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LOS ANGELES
SUPERIOR COURT

9 *Attorneys for Qui Tam Plaintiffs*

10
11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF LOS ANGELES**

13 **STATE OF CALIFORNIA *ex rel.* MARK**
14 **SERSANSIE and WILLIAM REYNOLDS,**

15 **Plaintiffs,**

16 **v.**

17 **GARDENS REGIONAL HOSPITAL**
18 **MEDICAL CENTER, INC. (d/b/a Tri-City**
19 **HOSPITAL MANAGEMENT**
20 **COMPANY, LLC.; HEALTHSMART**
21 **PACIFIC, INC. (d/b/a Pacific Hospital of**
22 **Long Beach); RIVERSIDE**
23 **HEALTHCARE SYSTEM, L.P. (d/b/a**
24 **Riverside Community Hospital); ST.**
25 **BERNADINE MEDICAL CENTER;**
26 **SPINAL SOLUTIONS, LLC.;**
27 **INTERNATIONAL IMPLANTS, LLC;**
28 **COMPREHENSIVE INTRA-**
OPERATIVE SERVICES, INC. (d/b/a/
C.I.O.S., Inc.); SUMMIT MEDICAL
EQUIPMENT, INC.; PLATINUM
MEDICAL GROUP, INC.; CROWDER
MACHINE & TOOL SHOP; JACK
AKMAKJIAN, M.D.; GURVINDER
SUNNY UPPAL, M.D.; JOSEPH
VANDERLINDEN, M.D.;

[Defendants continued on next caption page]

Case No. BC534466

FIRST AMENDED COMPLAINT:

- (1) **FOR VIOLATIONS OF THE CALIFORNIA INSURANCE FRAUDS PREVENTION ACT, AND**
- (2) **FOR VIOLATIONS OF THE CALIFORNIA FALSE CLAIMS ACT**

(Cal. Gov. Code § 12652;
Cal. Ins. Code § 1871.7)

DEMAND FOR JURY TRIAL

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**EDWARD C. KOLPIN, M.D.;
HEALTHPOINTE MEDICAL GROUP,
INC.; JEFFREY S. CATANZARITE,
D.C.; MICHAEL DROBOT; MICHAEL
"MIC" McGRATH; PAUL RANDALL;
CHRISTINA HERNANDEZ; ROGER
WILLIAMS; BERYL WEINER;
WILLIAM CROWDER; MARY
WILLIAMS; and DOES 1 through 25,
inclusive,**

Defendants.

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1 **I. INTRODUCTION**

2 1. This *Qui Tam* lawsuit is being brought to stop rampant insurance fraud achieved
3 through the unlawful employment of “runners, cappers and steerers,” overbilling, illegal
4 kickbacks to doctors, and counterfeiting of medical implant hardware perpetrated by Defendant
5 Hospitals and their surgeons, spinal surgery hardware distributors, and healthcare “marketers” in
6 the area of **spinal fusion surgeries**. By virtue of their unlawful scheme, the Defendants and
7 their unnamed coconspirators, have cheated the California Workers’ Compensation System,
8 including the State Compensation Insurance Fund (“SCIF”), Medi-Cal and private insurers out of
9 hundreds of millions of dollars.

10 2. This scheme has led to patients receiving dangerous medical implants that have a
11 substantial likelihood of failure. Many patients received spinal fusion surgeries that utilized
12 **counterfeit screws and rods**, placing patients’ lives at risk, and subjecting them to further
13 surgeries to replace the counterfeit hardware.

14 3. *Qui Tam* Plaintiffs, through deep investigation and inside knowledge of
15 Defendants’ operations, have obtained vast non-public evidence supporting the allegations of this
16 Complaint. Among other evidence, *Qui Tam* Plaintiffs are in possession of the **counterfeit**
17 **screws and rods** that Defendants have knowingly implanted in hundreds, likely thousands, of
18 California workers. *Qui Tam* Plaintiffs have verified with the bona fide manufacturers of the
19 spinal hardware that the hardware used by Defendants, now in *Qui Tam* Plaintiffs’ possession, is
20 counterfeit.

21 4. Additionally, *Qui Tam* Plaintiffs have obtained bills, invoices, agreements, and
22 copies of payments that evidence the vast system of kickbacks that underlies the scheme
23 described herein. *Qui Tam* Plaintiffs have also obtained details admissions from individuals
24 involved in the spinal fusion surgery scheme.

25 5. California’s employers, including its public employers, are required by law to
26 carry workers’ compensation coverage. In 2010, employers paid \$7.1 billion in insurance
27 premiums to private insurers or SCIF to cover their workers’ compensation liability. In turn,
28 these insurers have paid billions in medical claims related to injured workers. As a result of the

1 unlawful scheme described herein, private workers' compensation insurers, other private
2 insurers, SCIF and Medi-Cal have paid grossly inflated prices for spinal fusion surgeries and
3 hardware, including, in some cases, paying for surgeries that were not medically necessary. This
4 unlawful and fraudulent scheme has only served to increase the cost of mandatory workers'
5 compensation coverage for California's employers, as well as insurance premiums in the private
6 market.

7 6. The frequency of spinal fusion surgeries in the workers' compensation system has
8 exploded in recent years. In 2010, spinal fusion surgeries accounted for a whopping 40% of
9 inpatient hospital charges to the California Workers' Compensation System, up from only 30%
10 in 2001. As discussed in more detail below, the Defendant Hospitals' revenues from spinal
11 fusion surgeries have also dramatically increased during the period relevant to this Complaint.
12 In 2007, Defendant Tri-City Regional Medical Center billed just **\$3 million** to workers'
13 compensation insurers for spinal fusion surgeries. Only three years later, Tri-City billed
14 workers' compensation carriers **\$65 million** for the same surgery. This dramatic increase in
15 revenue realized by Defendant Tri-City and the other Defendant Hospitals is due in large part to
16 the unlawful employment of "runners, cappers, and steerers," overbilling, illegal kickbacks to
17 doctors, counterfeiting of spinal implant hardware and other egregious and unlawful activity.

18 7. The Legislature established the State Compensation Insurance Fund in 1914. It is
19 now the largest provider of workers' compensation coverage in California. SCIF is a division of
20 the California Department of Industrial Relations and is considered a California state agency.
21 *See, Gilmore v. SCIF* (1937) 23 Cal.App.2d 325, 329 (SCIF "is an agency of the state."). SCIF's
22 mission is to provide an available market for workers' compensation insurance at fair rates, and
23 to serve as a model for all workers' compensation carriers. It includes approximately 150,000
24 policyholders, more than \$1.2 billion in premium, and nearly \$20 billion in assets. In addition to
25 covering private employers, SCIF also acts as the workers' compensation carrier for several
26 California state agencies and political subdivisions. *See, Ins. Code § 11870*. SCIF has been
27 victimized for hundreds of millions of dollars by Defendants.

28

1 8. Moreover, the same scheme has been perpetrated on patients whose surgeries
2 were paid for by Medi-Cal – California’s safety net for individuals unable to afford health
3 insurance. Medi-Cal is intended to provide essential care for California’s growing indigent
4 population, but its funds are presently stretched to their limit. Medi-Cal has been subject to fraud
5 and abuse by unscrupulous providers and others involved in the healthcare system, including
6 Defendants in this case, who put profits above the public welfare. These unlawful schemes have
7 threatened to diminish the quality of care, substantially burdened taxpayers, and degraded the
8 medical profession.

9 **II. OVERVIEW OF THE UNLAWFUL SCHEME AND CONSPIRACY**

10 9. Recognizing the potential for extremely lucrative reimbursements from workers’
11 compensation carriers, Medi-Cal and private insurers, hospitals – including the Defendant
12 Hospitals named herein – have entered into contracts with third-party “marketers” to steer **spinal**
13 **surgery patients** to the hospitals.

14 10. **Hospital “marketers,”** including Defendants Paul Randall and Michael “Mic”
15 McGrath, are paid substantial sums of money by Defendant Hospitals to deliver spinal fusion
16 patients for surgery. For example, Tri-City paid Mic McGrath \$20,000 a month to steer spinal
17 cases to Defendant Tri-City Hospital.

18 11. **Chiropractors are paid illegal kickbacks** by the “marketers” for referring
19 patients to the Defendant Hospitals for spinal fusion surgeries. The “marketers” establish
20 networks of loyal chiropractors who receive handsome rewards for sending patients to particular
21 hospitals.

22 12. **Doctors, in addition to chiropractors, are also paid illegal kickbacks** by
23 “marketers” for referring patients to the Defendant Hospitals for spinal fusion surgeries. These
24 lower-level doctors refer patients for surgery to particular surgeons and hospitals in return for
25 illegal kickbacks.

26 13. **Defendant Hospitals have full knowledge** that these “marketers” have
27 egregiously targeted unsophisticated Latino workers from across California. Over the past
28 decade, at least 550 workers from the San Joaquin Valley have had spinal fusion surgeries at

1 either Tri-City Regional Medical Center or Pacific Hospital of Long Beach. In addition to the
2 illegal kickbacks described above, the “marketers” also paid illegal kickbacks to doctors to
3 recruit them to perform spinal fusion surgeries at the Defendant Hospitals.

4 14. **Implant hardware** is used in all **spinal fusion surgeries**. Many of the same
5 marketers and other unscrupulous operators, including Defendants Paul Randall, Michael Drobot
6 and Roger Williams, have established spinal hardware distributorships. **The Defendant**
7 **Distributors pay unlawful kickbacks to the surgeons to induce them to purchase their**
8 **implant hardware**. The Distributors then sell the implant hardware to the Defendant Hospitals
9 at grossly inflated prices.

10 15. Moreover, **several of the Defendants named herein manufacture and/or**
11 **knowingly utilize counterfeit screws and rods in the spinal implant hardware sold to**
12 **hospitals**. This is done with the Defendant Hospitals’ knowledge or reckless disregard for the
13 truth. The proceeds from these unlawful, counterfeit and inflated sales are used to further the
14 kickback schemes alleged herein.

15 16. The Defendant Hospitals have full knowledge that surgeons are using the
16 counterfeit screws and rods in spinal fusion surgeries and are in turn billing workers’
17 compensation carriers, Medi-Cal and private insurers at even further inflated prices. **This**
18 **scheme has bilked SCIF, insurers and Medi-Cal out of hundreds of millions of dollars**. It
19 has also led to patients receiving dangerous medical implants that have a substantial likelihood of
20 failure. Even worse, many patients received inflated spinal fusion surgeries with counterfeit
21 screws that were not even medically necessary in the first place.

22 **III. JURISDICTION AND VENUE**

23 17. This Court has jurisdiction over the claims in this Complaint pursuant to
24 California Insurance Code § 1871.7 (the “California Insurance Frauds Prevention Act”) and the
25 California Government Code § 12652 (the “California False Claims Act”).

26 18. All of the entities named in this Complaint are organized under the laws of
27 California and conduct substantial business within the State of California, as well as maintain
28

1 employees and offices within the State. Each entity named herein makes sales within California.
2 The entities' unlawful, false and/or fraudulent conduct took place within the State of California.

3 19. All of the individuals named in this Complaint reside in the State of California.
4 Their unlawful, false and/or fraudulent conduct took place within the State of California.

5 20. Venue in the County of Sacramento is appropriate pursuant to the California
6 Insurance Frauds Prevent Act and the California False Claims Act. *Qui Tam* Plaintiffs bring this
7 action to recover unlawful, false and/or fraudulent claims on behalf of the California Department
8 of Insurance, the State Compensation Insurance Fund and Medi-Cal. These state agencies, as
9 well as their special investigative units, are located in the County of Sacramento. Moreover, any
10 recovery achieved under these statutes is returned to the State of California and the appropriate
11 public agency.

12 **IV. PARTIES**

13 **A. Qui Tam Plaintiffs**

14 21. The Plaintiff in this action is the State of California, by and through *Qui Tam*
15 Plaintiffs Mark Sersansie and William Reynolds, pursuant to Insurance Code § 1871.7(e)(1) and
16 California Government Code § 12652.

17 22. *Qui Tam* Plaintiff Mark Sersansie is an individual and former employee of
18 Defendant Platinum Medical, an entity owned and controlled by Defendants Paul Randall and
19 Christina Hernandez. *Qui Tam* Plaintiff Sersansie is an "original source" as that term is defined,
20 and he has direct and independent knowledge of the information on which these allegations are
21 based. The facts alleged in this Complaint are based entirely upon his personal observation,
22 investigation, documents and tangible things in his possession, as well as the observations,
23 investigation, documents and tangible things in the possession of Mr. Sersansie.

24 23. *Qui Tam* Plaintiff William Reynolds is an individual and former employee of two
25 workers' compensation carriers in California. *Qui Tam* Plaintiff Reynolds is an "original source"
26 as that term is defined, and he has direct and independent knowledge of the information on
27 which these allegations are based. The facts alleged in this Complaint are based entirely upon
28 his personal observation, investigation, documents and tangible things in his possession, as well

1 as the observations, investigation, documents and tangible things in the possession of Mr.
2 Reynolds.

3 24. *Qui Tam* Plaintiffs have provided the Attorney General's office, the district
4 attorney, and the insurance commissioner of California with a full disclosure of substantially all
5 material facts, as required by Cal. Ins. Code § 1871.7(e)(2), and Government Code § 12652.

6 **B. Defendant Hospitals**

7 25. **Defendant Gardens Regional Hospital and Medical Center, Inc.**, doing
8 business as "Tri-City Regional Medical Center" ("Tri-City") is a non-profit hospital located at
9 21530 Pioneer Boulevard, Hawaiian Gardens, California 90716. It is a 107-bed facility situated
10 just south of Los Angeles near Long Beach. Hawaiian Gardens is a small, low-income city in
11 Los Angeles County with approximately 15,000 residents, consisting mostly of Latinos.

12 26. Defendant Tri-City has rapidly developed a thriving business performing spinal
13 fusion surgeries, mostly on workers' compensation patients. In 2007, the hospital performed just
14 \$3 million in spinal fusion surgeries. **By 2010, as a result of the unlawful scheme described**
15 **herein, Defendant Tri-City performed \$65 million in spinal surgeries on behalf of workers'**
16 **compensation patients.** Tri-City has entered into marketing agreements with Defendants Paul
17 Randall, Michael "Mic" McGrath and other unnamed coconspirators. These marketing
18 agreements have paid Defendants as much as \$100,000 a month to unlawfully steer spinal
19 surgery patients to the hospital. Tri-City paid Defendant Paul Randall more than \$3.2 million
20 between 2008 and 2011 to perform "marketing" services for the hospital.

21 27. Tri-City has knowingly and unlawfully (a) employed runners, cappers, steerers or
22 other persons for the purpose of obtaining patients (b) inflated the cost of spinal surgeries and
23 hardware billed to workers' compensation carriers, SCIF, Medi-Cal and private insurers, (c)
24 aided and abetted, as well as permitted, the kickback schemes described herein, (d) billed
25 insurance carriers, including SCIF, Medi-Cal and others, grossly inflated prices for counterfeit
26 screws and rods used in the spinal implant systems, and (e) billed insurance carriers for spinal
27 fusion surgeries that were not medically necessary.

1 28. **Defendant South Bay Hospital Management Company LLC** (“South Bay”) is
2 located at 12401 Wilshire Boulevard, Ste. 200, Los Angeles, California 90025. Defendant
3 South Bay operates as a “management company” for Defendant Tri-City. The LLC is comprised
4 of three managers: (a) Southern California Vital Solutions, Inc., (b) S&W Health Management
5 Services, Inc., and (c) the Serrano Management Group. Southern California Vital Solutions, Inc.
6 is owned and controlled by Dr. Glenn Marshak. S&W Health Management Services, Inc. is
7 owned and controlled by Defendant Beryl Weiner, Esq. The Serrano Management Group is
8 owned and controlled by the former CEO of Defendant Tri-City, Arthur Gerrick. Defendant
9 South Bay is being used as part of the scheme alleged herein. Profits from unlawful billing for
10 spinal fusion surgeries and hardware is funneled and laundered through Defendant South Bay.

11 29. Defendant South Bay has knowingly and unlawfully conspired to (a) employ
12 runners, cappers, steerers or other persons for the purpose of obtaining patients (b) inflate the
13 cost of spinal surgeries and hardware billed to workers’ compensation carriers, SCIF, Medi-Cal
14 and private insurers, (c) aid and abet, as well as permit, the kickback schemes described herein,
15 (d) bill insurance carriers, including SCIF, Medi-Cal and others, grossly inflated prices for
16 counterfeit screws and rods used in the spinal implant systems, and (e) bill insurance carriers for
17 spinal fusion surgeries that were not medically necessary. Defendant South Bay and its
18 managers, specifically Defendant Beryl Weiner, have retained the ill-gotten gains from this
19 unlawful scheme.

20 30. **Defendant Healthsmart Pacific, Inc.**, doing business as “Pacific Hospital of
21 Long Beach” (“Pacific Hospital”) is located at 2776 Pacific Avenue, Long Beach, California
22 90806. The hospital is owned and controlled by **Defendant Michael Drobot**, where he is also
23 its Chief Executive Officer. Pacific Hospital is managed by West Coast Surgery Center
24 Management, Inc., another company owned and operated by Defendant Michael Drobot.

25 31. Drobot purchased the hospital in 1997 and immediately shifted its focus to spinal
26 care for workers’ compensation patients. After he purchased it, the hospital quickly became one
27 of the most prolific spinal surgery hospitals in all of California. In the year prior to taking over
28 the hospital, Pacific performed just 162 spinal fusion surgeries. After Defendant Drobot took

1 over, it performed 477 in the subsequent year. According to hospital discharge data, between
2 2001 and 2010, it performed 5,138 spinal fusion surgeries for workers' compensation patients.
3 **Pacific Hospital billed \$533 million for these surgeries – three times as much as any other**
4 **hospital in California for the same period of time, including much larger hospitals.** The
5 hospital also entered into expensive "marketing" arrangements with Defendant Paul Randall and
6 others. As of August 2011, Randall entered into a \$100,000 per month agreement with
7 Defendant Drobot to steer patients and doctors to hospitals that use Defendant Drobot's implants,
8 including Pacific Hospital.

9 32. Defendant Pacific Hospital has knowingly and unlawfully (a) employed runners,
10 cappers, steerers or other persons for the purpose of obtaining patients, (b) inflated the cost of
11 spinal surgeries and hardware billed to workers' compensation carriers, SCIF, Medi-Cal and
12 private insurers, (c) aided and abetted, as well as permitted, the kickback schemes described
13 herein, (d) billed insurance carriers, including SCIF, Medi-Cal and others, grossly inflated prices
14 for counterfeit screws and rods used in the spinal implant systems, and (e) billed insurance
15 carriers for spinal fusion surgeries that were not medically necessary. Moreover, the hospital's
16 Chief Executive Officer and owner, Michael Drobot, is a central character in this conspiracy.

17 33. Defendant Riverside Healthcare System, L.P., doing business as "Riverside
18 Community Hospital" ("Riverside Hospital") is located at 4445 Magnolia Avenue, Riverside,
19 California 92521. Riverside Hospital performs approximately 6,354 inpatient surgeries per year
20 and 2,509 outpatient surgeries per year.

21 34. As with most hospitals, Defendant Riverside Hospital is responsible for procuring
22 the hardware used in its many operations. This obligation includes ensuring that such hardware
23 is FDA approved, as well as making sure its employees properly log and bill for this equipment.
24 Defendant Riverside Hospital knowingly or recklessly failed to meet these obligations by
25 procuring counterfeit, non-FDA approved screws and rods for use in spinal surgeries over the
26 course of many years. For example, Exhibit 10 lists surgeries, many of which were performed at
27 Defendant Riverside Hospital, which used hardware procured by Defendant Riverside Hospital
28

1 from Defendant Spinal Solutions and Defendant C.I.O.S., Inc. As described above, Spinal
2 Solutions and C.I.O.S., Inc. knowingly manufacture counterfeit screws and rods.

3 35. Moreover, the FDA has reporting requirements which hospitals, as device user
4 facilities, must follow. These requirements oblige hospitals to report injuries to the FDA which
5 were caused by the devices used by the hospitals in their surgeries. At minimum, hospitals must
6 report bi-annually any injuries or deaths which occurred at their hospital to the FDA. Defendant
7 Riverside Hospital failed to properly track spinal surgery hardware that it procured and
8 implanted in spinal surgery patients. Accordingly, Defendant Riverside Hospital is unable to
9 fully comply with these FDA reporting requirements.

10 36. **Defendant Riverside Hospital** also breached its obligation to procure proper
11 equipment due to its reckless disregard as to the proper logging of the equipment it procured for
12 its surgeries. As described in more detail *infra*, there are standard operating protocols designed
13 to ensure hospitals use only the safest, FDA approved medical implants. For example, each
14 implant system is required to arrive at the hospital with a peel-away sticker that is then placed on
15 an implant-log form that identifies all the implants that will go into a patient for a given surgery.
16 When a distributor uses counterfeit items, like Defendant Distributors in this case, the peel-away
17 sticker is replaced by a handwritten accounting of the items. To illustrate, Exhibit 9
18 demonstrates how obvious it should be to the hospital when a counterfeit part is sent to it for
19 logging. The lack of the peel-away sticker should immediately alarm the hospital staff whose
20 job it is to log the implant. Therefore, without Defendant Riverside Hospital's reckless disregard
21 as to these protocols, this counterfeit equipment would have never been logged and then allowed
22 to be used in hundreds of patients' surgeries.

23 37. Furthermore, Defendant Riverside Hospital also breached its responsibility to
24 provide a safe environment for its patients by receiving and using misbranded and adulterated
25 equipment in its spinal surgeries. For example, federal law requires that devices, including
26 surgical screws and rods, be properly branded. This branding includes, among other things,
27 making sure the device's established name be printed on the device's label. In addition to the
28 device having the properly established name printed on its label, the device is also required to

1 have adequate directions for its proper use. The regulations requiring adequate directions for use
2 apply even if the device in question was only sold to, and intended for use by, licensed
3 practitioners. Next, devices are considered adulterated if, among other requirements, they are
4 not manufactured using current good manufacturing practices, or the manufacturer/distributor
5 did not obtain premarket approval before selling and/or distributing the devices. Combined,
6 these regulations help prevent injury to patients by making sure that devices meet proper
7 standards for quality and safety before being used in a surgery, and that the surgeon performing
8 the surgery understands the proper use of these devices. Finally, federal law prohibits the receipt
9 of any misbranded or adulterated equipment. Defendant Riverside Hospital received, used, and
10 billed for numerous counterfeit screws and rods, which, as discussed above, were not properly
11 manufactured or labeled. Therefore, Defendant Riverside Hospital knowingly took receipt of
12 misbranded and adulterated equipment, in violation of the federal laws put in place to protect
13 patients' safety, and billed insurers millions of dollars for such equipment.

14 38. Additionally, Defendant Riverside Hospital has either knowingly – or at
15 minimum, recklessly – purchased counterfeit equipment at grossly inflated prices from
16 Defendants Spinal Solutions and C.I.O.S., Inc. for many years, and then billed these costs to
17 insurers. *See Exhibit 10.* Hospitals are not allowed to bill insurers for non-FDA approved
18 devices. Riverside Hospital not only billed insurers for non-FDA approved, counterfeit devices,
19 it billed them at grossly inflated prices for these devices.

20 39. Defendant Riverside Hospital has also knowingly billed for surgeries performed
21 by surgeons whom were provided illegal kickbacks for their performance of these spinal
22 surgeries. These surgeons performed hundreds of back surgeries at Defendant Riverside
23 Hospital, and they were paid kickbacks for these surgeries. For example, Defendant Dr.
24 Akmakjian was paid kickbacks by Defendant Spinal Solutions. Dr. Akmakjian had a reputation
25 for only performing surgeries when given kickbacks. Therefore, Defendant Riverside Hospital
26 was reckless when it let Dr. Akmakjian – a surgeon with a known pattern and reputation of
27 accepting kickbacks in exchange for performing surgeries at a hospital – perform surgeries at
28 Defendant Riverside Hospital.

1 40. Defendant Riverside Hospital has thus knowingly and unlawfully (a) aided and
2 abetted, as well as permitted, the kickback schemes described herein; and (b) billed insurance
3 carriers, including SCIF, Medi-Cal and others, grossly inflated prices for counterfeit screws and
4 rods used in the spinal implant systems.

5 41. **Defendant St. Bernardine Medical Center** (“St. Bernardine”) is located at 2101
6 N. Waterman Ave., San Bernardino, California 92404. Defendant St. Bernardine is a member
7 of Catholic Healthcare West (“CHW”). Defendant St. Bernardine, as a hospital, is responsible
8 for procuring proper hardware for use in surgeries. This obligation includes ensuring that all
9 equipment is FDA-approved, as well as making sure its employees properly log and bill for this
10 equipment. Defendant St. Bernardine has not met this obligation due to its reckless conduct of
11 procuring counterfeit, non-FDA approved screws on its patients for many years. For example,
12 Exhibit 10 lists surgeries, many of which were performed at Defendant St. Bernardine, which
13 used hardware procured by Defendant St. Bernardine from Defendant Spinal Solutions and
14 Defendant C.I.O.S., Inc. As described above, Spinal Solutions and C.I.O.S., Inc. knowingly
15 manufacture counterfeit screws and rods.

16 42. Moreover, the FDA has reporting requirements which hospitals, as device user
17 facilities, must follow. These requirements oblige hospitals to report injuries to the FDA which
18 were caused by the devices used by the hospitals in their surgeries. At minimum, hospitals must
19 report bi-annually any injuries or deaths which occurred at their hospital to the FDA. Defendant
20 St. Bernardine is unable to comply with these reporting requirement due to its failure to properly
21 procure, log, and track spinal implant hardware.

22 43. Defendant St. Bernardine also breached this obligation due to its reckless
23 disregard as to the proper logging of the equipment it procured for its surgeries. As described in
24 more detail *infra*, there are standard operating protocols designed to ensure hospitals use only the
25 safest, FDA approved medical implants. For example, each implant system is required to arrive
26 at the hospital with a peel-away sticker that is then placed on an implant-log form that identifies
27 all the implants that will go into a patient for a given surgery. When a distributor uses
28 counterfeit items, like Defendant Distributors in this case, the peel-away sticker is replaced by a

1 handwritten accounting of the items. To illustrate, Exhibit 9 demonstrates how obvious it should
2 be to the hospital when a counterfeit part is sent to it for logging. For one, the lack of the peel-
3 away sticker should immediately alarm the hospital staff whose job it is to log the implant.
4 Therefore, without Defendant St. Bernardine's reckless disregard as to these protocols, this
5 counterfeit equipment would have never been logged and then allowed to be used in numerous
6 patients' surgeries.

7 44. Furthermore, Defendant St. Bernardine also breached its responsibility to provide
8 a safe environment for its patients by receiving and using misbranded and adulterated equipment
9 in its spinal surgeries. For example, federal law requires that devices, including surgical screws
10 and rods, be properly branded. This branding includes, among other things, making sure the
11 device's established name be printed on the device's label. In addition to the device having the
12 properly established name printed on its label, the device is also required to have adequate
13 directions for its proper use. The regulations requiring adequate directions for use apply even if
14 the device in question was only sold to, and intended for use by, licensed practitioners. Next,
15 devices are considered adulterated if, among other requirements, they are not manufactured using
16 current good manufacturing practices, or the manufacturer/distributor did not obtain premarket
17 approval before selling and/or distributing the devices. Combined, these regulations help prevent
18 harm to patients by making sure that devices meet proper standards for quality and safety before
19 being used in a surgery, and that the surgeon performing the surgery understands the proper use
20 of these devices. Finally, federal law prohibits the receipt of any misbranded or adulterated
21 equipment. Defendant St. Bernardine received, used, and billed for numerous counterfeit screws
22 and rods, which, as discussed above, were not properly manufactured or labeled. Therefore,
23 Defendant St. Bernardine knowingly took receipt of misbranded and adulterated equipment, and
24 billed insurance carriers for it in violation of the federal laws put in place to protect patients'
25 safety.

26 45. Additionally, Defendant St. Bernardine has either knowingly – or at minimum,
27 recklessly – purchased counterfeit equipment with grossly inflated prices from Defendant Spinal
28 Solutions and Defendant C.I.O.S., Inc. and then billed these costs to insurers. See Exhibit 10.

1 marketing agreements with Defendants Tri-City, Pacific Hospital, Riverside Hospital, Michael
2 Drobot and Roger Williams, among others. **Qui Tam Plaintiffs are also in possession of**
3 **documents showing unlawful kickback invoices from doctors to C.I.O.S., and kickback**
4 payments from C.I.O.S. to doctors in accordance with those invoices.

5 54. Defendant C.I.O.S. has knowingly and unlawfully (a) agreed to serve as a runner,
6 capper, steerer or other person for the purpose of obtaining patients for Defendant Hospitals, (b)
7 engaged in a scheme to provide kickbacks to doctors performing spinal surgeries, (c) engaged in
8 a scheme to inflate the cost of spinal fusion hardware sold to hospitals and billed to insurers, and
9 (d) caused insurance carriers, including SCIF, Medi-Cal and others, to be billed grossly inflated
10 prices for counterfeit screws and rods used in the spinal implant systems.

11 55. **Defendant Summit Medical Equipment, Inc.** ("Summit") is located at 21520
12 Pioneer Boulevard, Suite 203, Hawaiian Gardens, California 90716. It is located in the same
13 complex as Defendant Tri-City. It is also located at the same address and suite as Defendant
14 Platinum Medical. Both Defendants Summit and Platinum Medical are owned and operated by
15 Defendants Paul Randall and Christina Hernandez. Paul Randall and Christina Hernandez use
16 various corporate shells to perpetrate the schemes alleged herein. **Defendant Summit recruited**
17 **doctors and chiropractors to refer workers' compensation patients for spinal surgeries at**
18 **Defendant Tri-City and other hospitals by paying them unlawful kickbacks of \$15,000 and**
19 **\$20,000 per surgery.** Defendant Summit also purchased and resold spinal surgery implant
20 hardware to be used in surgeries at Defendant Tri-City and other hospitals. In many cases, the
21 spinal implant hardware was counterfeit.

22 56. Defendant Summit Medical Group has knowingly and unlawfully (a) agreed to
23 serve as a runner, capper, steerer or other person for the purpose of obtaining patients for
24 Defendant Hospitals, (b) inflated the cost of spinal surgery hardware billed to hospitals, (c)
25 engaged in a scheme to use the profits from the inflated hardware to pay kickbacks to doctors
26 who refer spinal surgery cases to Defendant Hospitals, and (d) caused insurance carriers,
27 including SCIF, Medi-Cal and others, to be billed grossly inflated prices for counterfeit screws
28 and rods used in the spinal implant systems.

1 57. **Defendant Platinum Medical Group, Inc.** (“Platinum”) is located at 21520
2 Pioneer Boulevard, Suite 203, Hawaiian Gardens, California 90716. It is located in the same
3 complex as Defendant Tri-City. It is also located at the same address and suite as Defendant
4 Summit. Both Summit and Platinum are owned and operated by Defendants Paul Randall and
5 Christina Hernandez. *Qui Tam* Plaintiff Sersansie was employed for a period of time by
6 Defendant Platinum. **Defendant Platinum recruited doctors and chiropractors to refer
7 workers’ compensation patients for spinal surgeries at Defendant Tri-City and other
8 hospitals by paying them unlawful kickbacks of \$15,000 and \$20,000 per surgery.** It also
9 purchased and resold spinal surgery implant hardware to be used in surgeries at Defendant Tri-
10 City and other hospitals. In many cases, the spinal implant hardware was counterfeit.

11 58. Defendant Platinum has knowingly and unlawfully (a) agreed to serve as a runner,
12 capper, steerer or other person for the purpose of obtaining patients for Defendant Hospitals, (b)
13 inflated the cost of spinal surgery hardware billed to hospitals, (c) engaged in a scheme to use the
14 profits from the inflated hardware to pay kickbacks to doctors who refer spinal surgery cases to
15 Defendant Hospitals, and (d) caused insurance carriers, including SCIF, Medi-Cal and others, to
16 be billed grossly inflated prices for counterfeit screws and rods used in the spinal implant
17 systems.

18 59. Above are just a few of the distributors and marketers *Qui Tam* Plaintiffs know
19 are involved in the schemes alleged herein. *Qui Tam* Plaintiffs are ignorant of the names and
20 capacities of additional Defendant Distributors and Marketers sued herein as DOES 11 through
21 20, inclusive, and therefore sue such Defendants by fictitious names pursuant to California Code
22 of Civil Procedure section 474. *Qui Tam* Plaintiffs will amend this Complaint to allege the true
23 names and capacities of the fictitiously named Defendants once they are ascertained.

24 **D. Defendant Counterfeit Manufacturer**

25 60. **Defendant Crowder Machine & Tool Shop** is a machine and manufacturing
26 shop located at 43339 Business Park Drive, #108, Temecula, California 92590. Defendants
27 Spinal Solutions and Roger Williams hired Crowder Machine & Tool Shop to knowingly
28 manufacturer counterfeit, non-FDA approved pedicle screws and rods to be used in spinal fusion

1 surgeries. Defendant Crowder knowingly and unlawfully conspired to cause insurance carriers
2 to be billed at grossly inflated prices for counterfeit screws and rods used in the spinal fusion
3 surgeries.

4 61. Above is just one of the counterfeit manufacturers involved in the schemes
5 alleged herein and known to *Qui Tam* Plaintiffs. *Qui Tam* Plaintiffs are ignorant of the names
6 and capacities of additional Defendant Counterfeit Manufacturers sued herein as DOES 21
7 through 30, inclusive, and therefore sue such Defendants by fictitious names pursuant to
8 California Code of Civil Procedure section 474. *Qui Tam* Plaintiffs will amend this Complaint to
9 allege the true names and capacities of the fictitiously named Defendants once they are
10 ascertained.

11 **E. Defendant Surgeons**

12 62. **Defendant Jack Akmakjian, M.D.**, is a spinal fusion surgeon performing
13 surgeries in the Southern California region. Dr. Akmakjian's principal place of business is the
14 Spine and General Orthopaedics Center, located at 7300 Magnolia Drive, Riverside, California
15 92504. Dr. Akmakjian, however, also performs spinal fusion surgeries at the Defendant
16 Hospitals. Dr. Akmakjian has entered into sham "consulting" agreements with Defendants
17 C.I.O.S., Spinal Solutions and others. The actual purpose of these sham "consulting" agreements
18 is to provide him with illegal kickbacks for performing spinal fusion surgeries at Defendant
19 Hospitals and for **choosing implant hardware from the Defendant Distributors.**

20 63. **Defendant Gurvinder Sunny Uppal, M.D.**, is a spinal fusion surgeon
21 performing surgeries in the Southern California region. Dr. Uppal's principal place of business
22 is the Orthopedic Medical Group of Riverside, Inc., located at 6800 Brockton Avenue, Riverside,
23 California 92506. Dr. Uppal, however, also performs spinal fusion surgeries at the Defendant
24 Hospitals. Dr. Uppal has also entered into sham "consulting" agreements with Defendants
25 C.I.O.S., Spinal Solutions and others. The actual purpose of these sham "consulting" agreements
26 is to provide him with illegal kickbacks for performing spinal fusion surgeries at Defendant
27 Hospitals and for **choosing implant hardware from the Defendant Distributors.**

1 64. **Defendant Joseph Vanderlinden, M.D.**, is a surgeon who performs spinal fusion
2 surgeries. His principal place of business is located at 399 E. Highland Avenue, Suite 319, San
3 Bernardino, California 92404. Dr. Vanderlinden has accepted illegal kickbacks for performing
4 spinal fusion surgeries at Defendant Hospitals and for **choosing implant hardware from the**
5 **Defendant Distributors.**

6 65. **Defendant Edward C. Kolpin, M.D.**, is a spinal fusion surgeon performing
7 operations at both Defendant Tri-City and Defendant Pacific Hospital. Dr. Kolpin has received
8 illegal kickbacks for performing spinal fusion surgeries at Defendant Hospitals and for **choosing**
9 **implant hardware from the Defendant Distributors.**

10 66. Above are just a few of the doctors *Qui Tam* Plaintiffs know are involved in the
11 schemes alleged herein. *Qui Tam* Plaintiffs are ignorant of the names and capacities of
12 additional Defendant Surgeons sued herein as DOES 31 through 40, inclusive, and therefore sue
13 such Defendants by fictitious names pursuant to California Code of Civil Procedure section 474.
14 *Qui Tam* Plaintiffs will amend this Complaint to allege the true names and capacities of the
15 fictitiously named Defendants once they are ascertained.

16 **F. Defendant Chiropractors and Doctors**

17 67. **Defendant Healthpointe Medical Group, Inc.** (“Healthpointe”) owns a network
18 of clinics in Southern California, and is controlled and operated by Ismael Silva, M.D. On
19 Defendant Healthpointe’s website, it describes Defendant Healthpointe as “a multidisciplinary
20 healthcare organization offering a full range of occupational medical services in practice
21 locations throughout Southern California” The website further states that its purpose is to,
22 “provide the gamut of healthcare services for the cost-effective management of occupational
23 diseases and injuries, including treatments, adding value to each visit with efficient, caring
24 professionals.”

25 68. However, contrary to Healthpointe’s stated purpose and promises, in 2007
26 Healthpointe and Silva were paid approximately \$1.8 million by Defendant Michael Drobot of
27 Pacific Hospital and International Implants in exchange for the referral of patients for spinal
28 surgeries.

1 69. **Defendant Jeffrey S. Catanzarite, D.C.** is a practitioner located in Costa Mesa,
2 California. Catanzarite was paid approximately \$1.7 million in 2007 by Michael Drobot of
3 Pacific Hospital and International Implants in exchange for the referral of patients for spinal
4 surgeries.

5 70. Above are just a few of the chiropractors and doctors *Qui Tam* Plaintiffs know are
6 involved in the schemes alleged herein. *Qui Tam* Plaintiffs are ignorant of the names and
7 capacities of additional Defendant Surgeons sued herein as DOES 41 through 50, inclusive, and
8 therefore sue such Defendants by fictitious names pursuant to California Code of Civil Procedure
9 section 474. *Qui Tam* Plaintiffs will amend this Complaint to allege the true names and
10 capacities of the fictitiously named Defendants once they are ascertained.

11 **G. Individual Defendants**

12 71. **Defendant Michael Drobot** is an individual residing in the State of California.
13 Drobot owns and operates Defendants Pacific Hospital and International Implants. In addition to
14 these entities, Defendant Drobot has interests in, or owns, several other companies providing
15 services to workers' compensation patients. Some of Drobot's businesses include, a van service
16 to shuttle workers' compensation patients, a provider of Spanish interpretation services, and
17 distributors of spinal implant hardware. His hospital, Pacific Hospital, has been one of the most
18 prolific in performing spinal fusion surgeries.

19 72. Defendant Drobot has knowingly and unlawfully (a) employed runners, cappers,
20 steerers or other persons for the purpose of obtaining patients, (b) inflated the cost of spinal
21 surgeries and hardware billed to workers' compensation carriers, Medi-Cal and private insurers,
22 (c) engaged in, aided and abetted, as well as permitted, the kickback schemes described herein,
23 (d) billed insurance carriers, including SCIF, Medi-Cal and others, grossly inflated prices for
24 counterfeit screws and rods used in the spinal implant systems, and (e) billed insurance carriers
25 for spinal fusion surgeries that were not medically necessary.

26 73. **Defendant Michael "Mic" McGrath** is an individual residing in the State of
27 California. Defendant McGrath owns and operates Defendant C.I.O.S., Inc. Defendant McGrath
28 has entered into several lucrative "marketing" arrangements with Defendants Tri-City, Pacific

1 Hospital, Spinal Solutions and others. Pursuant to these arrangements, Defendant McGrath
2 steered spinal surgery patients to Defendant Hospitals.

3 74. McGrath has knowingly and unlawfully (a) agreed to act as a runner, capper,
4 steerer or other person for the purpose of obtaining patients for Defendant Hospitals, (b) engaged
5 in a scheme to provide kickbacks to doctors performing spinal surgeries, (c) inflated the cost of
6 spinal surgeries and hardware billed to workers' compensation carriers, Medi-Cal and private
7 insurers, and (d) knowingly caused insurance carriers, including SCIF, Medi-Cal and others, to
8 be billed grossly inflated prices for counterfeit screws and rods used in the spinal implant
9 systems.

10 75. **Defendant Paul Randall** is an individual residing in the State of California.
11 Defendant Randall owns and operates Defendants Summit and Platinum, along with Defendant
12 Christina Hernandez. Defendant Randall is a central character in this conspiracy. In 1993,
13 Defendant Randall was convicted of racketeering and served a 21-month term in federal prison.
14 He was convicted of a felony for deals that involved buying wooden shipping pallets on credit
15 and reselling them without paying the original vendors. Initially, after serving time in federal
16 prison, Defendant Randall went into business with Defendant Drobot. During that period, he
17 steered spinal patients and surgeons to Defendants Drobot and Pacific Hospital.

18 76. In 2008, Defendant Randall focused his attention on steering spinal patients to
19 Defendant Tri-City. He recruited many of the same spinal surgeons from Defendant Pacific
20 Hospital to Tri-City. More importantly, he recruited a network of loyal lower-level doctors and
21 chiropractors who would refer spinal cases to Defendant Hospitals in return for illegal kickbacks.
22 He paid chiropractors and physicians kickbacks of approximately \$15,000 and \$20,000 for a
23 spinal fusion referral.

24 77. Defendant Randall also formed spinal implant distributorships, which purchased
25 hardware and resold it to Defendant Tri-City and other hospitals at grossly inflated prices. Much
26 of the hardware sold to hospitals included counterfeit screws. Defendant Tri-City paid Randall
27 approximately \$3.2 million in "marketing" fees between 2008 and July 2011.
28

1 78. Defendant Randall has knowingly and unlawfully (a) agreed to act as a runner,
2 capper, steerer or other person for the purpose of obtaining patients for Defendant Hospitals, (b)
3 inflated the cost of spinal surgery hardware billed to Defendant Hospitals, (c) engaged in a
4 scheme to use the profits from the inflated hardware to pay kickbacks to doctors who refer spinal
5 surgery cases to Defendant Hospitals, and (d) caused insurance carriers, including SCIF, Medi-
6 Cal and others, to be billed grossly inflated prices for counterfeit screws and rods used in the
7 spinal implant systems.

8 79. **Defendant Christina Hernandez** is an individual residing in the State of
9 California. On information and belief, Defendant Randall used Defendant Hernandez as the
10 “figurehead” for his sham corporations and entities. Defendant Hernandez, along with Randall,
11 controlled Defendants Summit and Platinum. Defendant Hernandez has knowingly and
12 unlawfully (a) agreed to act as a runner, capper, steerer or other person for the purpose of
13 obtaining patients for Defendant Hospitals, (b) inflated the cost of spinal surgery hardware billed
14 to Defendant Hospitals, (c) engaged in a scheme to use the profits from the inflated hardware to
15 pay kickbacks to doctors who refer spinal surgery cases to Defendant Hospitals, and (d) caused
16 insurance carriers, including SCIF, Medi-Cal and others, to be billed grossly inflated prices for
17 counterfeit screws and rods used in the spinal implant systems.

18 80. **Defendant Roger Williams** is an individual residing in the State of California.
19 Williams owns and operates Defendant Spinal Solutions, LLC. During the period relevant to this
20 Complaint, he has engaged in a scheme to manufacture and sell to the Defendant Hospitals
21 counterfeit “pedicle screw systems” and rods used in spinal fusion surgeries. Defendant
22 Williams hired a machinist in the Temecula area named William Crowder from Crowder
23 Machine & Tool Shop to manufacture counterfeit screws and rods. Williams’ purpose was to
24 then bill the counterfeit screws and rods to the Defendant Hospitals (and in turn, insurance
25 carriers) as if they were the actual, FDA-approved screws. Employees at Crowder Machine &
26 Tool Shop have confirmed to *Qui Tam* Plaintiffs that they manufactured counterfeit screws for
27 Defendants Spinal Solutions and Williams. Defendant Williams has knowingly and unlawfully
28 (a) inflated the price of its spinal implant systems sold to hospitals, (b) engaged in a scheme to

1 manufacture and/or utilize counterfeit screws used in spinal fusion surgeries, (c) engaged in the
2 kickback schemes alleged herein, and (d) caused insurance carriers, including SCIF, Medi-Cal
3 and others, to be billed grossly inflated prices for counterfeit screws and rods used in spinal
4 implant systems.

5 81. **Defendant Beryl Weiner** is an attorney with the law firm of Selvin & Weiner,
6 APC. His principal place of business is located at 12401 Wilshire Boulevard, 2nd Floor, Los
7 Angeles, California 90025. Defendant Weiner has acted as the General Counsel of Defendant
8 Tri-City for a number of years. In addition to his role as General Counsel, Defendant Weiner
9 was a de facto executive of Defendant Tri-City, having control over many aspects of its
10 operations.

11 82. Beginning in 2006, Defendant Weiner took over management of Tri-City by
12 establishing Defendant South Bay Hospital Management Company LLC. Defendant South
13 Bay's operating team consisted of Defendant Weiner, then CEO Arthur Gerrick and Dr. Glenn
14 Marshak. Through this entity, and in his role as General Counsel to Defendant Tri-City, Weiner
15 controlled several aspects of the Hospital's operations, including the schemes alleged herein.
16 Defendant Weiner has knowingly used Defendant South Bay as a means to funnel and siphon-off
17 unlawful profits from Defendant Tri-City arising from unlawful billings for spinal fusion
18 surgeries and hardware.

19 83. Defendant Weiner also spearheaded this unlawful scheme by controlling and
20 concealing any information regarding the billing of surgical hardware. For example, Defendant
21 Weiner became irate and threatened one executive staff member when he learned the member
22 had sent an email to others regarding the proper billing practices of surgical hardware.
23 Defendant Weiner informed the executive staff member that Weiner controlled all billing and
24 pricing information pertaining to surgical hardware, and such information should be sent to the
25 general staff by him alone.

26 84. Defendant Weiner also made sure he supervised all of the surgical hardware
27 billings at Defendant Tri-City – despite the responsibility belonging to another staff member.
28 From Defendant Weiner's law firm, receipts for surgical hardware were then sent to Defendant

1 South Bay. Through this process, Defendant Weiner knowingly concealed and controlled the
2 paper trail of the billings and enabled him to unlawfully inflate the invoices.

3 85. In addition, Defendant Weiner negotiated the sham marketing agreement with
4 Defendant Paul Randall, described below, by which Tri-City paid kickbacks to surgeons.

5 86. Defendant Weiner has knowingly and unlawfully conspired to (a) employ
6 runners, cappers, steerers or other persons for the purpose of obtaining patients for Defendant
7 Tri-City, (b) inflate the cost of spinal surgeries and hardware billed to workers' compensation
8 carriers, SCIF, Medi-Cal and private insurers, (c) aid and abet, as well as permit, the kickback
9 schemes described herein, (d) cause insurance carriers, including SCIF, Medi-Cal and others, to
10 be billed at grossly inflated prices for counterfeit screws and rods used in spinal implant systems,
11 and (e) bill insurance carriers for spinal fusion surgeries that were not medically necessary.

12 87. Defendant William Crowder is an individual residing in the State of California.
13 He is the owner and proprietor of Defendant Crowder Machine & Tool Shop in Temecula,
14 California. At the behest of Spinal Solutions and Roger Williams, Crowder knowingly
15 manufactured non-FDA approved, counterfeit pedicle screws and rods to be used in spinal fusion
16 surgeries. Defendant Crowder knowingly and unlawfully conspired to cause insurance carriers
17 to be billed at grossly inflated prices for counterfeit screws and rods used in the spinal fusion
18 surgeries.

19 88. **Defendant Mary Williams** is an individual residing in the State of California.
20 She is the wife of Defendant Roger Williams. Mrs. Williams assisted in the day-to-day
21 operation of Defendant Spinal Solutions. She was responsible for billing and collections.

22 89. Defendant Williams knowingly and unlawfully (a) inflated the price of its spinal
23 implant systems sold to hospitals, (b) engaged in a scheme to manufacture and/or utilize
24 counterfeit screws and rods used in spinal fusion surgeries, (c) engaged in the kickback schemes
25 alleged herein, and (d) caused insurance carriers, including SCIF, Medi-Cal and others, to be
26 billed grossly inflated prices for counterfeit screws and rods used in spinal implant systems.

27 90. Above are just a few of the individuals *Qui Tam* Plaintiffs know are involved in
28 the schemes alleged herein. *Qui Tam* Plaintiffs are ignorant of the names and capacities of

1 additional individuals sued herein as DOES 51 through 60, inclusive, and therefore sue such
2 Defendants by fictitious names pursuant to California Code of Civil Procedure § 474. *Qui Tam*
3 Plaintiffs will amend this Complaint to allege the true names and capacities of the fictitiously
4 named Defendants once they are ascertained.

5 **V. THE STATUTORY SCHEMES IMPLICATED IN THIS CONSPIRACY**

6 **A. The Employment of Runners, Cappers, Steerers or Other Persons for the**
7 **Purpose of Procuring Patients is Unlawful**

8 91. Pursuant to California Insurance Code § 1871.7(a), it is “unlawful to knowingly
9 employ runners, cappers, steerers or other persons to procure clients or patients to perform or
10 obtain services or benefits pursuant to [the California Workers Compensation System] or to
11 procure clients or patients to perform or obtain services or benefits under a contract of insurance
12 or that will be the basis of a claim against an insured individual or his or her insurer.”

13 92. Any person or entity that violates § 1871.7(a) is subject to a civil penalty of up to
14 \$10,000 for each claim submitted to an insurer for payment. The person or entity is also subject
15 to treble damages for the amount of the claim for compensation billed to the insurer. The Court
16 may also grant equitable relief to protect the public. *See*, Cal. Ins. Code § 1871.7(b).

17 **B. The Use of Kickbacks to Chiropractors and Doctors for (a) Referring**
18 **Patients for Spinal Surgery, (b) Performing Surgeries at Particular**
19 **Hospitals, and (c) Purchasing Certain Surgical Implant Hardware is**
20 **Unlawful**

21 93. California Business & Professions Code § 650 prohibits doctors and chiropractors
22 from receiving kickbacks for referring patients and/or receiving financial incentives from
23 medical implant makers or distributors to use their products in surgeries.

24 94. California Labor Code § 3215 similarly prohibits persons from receiving
25 kickbacks for referring patients or engaging in other acts, such as performing surgeries at
26 particular hospitals or choosing particular medical implant hardware in the workers’
27 compensation context. *See also*, Cal. Lab. Code § 3820. Cal. Ins. Code § 754 makes the same
28 conduct generally unlawful when billed to any private insurer.

1 95. The American Medical Association’s (“AMA”) Code of Medical Ethics strictly
2 prohibits doctors from accepting “any kind of payment or compensation from a drug company or
3 device manufacturer for prescribing its products *Physicians should not be influenced in the*
4 *prescribing of . . . devices, or appliances by a direct or indirect financial interest in a firm or*
5 *other supplier, regardless of whether the firm is a manufacturer, distributor, wholesaler, or*
6 *repackager of the products involved.” See, AMA Code of Medical Ethics, Opinion 8.06.*

7 C. **Inflating the Cost of Medical Implant Hardware Above 10% or \$250 of the**
8 **“Documented Paid Cost” is Unlawful**

9 96. Under the California Workers’ Compensation System, the generally applicable
10 reimbursement that medical providers may seek for certain procedures or items is 120% of the
11 Medicare reimbursement rate. Cal. Lab. Code § 5307.1.

12 97. There are, however, certain exceptions to the generally applicable reimbursement
13 rate. Under Cal. Lab. Code § 5318, “[i]mplantable medical devices, hardware and
14 instrumentation . . . shall be separately reimbursed *at the provider’s documented paid cost, plus*
15 *an additional 10% of the provider’s documented paid cost, not to exceed a maximum of two-*
16 *hundred fifty dollars (\$250)” See also, 8 CCR § 9789.22 (f). This provision applies to*
17 *implant hardware for spinal fusion surgeries. The statute requires medical providers to pay for*
18 *the implant hardware prior to billing the insurer.*

19 **VI. SPECIFIC FACTS RELATED TO UNLAWFUL SCHEME**

20 A. **Medical Background on Spinal Fusion Surgeries**

21 98. A “spinal fusion,” also known as *spondylodesis* or *spondylosyndesis*, is a surgical
22 technique used to join two or more vertebrae. Supplementary bone tissue, either from the patient
23 (autograft) or a donor (allograft) is used in conjunction with the body’s natural bone growth
24 (osteoblastic) processes to fuse the vertebrae.

25 99. The surgery is most commonly performed on the lumbar region of the spine
26 (lower back), but it is also used to treat cervical and thoracic problems. The surgery is less
27 common in the thoracic region because there is little motion in the thoracic spine.

1 Spinal fusion in the thoracic region is most often associated with spinal deformities, such as
2 scoliosis and kyphosis, not with chronic pain.

3 100. In spinal fusion surgery, metal rods and screws are used to anchor the spine in
4 place while grafted bone or other material is employed to generate bone growth that fuses the
5 vertebrae. "Pedicule screws," plates, small titanium or carbon fiber cages and other hardware are
6 used to stabilize the spine in place until the graft takes hold. The hardware reduces the
7 movement of each vertebrae that is connected to the bridge – in theory, thereby relieving stress
8 on the injured vertebrae, disks and/or nerves.

9 **B. Controversy over the Medical Benefits of Spinal Fusion Surgery**

10 101. From a clinical standpoint, spinal fusion surgeries have generated controversy.
11 As many reports have concluded, spinal fusion surgery may be a necessary treatment in the face
12 of trauma or debilitating diseases affecting the spine, such as scoliosis. The surgery, however,
13 has been severely questioned when used to treat certain other types of back problems. It is
14 precisely these kinds of spinal fusion surgeries that have dramatically increased in the California
15 Workers Compensation System.

16 102. The most controversial use of spinal fusion surgery centers on patients who
17 merely suffer from degenerative disc disease. In studies, researchers have found that the U.S.
18 performs five times as many spine surgeries than the United Kingdom, with "no evidence [of]
19 better outcomes." Blue Cross and Blue Shield of North Carolina recently announced that they
20 will no longer pay for spinal fusion surgeries because they are "considered not medically
21 necessary."

22 103. In 1998, spinal fusion surgeries were the 37th most common surgery in the U.S.
23 By 2008, spinal fusion surgeries skyrocketed to the 16th most common surgery in the U.S. The
24 surgery now accounts for around \$10 billion a year in U.S. medical spending.

25 **C. How Defendant Hospitals Attract Spinal Fusion Patients**

26 104. Defendant Hospitals enter into sham "marketing" arrangements with persons who
27 agree to deliver patients to the hospitals for spinal fusion surgeries. Although the agreements are
28 couched in general terms, such as "[e]nhancing the visibility and promote the image, reputation

1 and accessibility . . . of Hospital’s facility, medical staff and clinical programs pertaining to
2 orthopedics, spinal diseases/injuries . . . with Consultant’s network of chiropractors and
3 orthopedic specialists . . .” and “disseminate marketing materials and other information related
4 to Hospital Services . . .”, the real purpose of these agreements is to unlawfully steer patients to
5 the Defendant Hospitals for spinal fusion surgeries. Attached hereto and incorporated herein by
6 reference as Exhibit 1 to this Complaint is a true and correct copy of one such “marketing”
7 agreement in *Qui Tam* Plaintiffs’ possession.

8 **1. Tri-City’s Relationship with Paul Randall**

9 105. Defendant Tri-City has entered into high-paying “marketing” agreements with
10 several Defendants in this action, including Paul Randall. *At one point, Defendant Tri-City paid*
11 *Defendant Randall as much as \$100,000 a month to deliver spinal patients to the hospital.*
12 Between 2008 and 2011, Defendant Tri-City paid Randall as much as \$3.2 million to deliver
13 workers’ compensation spinal surgery cases. In reality, these “marketing” agreements are
14 nothing more than attempts by the Defendant Hospitals to unlawfully steer spinal fusion patients
15 to the hospitals in order to bill the patients’ insurer.

16 106. In return for obtaining these large “marketing” contracts with Defendant
17 Hospitals, **Defendant Paul Randall and other “marketers” established networks of lower-**
18 **level doctors and chiropractors who referred patients for surgery at Defendant Tri-City in**
19 **return for illegal kickbacks.** This was done with Defendant Tri-City’s knowledge or reckless
20 disregard for the truth.

21 107. Defendant Paul Randall and other “marketers” also induced surgeons to perform
22 spinal surgeries at Defendant Tri-City by similarly paying them illegal kickbacks. This was also
23 done with Defendant Tri-City’s knowledge or reckless disregard for the truth.

24 108. Had Medi-Cal, SCIF, workers’ compensation insurers and private insurers known
25 that these claims were subject to capping and steering and/or subject to illegal kickbacks, they
26 would not have provided reimbursement for the claims. Medi-Cal, workers’ compensation
27 insurers, and private insurers regularly insert provisions in their contracts with medical providers
28

1 strictly prohibiting the use of runners, cappers, steerers and other persons to procure patients and
2 the use of kickbacks to generate billings.

3 2. **Pacific Hospital's Relationship with Paul Randall and Other**
4 **"Marketers"**

5 109. After serving time in a federal prison on racketeering charges, Defendant Randall
6 went into business with Defendant Drobot, who is the owner of Pacific Hospital of Long Beach.
7 There, Defendant Randall introduced Drobot to surgeons performing spinal fusions. *At the time,*
8 *Defendant Drobot paid Randall \$25,000 a month.* Defendants Randall and Drobot also co-
9 owned a weekend retreat in Bullhead City, Arizona, along with a doctor.

10 110. After a business dispute between Drobot and Randall, Defendant Randall began
11 working with Defendant Tri-City in or around 2008. In or around August 2011, Defendant
12 Randall returned to Drobot and Pacific Hospital, signing another "marketing" arrangement. *This*
13 *agreement paid Randall \$100,000 per month to unlawfully steer spinal patients to Defendant*
14 *Pacific Hospital and to promote Defendant Drobot's implants in future spinal surgery cases.*

15 111. As in the allegations above, **Defendant Randall and other "marketers"**
16 **employed by Pacific Hospital established networks of chiropractors and doctors who**
17 **referred patients to Defendant Pacific Hospital for spinal fusion surgeries in return for**
18 **illegal kickbacks.** This was done with Defendant Pacific Hospital's knowledge or reckless
19 disregard for the truth.

20 112. Defendant Paul Randall and other "marketers" also induced surgeons to perform
21 surgeries at Defendant Pacific Hospital by similarly paying them illegal kickbacks. This was
22 also done with Defendant Pacific Hospital's knowledge or reckless disregard for the truth.

23 113. Had Medi-Cal, SCIF, workers' compensation insurers and private insurers known
24 that these claims were subject to capping and steering and/or subject to illegal kickbacks, they
25 would not have provided reimbursement for the claims. Medi-Cal, workers' compensation
26 insurers, and private insurers regularly insert provisions in their contracts with medical providers
27 strictly prohibiting the use of runners, cappers, steerers and other persons to procure patients and
28 the use of kickbacks to generate billings.

1 **3. Tri-City’s Relationship with Michael “Mic” McGrath**

2 114. During the period relevant to this Complaint, Defendant Tri-City entered into
3 “marketing” agreements with Defendants C.I.O.S. and McGrath. **Under the terms of the**
4 **agreements, Tri-City paid McGrath \$20,000 per month.** The real purpose of the “marketing”
5 agreements were for C.I.O.S. and McGrath to steer spinal patients to Tri-City for spinal fusion
6 surgery. Attached hereto and incorporated herein by reference as Exhibit 1 is a true and correct
7 copy of the “marketing” agreement entered into by Defendants Tri-City, C.I.O.S. and McGrath.
8 This was done with the hospitals’ knowledge or reckless disregard for the truth.

9 115. In April of 2011, Defendant Tri-City also entered into a nonexclusive “Supplier
10 Agreement” with Defendants C.I.O.S. and McGrath. This “Supplier Agreement” made clear that
11 the hospital would continue to purchase hardware for spinal fusion surgeries from C.I.O.S. and
12 McGrath. **C.I.O.S. and McGrath paid illegal kickbacks to doctors who performed spinal**
13 **fusion surgeries for choosing Spinal Solutions’ implant hardware.** All of this conduct was
14 done with the Defendant Hospitals’ knowledge or reckless disregard for the truth. Attached
15 hereto as Exhibit 2 and incorporated herein by reference is a true and correct copy of the
16 agreement entered into by Defendants Tri-City, C.I.O.S. and McGrath.

17 116. Had Medi-Cal, SCIF, workers’ compensation insurers and private insurers known
18 that these claims were subject to capping and steering and/or subject to illegal kickbacks, they
19 would not have provided reimbursement for the claims. Medi-Cal, workers’ compensation
20 insurers, and private insurers regularly insert provisions in their contracts with medical providers
21 strictly prohibiting the use of runners, cappers, steerers and other persons to procure patients and
22 the use of kickbacks to generate billings.

23 **D. How “Marketers” Steer Spinal Fusion Cases to Defendant Hospitals**

24 117. Defendants Summit, Platinum, C.I.O.S., Randall, Hernandez, and McGrath all
25 help steer patients to Defendant Hospitals for spinal fusion surgeries. **These Defendants**
26 **achieve this unlawful purpose by paying kickbacks to lower-level doctors and**
27 **chiropractors.** For example, Defendant Randall paid chiropractors and doctors approximately
28

1 \$15,000 to \$20,000 in unlawful kickbacks for referring a patient for a spinal fusion surgery at
2 Defendant Tri-City.

3 118. As one example, in or around March 2010, Defendants Summit and Randall paid
4 a chiropractor \$30,000 in cash for referring two spinal surgery workers' compensation cases to
5 Defendant Tri-City.

6 119. In addition to recruiting networks of loyal chiropractors and doctors to refer spinal
7 cases to Defendant Hospitals, Defendants Summit, Platinum, C.I.O.S., Randall, Hernandez and
8 McGrath also unlawfully induced spinal surgeons to perform surgeries at the Defendant
9 Hospitals by paying them illegal kickbacks from the surgeries and entering into sham
10 "consulting" agreements.

11 120. For example, C.I.O.S. and McGrath entered into sham "consulting agreements"
12 with Dr. Gurvinder Sunny Uppal and Dr. Jack Akmakjian. These doctors performed spinal
13 fusion surgeries at Defendant Hospitals. The real purpose of these arrangements was to provide
14 kickbacks to the surgeons for performing spinal surgery cases at Defendant Hospitals and for
15 **choosing their spinal fusion hardware.**

16 121. As an example, in November of 2002, Defendant C.I.O.S. paid Dr. Jack
17 Akmakjian \$25,000 in three checks in the amount of \$8,333.33 each. This conduct continued
18 during the period relevant to this Complaint. **These kickbacks were paid to Dr. Akmakjian**
19 **for choosing C.I.O.S.'s and Spinal Solutions' spinal implant hardware**, and to induce Dr.
20 Akmakjian to perform his surgeries at Tri-City Hospital and other Defendant Hospitals. A true
21 and correct copy of the invoice and checks for these unlawful payments are attached hereto as
22 Exhibit 3 to this Complaint and incorporated herein by reference.

23 122. Had Medi-Cal, SCIF, workers' compensation insurers and private insurers known
24 that these claims were subject to capping and steering and/or subject to illegal kickbacks, they
25 would not have provided reimbursement for the claims. Medi-Cal, workers' compensation
26 insurers, and private insurers regularly insert provisions in their contracts with medical providers
27 strictly prohibiting the use of runners, cappers, steerers and other persons to procure patients and
28 the use of kickbacks to generate billings.

1 **F. The Role of Spinal Implant Distributors in this Scheme**

2 123. Many of the Defendants who entered into “marketing” agreements with the
3 Defendant Hospitals, also operate spinal implant distributorships. These distributorships sell
4 spinal implant hardware to the Defendant Hospitals.

5 124. Defendants Summit, Platinum, C.I.O.S., Spinal Solutions, International Implants,
6 Randall, Hernandez, McGrath, Williams and Drobot (“Defendant Distributors”) have all at one
7 time been engaged in selling spinal implant systems to the Defendant Hospitals.

8 **1. Defendant Distributors’ Unlawful Kickbacks to Spinal Surgeons**

9 125. The surgeons who perform surgeries at Defendant Hospitals are responsible for
10 choosing the implant hardware that will be used in the surgery. **In order to ensure that they**
11 **obtain lucrative reimbursements from insurers for the spinal implant hardware, Defendant**
12 **Distributors pay kickbacks to spinal surgeons to induce the spinal surgeons to purchase**
13 **their equipment.**

14 126. Defendant Distributors have all engaged in a scheme to pay kickbacks to surgeons
15 for choosing their implant hardware. In many cases, Defendant Distributors achieved the
16 kickback scheme by entering into sham “consulting” agreements with the surgeons. For
17 example, Defendants C.I.O.S. and McGrath entered into such sham agreements with Dr.
18 Gurvinder Sunny Uppal and Dr. Jack Akmakjian. *Qui Tam* Plaintiffs are in possession of these
19 sham “consulting” agreements. On information and belief, the other Defendant Surgeons
20 (Vanderlinden and Kolpin) have also entered into sham “consulting” agreements or other
21 financial arrangements with Defendant Distributors, marketers and other unnamed
22 coconspirators **for the purpose of paying them illegal kickbacks for choosing their implant**
23 **hardware.**

24 127. In some cases, the sham “consulting” agreements state that the doctor will
25 “[m]ake recommendations for instrument and implant modifications . . .” Yet, the agreements
26 are entered into with implant distributors who are mere “repackagers” of the hardware, not the
27 actual manufacturers of FDA approved hardware.

28

1 128. In a note to Defendants Roger Williams and Spinal Solutions, Defendant McGrath
2 discussed the illegal kickback scheme. Attached to the note were two checks for \$750, one for
3 Dr. Uppal and one for Dr. Akmakjian. In the note, McGrath informs Williams: **“Rog, these**
4 **che[cks] are . . . for Sunny & Jack. I had to pay to stop their crying. I’ll take this out of**
5 **Spine-Line at the end of the month.”** Attached hereto and incorporated herein by reference as
6 Exhibit 4 is a true and correct copy of that document.

7 129. In a series of three checks issued on the same day, Dr. Akmakjian was paid
8 \$25,000 in kickbacks for choosing C.I.O.S. and Spinal Solutions’ spinal implant hardware.
9 Attached hereto and incorporated herein by reference as Exhibit 3 is a true and correct copy of
10 those checks.

11 130. On January 20, 2010, Defendant C.I.O.S. issued an invoice to Spinal Solutions
12 seeking money for kickbacks to surgeons using Spinal Solutions’ spinal fusion hardware. The
13 invoice indicates that Defendant Drs. Uppal and Akmakjian were paid \$1,500 per spinal fusion
14 surgery. The invoice even indicates the names of the patients and the hospitals where the
15 surgeries were performed. Attached hereto and incorporated herein by reference as Exhibit 5 is a
16 true and correct copy of that invoice.

17 131. *Qui Tam* Plaintiffs are also in possession of a series of checks issued to Defendant
18 Joseph Vanderlinden, M.D., from C.I.O.S. The checks are signed by Michael McGrath. The
19 document demonstrates extraordinarily lucrative kickbacks to Dr. Vanderlinden. **In a period of**
20 **only three months, C.I.O.S. paid Vanderlinden \$24,000 in kickbacks for using C.I.O.S.’s**
21 **and Spinal Solutions’ spinal fusion hardware, and for performing the surgeries at**
22 **Defendant Hospitals.** Dr. Vanderlinden appears to have been paid \$1,500 in kickbacks per
23 spinal fusion surgery. Attached hereto and incorporated herein by reference as Exhibit 6 are true
24 and correct copies of that billing statement.

25 132. Defendant Marketers and Distributors also effectuated their unlawful kickback
26 schemes by paying for junkets and international travel on behalf of spinal fusion surgeons who
27 purchased their hardware. For example, Defendant Drs. Akmakjian and Uppal attended, along
28 with Michael McGrath, a conference in Montreal. *Qui Tam* Plaintiffs are informed and believe

1 that neither doctor paid for this trip and that it was instead paid for by Defendant C.I.O.S. in
2 conjunction with Defendant Spinal Solutions as an illegal kickback or inducement to purchase
3 their spinal implant hardware.

4 133. Had Medi-Cal, SCIF, workers' compensation insurers and private insurers known
5 that these claims were subject to capping and steering and/or subject to illegal kickbacks, they
6 would not have provided reimbursement for the claims. Medi-Cal, workers' compensation
7 insurers, and private insurers regularly insert provisions in their contracts with medical providers
8 strictly prohibiting the use of runners, cappers, steerers and other persons to procure patients and
9 the use of kickbacks to generate billings.

10 2. **Defendant Distributors' and Hospitals' Unlawful Scheme to Inflate**
11 **the Cost of Spinal Implant Hardware**

12 134. When billing workers' compensation carriers, medical providers are only
13 permitted to mark-up spinal fusion implant hardware by 10% or \$250 of their "documented paid
14 cost." Defendant Distributors and Hospitals are engaged in a scheme to unlawfully inflate the
15 cost of spinal implant hardware billed to insurers in violation of this provision.

16 a. **Tri-City Regional Hospital**

17 135. Defendant Distributors (Summit, Platinum, C.I.O.S., Spinal Solutions,
18 International Implants, Randall, Hernandez, McGrath, Williams and Drobot) created invoices to
19 hospitals, inflating the cost of the implant hardware from 2-10 times the actual purchase price.
20 These unlawfully inflated invoices were submitted to hospitals, including Defendant Hospitals,
21 who in turn unlawfully inflated the invoices even further for payment by insurance carriers.

22 136. Attached as Exhibit 7 and incorporated herein by reference is an example of
23 precisely how this unlawful billing inflation operates. On December 31, 2009, Defendant
24 C.I.O.S. submitted an invoice to Defendant Spinal Solutions for C.I.O.S.'s "commission" on the
25 sale of spinal implant hardware for a particular surgery. The invoice reflects the "list price" that
26 Spinal Solutions should have billed to Tri-City. **The total list price was \$22,155** (\$5,580 for
27 four screws, \$2,799 for two other screws, \$850 for two rods, \$2,850 for six screw caps, \$1,495
28 for "Medium Crosslink," and \$8,590 for two ALIF Cages). See Exhibit 7.

1 137. When Defendant Spinal Solutions billed Tri-City for the same hardware,
 2 however, it dramatically inflated the price. Defendant Spinal Solutions charged Tri-City a **total**
 3 **of \$95,223** (\$17,180 for the four screws, \$8,598.00 for the two other screws, \$7,790 for the two
 4 rods, \$17,370 for the six screw caps, \$12,095 for the Medium Crosslink, and \$32,190 for two
 5 ALIF Cages).

6 138. Not satisfied with the already greatly inflated cost of the implant hardware,
 7 Defendant Tri-City further inflated the cost when it billed the workers' compensation carrier – in
 8 this case, Berkshire Hathaway. Defendant Tri-City charged a **total of \$285,645** for the same
 9 hardware on precisely the same patient (\$51,540 for the four screws, \$25,770 for the two other
 10 screws, \$23,370 for the two rods, \$52,110 for the six screw caps, \$36,285 for the Medium
 11 Crosslink, and \$96,570 for two ALIF Cages).

12 139. Below is a summary of the unlawful inflation of implant hardware in only one
 13 case involving Defendant Tri-City:

15 Implant Product	16 List Price	17 Spinal Solutions to Tri-City	18 Tri-City to Workers' Compensation Insurer	19 Total Markup
20 4, 6x40mm Screws	21 \$5,580	22 \$17,180	23 \$51,540	24 \$45,960
25 2, 7x35mm Screws	26 \$2,790	27 \$8,590	28 \$25,770	\$22,980
29 2, 70mm Rods	\$850	\$7,790	\$23,370	\$22,520
30 6, Screw Caps	\$2,850	\$17,370	\$52,110	\$49,260
31 1, Medium Crosslink	\$1,495	\$12,095	\$36,285	\$34,790
32 2, ALIF Cages	\$8,590	\$32,190	\$96,570	\$87,980
				Total Overall Markup: \$263,490

33 140. Defendants Randall and Hernandez, through Defendants Summit and Platinum,
 34 also inflated the cost of hardware sold to hospitals by anywhere from 2 to 10 times the actual
 purchase price. In August of 2010, Defendant Randall submitted to Tri-City an invoice for
 spinal surgery hardware used on a workers' compensation patient, "R.G." **The invoice listed**

1 the cost of the hardware as \$42,467, when the actual cost of the hardware purchased by
2 Defendants was \$3,600.

3 141. Defendants Spinal Solutions, C.I.O.S., Summit, Platinum, International Implants,
4 Roger Williams, Mary Williams, Michael McGrath, Paul Randall, Christina Hernandez and
5 Michael Drobot (“Defendant Distributors”) are all involved with Defendants Tri-City and Pacific
6 Hospital in the scheme to inflate the cost of spinal implant hardware billed to insurers.

7 142. Additionally, in order to ensure that Defendant Tri-City is able to maintain its
8 “non-profit” status under state and federal tax law, its executives engaged in a scheme to skim
9 profits from the hospital originating from spinal fusion surgeries and hardware reimbursements.
10 Executives at Tri-City Hospital – including Defendant Beryl Weiner and others – established
11 Defendant South Bay Hospital Management Company, ostensibly to “manage” Defendant Tri-
12 City Hospital. The real purpose of the South Bay Management Company, however, is and was
13 to conceal and launder money from unlawful billings to insurance carriers.

14 143. During the course of *Qui Tam* Plaintiffs’ investigation, former CEO of Defendant
15 Tri-City, Arthur Gerrick, admitted to *Qui Tam* Plaintiffs that the hospital inflated the cost of
16 invoiced spinal implant hardware by 300%. These inflated prices were subsequently unlawfully
17 billed to insurance carriers. He also admitted that the hospital sought reimbursement from the
18 insurance carriers prior to paying the supplier for the medical implant hardware.

19 **b. Pacific Hospital of Long Beach**

20 144. Defendant Pacific Hospital also engaged in egregious unlawful billing inflation
21 for spinal implant hardware. In January of 2012, Defendant International Implants provided the
22 hardware for a spinal fusion surgery to be performed at Pacific Hospital. International Implants
23 charged Pacific Hospital \$32,465.00 for the hardware.

24 145. Only a few days later and without having actually paid for the surgical hardware
25 yet, Pacific Hospital billed the workers’ compensation carrier \$64,930.00. Pacific Hospital
26 unlawfully doubled the amount of the implant hardware that it billed to the workers’
27 compensation carrier. Attached hereto and incorporated herein by reference as Exhibit 8 to this
28

1 Complaint is a true and correct copy of documents demonstrating the billing inflation at Pacific
2 Hospital.

3 146. Similar to Defendant Tri-City, *Qui Tam* Plaintiffs' review of Defendant Pacific
4 Hospital's bills demonstrates that Defendant Pacific Hospital billed insurance carriers at inflated
5 rates prior to actually purchasing the implants from Defendant International Implants.

6 3. **Defendants' Unlawful Scheme to Further Inflate the Cost of Spinal**
7 **Implants by Manufacturing and Using Counterfeit Pedicle Screws**

8 147. As if the aforementioned scheme was not bad enough, Defendants have also
9 manufactured and/or knowingly utilized **counterfeit** "pedicle screw" systems and rods used in
10 spinal fusion surgeries. These counterfeit screws and rods have been used in implant systems
11 sold to Defendants Tri-City, Pacific Hospital, Riverside and St. Bernardine, as well as potentially
12 countless other hospitals. The counterfeit screws and rods are not FDA approved and pose a
13 serious threat to the health and safety of hundreds and potentially thousands of patients who
14 received them

15 148. The FDA's mission is, in part, to protect the public safety through the registration
16 and tracking of medical devices and surgical hardware. In order to obtain FDA approval for
17 original medical devices and surgical hardware, the manufacturer is required to go through an
18 onerous approval process. This approval process requires clinical trials, product testing and
19 other internal processes. On the other hand, in order for a "tagalong" device to be approved by
20 the FDA, the manufacturer, distributor or "repackager" is required to demonstrate that the
21 product is "substantially equivalent" to an already-approved FDA device. This process requires
22 the manufacturer to conduct product testing and meet other requirements in order to obtain the
23 proper registration. If the FDA approves the "tagalong" device, the hardware receives a "510-K"
24 number. Defendants circumvented this process by engaging in an illegal scheme to counterfeit
25 FDA-approved pedicle screw systems and rods.

26 149. Defendant Roger Williams and Spinal Solutions, along with the other Defendant
27 Distributors, hired a machinist in the Temecula area to manufacture counterfeit pedicle screws
28 and rods. Williams used a business called "Crowder's Machine & Tool Shop."

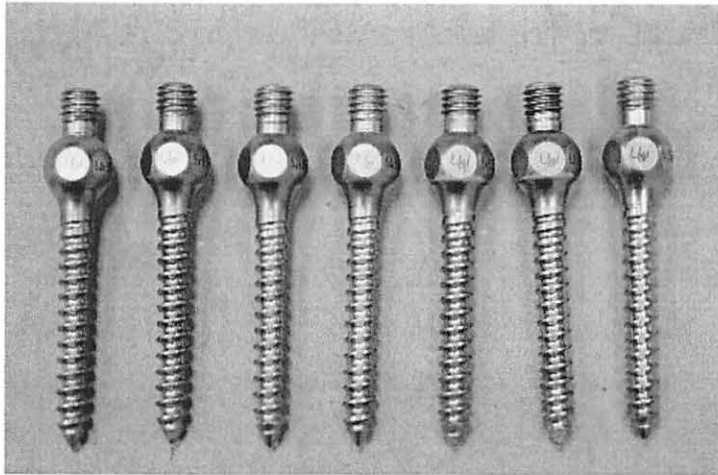
1 150. *Qui Tam* Plaintiffs have met with the owner and proprietor of Crowder’s Machine
2 & Tool Shop – Defendant William Crowder. He informed *Qui Tam* Plaintiffs that he had been
3 hired by Williams to manufacture counterfeit screws and rods to be sold as part of spinal implant
4 systems. He confirmed that he sold counterfeit screws and rods to Defendant Distributors.
5 Crowder informed *Qui Tam* Plaintiffs that the screws and rods were intended to look like the
6 FDA-approved pedicle screws manufactured by the “U&I Corporation.” U&I Corporation is a
7 South Korean medical device company that manufactures FDA-approved pedicle screws and
8 rods.

9 151. *Qui Tam* Plaintiffs were provided with samples of the counterfeit screws by
10 Defendant McGrath. *Qui Tam* Plaintiffs met with representatives of U&I Corporation, who flew
11 to the United States for a meeting. At that meeting U&I Corporation’s chief engineer and
12 executives examined the screws and confirmed to *Qui Tam* Plaintiffs that they were, in fact,
13 counterfeit.

14 152. In addition to counterfeiting U&I Corporation pedicle screws and rods, *Qui Tam*
15 Plaintiffs also uncovered evidence that Spinal Solutions and Roger Williams counterfeited
16 Ortho-Sol’s pedicle screws – a company from South Africa. After uncovering this evidence, *Qui*
17 *Tam* Plaintiffs contacted representatives of Ortho-Sol. In response to *Qui Tam* Plaintiffs’
18 inquiry, Richard Walker from Ortho-Sol confirmed that they also believed Spinal Solutions and
19 Roger Williams were engaged in a scheme to manufacturer counterfeit, non-FDA approved
20 hardware. Ortho-Sol halted any business with Spinal Solutions and Roger Williams when
21 “[a]larm bells started to ring.” In an email to *Qui Tam* Plaintiffs, Walker described that there
22 appeared to be product tampering and counterfeiting, “[u]nethical perverse incentive payments
23 made to surgeons for product use [and] Roger[’s] **sudden flamboyant increase in lifestyle**
24 **from mediocre, to a Upper Class Property, flashy vehicles, aircraft and yacht purchases.”**

25 153. Pasted below are pictures of some of the counterfeit pedicle screws in *Qui Tam*
26 Plaintiffs’ possession:

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9 154. Defendants utilized false lot numbers and, in some circumstances, failed
10 altogether to place serial or lot numbers on the implant logs or to follow FDA tracking
11 requirements or standard operating protocols by most hospitals. Defendants Tri-City, Pacific
12 Hospital, Riverside and St. Bernardine's ("Defendant Hospitals") all had knowledge and/or a
13 reckless disregard for the truth that the pedicle screws and rods they received from Defendant
14 Distributors were counterfeit. Notwithstanding the hospitals' knowledge, they billed insurers at
15 grossly inflated prices.

16 155. In using the counterfeit screws, Defendant Hospitals violated FDA law and
17 standard operating protocols designed to ensure that hospitals use only the safest medical
18 implants. As one example, Exhibit 9 shows precisely how the Defendant Hospitals are put on
19 notice of the counterfeit screws.

20 156. Each implant system is required to arrive at the hospital with a peel-away sticker
21 that is then placed on an implant-log form that identifies all implants going into a patient for a
22 given surgery. *See* Exhibit 9. When the distributor uses counterfeit items, like the Defendant
23 Distributors in this case, the peel-away sticker is replaced by a handwritten accounting of the
24 items. Those items should not be handwritten. See below:

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Product Information: **REF: HA081081A**
REF: 084057
 Place Healthcare Corporation
 11000 Westpark Drive, Suite 200
 Dallas, Texas 75243-1000
 Phone: (972) 412-1000
 Fax: (972) 412-1001
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1-2141-008 0° x 8 mm
 4-NG000135 4.0 x 12 mm level
 1-NG000101 One level 24 mm

Refer Patient to Pass Operating Room

Nurse verbally confirmed with the team:

The name of the procedure recorded Y N

That instrument, sponge and needle counts are correct (or not applicable) Y N NA

That specimen is labeled correctly (including patient name) Y N NA

Whether there are any equipment problems to be addressed Y N

Preoperative Assessment and Condition of Patient

Estimated Y N NA Responsive/Commands: Y N Responsive/Pain: Y N

Fully Awake: Y N Color: *Normal* Respiration: *Equal*

Heart Rate/Rhythm: *120/regular* Condition IV site: *Normal*

Capitation/dressing: *Normal* Solution: *NS* TBA:

Vital: *Q* Output: *Q* Review of Medications/Orders

Notes/Remarks:

Aspirations: *None* Transfused: *None* Receiving RN: *A. Ne. RN* Time: *12:35*

///

1 157. In addition, hospitals are required to obtain proof of the 510-K FDA registration
2 number of all hardware prior to any surgery. Manufacturers or distributors of such devices are
3 supposed to track the manufacturer, serial number, and lot number for each device. Hospitals are
4 also supposed to keep track of each device's "lot number." This tracking must correspond to
5 each patients' hospital implant log.

6 158. As the above example demonstrates, the devices that have a sticker attached to the
7 form include lot numbers; the implants that were merely handwritten on the form do not.
8 Hospital staff properly trained in medical implant requisition would not have accepted the above
9 form as proper documentation of the implant screws and other hardware. Notwithstanding these
10 glaring deficiencies and the obvious counterfeit nature of the screws, Defendant Hospitals billed
11 workers' compensation insurers, Medi-Cal and private insurers millions of dollars for counterfeit
12 medical implants.

13 159. During the course of *Qui Tam* Plaintiffs' investigation, Judy Hopkins, the former
14 head nurse at Defendant Tri-City, admitted that she knew the spinal fusion implant hardware was
15 counterfeit or otherwise not approved by the FDA. Hopkins also admitted that she knew of the
16 improper markups described herein, and knew of the illegal skimming of profits from Tri-City to
17 South Bay Hospital Management Company.

18 160. In addition to the unlawful inflation of the medical implants outlined in prior
19 sections, Defendant Hospitals further unlawfully inflated the costs billed to insurers through
20 these counterfeit pedicle screw and rod systems. The Defendant Hospitals billed workers'
21 compensation insurers, private insurers, SCIF, and Medi-Cal for the screws as if they were the
22 real, FDA-approved, pedicle screw systems and rods.

23 161. In addition to manufacturing and selling counterfeit medical implants, Defendants
24 Spinal Solutions and Roger Williams smuggled non-FDA approved spinal screws and related
25 hardware into the United States, and sold that hardware to Defendant Hospitals for use in
26 surgery.

27
28 ///

1 **VII. EXAMPLES OF FALSE CLAIMS**

2 162. Defendants conspired to, aided and abetted, or were otherwise unlawfully
3 involved in the submission of thousands of false or fraudulent claims for payment to workers'
4 compensation carriers, SCIF, private insurers and the Medi-Cal system. The claims were false or
5 fraudulent for one or more of the following reasons:

- 6 • Defendants knowingly sought, and falsely represented that they were entitled to,
7 reimbursement far in excess of amounts they paid for spinal hardware;
- 8 • Defendants knowingly sought, and falsely represented that they were entitled to,
9 reimbursement for spinal hardware for which they had not yet paid;
- 10 • Defendants knowingly sought, and falsely represented that they were entitled to,
11 reimbursement for claims that were procured by runners, cappers or steerers;
- 12 • Defendants knowingly sought, and falsely represented that they were entitled to,
13 reimbursement for spinal surgeries that were procured by means of, or otherwise
14 involved, the payment of illegal kickbacks; and
- 15 • Defendants knowingly sought, and falsely represented that they were entitled to,
16 reimbursement for spinal surgeries that utilized counterfeit or non-FDA approved
17 hardware.

18 163. As outlined above, Section 5318 of the California Labor Code, and Title 8,
19 Section 9789.22 of the California Code of Regulations, limit the amount that a provider may
20 charge an insurer for surgical hardware – including the spinal implants at issue – to “the
21 provider’s documented paid cost.” The provider is allowed to charge a 10% surcharge on top of
22 the documented paid cost, in an amount not to exceed \$250. Defendants Tri-City and Pacific
23 regularly submitted false claims for payment well in excess of 110% of their documented paid
24 cost for the spinal surgical hardware described herein.

25 164. For example, as described above in Paragraphs 138-139, Tri-City submitted a
26 claim for payment to Berkshire Hathaway for **\$285,645** worth of surgical hardware used on a
27 workers’ compensation patient, when Tri-City was only billed \$95,223 for the hardware from its
28 distributor. By submitting the claim, Tri-City represented that it was entitled to the entire

1 amount claimed. Furthermore, Tri-City submitted the claim to Berkshire Hathaway on a
2 standard UB-04 claim form. The standard UB-04 claim form contains an explicit certification
3 that states, in pertinent part:

4 THE SUBMITTER OF THIS FORM UNDERSTANDS THAT
5 MISREPRESENTATION OR FALSIFICATION OF ESSENTIAL
6 INFORMATION AS REQUESTED BY THIS FORM, MAY SERVE AS
7 THE BASIS FOR CIVIL MONETARY PENALTIES AND
8 ASSESSMENTS AND MAY UPON CONVICTION INCLUDE FINES
9 AND/OR IMPRISONMENT UNDER FEDERAL AND/OR STATE
10 LAW(S).

11 Submission of this claim constitutes certification that the billing
12 information as shown on the face hereof is true, accurate and complete and
13 that the submitter did not knowingly or recklessly disregard or
14 misrepresent or conceal material facts.

15 (Emphasis in original).

16 165. Tri-City's claim for payment in excess of the amount to which it was entitled
17 therefore constitutes a false claim. Tri-City has submitted hundreds and likely thousands of such
18 falsely inflated claims for amounts in excess of its documented paid cost for spinal surgery
19 hardware.

20 166. Similarly, Defendant Pacific Hospital has submitted falsely inflated claims for
21 amounts in excess of its documented paid cost for spinal surgery hardware. For example, for a
22 surgery performed on a workers' compensation patient on January 12, 2012, Pacific received an
23 invoice for surgical hardware totaling \$32,465. Pacific Hospital billed the workers'
24 compensation insurance carrier, Berkshire Hathaway, twice that amount – \$67,654 – for the
25 same hardware.

26 167. Moreover, under Section 5318 of the California Labor Code, and Title 8, Section
27 9789.22 of the California Code of Regulations, Defendant Hospitals were only permitted to bill
28 for hardware for which they had *already paid*. Defendants Tri-City and Pacific Hospital,
however, regularly and knowingly billed insurance carriers for spinal hardware prior to paying
the providers of the hardware. Each claim submitted by Defendants Tri-City and Pacific
Hospital for hardware for which they had not already paid constitutes a false claim.

168. Worse still, the Defendants knowingly sought, and falsely represented that they
were entitled to, reimbursement for spinal surgeries that were procured by means of, or otherwise

1 involved, the payment of illegal kickbacks; and Defendants Hospitals knowingly sought, and
2 falsely represented that they were entitled to, reimbursement for spinal surgeries that utilized
3 counterfeit or non-FDA approved hardware.

4 169. Attached hereto as Exhibit 10 is a spreadsheet detailing thousands of false claims
5 submitted by Defendant Hospitals between 2004 and 2009. These claims are all false for one or
6 more of the reasons described in the paragraphs above.

7 **VIII. DELAYED DISCOVERY, FRAUDULENT CONCEALMENT AND**
8 **CONTINUING COURSE OF CONDUCT**

9 170. *Qui Tam* Plaintiffs incorporate herein by reference and reallege all of the
10 allegations stated in this Complaint.

11 **A. Delayed Discovery Suspended Accrual of the Action**

12 171. *Qui Tam* Plaintiffs had no knowledge of the claims alleged herein, or of facts
13 sufficient to place them on inquiry notice of the claims set forth herein, until just months before
14 filing this Complaint. *Qui Tam* Plaintiffs did not discover, and could not have discovered
15 through the exercise of reasonable diligence, the existence of this scheme until just months
16 before the filing of the Complaint.

17 172. Because of the lack of transparency in the healthcare industry and medical billing
18 generally and due to Defendants' conduct, information was not available to *Qui Tam* Plaintiffs
19 prior to just months before the filing of the Complaint. For these reasons, the statute of
20 limitations did not begin to accrue with respect to the claims that *Qui Tam* Plaintiffs have alleged
21 in this Complaint until just months before the filing of the Complaint.

22 **B. Fraudulent Concealment Tolloed the Statute of Limitations**

23 173. In the alternative, application of the doctrine of fraudulent concealment tolled the
24 statute of limitations on the claims asserted herein by *Qui Tam* Plaintiffs.

25 174. *Qui Tam* Plaintiffs did not know and could not have known of the existence of the
26 claims asserted herein until just months before the filing of the Complaint.

27 175. Before that time, *Qui Tam* Plaintiffs were unaware of Defendants' unlawful
28 conduct. Defendants employed tactics to keep the schemes alleged herein secret. For example,

1 in order to hide the counterfeit nature of the pedicle screw systems and rods, Defendant
2 Distributors put “U&I Corporation,” and the branding of other companies who manufactured
3 real, FDA-approved screws, on the counterfeit screws and rods. This conduct concealed the true
4 nature of the implant hardware and deceived persons into believing they were not counterfeit.
5 Indeed, even the FDA did not discover the counterfeit nature of the screws when it raided
6 Defendant Spinal Solutions’ operations. Moreover, federal and state medical privacy laws make
7 it difficult for the public or whistleblowers to review medical billing in depth.

8 176. Additionally, Defendants utilized the utter lack of transparency in the healthcare
9 industry and medical billing generally to carry out their unlawful and fraudulent schemes. For
10 example, the State Compensation Insurance Fund’s publication, *A Treating Physician’s Guide to*
11 *Patient Care in the Workers’ Compensation System*, states that “[t]he nature of the workers’
12 compensation system combined with minimal accountability demanded of service providers to
13 allow documenting fraud and establishing potential criminal responsibility make fraud
14 **exceptionally difficult to detect and prosecute.**”

15 177. With respect to the illegal kickbacks, Defendants shrouded their unlawful conduct
16 through the use of sham “consulting” agreements and other complex financial arrangements.
17 Additionally, chiropractors and doctors were sometimes paid unlawful kickbacks in cash to
18 conceal the payments. Consequently, the doctrine of fraudulent concealment has tolled *Qui Tam*
19 Plaintiffs’ claims.

20 C. **Defendants’ Continuing Course of Conduct Constitutes a Continuing**
21 **Violation of the Insurance Frauds Prevent Act and the California False**
22 **Claims Act**

23 178. *Qui Tam* Plaintiffs are informed and believe that with respect to each individual
24 named in this Complaint, their conduct constituted a continuing pattern and course of conduct
25 that began as early as 2004 and continues up until the present.

26 179. This pattern and course of conduct constitutes a continuing violation of the
27 statutes at issue in this case.

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1 **IX. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **CALIFORNIA INSURANCE FRAUDS PREVENTION ACT, EMPLOYMENT**
4 **OF RUNNERS, CAPPERS AND STEERERS**
5 **OR OTHER PERSONS TO PROCURE PATIENTS**
6 **Against Defendant Hospitals, C.I.O.S., Summit, Platinum, Healthpointe, Catanzarite,**
7 **McGrath, Randall, Hernandez and Drobot**
8 **(Cal. Ins. Code § 1871.7(a))**

9 180. *Qui Tam* Plaintiffs incorporate herein by reference and reallege all of the
10 allegations stated in this Complaint.

11 181. Pursuant to Cal. Ins. Code § 1871.7(a), it is unlawful to knowingly employ
12 runners, cappers, steerers or other persons to procure patients for the purpose of submitting a
13 claim to that patient's insurance carrier.

14 182. From at least May 25, 2004, to the present, Defendant Hospitals and Drobot have
15 unlawfully employed Defendants C.I.O.S., Summit, Platinum, Healthpointe, Catanzarite,
16 McGrath, Hernandez, and Randall for the purpose of procuring patients to perform spinal fusion
17 surgeries at their hospitals. Defendant Hospitals did so in order to submit claims for payment to
18 insurance carriers.

19 183. From at least May 25, 2004, to the present, Defendants C.I.O.S., Summit,
20 Platinum, Healthpointe, Catanzarite, McGrath, Randall and Hernandez, acting as the runners,
21 cappers, steerers or other persons, all conspired with the Defendant Hospitals and Drobot to
22 violate Cal. Ins. Code § 1871.7(a).

23 184. Because the claims submitted to medical insurers by Defendant Hospitals were
24 procured by runners, cappers, steerers and other persons, these claims were false and fraudulent
25 under the California Insurance Frauds Prevention Act.

26 185. This conduct was a substantial factor in causing damages as detailed herein.
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SECOND CAUSE OF ACTION

**CALIFORNIA INSURANCE FRAUDS PREVENTION ACT, PRESENTING OR
CAUSING TO BE PRESENTED FALSE OR FRAUDULENT CLAIMS FOR THE
PAYMENT OF AN INJURY UNDER A CONTRACT OF INSURANCE**

**Against All Defendants
(Cal. Ins. Code § 1871.1(b); Cal. Pen. Code § 550(a)(1))**

186. *Qui Tam* Plaintiffs incorporate herein by reference and reallege all of the allegations stated in this Complaint.

187. From at least May 25, 2004, to the present, Defendants have all either knowingly presented or caused to be presented false and fraudulent claims for the payment of spinal surgeries, or aided, abetted, solicited, or conspired to present or cause to be presented such false and fraudulent claims.

188. The claims were false or fraudulent because:

- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement far in excess of amounts they paid for spinal hardware;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal hardware for which they had not yet paid;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal surgeries that were procured by means of, or otherwise involved, the payment of illegal kickbacks;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal surgeries that utilized counterfeit or non-FDA approved hardware.

189. Defendants either directly presented such false claims for payment to insurers, or caused such false claims to be presented.

190. This conduct was a substantial factor in causing damages as detailed herein.

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1 **THIRD CAUSE OF ACTION**

2 **CALIFORNIA INSURANCE FRAUDS PREVENTION ACT, KNOWINGLY**
3 **PREPARING OR MAKING ANY WRITING IN SUPPORT OF A FALSE OR**
4 **FRAUDULENT CLAIM**

5 **Against All Defendants**

6 **(Cal. Ins. Code § 1871.1(b); Cal. Pen. Code § 550(a)(5))**

7 191. *Qui Tam* Plaintiffs incorporate herein by reference and reallege all of the
8 allegations stated in this Complaint.

9 192. From at least May 25, 2004, to the present, Defendants have all either knowingly
10 prepared, made, or subscribed a writing, with the intent to present or use it, or to allow it to be
11 presented, in support of false and fraudulent claims for the payment of spinal surgeries on
12 patients, or have aided, abetted, solicited, or conspired to prepare, make, or subscribe such a
13 writing.

14 193. The writings include bills for payment presented to insurance carriers for
15 payment, and invoices prepared in support of such bills for payment. Such bills for payment
16 constitute false or fraudulent claims because through those bills:

- 17 • Defendants knowingly sought, and falsely represented that they were entitled to,
18 reimbursement far in excess of amounts they paid for spinal hardware;
- 19 • Defendants knowingly sought, and falsely represented that they were entitled to,
20 reimbursement for spinal hardware for which they had not yet paid;
- 21 • Defendants knowingly sought, and falsely represented that they were entitled to,
22 reimbursement for spinal surgeries that were procured by means of, or otherwise
23 involved, the payment of illegal kickbacks;
- 24 • Defendants knowingly sought, and falsely represented that they were entitled to,
25 reimbursement for spinal surgeries that utilized counterfeit or non-FDA approved
26 hardware.

27 194. Defendants either directly presented such false claims for payment to insurers, or
28 caused such false claims to be presented.

195. This conduct was a substantial factor in causing damages as detailed herein.

FOURTH CAUSE OF ACTION

**CALIFORNIA INSURANCE FRAUDS PREVENTION ACT, KNOWINGLY MAKING
OR CAUSING TO BE MADE ANY FALSE OR FRAUDULENT CLAIM FOR
PAYMENT OF A HEALTH CARE BENEFIT**

**Against All Defendants
(Cal. Ins. Code § 1871.1(b); Cal. Pen. Code § 550(a)(6))**

196. *Qui Tam* Plaintiffs incorporate herein by reference and reallege all of the allegations stated in this Complaint.

197. From at least May 25, 2004, to the present, Defendants have all either knowingly presented or caused to be presented false and fraudulent claims for the payment of spinal surgeries on patients, or aided, abetted, solicited, or conspired to present or cause to be presented such false and fraudulent claims.

198. The claims were false or fraudulent because:

- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement far in excess of amounts they paid for spinal hardware;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal hardware for which they had not yet paid;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal surgeries that were procured by means of, or otherwise involved, the payment of illegal kickbacks;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal surgeries that utilized counterfeit or non-FDA approved hardware.

199. Defendants either directly presented such false claims for payment to insurers, or caused such false claims to be presented.

200. This conduct was a substantial factor in causing damages as detailed herein.

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FIFTH CAUSE OF ACTION

**CALIFORNIA INSURANCE FRAUDS PREVENTION ACT, SOLICITING,
ACCEPTING, AND REFERRING BUSINESS TO OR FROM AN INDIVIDUAL OR
ENTITY THAT INTENDS TO VIOLATE SECTION 550 OF THE PENAL CODE OR
SECTION 1871.4 OF THE INSURANCE CODE
Against All Defendants
(Cal. Ins. Code § 1871.1(b); Cal. Pen. Code § 549)**

201. *Qui Tam* Plaintiffs incorporated herein by reference and reallege all of the allegations stated in this Complaint.

202. From at least May 25, 2004, to the present, Defendants have all solicited, accepted, or referred business to or from an entity or individual that intends to violate Section 550 of the Penal Code or Section 1871.4 of the Insurance Code.

203. The claims were false or fraudulent because:

- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement far in excess of amounts they paid for spinal hardware;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal hardware for which they had not yet paid;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal surgeries that were procured by means of, or otherwise involved, the payment of illegal kickbacks;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal surgeries that utilized counterfeit or non-FDA approved hardware

204. Defendants either directly presented such false claims for payment to insurers, or caused such false claims to be presented.

205. This conduct was a substantial factor in causing damages as detailed herein.

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SIXTH CAUSE OF ACTION

**CALIFORNIA FALSE CLAIMS ACT FOR SUBMISSION, USE, PRESENTATION OR
CAUSE OF SUBMISSION, USE, PRESENTATION OF FALSE CLAIMS OR
CONSPIRACY TO COMMIT FALSE CLAIMS TO MEDI-CAL
Against All Defendants
(Cal. Gov. Code § 12651(a)(1)-(3), 12652)**

206. *Qui Tam* Plaintiffs incorporate herein by reference and reallege all of the allegations stated in this Complaint.

207. By the conduct described above, from at least May 25, 2002, to the present, Defendants have all knowingly presented, caused to be presented false and fraudulent claims for payment or approval from California's Medi-Cal system.

208. From at least May 25, 2002, to the present, Defendants have also knowingly made, used, or caused to be made or used a false record or statement material to a false or fraudulent claim submitted to California's Medi-Cal system.

209. The claims were false or fraudulent because:

- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement far in excess of amounts they paid for spinal hardware;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal hardware for which they had not yet paid;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal surgeries that were procured by means of, or otherwise involved, the payment of illegal kickbacks;
- Defendants knowingly sought, and falsely represented that they were entitled to, reimbursement for spinal surgeries that utilized counterfeit or non-FDA approved hardware

210. Defendants either directly presented such false claims for payment to insurers, or caused such false claims to be presented.

211. This conduct was a substantial factor in causing damages as detailed herein.

1 **X. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff by and through *Qui Tam* Plaintiffs, pray judgment in its favor
3 and against Defendants as follows:

4 **Pursuant to the California Insurance Frauds Prevention Act:**

5 TO THE PEOPLE OF CALIFORNIA AND *QUI TAM* PLAINTIFFS:

6 1. For civil penalties of \$10,000 to be imposed for each and every false and
7 fraudulent claim for payment submitted, presented or caused to be submitted or presented to an
8 insurance company;

9 2. For an assessment of three-times the amount of each claim for compensation
10 made by Defendants;

11 3. For an injunction mandating that Defendants be prohibited from:

12 a) employing, or acting as, runners, cappers, steerers or other persons for the
13 purpose of procuring patients;

14 b) paying illegal kickbacks to chiropractors, doctors, lawyers and other
15 persons for referring patients to Defendant Hospitals;

16 c) inflating the cost of spinal implant hardware above that which is allowable
17 under California law;

18 d) paying illegal kickbacks to doctors and surgeons for choosing particular
19 spinal implant hardware;

20 e) manufacturing counterfeit, non-FDA approved spinal implant hardware
21 and billing insurers as if it were FDA approved hardware; and

22 f) performing non-medically necessary spinal fusion surgeries.

23 4. For pre and post-judgment interest;

24 5. For reasonable attorneys' fees, costs, and expenses incurred in bringing this case;

25 6. For an award of such other and further relief as this Court deems just and proper;

26 and

27 7. That the *Qui Tam* Plaintiffs be awarded the maximum percentage of any recovery
28 allowed to them pursuant to Cal. Ins. Code § 1871.7.

1 **Pursuant to the California False Claims Act:**

2 TO THE PEOPLE OF CALIFORNIA AND *QUI TAM* PLAINTIFFS:

3 1. For civil penalties of \$10,000 to be imposed for each and every false and
4 fraudulent claim for payment submitted, presented or caused to be submitted or presented to
5 Medi-Cal for payment;

6 2. For treble damages resulting to the Medi-Cal system from Defendants; conduct;

7 3. For pre and post-judgment interest;

8 4. For reasonable attorneys' fees, costs, and expenses incurred in bringing this case;

9 5. That the *Qui Tam* Plaintiffs be awarded the maximum percentage of any recovery
10 allowed to them pursuant to the California False Claims Act; and

11 6. For pre and post-judgment interest.

12
13 Dated: June 30, 2014

COTCHETT, PITRE & McCARTHY, LLP

14
15 By:

 Justin T. Berger / JSB

16 JOSEPH W. COTCHETT

17 NIALL P. McCARTHY

18 JUSTIN T. BERGER

19 DEMETRIUS X. LAMBRINOS

20 RYON M. NIXON

21
22 *Attorneys for Qui Tam Plaintiffs*


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DEMAND FOR JURY TRIAL

Qui Tam Plaintiffs MARK SERSANSIE and WILLIAM REYNOLDS hereby demand a jury trial on all issues so triable.

Dated: June 30, 2014

COTCHETT, PITRE & McCARTHY, LLP

By:  / ESB
JOSEPH W. COTCHETT
NIALL P. McCARTHY
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