and substantial justice. Moreover, Plaintiff is a non-profit membership
3 organization based in California.

4 25. Venue is proper in the Southern District of California pursuant to 28
5 U.S.C. § 1391 because Defendants transact substantial business in this District and
6 a substantial part of the events or omissions giving rise to Plaintiff's claims arose
7 here. Additionally, several workers' compensation insurers, self-insured employers
8 and third party administrators that hire Defendants either reside or did business with
9 Defendants in this District. Moreover, venue is proper in this District because
10 numerous Cal Chiro members are located here.

11 **STANDING**

12 26. On personal knowledge, Cal Chiro has standing to bring these claims
13 in its own capacity as it has been injured in fact and lost money or property as a
14 result of Defendants' wrongful conduct as described herein, including, *inter alia*,
15 by being forced to divert and devote valuable resources to help members deal with
16 Defendants' illegal, unfair and fraudulent practices, the loss of financial resources
17 in investigating these claims and diversion of staff time to investigate and attempt
18 to resolve such claims, and efforts taken by Cal Chiro to identify, combat and
19 counteract the harm caused by such conduct, consistent with its mission to do so.
20 Resources that could otherwise have been spent on fulfilling the organization's
21 goals were, and are being, diverted to address the practices alleged herein.

22 27. Cal Chiro also has standing to act on behalf of its members because
23 Cal Chiro members have been harmed by Defendants' conduct (although such
24 members are not in any way required to participate individually to seek the
25 prospective, injunctive and equitable relief requested in this action); the interests
26 Cal Chiro seeks to protect are highly relevant to the organization's purpose as set
27 forth above; and a strong likelihood exists that Cal Chiro's members will be harmed
28 in the future. In addition to the specific redress it seeks for its own injury, Cal Chiro

1 seeks declaratory and injunctive relief on behalf of its members. Both Cal Chiro
2 and these members have been harmed by the wrongful acts and practices of
3 Defendants as set forth in this Complaint.

4 28. Cal Chiro has lost money or property as a result of the practices set
5 forth herein and has expended considerable time as well as both financial and staff
6 resources to help Cal Chiro's members regarding Defendants' practices, separate
7 and apart from this litigation. These efforts include, but are not limited to, retaining
8 legislative analysts, incurring travel and meeting expenses, engaging in
9 communications with members, and expending numerous valuable hours of Cal
10 Chiro's leadership's time in order to manage the complaints received from Cal
11 Chiro members regarding Defendants' alleged violations of state law, which Cal
12 Chiro would have otherwise expended in other ways to advance the mission of Cal
13 Chiro set forth above.

14 29. Cal Chiro has, during the last several years, devoted significant
15 resources of its Board members to assist its members in addressing Defendants'
16 improper practices as alleged in this Complaint. Cal Chiro has received and
17 responded to communications from multiple professional chiropractor members
18 who have been pressured to lower prices, been threatened with termination or
19 reductions in referrals, or have actually been terminated or otherwise lost patients
20 and business, all in a manner in contravention with the California laws cited herein.
21 In many cases, patients have been steered away from their preferred chiropractor
22 providers who are members of Cal Chiro during a session of care simply because
23 their clinic is not the lowest cost provider that contracts with MedRisk. The Cal
24 Chiro leadership has thus been forced to expend significant time and resources in
25 investigation of and efforts to redress Defendants' wrongdoing.

26 30. Cal Chiro has also expended resources in communicating with and
27 educating its members about their rights and obligations as well as communicating
28 concerns regarding Defendants' practices with the Division of Workers'

1 Compensation as the only oversight committee agency in the State of California,
2 the Senate Labor and Industrial Relations Committee, numerous state legislators,
3 and leadership of other healthcare professional associations.

4 In addition, Cal Chiro members have been harmed by these practices, as there are
5 many cases where Cal Chiro members are not able to provide care for California's
6 injured workers at all because the only way to access a patient is to contract with
7 Defendants. Many Cal Chiro members cannot afford to sign or have had to
8 terminate a contract with MedRisk because Defendants only offered a payment rate
9 well below the cost of doing business. Historically, the typical California
10 chiropractor outpatient provider could be expected to have a mix of 10-20% workers
11 compensation patients as a percentage of their overall practice. That has eroded
12 dramatically in the past 15 years following changes in various laws affecting
13 chiropractic access and reimbursement in the workers compensation system. As a
14 consequence, less than 10% of California chiropractors are willing to see injured
15 workers, and Defendants' practices have further reduced many Cal Chiro members
16 participation to less than 1-3% of their practice. In effect, the reimbursement
17 policies of Defendants have driven most Cal Chiro members out of treating injured
18 workers.

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

24 32. As further alleged in detail below, Plaintiff, who has lost money or
25 property as a result of Defendants' unfair business practice, seeks to prohibit
26 ongoing unlawful acts that threaten future injury to its members as set forth in this
27 Complaint.

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1 33. Plaintiff reserves the right to expand, limit, modify, or amend these
2 allegations at any time, based upon, *inter alia*, changing circumstances and/or new
3 facts obtained during discovery.

4 **DEFENDANTS' ILLEGAL REFERRAL SCHEME**
5 **VIOLATES CALIFORNIA LAW**

6 34. Employers are required to pay for their employees' medical expenses
7 that result from any workplace injury or illness. Employers generally provide
8 workers compensation coverage for their employees either by purchasing insurance
9 from workers' compensation insurance carriers, or by self-insuring. As a result of
10 major pieces of legislation including, but not limited to, Senate Bill 899 (Stats. 2004,
11 ch. 34), Senate Bill 863 (Stats. 2012, ch. 363) and Senate Bill 542 (Stats. 2015, ch.
12 542), the employer has significant control over the treatment services received by
13 injured workers, including the injured worker's selection of his or her primary
14 physician.

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

26 36. California Labor Code § 139.32(c) provides, in relevant part, that "it is
27 unlawful for an interested party other than a claims administrator or a network
28 service provider to refer a person for services provided by another entity, or to use

1 services provided by another entity, if the other entity will be paid for those services
2 . . . and the interested party has a financial interest in the other entity.”

3 37. MedRisk is not a “physician network services provider” as that term is
4 defined under the Labor Code. To the extent MedRisk is conducting business
5 outside of an MPN as to which they are authorized “physician network service
6 providers,” it does so in violation of Labor Code § 139.32(c).

7 38. MedRisk is not a claims administrator under the Labor Code. The
8 entity that administers workers’ compensation coverage for an employer is known
9 as the “Claims Administrator.” Specifically, the term “Claims Administrator”
10 means a self-administered insurer providing security for the payment of
11 compensation, a self-administered self-insured employer, or a third-party
12 administrator for a self-insured employer, insurer, legally uninsured employer, or
13 joint powers authority. 8 C.C.R. § 9785(a)(3). For purposes of payment
14 requirements, the term “Claims Administrator” means the person or entity
15 responsible for the payment of compensation for any of the following: a self-
16 administered insurer providing security for the payment of compensation, a self-
17 administered self-insured employer, a group self-insurer, an insured employer, the
18 director of the Department of Industrial Relations as administrator for the Uninsured
19 Employers Benefits Trust Fund (UEBTF) and for the Subsequent Injuries Benefit
20 Trust Fund (SIBTF), a third-party claims administrator for a self-insured employer,
21 insurer, legally uninsured employer, group self-insurer, or joint powers authority,
22 and the California Insurance Guarantee Association (CIGA). 8 C.C.R. § 1(i).

23 39. Pursuant to Labor Code § 3702.1, no person, firm, or corporation can
24 act as a Claims Administrator and contract to administer claims of self-insured
25 employers in California unless they are themselves an insurer admitted to transact
26 workers’ compensation insurance in California, or they have a certificate of consent
27 to administer self-insured employers’ workers’ compensation claims. A separate
28 certificate is required for each adjusting location operated by the Claims

1 Administrator. And Claims Administrators for self-insured employers must
2 estimate, in good faith and with the exercise of a reasonable degree of care, the total
3 accrued liability of the employer for the payment of compensation for the
4 employer's annual report to the director. No available public records Plaintiff has
5 been able to locate indicate that MedRisk is directly licensed or otherwise
6 authorized to operate as a Claims Administrator in California.

7 40. As described above, MedRisk has a financial interest in the payor of
8 the services as defined by Labor Code § 139.32(a)(1) in that MedRisk's
9 compensation is based in whole or in part on the volume or value of the services
10 provided as a result of referrals. MedRisk has a financial interest in each of these
11 contracted health care professionals, and they are a representative or agent of their
12 employer, insurer and claims administrator clients based on the contractual
13 relationships described herein, and because they are being paid pursuant to those
14 contractual relationships.

15 41. MedRisk does not generally solicit rate offers from health care
16 professionals. Rather, MedRisk dictates the rates it will pay in exchange for
17 referring patients to these professionals, and determines referrals based on the
18 pricing that providers will accept. Nothing in the approved OFMS schedule
19 provides for the use of this type of tiered pricing process. MedRisk's own emails
20 to Plaintiff's members confirm that MedRisk conditions fee increases on the number
21 of referrals and that fee increases adversely affect the number of referrals that
22 Plaintiff's members can receive.

23 42. MedRisk's representatives routinely communicate the contrasting
24 rates imposed on various competing health care professionals in the same
25 geographic market to other professionals in an effort to convince them to take a
26 drastically lower payment rate in exchange for a preference in terms of a specified
27 increase in the number of referrals they will receive. It has been MedRisk's practice
28 to state the number of referrals that were recently made in a particular geographic

1 area, how few went to a particular chiropractor because of the rate they charged,
2 how many went to competitors in the area who accepted lower rates, and how many
3 more would go to the chiropractor if they agreed to reduce their rates by being able
4 to move up higher on the map of providers. Such statements make clear to
5 chiropractors who do not accede to the deepest discounts MedRisk demands but
6 remain contracted at higher rates that they will receive referrals only when MedRisk
7 cannot refer the injured worker to a practice that has contracted with it at a lower
8 rate in the same geographic area.

9 43. Such claims also establish that MedRisk is representing its networks
10 are significantly larger than they actually are, since only a small number of referrals,
11 by their own admission, are sent to chiropractors who bill at highest rates.
12 Defendants thus are promoting the existence of a “phantom network,” since while
13 they claim they have thousands of contracted chiropractors in their network, by
14 referring patients primarily to providers who bill at the lowest rates, in fact their
15 network is significantly smaller and narrower. Defendants have used that sort of
16 tiering rating system to extort chiropractors to accept ever lower rates. Being that
17 MedRisk is one of the largest players in this industry and may be required by some
18 companies to be used in order to get any referral business at all, chiropractors have
19 few options if they wish to treat patients with workers compensation-related
20 injuries. Having successfully used this strategy over the last several years,
21 Defendants have been able to, and continue to, skew the entire payment range
22 provided to chiropractors to be significantly below the OFMS rates, claiming such
23 rates are in effect for the indefinite future absent separate agreement. This skewed
24 system impacts the rates of both contracted and non-contracted chiropractors.

25 44. Pursuant to the OMFS, a chiropractor would typically receive
26 approximately \$135 for all the treatment services a chiropractor may provide an
27 injured worker in a day.

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1 45. The rates MedRisk pays chiropractors are significantly below the
2 OMFS rates; MedRisk rates have not increased despite the increases mandated for
3 these services by the OMFS over the last several years as set forth herein. The
4 OMFS rates for chiropractic services were increased again on January 1, 2018;
5 MedRisk so far does not appear to have passed on any of that increase to its
6 contracted chiropractors; if anything, they have tried to get chiropractors to agree to
7 rates as low as half that amount in exchange for increased referrals despite these
8 increases in the OMFS rates in recent years – meaning that Defendants have been
9 further profiting despite the directive to utilize higher payment schedules.

10 46. Based on statutes endowing employers with near total control of
11 medical care, injured workers rarely refer themselves to chiropractors, nor are they
12 generally referred by their treating physicians; the vast majority of referrals are
13 controlled and made directly by MedRisk or by many adjustors who have been
14 directed to primarily if not exclusively refer patients to MedRisk facilities. Injured
15 workers searching for a convenient chiropractor cannot make an appointment at that
16 practice directly. Rather, MedRisk hijacks the providers' addresses as MedRisk's
17 own, and patients must call the MedRisk phone number listed in the directory, at
18 which point they will be referred to a chiropractor selected by the MedRisk staff.
19 Thus, the provider directory is simply a method to steer patients to MedRisk's
20 cheapest providers to the benefit of MedRisk. Even though injured workers have
21 the right to choose a new primary treating physician after 30 days if they are
22 dissatisfied with the physician assigned by their employer, MedRisk misleads
23 injured workers into believing they have no such rights when it comes to their
24 chiropractors.

25 47. Because MedRisk directs its contracted providers to send their bills to
26 MedRisk and not to the ultimate workers' compensation payor insurer or self-
27 insured employer, and MedRisk itself bills its workers compensation payor clients
28 for the services contracted health care professionals provide to injured workers,

1 MedRisk is able to hide from its payor clients the amount of the spread it is able to
2 retain between what these clients pay MedRisk and what MedRisk pays its
3 contracted health care professionals.

4 48. By dictating the price of services to be charged by competing health
5 care professionals for the provision of treatment services to injured workers as an
6 agent of the competing purchasers of those services, MedRisk is able to set both the
7 rates multiple health care professionals receive and, separately and at a much higher
8 price, the rates multiple workers' compensation payers must pay for their services.
9 In so doing, Defendants' conduct constitutes acts of unfair competition as set forth
10 herein. In sum, MedRisk is paid by workers' compensation payors, at least in part,
11 based 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 provided
15 to injured workers, with MedRisk keeping the "spread" between the contracted rates
16 between MedRisk and the payor on the one hand, and MedRisk and the health care
17 professional on the other. Because MedRisk is paid more when it refers injured
18 workers to specific contracted network providers based on this spread, the amount
19 it is paid increases with the size of the discounts it has negotiated. MedRisk thus has
20 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 49. Further, MedRisk's conduct violates Labor Code § 139.32(d) which
23 states that it is unlawful for an interested party to enter into an arrangement or
24 scheme that the interested party knows, or should know, has a purpose of ensuring
25 referrals by the interested party to a particular entity that, if the interested party
26 directly made referrals to that other entity, would be in violation of this section; and
27 that it is unlawful for an interested party to offer, deliver, receive, or accept any
28 rebate, refund, commission, preference, patronage, dividend, discount, or other

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

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

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

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

1 referring clients or patients to ... obtain services or benefits pursuant to this division
2”, also in violation of Labor Code § 3215.

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

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

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

23 **UNLICENSED CLAIMS ADMINISTRATOR AND ADJUSTER**
24 **ACTIVITIES**

25 56. Defendants’ conduct in managing the provision of chiropractic
26 services and paying the claims submitted by chiropractors for therapy provided to
27 injured workers on behalf of self-insured employers also violates California law.
28

1 57. Unless the employee has pre-designated a personal physician, the
2 employer may select a treating physician during the first 30 days after a workplace
3 injury is reported. After 30 days from the date the injury is reported, the employee
4 may be treated by a physician or facility of his or her choice within a reasonable
5 geographic area, unless the employer has established an MPN. An MPN is a
6 network of providers, including physicians and other health care professionals,
7 created to provide medical treatment to injured employees. MPNs may be created
8 by self-insured employers, workers' compensation insurers or entities providing
9 physician network services. When the employer has established an MPN, the
10 employer or its representative arranges the initial medical evaluation and treatment
11 on behalf of the employee. Unless exempted by law or the employer, all medical
12 care for injured employees whose employer has an approved MPN will be handled
13 and provided through the MPN pursuant to Labor Code § 4616(a). The MPN
14 determines which locations are approved for physicians to provide treatment under
15 the MPN. 8 C.C.R. § 9767.3(4). Approved locations must be listed in an MPN's
16 provider directory.

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

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

26 60. An "entity that provides physician network services," as referenced in
27 Labor Code § 4616(a), means a legal entity employing or contracting with
28 physicians and other medical providers or contracting with physician networks to

1 deliver medical treatment to injured workers on behalf of one or more insurers, self-
2 insured employers, the Uninsured Employers Benefits Trust Fund, the California
3 Insurance Guaranty Association, or the Self-Insurers Security Fund, and that meet
4 the requirements of Labor Code §§ 4616, *et seq.*, and corresponding regulations,
5 including 8 C.C.R. § 9767.1(a)(7). It may include, but is not limited to, Claims
6 Administrators.

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

11 62. A complete, up-to-date list of MPNs is available at: www.dir.ca.gov/dwc/mpn/DWC_MPN_Main.html. MedRisk is not separately listed as an
12 authorized MPN. It is listed as a provider in the MPNs.
13

14 63. Chiropractors do not have any reasonable way of knowing whether an
15 injured worker is being referred within or outside of an MPN owned by MedRisk.

16 64. MedRisk is not licensed as an insurance company in California, nor as
17 a third-party administrator.

18 65. On information and belief, MedRisk does not appear to have a
19 "certificate of consent" to administer self-insured employers' workers'
20 compensation claims.

21 66. On information and belief, MedRisk is not an "entity that provides
22 physician network services" as that term is defined under California law as to the
23 chiropractor or other health care professionals with which it contracts, as MedRisk
24 does not directly own an approved MPN.

25 67. MedRisk does not appear to be certified as workers' compensation
26 claims adjusters or medical-only claims adjusters.

27 68. MedRisk is not licensed as a physician, chiropractor or other health
28 care provider.

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

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

18 71. In not maintaining the required licenses, authorizations or certificates
19 of consent, Defendants are violating numerous California laws as set forth in this
20 Complaint, including, *inter alia*, Business and Professions Code §§ 2400, 2630 and
21 2694, Labor Code § 3702.1 and Insurance Code § 11761.

22 **BILLING AND PAYMENT VIOLATIONS**

23 72. Defendants' conduct in submitting bills for and collecting payments
24 for chiropractic services also violates Business and Professions Code §§ 2400, 2630
25 and 2694, as Defendants are not licensed to practice as chiropractors.

26 73. Defendants' claims handling and payment activities further violate the
27 entire system governing the electronic handling and payment of bills for workers'
28 compensation medical treatment. Defendants' failure to accept electronic claims,

1 acknowledge their receipt electronically upon submission, process and pay those
2 claims expeditiously at no additional cost to the chiropractors, provide prompt, clear
3 explanations for any claim contest or denial, and abide by the legally mandated
4 internal and external billing dispute mechanisms violates Labor Code §§ 4603.2,
5 4603.4 and 4603.6 and their implementing regulations, 8 C.C.R. §§ 9792.5.1, *et seq.*

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

15 75. Under California Labor Code § 4603.2, the explanation of review must
16 include all the following:

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

19 b. The amount paid.

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

22 d. The additional information required to make a decision for an
23 incomplete itemization.

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

26 f. Information on whom to contact on behalf of the employer if a dispute
27 arises over the payment of the billing. The explanation of review shall inform the
28 medical provider of the time limit to raise any objection regarding the items or

1 procedures paid or disputed and how to obtain an independent review of the medical
2 bill pursuant to Section 4603.6.

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

9 77. The regulations implementing these statutes, 8 C.C.R. §§ 9792.5.1, *et*
10 *seq.*, and the California Division of Workers' Compensation Medical Billing and
11 Payment Guide and the California Division of Workers' Compensation Electronic
12 Medical Billing and Payment Companion Guide adopted by those regulations,
13 further require that the claims administrator send electronic claims
14 acknowledgments and remittance advice (explanations of review) and pay
15 electronic claims within 15 days.

16 78. MedRisk does not comply with these laws, does not pay on time, and
17 does not pay interest, thus significantly increasing the administrative burden on
18 chiropractors, significantly delaying and reducing the payments they would
19 otherwise receive and eliminating any ability for Defendants' employer clients from
20 auditing MedRisk's actual payment activities.

21
22 **CAUSE OF ACTION**

23 **Violation of the Unfair Competition Law**
24 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

25 **Unlawful, Unfair, and Deceptive or Fraudulent Business Acts and Practices**

26 79. Plaintiff incorporates by reference each of the preceding paragraphs as
27 though fully set forth herein.

28 80. Plaintiff brings this claim on its own behalf and on behalf of its
members, as set forth above.

1 81. 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 acts
4 alleged herein, Plaintiff’s members have been injured in fact and lost money or
5 property as a result of Defendants’ acts and practices, as they have lost and continue
6 to lose patients and continue to have patients diverted to providers who have been
7 forced to accept unreasonably low rates from MedRisk, pursuant to contracts that
8 by law may be void as against public policy to the extent they are proposed and
9 entered into in violation of law, and through the efforts they have had to expend
10 combatting Defendants’ conduct, and will continue to do so.

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

15 83. A business practice is “unlawful” under the UCL if it is forbidden by
16 law, including state laws or regulations, and the violation of any law may serve as
17 the predicate for a violation of the “unlawful” prong of the UCL. Defendants’
18 conduct is unlawful under numerous California laws and regulations, as set forth
19 herein.

20 84. The acts and practices of Defendants as described above constitute
21 “unfair” business acts and practices. Plaintiff and its members have also suffered
22 injury in fact and a loss of money or property as a result of Defendants’ unfair
23 business acts and practices as set forth in detail above and will continue to do so.

24 85. Defendants’ conduct does not benefit consumers or competition.
25 Indeed, the harm to consumers who are forced to utilize such services and to
26 competition in the form of health care professionals who are either forced to accept
27 unreasonable payments or forego providing such services altogether to a significant
28 number of consumers is significant, for the reasons set forth above.

1 86. Plaintiff, its members who have not contracted with Defendants and
2 the affected public could not have reasonably avoided the injury each of them
3 suffered, which injury is substantial.

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

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

22 89. The acts and practices of Defendants as described above also constitute
23 “fraudulent” or “deceptive” business practices as that term is used in Business &
24 Professions Code §§ 17200, *et seq.* Plaintiff and its members have suffered injury
25 in fact and a loss of money or property as a result of Defendants’ deceptive or
26 fraudulent business acts and practices as set forth in detail above, and will continue
27 to do so.

28 ///

1 90. Defendants’ obfuscated contracting and patient referral scheme is also
2 likely to deceive both injured workers and workers’ compensation payors, as set
3 forth in detail above, into believing they are receiving services and making
4 payments consistent with what the law permits, when in fact they are being charged
5 pursuant to a series of contracts that may be void as against public policy, and that
6 MedRisk’s chiropractor “provider network” is significantly larger than it actually is
7 based on the tiered pricing MedRisk uses to narrow its network in making
8 chiropractic patient referrals.

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

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

25 93. Defendants’ acts of unfair competition as set forth above present a
26 continuing threat and will persist and continue to do so unless and until this Court
27 issues appropriate injunctive and declaratory relief, including a declaration whether
28 the contracts offered and imposed by Defendants in violation of the above laws are

1 void as against public policy. In addition, Plaintiff may be entitled to equitable relief
2 according to proof at time of trial. Plaintiff also seeks attorneys’ fees and costs
3 pursuant to, *inter alia*, C.C.P. § 1021.5.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, individually and on behalf of its members as set
6 forth above, prays for relief as follows to the extent permitted by law:

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

11 Dated: October 23, 2019

Respectfully submitted,
12 POMERANTZ LLP

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14
15 By: /s/ Ari Y. Basser

Jordan L. Lurie
Ari Y. Basser

16
17
18 Dated: October 23, 2019

Respectfully submitted,

LAW OFFICES OF ZEV B. ZYSMAN
A PROFESSIONAL CORPORATION

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20
21 By: /s/ Zev B. Zysman

Zev B. Zysman

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25 Attorneys for Plaintiff
26 California Chiropractic Association

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