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SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

INDEPENDENT PHYSICAL THERAPISTS  
OF CALIFORNIA, on behalf of itself and its  
members,

Plaintiff,

vs.

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

Defendants.

CASE NO. RG19045049

Hon. Brad Seligman

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

1 Plaintiff Independent Physical Therapists of California (“IPTCA” or “Plaintiff”), by and  
2 through the undersigned attorneys, files this First Amended Complaint against Defendants  
3 MedRisk, LLC and MedRisk Holdco, LLC (hereafter collectively “MedRisk,” except where  
4 otherwise indicated) and DOES 1-10, inclusive (hereafter collectively “Defendants”) on behalf  
5 of itself and its members for violations of California’s Unfair Competition Law.

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

### 9 NATURE OF THE ACTION

10 1. This action arises out of Defendants’ systemic practice of illegally referring  
11 injured workers to those of its contracted health care professionals who acquiesce to the deepest  
12 discounts and other systemic policy violations.

13 2. MedRisk’s system is nothing like a traditional Preferred Provider Organization  
14 (“PPO”) where the PPO contracts with health care providers, and the payors let their  
15 beneficiaries choose to receive services from any of the health care providers who contract with  
16 the PPO, and then the payors pay the claims submitted by those contracted providers. Rather,  
17 MedRisk solicits deep discounts of a specified amount from its contracted health care  
18 professionals as an inducement for MedRisk to send them more referrals. MedRisk assigns  
19 injured workers to the provider of MedRisk's choosing, thus further ensuring it maximizes its  
20 revenue by assigning these injured workers to the providers who have acquiesced to the deepest  
21 discounts.

22 3. Under this system, over the past several years, MedRisk has engaged and  
23 continues to engage in a uniform and illegal practice of soliciting and receiving improper  
24 payments for the referral of healthcare services and managing services provided to injured  
25 workers in violation of California Labor Code § 3215, which prohibits offering or accepting any  
26 kind of compensation or inducement in exchange for referrals, in both its relationships with its  
27 workers' compensation insurers, self-insured employers and third-party administrators and in its  
28 relationships with its contracted health care professionals.

1           4.       Similarly, MedRisk's alleged misconduct is in violation of California Labor Code  
2 § 3820, which prohibits knowingly soliciting discounts as an inducement for referring patients  
3 to obtain workers compensation benefits and knowingly receiving other consideration as  
4 compensation for referring patients to obtain medical or medical-legal services.

5           5.       Defendants further exacerbate their unlawful payment scheme by engaging in a  
6 systemic practice of failing to comply with requirements that employers and their agents accept  
7 electronic claims, acknowledge their receipt electronically upon submission, process and pay  
8 those claims expeditiously, provide prompt, clear explanations for any claim contest or denial,  
9 and abide by the internal and external billing dispute mechanisms.

10          6.       By this action, Plaintiff seeks injunctive and declaratory relief to remedy  
11 Defendants' on-going violations of California's Unfair Competition Law, Cal. Bus. & Prof.  
12 Code §§ 17200, *et seq.* ("UCL") based on schemes that MedRisk is illegally referring injured  
13 workers to those of its contracted providers who acquiesce to the deepest discounts and other  
14 systemic policy violations. Plaintiff's requested relief does not require canceling, amending or  
15 altering third party contracts. Moreover, Plaintiff's claim is not barred based on the doctrine of  
16 primary jurisdiction or abstention as it does not seek to have this Court assume the  
17 administrative functions of the California Department of Worker's Compensation ("DWC") or  
18 interfere with the functions of the DWC, and the relief sought does not require this Court to  
19 usurp or impinge upon those functions. However, it does require that Defendant cease from the  
20 practice of illegally referring patients to providers based on lower rates and pocketing the  
21 difference, which affects the ability of Plaintiff's members to do business, is injurious to the  
22 public, and is an illegal and unfair business practice. Plaintiff also seeks an order requiring  
23 Defendants to comply with all legal requirements regarding electronic billing. Defendants'  
24 conduct is continuing and will not be remedied absent the relief sought herein by Plaintiff on  
25 behalf of itself and its members under the UCL.

26          7.       As the heart of this action involves systemic policy violations which make  
27 extensive participation of individual members unnecessary, Plaintiff has associational standing  
28 to pursue this action.

1 **PARTIES**

2 8. On personal knowledge, Independent Physical Therapists of California  
3 (“IPTCA”) is a California corporation with its principal place of business located in Encinitas,  
4 California. IPTCA is a non-profit membership organization, with approximately 300 physical  
5 therapist members located throughout the State of California. IPTCA’s stated mission is to  
6 educate practicing physical therapists in order to improve their clinical and business acumen, in  
7 addition to providing a body for advocating for the interests of physical therapists in California.  
8 IPTCA seeks to provide its members with services and programs designed to effectively  
9 represent physical therapists before state government, communicate to physical therapists the  
10 latest clinical and governmental news affecting their practices and patients, offer products and  
11 services through partners and others to positively impact patient treatment, and enhance the  
12 public’s knowledge of benefits of physical therapy treatment. IPTCA actively engages in  
13 media, legislative, political and regulatory processes to carry out its mission. Additionally,  
14 IPTCA regularly engages with government and private health plans to advocate for the interests  
15 of its members and works to represent members in discussions with numerous companies,  
16 including MedRisk and its subsidiary companies, with respect to payment practices such as at  
17 issue in this Complaint.

18 9. IPTCA brings this lawsuit in its capacity as an association, and on behalf of its  
19 members. As further set forth below, Plaintiff’s members have lost, and continue to lose,  
20 patients and income, and continue to have patients diverted as a result of MedRisk’s illegal  
21 conduct as a “middleman” in California’s workers’ compensation system. Plaintiff does not  
22 seek any individual relief greater or different than would benefit its members. Plaintiff has made  
23 numerous attempts to resolve this matter pre-litigation, including regulatory and legislative  
24 efforts, among other measures. Defendants’ conduct has created untenable business conditions  
25 for Plaintiff and its members. Defendants’ cartel-like conduct is continuing and will not be  
26 remedied absent the relief sought herein by Plaintiff on behalf of itself and its members.

27 10. Defendant MedRisk, LLC is a company organized under the laws of Delaware  
28 with its principal place of business located in King of Prussia, Pennsylvania, and is registered to

1 do business in California but has no registered address in California. On information and belief,  
2 MedRisk, LLC is transacting business as an unlicensed workers' compensation provider  
3 network broker in and from this State. Moreover, on information and belief, MedRisk, LLC  
4 conducts activities in California directly and through various divisions and subsidiaries  
5 operating here.

6 11. Defendant MedRisk Holdco, LLC is a company organized under the laws of  
7 Delaware with its principal place of business located in King of Prussia, Pennsylvania, and is  
8 registered to do business in California but has no registered address in California. On  
9 information and belief, MedRisk Holdco, LLC is transacting business as an unlicensed workers'  
10 compensation provider network broker in and from this State.

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

17 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10  
18 are the partners, agents, owners, shareholders, managers, or employees of MedRisk, LLC, and  
19 MedRisk Holdco, LLC at all relevant times.

20 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
21 acts and omissions alleged herein was performed by, or is attributable to, MedRisk, LLC, and  
22 MedRisk Holdco, LLC, and/or DOES 1 through 10 (collectively "Defendants"), each acting as  
23 the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the  
24 other co-Defendants and was acting within the course and scope of such agency, employment,  
25 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of  
26 any and all Defendants were in accordance with, and represent, the official policy of  
27 Defendants.

28 15. Defendants' conduct described herein was undertaken or authorized by

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

10 16. Plaintiff is informed and believes, and further alleges, that at all relevant times  
11 there has existed a unity of interest and ownership between MedRisk, LLC, and MedRisk  
12 Holdco, LLC, such that any individuality and separateness between these entities have ceased.

13 17. MedRisk, LLC is therefore the alter ego of MedRisk Holdco, LLC, which is and  
14 at all relevant times has been merely a shell, instrumentality, and conduit through which  
15 MedRisk Holdco, LLC carries on business in the State of California.

16 18. Adherence to the fiction of the separate existence of Defendants MedRisk, LLC,  
17 and MedRisk Holdco, LLC as distinct from one another would permit an abuse of the corporate  
18 privilege, and would promote injustice by protecting Defendants MedRisk, LLC, and MedRisk  
19 Holdco, LLC from liability for the wrongful acts committed by it under its various names.

#### 20 **JURISDICTION AND VENUE**

21 19. This Court has jurisdiction over the parties to this action. Plaintiff is a non-profit  
22 membership organization based in California. Defendants transact significant business in  
23 California. The court has jurisdiction over this action under Article VI, §10 of the California  
24 Constitution and §410.10 of the Code of Civil Procedure. Jurisdiction is also proper under  
25 Business & Professions Code § 17200, *et seq.*

26 20. Jurisdiction over Defendants is also proper because Defendants have purposely  
27 availed themselves of the privilege of conducting business activities in California, are registered  
28 to conduct business in this State and because they currently maintain systematic and continuous

1 business contacts with this State and/or base a significant amount of their operations here by  
2 managing the treatment services for thousands of injured workers who are residents of this State  
3 on behalf of numerous California workers' compensation insurers, self-insured employers and  
4 third party administrators that do business with Defendants, and therefore, rendering the  
5 exercise of jurisdiction by California courts and the application of California law to the claims  
6 of the Plaintiff permissible under traditional notions of fair play and substantial justice.

7 21. Venue is proper in this County because California Code of Civil Procedure  
8 §§395 and 395.5, and case law interpreting those sections, provide that if a foreign business  
9 entity fails to designate with the office of the California Secretary of State a principal place of  
10 business in California, it is subject to being sued in any county in the State that plaintiff desires.  
11 On information and belief, Defendants are foreign business entities, and have failed to designate  
12 a principal place of business in California with the office of the Secretary of State as of the date  
13 this Complaint was filed. Thus, Defendants have no right to any particular venue and Plaintiff  
14 may file this complaint in any county in California. *See Hardin v. San Jose City Lines*, 103 Cal.  
15 App. 2d 688, 689 (1951); *see also Easton v. Sup.Ct. (Schneider Bros., Inc.)*, 12 Cal. App. 3d  
16 243, 246-247 (1970). Moreover, venue is proper in this County because Defendants transact  
17 substantial business in this County, several workers' compensation insurers, self-insured  
18 employers and third party administrators that hire Defendants either reside or did business with  
19 Defendants in this County, Defendants entered into transactions and received substantial profits  
20 from contracts with persons in this County, and because numerous IPTCA members are located  
21 here.

## 22 IPTCA'S STANDING

23 22. On personal knowledge, IPTCA has organizational standing to bring these claims  
24 in its own capacity as it has been injured in fact and lost money or property as a result of  
25 Defendants' wrongful conduct as described herein, including, *inter alia*, by being forced to  
26 divert and devote valuable resources to help members deal with Defendants' illegal, unfair and  
27 fraudulent practices, the loss of financial resources in investigating these claims and diversion of  
28 staff time to investigate and attempt to resolve such claims, and efforts taken by IPTCA to

1 identify, combat and counteract the harm caused by such conduct, consistent with its mission to  
2 do so. Resources that could otherwise have been spent on fulfilling the organization's goals  
3 were, and are being, diverted to address the systemic practices alleged herein.

4       23. IPTCA also has associational standing to act on behalf of its members because  
5 IPTCA members have been harmed by Defendants' conduct (although such members are not in  
6 any way required to participate individually to seek the prospective, injunctive and equitable  
7 relief requested in this action); the interests IPTCA seeks to protect are highly relevant to the  
8 organization's purpose as set forth above; and a strong likelihood exists that IPTCA'S members  
9 will be harmed in the future. In addition to the specific redress it seeks for its own injury,  
10 IPTCA seeks declaratory and injunctive relief on behalf of its members. Both IPTCA and its  
11 members have been harmed by the wrongful acts and practices of Defendants as set forth in this  
12 Complaint. An association that has suffered injury in fact and lost money or property as a result  
13 of defendant's wrongful conduct may represent its members as the plaintiff in a UCL action.

14       24. Further, Plaintiff has associational standing because the individual participation  
15 of each member of the Plaintiff association is not *indispensable* to resolution of Plaintiff's  
16 claims. Indeed, neither the UCL claims asserted nor the injunctive and declaratory relief  
17 requested as set forth herein, require the participation of individual members. Defendants'  
18 systemic policy violations make extensive individual participation of Plaintiff's members  
19 unnecessary. To be clear, however, the participation of *some* members is not fatal to  
20 associational standing, so long as the participation of *each* member is not required. IPTCA has  
21 standing to pursue the UCL claims on behalf of its members, even if it might need to rely on  
22 evidentiary submissions of *some* of its members to establish the UCL violations. Moreover, as  
23 IPTCA seeks only equitable relief from these UCL violations, both the claims and relief support  
24 judicially efficient management. *United Farmers Agents Assn, Inc. v. Farmers Group, Inc.*, 32  
25 Cal. App. 5 478 (2019).

26       25. IPTCA has lost money or property as a result of the practices set forth herein and  
27 has expended considerable time and out of pocket expenses, as well as both financial and staff  
28 resources, prior to initiation of this action and independently of this action, to help IPTCA's



1 members regarding Defendants' alleged illegal practices, separate and apart from this litigation.  
2 These efforts include, but are not limited to, incurring costs and expenses relating to retaining  
3 legislative analysts to evaluate the practice of illegal referrals based on discounted rates,  
4 incurring travel and meeting expenses to meet with legislative officials to discuss the illegal  
5 practice, engaging in communications with members, and expending numerous valuable hours  
6 of IPTCA's leadership's time, which could have been spent on other projects, in order to  
7 manage the complaints received from IPTCA members regarding Defendants' alleged violations  
8 of state law, which IPTCA would have otherwise expended in other ways to advance the  
9 mission of IPTCA set forth above.

10         26. IPTCA has, during the last several years and prior to this litigation, been required  
11 to devote significant resources of its staff and Board members to assist its members in  
12 addressing Defendants' improper practices as alleged in this Complaint. IPTCA has received  
13 and responded to communications from multiple professional physical therapy members who  
14 have been pressured to lower prices, been threatened with termination or reductions in referrals,  
15 or have actually been terminated or otherwise lost patients and business, all in a manner in  
16 contravention with the California laws cited herein. In many cases, patients have been steered  
17 away from their preferred physical therapy providers who are members of IPTCA during a  
18 session of care simply because their clinic is not the lowest cost provider that contracts with  
19 MedRisk. MedRisk also has been participating in utilization review (UR) and claims  
20 administrator activities without any license or certification, which is in violation of California  
21 statutes. The IPTCA leadership has thus been forced to expend significant time and resources in  
22 investigation of and efforts to redress Defendants' wrongdoing.

23         27. IPTCA has also expended resources in communicating with and educating its  
24 members about their rights and obligations with respect to Defendant's illegal activities, as well  
25 as communicating concerns regarding Defendants' practices with the Division of Workers'  
26 Compensation as the only oversight committee agency in the State of California, the Senate  
27 Labor, Public Employment and Retirement Committee, Assembly Insurance Committee,  
28 numerous state legislators, and leadership of other healthcare professional associations.



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

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

15 34. Specifically, MedRisk acts as an illegal, for-profit “middleman” in California’s  
16 workers’ compensation system. MedRisk solicits and receives improper payments for the  
17 referral of healthcare services and managing services provided to injured workers in California  
18 in a multitude of ways that violate numerous California laws. These laws are specifically  
19 designed to protect injured workers, including laws requiring authorization or certification to  
20 engage in such conduct in California.

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

1 administrator, third party administrator, or claims adjustor in violation of numerous California  
2 laws.

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

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

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

22 39. Further, MedRisk's payor clients do not directly pay health care professionals'  
23 claims. Rather, MedRisk pays these claims and pockets whatever difference there is between  
24 what MedRisk is paid by payors and what MedRisk pays these professionals, creating a direct  
25 financial incentive to make referrals to the providers who have acquiesced to the deepest  
26 discounts.

27 40. For example, assume MedRisk agrees to provide all the services one of its  
28 client's injured workers needs for 10% less than the California Official Medical Fee Schedule

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

10 41. MedRisk’s clients neither have access to MedRisk’s provider contracts nor to  
11 copies of bills which these healthcare professionals submit to MedRisk for payment. Indeed,  
12 MedRisk forbids health care professionals from including the contracted rate on their bills.  
13 Thus, MedRisk’s clients may likely not know how much of the money these clients have paid  
14 that MedRisk is retaining and not passing on.

15 42. Moreover, MedRisk does not reimburse providers as required or pass on to  
16 providers any increases in reimbursements for services provided. For all the treatment services  
17 a physical therapist may provide an injured worker in a day, MedRisk generally pays its  
18 contracted physical therapists significantly below what physical therapists would be paid under  
19 the OMFS for workers’ compensation treatment services, which for a typical physical therapist  
20 is approximately \$155. The OMFS is based on the Medicare Physician Fee Schedule (“PFS”),  
21 which is itself maintained by the Centers for Medicare and Medicaid Services (“CMS”) to  
22 reflect the realistic cost of doing business for those health care professionals who are providing  
23 care to Medicare beneficiaries.

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

1 payment.

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

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

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

23 47. MedRisk further exacerbates its unduly low payment rates by failing to comply  
24 with many of the laws and regulations that have been enacted in the last several years requiring  
25 that employers and their agents accept electronic claims, acknowledge their receipt  
26 electronically upon submission, process and pay those claims expeditiously, provide prompt,  
27 clear explanations for any claim contest or denial, and abide by the internal and external billing  
28 dispute mechanisms. As a result, physical therapists continue to deal with all the billing and

1 payment issues that have plagued the workers' compensation system prior to the adoption of  
2 these laws, including "lost claims" and payment delays.

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

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

25 50. The participation of *some* of Plaintiff's members is not fatal to associational  
26 standing so long as the participation of *each* member is not required. As set forth in this  
27 Complaint, Defendants' systemic policy violations make extensive individual participation of  
28 Plaintiff's members unnecessary. The prerequisite for associational standing - that the claim not

1 require the participation of individual members - is best seen as focusing on matters of  
2 administrative convenience and efficiency. Moreover, as IPTCA seeks only equitable and  
3 declaratory relief from Defendants' UCL violations, both the claims and relief support judicially  
4 efficient management based on associational standing. *United Farmers Agents Assn, Inc. v.*  
5 *Farmers Group, Inc.*, 32 Cal. App. 5 478 (2019). Moreover, Plaintiff's requested relief does not  
6 require canceling, amending or altering third party contracts.

7 51. The individual participation of each member of the Plaintiff association is not  
8 indispensable to resolution of Plaintiff's claims. Plaintiff's claims can be established with  
9 evidence from MedRisk and documentation from some members, such as a small, but  
10 significant sample of Plaintiff's members.

11 52. For example, the following confirmatory emails to physical therapists in  
12 California from MedRisk representatives make quite clear that MedRisk knowingly steers  
13 injured workers to the health care providers willing to take the deepest discounts and suggest  
14 that the practice is systemic across various providers in MedRisk's system:

15 53. In an email dated March 8, 2019 from a MedRisk Network Development  
16 Specialist to a MedRisk provider, MedRisk stated, "Typical reimbursement is usually \$75-\$80.  
17 **There is room to negotiate but it potentially would affect your referral volume.**"

18 54. In an email dated March 30, 2018 from a MedRisk Network Development  
19 Specialist to a MedRisk provider, MedRisk stated, "I can offer an increase to \$75. My  
20 supervisor and I both reviewed the area and this would put you at the top of the rates in your  
21 area, but he is giving me the okay to offer. **Be mindful that having one of the highest rates in**  
22 **the area can potentially affect referrals since our clients are looking for cost savings.**"

23 55. In emails dated June 29, 2018 from a MedRisk Network Development Specialist  
24 to a MedRisk provider, MedRisk stated, "**Honestly, the [requested rate increase] may affect**  
25 **your referral volume**" and that "I reviewed the referrals for your area and I show your centers  
26 received the highest number of referrals to date this year. I show you receiving 106 and the next  
27 highest referral was 96. **You both [sic] at a \$70 per diem but the other provider has more**  
28 **locations. Honestly, staying at \$70 would be your best option if you are looking for referral**



1 **volume.”**

2 56. In an email dated June 29, 2018, a MedRisk provider reported that “I just got off  
3 the phone with [a MedRisk Network Development Specialist] who said that **I could get a direct**  
4 **contract but the \$85 per visit that I am requesting will automatically mean that I will see**  
5 **fewer referrals!”**

6 57. Defendants’ conduct violates the UCL, as well as the numerous California laws  
7 that prohibit Defendants from engaging in illegal payment schemes, prohibiting referral systems  
8 for workers’ compensation treatment services that are directly tied to financial incentives,  
9 prohibiting Defendants from operating without the required authorizations as a physician  
10 network service provider, claims administrator or claims adjustor, and otherwise interfering with  
11 the health care services being provided to injured workers by their physical therapists. Such  
12 conduct is in violation of numerous laws as set forth in detail below.

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

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

22 60. MedRisk is not a claims administrator under the Labor Code. The entity that  
23 administers workers’ compensation coverage for an employer is known as the “Claims  
24 Administrator.” Specifically, the term “Claims Administrator” means a self-administered insurer  
25 providing security for the payment of compensation, a self-administered self-insured employer,  
26 or a third-party administrator for a self-insured employer, insurer, legally uninsured employer,  
27 or joint powers authority. 8 C.C.R. § 9785(a)(3). For purposes of payment requirements, the  
28 term “Claims Administrator” means the person or entity responsible for the payment of

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

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

18         62. As described above, MedRisk has a financial interest in the payor of the services  
19 as defined by Labor Code § 139.32(a)(1) in that MedRisk's compensation is based in whole or  
20 in part on the volume or value of the services provided as a result of referrals. MedRisk has a  
21 financial interest in each of these contracted health care professionals, and they are a  
22 representative or agent of their employer, insurer and claims administrator clients based on the  
23 contractual relationships described herein, and because they are being paid pursuant to those  
24 contractual relationships.

25         63. MedRisk does not generally solicit rate offers from health care professionals.  
26 Rather, MedRisk dictates the rates it will pay in exchange for referring patients to these  
27 professionals, and determines referrals based on the pricing that providers will accept. Nothing  
28 in the approved OFMS schedule provides for the use of this type of tiered pricing process.

1 MedRisk’s own emails to Plaintiff’s members confirm that MedRisk conditions fee increases on  
2 the number of referrals and that fee increases adversely affect the number of referrals that  
3 Plaintiff’s members can receive.

4 64. MedRisk’s representatives routinely communicate the contrasting rates imposed  
5 on various competing health care professionals in the same geographic market to other  
6 professionals in an effort to convince them to take a drastically lower payment rate in exchange  
7 for a preference in terms of a specified increase in the number of referrals they will receive. It  
8 has been MedRisk’s practice to state the number of referrals that were recently made in a  
9 particular geographic area, how few went to a particular physical therapists because of the rate  
10 they charged, how many went to competitors in the area who accepted lower rates, and how  
11 many more would go to the physical therapists if they agreed to reduce their rates by being able  
12 to move up higher on the map of providers. Such statements make clear to physical therapists  
13 who do not accede to the deepest discounts MedRisk demands but remain contracted at higher  
14 rates that they will receive referrals only when MedRisk cannot refer the injured worker to a  
15 practice that has contracted with it at a lower rate in the same geographic area.

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

1 agreement. This skewed system impacts the rates of both contracted and non-contracted  
2 physical therapists.

3 66. Pursuant to the OMFS, a physical therapist would typically receive  
4 approximately \$155 for all the treatment services a physical therapist may provide an injured  
5 worker in a day.

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

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

27 69. Because MedRisk directs its contracted providers to send their bills to MedRisk  
28 and not to the ultimate workers’ compensation payor insurer or self-insured employer, and

1 MedRisk itself bills its workers compensation payor clients for the services contracted health  
2 care professionals provide to injured workers, MedRisk is able to hide from its payor clients the  
3 amount of the spread it is able to retain between what these clients pay MedRisk and what  
4 MedRisk pays its contracted health care professionals.

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

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

22 72. Further, MedRisk's conduct violates Labor Code § 139.32(d) which states that it  
23 is unlawful for an interested party to enter into an arrangement or scheme that the interested  
24 party knows, or should know, has a purpose of ensuring referrals by the interested party to a  
25 particular entity that, if the interested party directly made referrals to that other entity, would be  
26 in violation of this section; and that it is unlawful for an interested party to offer, deliver,  
27 receive, or accept any rebate, refund, commission, preference, patronage, dividend, discount, or  
28 other consideration whether in the form of money or otherwise, as compensation or inducement

1 to refer a person for services.

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

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

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

26 76. Defendants’ alleged misconduct also violates Labor Code § 3820, which makes it  
27 unlawful for any person who submits a workers’ compensation claim to: (a) knowingly solicit,  
28 receive, offer, pay or accept any rebate, referral, commission, preference, discount or other

1 consideration, monetary or not, as compensation or inducement for soliciting or referring clients  
2 or patients to obtain workers' compensation benefits; (b) knowingly operate or participate in a  
3 service that, for profit, refers or recommends clients or patients to obtain medical or medical-  
4 legal services; or (c) knowingly assist or conspire with any person who engages in any of the  
5 above.

6 77. As alleged above, MedRisk demands deep discounts from health care  
7 professionals as an inducement for the increased referral of injured workers for health care  
8 services in specific geographic areas. MedRisk is paid based on the number of referrals and the  
9 size of the discount it negotiates. Thus, MedRisk "knowingly solicits ... discount[s] ... as ...  
10 inducement for referring patients to ... obtain [workers compensation] benefits" and "knowingly  
11 ... receives ... other consideration ... as compensation ... for ... referring patients to obtain  
12 medical or medical-legal services", in violation of Labor Code § 3820(b)(3).

13 78. In addition, as MedRisk operates as a for profit referral service, it is also  
14 "operat[ing] ... a service that, for profit, refers ... patients to obtain medical ... services", in  
15 violation of Labor Code § 3820(b)(4).

16 79. Based on the foregoing, Defendants are acting as unlicensed claims  
17 administrators and adjusters in managing the provision of physical therapy services and paying  
18 the claims submitted by physical therapists for therapy provided to injured workers on behalf of  
19 self-insured employers.

20 80. Unless the employee has pre-designated a personal physician, the employer may  
21 select a treating physician during the first 30 days after a workplace injury is reported. After 30  
22 days from the date the injury is reported, the employee may be treated by a physician or facility  
23 of his or her choice within a reasonable geographic area, unless the employer has established an  
24 MPN. An MPN is a network of providers, including physicians and other health care  
25 professionals, created to provide medical treatment to injured employees. MPNs may be created  
26 by self-insured employers, workers' compensation insurers or entities providing physician  
27 network services. When the employer has established an MPN, the employer or its  
28 representative arranges the initial medical evaluation and treatment on behalf of the employee.

1 Unless exempted by law or the employer, all medical care for injured employees whose  
2 employer has an approved MPN will be handled and provided through the MPN pursuant to  
3 Labor Code § 4616(a). The MPN determines which locations are approved for physicians to  
4 provide treatment under the MPN. 8 C.C.R. § 9767.3(4). Approved locations must be listed in  
5 an MPN's provider directory.

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

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

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

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

25 85. A complete, up-to-date list of MPNs is available at: [www.dir.ca.gov/  
26 dwc/mpn/DWC\\_MPN\\_Main.html](http://www.dir.ca.gov/dwc/mpn/DWC_MPN_Main.html). MedRisk is not separately listed as an authorized MPN. It is  
27 listed as a provider in the MPNs.

28 86. Physical therapists do not have any reasonable way of knowing whether an



1 injured worker is being referred within or outside of an MPN owned by MedRisk.

2 87. MedRisk is not licensed as an insurance company in California, nor as a third-  
3 party administrator.

4 88. On information and belief, MedRisk does not appear to have a “certificate of  
5 consent” to administer self-insured employers’ workers’ compensation claims.

6 89. On information and belief, MedRisk is not an “entity that provides physician  
7 network services” as that term is defined under California law as to the physical therapist or  
8 other health care professionals with which it contracts, as MedRisk does not directly own an  
9 approved MPN.

10 90. MedRisk does not appear to be certified as workers’ compensation claims  
11 adjusters or medical-only claims adjusters.

12 91. MedRisk is not licensed as a physician, physical therapist or other health care  
13 provider.

14 92. Defendants’ conduct in managing the provision of physical therapy services and  
15 paying the claims submitted by physical therapists for therapy provided to injured workers on  
16 behalf of self-insured employers also violates Labor Code § 3702.1, which requires that only an  
17 insurer authorized to transact workers’ compensation insurance in California, or a third party  
18 administrator with a certificate of consent to administer self-insured employers’ workers’  
19 compensation claims, can act as a Claims Administrator for self-insured employers.

20 93. Defendants’ conduct also violates Insurance Code § 11761, which requires  
21 workers’ compensation insurers, self-insured employers and third-party administrators to certify  
22 that everyone they contract with to review, adjust or pay workers compensation medical bills is  
23 properly trained as a claims adjustor or medical-only claims adjustor. While MedRisk pays the  
24 medical claims of the health care professionals to whom it refers patients, and thus is acting as a  
25 “medical-only claims adjustor,” MedRisk is not publicly listed as being certified to perform this  
26 function. Thus, even assuming MedRisk is even authorized to perform the services of a licensed  
27 third-party administrator, which Plaintiff contests, MedRisk’s claims adjusting activities violate  
28 Insurance Code § 11761.

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

5           95.     Defendants' conduct also violates Labor Code § 4610(g) which requires that  
6 utilization review programs be accredited by the Utilization Review Accreditation Commission  
7 ("URAC") for all employers providing workers compensation benefits in California. Under  
8 Labor Code § 4610(g)(M), a request for authorization, including its supporting documentation,  
9 shall not be altered or amended by any entity other than the requesting physician or provider  
10 prior to the submission of the request to the claims administrator. MedRisk is not one of the 24  
11 California URAC accredited programs.

12           96.     By illegally referring patients as alleged herein, MedRisk is violating Labor Code  
13 § 4610(g) by inserting itself into patients' plans of care and mandating changes to those care  
14 plans by altering or amending who can provide the patient care. In violation of Labor Code  
15 4610(g), MedRisk employs a referral process for its profit (moving a patient from one provider  
16 to another when the discount provided by the second is greater than that contracted by the first).  
17 It does so within a process that is supposed to be accredited by URAC but is not so accredited or  
18 listed as part of an accredited process. To the extent that moving patients without their consent  
19 is a function of utilization review, unless MedRisk operates under one of the 24 California  
20 URAC accredited programs listed by URAC, the conduct is illegal, and Defendants are not  
21 permitted to do so. By way of analogy, MedRisk is not only driving 100 mph on the freeway, it  
22 is doing so without a driver's license, and apparently without having participated in driver's ed.  
23 MedRisk is not entitled to flout the law.

24           97.     All of the foregoing are predicate violations of the UCL for the purpose of  
25 determining whether Defendants engaged in unlawful business practices. The Court would not  
26 be setting or changing DWC policy; it would be presiding over an unfair competition action  
27 where it will be determined whether Defendants' unfair scheme has violated one or more  
28 California laws.

1 **BILLING AND PAYMENT VIOLATIONS**

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

10 99. Defendants’ conduct in submitting bills for and collecting payments for physical  
11 therapy services also violates Business and Professions Code §§ 2400, 2630 and 2694, as  
12 Defendants are not licensed to practice as physical therapists.

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

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

1           102. Under California Labor Code § 4603.2, the explanation of review must include  
2 all the following:

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

5           b. The amount paid.

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

7           d. The additional information required to make a decision for an incomplete  
8 itemization.

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

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

15           103. California Labor Code §§ 4603.2 and 4603.6 establish extensive procedures  
16 governing the handling of disputes over workers' compensation billing and payment. Among  
17 other things, these laws provide a significant penalty on late payments. A late payment must be  
18 paid at 15% more than the OFMS then in effect, together with interest at the same rate as  
19 judgments in civil actions retroactive to the date of receipt of the initial bill. Labor Code §§  
20 4603.2 (b)(1)(C)(2) and 4603.4 (d).

21           104. The regulations implementing these statutes, 8 C.C.R. §§ 9792.5.1, *et seq.*, and  
22 the California Division of Workers' Compensation Medical Billing and Payment Guide and the  
23 California Division of Workers' Compensation Electronic Medical Billing and Payment  
24 Companion Guide adopted by those regulations, further require that the claims administrator  
25 send electronic claims acknowledgments and remittance advice (explanations of review) and  
26 pay electronic claims within 15 days.

27           105. MedRisk does not comply with these laws, does not pay on time, and does not  
28 pay interest, thus significantly increasing the administrative burden on physical therapists,

1 significantly delaying and reducing the payments they would otherwise receive and eliminating  
2 any ability for Defendants' employer clients from auditing MedRisk's actual payment activities.

3 **CLASS ALLEGATIONS AND COMPLIANCE WITH CCP § 382**

4 106. As an association, Plaintiff can bring a representative action on behalf of its  
5 members and represent its members under the UCL where, as here, the association itself has  
6 suffered injury in fact and lost money or property.

7 107. To the extent that Plaintiff, an association, must bring this action as a class action  
8 and/or satisfy the requirements of California Code of Civil Procedure § 382, those requirements  
9 are satisfied.

10 108. The proposed Class which Plaintiff seeks to represent is composed of and  
11 defined as follows:

12 All members of Independent Physical Therapists of California who are located in  
13 the State of California that provide physical therapy treatment services to injured  
14 workers in California, during the four (4) year period preceding the filing of this  
15 Complaint through the date of final judgment in this action (the "Class").

16 109. Excluded from the Class are Defendants; their corporate parents, subsidiaries,  
17 affiliates, and any entity in which Defendants have a controlling interest; any of their officers,  
18 directors, employees, or agents; the legal representatives, successors or assigns of any such  
19 excluded persons or entities; and the judicial officers to whom this matter is assigned as well as  
20 their court staff. Plaintiff reserves the right to expand, limit, modify, or amend this class  
21 definition, including the addition of one or more subclasses, in connection with its motion for  
22 class certification, or at any other time, based upon, *inter alia*, changing circumstances and/or  
23 new facts obtained during discovery.

24 110. This action has been brought and may properly be maintained pursuant to the  
25 provisions of California Code of Civil Procedure § 382 because there is a well-defined  
26 community of interest in the litigation, the proposed Class is easily ascertainable and there are  
27 substantial benefits from certification that render proceeding as a class action superior to the  
28 alternatives.

1           111. Numerosity: The members of the Class are so numerous that joinder of all  
2 members for purposes of pursuing this action is unfeasible and impractical. Plaintiff estimates  
3 that there are as many 300 physical therapist members located throughout the State of California  
4 in the Class. Moreover, Plaintiff alleges that members of the Class, their identities, and their  
5 locations can be ascertained through appropriate discovery and records of Plaintiff.

6           112. Common Questions Predominate: Common questions of law and fact exist as to  
7 all members of the Class and predominate over any questions which affect individual members  
8 of the Class. These common legal and factual questions include, but are not limited to, the  
9 following:

10           a. Whether, during the Class Period, Defendants have engaged and continue to  
11 engage in a uniform, systemic and illegal practice of soliciting and receiving improper payments  
12 for the referral of healthcare services and managing services provided to injured workers in  
13 violation of Labor Code § 3215;

14           b. Whether, during the Class Period, Defendants have engaged and continue to  
15 engage in a uniform, systemic and illegal conduct in violation of Labor Code § 3820, which  
16 prohibits knowingly soliciting discounts as an inducement for referring patients to obtain workers  
17 compensation benefits and knowingly receiving other consideration as compensation for referring  
18 patients to obtain medical or medical-legal services.

19           c. Whether Defendants' conduct is an "unlawful" act or practice within the meaning  
20 of California Business & Professions Code §17200;

21           d. Whether Defendants' conduct is a "deceptive" act or practice within the meaning  
22 of California Business & Professions Code §17200;

23           e. Whether Defendants' conduct is an "unfair" act or practice within the meaning of  
24 California Business & Professions Code §17200; and

25           f. Whether Plaintiff and its members are entitled to injunctive relief to enjoin or  
26 restrain such unlawful practices by Defendants.

27           113. Typicality: Plaintiff's claims are typical of the claims of the members of the Class.  
28 Plaintiff's members have sustained injuries and damages arising out of Defendants' common

1 course of conduct in violation of law as complained of herein. Plaintiff is advancing the same  
2 claims and legal theories on behalf of itself and all members of the Class. Accordingly, Plaintiff  
3 has no interests antagonistic to the interests of any other member of the Class.

4 114. Adequacy: Plaintiff, as a representative party, will fairly and adequately protect  
5 the interests of the Class by vigorously pursuing this lawsuit through attorneys who are skilled  
6 and experienced in handling class action matters of this type.

7 115. This action is maintainable as a class action because Defendants have acted or  
8 refused to act on grounds generally applicable to the Class as a whole and Plaintiff seeks, *inter*  
9 *alia*, equitable remedies with respect to the Class as a whole. As such, the systematic policies  
10 and practices of Defendants make final injunctive relief and/or declaratory relief with respect to  
11 the Class as a whole appropriate.

12 116. This action is maintainable as a class action because the common questions of  
13 law and fact predominate over any questions affecting individual members of the Class.  
14 Moreover, a class action is clearly superior to alternative methods for the fair and efficient  
15 adjudication of the controversy. Class treatment will permit a large number of similarly situated  
16 persons or entities to prosecute the claims in a single forum simultaneously, efficiently, and  
17 without the unnecessary duplication of evidence, effort, and expense that numerous individual  
18 actions would produce.

19 117. This case will be manageable as a class action. Plaintiff knows of no difficulty to  
20 be encountered in the prosecution of this action that would preclude its maintenance as a class  
21 action. Further, because Plaintiff's members are ascertainable from Plaintiff's records, there is a  
22 well-defined community of interest among Plaintiff's members.

23 **FIRST CLAIM FOR RELIEF**

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

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

1           119. Plaintiff brings this claim on its own behalf and on behalf of its members, as set  
2 forth above.

3           120. As a result of Defendants’ acts and practices in violation of Business and  
4 Professions Code §§ 17200, *et seq.* (“UCL”), Plaintiff has suffered injury in fact and lost money  
5 or property as set forth above. In addition, as a result of the acts alleged herein, Plaintiff’s  
6 members have been injured in fact and lost money or property as a result of Defendants’ acts  
7 and practices, as they have lost and continue to lose patients and continue to have patients  
8 diverted to providers who have been forced to accept unreasonably low rates from MedRisk, in  
9 violation of law, and through the efforts they have had to expend combatting Defendants’  
10 conduct, and will continue to do so.

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

15           122. The UCL imposes strict liability. Plaintiff need not prove that Defendants  
16 intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices – only  
17 that such practices occurred.

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

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

26           125. Defendants’ conduct does not benefit consumers or competition. Indeed, the  
27 harm to consumers who are forced to utilize such services and to competition in the form of  
28 health care professionals who are either forced to accept unreasonable payments or forego



1 providing such services altogether to a significant number of consumers is significant, for the  
2 reasons set forth above.

3 126. Plaintiff, its members and the affected public could not have reasonably avoided  
4 the injury each of them suffered, which injury is substantial.

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

10 128. The gravity of the harm attributable to those practices is substantial. Discounts of  
11 the magnitude MedRisk demands can only be accommodated by reducing the quality of the  
12 medical treatments that can be offered. With respect to physical therapy services, that means  
13 patients must receive less direct supervision, and more services must be delegated to supportive  
14 personnel. For example, the blanket, prospective cap created by MedRisk's programs that  
15 requires physical therapists who wish to be "preferred providers" within the MedRisk network  
16 and thus receive the most referrals to stay at or below the average cost for physical therapy  
17 practices in California, without regard to the needs of their individual patient populations,  
18 adversely impacts injured workers and their right to necessary medical care, and imposes the  
19 greatest harm on the most severely injured patients with the greatest medical need.

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

25 130. Defendants' obfuscated contracting and patient referral scheme is also likely to  
26 deceive both injured workers and workers' compensation payors, as set forth in detail above,  
27 into believing they are receiving services and making payments consistent with what the law  
28 permits, when in fact they are engaged in a uniform and illegal practice, and that MedRisk's

1 physical therapy “provider network” is significantly larger than it actually is based on the tiered  
2 pricing MedRisk uses to narrow its network in making physical therapy patient referrals.

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

12 132. Defendants’ conduct and omissions of fact as set forth above were material and  
13 thus presumed to be a substantial factor in decisions to utilize Defendants’ services, with the  
14 result that injured workers were forced to receive services from underpaid physical therapists  
15 through a system that does not properly operate in this.

16 133. Defendants’ acts of unfair competition as set forth above present a continuing  
17 threat and will persist and continue to do so unless and until this Court issues appropriate  
18 injunctive and declaratory relief. In addition, Plaintiff may be entitled to equitable relief  
19 according to proof at time of trial. Plaintiff also seeks attorneys’ fees and costs pursuant to, *inter*  
20 *alia*, C.C.P. § 1021.5.

21 **PRAYER FOR RELIEF**

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

- 24 1. Injunctive and declaratory relief;  
25 2. Other equitable relief;  
26 3. Attorneys’ fees and costs pursuant to, *inter alia*, C.C.P. § 1021.5; and

27 ///

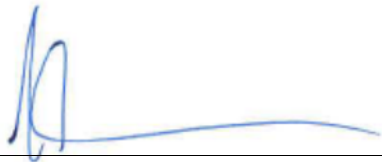
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4. Such other and further relief as Plaintiff may request and the Court may deem appropriate.

Dated: June 19, 2020

Respectfully submitted,  
POMERANTZ LLP

By:   
Jordan L. Lurie  
Ari Y. Basser

Dated: June 19, 2020

Respectfully submitted,  
LAW OFFICES OF ZEV B. ZYSMAN  
A PROFESSIONAL CORPORATION

By: /s/ Zev B. Zysman  
Zev B. Zysman  
  
Attorneys for Plaintiff  
Independent Physical Therapists  
of California



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**PROOF OF SERVICE**

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1100 Glendon Avenue, 15<sup>th</sup> Floor, Los Angeles, California 90024.

On **June 19, 2020**, I served the document described as:

**PLAINTIFF’S PROOF OF SERVICE OF FIRST AMENDED COMPLAINT**


on the interested parties in this action by sending [ ] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [ ] as stated on the attached service list:

MCDERMOTT WILL & EMERY                      Attorneys for Defendant  
Jason D. Strabo, State Bar No. 246426  
[Jstrabo@mwe.com](mailto:Jstrabo@mwe.com)  
2049 Century Park East, Suite 3200  
Los Angeles, CA 90067  
Telephone: (213) 229-9500

- [ ] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- [ ] **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.
- [ ] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.
- [ ] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **June 19, 2020**, at Los Angeles, California.

Ari Y. Bassier  
Type/Print Name

  
Signature