Thomas E. Fraysse - SBN 104436
Gregory D. Pike – SBN 124847
Ryan G. Jacobson –SBN 270188
KNOX RICKSEN LLP
777 South Figueroa Street, Suite 4900
Los Angeles, CA 90017-5870
Telephone: (213) 281-9171
Facsimile: (213) 281-9177

Attorneys for Plaintiffs
PEOPLE OF THE STATE OF CALIFORNIA,
ex rel., ALLSTATE INSURANCE COMPANY,
ALLSTATE INDEMNITY COMPANY,
ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY
and ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

CENTRAL DISTRICT – STANLEY MOSK COURTHOUSE

PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.*, ALLSTATE INSURANCE COMPANY, ALLSTATE INDEMNITY COMPANY, ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY and ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY,

Plaintiffs,

vs.

ALEJANDRO PLATON, D.C., ALEJANDRO PLATON CHIROPRACTIC, INC., MARTIN KOFF, D.C., MARIA MIRANDA, FRANK RIVERA, L.A. HEALTHCARE MANAGEMENT, INC.; and DOES ONE through ONE HUNDRED, inclusive,

Defendants.
_____/

Case No. BC 475239

PLAINTIFFS' BRIEF IN SUPPORT OF REQUEST FOR ENTRY OF DEFAULT JUDGMENT AGAINST MARIA MIRANDA, FRANK RIVERA AND LA HEALTHCARE MANAGEMENT, INC.

Dept.: 78
Judge: Hon. William F. Fahey

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

TABLE OF CONTENTS

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427
510.273.1560

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Regulations

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427
510.273.1730

Plaintiffs, PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.*, ALLSTATE INSURANCE COMPANY, ALLSTATE INDEMNITY COMPANY, ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY and ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY (hereinafter "plaintiffs" or "Allstate") respectfully submit this Brief In Support of their Request for Entry of Default Judgment Against Defendants Maria Miranda, Frank Rivera and L.A. Healthcare Management, Inc. concurrently with declarations of Gregory D. Pike, Esq. Joe Rocha, Michael Stahl, D.C. and Charles Bond, Esq. and evidence in support of Plaintiffs' prove up relative to their request for entry of default judgment against defendants Maria Miranda, Frank Rivera and L.A. Healthcare Management Inc. This Brief and the supporting Declarations are being filed pursuant to California Rule of Court 3.1800 and Los Angeles County Superior Court Local Rules 3.201and 3.205.

I. INTRODUCTION

This is a *qui tam* action brought by Allstate pursuant to California Insurance Code section 1871.7(b) (California's Insurance Frauds Prevention Act), which provides for civil penalties and assessments based on claims made against policies issued by Allstate in which there were violations of California Penal Code section 550. In substance, this case involves unlicensed, non-professional individuals, defendants Maria Miranda and Frank Rivera, by and through Miranda's solely owned corporation defendant L.A. Healthcare Management Inc. owning and operating two chiropractic clinics that catered to plaintiff attorneys that represent persons making claims involving soft tissue injuries. The two clinics were Los Angeles Health Care and Lynwood Health Care.

Allstate has reached settlements with defendants Alejandro Platon, D.C., Alejandro Platon Chiropractic, Inc. and Martin Koff, D.C. and they have been dismissed from the action. Defendants Miranda, Rivera and L.A. Healthcare Management, Inc. failed to answer the complaint and Plaintiffs' Requests for Entry of Default were entered on July 13, 2012 as to Miranda and Rivera and September 4, 2012 as to L.A. Healthcare Management, Inc. Therefore, the only issue in this case is the entry of default judgment against Miranda, Rivera and L.A. Healthcare Management, Inc.

There are three components to the fraud in this case – ownership fraud, clinical fraud and billing fraud. As set forth with more particularity in the Declaration of Charles Bond, Esq. filed concurrently herewith (hereinafter "Bond Decl.") there is no doubt that the clinics were illegally owned. Plain and simple, defendant Maria Miranda an unlicensed lay person cannot own a chiropractic practice under California law. As is common in illegally owned clinics, a professional is involved to give the appearance of legitimacy, hence the roles of Platon and Koff. (Bond Decl. ¶¶ 30-48.) California law regulating ownership of professional medical corporations is based on well-established public policy prohibiting lay-persons from dictating how medical/chiropractic services are provided. Needless to say, lay-ownership of chiropractic practices carries with it tremendous potential to subvert sound chiropractic or medical judgment, by allowing profit motive to dictate how medical services are provided. In this instance, there is no doubt that the profit motive has trumped sound chiropractic judgment as is evidenced by rampant clinical and billing fraud. Defendants engaged in ownership fraud, clinical fraud and billing fraud in connection with three hundred ninety four (394) separate claims that were submitted to Allstate, which include hundreds of individual violations of Penal Code section 550. This case is a great example of why non-professional or lay-ownership of chiropractic facilities is prohibited under California law, as the profit motive in this instance clearly trumped chiropractic necessity. (See *Marik v. Superior Court* (1987) 191 Cal.App.3d 1136, 1139-1140.)

Under California Insurance Code section 1871.7, Allstate is entitled to penalties and assessments. Upon a showing of violation of Penal Code section 550, a plaintiff is entitled to a penalty of not less than $5,000 and not more than $10,000 *per claim*. With 394 claims, penalties of up to $3,940,000 are available to plaintiffs. In addition, under section 1871.7, an assessment of up to three times the billed amount may be imposed. The total amount billed by both Los Angeles Health Care and Lynwood Health Care is $1,211,413.02. Thus, plaintiffs are entitled to recover assessments in the amount of $3,634,239.06 from defendants.

Additionally, under Insurance Code Section 1871.7(g)(2)(A), Plaintiff are entitled to recover attorneys' fees; Insurance Code Section 1871.7(g)(2)(B),entitles Plaintiffs to recover investigative

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

expenses and costs. As is set forth below and in the concurrently filed declarations of Gregory D. Pike, Esq. and Joe Rocha, Plaintiffs' attorneys' fees total $ 85,290.00 and expenses and cost total $98,810.25. In summary, Plaintiffs seek a judgment against Maria Miranda, Frank Rivera and L.A. Healthcare Management, Inc., jointly and severally, in the amount of $7,758,969.31.

II. FACTS

Los Angeles Health Care was a chiropractic clinic located at 2975 Wilshire Boulevard, Suite 201, Los Angeles, California. Los Angeles Health Care was purportedly owned by Alejandro Platon Chiropractic Corporation with Alejandro Platon, D.C. being the resident chiropractor. Alejandro Platon Chiropractic Corporation purportedly operated a satellite office known as Lynwood Health Care located at 3735 Martin Luther King Jr. Boulevard, Suite 345, Lynwood California with Martin Koff, D.C. being the resident chiropractor. In reality, both Los Angeles Health Care and Lynwood Health Care were owned and operated by lay persons Maria Miranda and Frank Rivera through Miranda's corporation, L.A. Healthcare Management Inc.

Investigation of corporate records and public documents reveals that Maria Miranda has used and been the principal associated with the entities known as Los Angeles Healthcare or Los Angeles Health Care since at least 1996 and L A Medical Management since 1994. In fact, a fictitious business name filing dated October 5, 1994, lists L A Medical Management with a principal address of 2975 Wilshire Blvd. Suite 201, Los Angeles, CA[1]. Miranda owned and operated a chiropractic clinic at 2975 Wilshire Blvd. Suite 201, Los Angeles, CA. known as LA Medical Group in which Miranda employed Eldon Beyerle, D.C. to act as the purported owner on paper and treating doctor. At some point in approximately 2000, Platon began working at LA Medical Group. In approximately 2002, Miranda replaced Beyerle with Platon and subsequently Miranda caused to be established the corporate entities sued as defendants in this action namely L.A. Healthcare Management, Inc. and Alejandro Platon Chiropractic Corporation. Records from the California Secretary of State's office, including Articles of Incorporation show that defendant L.A. Healthcare Management, Inc. was incorporated on December 23, 2002 (See Declaration of

[1] This is the same address as Los Angeles Health Care.

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

Gregory D. Pike, Esq. filed concurrently herewith (hereinafter "Pike Decl." ¶ 2 and Exhibit A-Platon Deposition 6/10/10 pp. 60:18-19; 119:19-25 to 121:10)) and one week later, Defendant Alejandro Platon Chiropractic Corporation was incorporated on December 30, 2002. (See Pike Decl. ¶ 12 and Exhibit F).

After incorporating L.A. Healthcare Management, Inc. and Alejandro Platon Chiropractic Corporation, Miranda by and through Frank Rivera was instrumental in opening and operating Lynwood Health Care as a "satellite" facility under Platon's license with the Board of Chiropractic examiners and hiring defendant Koff to be the treating doctor at Lynwood. (See Pike Declaration ¶ 4 Exhibit C -Koff Sworn Statement under Oath pp.14-16 and 23:34-24:1 and Bond Decl. ¶¶ 46-47). Miranda and Rivera through L.A. Healthcare Management, Inc. owned and operated Los Angeles Health Care and Lynwood Health Care for about eight years. Platon had little to nothing to do with the operations of Los Angeles Health Care and Lynwood. (See Pike Decl. ¶ 2, Exhibit A-Platon Deposition 6/10/10 pp. 26:12-16; 34:9-16; 36:1-5; 40:2-10; 40:17-18; 41:3-7; 41:8-10; 41:22-25-42:2; 42:3-11; 112:4-6; 119:2-5 and Pike Decl. ¶ 3, Exhibit B- Platon Deposition 1/31/11 pp. 51:15-16; 51:21-22; 51:23-25). Platon closed Los Angeles Health Care in May of 2010 and terminated his interest in Lynwood Health Care in April of 2010. (See Pike Decl. ¶ 2, Exhibit A-Platon Deposition 6/10/10 p. 26:12-20). However, Miranda and Rivera continued to operate a chiropractic clinic at the same location as Lynwood Healthcare with Koff as the resident chiropractor through November 2011. (See Pike Declaration ¶ 4 and Exhibit C -Koff Sworn Statement under Oath pp. 31-33)

Miranda continued the clinic operation in Lynwood under the name of United Care Chiropractic and replaced Platon's satellite license with one belonging to David Neff, D.C. Of significance, the clinic remained in the same premises for a number of months after the change from Platon to Neff. However, Koff, having been initially hired and always paid by L.A. Healthcare Management Inc. remained as the onsite treating doctor, as did the entire staff including Lirian Clemente, Graciela Alvarez and Talia Solis despite the purported change of ownership from Platon to Neff. (See Pike Decl. ¶ 4 Exhibit C -Koff Sworn Statement under Oath pp. 31:4-9; 68:20-

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427
510.834.1300

25; 69:14-18).

Miranda was an integral and controlling part of the chiropractic practices of Los Angeles Health Care and Lynwood Health Care. Miranda, in her role as capper, runner, or steerer of patients, marketed the clinic to plaintiff personal injury attorneys and firms (See Pike Decl. ¶ 2, Exhibit A-Platon Deposition 6/10/10 pp. 26:12-16; 119:2-5 and Bond Decl. ¶¶ 51-52). She told the attorneys that his clinics would deliver treatment and documentary support so that the attorneys would reap higher settlements. She effectively told them that his clinics were able to provide chiropractic and physical therapy services. Such services would include findings and diagnoses to show injury to the attorneys' clients; the production of documentary support for the treatment, including medical and chiropractic records sufficient to justify the treatment, narrative reports, and bills, which, as it turns out, were and are prepared by a non-professional, persons hired by Miranda and using templates. To meet the promises made to the plaintiff personal injury attorneys and firms, Miranda Rivera, Koff, Platon, and others literally manufactured records sufficient to show an injury and to justify the treatment rendered, regardless of the nature and extent of injury, if the person was injured at all. Miranda by and through Rivera as a non-professional "Office Manager," procured a steady a sizeable flow of mostly Hispanic patients for the clinics through her extensive connections with plaintiff personal injury attorneys and firms, and the greater Los Angeles Hispanic community. (See Bond Decl. ¶¶ 51-52; Pike Decl. ¶ 2, Exhibit A-Platon Deposition 6/10/10 pp. 6/10/10 29:11-20; 32:4-9; 32:23-25). Miranda and Rivera were in charge of collection activity, negotiating all liens and bills, knowing at all times that the more money they collected, the more money they would realize. (See Pike Decl. ¶ 2, Exhibit A-Platon Deposition 6/10/10 pp. 38:11-12; 40:2-10; 40:17-18; 41:8-10; 41:22-25-42:2).

The objective of the defendants was to accommodate the needs of plaintiff personal injury attorneys so that claims made against policies of insurance issued by insurance companies would appear to show an injury of sufficient severity to justify approximately thirty visits to one of the two clinics. Adhering to the maxim of insurance fraud – that it is not important what is done at a particular clinic so long as it is described in accordance with the norms of the insurance industry –

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

defendants engaged in a scheme to manufacture findings, diagnoses and documentary support for the payment of a claim, regardless of the true nature and extent of injury, if there was in fact injury to a patient. Defendants recorded findings, made diagnoses, and prepared documents that were false and fraudulent, with the intent to manufacture documentary evidence of serious injury where it did not otherwise exist, all to accommodate the needs of plaintiff personal injury attorneys and firms in making claims against insurance companies. (See Bond Decl. ¶¶ 30-39 Pike Decl. ¶ 4 Exhibit C -Koff Sworn Statement under Oath pp. 56:1-9; 57:1-11; 57:24-58:13; 58:17-22; 58:23-59:2; 59:16-24; 60:9-12; 70:14-23, Pike Decl. ¶ 2, Exhibit A-Platon Deposition 6/10/10 pp. 49:10-12; 68:8-11, Pike Decl. ¶ 3, Exhibit B-Platon Deposition 1/31/11 pp.41-45; 54:5-8 and Declaration of Michael Stahl, D.C. filed concurrently herewith (hereinafter "Stahl Decl.") ¶ 9).

Allstate suspected that Platon, Koff, Miranda and Rivera were involved in fraudulent activity based on indications of illegal ownership, up-coding, and over-billing. Allstate investigated the legality of the ownership of the clinics based on fictitious business name statements. In May 2009, Allstate obtained a copy of the Fictitious Business Name Statement for both Los Angeles Health Care and Lynwood Health Care (filed in a single document) that was filed in the Los Angeles County Recorder's Office on July 11, 2005. The registrant of both names was Alejandro Platon Chiropractic Inc. and the statement was signed on behalf Alejandro Platon Chiropractic Inc. by Frank Rivera as "Office Manager". (See Pike Decl, ¶ 5 and Exhibit D.)

III. ARGUMENT

A. Defendants Are Liable Under Insurance Code Section 1871.7 Because They Have Engaged In Fraudulent Conduct In Connection With Three Hundred Ninety Four (394) Claims Constituting In Excess Of 1,200 Violations Of California Penal Code Section 550.

Insurance Code section 1871.7(b) creates civil liability for conduct constituting criminal insurance fraud in violation of Penal Code section 550. It was enacted by the Legislature to encourage insurers to combat insurance fraud, allowing "any interested person, including an insurer, to bring a civil action for assessments and civil penalties against those who submit false or fraudulent documents or bills in support of insurance claims." (Cal. Ins. Code, § 1871.7; see also *People ex rel. Metz v. Farmer's Group, Inc.* (2007) 156 Cal.App.4th 1063, 1069 [67 Cal.Rptr.3d

842], *People ex rel. Allstate Insurance Co. v. Weitzman* (2003) 107 Cal.App.4th 534, 546-547 [132 Cal.Rptr.2d 165], and *People ex rel. Allstate Insurance Company v. Muhyeldin* (2003) 112 Cal.App.4th 604, 609 [5 Cal.Rptr.3d 492].) Under the Penal Code section 550, it is illegal to knowingly prepare, present, and pursue false or fraudulent claims, or make oral or written statements to support them, or to conceal information which affects entitlement to the insurance benefit claimed. (See Cal. Penal Code, §§ 550 (a) (1), (5), and (b) (1) – (3).)[2] Any of these criminal acts can serve as a predicate for civil liability under Insurance Code section 1871.7(b). Though violation of Penal Code section 550 is a predicate for liability under section 1871.7(b), plaintiffs' burden of proof is preponderance of the evidence. (See *People ex rel. Allstate Insurance Co. v. Muhyeldin* (2003) 112 Cal.App.4th 604, 609 [5 Cal.Rptr.3d 492].)

1. Defendants Prepared And Presented To Allstate False And Fraudulent Medical Reports, Including Three Hundred Ninety-Four (394) Instances Of Preparation And Submission Of Fraudulent "Narrative Reports."

Through the declarations of Gregory D. Pike, Joseph Rocha, Michael Stahl, D.C. and Charles Bond, Esq. plaintiffs have presented overwhelming evidence that Miranda, individually as the sole shareholder of L.A. Healthcare Management, Inc. by and through Rivera knowingly prepared, submitted and caused to be submitted false and fraudulent medical reports known as "narrative reports" and billing records pertaining to patients seen at Los Angeles Healthcare and Lynwood Health Care to Allstate in support of 394 separate claims for which the billed amount totals $1,211,413.02. (See Declaration of Joe Rocha filed concurrently herewith (hereinafter

[2] Under these five pertinent sections of Penal Code section 550, there are thirteen ways to find a violation – presenting a false or fraudulent claim, causing a false or fraudulent claim to be presented, preparing any writing with the intent to present or use it in support of a false or fraudulent claim, preparing any writing and allowing it to be presented in support of a false or fraudulent claim, making any writing with the intent to present or use it in support of a false or fraudulent claim, making any writing and allowing it to be presented in support of a false or fraudulent claim, subscribing any writing with the intent to present or use it in support of a false or fraudulent claim, subscribing any writing and allowing it to be presented in support of a false or fraudulent claim, presenting any written or oral statement containing any false or misleading information on a material fact as part of or in support of a claim, causing the presentation of any written or oral statement containing any false or misleading information on a material fact as part of or in support of a claim, preparing any written or oral statement containing false or misleading information on a material fact that is intended to be presented to any insurer in support of a claim, making any written or oral statement containing false or misleading information on a material fact that is intended to be presented to any insurer in support of a claim, and concealing an event that affect's any person's right or entitlement to any insurance benefit or the amount of any benefit or payment.

"Rocha Decl.") ¶ 3; Bond Decl. ¶¶ 38-39).

Exhibit C to the Declaration of Gregory D. Pike is the transcript of the sworn testimony under oath of Martin Koff. D.C., the resident chiropractor at Lynwood who was employed and paid by Miranda's corporation L.A. Healthcare Management, Inc. Regarding "narrative report" preparation Koff testified:

- He was always paid by check from LA Healthcare Management and signed by Rivera (24;22-25);
- He never prepared, by any method of preparation, a narrative report (56:1-9);
- Rivera would collect patient files and take off site and then return with narrative reports for each patient file (55:20-23);
- He did not read any narrative report bearing his name, but simply signed the report (58:17-22)
- A standard report form was used resulting in the same report for every patient (57:1-11); and
- It was a matter of standard operating procedure that a narrative report was prepare for every patient (57:24 to 58:1-13).

Regarding billing and bill preparation Koff testified:

- He did not set the charges contained in the bill for professional services (52:16-20) and
- He does not know who was responsible for bill preparation, selection of CPT codes and the selection of the fee for the procedures contained in the bill (55:1-9)

Exhibit A to the Declaration of Gregory D. Pike is the deposition testimony of Alejandro Platon D.C., the resident chiropractor at Los Angeles Health Care; regarding "narrative report" preparation. Platon testified on June 10, 2010:

- The management company generated all the narrative reports; none were prepared by Platon (38:9-12 and 49:10-12);
- He believes the narrative reports were prepared by Frank Rivera (68:8-11); and
- It was the standard operating procedure of L. A. Healthcare Management, Inc. to generate a report and bill on each patient without a request from Platon (69:20 to 70:1-9)

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

Regarding billing and bill preparation Platon testified:

- The management company generated all bills; (38:9-10);
- He does not know who at the management company prepared the bills (112:12-16)

Plaintiffs have presented evidence to meet their burden in showing that the narrative reports prepared by Frank Rivera while working for L. A. Healthcare Management, Inc. were false. First, the reports were not prepared by Alejandro Platon, D.C. or Martin Koff, D.C.; instead the reports were "generated" by Frank Rivera at the direction of Maria Miranda as part of the standard operating procedure of L. A. Healthcare Management, Inc. in operating both Los Angeles Health Care and Lynwood Health Care. Second, since neither Platon nor Koff authored the reports, but they were "generated" by Frank Rivera, an unlicensed layperson who does not possess the knowledge, skill and education to form the medical and chiropractic findings stated in each report, including but not limited to patient subjective complaint, objective medical/chiropractic finding, assessment/diagnosis and prognosis.

As set forth in the Declaration of Joseph Rocha ¶ 2, all 394 claims submitted to Allstate contained narrative reports presented to Allstate in support of a claim for insurance benefits. Each of the reports would constitute a violation of Penal Code section 550, as Rivera at the direction of Miranda prepared and made narrative reports, both knowing that reports would be presented either directly or indirectly to Allstate in support of a claim, and knowing that the reports were false or misleading. (See Bond Decl. ¶¶ 34-39). Each report violated a number of the subdivisions of the pertinent section 550 subdivision, yet for purposes of this matter, plaintiffs count each report as a single violation. Thus, the false reports prepared by Rivera at the direction of Miranda and presented to Allstate in violation of section 550 total 394.

2. <u>Defendants Prepared And Presented To Allstate False And Fraudulent Medical Reports, Including Two Hundred Seventy Nine (279) Instances Of The Submission Of Fraudulent "Narrative Reports" Containing False Clinical Findings-Clinical Fraud</u>

As set forth with more particularity in the Declaration of Michael Stahl, D.C., he is a Southern California based chiropractor and a 1981 graduate of Pepperdine University and a 1984 graduate of the Los Angeles College of Chiropractic. From 1991 to 1997, he was appointed as an

Expert Examination Commissioner to the Board of Chiropractic Examiners for the State of California, has been an Examiner for the National Board of Chiropractic Examiners, and has authored four authoritative chiropractic texts, including the "California State Chiropractic Board Examination Study Guide." He has contributed chapters to authoritative texts, written numerous articles, and is a faculty member at Loyola Marymount University in Anatomy & Physiology and an Associate Faculty member of Los Angeles College of Chiropractic. For over fifteen years Dr. Stahl has been working in the field of medical/chiropractic insurance fraud, and specifically with the issues of the billing fraud, and clinical fraud on which he has qualified as an expert in various courts over 75 times. (See Stahl Decl. ¶¶ 1-7).

In connection with this litigation, Dr. Stahl has reviewed and analyzed, through pattern analysis, the medical records, narrative report and bills pertaining to 153 individuals treated at Los Angeles Health Care and 126 individuals treated at Lynwood Health Care and sworn testimony of Drs. Koff and Platon. Dr. Stahl analyzed the materials by tracking the following data: name of claimant, age, date of incident, clinic location, attorney, treating chiropractor, chief complaint, blood pressure, respiration, pulse, ambulation, cervical spine tenderness, cervical spine ranges of motion, thoracic spine ranges of motion, lumbar spine ranges of motion, diagnosis, treatment recommendation, prognosis, CPT code for first exam, CPT code for final evaluation, CPT code for re-examination, Chiropractic Manipulative Treatment CPT code, actual number of chiropractic manipulations, total number of visits, total charges, existence or non-existence of supports, whether x-rays were ordered, and whether there were ER x-rays. (See Stahl Decl. ¶¶ 8-9). Dr. Stahl found patterns in the records and reports which lead him to form the expert opinion and conclude that clinical fraud was perpetrated and carried out by defendants in this litigation on a systematic basis at both Los Angeles Health Care and Lynwood Healthcare. The findings upon which Dr. Stahl based his opinion include:

- Miranda and Rivera by and through L.A. Healthcare Management, Inc. implemented a standard protocol for patient treatment for every patient at both Los Angeles Health Care and Lynwood Health Care regardless of age, gender, type of injury and severity of injury

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

that consisted of the patients being treated daily for two weeks, three times per week for two weeks, two times per week for two weeks and one time per week for two weeks and then discharge. (See Stahl Decl. ¶ 9a).

As to Los Angles Health Care:

- 99% of the patients had their heart, lungs and abdomen examined; which is highly atypical of a diverse patient population and of one of the patients, she was six months pregnant, but the report states "The abdomen was flat, soft, and non-tender." The patient gave birth to the child in middle of her course of treatment. (See Stahl Decl. ¶ 9b).
- 76% of the patients had a respiration rate of 16-18, which is atypical of a diverse patient population. (See Stahl Decl. ¶ 9c).
- 99% of the patients in which lumbo-sacral spine findings were recorded were found to have 3+ tenderness to palpation; such a finding defies clinical reality. (See Stahl Decl. ¶ 9d).
- 100% of the patients in which lumbo-sacral spine findings were recorded were found to have 3+ tenderness to palpation of the entire lumbar spine L1-L5; such a finding defies clinical reality. (See Stahl Decl. ¶ 9e).

As to Lynwood Health Care:

- 78% of the patients had blood pressure of 120/80 and 87% had a pulse of 72; additionally, if the analysis is limited to the years 2004 to 2010, 99% of patients had blood pressure of 120/80 and pulse of 72, all of which is highly atypical of a diverse patient population. (See Stahl Decl. ¶ 9f).
- 99% had tenderness to palpation at L1-L5 and 88% had straight leg raising test positive at 40 degrees, which is highly atypical of a diverse patient population. (See Stahl Decl. ¶ 9g).
- Dr. Koff is intentionally falsifying clinical records as Stahl uncovered pattern in patient treatment notes in which the same language is used verbatim for the first nine visits to Lynwood. The pattern is identical in the chart notes of patients involved in different accidents, occurring on different dates in different years. (See Stahl Decl. ¶ 9h).

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

The evidence and opinions set forth above prove that defendants were engaged in systematic clinical fraud that can only be characterized as "pre-determined care" consistent with a personal injury mill, where all patients receive the same treatment regardless of a large number of variables.

Taking into account the patients purportedly seen by Koff at Lynwood Health Care and Platon at Los Angeles Health are, had an age range of 7-years-old to 75-years-old, with an average age of approximately 33, as well as a large number of other variables (including different types of accidents, health conditions, height, weight, etc.), Dr. Stahl opined based on such consistency in the results of his pattern analysis, that it is highly improbable that this population would fall within such a narrow range on a significant number of the fields. The variability that one would expect in a random patient population is almost totally absent with respect to reports generated by Rivera for both clinics. (See Stahl Decl. ¶ 10).

The consistency of the findings is startling. As set forth above, the blood pressure readings, respiration and pulse findings, and reports of tenderness of the cervical, thoracic and lumbar spine are almost uniform, with very little variation, particularly in the reports of tenderness. Dr. Stahl opined the relatively uniform findings are beyond unusual and that variability is the norm, given the differences among patients. Such similar or identical findings in such significant percentages of the patient population can only be the product of intentional and improper recordation by defendants which equates to clinical fraud. (See Stahl Decl. ¶ 11).

Each of the reports would constitute a violation of Penal Code section 550, as Rivera at the direction of Miranda prepared and made narrative reports, both knowing that reports would be presented either directly or indirectly to Allstate in support of a claim, and knowing that the reports were false or misleading based on the inclusion in the report of the false clinical findings as to each patient in the 279 reports. Each report violated a number of the subdivisions of the pertinent section 550 subdivision, yet for purposes of this matter, plaintiffs count each report as a single violation. Thus, the false reports prepared by Rivera at the direction of Miranda and presented to Allstate in violation of section 550 total 279.

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

3. Defendants Prepared And Presented To Allstate False And Fraudulent Billing Records, Including Two Hundred Three (203) Instances Of False And Misleading Representations In Billing Statements.

On the issues of billing and the falsity of bills submitted to Allstate, it relies on the opinions set forth in the Declaration of Michael Stahl, D.C. He is well-qualified to testify on this issue as he has taught CPT (Current Procedural Terminology) coding and the fraudulent use of CPT codes for the past twenty (20) years for the National Insurance Crime Bureau. The CPT coding system is the only coding system in use and is the only terminology used by Medicare, Medi-Cal, workers' compensation and for reimbursement from health and other insurers. (See Stahl Decl. ¶ 6).

Based on the "Instructions for Use of the CPT Book," in which coders are instructed to "Select the name of the procedure or service that accurately identifies the service performed" and warns that a coder may not select a code that "merely approximates the service provided," Dr. Stahl found upcoding in numerous instances, which he defined as "billing by providers for more work, judgment or acumen than was expended on behalf of the patient." Dr. Stahl reviewed one hundred thirteen (113) Statements of Professional Services Rendered from Los Angeles Health Care that were submitted to Allstate in support of claims for insurance benefits. Of those 113 Statements, Dr. Stahl found fraudulent upcoding on the final billed visit in seventy five (75) Statements. Dr. Stahl reviewed one hundred seven (107) Statements of Professional Services Rendered from Lynwood Health Care that were submitted to Allstate in support of claims for insurance benefits. Of those 107 Statements, Dr. Stahl found fraudulent upcoding on the final billed visit in sixty four (64) Statements. According to Dr. Stahl, the upcoding occurred at both Los Angeles Health Care and Lynwood Healthcare when the bill for a final office visit was coded as a CPT 99241- a "consultation" - when in fact, none of the criteria for a consultation had taken place and the appropriate non-fraudulent charge should have been the appropriate office visit code (CPT 99201-99215). In reviewing the medical records for each of the 139 claims where Dr. Stahl found the use of CPT 99241 in the Statements of Professional Services Rendered, he did not find evidence in the corresponding medical records for each of the 139 claims that the following criteria for the use of a CPT 99241 consultation code were met:

1. Consultation is being performed at the REQUEST of another practitioner or appropriate

source requesting advice regarding evaluation and/or management of a specific problem;

2. The request for the consultation and the reason for the request must be RECORDED in the patient's medical record; and

3. After the consultation is provided, the practitioner must prepare a written REPORT of his or her findings, which is provided to the referring practitioner. (See Stahl Decl. ¶ 12).

Dr. Stahl is of the opinion that the incentive for Miranda, Rivera and L.A. Healthcare Management, Inc. to use the CPT 99241 consultation code was so that the final office visit could be billed at a higher rate than an office visit code (CPT 99201-99215). (See Stahl Decl. ¶ 13).

Dr. Stahl reviewed the sworn testimony of Dr. Koff (see Pike Decl ¶ 4 Exhibit C), and concluded that based on Koff's testimony that from 2008 to 2010 he was the only chiropractor at Lynwood seeing patient, Koff was seeing sixty (60) to eighty (80) patients per day and that Koff was working an eight hour day, that Koff was spending between 6-8 minutes with each patient. Dr. Stahl is of the opinion based on his review of the one hundred seven (107) Statements of Professional Services Rendered from Lynwood that were submitted to Allstate in support of claims for insurance benefits, that all 107 Statements contained false and fraudulent CPT coding for the initial visit. Dr. Stahl found that in each of the 107 Statements, the initial visit was billed as a CPT 99203 which requires a minimum of 30 minutes face-to-face time between doctor and patient which is a categorical impossibility based on the sworn testimony of Dr. Koff. (See Stahl Decl. ¶ 14).

4. <u>The Requisite Intent And Knowledge Can Be Inferred From Defendants' Sophisticated History And Experience In Connection With The Preparation And Submission Of Medical And Billing Records In Support Of Insurance Claims.</u>

Penal Code section 550 requires proof that the fraudulent claims or documents were knowingly prepared or presented with the intent to defraud. (See Cal. Penal Code, § 550.) Someone intends to defraud if he or she intends to deceive another person, including a corporation or business entity, either to cause a loss of money or to cause damage to a legal, financial, or property right. It is not necessary that anyone actually be defrauded or actually suffers a financial legal or property loss as a result of the defendant's acts. (See, CALCRIM 2000; Pen. Code §

550(a)(6).) Moreover, a trier of fact may infer that a defendant acted with intent to defraud and guilty knowledge from all the circumstances surrounding the defendant's conduct, including other similar transactions and knowledge that billings were fraudulent. (*People v. Singh* (1995) 37 Cal.App.4th 1343, 1371.) Intentionally or knowingly submitting bills containing false statements or charges necessarily involves intent to defraud. (*People v. Scofield* (1971) 17 Cal.App.3d 1018, 1026.) Therefore, if a defendant prepared or submitted such bills, a trier of fact may find that defendant acted with intent to defraud. (*Ibid,* See Bond Decl. ¶¶ 34-50).

Here, the requisite knowledge and intent can be inferred from defendants' sophisticated history and experience in connection with the preparation and submission of medical and billing records. Miranda and Rivera are sophisticated and experienced in the preparation of documents to be submitted to insurance companies including narrative reports and statements of professional services- billing. It is clear from the deposition testimony of Alejandro Platon (see Exhibit A to Pike Decl.) and the testimony under oath of Martin Koff (see Exhibit C to Pike Decl.) in which they both testified that Rivera by and through Miranda's corporation L.A. Healthcare Management, Inc. prepared the narrative reports without any request from Platon or Koff as it was the standard operating procedure of L.A. Healthcare Management to generate a report and bill for each patient so that these documents could then be provided to attorneys representing the purportedly injured person who would then submit the narrative report and bill to insurance companies like Allstate in support of a demand for settlement of the claim. It is no coincidence that in approximately 2000, Platon began working at LA Medical Group. In approximately 2002, Miranda replaced Beyerle with Platon (See Pike Decl. ¶ 2, Exhibit A-Platon Deposition 6/10/10 pp. 60:18-19; 119:19-25 to 121:10) and subsequently Miranda established L.A. Healthcare Management, Inc. and Alejandro Platon Chiropractic Corporation. Records from the California Secretary of State's office show that defendant L.A. Healthcare Management, Inc. was incorporated on December 23, 2002 and one week later, Defendant Alejandro Platon Chiropractic Corporation was incorporated on December 30, 2002. (See Pike Decl. ¶ 12 and Exhibit G). This creation of the corporate structure of the management company and the chiropractic corporation that purportedly owned Los Angeles Health

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

Care and Lynwood Health Care show the intent of Miranda and Rivera to carry out their enterprise to defraud insurance companies from the inception. (See Bond Decl. ¶¶ 34-50). Further evidence of the intent to defraud was the fact that the narrative reports were signed by Platon and Koff without either of them reading the reports to check for accuracy before they were signed and handed back to Rivera to send to attorneys representing the purportedly injured claimants.

Given Miranda and Rivera background, experience, and direct connection with billing, coding and report writing, and given the litany of events surrounding Drs. Platon and Koff, there can be no doubt whatsoever that both Miranda and Rivera knew what they was doing when they was doing it and that it was intentional. Miranda's operation of L.A. Healthcare Management, Inc., by and through Rivera and others was sophisticated, systematic, knowing, with Miranda controlling every aspect of the business. (See Bond Decl. ¶¶ 30-48 and 53-55).

///

B. Defendants Violated California Business And Professions Code Section 17200 By Engaging In Unlawful And Fraudulent Business Acts, Including Practicing Medicine Without A License, Operating A Professional Medical Corporation In Violation Of The Moscone Knox Professional Corporations Act, And By Falsifying Medical Records.

It is unlawful in the State of California to practice or attempt to practice medicine without a license. (Bus. & Prof. Code §§ 2052, 2053.) The making or rendering of a diagnosis by any method, device, or procedure is an integral aspect of the practice of medicine, where any person making a diagnosis in the state of California must be licensed to practice medicine by the state of California. (83 Ops. Cal. Atty. Gen. 170, 171 (2000); Bus. & Prof. Code §§ 2038, 2052, 2089.) By analogy, the same prohibit against the corporate practice of medicine applies with equal for to chiropractic corporations. Title 16 California Code of Regulations section 312.1 provides: "No unlicensed individual may own a chiropractic practice regardless of the form in which the practice is established (individual ownership, partnership, corporation, etc.)"

As set forth with more particularity in the Declaration of Charles Bond file concurrently with this Brief at paragraphs 1-18, Bond is an expert on issues pertaining to chiropractic similar to those in this case, including, but not limited to, issues related to unauthorized practice of chiropractic, the illegal corporate practice of medicine, management service organizations, illegal

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

fee splitting, the use of runners, cappers, and steerers, falsification of medical records, insurance fraud, and other matters related to the foregoing. (See Bond Decl. ¶ 5). Bond is of the opinion Miranda and Rivera were engaging in the practice of chiropractic without a license given the fact that Frank Rivera was producing reports containing medical diagnoses and forming medical opinions. Bond is of the opinion that the creation of the medical reports containing medical diagnoses constituted the practice of chiropractic and that the conduct of Platon and Koff was not the practice of chiropractic. (See Bond Decl. ¶¶ 30-48).

California law also enforces a corporate practice of medicine bar that strictly prohibits lay individuals and general corporations from practicing medicine. (Cal. Bus. & Prof. Code, §§ 2052, 2400.) Because L.A. Healthcare Management, Inc. operated as a general corporation under California law and was, at all times, wholly-owned by Miranda, defendants' conduct constitutes a violation of California's bar on the corporate practice of medicine. (See Cal. Bus. & Prof. Code, §§ 2400, 2052.) Moreover, because L.A. Healthcare Management, Inc. was at all times wholly owned by Miranda, who is not a physician; defendants' conduct does not comply with the Moscone Knox Professional Corporations Act which requires 51% ownership of a chiropractic corporation by a chiropractor licensed by the State of California. (Bond Decl. ¶¶ 40-48; Title 16 California Code of Regulations section 312.1; Corporations Code Section 13401.5(k). Thus, at all times, the conduct of Miranda and Rivera constituted the unlicensed practice of chiropractic as well as a violation of California's bar on the corporate practice of medicine. (Cal. Bus. & Prof. Code, §§ 2000 *et seq.*, 2200 *et seq.*, 2400 *et seq.*; Cal. Corp. Code, § 13400 *et seq.*) Moreover, Mr. Bond also is of the opinion that L.A. Healthcare Management, Inc. was a professional chiropractic corporation practicing in violation of the Moscone-Knox Professional Corporations Act in that it was diagnosing medical conditions, and billing under CPT codes for professional services, using the name of a licensed professional. (See Bond Decl. ¶¶ 40-48).

Indeed, the conduct of defendants in engaging in clinical fraud and running, capping, and steering is precisely the type of conduct the corporate bar was intended to prevent. That is, the interposition of L.A. Healthcare Management, Inc., a commercial entity owned by a layperson,

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

between the health care professional, in this case Platon and Koff and the patient gives rise to divided loyalties on the part of the health care professional and destroys the professional relationship into which those loyalties were cast. (65 Ops.Cal.Atty.Gen. 223) Therefore, because defendants were not licensed to practice medicine, but nonetheless held themselves out as a properly licensed provider of medical services including diagnoses and opinions, defendants conduct constitutes 394 fraudulent and misleading acts in violation of Penal Code section 550 and, thus, Insurance Code section 1871.7.[3] (See Bond Decl. ¶¶ 40-52).

C. <u>At All Times L.A. Healthcare Management Was The Alter Ego Of Miranda Because Of The Unity Of Interest And Ownership And Because Adherence To The Fiction Of The Separate Existence Of L.A. Healthcare Management Would Sanction Defendants' Fraud And Promote Injustice.</u>

It is well settled that, when necessary to circumvent fraud, both law and equity will disregard the distinct existence of a corporation and its stockholders and treat them as identical. (*Erkenbrecher v. Grant* (1921) 187 Cal. 7, 10-11 [200 P. 641].) The term "alter ego" describes a doctrine, the application of which results in either the obligations of a corporation being treated as those of its equitable owners or the obligations of the equitable owners being treated as those of the corporation. (*Minton v. Cavaney* (1961) 56 Cal.2d 576, 579, [15 Cal. Rptr. 641, 364 P.2d 473]; *Riddle v. Leuschner* (1959) 51 Cal.2d 574, 580 [335 P.2d 107]; *Wenban Estate, Inc. v. Hewlett* (1924) 193 Cal. 675, 696-697.) Before a corporation's acts and obligations can be legally recognized as those of a particular person, and vice versa, the following conditions must exist: 1) it must appear that the corporation is not only influenced and governed by that person, but that there is such a unity of interest and ownership that the individuality, or separateness, of such person and the corporation has ceased; and 2) the facts are such that an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice. (*Minifie v. Rowley* (1921) 187 Cal. 481, 487 [202 P. 673]; *Robbins v. Blecher* (1997) 52 Cal.App.4th 886, 892 [60 Cal.Rptr.2d 815]; *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 837 [26 Cal.Rptr. 806]; *Talbot v. Fresno-Pac. Corp.* (1960) 181 Cal.App.2d

[3] These 394 violations are separate and distinct from the 394 violations for fraudulent reports and billings discussed in Section A (1)-(3) of this brief.

425, 431 [5 Cal.Rptr. 361].) The variety of factors that courts have considered in reaching their determination as to whether the alter ego doctrine should be applied were summarized, with citations to authority, in *Associated Vendors Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 838-840, 26 Cal. Rptr. 806, including 1) the sole ownership of all of the stock in a corporation by one individual, 2) the use of a corporation as a mere shell, instrumentality, or conduit for a single venture or the business of an individual, 3) the commingling of funds and other assets, failure to segregate funds of the separate entities, 4) the treatment by an individual of the assets of the corporation as his or her own, and 5) the failure to maintain minutes or adequate corporate records and the confusion of the records of the separate entities. *(Ibid)*

Miranda, at all times was the sole shareholder of L.A. Healthcare Management, Inc. (See Bond Decl. ¶ 55a). She was solely responsible for overseeing and directing the conduct complained of in this matter including doctor recruitment, patient capping and steering, standard operating procedures for patient treatment, narrative report preparation and bill preparation (See Bond Decl. ¶¶ 38, 39, 51-52, 55b). The testimony of Dr. Platon and the bookkeeping and banking records of L.A. Healthcare Management, Inc. and Alejandro Platon Chiropractic Corporation obtained by Allstate clearly demonstrate a commingling of funds such that Miranda was essentially running her personal finances through L.A. Healthcare Management, Inc. as money was routinely taken from the account of Alejandro Platon Chiropractic Corporation, deposited into the account of L.A. Healthcare Management, Inc. and then checks were issued to Miranda by L.A. Healthcare Management, Inc. (See Bond Decl. ¶¶ 55c-55d).

Hence, the evidence clearly shows that Miranda and L.A. Healthcare Management, Inc. had such a unity of ownership and interest that the individuality or separateness of Miranda and her corporation ceased. In this instance, the adherence to the fiction of a separate existence of the corporation would sanction the fraud committed by and at the direction of Miranda. (See Bond Decl. ¶¶ 53-55).

D. <u>Under Insurance Code Section 1871.7(b) Plaintiffs Are Entitled To Assessments, Penalties, As Well As Attorney's Fees, Investigative Expenses, And Costs.</u>

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

1. Assessments and Penalties

In an action brought under Insurance Code section 1871.7, a *qui tam* plaintiff is entitled to various forms of relief, including 1) civil penalties, 2) assessments, and 3) expenses, attorney's fees, and costs. (Cal. Ins. Code, §§ 1871.7(b), 1871.7(g)(2)(A).) With respect to calculation of recoverable civil penalties and assessments, section 1871.7 provides a straightforward statutory directive. The section specifically proscribes a defendant's liability for 1) civil penalties of $5,000 to $10,000 for each fraudulent claim submitted for payment as well as 2) an assessment up to three times the amount of each claim for compensation. (Cal. Ins. Code, § 1871.7(b).) Section 1871.7(b) provides that the penalty prescribed in this paragraph shall be assessed for each fraudulent claim presented to an insurance company by a defendant and not for each violation. (*Ibid)* Thus, the two primary data points driving the calculation of plaintiffs' recovery in the present case are 1) the number of claims for payment submitted by defendants to plaintiffs and 2) the amount of each claim for payment submitted, i.e. the amount of each bill prepared and created by defendants which were submitted to plaintiffs. A *qui tam* plaintiff is entitled to these penalties and assessments in addition to recovery of attorney's fees, expenses, and costs. (Cal. Ins. Code, § 1871.7(g)(2)(A).)

As is discussed above, plaintiffs have proven over one thousand two hundred seventy (1270) violations of California Penal Code section 550 in each of the three hundred ninety four (394) claims at issue in this matter. Under Insurance Code section 1871.7(b), civil penalties are awardable of between $5,000 and $10,000 for each fraudulent claim submitted for payment, plus an assessment of up to three times the amount for each claim for compensation. With three hundred ninety four (394) claims in which a violation of section 550 has been more than adequately proven, plaintiffs respectfully request that the court impose a civil penalty of $10,000 per claim, or $3,940,000 against Miranda, Rivera and L.A. Healthcare Management, Inc., jointly and severally. In addition, in consideration of the proven billed amount to Allstate of $1,211,413.02 (See Rocha Decl. ¶ 3), plaintiffs respectfully request that the court triple that amount and impose an assessment of $3,634,239.06 against Miranda, Rivera and L.A. Healthcare Management, Inc., jointly and severally. Thus, the total civil penalties and assessments requested in the judgment to be entered against Maria Miranda, Frank Rivera and L.A. Healthcare Management, Inc. in light of the

overwhelming evidence is $7,758,969.31, to which attorney's fees, costs and expenses would be then be added as set forth below.

2. Attorneys' Fees, Costs and Investigative Expenses

Plaintiffs are entitled to an award of reasonable attorneys' fees, costs, and investigative expenses pursuant to this Court's Tentative Decision as well as California Insurance Code section 1871.7(g)(2)(A), California Code of Civil Procedure sections 1032 and 1033.5, and California Rules of Court rules 3.1702 and 8.104. The present case was brought under the California Insurance Frauds Prevention Act, codified as California Insurance Code section 1871.7. Section 1871.7, subsection (g)(2)(A), provides that a person bringing an action under the section "shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs." (Cal. Ins. Code, § 1871.7(g)(2)(A).) Additionally, the California Code of Civil Procedure provides that a prevailing party is entitled as a matter of right to recover costs in any action or proceeding, including attorney's fees as authorized by statute. (Cal. Code Civ. Proc., §§ 1032; 1033.5(a)(10)(A), (B).) Thus, under these sections, plaintiffs are statutorily entitled to a mandatory award of reasonable attorney's fees, costs, and expenses.

a. Under The Lodestar Method, Plaintiffs Are Entitled To A Mandatory Award Of Reasonable Attorney's Fees In The Amount Of $85,920.

The primary method for establishing the amount of "reasonable" attorney's fees is the lodestar method. The lodestar is produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. (*Pellegrino v. Robert Half International, Inc.* (2010) 182 Cal.App.4th 278, 290-291 [106 Cal.Rptr.3d 265].) The lodestar is the basic fee for comparable legal services in the community. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 [21 Cal.Rptr.3d 331]; *Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 347-350 [95 Cal.Rptr.3d 880].) Typically, the number of hours is established by contemporaneous time records, and the rate is determined by the attorney's usual and customary rate charged to (and paid by) other clients, and the rates of other attorneys in the area who handle similar cases. The court applies a reasonable rate, not necessarily the rate the attorney actually charged the client in the case. (*Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1260 [105

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427
(510) 834-1300

Cal.Rptr.3d 214].) The precise geographic location is less important than subject matter expertise and experience. (See *Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 614-619 [115 Cal.Rptr.3d 762] (nonlocal market rates allowed when local counsel unavailable).)

A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the careful compilation of the time spent and reasonable hourly compensation of each attorney involved in the presentation of the case. The California Supreme Court has expressly approved the use of prevailing hourly rates as a basis for the lodestar, noting that anchoring the calculation of fees to the lodestar adjustment method is the only way of approaching the problem in an objective manner. The trial court determines "reasonable" compensation by carefully reviewing attorney documentation of hours expended. (See *Graham v. DaimlerChrysler Corp.*, *supra*, 34 Cal.4th at 579.) Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative "multiplier" to take into account a variety of other factors. (*Pellegrino v. Robert Half International, Inc.* (2010) 182 Cal.App.4th 278, 291-294 [106 Cal.Rptr.3d 265] (upholding 1.75 multiplier)].) The court may adjust this figure based on factors that include the following: quality of the representation; results obtained; novelty and difficulty of the questions involved; skill displayed in presenting issues to the court; and necessity of the fees incurred.

In the present case, although under the lodestar method plaintiffs are entitled to a "reasonable rate" for comparable legal services in the community and not the hourly rate actually charged, in the present motion plaintiffs are seeking only to recover attorney's fees based on the hourly rate actually charged which is significantly lower than the hourly rates typically charged for comparable legal services in the community. (See Pike Decl. ¶ 9.) In the present case, the hourly rates charged by Knox Ricksen LLP were and are $180 per hour for partners, $160 per hour for associates, and $95 per hour for paralegals. (See Pike Decl. ¶ 9.) These hourly rates are significantly lower than the rates charged by other attorneys in the area for similar work, which range between $300 and $500 per hour for partners. (See Pike Decl. ¶ 8.) In fact, at a recent hearing in a similar *qui tam* matter now pending in Alameda County Superior Court, the Hon.

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

Steven Brick characterized the Knox Ricksen LLP hourly rates as "bargain basement." (*Ibid.*) Therefore, under the lodestar method the hourly rates charged by Knox Ricksen LLP are reasonable because they are significantly lower than the hourly rate typically charged for comparable legal services in the community.

The number of hours expended in the present case is established by the contemporaneous time records of Knox Ricksen LLP and are reasonable given the complexity and size of this case, the novelty and difficulty of the legal issues, the skill displayed in presenting the issues to this Court, and necessity of the fees incurred. (See Pike Decl. ¶ 7.) This case was and is a far-reaching insurance fraud *qui tam* action involving the knowing preparation of false and misleading medical reports and billing statements in connection with three hundred ninety four (394) claims submitted to plaintiffs. (See Rocha Decl. ¶¶ 2-3.) Projects and actions akin to the present case are generally complex and require a tremendous amount of time and effort to learn the concepts involved and to use that knowledge in reviewing voluminous materials and in conducting discovery. (See Pike Decl. ¶¶ 4-6.) Additionally, this case involved a massive amount of factual information relating to the three hundred ninety four (394) claims made by defendants, including the claim files, hundreds of medical reports, billing statements, diagnoses, findings, impairment ratings, and other fraudulent information which comprised defendants' fraudulent scheme. (*Ibid.*) Knox Ricksen LLP devoted a team of attorneys, paralegals, and staff to this project and action which was necessary to review, organize, and analyze the relevant evidence and to prosecute this case. (*Ibid.*)

Attached to the Declaration of Gregory D. Pike filed concurrently herewith is a spreadsheet which details the number of hours expended by Knox Ricksen LLP attorneys and paralegals in this matter. (See Pike Decl. ¶ 9, Exhibit E.) The billing entries contained in the spreadsheet are a record kept in the ordinary course of business and are the product of contemporaneous time entry by the Knox Ricksen LLP attorneys and staff working on this case. (See Pike Decl. ¶ 9.) The number of hours expended were reasonable and necessary to the investigation and prosecution of the action.

In sum, in this case the lodestar produced by multiplying the number of hours reasonably

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

expended by counsel by the reasonable hourly rate and established by the contemporaneous records filed concurrently herewith evidences that plaintiffs are entitled to reasonable attorney's fees in the amount of $85,920.

b. Plaintiffs Are Entitled To A Mandatory Award of Costs and Investigative Expenses In The Amount of $ 98,810.25

The present case was brought under section 1871.7, where subsection (g)(2)(A) provides a statutory directive that a person bringing an action under the section shall receive reasonable costs and expenses. Further, the statutory provisions relating to costs include Code of Civil Procedure sections 1021 et seq. and section 1032, which provide for recovery of costs by prevailing parties generally. Specific items declared to be recoverable as costs by a prevailing party are set forth in Code of Civil Procedure section 1033.5 and include the following: filing and motion fees; taking, video recording, and transcribing necessary depositions as well as travel expenses to attend depositions; service of process by a public officer, registered process server, or other means; ordinary witness fees pursuant to section 68093 of the Government Code; attorney's fees when authorized by statute; and any other item that is required to be awarded to the prevailing party pursuant to statute. (Cal. Code Civ. Proc., § 1033.5.)

Additionally, although there is no case law directly addressing an award of expenses in the context of an Insurance Code section 1871.7 action, case law in the context of the Federal False Claims Act ("FFCA") on which section 1871.7 was based does specifically hold that "expenses" are a discrete category of relief separate and apart from "fees" and "costs" also awarded under the FFCA. (*United States ex rel. Lindenthal v. General Dynamics Corp.* (1995) 61 F.3d 1402, 1413.) Thus, under section 1871.7 plaintiffs are entitled to a mandatory statutory award of costs and investigative expenses.

In the present case, the costs and investigative expenses incurred are established by the contemporaneous cost and expense amount of Knox Ricksen LLP and Allstate, both of which are summarized and set forth in the declarations of Gregory D. Pike and Joe Rocha. (See Pike Decl. ¶ 10, Exhibit F; See the Declaration of Joe Rocha filed concurrently herewith ("Rocha Decl." ¶ 5, Exhibit A.) The cost and expense incurred by Knox Ricksen LLP were systematically posted and

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427

were contemporaneously recorded by the Accounting Department of Knox Ricksen LLP. (See Pike Decl. ¶ 10.) The costs and expenses were reasonably incurred in the investigation of defendants and the prosecution of this matter at the direction of either Joe Rocha of Allstate or Gregory D. Pike of Knox Ricksen LLP, or both, and at all times were reviewed and approved by Allstate. (*Ibid.*) The costs and expenses incurred were all reasonably related to the investigation and prosecution of this action and are all reasonable in amount. (*Ibid.*) Similarly, the cost and expense records of Allstate were contemporaneously created and kept in ordinary course of business through the duration of this matter and were reviewed to ensure that the billed amount was related to the investigation/project and prosecution of the defendants and that the billed amount is correct. (See Rocha Decl. ¶ 5.) All of the work was either requested by Allstate, or was requested by Knox Ricksen LLP, or both, and also approved by Allstate. (*Ibid.*)

It should be noted that the costs and expenses incurred by Knox Ricksen LLP are not duplicative of those which were directly paid by Allstate in the investigation and prosecution of this action. The costs and expenses incurred by Knox Ricksen LLP are those expenses which were paid directly by Knox Ricksen LLP and then later reimbursed by Allstate. (See Pike Decl. ¶ 10.) Conversely, the costs and expenses incurred and paid directly by Allstate are set forth in Exhibit A to the Declaration of Joe Rocha. (*Ibid.*)

The costs and expenses incurred by Knox Ricksen LLP on behalf of Allstate total $6,705.11, and the costs and expenses incurred by Allstate directly total $92,105.14. Thus, plaintiffs are entitled to an award of costs and expenses in the amount of $98,810.25.

IV. CONCLUSION

Maria Miranda and Frank Rivera by and through Miranda' corporation L.A. Healthcare Management Inc., defrauded Allstate of a substantial amount of money by operating two personal injury mill clinics catering to personal injury attorneys in the greater Los Angeles area. Allstate has brought this action as a *qui tam* relator to force Maria Miranda and Frank Rivera and L.A to fully face the consequences of their conduct as allowed by law. The State of California has authorized this sort of pursuit via a *qui tam* action, recognizing a strong public interest in addressing auto

insurance fraud. Allstate, on its own behalf, and on behalf of the People of the State of California, has proven its case of insurance fraud against the defendants and respectfully requests that this court find Miranda, Rivera and L.A. Healthcare Management, Inc. jointly and severally liable under Insurance Code section 1871.7(b) for violating California Penal Code section 550 over 1,200 times in the 394 subject claims, and to hold them accountable for the full measure of the available penalties ($3,940,000.00) and assessments ($3,634,239.06) totaling $7,574,239.06.

Allstate also respectfully requests that this court award Allstate its attorneys' fees of $85,920.00 and costs and expenses of $98,810.25 totaling $184,730.25 incurred by it in the investigation and prosecution of this case against the defendants.

For all of the reasons set forth in this brief, the Declarations of Gregory D. Pike, Esq., Joe Rocha, Michael Stahl, D.C. and Charles Bond, Esq. and exhibits to each of the declarations, Allstate respectfully request that this court enter judgment against Miranda, Rivera and L.A. Healthcare Management, Inc. jointly and severally in the amount of $7,758,969.31.

Dated: February 4, 2013

KNOX RICKSEN LLP

By: _____
Gregory D. Pike
Attorneys for Plaintiffs, *ex rel.*,
ALLSTATE INSURANCE COMPANY, et al.

KNOX RICKSEN LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 500
OAKLAND, CALIFORNIA 94612-1427