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Claimants/Third-Party Plaintiffs Healthsmart
12 Pacific, Inc.; Healthsmart Pacific, Inc. d/b/a Pacific
Hospital of Long Beach; Long Beach Pain Center
13 Medical Clinic, Inc.; International Implants, LLC;
Pacific Specialty Physician Management, Inc.; and
14 First Medical Management, Inc.

15
16 UNITED STATES DISTRICT COURT

17 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

18 STATE COMPENSATION INSURANCE
19 FUND

20 Plaintiff,

21 v.

22 MICHAEL D. DROBOT, SR.; etc.,

23 Defendants.

Case No. CV 13- 00956-AG (CWx)

CROSSCLAIM AND
FIRST AMENDED THIRD-PARTY
COMPLAINT FOR:

- 1) EQUITABLE INDEMNITY
 - 2) DECLARATORY RELIEF
- [Fed. R. Civ. P. 13(g), 14(a)]

[JURY TRIAL DEMANDED]

24 HEALTHSMART PACIFIC INC., a
California corporation; HEALTHSMART
25 PACIFIC INC. d/b/a PACIFIC HOSPITAL
OF LONG BEACH, a California
26 corporation;

27 LONG BEACH PAIN CENTER
MEDICAL CLINIC, INC., a California
28 corporation; INTERNATIONAL

CROSSCLAIM AND FIRST AMENDED
THIRD-PARTY COMPLAINT
CASE NO. CV 13-00956 AG (CWx)

1 IMPLANTS, LLC, a California
2 corporation; PACIFIC SPECIALTY
3 PHYSICIAN MANAGEMENT, INC., a
4 California corporation; FIRST MEDICAL
5 MANAGEMENT, INC., a California
6 corporation,

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Crossclaimants
and Third-Party Plaintiffs,

v.

MITCHELL G. COHEN, an individual;
MITCHELL G. COHEN, M.D., INC., a
California corporation; PHILIP A. SOBOL,
an individual; SOBOL ORTHOPEDIC
MEDICAL GROUP, INC., a California
corporation; ALAN C. IVAR, an
individual; GRIFFIN MEDICAL GROUP,
INC., a California corporation; SOUTH
COAST REHABILITATION CENTER,
INC., a California corporation; PAUL
RANDALL, an individual; JASON
BERNARD, an individual; MICHAEL E.
BARRI, an individual; JOJASO
MANAGEMENT, INC., a California
corporation; SAMUEL VIDAURRETA, an
individual; PROSPICE GROUP, INC., a
California corporation; JACOB E.
TAUBER, an individual; JACOB E.
TAUBER, M.D., A PROFESSIONAL
CORPORATION, a California corporation;
ASSAD MICHAEL MOHEIMANI, an
individual; JEFFERY D. GROSS, an
individual; TIMOTHY J. HUNT, an
individual; ALLIED MEDICAL GROUP,
INC., a California corporation; GERALD
A. ALEXANDER, an individual; IAN I.
ARMSTRONG, an individual; IAN I.T.
ARMSTRONG, M.D., INC., A MEDICAL
CORPORATION, a California corporation;
FAUSTINO BERNADETT, an individual;
JACK H. ACKMAKJIAN, an individual;
JACK H. ACKMAKJIAN, M.D., INC., a
California corporation; LOKESH S.
TANTUWAYA, an individual; DR.
LOKESH S. TANTUWAYA, M.D., INC.,
a California corporation; EDWARD
KOMBERG, an individual,

Crossdefendants and Third-
Party Defendants.

1 Defendants Healthsmart Pacific, Inc. and Healthsmart Pacific, Inc. d/b/a
2 Pacific Hospital of Long Beach (together, “Healthsmart”); Michael D. Drobot, Sr.
3 (“Drobot, Sr.”); Long Beach Pain Center Medical Clinic, Inc. (“LBPC”);
4 International Implants, LLC (“I2”); Pacific Specialty Physician Management, Inc.
5 (“PSPM”); and First Medical Management, Inc. (“FMM”) (collectively, the
6 “Crossclaimants/Third-Party Plaintiffs”), for their Crossclaim against all parties
7 named herein, except for Paul Randall and Jeffrey D. Gross, and their Amended
8 Third-Party Complaint against all parties named herein, allege as follows:

9 JURISDICTION AND VENUE

10 1. On July 13, 2015 Plaintiff State Compensation Insurance Fund (“State
11 Fund”) filed a Third Amended Complaint, docket no. 716 (“TAC”) against, along
12 with other parties, the Crossclaimants/Third-Party Plaintiffs, a copy of which is
13 attached hereto as Exhibit A.* The TAC includes claims arising under the
14 Racketeering Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C.
15 § 1961 *et seq.*, and claims under California law.

16 2. This Court has federal question jurisdiction over the RICO claims
17 between Plaintiff and the Crossclaimants/Third-Party Plaintiffs, and has asserted
18 supplemental jurisdiction over the California law claims between them.

19 3. The claims asserted in this Crossclaim and First Amended Third-Party
20 Complaint, which are asserted under California law, arise out of the same facts and
21 circumstances as those of State Fund’s TAC, so that the Court may exercise
22 supplemental jurisdiction over them under 28 U.S.C. § 1367(a).

23 4. State Fund in its TAC has sued all the defendants named in this
24 Crossclaim, with the exception of Paul Randall and Jeffery D. Gross. This
25 Crossclaim is properly brought under Rule 14(g) of the Federal Rules of Civil
26

27 * The redacted version of the TAC is attached hereto as Exhibit 1. An
28 unredacted version, which was filed under seal, will be provided to the
Crossdefendants and Third-Party Defendants upon their agreement to the Protective
Order issued in this action by the Court.

1 Procedure, which provides that a defendant may state as a crossclaim any claim
2 against a coparty if the claim arises out of the transaction or occurrence that is the
3 subject matter of the original action, including a claim that the coparty is or may be
4 liable to the crossclaimant for all or part of a claim asserted in the action against the
5 crossclaimant.

6 5. This Amended Third-Party Complaint against all the parties named
7 herein is properly brought under Federal Rule of Civil Procedure 14(a).

8 6. Venue is proper under 42 U.S.C. § 1391(b), as a substantial portion of
9 the facts and circumstances giving rise to the claims herein occurred within this
10 judicial district, and at least one Crossdefendant and Third-Party Defendant resides
11 in this district.

12 PARTIES

13 7. At all relevant times, Healthsmart was a California corporation, with its
14 principal place of business in Newport Beach, California, that operated and did
15 business as Pacific Hospital of Long Beach (“PHLB”).

16 8. Drobot, Sr. is an individual residing in Orange County, California.

17 9. At all relevant times, LBPC was a California corporation.

18 10. At all relevant times, I2 was a California limited liability company.

19 11. At all relevant times, PSPM was a California corporation.

20 12. At all relevant times, FMM was a California corporation.

21 13. At all relevant times Crossdefendant and Third-Party Defendant
22 Faustino Bernadett (“Dr. Bernadett”) was a physician duly licensed to practice
23 medicine in the state of California, and did business in Long Beach, California.

24 14. At all relevant times Crossdefendant and Third-Party Defendant
25 Mitchell G. Cohen (“Dr. Cohen”) was a physician licensed to practice medicine in
26 the state of California and doing business in Orange County, California. On
27 information and belief, at all relevant times Dr. Cohen was the principal of, and did
28 business as Crossdefendant and Third-Party Defendant Mitchell G. Cohen, M.D.,

1 Inc., a California corporation. On information and belief, at all relevant times Dr.
2 Cohen also did business as Spine Care Center, a California corporation.

3 15. At all relevant times Crossdefendant and Third-Party Defendant Philip
4 A. Sobol (“Dr. Sobol”) was a physician licensed to practice medicine in the state of
5 California and doing business in Los Angeles County, California. On information
6 and belief, at all relevant times Dr. Sobol was the principal of, and did business as
7 Crossdefendant and Third-Party Defendant Sobol Orthopedic Medical Group, Inc., a
8 California corporation.

9 16. On information and belief, at all relevant times Crossdefendant and
10 Third-Party Defendant Alan C. Ivar (“Dr. Ivar”) was a chiropractor licensed to
11 practice in the state of California and doing business in Orange County, California.
12 On information and belief, at all relevant times Dr. Ivar was a principal of, and did
13 business as Crossdefendants and Third-Party Defendants Griffin Medical Group,
14 Inc., a California corporation and South Coast Rehabilitation Center, Inc., a
15 California corporation.

16 17. At all relevant times Third-Party Defendant Paul Randall (“Mr.
17 Randall”) was an individual engaged in marketing to physicians and marketing of
18 spinal implant hardware in Orange and Los Angeles Counties, among other
19 locations. On information and belief, at relevant times Randall was the principal of,
20 and did business as Matrix Medical.

21 18. On information and belief, at all relevant times, Crossdefendant and
22 Third-Party Defendant Jason Bernard (“Mr. Bernard”) was a resident of Los
23 Angeles County and engaged in marketing and consulting matters on behalf of
24 Global Service, Inc., a California corporation.

25 19. On information and belief, at all relevant times Crossdefendant and
26 Third-Party Defendant Michael E. Barri (“Dr. Barri”) was a resident of Orange
27 County, and a chiropractor licensed to practice in the state of California doing
28 business in Orange County, California. On information and belief, at all relevant

1 times Third-Party Defendant Michael E. Barri was a principal of, and did business
2 as Crossdefendant and Third-Party Defendant Jojaso Management, Inc., a California
3 corporation.

4 20. On information and belief, at all relevant times Crossdefendant and
5 Third-Party Defendant Samuel Vidauretta (“Mr. Vidauretta”) was an individual who
6 was a principal of, chief executive officer of, and did business as, Crossdefendant
7 and Third-Party Defendant Prospice Group, Inc., a California corporation.

8 21. On information and belief, at all relevant times Crossdefendant and
9 Third-Party Defendant Jacob E. Tauber (“Dr. Tauber”) was a physician and
10 orthopedic surgeon licensed to practice medicine in the state of California, and
11 doing business in Los Angeles County. On information and belief, at all relevant
12 times Dr. Tauber was a principal of, and did business as Crossdefendant and Third-
13 Party Defendant Jacob E. Tauber, M.D., a professional corporation, a California
14 corporation.

15 22. At all relevant times Crossdefendant and Third-Party Defendant Assad
16 Michael Moheimani (“Dr. Moheimani”) was a physician and orthopedic spine
17 surgeon licensed to practice medicine in the state of California, who, on information
18 and belief, did business as A Michael Moheimani, M.D., Inc., in Orange County,
19 California.

20 23. On information and belief, at all relevant times Third-Party Defendant
21 Jeffery D. Gross (“Dr. Gross”) was a physician and neurosurgeon licensed to
22 practice medicine in the state of California, and, on information and belief, was a
23 principal of and did business as Oasis Medical Providers, Inc., a California
24 corporation, in Orange County, California.

25 24. On information and belief, at all relevant times Third-Party Defendant
26 Timothy J. Hunt (“Dr. Hunt”) was a physician and orthopedic surgeon licensed to
27 practice medicine in the state of California, doing business in Los Angeles County,
28 California. On information and belief, at all relevant times Dr. Hunt was the owner

1 of and did business as Crossdefendant and Third-Party Defendant Allied Medical
2 Group, Inc., a California corporation.

3 25. On information and belief, at all relevant times Crossdefendant Third-
4 Party Defendant Gerald J. Alexander (“Dr. Alexander”), was a physician and
5 orthopedic spine surgeon licensed to practice medicine in the state of California, and
6 doing business in Orange County, California. On information and belief, at all
7 relevant times Third-Party Defendant Gerald J. Alexander was a principal of, and
8 did business as Gerald J. Alexander, Orthopaedic Surgery, Inc. and Newport Coast
9 Spine, Inc.

10 26. On information and belief, at all relevant times Third-Party Defendant
11 Ian I. Armstrong (“Dr. Armstrong”) was a physician and orthopedic spine surgeon
12 licensed to practice medicine in the state of California, and doing business in the
13 County of Los Angeles, California. On information and belief, at all relevant times
14 Dr. Armstrong was a principal of, and did business as Crossdefendant and Third –
15 Party Defendant Ian I.T. Armstrong, M.D., Inc., a medical corporation, a California
16 corporation.

17 27. On information and belief, at all relevant times Crossdefendant and
18 Third-Party Defendant Jack H. Akmakjian (“Dr. Akmakjian”) was a physician and
19 orthopedic spine surgeon licensed to practice medicine in the state of California, and
20 doing business in the County of Riverside, California. On information and belief, at
21 all relevant times Dr. Akmakjian was a principal of, and did business as
22 Crossdefendant and Third-Party Defendant Jack H. Akmakjian, M.D., Inc., a
23 California corporation.

24 28. At all relevant times Crossdefendant and Third-Party Defendant
25 Lokesh S. Tantuwaya (Dr. Tantuwaya”) was a physician licensed to practice
26 medicine in the state of California, and doing business in San Diego, California. On
27 information and belief, at all relevant times Dr. Tantuwaya was a principal of, and
28

1 did business as Crossdefendant and Third-Party Defendant Dr. Lokesh S.
2 Tantuwaya, M.D., Inc., a California corporation.

3 29. On information and belief, at all relevant times Crossdefendant and
4 Third-Party Defendant Edward Komberg (“Dr. Komberg”) was a resident of Los
5 Angeles County, California, and a chiropractor licensed to practice in the state of
6 California, doing business in Orange County, California.

7 **FACTUAL ALLEGATIONS**

8 30. In the TAC State Fund alleges, among other things, that the
9 Crossclaimants/Third-Party Plaintiffs made up a “Surgical Defendant Enterprise”
10 that “conspired with dozens of doctors, chiropractors, marketers and others,”
11 including the doctors, chiropractors and marketers sued as Crossdefendants and
12 Third-Party Defendants herein, to “pay kickbacks” in exchange for referrals of
13 patients to PHLB “for spinal surgeries and other medical services” or for “agreeing
14 to use certain equipment or devices,” including spinal hardware billed by I2 to
15 PHLB at “grossly inflated prices,” which services, equipment and devices were then
16 fraudulently billed to State Fund without disclosing these kickback arrangements.
17 State Fund in the TAC further alleges that the Third-Party Plaintiffs and their
18 alleged co-conspirators attempted to conceal payment of kickbacks by entering into
19 “fraudulent contracts” and other unlawful arrangements, including collection
20 agreements, option agreements, research and development agreements, lease and
21 rental agreements, consulting agreements, marketing agreements and management
22 agreements. Moreover, the TAC alleges that in paying the kickbacks, inflating the
23 medical hardware costs, and submitting the resulting claims for spinal surgeries and
24 medical services, Third-Party Plaintiffs and their co-conspirators acted with the
25 intent to defraud workers’ compensation insurance carriers, including State Fund.

26 31. In the TAC State Fund further alleges that Defendants California
27 Pharmacy Management LLC, Industrial Pharmacy Management LLC, and Meds
28 Management Group LLC conspired to enter into and did enter into sham

1 arrangements and agreements with physicians, including certain of those physicians
2 sued herein, involving, among other things, the payment of unlawful kickbacks and
3 violations on the prohibitions against the corporate practice of medicine. The TAC
4 further alleges that these allegedly fraudulent schemes were coordinated in part by
5 PSPM and FMM, and were part of an overarching fraudulent enterprise involving
6 the Crossclaimants/Third-Party Plaintiffs herein.

7 32. As more specifically alleged below, each Crossdefendant and Third-
8 Party Defendant sued herein intentionally participated in acts and omissions alleged
9 in the TAC by State Fund to have been unlawful and fraudulent, with knowledge of
10 the objects to be obtained by said acts and omissions, and provided substantial
11 assistance in accomplishing them, thereby aiding and abetting and conspiring with
12 Crossclaimants/Third-Party Defendants.

13 33. **Dr. Bernadett.** In October of 2005, Dr. Bernadett purchased the
14 shares of Healthsmart through Abrazos Healthcare, Inc., a Delaware corporation
15 (“Abrazos”), which ownership interest continued until a date in the year 2010.
16 Abrazos was in turn owned by the Bernadett Family Trust, a trust as to which, on
17 information and belief, Dr. Bernadett and his wife were the trustees and/or
18 beneficiaries. In 2005, Dr. Bernadett also acquired through Abrazos a fifty percent
19 ownership interest in both PSPM and FMM, and through PSPM, an ownership
20 interest in I2.

21 34. At all relevant times during his ownership of Healthsmart, Dr.
22 Bernadett was chairman of the board of directors of Abrazos and of Healthsmart,
23 was Drobot Sr.’s superior, who reported to Dr. Bernadett, and was otherwise
24 intimately involved in overseeing and managing its business and operations. During
25 said time period, Dr. Bernadett had full and complete access to the records of the
26 financial and business operations of Healthsmart, PHLB, PSPM, I2 and FMM, and
27 was otherwise at all said times party to, knowledgeable of, and authorized, ratified
28

1 and approved the acts and omissions alleged in the TAC as to said entities, including
2 the acts and omissions alleged as to the transactions between said entities and I2.

3 35. During his ownership of Healthsmart, PSPM, FMM and I2, Dr.
4 Bernadett regularly attended weekly meetings with Drobot Sr. and other executives
5 of said entities, at which the business and financial operations of said entities,
6 including agreements with and payments to physicians and marketers that State
7 Fund now alleges in the TAC involved kickbacks for patient referrals, were
8 reviewed. During that same time frame Dr. Bernadett likewise regularly reviewed
9 and tracked which doctors were performing spinal surgeries at PHLB, as well as the
10 source of referrals for such surgeries, and he reviewed, ratified and approved the
11 payments to referring physicians and surgeons alleged by State Fund in the TAC to
12 be kickback payments, knowing their purpose. During that same time frame Dr.
13 Bernadett also knew of, ratified and approved the purchase by PHLB of spinal
14 implant hardware from I2, with knowledge of Drobot Sr.'s ownership of I2 and of
15 I2's charges and operations.

16 36. From in or about 2001, Dr. Bernadett owned, directly or indirectly, and
17 been president of, LBPC. As such, Dr. Bernadett was at all times party to,
18 knowledgeable of, and authorized, ratified and approved the acts and omissions of
19 LBPC alleged to be actionable in the TAC.

20 37. **Dr. Cohen.** Dr. Cohen is an orthopedic spine surgeon who performed
21 spinal surgeries at PHLB, using hardware ordered from I2, PHLB's charges for
22 which were billed to and paid for by State Fund, in whole or in part. On information
23 and belief, Dr. Cohen billed his own for spinal surgeries to State Fund.

24 38. In June of 2012, Dr. Cohen entered into a written collection agreement
25 with PHLB ("Cohen Outsourced Collection Agreement"), under which Dr. Cohen
26 agreed to assist in the collection of payments from patients referred by him to PHLB
27 in return for a certain percentage of the amount collected, including reimbursements
28 for implants. State Fund alleges in its TAC the contingency payments pursuant to

1 the Cohen Outsourced Collection Agreement were not entirely paid in consideration
2 of collection services, but rather, included disguised payments for unlawful patient
3 referrals to PHLB.

4 39. Also in June of 2012, Dr. Cohen entered into a written research
5 agreement with I2 (“Cohen Research, Product Development and Training
6 Agreement”) on behalf of his company Spine Care Center, under which Dr. Cohen
7 was to provide research and consultation services to I2 with respect to certain I2
8 products and methodologies in return for certain payments. State Fund alleges in its
9 TAC that the payments to Dr. Cohen pursuant to the Cohen Research, Product
10 Development and Training Agreement were not fully in return for research and
11 consultation services provided, but instead, included disguised payments for
12 unlawful patient referrals to PSPM.

13 40. Effective July 3, 2012, the Cohen Outsourced Collection Agreement
14 and the Cohen Research, Product Development and Training Agreement were
15 amended and combined into a single agreement.

16 41. Pursuant to the aforesaid agreements, and to a preliminary oral
17 understanding with Dr. Cohen, from October 1, 2010 through March 5, 2013 I2 paid
18 Dr. Cohen the sum of \$335,000. As Dr. Cohen knew and intended, the existence of
19 said agreements and said payments were not disclosed to State Fund.

20 42. In paragraph 77 of the TAC State Fund alleges that Dr. Cohen engaged
21 in other fraudulent conduct in connection with the Pharmacy Defendants that
22 damaged State Fund, and seeks to hold Crossclaimants/Third-Party Plaintiffs liable
23 for said conduct.

24 43. **Dr. Sobol.** From June 2005 through and including the year 2013 Dr.
25 Sobol performed orthopedic surgeries at PHLB, and referred spine surgery patients
26 to spine surgeons who performed surgeries at PHLB. Charges were billed for a
27 substantial portion of said surgeries involving patients insured by State Fund by
28 PHLB, Dr. Sobol and/or the surgeons to whom Dr. Sobol referred patients for spinal

1 surgeries, and State Fund paid all or portions of said billings. State Fund also
2 alleges in the TAC that Dr. Sobol was paid for referring patients to LBPC, charges
3 as to which were billed to State Fund and paid in whole or in part by it.

4 44. From June 2005 through and including the year 2013, Dr. Sobol,
5 personally, and on behalf of his corporation, Crossdefendant and Third-Party
6 Defendant Sobol Orthopedic Medical Group, Inc., entered into a series of written
7 option agreements with PSPM (the “Sobol Option Agreements”), under which Dr.
8 Sobol and Sobol Orthopedic Medical Group, Inc. granted PSPM the option to
9 purchase Dr. Sobol’s interest in Sobol Orthopedic Medical Group, Inc., in return for
10 predetermined monthly payments: an Option Agreement, dated as of June 1, 2005;
11 an Amended and Restated Option Agreement, dated as of July 15, 2007, a Second
12 Restated Option Agreement dated as of April 1, 2008 (the “Pre-2013 Option
13 Agreements”), and an Option Agreement effective as of January 1, 2013.

14 45. Crosscomplainants/Third-Party Defendants are informed and believe
15 that under the Pre-2013 Option Agreements PSPM and/or its affiliate made
16 payments to Dr. Sobol and/or his corporation option payments in the aggregate
17 amount of \$5,090,000, and \$80,000 under the 2013 Option Agreement. State Fund
18 alleges in its TAC that the monthly payments pursuant to the Sobol Option
19 Agreements were not in their entirety paid in consideration for options to purchase
20 Dr. Sobol’s interest in Sobol Orthopedic Medical Group, Inc., but rather included
21 disguised payments for unlawful patient referrals to PHLB, that were computed and
22 based on patient referrals. As Dr. Sobol knew and intended, the existence of the
23 Sobol Option Agreements and said payments were not disclosed to State Fund.

24 46. In paragraph 95 of the TAC State Fund alleges that Dr. Sobol engaged
25 in other fraudulent conduct in connection with the Pharmacy Defendants that
26 damaged State Fund, and seeks to hold Crossclaimants/Third-Party Plaintiffs liable
27 for said conduct.

28

1 47. **Dr. Ivar.** On or about March of 2009, Dr. Ivar, through his company
2 Crossdefendant and Third-Party Defendant Griffin Medical Group, Inc., entered into
3 a collection agreement (the “Ivar Outsourced Collection Agreement”) with PHLB,
4 under which Dr. Ivar agreed to assist PHLB in the collection of bills arising from
5 services rendered to surgery patients referred by him to PHLB, in return for payment
6 of 15% of PHLB’s collections on said bills. Defendant Pacific Hospital (See Exhibit
7 D). Pursuant to said agreement Dr. Ivar was paid over \$280,000 through Griffin and
8 over \$290,000 through his company Crossdefendant and Third-Party Defendant
9 South Coast Rehabilitation Center, Inc.

10 48. State Fund alleges in its TAC that the contingency payments to Dr. Ivar
11 pursuant to the Ivar Outsourced Collection Agreement were not in their entirety paid
12 in consideration of collection services, but rather included disguised payments for
13 unlawful patient referrals to PHLB, that were computed and based on patient
14 referrals. On information and belief, Dr. Ivar intended that any such reason for said
15 payments not be disclosed to State Fund.

16 49. **Mr. Randall.** On information and belief, at all relevant times Third-
17 Party Defendant Paul Randall was engaged in marketing to physicians and
18 marketing of spinal implant hardware. On information and belief, at relevant times
19 Mr. Randall was the principal of, and did business as, Matrix Medical.

20 50. From October 2006 through August 2011, Mr. Randall personally and
21 through Matrix Medical entered into written marketing and consulting agreements
22 with PHLB, PSPM, and I2 (the “Randall Business Development Agreements”),
23 under which Mr. Randall agreed to provide consulting and marketing services to
24 develop business opportunities for PHLB, PSPM, and I2, which services included (i)
25 enhancing the name of PHLB and its Spine Center throughout Southern California,
26 (ii) working with orthopedic and neuro surgeons in the area to associate themselves
27 with PHLB and its Spine Center and admit their patients to PHLB for spine
28 surgeries, and (iii) to promote use by spine surgeons of implant hardware sold by I2.

1 Those agreements included (a) Consulting and Business Development Agreements
2 entered into between Mr. Randall and PHLB effective September 1 and October 1,
3 2007, and a Marketing Agreement entered into between Mr. Randall and PHLB
4 effective October 1, 2006, (b) Marketing Agreements entered into between Mr.
5 Randall and PSPM effective February 2, 2008 and July 7, 2008, and a Consulting
6 and Business Development Agreement entered into between Mr. Randall and PSPM
7 effective December 1, 2008, and (c) an Amended and Restated Marketing
8 Agreement entered into by Mr. Randall through Matrix Medical with I2 effective
9 August 1, 2011. In connection with this activity Mr. Randall met on a regular basis
10 with officers and managers of Healthsmart, PHLB, PSPM and I2, and reviewed their
11 business activity and operations, including those alleged by SCIF in the TAC to be
12 unlawful and fraudulent.

13 51. Third-Party Plaintiffs paid Mr. Randall over \$7 million over a ten-year
14 period pursuant to the Randall Business Development Agreements. State Fund
15 alleges in its TAC that payments such as the payments made pursuant to the Randall
16 Business Development Agreements were not entirely in consideration for marketing
17 and consulting services, but rather, included disguised payments for unlawful patient
18 referrals, including hundreds of patients referrals involving Mr. Randall as to which
19 services were billed to and paid for in whole or part by State Fund.

20 52. Third-Party Plaintiffs do not know, but based on information and belief
21 allege, that Mr. Randall caused sums to be paid to physicians and others to induce
22 them to do business with PHLB and I2. As Mr. Randall knew and intended, the
23 existence of the Randall Business Development Agreements and payments to him
24 from Third-Party Defendants and from him to others were not disclosed to State
25 Fund.

26 53. **Mr. Bernard.** Mr. Bernard, through his company Global Service, Inc.,
27 entered into a consulting agreement with PSPM effective September 1, 2010 (the
28 “Bernard Business Development Agreement”), under which Mr. Bernard agreed to

1 provide consulting and marketing services to develop business opportunities for
2 PSPM, in return for predetermined monthly payments. PSPM paid Bernard under
3 said agreement \$1,170,000 in the years 2010 through and including 2013.

4 54. State Fund alleges in its TAC that payments made to Mr. Bernard, such
5 as the ones Mr. Bernard received pursuant to the Bernard Business Development
6 Agreement were not entirely in consideration of consulting services, but rather,
7 included disguised payments for unlawful referrals of patients to physicians who
8 would perform surgeries at PHLB and LBPC as to which State Fund was billed and
9 paid for in whole or in part. On information and belief, Mr. Bernard intended that
10 such payments not be disclosed to State Fund.

11 55. **Dr. Barri.** Effective April 17, 2009, Dr. Barri, through Crossclaimant
12 and Third-Party Defendant Jojaso Management, Inc., entered into a collection
13 agreement with PHLB (the “Barri Outsourced Collection Agreement”), under which
14 Dr. Barri agreed to assist in the collection of payments from patients referred by him
15 to PHLB in return for a certain percentage of the amount collected, including
16 reimbursements for spinal implants.

17 56. State Fund alleges in its TAC that the contingency payments that Dr.
18 Barri received pursuant to the Barri Outsourced Collection Agreement were not
19 entirely in consideration of collection services, but rather, included disguised
20 payments for unlawful patient referrals, as to which State Fund was billed and paid
21 for in whole or in part. On information and belief, Dr. Barri intended that such
22 payments not be disclosed to State Fund.

23 57. In paragraph 75 of the TAC State Fund alleges that Dr. Barri engaged
24 in other fraudulent conduct in connection with the Pharmacy Defendants that
25 damaged State Fund, and seeks to hold Crossclaimants/Third-Party Plaintiffs liable
26 for said conduct.

27 58. **Mr. Vidauretta.** Effective November 1, 2008, Mr. Vidauretta, through
28 his company Crossdefendant and Third-Party Defendant Prospice Group, Inc.,

1 entered into a collection agreement with PHLB (the “Vidaureta Collection
2 Agreement”), under which Mr. Vidaureta agreed to provide lien collection services
3 in return for payment to Prospice of 20% to 30% of the amount of PHLB’s
4 collections, and associated hardware costs, on cases assigned to Prospice, including
5 cases as to which PHLB billed State Fund and collected monies. In reality Prospice
6 actually received under the agreement base monthly payments of \$12,000.00 and
7 additional contingent fee payments.

8 59. State Fund alleges in its TAC that agreements such as the Vidaureta
9 Collection Agreement were a cover for illegal kickback arrangements for patient
10 referrals to PHLB.

11 60. **Dr. Tauber.** On or about October 1, 2010, Dr. Tauber, through his
12 company Crossdefendant and Third-Party Defendant Jacob E. Tauber, M.D., a
13 Professional Corporation, entered into a sublease agreement (the “Tauber Sublease”)
14 with PSPM, under which Dr. Tauber agreed to sublease the medical office located at
15 9033 Wilshire Boulevard, Suite 401, Beverly Hills, California 90211, in return for
16 monthly rental payments of \$23,706.80. Starting in October 2010 and continuing
17 into April 2013 Dr. Tauber received in the aggregate \$713,056.48 in payments
18 pursuant to the Tauber Sublease.

19 61. In the TAC State Fund alleges that Dr. Tauber referred spinal surgeries
20 to PHLB, to be performed using hardware ordered from I2, that were billed to, and
21 paid by State Fund in whole or part, including surgeries performed by Dr. Serge
22 Obukhoff and Dr. Ian Armstrong, and that Dr. Tauber himself performed non-spinal
23 surgeries at PHLB, in exchange for kickback payments, through agreements with
24 entity defendants sued in this action by State Fund, including under the Tauber
25 Sublease entered into with PSPM.

26 62. In paragraphs 41 and 100 of the TAC State Fund further alleges that
27 Dr. Tauber engaged in other fraudulent conduct in connection with various
28 agreements and transactions concerning the Pharmacy Defendants that damaged

1 State Fund, and seeks to hold Crossclaimants/Third-Party Plaintiffs liable for said
2 conduct.

3 63. **Dr. Moheimani.** Effective March 1, 2010, Dr. Moheimani, through
4 his company A Michael Moheimani M.D. Inc., entered into an option agreement
5 (the “Moheimani Option Agreement”) with PSPM, under which Dr. Moheimani
6 granted PSPM the options to purchase his medical practices, located in Santa Ana,
7 Fontana, Rancho Cucamonga, Long Beach and Riverside, in return for
8 predetermined monthly option payments.

9 64. Pursuant to said the Moheimani Option Agreement PSPM caused
10 payments to be made to Dr. Moheimani from April 29, 2010 to September 13, 2011
11 in the aggregate sum of \$410,000, and an additional payment to purchase accounts
12 receivable in the sum of \$140,000 on May 23, 2012.

13 65. In the TAC State Fund alleges that in 2009-2011 Dr. Moheimani
14 performed spinal surgeries at PHLB, using hardware ordered from I2, that were
15 billed to State Fund by both PHLB and Dr. Moheimani, in exchange for illegal
16 kickback payments paid through sham agreements with entity defendants sued by
17 State Fund in this action, including through the Moheimani Option Agreement,
18 which payments State Fund alleges were not consideration for PSPM’s option to
19 purchase Dr. Moheimani’s medical practice, but rather disguised payments for
20 unlawful patient referrals.

21 66. **Dr. Gross.** Effective January 1, 2009, Dr. Gross, through his company
22 Oasis Medical Providers, Inc., entered into a collection agreement (the “Gross
23 Collection Agreement”) with PHLB, under which Dr. Gross agreed to assist in the
24 collection of payments from patients referred by him to PHLB, including those as to
25 which PHLB services were billed to State Fund, in return for a certain percentage of
26 the amount collected, including reimbursements for implants. This agreement was
27 later amended in June, 2009 to include additional contingency payments of
28 collections for other inpatient surgeries and outpatient cases.

1 67. Pursuant to said the Gross Collection Agreement PSPM caused tens of
2 thousands of dollars in payments to be made to Dr. Gross, through and including
3 August, 2009.

4 68. State Fund alleges in its TAC that payments such as those that Dr.
5 Gross received pursuant to the Gross Collection Agreement and its amendment were
6 not entirely in consideration for collection services, but rather, included disguised
7 payments for unlawful patient referrals. On information and belief, Dr. Gross
8 intended that such payments not be disclosed to State Fund.

9 69. **Dr. Hunt.** Effective January 1, 2009, Dr. Hunt, on behalf of Allied
10 Medical Group, Inc., entered into an option agreement (the “Hunt Option
11 Agreement”) with PSPM, under which Dr. Hunt granted PSPM the option to
12 purchase the orthopedic medical practice of Allied Medical Group, Inc., in return for
13 predetermined monthly payments.

14 70. On October 17, 2008 in anticipation of the Hunt Option Agreement,
15 and then from February 2, 2009 through and including February 27, 2012 under it,
16 PSPM caused to be paid to Dr. Hunt through Allied Medical Group, Inc. the
17 aggregate sum of \$1,405,000.

18 71. State Fund alleges in its TAC that the monthly payments that Dr. Hunt
19 received pursuant to the Hunt Option Agreement were not entirely in consideration
20 for PSPM’s option to purchase Dr. Hunt’s medical practice, but rather, included
21 disguised payments for unlawful patient referrals. On information and belief, Dr.
22 Hunt intended that such payments not be disclosed to State Fund.

23 72. **Dr. Alexander.** On information and belief, Dr. Armstrong is an
24 orthopedic spine surgeon who performed spinal surgeries at PHLB starting no later
25 than 2004 and ending no earlier than 2011, and who used hardware ordered from I2.
26 PHLB’s charges as to said surgeries were billed to and paid for by State Fund, in
27 whole or in part. On information and belief, Dr. Alexander also billed State Fund on
28

1 said spinal surgeries at PHLB, through his company Gerald J. Alexander,
2 Orthopaedic Surgery, Inc. and/or Newport Coast Spine, Inc.

3 73. Effective December 1, 2009 Dr. Alexander entered into an option
4 agreement with PSPM (the “Alexander Option Agreement”), under which Dr.
5 Alexander granted PSPM the option to purchase Dr. Alexander’s medical practice in
6 return for monthly payments. Pursuant to said agreement PSPM caused \$515,000 in
7 payments to be made to Dr. Alexander from through April 2013.

8 74. State Fund alleges in its TAC that the monthly payments pursuant to
9 the Alexander Option were not fully in consideration of PSPM’s option to purchase
10 Dr. Alexander’s practice, but rather, included disguised payments for unlawful
11 patient referrals. In the TAC State Fund further alleges that Dr. Alexander referred
12 patients to LBPC in exchange for payments that were unlawful kickbacks. On
13 information and belief, Dr. Alexander intended that any such payments referred to
14 above not be disclosed to State Fund.

15 75. In paragraph 68 of the TAC State Fund further alleges that Dr.
16 Alexander engaged in other fraudulent conduct in connection with various
17 agreements and transactions concerning the Pharmacy Defendants that damaged
18 State Fund, and seeks to hold Crossclaimants/Third-Party Plaintiffs liable for said
19 conduct.

20 76. **Dr. Armstrong.** On information and belief, Dr. Armstrong is an
21 orthopedic spine surgeon who performed spinal surgeries at PHLB starting no later
22 than 2006 and ending no earlier than 2012, and who used hardware ordered from I2.
23 PHLB’s charges as to said surgeries were billed to and paid for by State Fund, in
24 whole or in part. On information and belief, Dr. Armstrong also billed his own for
25 said spinal surgeries at PHLB to State Fund, through Crossdefendant and Third-
26 Party Defendant Ian I.T. Armstrong, M.D., Inc., a medical corporation.

27 77. Effective July 1, 2009 Dr. Armstrong entered into a research agreement
28 with I2 (the “Armstrong Research, Product Development and Training

1 Agreement”). Pursuant to said agreement I2 caused to be paid to Dr. Armstrong,
2 either as monthly or hourly payments, the aggregate sum of \$381,000 from
3 September 1, 2009 through January 3, 2011.

4 78. Effective August 1, 2009 Dr. Armstrong also entered into an agreement
5 with PHLB under which Dr. Armstrong was to provide backup emergency room
6 coverage (the “Emergency Room Backup Coverage Agreement”). Pursuant to said
7 agreement PHLB caused \$20,000 monthly payments to be made to Dr. Armstrong,
8 in the aggregate amount of \$860,000.

9 79. State Fund alleges in its TAC that the payments to Dr. Armstrong
10 pursuant to the Armstrong Research, Product Development and Training
11 Agreement, and the Emergency Room Backup Coverage Agreement, were not
12 entirely in consideration of research and consultation services, or of emergency
13 room backup services, as the case may be, but rather included disguised payments
14 for unlawful patient referrals. On information and belief, Dr. Armstrong intended
15 that such payments not be disclosed to State Fund.

16 80. In paragraph 71 of the TAC State Fund further alleges that Dr.
17 Armstrong engaged in other fraudulent conduct in connection with various
18 agreements and transactions concerning the Pharmacy Defendants that damaged
19 State Fund, and seeks to hold Crossclaimants/Third-Party Plaintiffs liable for said
20 conduct.

21 81. **Dr. Akmakjian.** On information and belief, at all relevant times
22 Third-Party Defendant Jack H. Akmakjian was a physician and orthopedic spine
23 surgeon licensed to practice medicine in the state of California, and doing business
24 in the county of Riverside, California. On information and belief, Dr. Akmakjian
25 performed spinal surgeries at PHLB starting no later than 2009 and ending no earlier
26 than 2013, and used hardware ordered from I2. PHLB’s charges as to said surgeries
27 were billed to and paid for by State Fund, in whole or in part. On information and
28 belief, Dr. Akhmajian also billed his own for said spinal surgeries at PHLB to State

1 Fund through his company Crossdefendant and Third-Party Defendant Jack H.
2 Akmakjian, M.D., Inc., a California corporation.

3 82. I2 entered into an “Independent Contractor Agreement” with
4 Comprehensive Intra Operative Services effective January 1, 2012 under which
5 Michael McGrath would assist Dr. Akmakjian with respect to his surgeries at PHLB
6 and use of spinal implants in connection therewith. From February 8, 2010 to
7 February 28, 2013 I2 caused payments to be made under said agreement in the sum
8 of \$978,500.

9 83. In the TAC State Fund alleges that said “Independent Contractor
10 Agreement” was a cover for the payment by Crossclaimants/Third-Party Plaintiffs to
11 Dr. Akmakjian for unlawfully referring patients to PHLB for spinal surgeries and
12 for us of I2 implants. On information and belief, Dr. Armstrong intended that such
13 payments not be disclosed to State Fund.

14 84. In paragraph 65 of the TAC State Fund further alleges that Dr.
15 Akmakjian engaged in other fraudulent conduct in connection with various
16 agreements and transactions concerning the Pharmacy Defendants that damaged
17 State Fund, and seeks to hold Crossclaimants/Third-Party Plaintiffs liable for said
18 conduct.

19 85. **Dr. Tantuwaya.** On information and belief, Dr. Tantuwaya is an
20 orthopedic spine surgeon who performed spinal surgeries at PHLB starting no later
21 than 2010 and ending no earlier than 2012, and who used hardware ordered from I2.
22 PHLB’s charges as to said surgeries were billed to and paid for by State Fund, in
23 whole or in part. On information and belief, Dr. Tantuwaya also billed State Fund on
24 said spinal surgeries at PHLB, through his company Crossdefendant and Third-Party
25 Defendant Dr. Lokesh S. Tantuwaya, M.D., Inc.

26 86. Effective March 1, 2010 Dr. Tantuwaya entered into an option
27 agreement with PSPM (the “Tantuwaya Option Agreement”), under which Dr.
28 Tantuwaya granted PSPM the option to purchase Dr. Tantuwaya’s medical practice

1 in return for payments. Pursuant to said or in anticipation of said agreement PSPM
2 caused \$1,453,900 in payments to be made to Dr. Tantawaya from April 8, 2010
3 through November 3, 2011.

4 87. State Fund alleges in its TAC that the monthly payments pursuant to
5 the Tantawaya Option Agreement were not fully in consideration of PSPM's option
6 to purchase Dr. Tantawaya's practice, but rather, included disguised payments for
7 unlawful patient referrals. On information and belief, Dr. Alexander intended that
8 any such payments referred to above not be disclosed to State Fund.

9 88. In the TAC State Fund alleges that Dr. Tantawaya received kickback
10 payments for referring patients to PHLB and using I2 spinal implant hardware,
11 under other agreements with entities sued by State Fund in this action. Effective
12 March 1, 2012, I2 entered into an aircraft lease with MD Aviation, LLC, a limited
13 liability company to lease an aircraft (the "MD Aviation Lease"). On information
14 and belief Dr. Tantawaya was owner and manager of MD Aviation, LLC. Under
15 said agreement I2 caused to be paid \$1,863,384.51 to MD Aviation, Inc. On
16 information, the MD Aviation Lease was the type of agreement alleged by State
17 Fund in the TAC that disguised payments to physicians, in this case to Dr.
18 Tantawaya, for unlawful patient referrals and the use of I2 implants in spinal
19 surgeries. On information and belief, Dr. Tantawaya intended that any such
20 payments under the MD Aviation Lease not be disclosed to State Fund.

21 89. **Dr. Komberg**. In the TAC State Fund alleges that Dr. Komberg
22 referred patients for services and surgeries to be performed at PHLB and LBPC for
23 which PHLB billed State Fund in exchange for kickback payments from unnamed
24 entities sued as defendants in this action.

25 90. In paragraph 86 of the TAC State Fund further alleges that Dr.
26 Komberg had agreements with CPM and other Pharmacy Defendants to engage in
27 other unlawful and fraudulent conduct as to which State Fund seeks to hold
28 Crossclaimants/Third-Party Plaintiffs liable.

1 91. In paragraphs 86 and 87 of the TAC, State Fund further alleges that Dr.
2 Komberg unlawfully influenced and facilitated the submission of fraudulent bills by
3 physicians operating out of the medical practices he owned and operated, including
4 Tri-County Health Group, Inc., out of which Dr. Cohen allegedly practiced, and Tri-
5 City Health Group, Inc., as to which State Fund seeks to hold Crossclaimants/Third-
6 Party Plaintiffs liable.

7 FIRST CLAIM FOR RELIEF

8 (Equitable Indemnity against all Third-Party Defendants)

9 92. Crossclaimants/Third-Party Plaintiffs hereby incorporate by reference
10 and reallege, as though fully set forth herein, the allegations contained in paragraphs
11 1 through 91 above.

12 93. In the TAC State Fund alleges that, due to the conduct of the
13 Crossclaimants/Third-Party Plaintiffs and their alleged co-conspirators, State Fund
14 suffered injury to its business and property, and was otherwise damaged.

15 94. As set forth in their Answer to the Second Amended Complaint the
16 Crossclaimants/Third-Party Plaintiffs denied and still deny the actionable allegations
17 of State Fund’s Second Amended Complaint and its TAC, and further deny that they
18 are responsible or liable for any costs and damages, or that they are in any way
19 subject to any of the relief requested in the TAC.

20 95. However, should the Crossclaimants/Third-Party Plaintiffs be found
21 liable for any injury and/or damages arising from the allegations in the TAC that
22 they conspired with physicians, chiropractors, marketers and others or otherwise
23 fraudulently caused injury to State Fund’s business and property through the
24 wrongful acts alleged therein, the Crossdefendants and Third-Party Defendants are
25 each at fault, fully or in part, for any such injury and/or damages as aiders and
26 abettors of the alleged wrongful and unlawful conduct, co-conspirators and/or joint
27 tortfeasors with Crossclaimants/Third-Party Plaintiffs, under the doctrine of
28 equitable indemnity, which is applicable to State Fund’s claims for common law

1 fraud under California law and for violation of California Business & Professions
2 Code section 17200 (the “California law claims”).

3 96. By reason of the above, the Crossdefendants and Third-Party
4 Defendants are each partially or fully responsible for any and all claims, losses,
5 damages, attorney’s fees, or costs that the Crossclaimants/Third-Party Plaintiffs are
6 required to pay as a result of the facts and circumstances raised in the TAC under
7 said California law claims, and the Crossclaimants/Third-Party Plaintiffs are entitled
8 to equitable indemnification in full or in part from each of the Crossdefendants and
9 Third-Party Defendants for any and all claims, losses, damages, attorney’s fees, or
10 costs that the Crossclaimants/Third-Party Plaintiffs are required to pay as a result of
11 the facts and circumstances alleged in the TAC as to said California law claims.

12 SECOND CLAIM FOR RELIEF

13 (For Declaratory Relief Under 28 U.S.C. § 2201 and Cal. Code Civ. Proc. § 1060)

14 97. The Crossclaimants/Third-Party Plaintiffs hereby incorporate by
15 reference and reallege, as though fully set forth herein, the allegations contained in
16 paragraphs 1 through 96 above.

17 98. An actual controversy exists between the Crossclaimants/Third-Party
18 Plaintiffs and each of the Crossdefendants and Third-Party Defendants, in that the
19 Crossclaimants/Third-Party Plaintiffs contend that, if they are required to pay any
20 claims, losses, damages, attorney’s fees, or costs as a result of the facts and
21 circumstances alleged in the TAC as to State Fund’s California law claims, each of
22 the Crossdefendants and Third-Party Defendants are aiders and abettors, intentional
23 joint tortfeasors and co-conspirators as to Crossclaimants/Third-Party Plaintiffs’
24 alleged wrongdoing, and must indemnify the Third-Party Plaintiffs for any such
25 amounts, in whole or in part, under the doctrine of equitable indemnity as to said
26 California law claims, which contentions the Crossdefendants and Third-Party
27 Defendants each deny.

28

1 99. Without a judicial declaration setting forth the parties’ respective rights
2 and obligations concerning these obligations and legal duties, a multiplicity of
3 actions may result. Therefore, the Crossclaimants/Third-Party Plaintiffs request a
4 determination of the obligations of each of the Crossdefendants and Third-Party
5 Defendants, and each of them, to equitably indemnify the Crossclaimants/Third-
6 Party Plaintiffs for any and all claims, losses, damages, attorney’s fees, or costs that
7 they are required to pay as a result of the facts and circumstances raised in the
8 TAC as to State Fund’s California law claims.

9 PRAYER

10 WHEREFORE, the Crossclaimants/Third-Party Plaintiffs pray for judgment
11 ordering, adjudging and decreeing as follows:

12 1. For a judgment that the Crossdefendants and Third-Party Defendants
13 indemnify the Crossclaimants/Third-Party Plaintiffs, and each of them, for all or
14 part of any and all claims, losses, damages, attorney’s fees or costs that the
15 Crossclaimants/Third-Party Plaintiffs may be required to pay as a result of the facts
16 and circumstances raised in the California law claims in Plaintiff State Compensa-
17 tion Insurance Fund’s Third Amended Complaint; and for a Declaration as to the
18 same;

19 2. For costs of suit herein; and

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3. For such other relief as the Court may deem just and proper.

Dated: August 10, 2015

NORRIS & GALANTER LLP
DONALD G. NORRIS

LOEB & LOEB LLP
DANIEL A. PLATT
WILLIAMS M. BRODY

BY: /S/ Donald G. Norris
Donald G. Norris
Attorneys for Defendants,
Crossclaimants and Third-Party
Plaintiffs Healthsmart Pacific Inc.;
Healthsmart Pacific, Inc. d/b/a Pacific
Hospital of Long Beach; Michael D.
Drobot, Sr.; Long Beach Pain Medical
Clinic, Inc.; International Implants, LLC;
Pacific Specialty Physician
Management, Inc.; and First Medical
Management, Inc.

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DEMAND FOR JURY TRIAL

Defendants, Crossclaimants and Third-Party Plaintiffs Healthsmart Pacific Inc., Healthsmart Pacific, Inc. d/b/a Pacific Hospital of Long Beach, Michael D. Drobot, Sr., Long Beach Pain Medical Clinic, Inc., International Implants, LLC; Pacific Specialty Physician Management, Inc., and First Medical Management, Inc. hereby demand trial by jury in this action.

Dated: August 10, 2015

NORRIS & GALANTER LLP
DONALD G. NORRIS

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DANIEL A. PLATT
WILLIAMS M. BRODY

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Healthsmart Pacific, Inc. d/b/a Pacific
Hospital of Long Beach; Michael D.
Drobot, Sr.; Long Beach Pain Medical
Clinic, Inc.; International Implants, LLC;
Pacific Specialty Physician
Management, Inc.; and First Medical
Management, Inc.