

1 Eric J. Benink, Esq., SBN 187434
2 Vincent D. Slavens, Esq. SBN 217132
3 KRAUSE KALFAYAN BENINK & SLAVENS, LLP
4 625 Broadway, Suite 635
5 San Diego, CA 92101
6 Tel.: (619) 232-0331
7 Fax: (619) 232-4019

2009 JAN 26 AM 11:02
SAN DIEGO COUNTY, CA

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

10 ARIEL J. SABBAN, on behalf of himself and all) Case No. 37-2009-00081971-CU-BT-CTL
11 others similarly situated,)
12 Plaintiff,)
13 v.) CLASS ACTION COMPLAINT FOR
14 SCRIPPS HEALTH, a California corporation;) UNJUST ENRICHMENT, VIOLATION
15 LA JOLLA EMERGENCY PHYSICIANS) OF UNFAIR COMPETITION LAW,
16 MEDICAL GROUP; and DOES 1 through 10,) CONVERSION, AND IMPOSITION OF
17 inclusive,) CONSTRUCTIVE TRUST
18) [CLASS ACTION]
19) [Jury Trial Demanded]
20 Defendants.)
21)
22)
23)
24)
25)
26)
27)
28)

I.
NATURE OF THE ACTION

1. This is a class action seeking a return of funds that Defendants Scripps Health ("Scripps") and La Jolla Emergency Physicians Medical Group, ("EPMG") have wrongfully collected from their patients in a process known as balance billing. Defendants provide emergency medical services to patients and submit a bill for such services to patients' health maintenance organization ("HMO.") In accordance with the law, HMO's pay Defendants what they determine to be the reasonable value of the emergency medical services Defendants provided. Sometimes, the HMOs pay Defendants less than the amount billed. Defendants then bill the patients for the

1 remaining balance of the bill. This practice is unlawful under California law, including the Knox-
2 Keene Health Care Service Plan Act of 1975 (Health & Safety Code, §§ 1340, *et seq.*)(referred to
3 herein as the “Knox-Keene Act.”) Plaintiff seeks to recover illegally-collected funds on behalf of a
4 class of patients.

5 **II.**
6 **JURISDICTION AND VENUE**

7 2. At all relevant times hereto, Defendants provided emergency medical services to
8 residents in the county of San Diego, California and operated emergency rooms at hospitals in the
9 county of San Diego, California. The emergency medical services alleged in this action took place
10 in the county of San Diego, California.

11 3. Defendant Scripps’ principal place of business is San Diego, California.

12 **III.**
13 **PARTIES**

14 4. Plaintiff Ariel J. Sabban (“Sabban”) is an individual residing in La Jolla, California.

15 5. Defendant Scripps Health is a California Corporation, with its principal place of
16 business in San Diego, California.

17 6. Defendant La Jolla Emergency Physicians Medical Group provides emergency
18 medical services to patients of Scripps Hospital, in La Jolla, California.

19 7. Plaintiff is unaware of the true names and capacities of defendants sued herein as
20 DOES 1 through 10, inclusive, and therefore sues these defendants by such fictitious names.
21 Plaintiff is informed and believes, and thereon alleges, that each of said fictitiously-named
22 defendants is in some manner responsible for the acts, omissions, injuries and/or damages alleged
23 herein. Plaintiff will amend this complaint to allege the true names and capacities of said
24 fictitiously-named defendants when the same have been ascertained.

25 8. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, each of the defendants was the agent, employee, representative, partner, joint venturer,
27 and/or alter ego of each of the other defendants and, in doing the things alleged herein, was acting
28 within the course and scope of such agency, employment, representation, on behalf of such

1 partnership or joint venture, and/or as such alter ego, with the authority, permission, consent, and/or
2 ratification of each of the other defendants.

3
4 **IV.**
GENERAL ALLEGATIONS

5 **A. Balance Billing:**

6 9. California's Health and Safety Code, Section 1317, requires emergency health care
7 providers to provide emergency health care services to anyone who requests it and to whom the
8 Emergency health care providers reasonably believe need it.

9 10. Emergency health care providers are entitled to request that their patients provide
10 their health care insurance information at the time Emergency health care providers provide the
11 emergency health care services.

12 11. The Knox-Keene Act, as amended in 1994, requires HMO's to reimburse emergency
13 health care providers for emergency services and emergency care provided to their members.

14 12. Regulations of the Department of Managed Health Care provide that HMO's are
15 required to pay emergency health care providers "the reasonable and customary value for the health
16 care services rendered based upon [several factors]".

17 13. Defendants have and continue to submit their bills for emergency health care
18 services to patients' HMO's. Often the HMO's determine the reasonable value of the emergency
19 services to be less than the amount billed and they pay that reduced amount to the Defendants.

20 14. When this occurs, Defendants have and continue to bill patients for the balance of
21 the bill.

22 15. Under the Knox-Keene Act, emergency health care providers, like Defendants, are
23 barred from recovering from the patient this balance.

24 **B. Plaintiff's Experience With Defendants**

25 16. On June 24, 2007, Plaintiff's son fell and seriously cut his head. He took his son
26 to the emergency room at Scripps Memorial Hospital ("Hospital") in La Jolla for emergency medical
27 treatment. Scripps Health operates the Hospital and EPMG manages the emergency room at the
28 Hospital. Defendants are emergency health care providers that are subject to Health & Safety Code

1 Section 1317 and the Knox-Keene Act, described above.

2 17. Plaintiff's son was admitted to the Hospital and Defendants provided to him
3 reasonably necessary emergency medical services, including the surgical repair of the wound to his
4 head.

5 18. At the time of treatment, Plaintiff was a subscriber of a Blue Cross of California
6 HMO ("Blue Cross.") Blue Cross is a for profit health care service plan as defined in Health &
7 Safety Code section 1345(f), is subject to the Knox-Keene Act, and is required to reimburse
8 emergency health care providers for emergency services they provide to Blue Cross' subscribers.
9 Plaintiff's son was insured under his Blue Cross plan.

10 19. Plaintiff provided Scripps with his Blue Cross insurance information at the time of
11 his son's treatment.

12 20. In a notice to Plaintiff titled "Explanation of Benefits," Blue Cross notified Plaintiff
13 that Defendants had submitted to Blue Cross a bill totaling \$521.00.

14 21. Blue Cross agreed to pay and did pay to Defendants a total of \$463.71, which is
15 \$57.83 less than the amount Defendants submitted to Blue Cross.

16 22. On October 15, 2007, Defendants sent to Plaintiff a bill demanding payment of
17 \$57.83, to recover the difference between what Defendants had billed to Blue Cross and what Blue
18 Cross agreed to pay. The bill stated: "Blue Cross has been billed. If payment was not in full contact
19 them for reason of non-payment or make payment yourself. *Responsibility for payment is yours.*"

20 23. On December 15, 2007, Plaintiff paid Defendants \$57.83 in full payment of the
21 October 15, 2007 bill.

22 24. Defendants' act of billing Plaintiff for the difference between the amount billed to
23 Blue Cross and the amount paid by Blue Cross is balance billing and it unlawful and unfair under
24 California law.

25 25. Plaintiff was actually injured by Defendants' conduct in the amount of \$57.83.

26 26. Plaintiff alleges on information and belief that Defendants have engaged for at least
27 the past four years, and they continue to engage now, in the illegal practice of balance billing,
28 causing substantial injury to residents throughout San Diego county and likely beyond.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V.
CLASS ALLEGATIONS

27. Plaintiff brings this suit as a class action under Section 382 of the Code of Civil Procedure on behalf of the following class of persons:

All persons residing in California who, during the past four years and up to and including the date of trial of this action, were balance billed by Defendants for emergency medical services rendered.

28. Excluded from the class are the Defendants herein, any person, firm, trust, corporation, officer, director or other individual or entity in which the Defendants have a controlling interest or which is related to or affiliated with the Defendants, and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party.

29. The number of putative class members is so numerous that joinder of all such customers would be impracticable. Plaintiff's claims are typical of the claims of the members of the Class.

30. Plaintiff will fairly and adequately protect the interests of the members of the Class and Plaintiff has no interests which are contrary to or in conflict with those of the Class members he seeks to represent. Plaintiff has retained competent counsel experienced in class action litigation to further ensure such protection and intends to prosecute this action vigorously.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the harm suffered by individual members of the Class is likely relatively small, the expense and burden of individual litigation make it impossible for the members of the Class to individually redress the wrongs done to them. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

32. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class includes whether Defendants' practice of balance billing is unfair and unlawful, in violation of California law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI.
CAUSES OF ACTION

FIRST CAUSE OF ACTION
UNJUST ENRICHMENT
(AGAINST ALL DEFENDANTS)

33. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

34. Defendants were unjustly enriched at Plaintiff and the class's expense.

SECOND CAUSE OF ACTION
VIOLATION OF UNFAIR COMPETITION LAW
BUS. & PROF. CODE §§ 17200
(AGAINST ALL DEFENDANTS)

35. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

36. Defendants' acts and practices alleged herein constitute unlawful, unfair and fraudulent business acts and practices within the meaning of California Bus. & Prof. Code §§ 17200, *et. seq.*

37. Defendants engaged in unfair business acts and practices in that the harm caused by Defendants' conduct outweighs any utility of such conduct and such conduct offends public policy, is immoral, unscrupulous, unethical, deceitful and offensive, and cause substantial injury to Plaintiff and the members of the class.

38. Defendants engaged in unlawful acts, alleged above, that violate state law, including Health & Safety Code, Section 1340, *et seq.*

39. As a direct and proximate cause of these acts and practices, Plaintiff and the class suffered injury.

THIRD CAUSE OF ACTION
CONVERSION
(AGAINST ALL DEFENDANTS)

40. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

1 1761(e) and 1770.

2 51. As set forth herein, Defendants' acts and practices of balance billing for its
3 emergency medical services, as alleged herein, violate the California Consumers Legal Remedies
4 Act in that: (a) Defendants represent that the transactions confer or involve rights, remedies, or
5 obligations which they do not have or involve, or which are prohibited by law, in violation of
6 Civil Code Section 1770(14).

7 52. Pursuant to the provision of California Civil Code § 1780(a)(2), plaintiff seeks
8 injunctive relief in the form of an order requiring Defendants to permanently cease their practices
9 as alleged herein. Plaintiff does not seek damages at this time.

10 53. Plaintiff seeks recovery of attorneys' fees and costs of litigation pursuant to Civil
11 Code §1780.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff requests relief as follows:

- 14 1. Damages and/or restitution and disgorgement pursuant to all causes of action
15 except for violations of the Consumer Legal Remedies Act in an amount to be
16 proven at trial;
 - 17 2. For an order enjoining Defendants from continuing the unlawful and unfair
18 conduct alleged herein;
 - 19 2. Imposition of a constructive trust over funds that Defendants collected;
 - 20 3. Certification of a class as defined, *supra*, pursuant to Code Civ. Proc. § 382 and
21 Civ. Code §1781;
 - 22 4. Appointment of Krause Kalfayan Benink & Slavens, LLP as the lead attorneys
23 and Ariel J. Sabban as the lead plaintiff;
 - 24 5. Attorneys fees and costs as provided for by law;
 - 25 6. Prejudgment interest;
 - 26 7. Punitive damages; and
 - 27 8. Any other relief that the Court may deem proper and just.
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January ²³~~22~~, 2009

KRAUSE KALFAYAN BENINK &
SLAVENS, LLP



Vincent D. Slavens
Attorneys for Plaintiff

AFFIDAVIT (CLRA §1780(d))

Plaintiff Ariel Sabban, hereby submits his affidavit pursuant to Consumer Legal Remedies Act ("CLRA"), Section 1780(d), as follows:

I am informed and believe that Defendants Scripps Health and La Jolla Emergency Physicians Medical Group conduct business in the County of San Diego, California, and therefore, this Court is the proper place for trial of this action pursuant to CLRA Section 1780(d).

I make this affidavit under penalty of perjury under the laws of the State of California.

Date: 1/23/09


Ariel Sabban