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10 **Attorneys for Plaintiff:**
11 AMERICAN ACADEMY OF
12 EMERGENCY MEDICINE PHYSICIAN
13 GROUP, INC.

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO**

17 AMERICAN ACADEMY OF EMERGENCY
18 MEDICINE PHYSICIAN GROUP, INC., a
19 Wisconsin Corporation,

20 Plaintiff,

21 v.

22 ENVISION HEALTHCARE
23 CORPORATION; a Delaware Corporation;
24 ENVISION PHYSICIAN SERVICES LLC; a
25 Delaware Limited Liability Corporation doing
26 business in California.

27 Defendants.

Case No.: 3:22-cv-00421-CRB

**FIRST AMENDED COMPLAINT FOR
UNFAIR BUSINESS PRACTICES
(BUSINESS AND PROF. CODE § 17200
et. seq.) AND FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Public Redacted Version

Hon. Charles R. Breyer

1 occurring in California in connection with Defendants' violations of §§ 650, 2400, 2052, 16600,
2 Cal. Corp. Code §§ 13407 and 13408.5 and the Unfair Competition Law under Cal. Bus. Prof.
3 Code § 17200. No portion of this First Amended Complaint is brought pursuant to federal law.

4 7. No administrative agency has primary jurisdiction over the issues raised by this
5 action, specifically the corporate practice of medicine. The California Medical Board has
6 enforcement powers and administers the Medical Practice Act only as to individual physicians
7 and surgeons or practice groups, particularly through disciplinary actions, but lacks such
8 enforcement powers over lay corporations such as the Defendants in this action. Business &
9 Professions Code § 2200. Plaintiff is not suing individual physicians or practice groups. By
10 definition, lay corporations have no rights or privileges under the Medical Practice Act to begin
11 with (Business & Professions Code § 2400) that the Medical Board could take away. California
12 courts have routinely adjudicated alleged violations of the laws at issue in this amended
13 Complaint in civil actions.

14 8. This court is the proper forum to adjudicate the issues raised herein, as no
15 administrative agency has the means to afford the redress requested or investigate the violations
16 complained of. This lawsuit does not involve determining complex economic policy but merely
17 tasks the court with its ordinary function of statutory interpretation.

18 9. At all times mentioned herein, each Defendant was the agent of each other
19 Defendant in undertaking the acts alleged.

20 **II. CHOICE OF LAW.**

21 9. California law applies to Plaintiff's claims. The application of California law is
22 constitutional, and California has a strong interest in regulating the business practices of resident
23 corporations, deterring, and enjoining the commission of unlawful practices, and affording
24 restitution to those harmed by activities occurring in and emanating from California.

25 10. California is the state in which Defendants violated California's prohibition on the
26 Corporate Practice of Medicine, offered unlawful kickbacks in exchange for patient referrals,
27 employed physicians, used illegal restrictive covenants in their contracts with physicians,

1 committed unfair business practices, including false advertising, and bars the formed professional
2 corporations so as to cause the violation of law, applicable rules and regulations, relating to fee-
3 splitting, kickbacks, or other similar practices by physicians and surgeons or psychologists.

4 11. Plaintiff was injured by conduct occurring in and emanating from California.

5 12. Defendants have significant minimum contacts with California creating State
6 interests with all parties and the alleged acts. California's interests far exceed those of any other
7 state.

8 **III. INTRODUCTION.**

9 13. The practice of medicine in California is subject to extensive regulatory control
10 designed to protect the health and safety of the public. Bus. & Prof. Code § 2400 et. seq., prohibits
11 corporations, lay entities, or any non-licensed persons or entities from practicing medicine,
12 assisting in the unlicensed practice of medicine, directly or indirectly employing physicians,
13 owning physician practices, and making business and administrative decisions that have medical
14 implications. There are medical implications of business and administrative decisions relating to
15 location of the practice, improvements, furnishings, inventory, design specifications, hiring and
16 firing physicians and support staff, costs, gross billing, employee needs, and setting physician
17 compensation. Business and Professions Code, § 2052 prohibits the practice of medicine without
18 a valid license; § 2052(b) prohibits unlicensed persons from advertising or holding themselves
19 out to the public as licensed and prohibits conspiracies or aiding and abetting the unlicensed
20 practice or sharing of fees. The primary objective of the Corporate Practice bar is to prevent the
21 intrusion of commercial influence on the practice of medicine.

22 14. Business and Professions Code §650 prohibits the offer, delivery, receipt, or
23 acceptance of consideration to induce the referral of patients. Welfare & Inst. Code § 14107.2
24 similarly prohibits the offer or payment of remuneration for referrals of patients from a physician
25 or instruction that treats Medi-Cal beneficiaries. The Corporate Practice Prohibition and Anti-
26 Kickback statutes' bar of referrals for compensation operate together to achieve the goal of
27 avoiding the influence of commercial entities over medical practices.

1 15. Business and Professions Code § 16600 et. Seq. bars agreements that restrain
2 persons from engaging in their lawful profession.

3 16. Cal. Corp. Code § 13408.5 bars the formation of professional corporations "so as
4 to cause any violation of law, or any applicable rules and regulations, relating to fee-splitting,
5 kickbacks, or other similar practices by physicians and surgeons or psychologists, including, but
6 not limited to, Section 650 or subdivision (e) of Section 2960 of the Business and Professions
7 Code."

8 17. Cal. Corp. Code § 13407 restricts the transfer of shares in a professional
9 corporation, such as a medical corporation, to only: licensed persons, other shareholders within
10 the same professional corporation, persons licensed in the same profession in the same
11 jurisdiction.

12 18. Business and Professions Code § 17200 et. seq. prohibits the use of unfair,
13 unlawful, and/or fraudulent business acts or practices within the State of California.

14 19. Business and Professions Code § 17500 et. seq. prohibits the making of untrue or
15 misleading statements concerning professional or other services.

16 20. Within the last four years, Defendants, and each of them, embarked upon and or
17 continued illegal, unfair, and deceptive business practices aimed at engaging and assisting others
18 in the practice of medicine by forming and using licensed entities to accomplish the same, offering
19 and paying consideration for patient referrals, restraining physician's ability to practice medicine
20 through restrictive covenants, and false advertising, as described below.

21 **IV. FACTS.**

22 21. PLEP is a physician-owned and controlled professional corporation consisting of
23 emergency department physicians practicing emergency medicine in Placentia Linda Hospital,
24 Inc., d/b/a Placentia-Linda Hospital's ("Placentia Linda Hospital") emergency department before
25 2021. PLEP contracted with Plaintiff AAEMPG to provide practice management services for its
26 Placentia Linda ED contract between November 1, 2018 and November 1, 2021. The practice
27 management services provided by AAEMPG specifically exclude all activities described in the

1 definitions of the practice of medicine as outlined in the medical practice act where the Client's
2 Hospital(s) are located. PLEP maintained exclusive control of clinical decisions, and most of
3 AAEMPG's services to PLEP were optional and at PLEP's direction. AAEMPG executives,
4 employees, and management do not own any PLEP stock and do not hold positions as PLEP's
5 corporate officers.

6 22. Tenet Health Hospital System ("Tenet") operates Hospitals throughout the United
7 States. Tenet owns Lakewood Regional Medical Center Inc., d/b/a Lakewood Regional Medical
8 Center, Fountain Valley Regional Hospital and Medical Center, d/b/a Fountain Valley Regional
9 Hospital, Los Alamitos Medical Center, Inc., d/b/a Los Alamitos Medical Center, and Placentia
10 Linda Hospital).

11 23. Envision Healthcare Corporation is a lay entity created in June 2016 by merging
12 Envision Healthcare Holdings, Inc. (NYSE: EVHC) and AMSURG Corp. (NASDAQ: AMSG).
13 Before the merger, Envision Healthcare Holdings, Inc. owned American Medical Response, Inc.
14 (AMR), EmCare Holdings, Inc. (EmCare), and Evolution Health LLC. Before the merger,
15 AMSURG owned and operated two hundred and fifty-six (256) ambulatory surgery centers and
16 one surgical Hospital and owned Sheridan, a physician services company similar to EmCare.
17 After the merger, Envision Healthcare Corporation combined and rebranded the two companies'
18 physician services arms. In doing so, EmCare and Sheridan combined into Envision Physician
19 Services LLC. In 2017, Envision Healthcare Corporation sold its ambulance unit to Kohlberg
20 Kravis Roberts ("KKR ") a private equity firm with over \$100 billion under management for \$2.4
21 billion.

22 24. Envision Physician Services was formed in Delaware on October 4, 2017. It was
23 registered to do business in California on December 20, 2017. Its sole member is Envision
24 Healthcare Corporation. It is and was at all times owned and controlled by Envision Healthcare
25 Corporation.

26 25. Envision Physician Services' initial registration in California listed its address as
27 1A Burton Hills Boulevard, Nashville, TN, which is Envision Healthcare Corporation's corporate

1 headquarters. Envision Physician Services 2019 statement of information updates its corporate
2 address to be 7700 W. Sunrise Boulevard, Plantation, FL. Envision Healthcare Corporation's
3 General Counsel, Craig Wilson, signed Envision Physician Services' initial registration and each
4 subsequent statement of information. The next year, in 2018, KKR purchased the rest of Envision
5 Healthcare Corporation for \$9.9 billion. Consequently, Envision Healthcare Corporation was no
6 longer publicly traded.

7 26. Envision Healthcare Corporation and Envision Physician Services LLC shall
8 collectively be referred to herein as "Envision."

9 27. California (and many other states) bar lay entities from owning physician practice
10 groups, employing physicians, or violating the Corporate Practice of Medicine Bar. Envision's
11 business model is to circumvent the ban by purchasing, controlling, or creating a separate
12 subsidiary licensed Professional Medical Corporations. Those entities, controlled entirely by
13 Envision, exist only on paper to undertake functions the law permits only physicians to undertake,
14 such as employing physicians or providing medical coverage for hospitals. Corp. Code § 13408.5
15 specifically bars the creation of professional corporations for such purposes. Corp. Code § 13407
16 specifically prohibits the transfer of stock ownership in professional corporations to unlicensed
17 "persons"/entities, such as the shell corporations Envision created to exert control directly or
18 indirectly over its wholly-owned physician groups.

19 28. Envision's predecessors EmCare and Sheridan designed these Professional
20 Medical Corporations to evade Corporate Practice of Medicine and anti-kickback rules. Envision
21 has adopted the same practice. They exist in all states in which Envision operates that have such
22 prohibitions. Envision manages, operates, and controls these Professional Medical Corporations
23 through its employees, officers, or agents. The Professional Medical Corporation's bylaws limit
24 the rights of the shareholders in favor of Envision or its appointed Directors. The group members
25 must execute Agreements that include restrictions on their ability to issue dividends, create
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1 30. Premier Emergency Physicians of California Medical Group, a Professional
2 Corporation ("Premier") is one such affiliate or medical group controlled by Envision. Premier's
3 CEO, CFO, and Director is Mark Jeffrey Slepín. Dr. Slepín is a Sr. Vice President of Envision
4 Physicians' Services at its corporate headquarters in Plantation, Florida. Dr. Slepín is informed
5 and believed to be an officer for over a hundred Envision affiliates. Ilene Moore, General Counsel
6 for Envision Physician Services, is Premier's Secretary. Premier's mailing address and principle
7 executive offices are also located at Envision Physicians' Services corporate headquarters
8 Plantation, Florida.

9 31. California EM-I Medical Services, a Medical Corporation ("EM-I"), is another
10 Envision-controlled medical group. It provides anesthesia services. Mark Jeffrey Slepín, MD, is
11 its Chief Executive Officer, Secretary, Chief Financial Officer, and Director. EM-I's mailing
12 address and principal executive offices are located at Envision Physicians' Services corporate
13 headquarters in Plantation, Florida.

14 32. Glass Beach Medical Services, a Medical Corporation ("Glass Beach") is another
15 Envision-controlled medical group Envision uses to employ physicians. Douglas Smith M.D, the
16 President of Envision Physician Services, is its Chief Executive Officer and Director. Its Secretary
17 and Chief Financial Officer are also Envision officers and employees who operate out of Envision
18 Physicians Services corporate offices in Plantation, Florida. Plaintiff is informed and believes that
19 Douglas Smith, M.D., and its other officers are directors of hundreds if not thousands of medical
20 groups controlled by Envision Physician Services. He is not licensed to practice medicine in
21 California.

22 33. None of the corporate officers of Premier, EM-1, or Glass Beach are physicians
23 licensed to practice medicine in California.

24 34. Plaintiff is informed and believes that Premier sub-contracts with Glass Beach to
25 provide emergency department staffing to Placentia-Linda Hospital and other Tenet Health
26 emergency departments. Glass Beach, EM-I, and Premier provide services for which payment
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1 may be made in whole or in part under California Welfare and Institutions Code Division 9, Part
2 3, Chapters 7 and 8.

3 35. Envision Healthcare and Envision Physician Services have complete control over
4 the professional medical corporation they establish and maintain and have formed hundreds of
5 controlled affiliate practices nationwide. Plaintiff is informed and believes numerous other
6 Envision-controlled affiliate medical groups exist in California.

7 **A. Corporate Practice of Medicine.**

8 36. Envision either forms the Medical Groups referred to above or installs Envision
9 executives or officers in pre-existing Professional Medical Corporations to exempt itself from
10 rules restricting Corporations from employing doctors, engaging in the practice of medicine, and
11 preventing kickbacks. It either installs straw-man owners or its executives as owners and
12 corporate officers of each Professional Medical Corporation (referred to variously herein as
13 controlled affiliate medical group, or medical groups or groups). Such owners are bound by side
14 agreements to sell the entities to envision if requested for nominal amounts. The bylaws of such
15 group or other agreements and practices prevent the removal of Envision Corporate officers or
16 straw men. Plaintiff is informed and believes Envision further ensures corporate control of these
17 professional controlled affiliate groups by requiring the physician members or owners to execute
18 agreements limiting their authority. Such separate agreements include restrictions on the ability
19 of the named physician owner and or members to issue dividends, create additional stock, sell the
20 medical group, or transfer their shares.

21 37. Envision requires the affiliate professional medical corporation to cause either its
22 executive or the straw-man owner to enter into a Management Services Agreement with Envision
23 Physician Services. Envision denominates their Management Services Agreement to mimic a
24 traditional legitimate relationship whereby physicians independently choose a management
25 services organization (MSO). The irony is that, the physicians do not hire the MSO to work for
26 them, but, rather, the physicians work for the MSO, Envision, as set forth herein.

1 38. After the Management Services Agreement is entered into by the straw-man owner
2 or leader of the affiliated Medical Group, or by installed Envision executive on behalf of the
3 completely controlled group, Envision exercises profound and pervasive direct and indirect
4 control and/or influence over the medical practice, making decisions which bear directly and
5 indirectly on the practice of medicine, rendering physicians as mere employees, and diminishing
6 physician independence and freedom from commercial interests, in violation of California's
7 corporate practice of medicine ban.

8 39. Envision decides how many and which physicians to hire, their compensation, and
9 their work schedule. Envision controls and influences advertising for physician vacancies, vetting
10 physicians, establishing the terms of employment, the physician's rate of pay, scheduling the hours
11 physicians will work, its staffing levels, the number of patient encounters, and working
12 conditions. Envision decides when to terminate physicians and denies them rights to appeal via
13 traditional medical staffing mechanisms. Envision negotiates the Groups' contracts with third-
14 party payors and health insurers and then decides whether the group will agree to the terms. The
15 Medical Group is bound to the terms of such agreement. Physicians are not made aware of the
16 terms of their contracts with third-party payors. Physicians have no rights under their employment
17 agreements to make these decisions.

18 40. Envision requires physicians to assign their rights to the proceeds of their medical
19 billings to Envision who then determines what is charged to patients and insurers. Envision
20 controls coding decisions (how medical procedures are categorized for billing purposes), and
21 bills patients and insurers for such medical services. Physicians employed by Envision do not see
22 what is billed and remitted in their names.

23 41. Envision collects physicians' fees, but does not report how much they collected in
24 the physicians' names or the group's names. Physicians are not allowed to know what is billed in
25 their name or the Groups' name because, in part, they would know how much profit Envision is
26 making from their professional services.

1 42. Envision creates uniform contracts that physicians must sign as a condition of
2 employment, which, *inter alia*, contain restrictive covenants. Envision determines each
3 physician and groups' income as well as its own profits. Envision keeps all revenue after
4 payment of physicians' salaries, such that the relationship amounts to fee-splitting.

5 43. Plaintiff is informed and believes that Envision retains amounts from the
6 physicians' billings that exceed the reasonable value of the billing and any other administrative
7 services Envision provides. Therefore, Envision is participating in what amounts to illegal fee-
8 sharing with a lay entity. Because Premier, EM-I, and Glass Beach provide services for which
9 payment may be made in whole or in part under California Welfare and Institutions Code
10 Division 9, Part 3, Chapters 7 and 8, Envision also receives remuneration under those code
11 sections.

12 44. Envisions' certified public accountants who prepare and audit Envision's financial
13 statements treat the revenues as Envision's income for accounting and tax purposes. Envision
14 controls the use of funds collected in the physician's name.

15 45. Given that Envision Physician Services installs the officers and directors of the
16 completely controlled affiliate groups, makes all hiring and firing decisions, controls the
17 financial aspects of the group, sets salaries, controls contracting, and retains all profit --it is the
18 functional owner of the completely controlled affiliate groups irrespective of its use of the
19 corporate form. Envision so dominated and controlled the Professional Medical Corporations to
20 the degree that the corporation's independent existence was non-existent. Envision further
21 establishes and promulgates physician "best practices," "red rules," and "evidence-based
22 pathways" protocols which create standards for treating patients and are used to compare the
23 performance of physician to Envision-created or endorsed standards, a form of clinical oversight.
24 It creates "benchmarking" reports that compare physician performance to Envision-created
25 standards, intending to modify the exercise of their independent medical judgment. Envision
26 tracks physician performance and then provides "practice improvement feedback" in the form of
27 reports designed to educate physicians to practice medicine. Envision represents to Hospitals that

1 it improves operational deficiencies and management systems and will increase the efficiency of
2 the health care delivery system. When delivered by Envision with its power and influence over
3 hiring, firing, billing, contracting, salary, scheduling, work conditions, non-competes, and other
4 aspects alleged herein, these performance standards have medical implications and violate the
5 corporate practice doctrine.

6 46. Envision Physician Services' predecessor and now subsidiary EmCare Holdings
7 acknowledged in public filings that "Under the corporate practice of medicine restrictions of
8 certain states, decisions and activities such as scheduling, contracting, setting rates and the hiring
9 and management of non-clinical personnel may implicate the restrictions on the corporate
10 practice of medicine." It further acknowledged in filings that there is risk that "regulatory
11 authorities or other parties, including our affiliated physicians, may assert that, despite these
12 arrangements, we are engaged in the corporate practice of medicine or that our contractual
13 arrangements with affiliated physician groups constitute unlawful fee-splitting. In this event, we
14 could be subject to adverse judicial or administrative interpretations, to civil or criminal
15 penalties, our contracts could be found legally invalid and unenforceable, or we could be
16 required to restructure our contractual arrangements with our affiliated physician groups." The
17 practices EmCare identified as subjecting it to risk in 2015 exist in greater degree today. It
18 operates as Envision Physician Services and legal proscriptions against the corporate practice of
19 medicine have strengthened even further. EmCare understood its practices to potentially be
20 illegal and knowingly continued them.

21 47. Envision's agreements with the group and control over it allow it to increase
22 billings to patients, insurers, and third-party payors for the physician services, which can
23 potentially affect patient care. It has been the subject of multiple lawsuits against it nationwide
24 for excessive billings for these reasons. Defendants, additionally, profit by reducing physician
25 compensation, increasing the number of patients that physicians see per hour, and increasing the
26 utilization of physician assistants to replace more costly physician coverage. For example,
27 Envision tells prospective hospital clients that physician assistants are two-thirds less costly than

1 physicians and advocate increased use, although only physicians can make decisions related to
2 patient care.

3 48. Envision requires its physicians to execute restrictive covenants that the physician
4 may not attempt to assist or cause any other emergency medicine group medical practice to
5 replace Envision. These provisions constitute further violations of the corporate practice of
6 medicine and independently constitute a violation of Business and Professions Code §16600.

7 The Glass Beach agreement provides the physician will not:

8 "(i) directly or indirectly induce or persuade (or attempt to induce or
9 persuade) any person or entity (including any health care entity) to
10 terminate its contract with any affiliates, subsidiaries, or managed
11 entities thereof, Envision Healthcare Company, or any affiliates,
12 subsidiaries, or managed entities thereof, or (ii) other than as an
13 independent contractor of Company, solicit to provide any medical
14 or management services to any hospital or medical facility at which
15 medical services are provided by Contractor hereunder. In addition,
16 for twelve (12) months following termination of this Agreement,
17 Contractor shall not directly or indirectly induce, persuade (or
18 attempt to induce or persuade) any person or entity to terminate or
19 breach any contract with Company, any affiliates, subsidiaries, or
20 managed entities thereof, Envision Healthcare Company, or any
21 affiliates, subsidiaries, or managed entities."

22 49. Plaintiff is informed and believes that all of Envisions' or its completely controlled
23 affiliate groups' contracts with physicians have covenants that are as restrictive as Glass Beach's
24 contract, if not more.

25 50. The Contracts between Envision's controlled medical groups and the hospitals also
26 contain illegal restrictive covenants. [REDACTED]

27 [REDACTED]

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[REDACTED]

51. [REDACTED]

[REDACTED]

[REDACTED]

52. By barring physicians from forming a group to compete with Envision's completely controlled affiliate groups or agreeing to work for any other medical group that is soliciting or will solicit the exclusive emergency services contracts held by Envision controlled groups, Envision, and its controlled affiliate groups restrict a physician's ability to practice their profession. Envision further, unreasonably limits physicians' employment options and ability to work for other groups for a critical period of 12 months, and unreasonably interferes with the physician's ability to compete with their former employer, Envision, all in violation of Business & Professions Code § 16600. The contracts are null and void, not enforceable. Many of the locations where Envision holds emergency department contracts in California, including Placentia Linda, have a limited number of emergency departments in the locale and thus a limited number of employment opportunities for emergency department physicians.

53. Even if a physician did not induce a hospital to terminate its contract with a controlled affiliate group and merely waited on the sidelines for that contract to expire or be terminated, the physician would still be restrained from practicing at contracting hospitals by

1 virtue of the [REDACTED]
2 [REDACTED]

3 54. Envision intends and is aware their restriction has this effect of restraining
4 competition and requires physicians to sign a false disclaimer in their agreements that they can
5 "earn a reasonable living in the area in which they reside" as if this immunizes Envision from
6 violation of Business & Professions Code § 16600.

7 55. Envision Physician Services predecessor EmCare, in its 2014 annual report SEC
8 filing, concedes its practice of including restrictive covenants in physician contracts is a
9 disclosable risk: "We have contracts with physicians and professional corporations in many states.
10 Some of these contracts, as well as our contracts with hospitals, include provisions preventing
11 these physicians and professional corporations from competing with us both during and after the
12 term of our relationship with them. The law governing non-compete agreements and other forms
13 of restrictive covenants varies from state to state. Some states are reluctant to strictly enforce non-
14 compete agreements and restrictive covenants applicable to physicians. There can be no assurance
15 that our non-compete agreements related to affiliated physicians and professional corporations
16 will not be successfully challenged as unenforceable in certain states. In such event, we would be
17 unable to prevent former affiliated physicians and professional corporations from competing with
18 us, potentially resulting in the loss of some of our hospital contracts."

19 56. Plaintiffs are informed and believe that Envision's disclosures to investors,
20 prospective investors, stakeholders, and lending institutions since 2014 have even more candid
21 descriptions, as those communications are not public.

22 57. Barring physicians from participating in unseating or competing for a contract that
23 a controlled Envision Physician Group has with hospitals violates public policy and is an incipient
24 antitrust violation. It limits a hospital's ability to choose the best emergency group and gives
25 Envision an unfair and almost insurmountable advantage in retaining exclusive contracts in
26 perpetuity. Hospital staff generally like working with the emergency department group they have
27 known for years; an essential part of obtaining a new contract is a medical group's promise to

1 retain most emergency department physicians. Physicians' mobility is restrained during the
2 critical one-year time after they depart from a group by being barred from competing for the
3 contracts at Hospitals where Envision operates.

4 58. The provision has the effect of substantially lessening competition and tending to
5 create a monopoly in the business and trade of emergency department physician services
6 throughout the state of California, reducing the number of competitors for Emergency Services
7 Contracts, limiting the supply of emergency physicians available to patients seeking emergency
8 services, and causing increases in the price of such patient services by limiting the facilities where
9 emergency physicians can practice in violation of the Cartright Act, Business & Professions Code
10 § 16727.

11 59. The non-competition provisions are unfair competitive practices under business,
12 and Prof. Code 17200 et seq and violate public policy. They interfere with a hospital's ability to
13 obtain any physician group they determine could provide the best medical care, effectively
14 preventing the Hospitals from retaining physicians currently working in the emergency
15 department for one year.

16 60. The non-competition provisions serve no legitimate proprietary interests.
17 Emergency department contracts are not assets that may be legally bought or sold. To the extent
18 Envision paid for the exclusive emergency department contract, as set for in paragraphs 28-33
19 *infra*, such conduct was illegal and cannot confer a proprietary interest.

20 61. Whether or not enforced by Envision, the inclusion of void non-competition
21 provisions in the agreement is a violation of § 16600 and an unfair business practice.

22 62. Defendants actively conceal their unlawful agreements and business practices.
23 Defendants require all physicians to execute nondisclosure agreements concerning the contents
24 of their employment agreements. They utilize multiple corporate entities to make it difficult to
25 detect ownership and control of the medical groups and provisions and call their affiliates names
26 other than Envision to avoid detection. For example, even though Premier has a contract for
27

1 emergency physicians at Placentia, the physicians sign a contract with Glass Beach, an
2 intermediary entity.

3 **B. Providing Kickbacks to Acquire Emergency Medicine Exclusive Contracts.**

4 63. Except for narrowly specified exempt entities, hospital emergency departments in
5 California are staffed by physician groups that work under agreements commonly known as
6 exclusive emergency services contracts. Hospitals grant such contracts to a medical group to
7 ensure continuous physician coverage of their emergency departments.

8 64. The exclusive contracts are typically two or three years in duration. The physicians
9 who receive the contract have the exclusive right to treat patients at the emergency department.
10 Physicians who are not members of the group holding the exclusive contract are excluded from
11 treating patients in such emergency departments unless hired as employees or independent
12 contractors.

13 65. Hospitals can generally choose among competing physician groups in awarding
14 such exclusive contracts. Since exclusive emergency services contracts guarantee a continuous
15 flow of patients, granting such a contract constitutes a referral of patients under California law.
16 Like any exclusive hospital contract, emergency department contracts may not be sold by the
17 Hospital or purchased by physicians, nor may consideration be offered or exchanged for the
18 granting or renewal of such agreements under Business and Professions Code §650 or Health and
19 Welfare code §14107.2.

20 66. Unlike emergency department coverage contracts, anesthesia coverage does not
21 provide physician groups the same level of patient flow or remuneration from patients and third-
22 party payors. Given this practice's economic reality, it is nearly universal for hospitals to provide
23 anesthesia groups a significant cash subsidy above what it may charge patients and third-party
24 payors for treating patients.

25 67. [REDACTED]
26 [REDACTED]
27 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]

8 68. While Hospitals may pay subsidies to physicians for them to enter into exclusive
 9 hospital department staffing contracts, physicians may not offer consideration for receiving those
 10 staffing agreements because that would constitute compensation paid in exchange for a patient
 11 referral. Envision pays consideration in exchange for exclusive emergency room staffing
 12 contracts by paying hospitals in reduced subsidies to its anesthesia groups.

13 69. Plaintiff was the victim of and suffered harm in fact from this practice. It lost its
 14 contract with PLEP, the group holding the Placentia-Linda contract, when the Hospital awarded
 15 it (and Anesthesiology coverage contracts) to Envision's affiliate medical group Premier (and
 16 EM-I.)

17 70. [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]

24 71. Plaintiff is informed and believes this kickback scheme is one of its standard
 25 methods of acquiring new contracts and maintaining existing ones.

26 72. Envision offered to provide such unsubsidized or under subsidized anesthesia
 27 services to Tenet Hospitals in 2021 in exchange for their emergency department contracts,

1 including the Placentia Linda Emergency Department contract. The Hospital awarded the contract
2 to Envision-controlled affiliate groups, Premier and EM-I, who subcontracted with Glass Beach
3 and failed to renew its agreement with PLEP.

4 73. Plaintiff is informed and believes that Envision offers or provides other
5 considerations to acquire exclusive ED contracts, including offering other remuneration to
6 physicians who control physician groups to them to contract with Envision induce transfer of
7 Emergency Department contracts to its completely controlled affiliate groups. Plaintiff is
8 informed and believed Envision offered remuneration to acquire the contract at California Tenet
9 Healthcare hospitals identified herein.

10 74. Even if Envision in California temporarily ceased, the acts complained of herein
11 are capable of repetition in California at a future time. Because the illegal practices as described
12 in the Complaint are Envision's business model and exist nationwide, they are easily re-imported
13 to California. California is a large market for emergency medical services, and other companies
14 engage in similar illegal tactics. The agreements between the Medical Groups, Physicians, and
15 Hospitals described herein are highly guarded by Envision and protected by a non-disclosure
16 agreement. Purposefully concealed through complex commercial relationships, exclusive
17 emergency contracts are kept secret by Envision. The conduct complained of is therefore capable
18 of repetition yet evades review.

19
20 **FIRST CAUSE OF ACTION**

21 **(Unfair Competition in Violation of Cal. Bus. & Prof Code § 17200- Injunctive Relief**
22 **Against All Defendants)**

23 75. Plaintiff realleges and incorporates by reference each allegation as if fully stated
24 herein.

25 76. Defendants transact business by operating controlled Physician Groups and
26 Management Services Company as described herein.

1 77. The violations of law described in this Complaint have been, and are being, carried
2 out and directed wholly or in part within the County of Contra Costa and other locations within
3 the State of California where Envision does business.

4 78. California Business and Professions Code § 17200 prohibits "unlawful, unfair or
5 fraudulent business practices."

6 79. Defendants have engaged within the last four years and continue to engage in
7 unlawful, unfair and/or fraudulent business acts or practices in violation of Section 17200. Such
8 acts and practices include, but are not limited to, the following:

- 9 a. Unlawfully engaging in and aiding and abetting the unlawful Corporate
10 Practice of Medicine within the State of California in violation of Business &
11 Professions Code 24000, 2502 et al.
- 12 b. Unlawfully forming professional corporations so as to cause any violation of
13 law, or any applicable rules and regulations, relating to fee splitting, kickbacks,
14 or other similar practices by physicians and surgeons or psychologists,
15 including, but not limited to, Section 650 or subdivision (e) of Section 2960 of
16 the Business and Professions Code in violation of Cal. Corp. Code § 13408.5.
- 17 c. Unlawfully offering or paying consideration for the acquisition or retention of
18 emergency department exclusive contracts, and/or aiding and abetting in the
19 same, in violation of Penal Code § 650 and Welfare and Institutions code §
20 14107.2 and attempting to do the same.
- 21 d. Unlawfully restraining the practice of medicine by requiring physicians to
22 execute illegal restrictive covenants to restrict their employment.

23 80. Defendants have engaged in "unlawful" business practices, as defined in *Cel-Tech*
24 *Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal.4th 163 (1999) ("*Cel-Tech*")
25 and its progeny. That Defendants have engaged in unlawful conduct is clear from the above
26 allegations that Defendants have violated the corporate practice of medicine ban in California,
27

1 and specifically Business and Professions Code §§ 650, 2400, 2052, 16600, and Cal. Corp. Code
2 §§ 13407 and 13408.5.

3 81. The wrongful business practices Defendants have engaged in are "unfair" within
4 the meaning of Business and Professions Code § 17200, *Cel-Tech* and its progeny, *inter alia*,
5 because:

- 6 a. Defendants' business practices harmed Plaintiff in causing Plaintiff to lose its
7 exclusive contracts for emergency services with PLEP and other hospitals in
8 California;
- 9 b. Defendants engaged in conduct that threatens an incipient violation of antitrust
10 law and violates the policy or spirit of the same because the effect of its
11 wrongful conduct is comparable to or the same as a violation of said antitrust
12 laws. Defendants' restrictive covenants for its physician employees unfairly
13 and unlawfully restrict their ability to work for competing medical groups so
14 that competing medical groups are threatened to be without sufficient
15 physicians to offer their emergency services to hospitals.
- 16 c. Defendants' corporate practice of medicine also has the effect of increasing
17 medical costs to patients by giving Defendants power over billing and pricing
18 rather than, the physicians groups. Defendants' thwarting of competitor
19 medical groups compounds the effects of Defendants' ability to price gauge.
20 These issues are particularly dominant in rural areas.
- 21 d. Defendants' false advertising practice as alleged above and further below are
22 made unlawful by 15 USC as stated in 15 USC § 52(a) and declared an
23 unlawful business practice in violation of antitrust laws as stated in 15 USC §
24 52(b).
- 25 e. Further, Defendants' practices are violative or have the same effect as violating
26 the Cartright Act at Business & Professions Code § 16727 prohibiting the
27 creation of contracts for the sale of services that limit the purchaser of those

1 services from purchasing the same services from another provider where such
2 has the effect of substantially lessening competition or tending to create a
3 monopoly. Here, Defendants' exclusive emergency services contracts and
4 employment contracts with its controlled physicians do exactly that. As alleged
5 above, the provision has the effect of substantially lessening competition and
6 tending to create a monopoly in the business and trade of emergency
7 department physician services throughout the state of California, reducing the
8 number of competitors for Emergency Services Contracts, limiting the supply
9 of emergency physicians available to patients seeking emergency services, and
10 causing increases in the price of such patient services by limiting the facilities
11 where emergency physicians can practice in violation of the Cartright Act,
12 Business & Professions Code § 16727.

13 f. Defendants' practice of creating a litany of shell corporations in various states
14 which acquire professional medical corporations/physicians groups while
15 reserving the right of a stock buyback from said shell corporations, and
16 appointing medical directors who are not licensed in California has the effect
17 of substantially lessening competition with medical groups which are lawfully
18 set up, owned by physicians licensed in California and are not controlled by
19 lay corporations, and creates a monopoly in California over medical groups
20 offering exclusive emergency physician services to hospitals.

21 g. Defendants' practice of violating the corporate practice of medicine by staffing
22 groups with Envision employees and causing them to enter restrictive
23 agreements reduces the market for lawfully operating management services
24 organizations. Lawfully operating management services organizations such as
25 AAEMPG cannot compete with Envision or similar organizations based on
26 price or quality of service because Envision functionally owns the medical
27 groups to which it purports to provide management services. AAEMPG has

1 been harmed through the reduction in the market for lawful management
2 services organizations.

3 h. Defendants conduct significantly threatens and harms competition by the
4 aforementioned threats or incipient violations of the antitrust laws of this state
5 and the United States.

6 i. As alleged throughout this Complaint, the Defendants' acts and business
7 practices, outlined in this first amended Complaint, constitute unfair business
8 practices because they offend established public policy and cause harm that
9 greatly outweighs any benefits associated with those acts and practices.
10 Specifically, Defendants' business practices violate the public policy
11 underlying California's ban on the corporate practice of medicine:

12 82. The public and others were likely to be deceived by Defendants' acts, business
13 practices, and conduct alleged in this amended Complaint as follows:

14 a. Deceiving the public and potential patients by representing on Defendants'
15 websites that Envision Physician Services was a physician group lawfully
16 structured and able to provide medical services to patients in violation of
17 Business & Professions Code § 17500.

18 b. The public is likely to be deceived by Envision's statements on its website
19 (<https://www.envisionphysicianservices.com/company>) as of the date of this
20 amended Complaint is a "physician-led medical group" when in reality it is
21 owned by a lay private equity fund. Envision Physician Services and
22 Healthcare Corporations are barred from practicing medicine in California and
23 all other states that bar the corporate practice of medicine. Medical
24 professionals not licensed to practice in California form shell medical
25 professional groups to hide Envision's illegal scheme. Envision Physician
26 Services is not a physician led medical group, but instead controlled by
27

1 corporate officers and private equity funds who are not themselves licensed
2 physicians or owned by licensed physicians.

3 c. Similarly, Envision's pitch deck's to Hospitals and Physicians within the state
4 of California identify it as "one of the nation's largest medical groups" and a
5 "national medical group." Both statements are false and misleading because
6 Envision cannot act as a medical group in states, such as California, where
7 there is a bar on the corporate practice of medicine.

8 d. The public is likely to be deceived by Envision's statements on its website
9 ([https://www.envisionphysicianservices.com/explore-solutions/emergency-
11 medicine](https://www.envisionphysicianservices.com/explore-solutions/emergency-
10 medicine)) as of the date of this amended Complaint states that Envision
12 Physician Services is "the nation's largest emergency medicine group" when
13 in reality it is owned by a lay private equity fund. Envision Physician Services
14 and Healthcare Corporations are barred from practicing medicine in California
15 and all other states that bar the corporate practice of medicine. Medical
16 professionals not licensed to practice in California form shell medical
17 professional groups to hide Envision's illegal scheme. Envision Physician
18 Services is not an emergency medicine group, but instead controlled by
19 corporate officers and private equity funds who are not themselves licensed
20 physicians or owned by licensed physicians.

21 83. As a direct and proximate result of the preceding acts and practices, Defendants
22 have received income, profits, and other benefits they would not have obtained otherwise.

23 84. By engaging in a pattern and practice of violating section 17200 as described
24 herein, Defendants were able to unfairly compete with other entities such as Plaintiff's who are
25 engaged in providing administrative services to physician groups in the State of California
26 engaged in the violations of § 17200 and law described in this Complaint.

27 85. Plaintiff is informed and believes, and based upon such information and belief,
28 alleges that as a direct result of these acts and omissions, Defendants have received or will receive

1 income and other benefits which they would not have received if they had not engaged in the
2 violations of Business and Professions Code § 17200 et seq. described in this Complaint.

3 86. Plaintiff as providers of practice management services to Physicians without
4 committing the unlawful, unfair, and fraudulent business practices routinely employed by
5 Defendants suffered an injury in fact and has and will lose revenue as it did, for example, when
6 Envision acquired the Emergency Department exclusive contract at Placentia-Linda Hospital,
7 which loss resulted in Plaintiff's losing its Management Services Agreement with PLEP to provide
8 practice management services,

9 87. Plaintiff has no adequate remedy at law in that damages are insufficient to protect
10 the Plaintiff and public from the harm caused by the conditions described in this Complaint.

11 88. Plaintiff continues to suffer as it is to compete at a disadvantage against
12 Defendants who employ illegal methods. Unless injunctive relief is granted to enjoin Defendants'
13 unlawful, unfair and/or fraudulent practices, Plaintiff and the public will suffer irreparable injury.

14 89. WHEREFORE, Plaintiff prays for the relief requested below;

15 **SECOND CAUSE OF ACTION**

16 **(Declaratory and Injunctive Relief)**

17 90. Plaintiff realleges and incorporates by reference each allegation as if fully stated
18 herein.

19 91. Pursuant to Business & Professions Code § 16750 "Any person who is injured in
20 his or her business or property by reason of anything forbidden or declared unlawful by this
21 chapter, may sue therefor in any court having jurisdiction in the county [...], and to recover three
22 times the damages sustained by him or her, interest on his or her actual damages pursuant to
23 Section 16761, and preliminary or permanent injunctive relief when and under the same
24 conditions and principles as injunctive relief is granted by courts generally under the laws of this
25 state and the rules governing these proceedings, and shall be awarded a reasonable attorneys' fee
26 together with the costs of the suit. This action may be brought by any person who is injured in his
27

1 or her business or property by reason of anything forbidden or declared unlawful by this chapter,
2 regardless of whether such injured person dealt directly or indirectly with the defendant."

3 92. Defendants caused their controlled affiliate groups and physicians to enter into,
4 implement, and enforce express agreements that are unlawful and void under Business &
5 Professions Code § 16600.

6 93. Envision through itself and its completely controlled affiliate groups offered to
7 and/or paid consideration to induce the granting of exclusive contracts/referral of patients in
8 violation of Penal Code 650 and Welfare & Inst. Code § 14107.02.

9 94. Envision through itself and by the direct control of its completely controlled
10 affiliate groups, kickbacks, restrictive covenants, and other practices alleged violated California's
11 ban on the corporate practice of medicine in violation, among other things, of Cal. Bus. & Prof.
12 Code §§2400 & 2502.

13 95. Envision's inclusion of restrictive covenants in their completely controlled affiliate
14 group's employment agreements with physicians have the purpose and effect of (a) reducing the
15 open competition among medical groups for emergency room staffing contracts; (b) reducing
16 physician mobility; (c) eliminating physicians' ability to pursue the lawful employment of their
17 choice; and (d) limiting physician choices for management and administrative service contractors.

18 96. Envision's inclusion of restrictive covenants in their completely controlled affiliate
19 group's employment agreements is void and unlawful in that they are contrary to California's
20 legislative policy in favor of open competition and employee mobility.

21 97. Envision's inclusion of restrictive covenants in their completely controlled affiliate
22 group's employment agreements is not limited to the protection of any proprietary interest of
23 Envision.

24 98. Envision's inclusion of restrictive covenants in their completely controlled affiliate
25 group's employment agreements does not fall into any statutory exception to § 16600.
26
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1 99. Envision's control over Professional Medical Corporations including Premier and
2 EM-1 constitute violations of law including the practice of medicine by an unlicensed entity in
3 violation of Business and Prof Code §§ 650, 2400, 2052 and Cal. Corp. Code § 13408.

4 100. Envision's use of subsidy waivers is a form of consideration to induce the granting
5 of exclusive contracts/referral of patients in violation of Penal Code 650 and Welfare & Inst. Code
6 § 14107.02.

7 101. Plaintiffs empower local, independent, democratic emergency physician groups to
8 meet their full potential. Their member groups practice in a fair and transparent setting where
9 each physician is an owner. Plaintiffs' member groups retain full ownership of their practices.
10 Plaintiffs' member groups compete directly with Envision-controlled groups for exclusive
11 emergency department referral agreements.

12 102. A present case and controversy exist regarding Envision's current practices of
13 violating the ban on the corporate practice of medicine, using restrictive covenants, and offering
14 remuneration in exchange for patient referrals. Private equity-owned Envision, through its lay
15 management services organization, shuts out legally operating medical groups, such as those
16 partnering with Plaintiff, by offering remuneration to hospitals in exchange for emergency referral
17 contracts at Hospital's previously serviced by AAEMPG partnered medical groups, including at
18 Placentia-Linda Hospital, then illegally shuts out the future competition by requiring all
19 physicians practicing medicine in the emergency department to sign restrictive covenants
20 preventing them from working for a competing group or removing Envision's control over the
21 controlled group.

22 103. Plaintiffs are informed and believe that Envision is actively marketing its services
23 to other Emergency departments throughout California and, in so doing, will continue its
24 corporate practice of medicine, offers of remuneration in exchange for patient referrals, and
25 restrict emergency physicians from working for competing medical groups. Envision will
26 continue these practices in its current hospital contracts and will expand them to new hospitals
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1 unless a judgment declares such practices illegal. Accordingly, Plaintiff seeks the following
2 declaratory relief:

3 104. A Declaration that Envision's restrictive covenants are void and may not be used
4 in agreements with physicians.

5 105. A Declaration that Envision's creation or control over its completely controlled
6 affiliate groups as described herein constitutes the corporate practice of medicine and is therefore
7 unlawful.

8 106. A Declaration that Envision's offers of remuneration in exchange for exclusive
9 emergency department referral agreements, as described herein, constitute illegal kickbacks.

10 107. Given the public importance of the issues the issue of the legality this business
11 model, the court should issue declaratory relief on the matter.

12 108. WHEREFORE, Plaintiff prays for the relief requested.

13 **VI. PRAYER.**

14 WHEREFORE, Plaintiff prays for:

15 1. Defendants be enjoined engaging in acts constituting the practice of medicine
16 through the means and methods described herein, including but not limited to creating and
17 maintaining Professional Medical Groups, exercising control over billing, staffing, and related
18 services, use of restrictive covenants, or using control using its control over completely controlled
19 affiliate groups to require those groups to include restrictive covenants in their employment and
20 independent contractor agreements with any California physician, otherwise aiding and abetting
21 in the Corporate Practice of Medicine.

22 2. Defendants be enjoined from offering or providing remuneration or anything of
23 value to any Hospital or Hospital system operating in the State of California, including hospital
24 services below-cost or market in exchange for patient referrals.

25 3. A declaration that the practice of causing controlled Professional Medical
26 Corporations to enter into, implement, and enforce restrictive covenants similar to those identified
27

1 in paragraph 45 above is unlawful and that the restrictive covenants are void under Cal. Bus. and
2 Prof. Code §§16600.

3 4. A declaration that the practice of offering to or agreeing to provide Hospitals with
4 personnel to staff departments without the requirement of a subsidy (where subsidies are normally
5 paid) in exchange for Emergency Department contracts constitutes violations of Bus. and Prof.
6 Code § 650 and Welfare & Inst. Code § 14107.02.

7 5. A declaration that the control over medical professional corporations by lay
8 entities constitutes the corporate practice of medicine in violation of, among other things, of Cal.
9 Bus. & Prof. Code §§2400 & 2502.

10 6. Attorney's Fees as allowed by law, including but not limited to those allowable
11 under Cal. Code Civ. Proc. § 1021.5.

12 7. For such other and further relief as the court may deem proper.

13
14
15 Date: February 18, 2022

MILLSTEIN FELLNER LLP

16
17 By: /s/ David J. Millstein
18 David J. Millstein, Esq.
19 Gerald S. Richelson, Esq.

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