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Independent Physicians Associates Medical Group, Inc.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

INDEPENDENT PHYSICIANS
ASSOCIATES MEDICAL GROUP,
INC, d/b/a ALLCARE IPA, A California
corporation,

Plaintiff,

vs.

IRONSHORE SPECIALTY
INSURANCE COMPANY, An Arizona
corporation,

Defendant.

Case No.:

COMPLAINT FOR:

- (1) DECLARATORY RELIEF ON
DEFENDANT'S DUTY TO
DEFEND**
- (2) BREACH OF CONTRACT**
- (3) BREACH OF COVENANT OF
GOOD FAITH AND FAIR
DEALING**

JURY TRIAL DEMANDED

1. In this insurance coverage suit, Plaintiff Independent Physicians Associates Medical Group, Inc, d/b/a AllCare IPA (“AllCare” or “Plaintiff”), seeks: (i) a judicial declaration that Defendant IronShore Specialty Insurance Company. (“IronShore” or “Defendant”) has a duty to defend Plaintiff in two underlying actions: The first is styled as *Central Valley Medical Group, Inc., v. Independent Physicians Associates Medical Group, Inc.*, Superior Court, Stanislaus County, California, Case No. CV-19-001652 (the “CVMG Action”) and the second is styled as *Dameron Hospital v. Independent Physicians Associates Medical Group, Inc.*, Superior Court, San Joaquin County, California, Case No. STK-CV-UBC-21019-13963 (the “Dameron Action”); (ii) a judicial declaration that IronShore must reimburse AllCare for all reasonable defense expenses it has incurred and will incur in the *CVMG Action* and the *Dameron Action*, plus prejudgment interest at the applicable rate from the date of each invoice; (iii) a judicial declaration that IronShore has breached its insurance contracts with AllCare; (iv) a judicial declaration that IronShore has breached its covenant of good faith and fair dealing; (v) damages from IronShore for its breaches of contract; and (vi) damages from IronShore for its breach of the covenant of good faith and fair dealing.

THE PARTIES

2. Plaintiff AllCare is a California corporation with its principal place of business in Modesto, California.

3. On information and belief, Defendant Ironshore Specialty Insurance Company, is an Arizona corporation with its principal place of business in New York, New York.

JURISDICTION

4. This is an action for declaratory relief pursuant to 28 U.S.C. § 2201.

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that complete diversity exists between the parties, as the Plaintiff is a citizen of California and the Defendant is a citizen of Arizona and New York, for purposes of

1 diversity jurisdiction.

2 6. The amount in controversy exceeds the sum or value of \$75,000
3 exclusive of interest and costs. In addition to other and further relief, declaratory
4 relief is sought.

5 7. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a)
6 over the contract and covenant of good faith and fair dealing claims.

7 **VENUE**

8 8. Venue is proper in the United States District Court for the Eastern
9 District of California pursuant to 28 U.S.C. § 1391 because a substantial part of the
10 events or omissions giving rise to the claim alleged herein occurred in this District.

11 9. On information and belief, IronShore is an insurance company actively
12 selling insurance policies in California, including the Eastern District of California.

13 10. IronShore sold the insurance policies at issue in this case to AllCare, a
14 business located in the Eastern District of California where the policy was received.

15 11. The IronShore policies at issue were intended to cover AllCare's business
16 operations throughout California, including the Eastern District of California, as well
17 as throughout the United States.

18 12. The alleged wrongful conduct described in the pleadings in the *CVMG*
19 *Action* and in the *Dameron Action* purportedly occurred within the Eastern District of
20 California.

21 13. Part of the performance required under the IronShore policies at issue,
22 including, without limitation, defense of the two underlying actions and the incurring
23 and payment for attorneys' defense fees, occurs within the Eastern District of
24 California, as work done by the insured's defense team is occurring in Stanislaus
25 County and San Joaquin County, California, within the Eastern District of California.

26 **THE IRONSHORE POLICIES**

27 *IronShore's E&O Policy*

28 14. IronShore sold Managed Care Errors and Omissions Liability Policy No.

002386603 to the Insured Entity, Independent Physicians Associates Medical Group, Inc. dba Allcare IPA, for the Policy Period May 22, 2018 to May 22, 2019 and renewed it as Policy No. 002386604 for the Policy Period May 22, 2019 to May 22, 2020 (the “E&O Policy”). A copy of **the E&O Policy** is attached here as **Exhibit “1”**.

15. IronShore’s E&O Policy’s Insuring Agreement for Managed Care Errors and Omissions Insurance provides, in pertinent part, as follows:

The Underwriter will pay on behalf of the **Insured**¹ any **Loss** which the **Insured** is legally obligated to pay as a result of any **Claim** that is first made against the **Insured** during the **Policy Period** and reported to the Underwriter either during the Policy Period or in any event within ninety (90) days after the end of the **Policy Period**, in accordance with CONDITION (B) of this Policy. As part of and subject to the Limits of Liability stated in ITEM 3(a) of the Declarations, the Underwriter will have the right and duty to defend any **Claim** made against the **Insured** which is covered by this Policy, even if the allegations of such **Claim** are groundless, false or fraudulent.

[**Exhibit “1”** § I. A].

16. The E&O Policy’s applicable limit of insurance for the “Managed Care Errors and Omissions Insurance” is \$2,000,000 for each Claim or Related Claim with an aggregate of \$4,000,000. [**Exhibit “1”** Policy Declarations, III. a.]

17. The Policy includes the following pertinent Definitions:

“**Claim**” means any written notice received by any **Insured** that a person or entity ... intends to hold an Insured responsible for a **Wrongful Act** which was committed or allegedly committed on or after the Retroactive Date listed in ITEM 7 of the Declarations. In clarification and not in limitation of the foregoing, such notice may be in the form of an arbitration, mediation, judicial, declaratory or injunctive proceeding. A **Claim** will be deemed to be made when such written notice is first received by the President, Chief Executive Officer, Chief Financial Officer, member of the legal department, or member of the risk management department of the **Insured**.

* * *

“**Defense Expenses**” means reasonable legal fees and expenses incurred in the investigation, adjustment, defense or appeal of a Claim; provided, that Defense Expenses shall

¹ Bolded terms in the Policy are defined terms.

not include remuneration, salaries, overhead, fees or benefit expenses of any **Insured**.

* * *

“Insured” means any **Insured Entity** and any **Insured Person**.

* * *

“Loss” means any ... **Defense Expenses** and any monetary amount which an Insured is legally obligated to pay as a result of a **Claim**....

* * *

“Managed Care Service” means any services or activities performed in the administration or management of health care, consumer directed health care, behavioral health, prescription drug, dental, vision, long or short term disability, automobile medical payment, or workers’ compensation plans, whether provided on paper, in person, electronically, or in any other form and whether performed on behalf of the **Insured** or by the **Insured** for itself or on behalf of any other party for a fee.

* * *

“Wrongful Act” means:

(1) any actual or alleged act, error or omission in the performance of, or any failure to perform, a **Managed Care Service** by any **Insured Entity**....

[**Exhibit “1”** § II Definitions]

18. The E&O Policy establishes a Retroactive Date of January 1, 1993 as the date from which the E&O Policy provides coverage for wrongful acts.

[**Exhibit “1”** Declarations Item 7]

19. The Policy includes the following pertinent exclusion (as identified by IronShore):

Except for Defense Expenses, the Underwriter shall not pay Loss from any Claim brought about or contributed to by:

(1) any willful misconduct or willfully dishonest, fraudulent, criminal or malicious act, error or omission by any Insured;

(2) any willful violation by any Insured of any law, statute, ordinance, rule or regulation; or

(3) any Insured gaining any profit, remuneration or

1 advantage to which such Insured was not legally entitled.

2 For the purposes of determining the applicability of this
3 EXCLUSION (A), no Wrongful Act of any Insured shall be
4 imputed to any other Insured. Determination of the
5 applicability of this EXCLUSION (A) may be made by an
admission or by a final adjudication in a proceeding
constituting the Claim, or in a proceeding separate from or
collateral to any proceeding constituting the Claim.

6 **[Exhibit “1” § III Exclusions]**

7 *IronShore’s D&O Policy*

8 20. IronShore sold Managed Care Organizations Directors and Officers
9 Liability Policy No. 002386703 to the Insured Entity, Independent Physicians
10 Associates Medical Group, Inc. dba Allcare IPA, for the Policy Period May 22, 2018
11 to May 22, 2019 and renewed it as Policy No. 002386704 for the Policy Period May
12 22, 2019 to May 22, 2020 (the “D&O Policy”). A copy of **the D&O Policy** is attached
13 here as **Exhibit “2”**.

14 21. IronShore’s D&O Policy’s Insuring Agreement for Managed Care
15 Organizations Directors and Officers Liability Policy provides, in pertinent part, as
16 follows:

17 On behalf of the **Insured Entity**, the Underwriter will pay
18 **Loss** from **Claims** first made during the **Policy Period**
19 against the **Insured Entity** for Wrongful Acts and reported
20 to the Underwriter either during the **Policy Period** or in any
event within sixty (60) days after the end of **the Policy**
Period....

21 **[Exhibit “2” § I. C].**

22 22. The **Insured Entity** is Independent Physicians Medical Group, Inc. dba
23 AllCare.

24 **[Exhibit “2” Endorsement 3].**

25 23. The E&O Policy’s applicable limit of insurance for the “Managed Care
26 Organizations Directors and Officers Liability Policy” is \$2,000,000 for each Claim or
27 Related Claim with an aggregate of \$4,000,000.

28 **[Exhibit “2” Policy Declarations, III]**

24. The Policy includes the following pertinent Definitions:

1 **“Claim”** means:

2 (1) any written demand for monetary, non-monetary or
3 injunctive relief;

4 (2) any civil proceeding in a court of law or equity,
5 including any appeal therefrom, which is commenced by the
6 filing of a complaint, motion for judgment or similar
7 proceeding

8 **[Exhibit “2” § II B]**

9 **“Defense Expenses”** means reasonable and necessary legal
10 fees and expenses incurred in the defense or appeal of a
11 **Claim**.....

12 **[Exhibit “2” § II D]**

13 **“Loss”** means **Defense Expenses** and any monetary amount
14 which an Insured is legally obligated to pay as a result of
15 any **Claim**....

16 **[Exhibit “2” § II L]**

17 **“Wrongful Act”** means:

18 (1) any actual or alleged act, error, omission, misstatement,
19 misleading statement or breach of duty by any **Insured**
20 **Entity**

21 **[Exhibit “2” § II Y]**

22 25. The D&O Policy includes the following pertinent exclusion (as identified
23 by IronShore):

24 This Policy does not apply to, and no coverage will be
25 available under this Policy for:

26 (A) **Loss**, other than **Defense Expenses**, which any **Insured**
27 is obligated to pay:

28 (1) from any **Claim**...

 (b) against any **Insured** brought about or contributed to in
fact by the gaining by any **Insured** of any profit,
remuneration or advantage to which such Insured is not
legally entitled....

[Exhibit “2” § II A. 1. b]

Loss, including **Defense Expenses**, from any Claim:

 (4) for any actual or alleged liability of any **Insured Entity**
under any express contract or agreement, unless such
liability would have attached to such **Insured Entity** in the

1 absence of such express contract or agreement. For purposes
2 of this EXCLUSION (D)(4), an “express contract or
3 agreement” is an actual agreement between or among the
4 contracting parties, the terms of which are openly stated in
5 distinct and explicit language, either orally or in writing, at
6 the time of its making;

7 [Exhibit “2” § II D. 4]

8 **THE UNDERLYING CVMG ACTION**

9 26. On March 19, 2019, claimant Central Valley Medical Group,
10 Inc.(“CVMG”) filed its complaint (“CVMG Complaint”) against Plaintiff Independent
11 Physicians Medical Group, Inc. dba AllCare (“AllCare”) in the action styled as
12 *Central Valley Medical Group, Inc. v. Independent Physicians Medical Group, Inc.*
13 *dba AllCare*, in the Stanislaus County California Superior Court, Case No. CV 19-
14 1652 (the “CVMG Action”). A copy of the original CVMG Complaint is incorporated
15 herein and attached as **Exhibit “3.”**

16 27. On August 6, 2019 claimant CVMG filed a First Amended Complaint
17 (“FAC”) in the *CVMG Action* in the Stanislaus County California Superior Court. A
18 copy of CVMG’s FAC is incorporated herein and attached as **Exhibit “4.”**

19 28. On December 4, 2019 claimant CVMG filed a Second Amended
20 Complaint (“SAC”) in the *CVMG Action* in the Stanislaus County California Superior
21 Court. A copy of CVMG’s (redacted, publically filed) SAC is incorporated herein and
22 attached as **Exhibit “5.”**

23 29. The CVMG Complaints allege a Claim against AllCare under
24 IronShore’s E&O policy. They make pertinent allegations of acts, errors or omissions
25 in the performance of, or any failure to perform, a Managed Care Service, allegedly
26 committed on or after the Retroactive Date of January 1, 1993, that create a potential
27 for coverage under the IronShore’s E&O policy, thereby triggering IronShore’s
28 defense obligation.

30. CVMG’s SAC made the following allegations, among others, against
AllCare:

¶ 6 [I]n the case of ALLCARE’s soon-to sunset contractual

relationship with CareMore Health Plan, ALLCARE sent inaccurate and misleading communications to members to lure them away from their existing health plan (which as described below harmed and will continue to harm CVMG).

¶ 17 Through its contract with Sutter, CVMG currently is contracted with the following insurance plans: Aetna Health of California Inc.; Cigna HealthCare of California, Inc.; Health Net of California, Inc.; and UHC of California. As described below, because of ALLCARE's improper conduct, Sutter has elected to terminate its relationship with CVMG, effective January 1, 2020 and thus going forward, CVMG will not be contracted with the health plans identified in this paragraph.

ALLCARE "Misled Members into Switching Health Plans"

¶ 21 As of late 2018, ALLCARE and CVMG were the only two IPAs in Stanislaus County with physician networks sufficient to serve CareMore's 4,500 Medicare Members. ALLCARE was aware in late 2018 that CVMG was the only other IPA in Stanislaus County with a sufficient physician network to serve CareMore's members. ALLCARE was aware that throughout 2019, CVMG was the only other IPA in Stanislaus County with a sufficient physician network to serve CareMore's members.

¶ 25 During Open Enrollment, ALLCARE prepared and sent letters to approximately 3,000 CareMore members, which letters were sent on the letterhead of ALLCARE contracted physicians ("Plan Switch Letters"). ALLCARE sent these Plan Switch Letters to the CareMore members by U.S. Mail, overnight mail and/or certified mail, and some members received more than one copy of the same Plan Switch Letter by different delivery methods.

¶ 26 ALLCARE's Plan Switch Letters informed the CareMore members that "[t]his is an important message about possible changes to your health plan." The Plan Switch Letters notified CareMore members that "[i]n the foreseeable future I [the member's physician] may no longer be contracted with CareMore Health Plan through AllCare, and may not be able to care for you under your CareMore Plan" and that "I take your care and selection of Medicare Advantage health plans seriously and want you to have all the information available to ensure continued access to me as your Primary Care Physician." The Plan Switch Letters suggested that the member contact HealthMarkets to "help you compare your Medicare Advantage health plan options and to keep me as your physician."

¶ 27 The Plan Switch Letters do not provide a date by which CareMore is no longer contracted with ALLCARE, contrary to the requirements of Health and Safety Code § 1373.65; 28 Cal. Code of Reg. § 1300.67.1.3; Department of Health Care Services All Plan Letter 16-001. The Plan Switch Letters do not inform the members that the contract between ALLCARE and CareMore is in force until December 31, 2019, more than a year after the Plan Switch Letters were sent. Because the Plan Switch Letters contain language implying urgency and serious concern, were sent in a manner communicating seriousness and urgency (overnight mail/certified mail) and do not provide a date by which CareMore will no longer be contracted with ALLCARE, the Plan Switch

1 Letters created a false impression that members needed to make an
2 immediate change before the end of Open Enrollment on December 7,
2018.

3 ¶ 28 The Plan Switch Letters did not include “the following statement
4 in not less than 8-point type:

5 ‘If you have been receiving care from a health care provider, you may
6 have a right to keep your provider for a designated time period. Please
7 contact your HMO’s customer service department, and if you have
8 further questions, you are encouraged to contact the Department of
Managed Health Care, which protects HMO consumers, by telephone at
its toll-free number, 1-888-HMO-2219, or at a TDD number for the deaf
or hard of hearing at 1-877-688-9891, or online at
www.hmohelp.ca.gov.’”

9 California Health and Safety Code section 1673.65(f) requires that “[a]
10 health care service plan and a provider...include [the above language] in
11 all written, printed, or electronic communications sent to an enrollee that
12 concern the contract termination or block transfer” of patients.

13 ¶ 29 These Plan Switch Letters to patients were inaccurate and
14 misleading, and inconsistent with statutory requirements for
15 communications with Medicare health plan members.

16 ¶ 31 ALLCARE sent the Plan Switch Letters with the intention of
17 inducing patients covered by CareMore to switch health plans away from
18 CareMore (and by extension away from CVMG).

19 ¶ 32 ALLCARE intended for the patients receiving the Plan Switch
20 Letters to rely upon the Plan Switch Letters to alter their choice of health
21 plan during the open enrollment period for 2018 so as to continue to
22 receive treatment from their primary care physician. ALLCARE intended
23 for the patients to have a mistaken impression that they were in imminent
24 danger of losing their doctors unless they transferred from CareMore to
25 another HMO.

26 ALLCARE Scheme [to] Destroy CVMG’s Existing Business”

27 ¶ 38 On or about [REDACTED],² ALLCARE paid its physicians
28 their annual contractual performance bonuses for their performance
[REDACTED]

¶ 39 Beginning on or about February 20, 2019, Defendant ALLCARE,
through its agents and officers including its Chief Executive Officer,

² Portions of the Second Amended Complaint have been Redacted from Public Version. The terms of the Protective Order in the CVMG suit do not permit AllCare’s insurers to have access to sealed documents. However, the redacted portions of the Second Amended Complaint concern only financial details about the physicians’ contracts that are referenced therein. That level of detail in the allegations is unlikely to affect a duty to defend analysis.

1 Matthew Coury, and its President and Chairman of the Board, Randy
2 Winter, told physicians who were affiliated with both Defendant and
3 CVMG that Defendant would withhold any further annual contractual
performance bonuses unless the physicians terminated their CMVG
contracts.

4 ¶ 40 ALLCARE dressed up this part of its scheme in colorful language,
5 referring to it as the Preferred Physician Quality Incentive Program
6 (“PPQI”). To be eligible for the PPQI, physicians could not contract with
7 any other IPA in Stanislaus County that holds one or more of the same
8 HMO contracts as ALLCARE. ALLCARE referred to this requirement as
the prerequisite (referred to herein as the “Exclusivity Prerequisite”).
ALLCARE told physicians that, unless they gave notice of termination of
their contract with CVMG within 60 days, they would lose their
performance bonuses.

9 ¶41. ALLCARE’s goal was for 100% of ALLCARE’s physicians to
10 terminate their contract with CVMG, decimating CVMG’s network and
11 destroying CVMG’s business. In this way, ALLCARE would divert
membership from CVMG by making sure that patients had no choice but
to see their PCP through ALLCARE.

12 ¶42. ALLCARE’s Exclusivity Prerequisite was intended to, and in fact,
13 did, put significant financial pressure on PCPs. [REDACTED]

14 [REDACTED] This loss of
15 compensation was significant for all of these physicians.

16 ¶43. The only IPA in Stanislaus County impacted by this policy was
17 CVMG. This was known to ALLCARE when it developed and
18 announced the Exclusivity Prerequisite. As such, the Exclusivity
19 Prerequisite targeted CVMG only.

20 ¶44. Thus, any physician who failed to terminate her contract with
21 CVMG would lose her annual contractual performance bonus [REDACTED]
22 [REDACTED].

23 ¶46. ... ALLCARE has communicated to its physicians that ALLCARE
24 will penalize non-exclusive CVMG-contracted physicians by refusing to
25 pay the contractually mandated performance bonuses. Non-exclusive
26 CVMG-contracted physicians will not be paid for meeting their
27 performance targets in breach of ALLCARE’s contract with the
28 physicians.

¶47. ALLCARE also promised to divert funds earned by physicians (as
a result of patients assigned to those physicians through ALLCARE) who
remain contracted with CVMG to those physicians who terminate their
contracts with CVMG. Thus, the “exclusive” physicians will receive
funds earned by the non-exclusive physicians.

¶48.Physicians were pressured by ALLCARE and its agents to
terminate their contracts with CVMG and had a resulting fear that their
livelihoods were at risk if they opted not to terminate their contracts with
CVMG.

¶49. To further its scheme, ALLCARE and/or its agents also disparaged

1 and defamed CVMG by communicating to physicians and medical
 2 providers that CVMG would no longer be in existence as of July 2019.
 3 ALLCARE also communicated to physicians and medical providers that
 4 CVMG did not pay bonuses to physicians in 2018 and that this failure to
 pay bonuses was evidence that CVMG's business was not doing well.
 These statements were inaccurate and contrary to the reason for CVMG's
 decision related to bonuses.

5 ALLCARE Scheme [to] Destroy CVMG's Prospective Business"

6 ¶52. ... ALLCARE has now focused its efforts on destroying the
 7 upcoming CareMore contract. For instance, as a result of ALLCARE's
 8 assault on CVMG's PCP Network, CVMG's network recently was
 9 deemed inadequate to serve CareMore's members (even though it had
 been determined adequate previously). ALLCARE's improper conduct
 decimated CVMG's network, directly leading to the "inadequate"
 designation. [REDACTED]

10 [REDACTED]

11 ¶53. It is critical for CVMG's business that it be able to retain and
 12 attract physicians to its network. Should its network become inadequate,
 13 it is at risk for losing the CareMore contract, upon which CVMG's
 14 business now depends. ALLCARE continues to take actions to interfere
 with CVMG's relationships with physicians and members, in an effort to
 destroy CVMG's network and its business.

15 ¶54. Because CVMG understood that ALLCARE's contracts with
 16 its PCPs allow those physicians to contract with other IPAs for members
 17 with health plans with whom ALLCARE was not contracted (e.g. a non-
 overlapping health plan), CVMG contacted PCPs requesting that they
 18 contract with CVMG for the CareMore business only.... CVMG sent
 these physicians correspondence inviting them to contract with CVMG
 for CareMore only....

19 ¶55. Most physicians declined CVMG's offer because they believed
 20 that ALLCARE's Exclusivity Prerequisite prevented them from
 21 contracting with CVMG. In other words, these physicians refused to
 22 contract with CVMG as a direct result of ALLCARE'S wrongful
 23 conduct, which led physicians to believe that they would lose their
 contractual bonuses. Although a few physicians agreed to contract with
 CVMG for CareMore only, those physicians ultimately backed out of
 their decision after additional contact from an ALLCARE representative
 who told them ALLCARE would withhold the bonuses if they contracted
 with CVMG.

24 ¶56. ALLCARE's intentional misrepresentation, deceit and/or
 25 concealment of the nature of its contract with physicians was intended to
 26 deprive CareMore and CVMG of members and to otherwise cause injury
 27 to CareMore and CVMG. ALLCARE knew that such intentional
 28 misrepresentation, deceit and/or concealment of the nature of its contract
 with physicians would or was likely to disrupt patient-physician
 relationships and cause ALLCARE-contracted physicians to lose
 members. ALLCARE sought to "make up" for any such losses to
 physicians by redirecting funds earned by CVMG-contracted physicians
 to the now-exclusive physicians who had terminated their contracts with

1 CVMG.

2 ¶62. ALLCARE's actions have prevented those physicians from
3 retaining their relationship with those patients and prevented those
4 patients from retaining their relationship with those physicians.
5 ALLCARE has done this by communicating to physicians that the
6 Exclusivity Prerequisite prevents physicians from contracting with
CVMG at all, including for CareMore only. This is contrary to the
express contractual language in ALLCARE's contracts with physicians.
ALLCARE's actions will cause unnecessary disruptions in
patient/physician relationships.

7 ¶63. ALLCARE's scheme is not limited to pressuring the PCPs.
8 Specifically, ALLCARE has also targeted the patients.....
9 [C]ommunications were intended to induce the members to terminate
10 their relationship with CVMG in order to retain their relationship with
11 their physician. ALLCARE participated in and/or was aware of
12 communications to members related to the termination of the physician's
13 relationship with CVMG and intended that such communications would
14 induce members to terminate their relationship with CVMG in order to
15 retain access to their physician. In fact, "form" communications from
16 physicians in various practices to their CareMore members were sent to
those members as recently as October 2019. ALLCARE was aware of
and/or participated in these communications to CareMore members.

13 ¶65. ALLCARE's actions have caused, and will continue to cause,
14 CVMG to suffer significant harm.

15 ¶¶ 66-79 By Loss of PCPs, Loss of Members, Network Adequacy, Loss
16 of potential HMO contracts, Loss of Existing HMO contracts, Harm to
the CareMore Contract, and Harm To Healthcare Consumers.

17 ¶84. As a separate and independent wrongful act,² Defendant's threat to
18 refuse to pay earned annual contractual performance bonuses to
19 physicians in the future unless they terminate their contracts with
20 CVMG, while still demanding but not paying for the same performance,
21 is a breach of Defendant's contract(s) with those physicians, a breach of
22 the implied covenant of good faith and fair dealing inherent in that
23 contract, and/or violation of California law (including placing an undue
24 burden on trade).³ ALLCARE's conduct is coercive in light of the actual
25 and/or perceived severe harm those physicians would suffer if they
26 refused ALLCARE's demand, including but not limited to impacts to
27 their livelihood and personal and business finances, impacts to the
28 livelihoods of their staff, and the professional cost involved in severing
relationships with patients who are contracted with CVMG. As alleged
above, ALLCARE further interfered with CVMG's contracts and
relationships by making defamatory statements about CVMG to
physicians.

ALLCARE and/or its agents also disparaged and defamed CVMG by
communicating to physicians that CVMG would no longer be in
existence as of July 2019.

¶96. As a separate and independent wrongful act, Defendant's threat to
refuse to pay earned annual contractual performance bonuses to
physicians in the future unless they terminate their contracts with

1 CVMG, while still demanding but not paying for the same performance,
 2 is an illegal restraint in trade, a breach of Defendant's contract(s) with
 3 those physicians and/or a breach of the implied covenant of good faith
 4 and fair dealing inherent in that contract. ALLCARE's conduct is
 5 coercive in light of the actual and/or perceived severe harm those
 6 physicians would suffer if they refused ALLCARE's demand, including
 7 but not limited to impacts to their livelihood and personal and business
 8 finances, impacts to the livelihoods of their staff, and the professional
 9 cost involved in severing relationships with patients who are contracted
 10 with CVMG. As alleged above, ALLCARE further interfered with
 11 CVMG's contracts and relationships by making defamatory statements
 12 about CVMG to physicians.

13 ¶122. As a separate and independent wrongful act, Defendant's threat to
 14 refuse to pay earned annual contractual performance bonuses to
 15 physicians in the future unless they terminate their contracts with
 16 CVMG, while still demanding but not paying for the same performance,
 17 is an unlawful restraint in trade, a breach of Defendant's contract(s) with
 18 those physicians and/or a breach of the implied covenant of good faith
 19 and fair dealing inherent in that contract. ALLCARE's conduct is
 20 coercive in light of the actual and/or perceived severe harm those
 21 physicians would suffer if they refused ALLCARE's demand, including
 22 but not limited to impacts to their livelihood and personal and business
 23 finances, impacts to the livelihoods of their staff, and the professional
 24 cost involved in severing relationships with patients who are contracted
 25 with CVMG. As alleged above, ALLCARE further interfered with
 26 CVMG's contracts and relationships by making defamatory statements
 27 about CVMG to physicians.

28 ¶199. Here, ALLCARE's Exclusivity Prerequisite prevents physicians
 from freely engaging in their lawful profession as physicians.
 ALLCARE's policy penalizes physicians who contract with CVMG,
 refusing to pay those physicians their contractual performance bonuses
 unless they terminate their contracts with CVMG. The contractual
 performance bonus owed by ALLCARE to these physicians [REDACTED]

[REDACTED] ALLCARE's policy functions as a penalty
 for physicians who choose to contract with CVMG and withholds
 compensation from those physicians. [REDACTED]

¶200. Furthermore, ALLCARE's threats to withhold contractual
 performance bonuses from physicians who contract with CVMG has
 prevented physicians who desire to contract with CVMG from entering
 into and/or maintaining those contracts.

¶201. These threats restrain physicians from "engaging in [their] lawful
 profession, trade, or business" in contravention of Section 16600.

¶206. As a direct and proximate result of Defendant's conduct as alleged
 herein, CVMG has lost all its existing contracts with health plans.

[Exhibit "5"].

1 31. CVMG seeks and has sought monetary damages from AllCare for its
2 various allegedly wrongful acts.

3 **TENDER OF *CVMG ACTION* TO IRONSHORE AND ITS**
4 **ACKNOWLEDGMENT OF POTENTIAL COVERAGE**
5 **REQUIRING DEFENSE BY INDEPENDENT COUNSEL**

6 32. AllCare requested a defense of the *CVMG Action* from IronShore on or
7 about August 27, 2019 when it provided a copy of CVMG's FAC to IronShore.

8 33. IronShore initially denied AllCare's request for defense of the *CVMG*
9 *Action* on November 29, 2017.

10 34. AllCare provided IronShore with a copy of CVMG's SAC on December
11 19, 2019.

12 35. IronShore finally acknowledged its duty to defend the *CVMG Action*,
13 subject to a reservation of rights, on February 5, 2020. A copy of that letter is attached
14 as **Exhibit "6"**.

15 36. IronShore agreed in its February 5, 2020 reservation of rights letter that
16 "[b]ased on CVMG's allegations that [AllCare's] Patient Switch Letter failed to
17 include certain statements required by the California Health and Safety Code section
18 1373.65 the FAC and the SAC potentially constitute Claims for Wrongful Acts under
19 the policy." "on the Internet during the period of the [Policy]." [**Exhibit "6"** p. 5].

20 37. IronShore's February 5, 2020 letter further agreed that "[p]ursuant to
21 Insuring Agreement A of the policy, IronShore has the right and duty to defend any
22 Claim against the Insured [but] in light of IronShore's reservation of rights, pursuant
23 to California Civil Code section 2860(A), AllCare has the right to select independent
24 counsel to defend this matter."

25 [**Exhibit "6"** p. 9].

26 **THE UNDERLYING *DAMERON ACTION***

27 38. On October 21, 2019, claimant Dameron Hospital filed its complaint
28 ("Dameron Complaint") against Plaintiff Independent Physicians Medical Group, Inc.

1 dba AllCare in the action styled as *Dameron Hospital v. Independent Physicians*
 2 *Medical Group, Inc. dba AllCare IPA, et al.* in the San Joaquin County California
 3 Superior Court, Case No. STK-CV-UBC-2019-13963 (the “*Dameron Action*”). A
 4 copy of the Dameron Complaint is incorporated herein and attached as **Exhibit “7.”**

5 39. The Dameron Complaint alleges a Claim against AllCare under
 6 IronShore’s D&O policy. It makes pertinent allegations of acts, errors, omissions,
 7 misstatements, misleading statements or breaches of duty by AllCare, the Insured
 8 Entity, allegedly committed during the Policy Period, that create a potential for
 9 coverage under the IronShore’s D&O policy, thereby triggering IronShore’s defense
 10 obligation.

11 40. Dameron’s Complaint made the following allegations, among others,
 12 against AllCare:

13 The Complaint alleges that in 2017, the Plaintiff Hospital,
 14 Alignment Health Plan and AllCare entered into a risk pool
 15 arrangement whereby the entities coordinated care provided
 to Alignment’s members who were seen by AllCare’s
 physicians.

16 The Complaint alleges that Alignment, a Medicare
 17 Advantage Plan, received monthly capitation payments from
 the Centers for Medicare and Medicaid Services (“CMS”)
 18 for every member.

19 Under its agreement with CMS, Alignment arranged for the
 20 provision and payment of medical services for its members
 and used the capitation funds it received from CMS to pay
 21 for their medical services. Alignment would also direct a
 percentage of the capitation funds it received from CMS into
 a Risk Pool Fund.

22 The Plaintiff Hospital and AllCare shared the risk for the
 23 services provided to Alignment’s members but were able to
 control the utilization and cost of the services in an effort to
 24 generate a surplus in the Risk Fund. In the event of a
 surplus, the Plaintiff was required to pay 45% of the surplus
 to Alignment.

25 The Plaintiff alleges that to control the costs and utilization
 26 of care, it was necessary for AllCare physicians to admit
 their patients (and Alignment members) to the Plaintiff
 27 Hospital as needed; admissions to other hospitals required
 prior approval from the Plaintiff’s Case Manager.

28 The Plaintiff alleges that AllCare did not admit their patients

1 to the Plaintiff Hospital as the primary hospital. Rather,
2 AllCare admitted patients to competitor hospitals without
the authorization from the Plaintiff's Case Manager.

3 The Complaint alleges that AllCare knew that by admitting
4 its patients to other hospitals, the funds in the Risk Pool
would be diverted away from the Plaintiff Hospital and used
5 to pay the competitor hospitals.

6 The Complaint alleges that AllCare refused to send its
7 patients to the Plaintiff Hospital and refused to coordinate
care with the Plaintiff, which negatively impacted the Risk
8 Pool. As a result, the Risk Pool Funds for 2017 and 2018
resulted in deficits.

9 **[Exhibit "7"]**

10 41. Dameron seeks and has sought monetary damages from AllCare for its
11 various allegedly wrongful acts.

12 **TENDER OF *DAMERON ACTION* TO IRONSHORE AND ITS**
13 **ACKNOWLEDGMENT OF POTENTIAL COVERAGE**
14 **REQUIRING DEFENSE BY INDEPENDENT COUNSEL**

15 42. AllCare promptly requested a defense of the *Dameron Action* from
16 IronShore on and provided a copy of Dameron's Complaint to IronShore.

17 43. IronShore acknowledged its duty to defend the *Dameron Action* and sent
18 AllCare a reservation of rights letter on January 2, 2020. A copy of that letter is
19 attached as **Exhibit "8."**

20 44. IronShore agreed in its January 2, 2020 reservation of rights letter that
21 "[t]he Complaint alleges an act, error, omission, misstatement, misleading statement
22 or breach of duty by the Insured Entity, and so has the potential to trigger coverage
23 under the D&O Policy." **[Exhibit "8" p. 4].**

24 45. IronShore further agreed "that in light of Ironshore's reservation of
25 rights, pursuant to California Civil Code § 2860(a), AllCare has the right to select
26 independent counsel to defend this matter." **[Exhibit "8" p. 5].**

**IRONSHORE’S BREACH –
FAILURE TO PAY FOR DEFENSE FEES**

46. AllCare has retained the services of Kessenick Gamma & Free, LLP (“KGF”) as defense counsel in both the *CVMG* and *Dameron Actions* because KGF has strong medical litigation experience and is familiar with AllCare and AllCare’s industry.

47. Although IronShore has agreed that it has a defense obligation for both the *CVMG* and *Dameron Actions* and that AllCare has a right to independent defense counsel that it will pay in both the *CVMG* and *Dameron Actions*, IronShore has entirely failed to make any payments of defense invoices. All defense invoices for the periods after the tender of defense in the two cases have been sent to IronShore but IronShore has failed to make any payments of defense expenses in the two cases.

48. AllCare has repeatedly asked for payment of defense expenses incurred in the defense of the *CVMG* and *Dameron Actions* and although IronShore has claimed that it is “defending” the actions, IronShore has failed and refused to pay any defense expenses as it has repeatedly promised to do. It has not defended AllCare.

FIRST CAUSE OF ACTION

Declaratory Relief – Duty to Defend

49. Plaintiff, by this reference, incorporates each and every allegation set forth in the above paragraphs of this Complaint as though fully alleged herein.

50. Valid contracts exist between AllCare and IronShore, namely, the Policies.

51. AllCare has fully performed all of the obligations and conditions to be performed by it under the Policies and has paid premiums owed under the Policies each month the Policies have been in force.

52. By issuing and delivering the Policies and taking payments from AllCare, IronShore agreed to provide a defense for suit seeking damages for “wrongful acts” as defined in the Policies.

1 53. The *CVMG Action* alleges facts implicating coverage under the E&O
2 Policy as “wrongful acts,” thereby triggering IronShore’s obligation to defend its
3 insured, AllCare, in the *CVMG Action*.

4 54. The *Dameron Action* alleges facts implicating coverage under the D&O
5 Policy as “wrongful acts,” thereby triggering IronShore’s obligation to defend its
6 insured, AllCare, in the *Dameron Action*.

7 55. No exclusions would bar IronShore from defending AllCare in the
8 *CVMG Action*.

9 56. No exclusions would bar IronShore from defending AllCare in the
10 *Dameron Action*.

11 57. IronShore has acknowledged the potential for coverage in its reservation
12 of rights letter and also expressly acknowledged that it has an obligation to defend
13 AllCare in the *CVMG Action* by paying the reasonable expenses of independent
14 defense counsel.

15 58. IronShore has acknowledged the potential for coverage in its reservation
16 of rights letter and also expressly acknowledged that it has an obligation to defend
17 AllCare in the *Dameron Action* by paying the reasonable expenses of independent
18 defense counsel.

19 59. IronShore is obligated under the E&O Policy to pay attorneys’ fees,
20 costs, and other expenses that its insured, AllCare, incurs in the defense of the *CVMG*
21 *Action*.

22 60. IronShore is obligated under the D&O Policy to pay attorneys’ fees,
23 costs, and other expenses that its insured, AllCare, incurs in the defense of the
24 *Dameron Action*

25 61. IronShore’s duty and obligation to defend AllCare in the *CVMG Action*
26 further includes the duty to reimburse Plaintiff for all the defense expenses it incurs in
27 the *CVMG Action*.

28 62. IronShore’s duty and obligation to defend AllCare in the *CVMG Action*

1 further includes the duty to reimburse Plaintiff for all the defense expenses it incurs in
2 the *Dameron Action*.

3 63. IronShore has not paid any of KGF's defense invoices since the dates of
4 tender.

5 64. An actual bona fide controversy exists between AllCare and IronShore
6 that requires judicial declaration by this Court of the parties' rights and duties
7 regarding the IronShore's duty to defend AllCare in the *CVMG Action*, the amount of
8 defense expenses owed by IronShore, and IronShore's duty to timely pay defense fees
9 and costs.

10 SECOND CAUSE OF ACTION

11 Breach Of Contract

12 65. Plaintiff, by this reference, incorporates each and every allegation set
13 forth in the above paragraphs of this Complaint as though fully alleged herein.

14 66. Valid contracts exist between AllCare and IronShore, namely, the
15 Policies.

16 67. AllCare has fully performed all of the obligations and conditions to be
17 performed by it under the Policies and has paid premiums owed under the Policies
18 each month the Policies have been in force.

19 68. By issuing and delivering the Policies and taking payments from AllCare,
20 IronShore agreed to provide a defense for suit seeking damages for "wrongful acts" as
21 defined in the Policies.

22 69. The *CVMG Action* alleges facts implicating coverage under the E&O
23 Policy as "wrongful acts," thereby triggering IronShore's obligation to defend its
24 insured, AllCare, in the *CVMG Action*.

25 70. The *Dameron Action* alleges facts implicating coverage under the D&O
26 Policy as "wrongful acts," thereby triggering IronShore's obligation to defend its
27 insured, AllCare, in the *Dameron Action*.

28 71. No exclusions would bar IronShore from defending AllCare in the

1 *CVMG Action.*

2 72. No exclusions would bar IronShore from defending AllCare in the
3 *Dameron Action.*

4 73. IronShore has acknowledged the potential for coverage in its reservation
5 of rights letter and also expressly acknowledged that it has an obligation to defend
6 AllCare in the *CVMG Action* by paying the reasonable expenses of independent
7 defense counsel.

8 74. IronShore has acknowledged the potential for coverage in its reservation
9 of rights letter and also expressly acknowledged that it has an obligation to defend
10 AllCare in the *Dameron Action* by paying the reasonable expenses of independent
11 defense counsel.

12 75. IronShore is obligated under the E&O Policy to pay attorneys' fees,
13 costs, and other expenses that its insured, AllCare, incurs in the defense of the *CVMG*
14 *Action.*

15 76. IronShore is obligated under the D&O Policy to pay attorneys' fees,
16 costs, and other expenses that its insured, AllCare, incurs in the defense of the
17 *Dameron Action*

18 77. IronShore's duty and obligation to defend AllCare in the *CVMG Action*
19 further includes the duty to reimburse Plaintiff for all the defense expenses it incurs in
20 the *CVMG Action.*

21 78. IronShore's duty and obligation to defend AllCare in the *CVMG Action*
22 further includes the duty to reimburse Plaintiff for all the defense expenses it incurs in
23 the *Dameron Action.*

24 79. IronShore has not paid any of KGF's defense invoices since the dates of
25 tender.

26 80. IronShore has breached its duty to defend the Plaintiffs in the *CVMG and*
27 *Dameron Actions.*

28 81. As a result of the breach, AllCare incurred and continues to incur defense

1 expenses in defending against the *CVMG and Dameron Actions* and other damages.

2 **THIRD CAUSE OF ACTION**

3 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

4 82. Plaintiff, by this reference, incorporates each and every allegation set
5 forth in the above paragraphs of this Complaint as though fully alleged herein.

6 83. Valid contracts exist between AllCare and IronShore, namely, the
7 Policies.

8 84. By issuing and delivering the Policies and taking payments from AllCare,
9 IronShore agreed to provide a defense for suits seeking damages for “wrongful acts”
10 as defined in the Policies.

11 85. The *CVMG and Dameron Actions* allege facts implicating coverage
12 under the Policies as “wrongful acts”, thereby triggering IronShore’s obligation to
13 defend its insured, AllCare, in the *CVMG and Dameron Actions*.

14 86. No exclusions would bar IronShore from defending AllCare in the
15 *CVMG and Dameron Actions*.

16 87. IronShore has acknowledged the potential for coverage and that it has an
17 obligation to defend AllCare in the *CVMG and Dameron Actions*.

18 88. IronShore is obligated under the Policies to pay attorneys’ fees, costs,
19 and other expenses that its insured, AllCare, incurs in the defense of the *CVMG and*
20 *Dameron Actions*.

21 89. An implied duty of good faith and fair dealing is implicit in every
22 contract, including insurance contracts.

23 90. IronShore unreasonably failed to provide policy benefits, namely the
24 payment of reasonable defense expenses as incurred and according to its repeated
25 promises.

26 91. IronShore has unreasonably refused without good cause to pay for any of
27 KGF’s defense invoices.

28 92. IronShore, despite repeated requests from AllCare to pay defense

1 expenses and providing copious information regarding its breach, has continued
2 failing to make any defense payments.

3 93. IronShore's actions have been unreasonable and a breach of its implied
4 covenant of good faith and fair dealing with its insured.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff Independent Physicians Associates Medical Group,
7 Inc, d/b/a AllCare IPA prays for judgment against Defendant IronShore Specialty
8 Insurance Company. as follows:

9 1. A judicial declaration that Defendant IronShore has a duty to defend
10 AllCare in the underlying actions styled as *Central Valley Medical Group, Inc., v.*
11 *Independent Physicians Associates Medical Group, Inc*, Superior Court, Stanislaus
12 County, California, Case No. CV-19-001652 (the "*CVMG Action*") and *Dameron*
13 *Hospital v. Independent Physicians Associates Medical Group, Inc*, Superior Court,
14 San Joaquin County, California, Case No. STK-CV-UBC-21019-13963 (the
15 "*Dameron Action*");

16 2. A judicial declaration that IronShore must timely and promptly reimburse
17 AllCare for all the reasonable defense expenses incurred and will incur in the defense
18 of the *CVMG Action* and the *Dameron Action* paid on a monthly basis, plus
19 prejudgment interest from the date of each invoice at the statutory interest rate;

20 3. A determination that IronShore has breached its contract obligation to
21 defend its insured, AllCare, in the *CVMG Action* and in the *Dameron Action*;

22 4. An award of damages against IronShore for its breach of the Policy
23 contracts;

24 5. A determination that IronShore has breached its implied covenant of
25 good faith and fair dealing;

26 6. An award of damages against IronShore for its breach of its covenant of
27 good faith and fair dealing;

28 7. An award of AllCare's reasonable attorneys' fees incurred in this lawsuit;

8. An award of the costs of this suit; and

9. For such other and further relief as this Court may deem just and proper.

Dated: May 21, 2020

GAUNTLETT & ASSOCIATES

By: /s/ James A. Lowe

David A. Gauntlett
James A. Lowe

Attorneys for Plaintiff
Independent Physicians Associates
Medical Group, Inc.

DEMAND FOR JURY TRIAL

AllCare demands a trial by jury on all issues subject to jury determination.

Dated: May 21, 2020

GAUNTLETT & ASSOCIATES

By: /s/ James A. Lowe

David A. Gauntlett
James A. Lowe

Attorneys for Plaintiff
Independent Physicians Associates
Medical Group, Inc.