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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
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Clerk of the Superior Court  
By Meg Hackett, Deputy Clerk

6 Attorneys for Plaintiff, JON LARSON

7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
8 **COUNTY OF SAN DIEGO—NORTH COUNTY DIVISION**

9 JON LARSON, an individual,

10 Plaintiff,

11 v.

12  
13 LA JOLLA NEUROSURGICAL  
14 ASSOCIATES, a business entity, form  
15 unknown; and DOES 1-10,

16 Defendants.

Case No.: 37-2017-00015756-CU-MC-NC

**COMPLAINT AND DEMAND FOR  
JURY TRIAL FOR VIOLATIONS  
OF:**

1. **STATE OF CALIFORNIA  
ROSENTHAL ACT, CALIF.  
CIV. CODE § 1788, et seq.;**

17  
18  
19  
20 Plaintiff, JON LARSON, an Individual, by and through his attorneys of record,  
21 hereby complains and alleges as follows:

22 **INTRODUCTION**

23 1. Plaintiff, by and through his attorneys of record, bring this action to secure  
24 redress from unlawful debt collection practices engaged in by Defendant LA JOLLA  
25 NEUROSURGICAL ASSOCIATES (hereinafter "Defendant") in violation of the State  
26 of California Rosenthal Act, California Civil Code § 1788-1788.32 (hereinafter  
27 "Rosenthal" or "Rosenthal Act").

1           2.     In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the  
2 following findings and purpose in creating the Rosenthal Act:

3           (a)(1) The banking and credit system and grantors of credit to  
4 consumers are dependent upon the collection of just and owing  
5 debts. Unfair or deceptive collection practices undermine the  
6 public confidence which is essential to the continued functioning  
7 of the banking and credit system and sound extensions of credit to  
8 consumers.

9           (2) There is need to ensure that debt collectors and debtors exercise  
10 their responsibilities to another with fairness and honesty and due  
11 regard for the rights of the other.

12           (b) It is the purpose of this title to prohibit debt collectors from  
13 engaging in unfair or deceptive acts of practices in the collection of  
14 consumer debts and to require debtors to act fairly in entering into  
15 and honoring such debts, as specified in this title.

#### 16                                                                 **JURISDICTION AND VENUE**

17           3.     This action arises out of violations of the Rosenthal Act, over which the  
18 Court has subject matter jurisdiction pursuant to Calif. Civ. Code §1788.30.

19           4.     Because Defendant conducts business within the County of San Diego,  
20 State of California, is physically located at 9834 Genesee Ave, Suite 411, in the City of  
21 La Jolla, State of California, personal jurisdiction is established.

22           5.     Venue in this District is proper for the following reasons: (i) Plaintiff  
23 resides in the City of Oceanside, County of San Diego, State of California, which is  
24 within this judicial district; (ii) the conduct complained of herein occurred within this  
25 judicial district; and, (iii) Defendant conducted business within this judicial district at  
26 all times relevant by sending debt collection letters to Plaintiff at his residence in the  
27 City of Oceanside.

#### 28                                                                 **PARTIES & DEFINITIONS**

          6.     Plaintiff is a natural person whose permanent residence is in the County of

1 San Diego, City of Oceanside, State of California, and is therefore a “person” as that  
2 term is defined by California Civil Code § 1788.2(g) of the Rosenthal Act.

3 7. Plaintiff, as a natural person allegedly obligated to pay a consumer debt to  
4 Defendants, alleged to have been due and owing, is therefore a “debtor” as that term is  
5 defined by California Civil Code § 1788.2(h) of the Rosenthal Act.

6 8. As a partnership, corporation, limited liability company, or other similar  
7 entity, Defendant is therefore a “person” within the meaning of California Civil Code §  
8 1788.2(g) of the Rosenthal Act.

9 9. Defendant was allegedly owed a monetary debt by Plaintiff, which makes  
10 Defendants each a “creditor” under California Civil Code § 1788.2(i) of the Rosenthal  
11 Act.

12 10. Defendant alleged that Plaintiff owed it money that it was allegedly  
13 collecting for money arising out of medical services performed upon Plaintiff by  
14 Defendant for treatment of injuries arising out of an industrial work-place accident,  
15 without payment being required at the time of services being rendered, and Plaintiff is  
16 informed and believes that the money alleged to be owed to Defendant originated from  
17 monetary credit that was extended primarily for personal, family, or household  
18 purposes, and is therefore a “debt” as that term is defined by California Civil Code §  
19 1788.2(d) of the Rosenthal Act.

20 11. Defendant was attempting to collect on a debt that originated from  
21 monetary credit that was extended primarily for personal, family, or household  
22 purposes due to medical services performed upon Plaintiff to treat injuries arising out of  
23 an industrial work-place accident without payment being required at the time of  
24 services, and was therefore a “consumer credit transaction” within the meaning of  
25 California Civil Code § 1788.2(e) of the Rosenthal Act.

26 12. Because Plaintiff, a natural person allegedly obligated to pay money to  
27 Defendant arising from a consumer credit transaction due to medical services  
28 performed upon Plaintiff to treat injuries arising out of an industrial work-place

1 accident without payment being required at the time of services, the money allegedly  
2 owed was a “consumer debt” within the meaning of California Civil Code § 1788.2(f)  
3 of the Rosenthal Act.

4 13. Defendant is a person who, in the ordinary course of business, regularly,  
5 on behalf of itself, engages in debt collection, because it took actions on its own behalf  
6 in connection with the collection of a consumer debt, and is therefore both a “debt  
7 collector” and undertakes “debt collection” as defined in Calif. Civ. Code 1788.2(b)-(c)  
8 of the Rosenthal Act.

### 9 FACTUAL ALLEGATIONS

10 14. Sometime in 2011, Plaintiff began to suffer injuries to his spinal column,  
11 neck, shoulder, trapezius, and biceps as a direct result of persistent heavy lifting while  
12 employed with Lowe’s Home Centers.

13 15. Plaintiff began to suffer issues with degenerative discs, dissipated cartilage  
14 between the discs, crushed vertebrae, damaged discs, and eventually had to have bone  
15 plates installed in his spinal column.

16 16. These issues have also resulted in a plethora of mental health issues, such  
17 as depression and loss of self-worth and loss of self-confidence.

18 17. These issues have also resulted in gastrointestinal issues.

19 18. Plaintiff continues to suffer from spinal column damage, vertebrae  
20 damage, gastrointestinal issues, and mental health issues.

21 19. Plaintiff continues to receive physical and mental health treatment for  
22 these issues.

23 20. Plaintiff is still taking various medications for both the on-going physical  
24 and mental health injuries, and also continues to seek treatment for both.

25 21. Since November 2011, Plaintiff has maintained an on-going claim with the  
26 California Workers’ Compensation Board in California Workers’ Compensation case  
27 number ADJ8166561, which remains active to this day.

28 22. California Labor Code § 3751(b) states “If an employee has filed a claim

1 form pursuant to Section 5401, a provider of medical services shall not, with actual  
2 knowledge that a claim is pending, collect money directly from the employee for  
3 services to cure or relieve the effects of the injury for which the claim form was filed,  
4 unless the medical provider has received written notice that liability for the injury has  
5 been rejected by the employer and the medical provider has provided a copy of this  
6 notice to the employee.”

7 23. California Labor Code § 4900 states: “No claim for compensation, except  
8 as provided in Section 96, is assignable before payment, but this provision does not  
9 affect the survival thereof.”

10 24. Liability for the injury has not been rejected to this day, and therefore no  
11 purported creditor could have received written notice of a rejection that has not  
12 occurred.

13 25. In June and August of 2015, Plaintiff received medical services from  
14 Defendant for treatment of injuries that are the subject of his worker’s compensation  
15 claim, of which Defendant knew about and was aware that all billings for services  
16 should be handled pursuant to the Worker’s Compensation Act.

17 26. When Plaintiff received this treatment from Defendant, he specifically  
18 informed Defendant that the treatment was for on-going injuries related to his worker’s  
19 compensation claim.

20 27. Upon information and belief, the account history and the account file  
21 contain this information—that the services were being rendered for on-going injuries  
22 related to his worker’s compensation claim.

23 28. Nevertheless, Defendant began attempting to collect from Plaintiff directly  
24 by sending him multiple bills for collection.

25 29. However, no letter has been provided to Defendant informing Defendant  
26 that liability has been rejected, which means Defendant has been attempting to  
27 unlawfully collect the amounts from Plaintiff directly pursuant to Labor Code 3751.

28 30. In response to Defendant’s multiple collection letters, Plaintiff’s workers’

1 compensation attorney—Mr. James W. Talley of The Law Offices of Galyean, Talley  
2 & Wood—sent a letter dated November 15, 2016 to Defendant at the same address  
3 listed as its return address on each collection letter—9834 Genesee Avenue, Suite 411,  
4 La Jolla, California—which is also the same location as Defendant’s physical location.

5 31. Mr. Talley’s letter enclosed a copy of one of Defendant’s collection letters  
6 for Defendant to reference in relation to the subject of Mr. Talley’s letter.

7 32. Mr. Talley’s letter specifically informed Defendant that his office  
8 represents Plaintiff upon the alleged debt.

9 33. This letter clearly informs Defendant about the pending workers’  
10 compensation claim, provides the case number, and also provides the insurance  
11 carrier’s contact information responsible for payment of medical billings pertaining to  
12 Plaintiff’s workers’ compensation claims.

13 34. This letter also very clearly informs Defendant that the Workers’  
14 Compensation Appeals Board (WCAB) has exclusive jurisdiction to hear and determine  
15 claims pertaining to an asserter workers’ compensation claim, and cites to the case of  
16 *WCAB v. Small Claims Court (Shans)* 35 Cal. App. 3d 643 that supports Mr. Talley’s  
17 assertions (which relied upon California Labor Code §§ 4600, 5300, 5304, and 5955 to  
18 reach its holding).

19 35. This letter also clearly informs Defendant that its sole remedy for payment  
20 of the medical bill is to file a lien with the WCAB.

21 36. This letter also clearly contained the office name, address, and phone  
22 number for Galyean, Talley & Wood.

23 37. This letter also provides the name and contact information for the  
24 insurance carrier that is handling payment for medical billings in Plaintiff’s worker’s  
25 compensation claim—Sedgwick CMS—as well as the name and contact information for  
26 the law firm representing Sedgwick CMS, and also instructs Defendant to contact them  
27 directly to submit a claim for payment.

28 38. Finally, this letter also clearly notifies Defendant that any future contact

1 with Plaintiff directly regarding the medical billings and any negative credit reporting  
2 and any pursuit of a civil claim for collection of the debt will be considered harassment  
3 and will give rise to Plaintiff having a claim for debt harassment.

4 39. At all times relevant herein, an aggrieved creditors' remedy if the WCAB's  
5 decision is unsatisfactory is a petition for reconsideration pursuant to California Labor  
6 Code § 5900 and then appellate review pursuant to California Labor Code § 5950.

7 40. Plaintiff has never received written notice from Defendant that liability  
8 upon the claim had been rejected.

9 41. After Plaintiff's worker's compensation attorney delivered his November  
10 2016 letter to Defendant, rather than participate in the worker's compensation process  
11 as required by law, Defendant has instead persisted in its unlawful efforts to attempt to  
12 collect the full amount of the debt from Plaintiff directly.

13 42. Defendant has sent letters directly to Plaintiff dated December 9, 2016,  
14 January 10, 2017, February 14, 2017, and February 17, 2017, all of which claim that  
15 Plaintiff directly owes a balance of \$456.00, and each letter contains the ominous  
16 language "YOUR ACCOUNT IS PAST DUE" and threatens "Payment due in 10 days  
17 to avoid further collection efforts".

18 43. Defendant's numerous collection letters to Plaintiff directly have confused  
19 Plaintiff as to whether he was going to be subjected to more debt collection activity  
20 even though the debt had been submitted as part of his worker's compensation claim,  
21 which was supposed to have protected Plaintiff by insulating him from being  
22 individually responsible for payment thereof.

23 44. Despite Defendant's actual knowledge of the worker's compensations  
24 attorney's representation of Plaintiff, and despite Defendant's actual knowledge of the  
25 worker's compensation claim, Defendant's multiple collection letters nevertheless  
26 expressly claim that Plaintiff personally owes the debt and makes absolutely no  
27 reference to the pending worker's compensation claim or to the November 2016  
28 attorney representation letter.

1           45. As a direct result of Defendant's unfair, oppressive, and abusive conduct in  
2 connection with its debt collection activity as explained above, Plaintiff has suffered  
3 mental anguish by way of embarrassment, shame, anxiety, fear, and feelings of despair  
4 over the fact that Defendant has continued its collection efforts from him directly  
5 despite his workers' compensation attorney having already notified them of their  
6 exclusive remedy being a lien and has placed him in a position of distrust with his  
7 worker's compensation attorney's advice and feelings of despair over whether the  
8 worker's compensation board process actually provides him with the protections it is  
9 supposed to.

10                                   **FIRST CAUSE OF ACTION**  
11                                   **VIOLATIONS OF ROSENTHAL ACT**

12           46. Plaintiff re-alleges and incorporates by reference the above paragraphs, as  
13 though set forth fully herein.

14           47. Calif. Civ. Code § 1788.17 incorporates specific prohibitions as codified in  
15 the FDCPA and makes them direct violations of the Rosenthal Act, as this Section reads  
16 as follows:

17           Notwithstanding any other provision of this title, every debt collector  
18 collecting or attempting to collect a consumer debt shall comply with the  
19 provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject  
20 to the remedies in Section 1692k of, Title 15 of the United States Code.  
21 However, subsection (11) of Section 1692e and Section 1692g shall not  
22 apply to any person specified in paragraphs (A) and (B) of subsection (6)  
23 of Section 1692a of Title 15 of the United States Code or that person's  
24 principal. The references to federal codes in this section refer to those  
25 codes as they read January 1, 2001.

26           48. Defendant meets the applicable definitions of the Rosenthal Act as  
27 explained above, in particular the definitions of "debt collector" within the meaning of  
28 California Civil Code § 1788.2(c) and "debt collection" within the meaning of  
California Civil Code § 1788.2(b), as Defendant is one who, in the ordinary course of



1 business, regularly, on behalf of himself or herself or others, engages in debt collection  
2 of consumer debts.

3 49. By sending collection letters directly to Plaintiff personally after Defendant  
4 was notified in writing that Plaintiff was represented by an attorney on this very debt  
5 and the written correspondence clearly contained the office name, address, and phone  
6 number for Plaintiff's attorneys, and this action is undeniably unlawful pursuant to  
7 Calif. Labor Code §§ 3751 and 4900, Defendant therefore violated the Rosenthal Act  
8 via Calif. Civil Code § 1788.14(c), which caused Plaintiff to feel as if he were not  
9 protected by the worker's compensation laws and to lose trust and faith in his worker's  
10 compensation attorney and in the worker's compensation process.

11 50. Defendant violated 15 U.S.C. §1692f of the FDCPA, which is incorporated  
12 into the Rosenthal Act via Calif. Civ. Code §1788.17 to create direct liability of the  
13 Rosenthal Act for the same conduct as prohibited by the FDCPA section, by using  
14 unfair and unconscionable means to attempt to collect the consumer debt directly from  
15 Plaintiff as an end-run around Plaintiff's attorney's representation and worker's  
16 compensation coverage/protections, and this action is undeniably unlawful pursuant to  
17 Calif. Labor Code §§ 3751 and 4900, which caused Plaintiff to feel as if he were not  
18 protected by the worker's compensation laws and to lose trust and faith in his worker's  
19 compensation attorney and in the worker's compensation process.

20 51. Defendant violated 15 U.S.C. §1692f of the FDCPA, as incorporated into  
21 the Rosenthal Act via Calif. Civ. Code §1788.17 to create direct liability of the  
22 Rosenthal Act for the same conduct as prohibited by the FDCPA section, by sending  
23 multiple collection letters to Plaintiff directly in December 2016 and January and  
24 February of 2017, claiming that he had personal liability upon the debt and ominously  
25 threatening that he would be subject to further collection efforts, even though Defendant  
26 had been specifically notified by Plaintiff and Plaintiff's attorneys that the services were  
27 the subject of an industrial accident for which a pending worker's compensation claim  
28 was proceeding, and this action is undeniably unlawful pursuant to Calif. Labor Code §

1 3751, which caused Plaintiff to feel as if he were not protected by the worker's  
2 compensation laws and to lose trust and faith in his worker's compensation attorney and  
3 in the worker's compensation process.

4 52. Defendant violated 15 U.S.C. §1692e of the FDCPA, as incorporated into  
5 the Rosenthal Act via Calif. Civ. Code §1788.17 to create direct liability of the  
6 Rosenthal Act for the same conduct as prohibited by the FDCPA section, by sending  
7 collection letters to Plaintiff directly in December 2016 and January and February of  
8 2017, claiming that he had personal liability upon the debt and ominously threatening  
9 that he would be subject to negative credit reporting, which amounted to false,  
10 deceptive, and/or misleading representations in connection with the collect of the  
11 consumer debt, and this action is undeniably unlawful pursuant to Calif. Labor Code §  
12 3751, since Defendant had been notified by Plaintiff and his attorney that the services  
13 were the subject of an industrial accident for which a pending worker's compensation  
14 claim was proceeding, which caused Plaintiff to feel as if he were not protected by the  
15 worker's compensation laws and to lose trust and faith in his worker's compensation  
16 attorney and in the worker's compensation process.

17 53. Defendant violated 15 U.S.C. §1692e(2)(A) of the FDCPA, as  
18 incorporated into the Rosenthal Act via Calif. Civ. Code §1788.17 to create direct  
19 liability of the Rosenthal Act for the same conduct as prohibited by the FDCPA section,  
20 by sending collection letters to Plaintiff directly in December 2016 and January and  
21 February of 2017, claiming that he had personal liability upon the debt and ominously  
22 threatening that he would be subject to negative credit reporting, which amounted to  
23 false, deceptive, and/or misleading representations in connection with the collect of the  
24 consumer debt, and this action is undeniably unlawful pursuant to Calif. Labor Code §  
25 3751, since Defendant had been notified by Plaintiff and his attorney that the services  
26 were the subject of an industrial accident for which a pending worker's compensation  
27 claim was proceeding, which caused Plaintiff to feel as if he were not protected by the  
28 worker's compensation laws and to lose trust and faith in his worker's compensation

1 attorney and in the worker's compensation process.

2 54. Defendant violated 15 U.S.C. §1692e(10) of the FDCPA, as incorporated  
3 into the Rosenthal Act via Calif. Civ. Code §1788.17 to create direct liability of the  
4 Rosenthal Act for the same conduct as prohibited by the FDCPA section, by sending  
5 collection letters to Plaintiff directly in December 2016 and January and February of  
6 2017, claiming that he had personal liability upon the debt and ominously threatening  
7 that he would be subject to negative credit reporting, which amounted to false,  
8 deceptive, and/or misleading representations in connection with the collect of the  
9 consumer debt, and this action is undeniably unlawful pursuant to Calif. Labor Code §  
10 3751, since Defendant had been notified by Plaintiff and his attorney that the services  
11 were the subject of an industrial accident for which a pending worker's compensation  
12 claim was proceeding, which caused Plaintiff to feel as if he were not protected by the  
13 worker's compensation laws and to lose trust and faith in his worker's compensation  
14 attorney and in the worker's compensation process.

15 55. Defendant violated 15 U.S.C. §1692d of the FDCPA, as incorporated into  
16 the Rosenthal Act via Calif. Civ. Code §1788.17 to create direct liability of the  
17 Rosenthal Act for the same conduct as prohibited by the FDCPA section, by sending  
18 collection letters to Plaintiff directly in December 2016 and January and February of  
19 2017, claiming that he had personal liability upon the debt and ominously threatening  
20 that he would be subject to negative credit reporting, which amounted to false,  
21 deceptive, and/or misleading representations in connection with the collect of the  
22 consumer debt, and this action is undeniably unlawful pursuant to Calif. Labor Code §  
23 3751, since Defendant had been notified by Plaintiff and his attorney that the services  
24 were the subject of an industrial accident for which a pending worker's compensation  
25 claim was proceeding, which caused Plaintiff to feel as if he were not protected by the  
26 worker's compensation laws and to lose trust and faith in his worker's compensation  
27 attorney and in the worker's compensation process.

28 56. Defendant violated 15 U.S.C. §1692d of the FDCPA, as incorporated into

1 the Rosenthal Act via Calif. Civ. Code §1788.17 to create direct liability of the  
2 Rosenthal Act for the same conduct as prohibited by the FDCPA section, by sending  
3 collection letters to Plaintiff directly in December 2016 and January and February of  
4 2017, claiming that he had personal liability upon the debt and ominously threatening  
5 that he would be subject to negative credit reporting, which amounted to false,  
6 deceptive, and/or misleading representations in connection with the collect of the  
7 consumer debt, and this action is undeniably unlawful pursuant to Calif. Labor Code §  
8 3751, since Defendant had been notified by Plaintiff and his attorney that the services  
9 were the subject of an industrial accident for which a pending worker's compensation  
10 claim was proceeding, which caused Plaintiff to feel as if he were not protected by the  
11 worker's compensation laws and to lose trust and faith in his worker's compensation  
12 attorney and in the worker's compensation process.

13 57. Defendant violated 15 U.S.C. §1692c(a)(2) of the FDCPA, as incorporated  
14 into the Rosenthal Act via Calif. Civ. Code §1788.17 to create direct liability  
15 thereunder, by communicating directly with a person that it knew to be represented by  
16 an attorney in an attempt to collect the full amount of the debt from Plaintiff directly,  
17 which caused Plaintiff to feel as if he were not protected by the worker's compensation  
18 laws and to lose trust and faith in his worker's compensation attorney and in the  
19 worker's compensation process.

20 58. Defendant violated 15 U.S.C. §1692c(c) of the FDCPA, as incorporated  
21 into the Rosenthal Act via Calif. Civ. Code §1788.17 to create direct liability  
22 thereunder, by communicating directly with a person that it knew to be represented by  
23 an attorney in an attempt to collect the full amount of the debt from Plaintiff directly,  
24 which caused Plaintiff to feel as if he were not protected by the worker's compensation  
25 laws and to lose trust and faith in his worker's compensation attorney and in the  
26 worker's compensation process.

27 59. Plaintiff is informed and believes that all of the above violations were  
28 willful, because Plaintiff and his worker's compensation attorney have notified

1 Defendant multiple times of the worker's compensation claim, including via written  
2 letter in November 2016, and Defendant has attempted to work an end-run around the  
3 worker's compensation process and attorney representation as a means of attempting to  
4 collect the full amount of the debt and not risk a delay in payment and risk having to  
5 accept reduced payment.

6 60. As a result, Plaintiff has suffered emotional distress and mental anguish as  
7 identified above.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, , and  
10 Plaintiff be awarded damages from Defendant as follows:

- 11 • An award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code §  
12 1788.30(b);
- 13 • An additional award of statutory damages of \$1,000.00 pursuant to 15  
14 U.S.C. §1692k, as incorporated into the Rosenthal Act via Calif. Civ. Code  
15 §1788.17;
- 16 • An award of actual damages in the amount of \$15,000.00, or as the jury may  
17 allow, pursuant to California Civil Code § 1788.30(a);
- 18 • An award of costs of litigation and reasonable attorney's fees pursuant to  
19 Cal. Civ. Code § 1788.30(c); and
- 20 • Any other such relief as the Court may deem proper.

21 Pursuant to the seventh amendment to the Constitution of the United States of  
22 America, Plaintiff is entitled to, and demands, a trial by jury.

23 Dated: April 25, 2017

Respectfully submitted,

24 SEMNAR & HARTMAN, LLP

25  
26 By: /s/ Jared M. Hartman  
27 Jared M. Hartman, Esq.  
28 Attorneys for Plaintiff