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**U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JON LARSON, an individual,

Plaintiff,

v.

SCRIPPS MEMORIAL HOSPITAL—
LA JOLLA, a business entity, form
unknown; R.M. GALICIA, INC. d/b/a
PROGRESSIVE MANAGEMENT
SYSTEMS; and DOES 1-10,

Defendants.

Case No.: '16CV2485 BEN JLB

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

- 1. FEDERAL FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692, et seq.;**
- 2. TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227(b)**
- 3. STATE OF CALIFORNIA ROSENTHAL ACT, CALIF. CIV. CODE § 1788, et seq.;**
- 4. CALIFORNIA WORKER'S COMPENSATION ACT, CALIF. LABOR CODE § 3571(b)**

Plaintiff, JON LARSON, an Individual, by and through his attorneys of record, hereby complains and alleges as follows:

INTRODUCTION

1. Plaintiff, by and through his attorneys of record, bring this action to secure redress from unlawful debt collection practices engaged in by Defendant SCRIPPS MEMORIAL HOSPITAL—LA JOLLA (hereinafter “Defendant SCRIPPS”) in

1 violation of the State of California Rosenthal Act, California Civil Code § 1788-
2 1788.32 (hereinafter “Rosenthal” or “Rosenthal Act”) and the California Worker’s
3 Compensation Act, Calif. Labor Code 3571(b); and Defendant R.M. GALICIA, INC.
4 d/b/a/ PROGRESSIVE MANAGEMENT SYSTEMS (hereinafter “Defendant PMS”),
5 in violation of the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692-1692p
6 (hereinafter “FDCPA”), the Telephone Consumer Protection Act, 47 U.S.C. 227
7 (hereinafter “TCPA”), the State of California Rosenthal Act, California Civil Code §
8 1788-1788.32 (hereinafter “Rosenthal” or “Rosenthal Act”), and the California
9 Worker’s Compensation Act, Calif. Labor Code 3571(b).

10 2. In 15 U.S.C. § 1692(a)-(e), the U.S. Legislature made the following
11 findings and purpose in creating the FDCPA:

12 Abusive practices. There is abundant evidence of the use of
13 abusive, deceptive, and unfair debt collection practices by many
14 debt collectors. Abusive debt collection practices contribute to the
15 number of personal bankruptcies, to marital instability, to the loss
of jobs, and to invasions of individual privacy.

16 Inadequacy of laws. Existing laws and procedures for redressing
17 these injuries are inadequate to protect consumers.

18 Available non-abusive collection methods. Means other than
19 misrepresentation or other abusive debt collection practices are
20 available for the effective collection of debts.

21 Interstate commerce. Abusive debt collection practices are carried
22 on to a substantial extent in interstate commerce and through
23 means and instrumentalities of such commerce. Even where
24 abusive debt collection practices are purely intrastate in character,
they nevertheless directly affect interstate commerce.

25 Purposes. It is the purpose of this title [15 USCS §§ 1692 et seq.]
26 to eliminate abusive debt collection practices by debt collectors, to
27 insure that those debt collectors who refrain from using abusive
28 debt collection practices are not competitively disadvantaged, and
to promote consistent State action to protect consumers against

1 debt collection abuses.

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

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

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

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

17 **JURISDICTION AND VENUE**

18 4. This action arises out of Defendant PMS’ violations of the Federal FDCPA
19 and the TCPA, over which the U.S. District Court has original subject matter jurisdiction
20 pursuant to 15 U.S.C. § 1681p; as well as Defendant PMS’ and Defendant SCRIPPS’
21 violations of the State of California Rosenthal Act and State of California Worker’s
22 Compensation Act, both of which the U.S. District Court has supplemental jurisdiction
23 over pursuant to 28 U.S.C. § 1367(a).

24 5. Because Defendant SCRIPPS conducts business within the County of San
25 Diego, State of California, is physically located at 9888 Genesee Ave, in the City of La
26 Jolla, State of California, personal jurisdiction is established.

27 6. Defendant PMS is a debt collector that maintains its corporate office at
28 1521 West Cameron Ave., First Floor, West Covina, California 91790. PMS is
registered to do business in California as entity number C1216320, and is a “person” as

1 defined by 47 U.S.C. § 153 (32). Therefore, personal jurisdiction is established.

2 7. Venue in this District is proper pursuant to 28 U.S.C. § 1391 for the
3 following reasons: (i) Plaintiff resides in the County of San Diego, State of California,
4 which is within this judicial district; (ii) the conduct complained of herein occurred
5 within this judicial district; and, (iii) Defendant conducted business within this judicial
6 district at all times relevant.

7 **PARTIES & DEFINITIONS**

8 8. Plaintiff is a natural person whose permanent residence is in the County of
9 San Diego, City of Oceanside, State of California, and is therefore a “person” as that
10 term is defined by California Civil Code § 1788.2(g) of the Rosenthal Act.

11 9. Plaintiff, as a natural person allegedly obligated to pay a consumer debt to
12 Defendants, alleged to have been due and owing, is therefore both a “consumer” as that
13 term is defined by 15 U.S.C. § 1692a(3) of the FDCPA, and is also therefore a “debtor”
14 as that term is defined by California Civil Code § 1788.2(h) of the Rosenthal Act.

15 4. As a partnership, corporation, limited liability company, or other similar
16 entity, Defendants SCRIPPS and PMS are therefore each a “person” within the meaning
17 of California Civil Code § 1788.2(g) of the Rosenthal Act.

18 5. Defendants SCRIPPS and PMS were allegedly owed a monetary debt by
19 Plaintiff, which makes Defendants each a “creditor” under California Civil Code §
20 1788.2(i) of the Rosenthal Act.

21 6. Defendants SCRIPPS and PMS alleged that Plaintiff owed them money
22 that they were allegedly collecting for money arising out of medical services performed
23 upon Plaintiff by Defendant SCRIPPS for treatment of injuries arising out of an
24 industrial work-place accident, without payment being required at the time of services
25 being rendered, and Plaintiff is informed and believes that the money alleged to have
26 been owed to Defendants originated from monetary credit that was extended primarily
27 for personal, family, or household purposes, and is therefore a “debt” as that term is
28 defined by 15 U.S.C. § 1692a(5) of the FDCPA and California Civil Code § 1788.2(d)

1 of the Rosenthal Act.

2 7. Upon information and belief, Defendants SCRIPPS and PMS were
3 attempting to collect on a debt that originated from monetary credit that was extended
4 primarily for personal, family, or household purposes due to medical services
5 performed upon Plaintiff to treat injuries arising out of an industrial work-place
6 accident without payment being required at the time of services, and was therefore a
7 “consumer credit transaction” within the meaning of California Civil Code § 1788.2(e)
8 of the Rosenthal Act.

9 8. Because Plaintiff, a natural person allegedly obligated to pay money to
10 Defendants SCRIPPS and PMS arising from what Plaintiff is informed and believes
11 was a consumer credit transaction due to medical services performed upon Plaintiff to
12 treat injuries arising out of an industrial work-place accident without payment being
13 required at the time of services, the money allegedly owed was a “consumer debt”
14 within the meaning of California Civil Code § 1788.2(f) of the Rosenthal Act.

15 9. Plaintiff is informed and believes that Defendant PMS utilizes the
16 instrumentalities of interstate commerce and the mails in a business for which the
17 principal purpose is the collection of any debts, is one who regularly collects or
18 attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or
19 due another, and is therefore a “debt collector” within the meaning of 15 U.S.C. §
20 1692a(6) of the FDCPA and California Civil Code § 1788.2(c) of the Rosenthal Act,
21 and thereby engages in “debt collection” within the meaning of California Civil Code §
22 1788.2(b) of the Rosenthal Act.

23 10. Plaintiff is informed and believes that Defendant SCRIPPS is one who
24 regularly collects or attempts to collect debts on behalf of themselves, and Defendant
25 PMS is one who regularly collects or attempts to collect debts on behalf of others, and
26 both are therefore a “debt collector” within the meaning of and California Civil Code §
27 1788.2(c) of the Rosenthal Act, and thereby engages in “debt collection” within the
28 meaning of California Civil Code § 1788.2(b) of the Rosenthal Act.

FACTUAL ALLEGATIONS

1
2 11. Sometime in 2011, Plaintiff began to suffer injuries to his spinal column,
3 neck, shoulder, trapezius, and biceps as a direct result of persistent heavy lifting while
4 employed with Lowe’s Home Centers.

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

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

10 14. These issues have also resulted in gastrointestinal issues.

11 15. Plaintiff continues to suffer from spinal column damage, vertebrae
12 damage, gastrointestinal issues, and mental health issues.

13 16. Plaintiff continues to receive physical and mental health treatment for
14 these issues.

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

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

20 19. In November 2015, Plaintiff received medical services from Defendant
21 SCRIPPS for treatment of gastrointestinal issues arising from the injuries that are the
22 subject of his worker’s compensation claim, of which Defendant SCRIPPS knew about
23 and was aware that all billings for services should be handled pursuant to the Worker’s
24 Compensation Act.

25 20. Plaintiff recalls that when he received treatment from Defendant SCRIPPS
26 on November 14, 2015, he specifically informed Defendant SCRIPPS that the treatment
27 was for on-going injuries related to his worker’s compensation claim.

28 21. Nevertheless, Defendant SCRIPPS began attempting to collect from

1 Plaintiff directly by sending him bills for collection.

2 22. In particular, Plaintiff received a letter dated April 6, 2016 from Defendant
3 SCRIPPS attempting to collect \$6,175.00 from Plaintiff directly.

4 23. In its April 6, 2016 letter, Defendant SCRIPPS claimed that “a negative
5 credit report reflecting your credit record may be submitted to a national credit
6 reporting agency if your account is sent to an external collection agency. This may be
7 the result if you fail to fulfill your obligation. Once your account has been turned over
8 to an external collection agency, we may not be able to assist you.”

9 24. Upon information and belief, Defendant SCRIPPS contacted Plaintiff
10 directly with these ominous threats of negative credit reporting and ominous threats of
11 not helping Plaintiff if the account is turned over to a third party collector in an attempt
12 to collect the full amount from Plaintiff directly, despite his informing Defendant
13 SCRIPPS of the worker’s compensation claim, because Defendant SCRIPPS was trying
14 to avoid having to accept a reduced payment from the worker’s compensation process
15 and to also avoid having to delay receiving payment while waiting for the worker’s
16 compensation claim to finalize.

17 25. Upon receiving Defendant SCRIPPS’ collection letter dated April 6, 2016,
18 Plaintiff’s workers’ compensation attorney—Mr. James W. Talley of The Law Offices
19 of Galyean, Talley & Wood—sent a letter dated May 24, 2016 to Defendant SCRIPPS’
20 collection department in San Diego and to Defendant SCRIPPS’ primary headquarters
21 in Los Angeles, informing them that they represent him on the alleged debt.

22 26. This letter clearly informs Defendant SCRIPPS about the pending
23 workers’ compensation claim, provides the case number, and also provides the
24 insurance carrier’s contact information responsible for payment of medical billings
25 pertaining to Plaintiff’s workers’ compensation claims.

26 27. This letter also very clearly informs Defendant SCRIPPS that the Workers’
27 Compensation Appeals Board (WCAB) has exclusive jurisdiction to hear and determine
28 claims pertaining to an asserter workers’ compensation claim, and cites to the case of

1 *WCAB v. Small Claims Court (Shans)* 35 Cal. App. 3d 643 that supports Mr. Talley's
2 assertions (which relied upon California Labor Code §§ 4600, 5300, 5304, and 5955 to
3 reach its holding).

4 28. This letter also clearly informs Defendant SCRIPPS that their remedy for
5 payment of the medical bill was to file a lien with the WCAB.

6 29. This letter also clearly contained the office name, address, and phone
7 number for Galyean, Talley & Wood.

8 30. This letter also provides the name and contact information for the
9 insurance carrier that is handling payment for medical billings in Plaintiff's worker's
10 compensation claim—Sedgwick CMS—as well as the name and contact information for
11 the law firm representing Sedgwick CMS, and also instructs Defendant SCRIPPS to
12 contact them directly to submit a claim for payment.

13 31. Finally, this letter also clearly notifies Defendant SCRIPPS that any future
14 contact with Plaintiff directly regarding the medical billings and any negative credit
15 reporting and any pursuit of a civil claim for collection of the debt will be considered
16 harassment and will give rise to Plaintiff having a claim for debt harassment.

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

20 33. Plaintiff has never received written notice from Defendant SCRIPPS that
21 her employer has rejected the claim for services relevant to the alleged debt Defendant
22 was attempting to collect.

23 34. After Plaintiff's worker's compensation attorney delivered his May 2016
24 letter to Defendant SCRIPPS, rather than participate in the worker's compensation
25 process as required by law, Defendant SCRIPPS instead retained the services of
26 Defendant PMS to attempt to collect the full amount of the debt, plus interest, from
27 Plaintiff directly.

28 35. By letter dated June 15, 2016 that was sent directly to Plaintiff, Defendant

1 PMS claimed that Plaintiff owed \$6,1750.00 and that there was an interest rate of 10%
2 upon the debt.

3 36. Upon information and belief, Defendant PMS was retained as an agent to
4 collect on behalf of Defendant SCRIPPS, and was not sold the rights to the account
5 outright.

6 37. Therefore, as an agent of Defendant SCRIPPS, Defendant PMS is
7 presumed to have always been acting on behalf of, at the direction of, and in association
8 with Defendant SCRIPPS.

9 38. Furthermore, as an agent of Defendant SCRIPPS, the information provided
10 to Defendant SCRIPPS by Plaintiff and his worker's compensation attorney is imputed
11 to Defendant PMS.

12 39. Therefore, Defendant PMS is presumed to have knowledge of the worker's
13 compensation attorney's representation, and is presumed to also have all the same
14 information regarding the legal requirement of seeking payment directly through the
15 worker's compensation claim process.

16 40. Additionally, Plaintiff is also informed and believes that Defendant PMS
17 would have had access to, or would have received, the file for this account from
18 Defendant SCRIPPS, and that the file would have included the information provided by
19 Plaintiff to Defendant SCRIPPS at the time of his receiving services in November 2015,
20 and that the file would have contained the May 2016 letter provided by Plaintiff's
21 worker's compensation attorney.

22 41. Despite Defendant PMS' knowledge of the worker's compensations
23 attorney's representation of Plaintiff, and despite Defendant PMS' knowledge of the
24 worker's compensation claim, Defendant PMS' June 2016 letter nevertheless claims
25 that Plaintiff.

26 42. Furthermore, Plaintiff has received multiple voicemails on his personal
27 wireless cellular telephone from Defendant PMS in July, August, and September.

28 43. At a minimum, Defendant PMS has called Plaintiff at least 5 times

1 between the months of July, August, and September.

2 44. Plaintiff is informed and believes that Defendant PMS has called him more
3 than 5 times during the months of June through September.

4 45. Each phone message that Plaintiff has received from Defendant PMS has
5 resulted in a pre-recorded voice message being left on his phone identifying the call as
6 coming from Defendant PMS and asking Plaintiff to call them back.

7 46. However, Plaintiff's worker's compensation attorney's May 2016 letter
8 operated as revocation of any possible consent given by Plaintiff to be contacted
9 directly by Defendant SCRIPPS regarding this alleged debt.

10 47. Because Defendant PMS is, at all times relevant, acting as an agent on
11 behalf of, at the direction of, and in association with Defendant SCRIPPS, the
12 revocation of consent delivered to Defendant SCRIPPS also applies to Defendant PMS.

13 48. In other words, if Defendant PMS seeks to claim that it has received
14 consent from Plaintiff to call him upon his wireless cellular telephone by virtue of
15 Plaintiff having given such phone number to Defendant SCRIPPS, then the same
16 principles apply with respect to the revocation of consent delivered to Defendant
17 SCRIPPS such that Defendant PMS has had no consent for any of the calls that it has
18 placed to Plaintiff.

19 49. As these calls were for the purpose of debt collection, they were not made
20 for emergency purposes, as defined by 47 U.S.C. § 227(b)(1)(A)(i).

21 50. Upon information and belief, per its business practices, each of
22 Defendant's calls were placed using an "automatic telephone dialing system"
23 ("ATDS"), as defined by 47 U.S.C. § 227(a)(1) in addition to the artificial or
24 prerecorded voice messages, as prohibited by 47 U.S.C. § 227(b)(1)(A).

25 51. An ATDS is equipment that has the capacity to store or produce telephone
26 numbers to be called, using a random or sequential number generator, and utilizes such
27 equipment to dial such numbers, as defined in 47 U.S.C. § 227(a)(1)(A)-(B).
28 Automatic telephone dialing systems place calls without human intervention until a

1 connection is made with a person on the receiving end of the call, at which time the
2 dialers attempt to connect the recipient with a live agent of the debt collector.

3 52. Upon information and belief, the ATDS used by Defendant to call Plaintiff
4 has the capacity to store or produce telephone numbers to be called, using a random or
5 sequential number generator.

6 53. Courts have ruled that it is reasonable to infer from the use of an artificial
7 or prerecorded voice and the commercial nature of the calls that a debt collector used an
8 ATDS in calling the plaintiff. *See, Vaccaro v. CVS Pharm., Inc.*, 2013 U.S. Dist.
9 LEXIS 99991, at *9 (S.D. Cal. July 16, 2013); *Vance v. Bureau of Collection Recovery*
10 *LLC*, 2011 U.S. Dist. LEXIS 24908, at **8-9 (N.D. Ill. Mar. 11, 2011).

11 54. Each of these unsolicited telephone calls by Defendant, or its agent(s),
12 violated 47 U.S.C. § 227(b)(1).

13 55. Furthermore, each single call that was placed with both an ATDS and a
14 pre-recorded/artificial voice message entitles Plaintiff to two violations per call. *Lary v.*
15 *Trinity Physician Fin. & Ins. Servs.*, 780 F.3d 1101, 1105 (11th Cir. 2015) (holding that
16 a single call using both an ATDS and a prerecorded voice constitutes two violations of
17 the TCPA).

18 56. As a result of both Defendants' unfair, oppressive, and abusive conduct in
19 connection with their debt collection activity, Plaintiff has suffered mental anguish by
20 way of embarrassment, shame, anxiety, fear, and feelings of despair over the fact that
21 Defendants have continued their collection efforts from him directly despite his
22 workers' compensation attorney having already notified them of their exclusive remedy
23 being a lien and has placed him in a position of distrust with his worker's compensation
24 attorney's advice and feelings of despair over whether the worker's compensation board
25 process actually provides him with the protections it is supposed to.

26 57. At all times during the aforementioned actions, there was in full force and
27 effect the following obligations upon debt collectors by the Federal FDCPA, pursuant
28 to 15 U.S.C. § 1692c(a) & (c):

1 (a) Communication with the consumer generally. Without the prior
2 consent of the consumer given directly to the debt collector or
3 the express permission of a court of competent jurisdiction, a
4 debt collector may not communicate with a consumer in
connection with the collection of any debt—

5 ...

6 (2) if the debt collector knows the consumer is represented by an
7 attorney with respect to such debt and has knowledge of, or can
8 readily ascertain, such attorney's name and address, unless the
9 attorney fails to respond within a reasonable period of time to a
communication from the debt collector or unless the attorney
consents to direct communication with the consumer;

10 ...

11 (c) Ceasing communication. If a consumer notifies a debt
12 collector in writing that the consumer refuses to pay a debt or
13 that the consumer wishes the debt collector to cease further
communication with the consumer, the debt collector shall not
communicate further with the consumer with respect to such
debt, except--

14 (1) to advise the consumer that the debt collector's further
efforts are being terminated;

15 (2) to notify the consumer that the debt collector or creditor
16 may invoke specified remedies which are ordinarily invoked by
such debt collector or creditor; or

17 (3) where applicable, to notify the consumer that the debt
18 collector or creditor intends to invoke a specified remedy. If
19 such notice from the consumer is made by mail, notification
shall be complete upon receipt.

20 58. At all times during the aforementioned actions, there was in full force and
21 effect the following obligation upon debt collectors by the Federal FDCPA, pursuant to
22 15 U.S.C. § 1692d:

23 A debt collector may not engage in any conduct the natural
24 consequence of which is to harass, oppress, or abuse any person in
25 connection with the collection of a debt.

26 59. At all times during the aforementioned actions, there was in full force and
27 effect the following obligation upon debt collectors by the Federal FDCPA, pursuant to
28 15 U.S.C. § 1692e(10):

1 A debt collector may not use any false, deceptive, or misleading
2 representation or means in connection with the collection of any debt.
3 Without limiting the general application of the foregoing, the
4 following conduct is a violation of this section:

5 ...
6 (10) The use of any false representation or deceptive means to
7 collect or attempt to collect any debt or to obtain information
8 concerning a consumer.

9 60. At all times during the aforementioned actions, there was in full force and
10 effect the following obligation upon debt collectors by the Federal FDCPA, pursuant to
11 15 U.S.C. § 1692f:

12 A debt collector may not use unfair or unconscionable means to
13 collect or attempt to collect any debt.

14 61. At all times during the aforementioned actions, there was in full force and
15 effect the following obligation pertaining to pursuant to California Civil Code §
16 1788.14 of the Rosenthal Act:

17 No debt collector shall collect or attempt to collect a consumer debt
18 by means of the following practices:

19 ...
20 Initiating communications, other than statements of account, with
21 the debtor with regard to the consumer debt, when the debt
22 collector has been previously notified in writing by the debtor's
23 attorney that the debtor is represented by such attorney with respect
24 to the consumer debt and such notice includes the attorney's name
25 and address and a request by such attorney that all communications
26 regarding the consumer debt be addressed to such attorney, unless
27 the attorney fails to answer correspondence, return telephone calls,
28 or discuss the obligation in question. This subdivision shall not
apply where prior approval has been obtained from the debtor's
attorney, or where the communication is a response in the ordinary
course of business to a debtor's inquiry.

62. At all times during the aforementioned actions, there was in full force and
effect the following obligation for a debt collector in connection with the collection of

1 any debt, pertaining to pursuant to California Civil Code § 1788.17 of the Rosenthal
2 Act, requiring all debt collectors to be responsible for and liable for all requirements
3 contained with the Federal FDCPA, exceptions of which are not applicable:

4 Notwithstanding any other provision of this title, every debt
5 collector collecting or attempting to collect a consumer debt shall
6 comply with the provisions of Sections 1692b to 1692j, inclusive,
7 of, and shall be subject to the remedies in Section 1692k of, Title 15
8 of the United States Code. However, subsection (11) of Section
9 1692e and Section 1692g shall not apply to any person specified in
10 paragraphs (A) and (B) of subsection (6) of Section 1692a of Title
11 15 of the United States Code or that person's principal. The
12 references to federal codes in this section refer to those codes as
13 they read January 1, 2001.

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FIRST CAUSE OF ACTION
VIOLATIONS OF FDCPA
AS AGAINST DEFENDANT PMS ONLY

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

64. By conspiring to contact Plaintiff directly in an attempt to collect a debt for
medical bills when their exclusive remedy is to file a lien with the WCAB, despite
clearly being put on notice about that fact by Plaintiff's worker's compensation
attorney, Defendant PMS acted with unfairness, oppression, and abuse towards Plaintiff
and therefore violated 15 U.S.C. §§ 1692d & 1692f of the FDCPA.

65. By sending collection letters directly to Plaintiff personally after Defendant
PMS was notified in writing that Plaintiff was represented by attorneys on this very
debt, by virtue of Defendant PMS receiving and/or having access to the file from
Defendant SCRIPPS that contained Plaintiff's worker's compensation attorney's May
2016 letter, and the written correspondence clearly contained the office name, address,
and phone number for Plaintiff's attorneys, and requested that she not be contacted

1 directly, Defendants therefore violated 15 U.S.C. §§ 1692c(a)(2) and 1692c(c) of the
2 Federal FDCPA.

3 66. By attempting to collect from Plaintiff directly for a debt that is limited to
4 compensation under the Worker's Compensation Act, Defendant PMS acted with false,
5 deceptive, and misleading representations about the nature and status of the debt and
6 therefore violated 15 U.S.C. §§ 1692e, 1692e(2)(A), & 1692e(10) of the FDCPA.

7 67. Plaintiff is informed and believes that all of the above violations were
8 willful, because Plaintiff and his worker's compensation attorney have notified
9 Defendant PMS' principal—Defendant SCRIPPS—multiple times of the worker's
10 compensation claim, including via written letter in May 2016.

11 68. As a result, Plaintiff has suffered emotional distress and mental anguish as
12 identified above.

13 **SECOND CAUSE OF ACTION**
14 **NEGLIGENT AND WILLFUL VIOLATIONS OF TCPA**
15 **AS AGAINST DEFENDANT PMS ONLY**

16 69. Plaintiff re-alleges and incorporates by reference the above paragraphs, as
17 though set forth fully herein.

18 70. By calling Plaintiff multiple times upon his personal wireless cellular
19 telephone with an ATDS and/or pre-recorded/artificial voice messages after Plaintiff's
20 worker's compensation attorney revoked any consent for Defendant PMS' principal—
21 Defendant SCRIPPS—to contact Plaintiff directly, and this revocation of consent
22 occurred prior to Defendant PMS being retained by Defendant SCRIPPS, Defendant
23 PMS therefore had no prior express consent to place such calls to Plaintiff's cellular
24 telephone.

25 71. The forgoing acts and omissions of Defendant constitute numerous and
26 multiple violations of the TCPA, including but not limited to each and everyone one of
27 the above-cited provisions of 47 U.S.C. § 227, *et seq.*

1 72. As a result of Defendant’s negligent violations of 47 U.S.C. § 227 *et seq.*,
 2 Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every
 3 negligent violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

4 73. As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. §
 5 227 *et seq.*, Plaintiff is entitled to an award of up to \$1,500.00 in statutory damages, for
 6 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §
 7 227(b)(3)(C).

8 **THIRD CAUSE OF ACTION**
 9 **VIOLATIONS OF ROSENTHAL ACT**
 10 **AS AGAINST BOTH DEFENDANTS**

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

13 75. By violating the FDCPA as identified the First Cause of Action above,
 14 Defendant PMS also necessarily violated the Rosenthal Act multiple times via Calif.
 15 Civil Code § 1788.17.

16 76. By conspiring to send collection letters directly to Plaintiff personally after
 17 Defendants were notified in writing that Plaintiff was represented by attorneys on this
 18 very debt and the written correspondence clearly contained the office name, address,
 19 and phone number for Plaintiff’s attorneys, Defendants both therefore violated the
 20 Rosenthal Act via Calif. Civil Code § 1788.14(c).

21 77. By retaining the services of an agent—Defendant PMS—in June 2016 to
 22 contact Plaintiff directly in an attempt to collect upon the debt after receiving Plaintiff’s
 23 worker’s compensation attorney’s letter in May 2016, and Defendant PMS was retained
 24 to always act on behalf of, at the direction of, and in association with Defendant
 25 SCRIPPS, Defendant SCRIPPS therefore violated the Rosenthal Act via Calif. Civil
 26 Code § 1788.14(c) by committing violations of 15 U.S.C. 1692f, 1692e, 1692e(2)(A),
 27 1692e(10), 1692d, 1692c(a)(2), and 1692c(c) of the FDCPA, all of which have been
 28 incorporated into the Rosenthal Act.

1 78. As a result, Plaintiff has suffered emotional distress and mental anguish as
2 identified above.

3 **FOURTH CAUSE OF ACTION**
4 **CALIF. WORKER'S COMPENSATION ACT**
5 **AS AGAINST BOTH DEFENDANTS**

6 79. Plaintiff re-alleges and incorporates by reference the above paragraphs, as
7 though set forth fully herein.

8 80. California Labor Code § 3751(b) provides that medical providers shall not
9 collect money directly from their patients for services to cure or relieve the effect of the
10 injury for which a claim form, pursuant to Cal. Lab. Code § 5401, was filed, unless the
11 medical provider has received written notice that liability for the injury has been rejected
12 by the employer and the medical provider has provided a copy of this notice to the
13 patient. Any medical provider who violates Cal. Lab. Code § 3751(b) shall be liable for
14 three times the amount unlawfully collected, plus reasonable attorney's fees and costs.

15 81. Defendants SCRIPPS' and PMS' act of colluding to attempt to collect
16 money directly from Plaintiff for medical services that Plaintiff obtained strictly to
17 relieve the effect of the employment-related injuries suffered by Plaintiff, and for which
18 a claim form had been filed and the claim form was not rejected by the employer, is in
19 violation of Cal. Lab. Code § 3751(b).

20 82. As a result of each and every violation of the Cal. Lab. Code § 3751(b),
21 Plaintiff is entitled to any actual damages and reasonable attorney's fees and costs
22 pursuant to Cal. Lab. Code § 3751(b) from each and every Defendant jointly and
23 severally.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff prays that judgment be entered against each and every
26 Defendant, jointly and severally, and Plaintiff be awarded damages from Defendants as
27 follows:

- 1 • An award of statutory damages of \$1,000.00 from Defendant PMS pursuant
2 to 15 U.S.C. § 1692k(a)(2)(A);
- 3 • An award of actual damages in the amount of \$15,000.00, or as the jury may
4 allow, from Defendant PMS pursuant to 15 U.S.C. § 1692k(a)(1);
- 5 • An award of costs of litigation and reasonable attorney’s fees from
6 Defendant PMS pursuant to 15 U.S.C. § 1692k(a)(3);
- 7 • As a result of Defendant PMS’ negligent violations of 47 U.S.C. §
8 227(b)(1), Plaintiff seeks \$500.00 in statutory damages for each and every
9 violation pursuant to 47 U.S.C. § 227(b)(3)(B);
- 10 • As a result of Defendant PMS’ knowing and/or willful violations of 47
11 U.S.C. § 227(b)(1), Plaintiff seeks \$1,500.00 in statutory damages for each
12 and every violation pursuant to 47 U.S.C. § 227(b)(3)(B).
- 13 • Injunctive relief prohibiting Defendant PMS from engaging in such conduct
14 in the future pursuant to 47 U.S.C. § 227(b)(3)(A);
- 15 • An award of statutory damages of \$1,000.00 from each Defendant
16 individually, pursuant to Cal. Civ. Code § 1788.30(b);
- 17 • An award of actual damages from both Defendants, jointly and severally, in
18 the amount of \$15,000.00, or as the jury may allow, pursuant to California
19 Civil Code § 1788.30(a);
- 20 • An award of costs of litigation and reasonable attorney’s fees from both
21 Defendants, jointly and severally, pursuant to Cal. Civ. Code § 1788.30(c);
- 22 • An award of damages from both Defendants jointly and severally pursuant
23 to California Labor Code § 3751(b);
- 24 • An award of costs of litigation and reasonable attorney’s fees both
25 Defendants jointly and severally pursuant to Cal. Lab. Code § 3751(b).

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

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4 Dated: October 4, 2016

Respectfully submitted,

5 SEMNAR & HARTMAN, LLP

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7 By: /s/ Jared M. Hartman
8 Jared M. Hartman, Esq.
9 Attorneys for Plaintiff

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