

CONFORM

1 ALEXANDER ROBERTSON, IV (State Bar No. 127042)  
ROBERTSON & ASSOCIATES, LLP  
2 880 Hampshire Road, Suite B  
Westlake Village, California 91361  
3 Telephone: (805) 418-9900  
Facsimile: (805) 418-9901

4 JOHN M. WALKER(State Bar No. 89723)  
LAW OFFICES OF JOHN M. WALKER  
5 5850 Canoga Avenue, 4th Floor  
Woodland Hills, CA 91367  
6 Telephone: (818) 719-9181  
Facsimile: (818) 719-9264

7 Attorneys for Plaintiffs

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JUN 13 2011

John A. Clarke, Executive Officer/ Clerk

By *[Signature]*, Deputy  
C. PIEDRA

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES - CENTRAL CIVIL WEST

11 JOHN FAITRO, an individual and ) CASE NO. BC454464  
as the personal representative )  
12 of THE ESTATE OF LAURA LEE ) FIRST AMENDED CLASS ACTION  
FAITRO, deceased; ARTURO & ELVIA ) COMPLAINT FOR VIOLATIONS OF:  
13 RENTERIA, as individuals and as )  
the personal representatives of ) 1. UNFAIR COMPETITION LAW  
14 THE ESTATE OF ANA RENTERIA, ) (UCL);  
deceased; BRIDGET SANDOVAL, an ) 2. FALSE ADVERTISING LAW  
15 individual; SUSAN BLACKBURN, ) (FAL);  
guardian ad litem for TAYLOR ) 3. CONSUMER LEGAL REMEDIES  
16 BLACKBURN, a minor; JESSICA ) ACT (CLRA)  
BLEAMAN, an individual; SUSAN )  
17 LEVERETT, an individual; CONNIE ) Assigned to the Honorable Carl  
MARIA HERERRA, an individual; ) J. West, Dept. 322  
18 APRIL MORENO, an individual; as )  
Plaintiff Class Representatives, ) Complaint filed: 02/04/2011  
19 Plaintiffs, )  
20 vs. )  
21 TOP SURGEONS, INC., a )  
22 corporation; TOP SURGEONS, LLC, )  
a limited liability company; )  
23 1 800 GET THIN, LLC; ALMONT )  
AMBULATORY SURGERY CENTER, INC., )  
24 a corporation; ANTELOPE VALLEY )  
SURGICAL CENTER, INC.; BEVERLY )  
25 HILLS SURGERY CENTER, LLC; )  
CALIFORNIA HOSPITAL MANAGEMENT & )  
26 COLLECTIONS, INC.; LAP BAND )  
SPECIALISTS, LLC; SKIN CANCER )  
27 AND RECONSTRUCTIVE SURGERY )  
SPECIALISTS OF BEVERLY HILLS; )  
28 SKIN CANCER AND RECONSTRUCTIVE )  
SURGERY SPECIALISTS OF VALENCIA; )

1 SURGERY CENTER MANAGEMENT, LLC; )  
NEW LIFE SURGERY CENTER, LLC; )  
2 WOODLAKE AMBULATORY SURGERY )  
CENTER, INC; KAMBIZ BENIAMIA )  
3 OMIDI, aka JULIAN OMIDI, an )  
individual; MICHAEL OMIDI, M.D., )  
4 an individual; CINDY OMIDI, an )  
individual; and DOES 1-100, )  
5 Inclusive, )  
6 Defendants. )

---

7  
8 Plaintiffs, by and through their counsel, for violations of  
9 the Unfair Competition Law ("UCL"), *Business & Professions Code*  
10 § 17200, *et seq.*, and violations of the False Advertising Law,  
11 *Business & Professions Code* § 17500, *et seq.*, and violations of  
12 the Consumer Legal Remedies Act ("CLRA"), *Civil Code* § 1750, *et*  
13 *seq.*, allege as representatives on behalf of all similarly  
14 situated individuals, as follows:

15 I.

16 NATURE OF THE ACTION

17 1. Defendants, TOP SURGEONS, INC., and/or TOP SURGEONS,  
18 LLC, 1 800 GET THIN, LLC, ALMONT AMBULATORY SURGERY CENTER, INC.,  
19 ANTELOPE VALLEY SURGICAL CENTER, INC., BEVERLY HILLS SURGERY  
20 CENTER, LLC, CALIFORNIA HOSPITAL MANAGEMENT & COLLECTIONS, INC.,  
21 LAP BAND SPECIALISTS, LLC, SKIN CANCER AND RECONSTRUCTIVE SURGERY  
22 SPECIALISTS OF BEVERLY HILLS, SKIN CANCER AND RECONSTRUCTIVE  
23 SURGERY SPECIALISTS OF VALENCIA, SURGERY CENTER MANAGEMENT, LLC,  
24 NEW LIFE SURGERY CENTER, LLC and WOODLAKE AMBULATORY SURGERY  
25 CENTER, INC., business enterprises which advertise, market and  
26 sell services to consumers in California for laparoscopic  
27 surgeries to install LAP-BAND devices in morbidly obese persons.

28 ///

1           2. Defendants advertise Lap-Band surgical services via  
2 freeway billboards, television and radio advertisements, bus  
3 advertisements, newspapers and the Internet under the name of "1-  
4 800-GET-THIN" and "WEIGHT LOSS CENTERS".

5           3. Plaintiffs are informed and believe, and thereon allege  
6 that at all relevant times herein, Defendant, TOP SURGEONS, INC.,  
7 was a California corporation formed on or about July 6, 2006, for  
8 the purpose of engaging in the practice of medicine with  
9 Defendant, MICHAEL OMIDI, serving as the initial director,  
10 president and secretary of the corporation. On or about May 14,  
11 2008, TOP SURGEONS, INC. was converted out to its successor,  
12 Defendant, TOP SURGEONS, LLC. Plaintiffs are informed and  
13 believe, and thereon allege that Defendant, MICHAEL OMIDI, served  
14 as the president and secretary of TOP SURGEONS, LLC, from May 14,  
15 2008, until November 8, 2010, wherein Charles Klasky became the  
16 manager. Despite allegedly "converting out" TOP SURGEONS, INC.  
17 in 2008, Plaintiffs are informed and believe, and thereon allege,  
18 that at all times relevant herein, Defendants have continued to  
19 use this corporation name on letterhead, business cards,  
20 contracts and invoices given to the Plaintiffs herein, thereby  
21 holding themselves out to consumers as conducting business under  
22 the name of "TOP SURGEONS, INC."

23           4. Plaintiffs are informed and believe, and thereon allege  
24 that on or about May 22, 2007, Defendant, JULIAN OMIDI caused to  
25 be filed a fictitious business name statement with the Los  
26 Angeles County Recorder/Clerk's Office for "ALMONT AMBULATORY  
27 SURGERY CENTER". Thereafter, Defendant, ALMONT AMBULATORY  
28 SURGERY CENTER, a medical corporation, was incorporated in

1 California on or about December 16, 2009, by Defendant, MICHAEL  
2 OMIDI, who served as the initial director, president and  
3 secretary until on or about February 25, 2011, when Charles  
4 Klasky became manager.

5 5. Plaintiffs are informed and believe, and thereon allege  
6 that Defendant, ANTELOPE VALLEY SURGICAL CENTER, INC., was  
7 incorporated on or about July 6, 2006, by Defendant, MICHAEL  
8 OMIDI, as the sole initial director, president and secretary.

9 6. Plaintiffs are informed and believe, and thereon allege  
10 that Defendant, BEVERLY HILLS SURGERY CENTER, LLC, was organized  
11 on or about June 10, 2009, by Thomas C. Cloud and that Defendant,  
12 JULIAN OMIDI was the chief executive officer and Defendant, CINDY  
13 OMIDI was the manager. On or about March 3, 2010, Atul Madan,  
14 M.D. became the chief executive officer and Maria Abaca became  
15 the manager.

16 7. Plaintiffs are informed and believe, and thereon allege  
17 that Defendant, CALIFORNIA HOSPITAL MANAGEMENT & COLLECTIONS,  
18 INC., was incorporated in California by Defendant, JULIAN OMIDI  
19 as the sole incorporator and director. On or about April 13,  
20 2010, Defendant, CINDY OMIDI became the sole officer and director  
21 of this Defendant.

22 8. Plaintiffs are informed and believe, and thereon allege  
23 that Defendant, LAP BAND SPECIALISTS, LLC, was organized in  
24 California as a limited liability company by Thomas C. Cloud,  
25 with Defendant CINDY OMIDI as the sole manager.

26 9. Plaintiffs are informed and believe, and thereon allege  
27 that Defendant, SKIN CANCER AND RECONSTRUCTIVE SURGERY  
28 SPECIALISTS OF BEVERLY HILLS, a medical corporation, became

1 incorporated in California by Defendant, MICHAEL OMIDI, as the  
2 sole officer and director.

3 10. Plaintiffs are informed and believe, and thereon  
4 allege that Defendant, SKIN CANCER AND RECONSTRUCTIVE SURGERY  
5 SPECIALISTS OF VALENCIA, a medical corporation, became  
6 incorporated in California by Defendant, MICHAEL OMIDI, as the  
7 sole officer and director until on or about June 17, 2009 when  
8 Defendant, CINDY OMIDI became the sole officer and director.

9 11. Plaintiffs are informed and believe, and thereon allege  
10 that Defendant, SURGERY CENTER MANAGEMENT, LLC, was organized as  
11 a California limited liability company by Thomas C. Cloud, with  
12 Charles Klasky as the sole manager.

13 12. Plaintiffs are informed and believe, and thereon allege  
14 that Defendant, 1 800 GET THIN, LLC, was organized as a  
15 California limited liability company on or about March 11, 2010  
16 by Robert B. Silverman, Esq., with an undisclosed single manager.  
17 Plaintiffs are informed and believe that the sole manager of this  
18 Defendant is Defendant, JULIAN OMIDI or his brother, MICHAEL  
19 OMIDI.

20 13. Plaintiffs are informed and believe, and thereon allege  
21 that Defendant, NEW LIFE SURGERY CENTER, LLC, was organized as a  
22 California limited liability company by Alexander Weisse, Esq.,  
23 on or about June 9, 2010, with an undisclosed single manager.  
24 Plaintiffs are informed and believe that the sole manager of this  
25 Defendant is Defendant, JULIAN OMIDI or his brother, MICHAEL  
26 OMIDI.

27 14. Plaintiffs are informed and believe, and thereon allege  
28 that Defendant, WOODLAKE AMBULATORY SURGERY CENTER, INC., is a

1 corporation organized and existing under the laws of the State of  
2 California.

3 15. Plaintiffs are informed and believe, and thereon  
4 allege, that Defendants, TOP SURGEONS, INC., and its successor,  
5 TOP SURGEONS, LLC (hereinafter collectively referred to as "TOP  
6 SURGEONS"), 1 800 GET THIN, LLC and JULIAN OMIDI and MICHAEL  
7 OMIDI (hereinafter collectively referred to as the "OMIDI  
8 BROTHERS") and DOES 1 through 25, operate a "call center" at the  
9 office which many of the named Defendants herein share, located  
10 at 9001 Wilshire Boulevard, Suite 106, Beverly Hills, California.  
11 Plaintiffs are further informed and believe, and thereon allege  
12 that TOP SURGEONS is a medical service provider, offering among  
13 other services, Lap Band surgery, plastic surgery, cosmetic  
14 surgery and dermatology services. Plaintiffs allege that  
15 arrangements for obtaining medical services from TOP SURGEONS are  
16 made through a "call center" staffed with hourly employees whose  
17 work consists of handling high-volume calls from and to  
18 prospective and current patients of TOP SURGEONS. Plaintiffs are  
19 further informed and believe, and thereon allege that the call  
20 center employees are provided with a script prepared by the TOP  
21 SURGEONS and the OMIDI BROTHERS. The script provides call center  
22 employees with instructions for speaking with patients and  
23 prospective patients, answering routine questions regarding  
24 services provided by TOP SURGEONS, and scheduling appointments.  
25 Plaintiffs further allege that the call center employees are paid  
26 a minimum hourly wage, plus an incentive-based commission for  
27 sales of TOP SURGEONS' medical services to patients. PLAINTIFFS  
28 are further informed and believe, and thereon allege that

1 Defendants, JULIAN OMIDI, MICHAEL OMIDI, and CINDY OMIDI, are and  
2 at all relevant times were, persons who owned, controlled and  
3 managed Defendants, TOP SURGEONS, INC., and/or TOP SURGEONS, LLC,  
4 1 800 GET THIN, LLC, ALMONT AMBULATORY SURGERY CENTER, INC.,  
5 ANTELOPE VALLEY SURGICAL CENTER, INC., BEVERLY HILLS SURGERY  
6 CENTER, LLC, CALIFORNIA HOSPITAL MANAGEMENT & COLLECTIONS, INC.,  
7 LAP BAND SPECIALISTS, LLC, SKIN CANCER AND RECONSTRUCTIVE SURGERY  
8 SPECIALISTS OF BEVERLY HILLS, SKIN CANCER AND RECONSTRUCTIVE  
9 SURGERY SPECIALISTS OF VALENCIA, SURGERY CENTER MANAGEMENT, LLC,  
10 NEW LIFE SURGERY CENTER, LLC and WOODLAKE AMBULATORY SURGERY  
11 CENTER, INC.

12 16. Plaintiffs are informed and believe, and thereon allege  
13 that Defendants, JULIAN OMIDI, MICHAEL OMIDI and CINDY OMIDI have  
14 formed and organized each of the business entities named as  
15 Defendants herein to recreate their image after negative  
16 publicity, regulatory action/investigations and/or loss of  
17 accreditation have occurred to one or more of their affiliates.

18 17. Plaintiffs are all consumers who called 1-800-GET-THIN  
19 as a result of the Defendants' ubiquitous advertising campaign in  
20 Southern California on freeway billboards, radio and T.V. ads,  
21 bus placards, newspaper and Internet ads for Lap Band surgery.  
22 After initially calling the 1-800-GET-THIN phone number,  
23 Plaintiffs were all invited to attend a "free" seminar at one of  
24 the Defendants' office locations, where the Plaintiffs were told  
25 that the Defendants had special knowledge how to get their PPO  
26 insurance carriers to pay for 100% of their Lap Band surgeries.  
27 These seminars were not conducted by licensed doctors, but  
28 "consultants" who were simply salespersons who attempted to sell

1 the Plaintiffs additional surgical procedures ranging from  
2 trimming ingrown toenails to plastic surgery, again with the  
3 promise that all procedures would be paid for 100% by the  
4 Plaintiffs' PPO insurance carrier. Each of the Plaintiffs herein  
5 contracted with one or more of the OMIDIS' alter-ego companies  
6 for Lap Band surgery. Plaintiffs allege on information and  
7 belief that none of the Defendants named herein performed the  
8 actual Lap Band surgeries or pre-operative procedures on the  
9 Plaintiffs. Rather, Plaintiffs allege on information and belief  
10 that each of the Defendants named herein provided the marketing,  
11 billing and/or collection for the Lap Band surgeries performed by  
12 surgeons hired by the Defendants.

13 18. In this action, Plaintiffs seek injunctive relief and  
14 restitution for the Defendants' violations of the UCL and  
15 violations of the False Advertising Law in the advertising,  
16 marketing and sale of Lap-Band surgical services to members of  
17 the public. In the cause of action for violation of the CLRA,  
18 Plaintiffs seek actual damages, injunctive relief, restitution,  
19 punitive damages, attorneys fees and costs, and treble damages  
20 for a subclass of disabled persons as defined by Civil Code §  
21 1780(b)(1).

22 19. Plaintiffs do not seek damages for wrongful death or  
23 personal injuries for themselves, their decedents, or represented  
24 plaintiffs. Plaintiffs, however, reserve their individual rights  
25 to seek damages in a separate action for wrongful death, medical  
26 malpractice, and/or survival actions.

27 ///

28 ///

1 II.

2 PARTIES

3 20. Plaintiff, BRIDGET SANDOVAL, is a resident of the  
4 County of Los Angeles, who responded to a 1-800-GET-THIN radio ad  
5 in March, 2008. After calling the toll free phone number, she  
6 was told to come to the Defendants' main office, located at 9001  
7 Wilshire Blvd., Suite 106, Beverly Hills, California, where she  
8 and her husband, Jacques Sandoval, met with Defendant, JULIAN  
9 OMIDI, who introduced himself as "Dr. JULIAN OMIDI", despite the  
10 fact the Medical Board of California had previously issued a  
11 decision revoking his medical license on October 26, 2007. In  
12 its decision, the Medical Board found that JULIAN OMIDI was  
13 arrested and convicted for burglary of exam papers while  
14 attending UC-Irvine, had fraudulently misrepresented the  
15 educational institutions he attended on his medical license  
16 application, and had demonstrated a "penchant for dishonesty, to  
17 bend his position and shade his statements to suit his needs,  
18 without consistent regard for the truth." At this first  
19 appointment, "Dr. JULIAN OMIDI" personally took the height and  
20 weight measurements of Mr. and Mrs. Sandoval and told BRIDGET  
21 SANDOVAL that he would take off a couple of inches from her  
22 height in order to increase her BMI score so that her insurance  
23 would cover the cost of her Lap Band surgery. "Dr. JULIAN OMIDI"  
24 further examined Jacques Sandoval and diagnosed him with "sun  
25 spots" on his face and tried to sell him dermatological surgery  
26 to remove them. "Dr. JULIAN OMIDI" also suggested that BRIDGET  
27 SANDOVAL undergo a breast reduction and tummy-tuck surgery along  
28 with her Lap Band surgery.

1           21. On or about April 17, 2008, BRIDGET SANDOVAL underwent  
2 a Lap Band surgery with Dr. Sergey Lyass at TOP SURGEON's  
3 facility located at 7320 Woodlake Ave., Suite 108, West Hills,  
4 California, 91307. Defendants provided BRIDGET SANDOVAL with a  
5 business card with the "TOP SURGEONS, INC." logo with Dr. Lyass'  
6 name and phone number on it. Following her surgery, BRIDGET  
7 SANDOVAL attended multiple follow-up appointments for  
8 "adjustments" at TOP SURGEON's facility located at 25775 McBean  
9 Parkway, Suite 108, Valencia, California, 91355 with Dr. George  
10 Tashjian. Unbeknownst to Plaintiff, Dr. Tashjian was then under  
11 investigation by the Medical Board of California for "gross  
12 negligence" in the treatment of three (3) patients (2 of whom  
13 died), which later resulted in a formal Accusation being filed  
14 against him on November 3, 2009 by the California Attorney  
15 General to revoke his medical license. On November 8, 2010, Dr.  
16 Tashjian stipulated to a disciplinary order with the Medical  
17 Board of California concerning the medical treatment of two of  
18 the three patients which were the subject of the aforementioned  
19 Accusation, resulting in a public reprimand against him.

20           22. After her first adjustment with Dr. Tashjian on or  
21 about July 28, 2009, BRIDGET SANDOVAL repeatedly complained to  
22 Dr. Tashjian that she felt pain in her stomach, had chronic  
23 nausea and reflux and she asked him to perform a fluoroscopy.  
24 However, despite these symptoms, Dr. Tashjian refused to perform  
25 a fluoroscopy or endoscopy, and instead prescribed Protonix, an  
26 anti-reflux medication.

27           23. After 5-6 months of experiencing chronic nausea and  
28 reflux, Plaintiff had her Lap Band removed in April, 2010 by Dr.

1 Lyass, who had left the employ of the Defendants and was then  
2 working at Cedars-Sinai Medical Center. After performing the  
3 removal of the Lap Band, Dr. Lyass told BRIDGET SANDOVAL that the  
4 Lap Band had eroded and cut into her stomach wall, causing damage  
5 to her stomach. As a result, Plaintiff now has difficulty eating  
6 solid food and cannot have the Lap Band replaced.

7 24. BRIDGET SANDOVAL paid to TOP SURGEONS, LLC the sum of  
8 at least \$132.00 on or about February 16, 2009 for evaluation by  
9 a dietician and was billed a total of \$9,830.00 by Defendant,  
10 "TOP SURGEONS, INC." on December 17, 2009, for charges associated  
11 with her Lap Band surgery and post-surgical "adjustments" which  
12 were not covered by her insurance company, despite the  
13 Defendants' representations that her insurance had approved this  
14 surgery and would pay for it. Defendant, TOP SURGEONS, INC.,  
15 repeatedly telephoned Plaintiff between December 17, 2009 and  
16 February 2010 demanding payment of this sum and threatened to  
17 turn it over to collections. As a result, BRIDGET SANDOVAL has  
18 suffered an injury in fact and lost money or property as direct  
19 result of the Defendants' actions.

20 25. At no time did any of the Defendants ever tell BRIDGET  
21 SANDOVAL that "Dr. JULIAN OMIDI" had his medical license revoked  
22 or that Dr. Tashjian, who performed her adjustments to the Lap  
23 Band, was under investigation by the Medical Board of California,  
24 or had an Accusation filed against him by the Medical Board for  
25 "gross negligence", which resulted in the deaths of two (2)  
26 patients. Had the Defendants disclosed these material facts to  
27 her, BRIDGET SANDOVAL would not have hired and paid Defendants to  
28 have her Lap Band surgery, and subsequent adjustments, performed.

1           26. Plaintiff, SUSAN BLACKBURN, is a resident of the County  
2 of Los Angeles, and is the mother and guardian ad litem for her  
3 minor daughter, TAYLOR BLACKBURN. On or about October, 2008,  
4 SUSAN BLACKBURN responded to a 1-800-GET-THIN billboard ad and  
5 called the toll free phone number on behalf of her daughter,  
6 TAYLOR, who was only 14 years old at the time. SUSAN BLACKBURN  
7 was told to attend an appointment at the Defendants' Palmdale  
8 facility, where she met with Dr. Salimitari. At this first  
9 office visit, SUSAN BLACKBURN was told that her daughter's BMI  
10 score was only 32. SUSAN BLACKBURN was then instructed to take a  
11 telephone call with "Dr. JULIAN OMIDI", who was at the  
12 Defendants' Beverly Hills office. "Dr. JULIAN OMIDI" asked SUSAN  
13 BLACKBURN to tell him TAYLOR's highest lifetime weight, which was  
14 230 lbs. However, at that time, TAYLOR's actual weight was only  
15 184 lbs. "Dr. JULIAN OMIDI" told SUSAN BLACKBURN during that  
16 telephone conversation in Defendants' Palmdale office that he was  
17 going to use 230 pounds on the paperwork in order to get SUSAN  
18 BLACKBURN's insurance to pay for TAYLOR's Lap Band surgery. "Dr.  
19 JULIAN OMIDI" never disclosed to SUSAN BLACKBURN that the Medical  
20 Board of California had previously issued a decision revoking his  
21 medical license on October 26, 2007. In its decision, the  
22 Medical Board found that he was arrested and convicted for  
23 burglary of exam papers while attending UC-Irvine, had  
24 fraudulently misrepresented the educational institutions he  
25 attended on his medical license application, and had demonstrated  
26 a "penchant for dishonesty, to bend his position and shade his  
27 statements to suit his needs, without consistent regard for the  
28 truth." Had the Defendants disclosed these material facts to

1 her, BRIDGET SANDOVAL would not have hired and paid Defendants to  
2 have her Lap Band surgery, and subsequent adjustments, performed.

3 27. On November 5, 2008, the day of surgery, SUSAN and  
4 TAYLOR BLACKBURN met again with Dr. Salimitari at Defendants'  
5 Beverly Hills facility. However, when he entered the room and  
6 saw how young TAYLOR was, he refused to perform the operation.  
7 SUSAN BLACKBURN then observed JULIAN OMIDI call Dr. Salimitari  
8 into his office, where a discussion took place for several hours.  
9 Upon leaving JULIAN OMIDI's office, Dr. Salimitari told SUSAN  
10 BLACKBURN that he would perform the Lap Band surgery on TAYLOR.

11 28. On the day of surgery, TAYLOR weighed 184 lbs and her  
12 height was 5 ft. 4-1/2 inches and her BMI was 32. However, on  
13 the day of surgery, Defendants falsely listed TAYLOR's height as  
14 only 5 ft. 2 inches and her BMI as "40" on her Operative Notes.

15 29. TAYLOR BLACKBURN suffered chronic nausea and diarrhea  
16 following her Lap Band surgery and eventually had the Lap Band  
17 removed in September, 2010.

18 30. The "Conditions for Approval" of the Lap Band device  
19 issued by the U.S. Food and Drug Administration ("FDA") in 2001  
20 conditioned the use of the Lap Band device on patients 18 years  
21 or older. In fact, the FDA expressly stated that the use of the  
22 Lap Band device in a patient below the age of 18 years was  
23 "contraindicated". Plaintiffs are informed and believe, and  
24 thereon allege that the Lap Band surgery performed on TAYLOR  
25 BLACKBURN, at the age of 14 years, violated the conditions of  
26 approval issued by the FDA for the Lap Band device, and was an  
27 "off-label" use of that restricted device by Defendants.

28 ///

1           31. SUSAN BLACKBURN was forced to incur the cost of  
2 removing TAYLOR's Lap Band in September, 2010, thereby suffering  
3 an injury in fact and lost money or property as a direct result  
4 of the Defendants' actions.

5           32. JESSICA BLEAMAN is a resident of the County of Los  
6 Angeles, who responded to a 1-800-GET-THIN ad for a Lap Band  
7 surgery. JESSICA BLEAMAN had her Lap Band surgery performed on  
8 October 15, 2009 by Dr. Salimitari of TOP SURGEONS, INC., at Tri-  
9 City Regional Medial Center in Hawaiian Gardens, California.  
10 Following her surgery, JESSICA BLEAMAN experienced chronic nausea  
11 and vomiting for three (3) months. She had adjustments performed  
12 by Dr. George Tashjian on or about October 21, 2009. Unbeknownst  
13 to Plaintiff, Dr. Tashjian was then under investigation by the  
14 Medical Board of California for "gross negligence" in the  
15 treatment of three (3) patients (2 of whom died), which later  
16 resulted in a formal Accusation being filed against him on  
17 November 3, 2009 by the California Attorney General to revoke his  
18 medical license. On November 8, 2010, Dr. Tasjian stipulated to  
19 a disciplinary order with the Medical Board of California  
20 concerning the medical treatment of two of the three patients  
21 which were the subject of the aforementioned Accusation,  
22 resulting in a public reprimand against him.

23           33. On or about July 27, 2009, JESSICA BLEAMAN underwent a  
24 gastro endoscopy at Defendants' Beverly Hills Surgery Center,  
25 located at 9001 Wilshire Blvd, Suite 106, Beverly Hills,  
26 California Unbeknownst to her, the United States Department of  
27 Health & Human Services ("DHHS") had notified Defendants on June  
28 4, 2009, that their Beverly Hills surgical facility had lost its

1 accreditation to participate in the Medicare Program based upon  
2 an inspection performed by the California Department of Health  
3 Services ("CDHS") on May 7, 2009. During that inspection, the  
4 CDHS found 29 separate violations, which the DHHS characterized  
5 were "such a character as to pose immediate jeopardy to the  
6 health and safety of your patients." Additionally, the DHHS  
7 noted that the Defendants' Beverly Hills accreditation had been  
8 revoked on April 27, 2009 by the American Association for  
9 Accreditation of Ambulatory Surgery Facilities. Operating  
10 without the proper accreditation is a violation of *Health &*  
11 *Safety Code* § 1248.1.

12 34. On or about October 19, 2010, Dr. Daniel Shin, an  
13 anesthesiologist, administered anesthesia to Plaintiff during a  
14 second surgery performed by Dr. Atul Madan at Defendants' Beverly  
15 Hills facility. Unbeknownst to Plaintiff at the time, Dr. Shin  
16 had stipulated to a disciplinary order on June 24, 2009, which  
17 provided that Dr. Shin undergo a psychiatric evaluation, a  
18 medical evaluation and anger management classes arising from his  
19 2007 conviction for assault with a deadly weapon (a meat cleaver)  
20 upon a process server. Had this fact, and Dr. Tashjian's  
21 disciplinary record, been disclosed to Plaintiff, JESSICA BLEAMAN  
22 would never have contracted with the Defendants for her Lap Band  
23 surgery and adjustments.

24 35. Plaintiff, JESSICA BLEAMAN, was billed \$78,000  
25 following her Lap Band surgery, despite that fact that Defendants  
26 received approximately \$32,000 from her insurance, which was  
27 double the price advertised by Defendants. JESSICA BLEAMAN was  
28 forced to pay BEVERLY HILLS SURGERY CENTER, LLC, the sum of

1 \$5,000 above and beyond what her insurance paid to Defendants  
2 after Defendants sent the matter to collections, thereby  
3 suffering an injury in fact and lost money or property as a  
4 direct result of the Defendants' actions.

5 36. Plaintiff, CONNIE M. HERRERA, is currently a resident  
6 of the State of Hawaii, who responded to a 1-800-GET-THIN ad and  
7 attended one of the Defendants' seminars on or about March 31,  
8 2010. At this seminar, Dr. Atul Madan weighed Plaintiff and told  
9 her that her BMI score was not high enough to qualify for her  
10 insurance to pay for the Lap Band surgery. Dr. Madan told  
11 Plaintiff to write a hand-written note to her insurance company,  
12 saying she had battled weight loss all of her life and that she  
13 had unsuccessfully tried all of the commercial diet programs  
14 (i.e., Jenny Craig). Dr. Madan instructed CONNIE M. HERRERA  
15 exactly what to write in her note to her insurance company.  
16 Plaintiff told Dr. Madan that this information was not true, but  
17 he told Plaintiff this was the only way to get her insurance  
18 company to pay for her surgery. CONNIE M. HERRERA noticed that  
19 there were approximately 6-7 other persons standing at the  
20 counter writing the exact same note to their insurance companies  
21 at the direction of Dr. Madan. Although this was advertised as a  
22 "free" seminar, Plaintiff's insurance company was billed \$500.00  
23 by TOP SURGEONS for this seminar.

24 37. On April 2, 2010, CONNIE HERRERA had a pre-operative  
25 endoscopy performed at Defendants' San Bernardino facility.  
26 Plaintiff's insurance company was charged \$4,000.00 for a  
27 "recovery room", however, there was no recovery room and  
28 ///

1 Plaintiff was placed in a wheel chair following surgery and never  
2 was moved to a post-operative recovery room.

3 38. On or about May 5, 2010, Plaintiff had a pre-operative  
4 "sleep study" performed at the direction of Defendants. However,  
5 upon arriving at the location, Plaintiff found it to be a small  
6 office located in a strip mall with only one room, occupied by a  
7 receptionist and many other "patients". Plaintiff's insurance  
8 company was billed by BEVERLY HILLS SURGERY CENTER the sum of  
9 \$25,395.00 for this fake "sleep study".

10 39. Defendant, BEVERLY HILLS SURGERY CENTER, LLC, billed  
11 Plaintiff's insurance company for "adjustments" to her Lap Band  
12 on July 2, July 7, and August 4, 2010. However, when Plaintiff  
13 consulted an independent bariatric surgeon in Hawaii afterwards,  
14 Plaintiff was told that there was no fluid whatsoever in her Lap  
15 Band, meaning that the "adjustments" were also faked. Plaintiff's  
16 insurance company was billed by Defendants \$1,350.00 for these  
17 faked "adjustments".

18 40. CONNIE M. HERRERA had her Lap Band surgery on June 29,  
19 2010. Dr. Scott Bickman was her anesthesiologist. However,  
20 unbeknownst to her, the Medical Board of California had filed an  
21 Accusation against Dr. Bickman on March 23, 2004 for "gross  
22 negligence" and "incompetence" arising from the death of a  
23 patient. On or about August 18, 2006, the Medical Board issued  
24 its decision, adopting a stipulated settlement and disciplinary  
25 order against Dr. Bickman, revoking his medical license, but  
26 staying that revocation contingent upon Dr. Bickman completing  
27 the terms of probation for 35 months. On October 30, 2009, the  
28 Medical Board issued an order restoring Dr. Bickman's medical

1 license to a "clear status" based upon his completion of  
2 probation. At no time did Defendants ever inform CONNIE M.  
3 HERRERA that her anesthesiologist would be Dr. Bickman, or that  
4 Dr. Bickman had been disciplined by the Medical Board for "gross  
5 negligence" and "incompetence" arising from the death of one of  
6 his patients. Had Defendants informed Plaintiff of this material  
7 fact, Plaintiff would not have consented to be treated by Dr.  
8 Bickman.

9 41. On or about September 1, 2010, CONNIE M. HERRERA was  
10 billed by Defendants the sum of \$211,729.50, despite the fact  
11 that Defendants had told her that her insurance would cover 100%  
12 of the cost of all procedures they performed pre and post-  
13 operatively in connection with her Lap Band surgery. On or about  
14 June 29, 2010, CONNIE HERRERA signed a "Office Financial Policy  
15 and Service Contract", which provided, in relevant part: "I  
16 understand that PROVIDER(s) and/or FACILITY(s) providing services  
17 or their designated associates are assignees ("PROVIDERS") will  
18 bill my insurance as a courtesy, but my patient portion (co-pays  
19 for office visits, deductible, and uncovered procedures) is my  
20 responsibility and due at the time of service. I understand you  
21 require a credit card to be kept on file... If my insurance  
22 fails to pay my claim in a timely manner, I authorize PROVIDERS  
23 to initiate a complaint to the State Insurance Commissioner for  
24 any reason on my behalf." Further, on or about June 29, 2010,  
25 Plaintiff also signed a "Assignment of Rights and Benefits"  
26 agreement, which provided, in pertinent part: "If my insurance  
27 company does not pay my claim within thirty days I agree to remit  
28 payment to PROVIDERS within one week of receiving the bill....

1 I understand that I am ultimately responsible for payment of any  
2 medical services received and not insurance company." On or  
3 about December 23, 2010, Plaintiff paid to WeightLossCenters of  
4 Beverly Hills the sum of \$7,498.00. Additionally, on or about  
5 September 20, 2010, Plaintiff paid to WeightLossCenters of  
6 Beverly Hills the sum of \$2,000. Additionally, Plaintiff paid  
7 over \$6,000 in COBRA for services rendered by the Defendants.  
8 Both of these checks were deposited into the account of "Surgery  
9 Center Management, LLC". Plaintiff thereby suffered an injury in  
10 fact and lost money or property as a direct result of the  
11 Defendants' actions.

12 42. Plaintiff, APRIL D. MORENO, is a resident of the County  
13 of San Diego, who responded to a 1-800-GET-THIN ad. Plaintiff  
14 was put in touch with a "Lap Band Consultant" named Patricia Ruiz  
15 at the Defendants' Beverly Hills office for 1 800 GET THIN, dba  
16 "Weight Loss Centers" and had all of her contacts regarding  
17 scheduling her pre-operative tests and Lap Band surgery, approval  
18 of insurance benefits and billing performed at the Defendants'  
19 Beverly Hills office location. Further, Plaintiff, APRIL D.  
20 MORENO, was mailed correspondence, forms and instructions from  
21 the Defendants' Beverly Hills office location, which identified  
22 the company that Plaintiff was dealing with as "1 800 GET THIN"  
23 and "Weight Loss Centers", both of which listed on the paperwork  
24 given to the Plaintiff the phone number for the Defendants'  
25 Beverly Hills office. Accordingly, all the Plaintiffs' contacts  
26 were with the Defendants' Beverly Hills office located in Los  
27 Angeles County. Plaintiff was told to show up on December 4,  
28 2010 for a pre-operative endoscopy at Defendants's San Diego

1 facility, San Diego Ambulatory Surgical Center, 3434 Midway  
2 Drive, San Diego, California Dr. Daniel Shin was the Plaintiff's  
3 anesthesiologist for her endoscopy. Unbeknownst to Plaintiff at  
4 the time, Dr. Shin had stipulated to a disciplinary order on June  
5 24, 2009, which provided that Dr. Shin undergo a psychiatric  
6 evaluation, a medical evaluation and anger management classes  
7 arising from his 2007 conviction for assault with a deadly weapon  
8 (a meat cleaver) upon a process server. Had this fact been  
9 disclosed to Plaintiff, APRIL D. MORENO would never have  
10 contracted with the Defendants for her Lap Band surgery and pre-  
11 operative endoscopy.

12 43. During her endoscopy procedure, APRIL M. MORENO was  
13 forced to wait nearly nine (9) hours in Defendant's office,  
14 without food or water. During her recovery following her  
15 endoscopy, Plaintiff was discharged despite her unstable  
16 condition, and spent approximately eight (8) hours in the  
17 emergency room at a hospital, where she was diagnosed with acute  
18 gastritis, thereby suffering an injury in fact and lost money or  
19 property as a direct result of the Defendants' actions.

20 44. Despite advertising the initial seminar as "free",  
21 Defendants billed Plaintiff's insurance company \$600.00 for the  
22 seminar held on November 30, 2010, and billed her insurance  
23 approximately \$20,000 to perform a pre-operative ultra-sound and  
24 endoscopy. Plaintiff's non-covered share of these charges was  
25 \$6,385.47, which Defendants have attempted to collect directly  
26 from Plaintiff on numerous occasions causing her an injury in  
27 fact.

28 ///

1           45. Plaintiff, SUSAN LEVERETT, is a resident of the County  
2 of Los Angeles, who responded to a 1-800-GET-THIN ad and had a  
3 Lap Band surgery performed by Dr. Atul Madan on or about May 21,  
4 2010. Despite being advertised as a free seminar, Plaintiff was  
5 billed for attending the initial seminar. Following surgery,  
6 Plaintiff has experienced pain and nausea, requiring a second  
7 surgery with another surgeon to repair an improperly placed Lap  
8 Band. Plaintiff has repeatedly asked for copies of her medical  
9 records from Defendant, but Dr. Madan has refused to release them  
10 to her in violation of *Health & Safety Code* § 123100, *et. seq.* On  
11 or about August 1, 2010, Defendants LAP BAND SPECIALIST, LLC,  
12 billed the sum of \$3,750.00 to Plaintiff's insurance company,  
13 which only agreed to pay \$61.34 of this sum. Plaintiff was  
14 informed that it was her responsibility to pay the balance of  
15 \$3,688.66 of this amount and further advised by her insurance  
16 company that the sum of \$250.00 of her medical deductible had  
17 been applied to this claim. On or about August 11, 2010,  
18 Defendant LAP BAND SPECIALIST, LLC billed the sum of \$3,650.00 to  
19 Plaintiff's insurance carrier, who only agreed to pay \$33.78 of  
20 this amount. Plaintiff was advised that it was her  
21 responsibility to pay the balance of \$3,616.22 of this bill. On  
22 or about August 11, 2010, Defendant LAP BAND SPECIALIST, LLC  
23 billed to Plaintiff's insurance carrier the sum of \$3,660.00, of  
24 which Plaintiff's insurer only agreed to pay the sum of \$33.78.  
25 The Plaintiff was advised that it was her responsibility to pay  
26 the balance of \$3,616.22. On or about August 16, 2010, Defendant  
27 SKIN CANCER AND RECONSTRUCTIVE SURGERY SPECIALISTS OF BEVERLY  
28 HILLS billed to the Plaintiff's insurance company the sum of

1 \$10,450.00, of which Plaintiff's insurer only agreed to pay  
2 \$924.08. The Plaintiff was informed that it was her  
3 responsibility to pay the balance of \$9,525.92. On or about  
4 August 16, 2010, Defendant SKIN CANCER AND RECONSTRUCTIVE SURGERY  
5 SPECIALISTS OF BEVERLY HILLS billed to Plaintiff's insurance  
6 company the sum of \$33,650.00, of which Plaintiff's insurer only  
7 agreed to pay the sum of \$6,338.77. Plaintiff was informed that  
8 it was her responsibility to pay the balance of \$27,311.23. On  
9 or about April 15, 2011, Defendants BEVERLY HILLS SURGERY CENTER  
10 billed to the Plaintiff's insurance company the sum of \$3,800.00,  
11 of which her insurer only agreed to pay the sum of \$417.14.  
12 Plaintiff was informed that it was her responsibility to pay the  
13 balance of this bill. SUSAN LEVERETT has paid the deductible of  
14 \$250.00 as a results of the Defendants billing and has been  
15 informed that it is her responsibility to pay the uncovered  
16 portion of the above-referenced bills from the Defendants and  
17 therefore has suffered an injury in fact and lost money and  
18 property as a direct results of the Defendants' actions.

19 46. Plaintiff, JOHN FAITRO, is an indiviidual and resident  
20 of the State of California, and surviving spouse of decedent,  
21 LAURA LEE FAITRO. As the personal representative of decedent  
22 LAURA LEE FAITRO, JOHN FAITRO is entitled to bring this action on  
23 behalf of LAURA LEE FAITRO pursuant to C.C.P. § 337.30, and in  
24 his own name having suffered an injury-in-fact and having lost  
25 money paid to Defendants as a result of the Defendants' unfair  
26 competition and false advertising as alleged herein. JOHN FAITRO  
27 is blind and classified as a "disabled person" pursuant to Civil  
28 Code § 1761. LAURA LEE FAITRO (hereinafter the "FAITROS") saw

1 and heard Defendants' advertisements on TV and as a result, hired  
2 and paid Defendants, and each of them, to perform a Lap-Band  
3 surgical procedure on LAURA LEE FAITRO. LAURA LEE FAITRO paid  
4 co-payments to the Defendants in the amounts of \$25, \$35 and \$25  
5 on July 1, 2010, May 12, 2010 and March 19, 2010, respectively.  
6 Further, on or about June 26, 2010, Defendants billed to  
7 Plaintiff's insurance company the sum of \$3,200.00, of which  
8 \$150.00 was applied to Plaintiff's deductible. On or about June  
9 15, 2010, SKIN CANCER AND RECONSTRUCTIVE SURGERY SPECIALISTS OF  
10 BEVERLY HILLS billed to Plaintiff's insurance company the sum of  
11 \$1,025.00, of which \$267.00 was applied to the Plaintiff's  
12 deductible. On or about May 24, 2010, SKIN CANCER AND  
13 RECONSTRUCTIVE SURGERY SPECIALISTS OF BEVERLY HILLS billed to the  
14 Plaintiff's insurance company the sum of \$500.00, of which  
15 \$283.00 was applied to the Plaintiff's deductible. The Plaintiff  
16 is informed and believes, and thereon alleges, that the total  
17 amount of \$700.00 was applied to her deductible as a result of  
18 the various bills received by the Defendants. Further, on or  
19 about July 1, 2010, LAURA LEE FAITRO was informed by her insurer  
20 that BEVERLY HILLS SURGERY CENTER had billed a total of  
21 \$12,220.00 for surgery performed on May 20, 2010, but that her  
22 insurer would only pay the sum of \$3,929.18, despite the  
23 Defendants' representations to the Plaintiff prior to surgery  
24 that the maximum out-of-pocket expense for which she would be  
25 responsible was \$700.00.

26 47. Plaintiffs are informed and believe that on or about  
27 July 21, 2010, Ishan Najib Shamaan, M.D., assisted by AU LEE,  
28 M.D., performed a Lap-Band laparoscopic surgery on LAURA LEE

1 FAITRO at TOP SURGEON'S ambulatory surgical suite located at 7320  
2 Woodlake Avenue, Suite 320, West Hills, California. During her  
3 surgery, Dr. Shamaan lacerated the liver of LAURA LEE FAITRO in  
4 three (3) places, and had to call another TOP SURGEON doctor,  
5 Kevork George Tashjian, M.D., to assist him to complete LAURA LEE  
6 FAITRO's Lap-Band surgical procedure. During her post-operative  
7 recovery at TOP SURGEON'S facility, LAURA LEE FAITRO complained  
8 of severe abdominal pain, but nonetheless was discharged hours  
9 later and told to come back to a follow up visit at TOP SURGEONS  
10 seven days later. During the 48 hours following her surgery,  
11 LAURA LEE FAITRO continued to experience several abdominal pain  
12 and nausea. On July 23, 2010, LAURA LEE FAITRO attended a  
13 follow-up appointment with TOP SURGEONS in Oxnard, California.  
14 At that time, the representative of TOP SURGEONS told the FAITROS  
15 that something was wrong and that she needed to drive to Monrovia  
16 to see her surgeon, Dr. Tashjian. However, LAURA LEE FAITRO's  
17 pain was so intense she instead drove to Simi Valley Hospital,  
18 where she was admitted into the emergency room where she was  
19 treated, her condition declined and finally she died on July 26,  
20 2010.

21 48. The autopsy report revealed that there were 3.2 liters  
22 of bloody fluid in her abdominal cavity. Her liver showed three  
23 (3) lacerations. The cause of death was determined to be multi-  
24 organ failure and infarction due to shock, secondary to bleeding  
25 and sepsis in the abdominal cavity.

26 49. Plaintiffs, ELVIA and ARTURO RENTERIA (hereinafter the  
27 "RENTERIAS") are residents of the State of California and the  
28 surviving parents of Decedent, ANA RENTERIA. As the heirs and

1 personal representative of decedent, ANA RENTERIA, ELVIA and  
2 ARTURO RENTERIA are entitled to bring this action on behalf of  
3 ANA RENTERIA pursuant to C.C.P. § 337.30, who having suffered an  
4 injury-in-fact and having lost money as a result of the  
5 Defendants' unfair competition and false advertising as alleged  
6 herein. On or about February 4, 2010, Decedent, ANA RENTERIA,  
7 contracted with Defendants, and each of them, for laparoscopic  
8 consultation and surgical services based upon seeing the  
9 Defendants' advertisements. On or about February 4, 2010,  
10 Decedent, ANA RENTERIA had a Lap-Band surgery performed by Dr.  
11 Atul K. Madan, a surgeon employed by TOP SURGEONS at the  
12 Defendants' Beverly Hills Surgical Center, located at 9001  
13 Wilshire Blvd, Suite 106, Beverly Hills, California, which is the  
14 same facility formerly known as ALMONT AMBULATORY SURGERY CENTER,  
15 INC. that lost its Medicare and Medicaid certification in July  
16 20, 2009. This address is also the business address for TOP  
17 SURGEONS.

18 50. On or about July 28, 2009, TOP SURGEONS, INC. billed to  
19 ANA RENTERIA the sum of \$540.54, which Defendant claimed was non-  
20 covered charges from Defendants ALMONT AMBULATORY SURGERY CENTER  
21 and ARIEL MALAMUD, M.D. On or about February 4, 2010, Defendant  
22 TOP SURGEONS, INC. billed ANA RENTERIA the sum of \$3,200.00 for a  
23 balance due for a hiatal hernia surgery performed by Dr. Atul  
24 Madan on January 26, 2010. This bill also reflected that ANA  
25 RENTERIA paid \$100.00 in cash on February 4, 2010, to TOP  
26 SURGEONS, INC. Further, ALMONT AMBULATORY SURGERY CENTER billed  
27 Plaintiff's insurance company on May 23, 2009, the sum of  
28 \$12,220.00 for her Lap Band surgery, of which \$265.00 was applied

1 to the Plaintiff's deductible. On or about February 4, 2010,  
2 Defendant BEVERLY HILLS SURGICAL CENTER billed to the Plaintiff's  
3 insurance company the sum of \$2,440.00, of which \$683.70 was  
4 applied to the Plaintiff's deductible. Accordingly, Plaintiff  
5 ANA RENTERIA suffered an injury in fact and lost money or  
6 property as a result of the Defendants' wrongful conduct.

7 51. Following her Lap-Band surgery, Decedent, ANA RENTERIA,  
8 was admitted to Lakewood Regional Medical Center on February 9,  
9 2010 with abdominal pain and shortness of breath. In the  
10 hospital, ANA RENTERIA was diagnosed with sepsis, pneumonia,  
11 diabetic ketoacidosis, and renal failure. An abdominal CT showed  
12 fluid between the Lap-Band and stomach. ANA RENTERIA went into  
13 cardiopulmonary arrest seven times in a three hour period, was  
14 diagnosed with anoxic brain injury and died on Valentine's Day,  
15 February 14, 2010. Upon autopsy, the coroner found "cavity  
16 contains 600 ml of purulent milky red-tan fluid". The Coroner  
17 listed the immediate cause of death as "Peritonitis due to a leak  
18 from gastro esophageal junction" as a consequence of laparoscopic  
19 gastric band placement and hiatal hernia repair." The Coroner  
20 further stated, "Decedent died due to complications of  
21 laparoscopic gastric band placement and hernia repair." LAKEWOOD  
22 REGIONAL MEDICAL CENTER charged the total of \$246,485.92 for  
23 services provided to decedent, ANA RENTERIA, as a result of her  
24 hospitalization from February 9, 2010 until the date of her death  
25 on February 14, 2010. Of that amount, Plaintiff paid \$2,100.00.

26 52. Plaintiff, SAMANTHA FINKS SHOFFNER, is a resident of  
27 the County of Orange who responded to a 1 800 GET THIN ad.  
28 Plaintiff was put in touch with a "Lap Band Consultant" named

1 Jake Graham at "WeightLossCenters" at the Defendants' Beverly  
2 Hills office address. The Plaintiff was provided with forms by  
3 her "Lap Band Consultant" and advised that the "maximum estimate  
4 out-of-pocket cost is \$2,400.00." Thereafter, Plaintiff was  
5 scheduled for a "sleep study" on February 19, 2011, and  
6 preoperative testing on January 15, 2011, at the Defendant's  
7 facility located at 7320 Woodlake Avenue, Suite 320, West Hills,  
8 California, known as "Valley Surgical Center." Plaintiff was  
9 provided with forms indicating that the name of the medical  
10 facility was "NEW LIFE SURGERY CENTER, 9001 Wilshire Boulevard,  
11 Suite 201, Beverly Hills, California 90211." Further, on or  
12 about January 8, 2011, the Plaintiff signed an "Assignment of  
13 Rights and Benefits", which stated, in relevant part: "If my  
14 insurance company does not pay my claim within thirty days after  
15 it is received, I agree to remit payment to NEW LIFE SURGERY  
16 CENTER within two weeks of receiving the bill.... I am ultimately  
17 responsible for payment of mu account." On or about January 8,  
18 2011, Defendants billed the Plaintiff's insurance company the sum  
19 of \$600.00 for an initial office visit, of which \$178.86 was  
20 applied to the Plaintiff's deductible. On or about January 15,  
21 2011, Plaintiff underwent and endoscopy procedure at the  
22 Defendant's Valley Surgical Center and her insurance was billed  
23 the sum of \$4,590.00, of which \$346.09 was applied to the  
24 Plaintiff's deductible. On or about the same date, the  
25 Plaintiff's insurance company was billed the sum of \$4,550.00 for  
26 anesthesia in connection with the endoscopy procedure, of which  
27 \$237.41 was applied to the Plaintiff's deductible. As a result,  
28 Plaintiff has suffered an injury in fact and lost money or

1 property as a result of the Defendant's wrongful conduct.  
2 Following the endoscopy, Plaintiff was advised by her insurance  
3 company, Blue Cross Blue Shield of Texas, that the Defendants had  
4 submitted bills indicating a diagnosis of "diaphragmatic hernia",  
5 which is a birth defect in which there is an abnormal opening in  
6 the diaphragm, causing severe breathing difficulty upon birth.  
7 Because Plaintiff has never suffered any of the symptoms  
8 associated with this birth defect, she believed this diagnosis to  
9 be fraudulent in an effort to obtain additional insurance  
10 benefits from her insurance company. As a result the Plaintiff  
11 cancelled her Lap band surgery with the Defendants. In  
12 retaliation for cancelling her scheduled Lap Band surgery, NEW  
13 LIFE SURGERY CENTER has repeatedly telephoned the Plaintiff  
14 informing her that she is responsible for the sum of \$4,900.00 as  
15 a result of a "cancellation fee".

16 53. Plaintiffs are informed and believe, and thereon  
17 allege, that each of the representative Plaintiffs herein had  
18 their insurance deductibles consumed by exorbitant and  
19 inconsistent billing by the Defendants, and many paid co-pays  
20 and/or charges which were not covered by their health insurance  
21 as alleged herein. Plaintiffs are further informed and believe  
22 and thereon allege, that the Defendants charged different rates  
23 for the same procedure, supplies and facilities to different  
24 Plaintiffs and their insurers. Plaintiffs further are informed  
25 and believe, and thereon allege, that each Plaintiff was required  
26 to sign an "Office Financial and Service Contract", which  
27 obligated the Plaintiffs to pay any portion of the medical bills  
28 invoiced by the Defendants which were not covered by their

1 insurance company. This contractual obligation constituted an  
2 imminent invasion or injury to a legally protected interest and  
3 thus the Plaintiffs, and each of them, have suffered an injury in  
4 fact. Further, Plaintiffs allege that had they not been deceived  
5 by the Defendants as alleged herein, none of the Plaintiffs would  
6 have purchased medical services advertised and billed by the  
7 Defendants.

8 54. Plaintiffs are informed and believe, and thereon allege  
9 that Defendants, JULIAN OMIDI, MICHAEL OMIDI, CINDY OMIDI, TOP  
10 SURGEONS, INC., TOP SURGEONS, LLC, 1 800 GET THIN, LLC, ALMONT  
11 AMBULATORY SURGERY CENTER, INC., BEVERLY HILLS SURGERY CENTER,  
12 LLC, LAP BAND SPECIALISTS, LLC; SKIN CANCER AND RECONSTRUCTIVE  
13 SURGERY SPECIALISTS OF BEVERLY HILLS; SKIN CANCER AND  
14 RECONSTRUCTIVE SURGERY SPECIALISTS OF VALENCIA; SURGERY CENTER  
15 MANAGEMENT, LLC; NEW LIFE SURGERY CENTER, LLC; VALLEY SURGICAL  
16 CENTER. and DOES 1-100 are the successor, predecessor, affiliate  
17 and/or alter ego of each other and each of these named Defendants  
18 are and have been controlled by the same officers, directors,  
19 principals and shareholders, and that each said Defendant owned,  
20 occupied, managed and controlled ambulatory surgical hospital  
21 facilities in the County of Los Angeles, and elsewhere in  
22 Southern California, and held out to the public at large,  
23 including Plaintiffs and the Class members herein, that they were  
24 properly equipped, fully accredited, competently staffed and  
25 qualified with prudent personnel, and operating in compliance  
26 with the standard of due care maintained in other properly  
27 equipped, efficiently operated and administered accredited  
28 skilled ambulatory surgical hospitals, clinics and medical groups

1 in the community. Plaintiffs are informed and believe, and  
2 thereon allege that Defendants, and each of them, administrated,  
3 governed, controlled, managed and directed all of the necessary  
4 functions, activities and operations of said facilities,  
5 including its medical, surgical and nursing care.

6 55. Plaintiffs are informed and believe, and thereon  
7 allege, that the above-named Defendants are the alter-egos of  
8 each other. Plaintiffs are informed and believe, and thereon  
9 allege, that each named Defendant is, and was, at all times  
10 mentioned herein, acting as the agent and conduit of the other  
11 Defendants. Plaintiffs are informed and believe, and thereon  
12 allege, that there is a unity of interest between and among the  
13 Defendants. Plaintiffs are further informed and believe and  
14 thereon alleges that in light of the unity of interest and  
15 control, if each named Defendant is not held liable for the debts  
16 and obligations of the other Defendants, a fraud and injustice  
17 would result upon the Plaintiffs and members of the Class.  
18 Accordingly, Plaintiffs seek judgment against each of the above-  
19 named Defendants. Plaintiffs are informed and believe, and  
20 thereon allege, that JULIAN OMIDI, MICHAEL OMIDI and CINDI OMIDI  
21 have created and operated each of the corporate and limited  
22 liability entities named as Defendants herein as part of a scheme  
23 to defraud consumers and conceal the identities of the true  
24 owners of these companies because of the OMIDI brothers'  
25 disciplinary history with the California Medical Board. Further,  
26 Plaintiffs allege that the OMIDIS have used the corporate and  
27 limited liability entities interchangeably on letterhead,  
28 business cards, contracts and invoices provided to the Plaintiffs

1 creating a unity of interest between the OMIDIS and their  
2 corporate and limited liability entities such that if the OMIDIS  
3 are not held liable for the debts and obligations of their  
4 corporate and limited liability entities, a fraud and injustice  
5 would result upon the Plaintiffs and members of the class.

6 56. Plaintiffs are informed and believe and thereon allege,  
7 that at all times herein mentioned, each of the Defendants was  
8 the agent, servant and/or employee of each of the remaining  
9 Defendants, and at all times herein mentioned was acting within  
10 the course and scope of said agency, employment and/or conspiracy  
11 with the full knowledge, consent, permission and ratification of  
12 each of their co-Defendants.

13 57. The true names and capacities, whether individual,  
14 corporate, associate or otherwise, of DOES 1 through 100,  
15 inclusive, are unknown to Plaintiffs, who therefore sue these  
16 Defendants by such fictitious names. Plaintiffs are informed and  
17 believe, and thereon allege that each of the Defendants  
18 designated as a DOE is a resident of, or business entity doing  
19 business in, the State of California and is responsible in some  
20 manner for the events and happenings herein referred to, and  
21 proximately caused injury and damages to Plaintiffs as  
22 hereinafter alleged.

23 58. Plaintiffs are informed and believe, and thereon allege  
24 that at all times herein mentioned, each of the Defendants sued  
25 herein as DOE was the agent, alter-ego, servant and employee of  
26 each of the remaining Defendants herein and was acting within the  
27 scope and purpose of such agency, service and employment.

28 ///

1 III.

2 JURISDICTION AND VENUE

3 59. This Court has subject matter jurisdiction over this  
4 class action pursuant to *Business & Professions Code* §§ 17204 and  
5 17535 and *Civil Code* § 1781. This Court has personal  
6 jurisdiction over the parties because Plaintiffs submit to the  
7 jurisdiction of the Court and Defendants systematically and  
8 continuously conduct business in the County of Los Angeles, State  
9 of California.

10 60. Venue is proper in this Court pursuant to *Business &*  
11 *Professions Code* § 17204 and 17535, and *Civil Code* § 1781,  
12 because Defendants regularly conduct business in the County of  
13 Los Angeles, State of California, including marketing,  
14 advertising, and billing services directed to California  
15 residents. Further, at all times mentioned in the Complaint,  
16 Defendants made misrepresentations and omissions of material  
17 facts to residents of the County of Los Angeles and State of  
18 California.

19 61. Federal court subject matter jurisdiction over this  
20 representative action does not exist and did not exist at the  
21 time these actions were filed. Plaintiffs assert no federal  
22 question and/or violations of federal law.

23 IV.

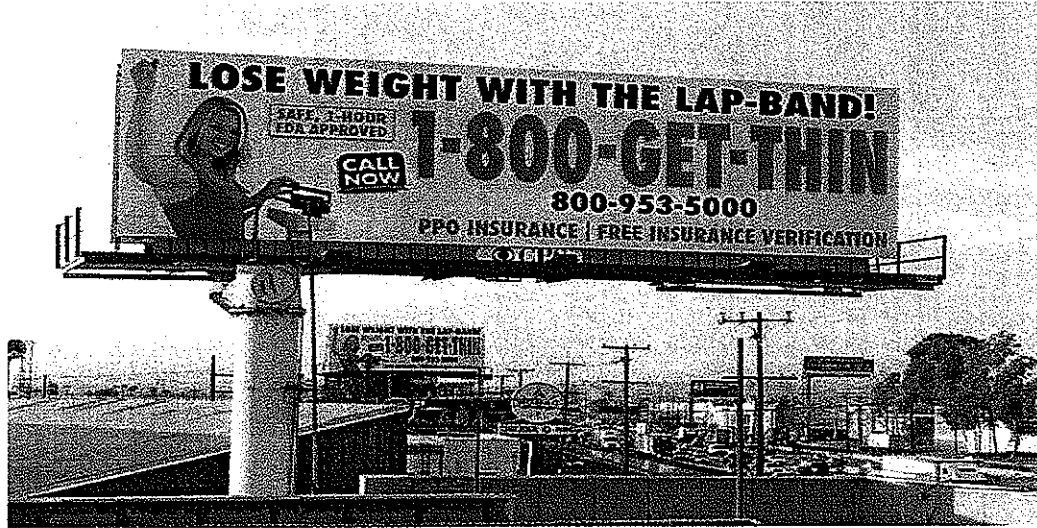
24 FACTUAL ALLEGATIONS

25 A. Defendants' Saturation Advertising Campaign

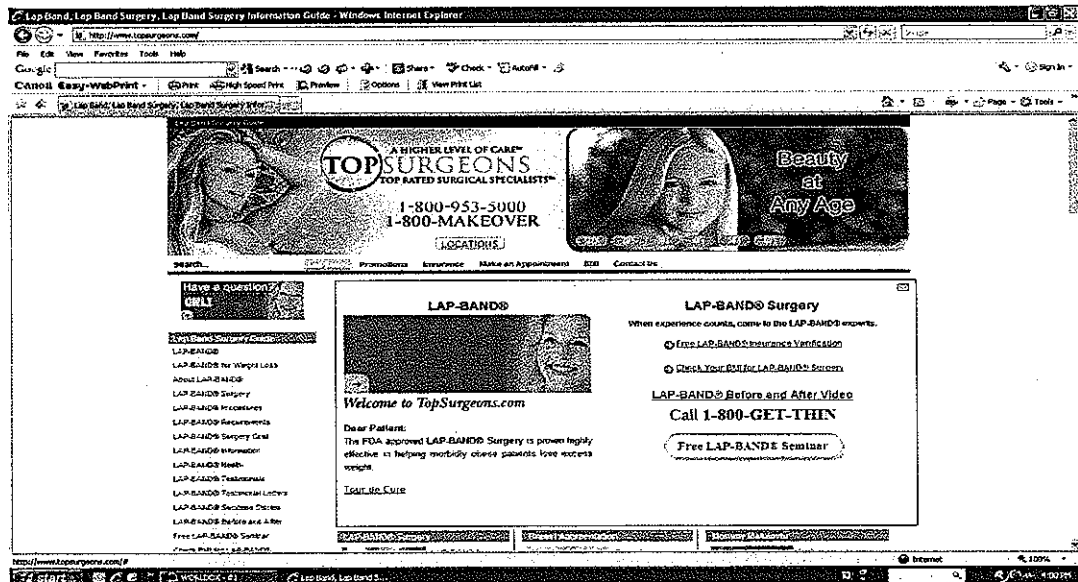
26 62. At issue in this case is the Defendants' ubiquitous  
27 advertising for Lap-Band surgery, which appears on hundreds of  
28 freeway billboards in Southern California, as well as on

1 television and radio ads, bus advertising, newspapers, direct  
2 mail and on the Internet.

3 63. An example of the Defendants' freeway billboard ad is  
4 illustrated below:

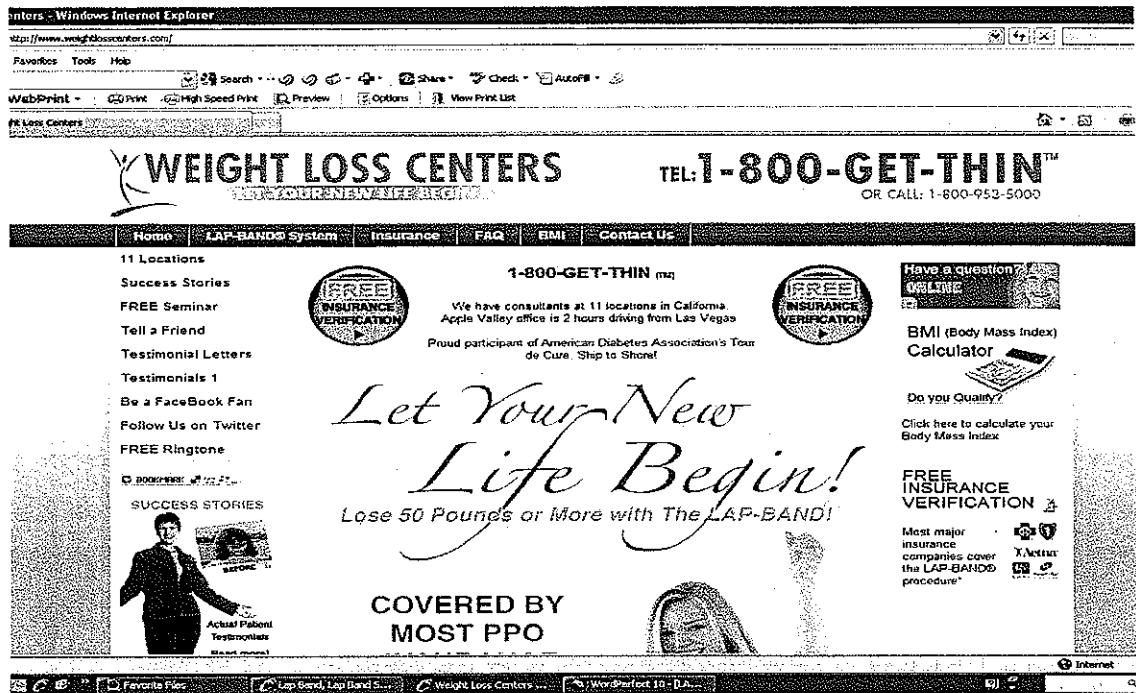


15 64. An example of Defendants' advertisement on  
16 [www.topsurgeons.com](http://www.topsurgeons.com) is as follows:



///

1 65. An example of the Defendants' advertisement on  
2 [www.weightlosscenters.com](http://www.weightlosscenters.com) is as follows:



15 66. Plaintiffs are informed and believe, and thereon  
16 allege, that the phone numbers listed on the website  
17 advertisements for [www.topsurgeons.com](http://www.topsurgeons.com) and  
18 [www.weightlosscenters.com](http://www.weightlosscenters.com) are identical and that the  
19 [www.weightlosscenters.com](http://www.weightlosscenters.com) website is hosted by TOP SURGEONS.

20 67. Defendants' advertising on billboards, television, bus  
21 advertisements, newspapers, direct mail and the Internet as "1-  
22 800-GET-THIN" fails to identify any person or legal entity  
23 sponsoring these advertisements, and fails to identify any  
24 physical business address of the sponsor. Further, consumers who  
25 call this toll free phone number or view the  
26 [www.weightlosscenters.com](http://www.weightlosscenters.com) website are prevented from being able to  
27 research the identity, medical license history, and disciplinary  
28 action, if any, of the surgeons affiliated with the Defendants so

1 that they can make an informed decision whether to have their  
2 LAP-BAND surgery performed by the Defendants.

3 68. At all relevant times herein, Defendants' website at  
4 www.topsurgeons.com and Defendants' Facebook page claimed they  
5 offered "A Higher Level Of Care" and "Top Rated Surgical  
6 Specialists". Defendants' websites at www.weightlosscenters.com  
7 and www.800get-thin.com ands Facebook page boast a "Nationally  
8 Recognized, expert and caring team", and "Specially trained,  
9 hand-picked board certified surgeons". However, Plaintiffs are  
10 informed and believe, and thereon allege, that according to the  
11 Medical Board of California, Drs. MICHAEL OMIDI and Tashjian have  
12 no board certifications, and the principals of the Defendants  
13 have either had their medical licenses revoked, are currently on  
14 probation, or are in the process of having their medical licenses  
15 revoked by the State of California.

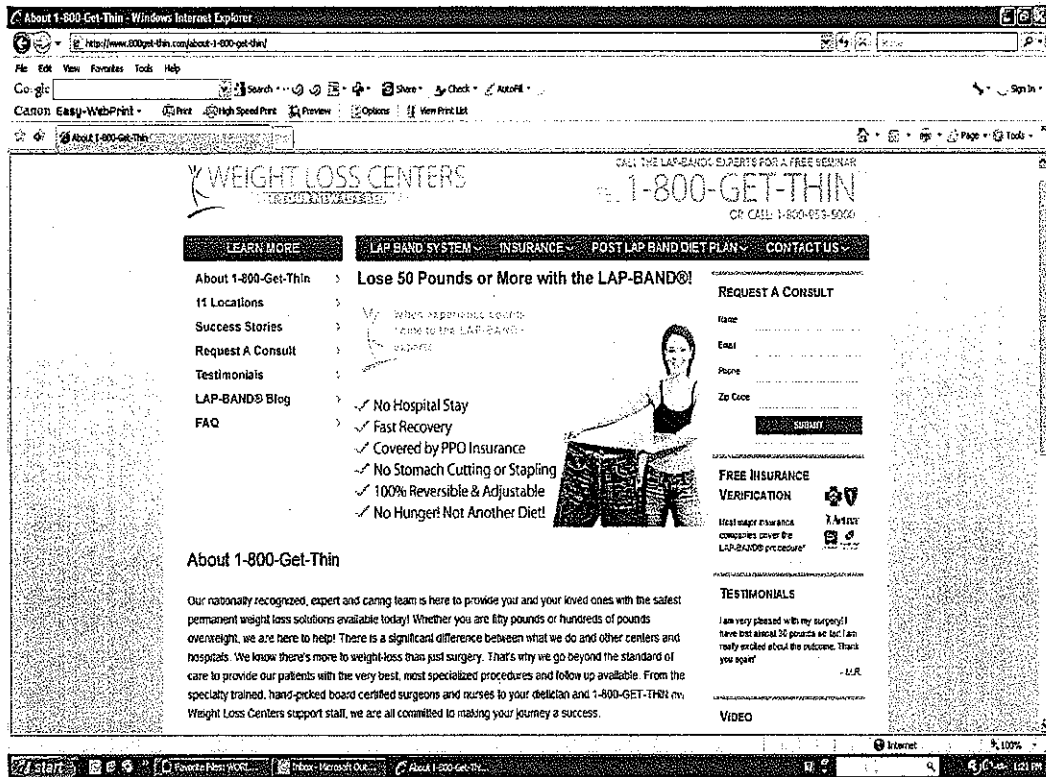
16 B. Defendants Know That They are Not "Top Rated Surgical  
17 Specialists" or "Specially trained, hand-picked board  
18 certified surgeons" and That They Do Not "Go Beyond the  
19 Standard of Care":

20 69. Defendants' website below represents that they are "top  
21 rated surgical specialists" and "specially trained, hand-picked  
22 board certified surgeons" and that they go "go beyond the  
23 standard of care". These representations go far beyond mere  
24 "puffery", but actually represent the quality, certification,  
25 skill and expertise offered by Defendants' surgeons. However,  
26 these representations are false and deceptive and highly likely

27 ///

28 ///

1 to deceive consumers.



16 (1) **KAMBIZ BENIAMIA OMIDI, aka "JULIAN OMIDI":**

17 70. Plaintiffs are informed and believe, and thereon allege  
18 that KAMBIZ BENIAMIA OMIDI, aka "JULIAN OMIDI" (hereinafter  
19 referred to as "JULIAN OMIDI") is the president of Defendant, TOP  
20 SURGEONS, INC., the principal of Defendant, TOP SURGEONS, LLC,  
21 the President of Defendant, ALMONT AMBULATORY SURGERY CENTER, and  
22 the Chief Executive Officer of Defendant, BEVERLY HILLS SURGERY  
23 CENTER, LLC Plaintiffs are further informed and believe, and  
24 thereon allege, that the State of California revoked JULIAN  
25 OMIDI's physician and surgeon's license on June 19, 2009, for  
26 dishonesty, unprofessional conduct, failing to disclose criminal  
27 convictions and a "penchant for dishonesty, to bend his position  
28 and shade his statements to suit his needs, without consistent

1 regard for the truth." Despite the fact that his physician and  
2 surgeon's certificate has been revoked by the Medical Board of  
3 California, Plaintiffs are informed and believe, and thereon  
4 allege, that JULIAN OMIDI owns and manages Defendants, TOP  
5 SURGEONS, ALMONT AMBULATORY SURGERY CENTER and BEVERLY HILLS  
6 SURGERY CENTER, all of which routinely perform Lap Band  
7 surgeries.

8 (2) MICHAEL OMIDI:

9 71. Plaintiffs are informed and believe, and thereon  
10 allege, that MICHAEL OMIDI, M.D. is the Chief of Staff and  
11 Director of Surgery of Defendants, TOP SURGEONS, ALMONT and  
12 BEVERLY HILLS SURGERY CENTER, LLC, and that the State of  
13 California revoked MICHAEL OMIDI's physician and surgeon's  
14 license effective October 3, 2008 for aiding and abetting the  
15 unlicensed practice of medicine and for gross negligence in the  
16 treatment of three (3) patients, but his license revocation has  
17 been stayed for a period of three (3) years of probation.  
18 According to the Medical Board of California, MICHAEL OMIDI holds  
19 no board certification.

20 (3) KEVORK GEORGE TASHJIAN, M.D.:

21 72. Plaintiffs are informed and believe, and thereon  
22 allege, that Kevork George Tashjian, Jr., M.D. is a physician and  
23 surgeon employed by Defendants, and each of them, to perform Lap-  
24 Band surgeries on the Defendants' clients. On or about November  
25 3, 2009, the State of California filed an Accusation against Dr.  
26 Tashjian for gross negligence arising from surgeries performed on  
27 three patients, two of whom died as a result of his gross  
28 negligence. On November 4, 2010, the State of California filed a

1 First Amended Accusation against Dr. Tashjian for "repeated  
2 negligent acts" involving Tashjian's surgery on and care of two  
3 patients, one of whom died as a result of complications from  
4 surgery. The First Amended Accusation accuses Dr. Tashjian of  
5 acts which "constitute departures from the standard of practice".  
6 The First Amended Complaint seeks revoking or suspending Dr.  
7 Tashjian's physician's and surgeon's certificate.

8 73. On or about November 8, 2010, Dr. Tashjian consented to  
9 a Stipulated Settlement and Disciplinary Order with the Medical  
10 Board, admitting that he had committed "repeated negligent acts"  
11 in the treatment of two patients as alleged in the aforementioned  
12 Accusation.

13 74. On or about February 16, 2011, the Medical Board issued  
14 a Citation to Dr. Tashjian to "failure to maintain adequate and  
15 accurate medical records".

16 75. Plaintiffs are informed and believe, and thereon allege  
17 that the Defendants, and each of them, have failed and continue  
18 to fail to disclose these material facts to their clients and  
19 patients on whom Dr. Tashjian continues to perform Lap-Band  
20 surgeries.

21 C. Defendants' Advertising Fails to Provide the Relevant  
22 Warnings, Precautions, Side Effects, and Contraindications  
23 Related to the Procedure:

24 76. Defendants have advertised that their Lap-Band  
25 surgeries are "Safe" and a "1-Hour" procedure. Plaintiffs are  
26 informed and believe that the published morbidity rates for Lap  
27 Band surgeries are between 0.02% - 0.05% (or between 2 and 5  
28 deaths per 10,000 patients). However, Plaintiffs are aware of at

1 least four (4) patients of the Defendants who died within days of  
2 undergoing Lap Band surgeries performed by the Defendants. These  
3 deaths include LAURA LEE FAITRO, ANA RENTERIA, WILLIE BROOKS,  
4 JR., and TAMARA WALTER. Even assuming Defendants have performed  
5 5,000 Lap Band surgeries (which is highly doubtful), these four  
6 (4) deaths alone exceed the published mortality rates.

7 77. Additionally, the Lap-Band surgery requires several  
8 hours of post-operative recovery in an out-patient setting and is  
9 not a simple "1 hour" process as advertised by Defendants.

10 78. Further, the U.S. Food and Drug Administration's  
11 approval of the Lap-Band Adjustable Gastric Banding System in  
12 June of 2001 imposed "conditions of approval" upon the sale,  
13 advertising and distribution of the Lap-Band device. These  
14 conditions included, "[A]ll advertisements and other descriptive  
15 printed material issued by the applicant or distributor with  
16 respect to the device shall include a brief statement of the  
17 intended uses of the device and relevant warnings, precautions,  
18 side effects and contraindications."

19 79. According to the FDA's "Summary of Safety and  
20 Effectiveness Data" for the Lap Band Adjustable Gastric Banding  
21 System, in the U.S. clinical studies of 292 patients, 82% of the  
22 patients reported having one or more adverse events during the  
23 post-operative period, including nausea/vomiting (42%),  
24 gastroesophageal reflux (32%), band slippage/pouch dilation  
25 (24%), abdominal pain (18%), stoma obstruction (14%), dysphagia  
26 (8%), alopecia (7%), esophageal dilation (7%), diarrhea (6%),  
27 port site pain (6%), constipation (5%), port displacement (5%),  
28 infection (5%), and hernia (5%).

1           80. On December 7, 2010, the Health Officer for Los Angeles  
2 County requested the FDA to investigate the Defendants'  
3 advertising of their Lap-Band surgeries because the advertising  
4 "inadequately informs consumers of potential risks" and "fail to  
5 provide the relevant warnings, precautions, side effects, and  
6 contraindications related to the procedure."

7           81. Plaintiffs allege that the Defendants' advertising that  
8 the Lap Band surgeries they perform are "safe" and a "1-hour"  
9 procedure are deceptive and fail to disclose the relevant  
10 warnings, precautions, side effects and contraindications  
11 required by the FDA and the serious risk of these adverse health  
12 affects to consumers.

13 **D. Defendants Advertising Creates a False Sense of Urgency To**  
14 **Have the Lap-Band Surgery Performed Immediately:**

15           82. Defendants' advertisement below urges consumers "CALL  
16 NOW! SCHEDULE YOUR APPOINTMENT TODAY WHILE YOUR PPO INSURANCE  
17 STILL COVERS THE LAP-BAND!"

18 ///

19 ///

20 ///

21

22

23

24

25

26

27

28

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

**DIETS FAIL**  
**THE LAP-BAND WORKS!**



**SARA LOST  
80 POUNDS**



**FREE**  
LAP-BAND GUIDE &  
SUCCESS STORY DVD

- ✓ FDA APPROVED
- ✓ NO STOMACH CUTTING OR STAPLING
- ✓ ONE HOUR OUTPATIENT PROCEDURE
- ✓ 100% REVERSIBLE AND ADJUSTABLE

**FREE PPO HEALTH INSURANCE VERIFICATION**

**GET THE LAP-BAND!**

**CALL NOW! 1-800-GET-THIN**

Hours: 6:30AM - 10PM • (1-800-953-5000)

BEVERLY HILLS | WEST HILLS | VALENCIA | PALMDALE | APPLE VALLEY | BAKERSFIELD  
COVINA | SANTA ANA | LONG BEACH | SAN BERNARDINO | SAN DIEGO

**DIETS FAIL**  
**THE LAP-BAND WORKS!**



**CALL NOW!**

**SCHEDULE YOUR APPOINTMENT  
TODAY WHILE YOUR PPO INSURANCE  
STILL COVERS THE LAP-BAND!**

**FREE PPO HEALTH INSURANCE VERIFICATION**

**GET THE LAP-BAND!**

**CALL NOW! 1-800-GET-THIN**

Hours: 6:30AM - 10PM • (1-800-953-5000)

BEVERLY HILLS | WEST HILLS | VALENCIA | PALMDALE | APPLE VALLEY | BAKERSFIELD  
COVINA | SANTA ANA | LONG BEACH | SAN BERNARDINO | SAN DIEGO

83. Defendants' use of a fake newspaper headline stating, "Insurance Reform May Stop PPO Insurance Coverage for the Lap-Band" conveys a sense of urgency that if the consumer doesn't rush and make an appointment, he or she may lose the chance to get the Lap-Band surgery paid for by their PPO insurance coverage. In fact, according to a newspaper article published by the Orange County Register on November 3, 2010, Dr. Peter LePort, medical director of the Center for Obesity at Orange Coast

1 Memorial Hospital in Fountain Valley, California called the  
2 Defendants' radio ad referencing the "urgency" cited above as  
3 "definitely misleading". The article quoted Dr. LePort as  
4 saying, "To me, that's just a scare tactic saying, 'Go ahead and  
5 do this before you lose your chance of ever having it done and  
6 you've gotta be fat for the rest of your life.'"

7 **E. Defendants' Advertising Deceptively Shields their True**  
8 **Identity from Consumers:**

9 84. Plaintiffs are informed and believe that the  
10 advertisements by Defendants, and each of them, conceal the true  
11 identities of the principals, owners and actual surgeons employed  
12 by the Defendants. As a result, consumers are effectively  
13 prevented from researching the track record of their surgeons  
14 prior to their scheduled surgeries, and are prevented from  
15 learning of the disciplinary history of the owners and principals  
16 behind "1-800-GET-THIN" and "WEIGHT LOSS CENTERS" by the Medical  
17 Board of California.

18 **F. Defendants' Advertising Violates California's False**  
19 **Advertising Law for Health Care Professionals:**

20 85. *Business & Professions Code* § 651 provides that it is  
21 unlawful for any doctor to disseminate, or cause to be  
22 disseminated any form of public communication containing false,  
23 fraudulent, misleading, or deceptive statement, claim, or image  
24 for the purpose of or likely to induce, directly or indirectly,  
25 the rendering of professional services. A "public communication"  
26 is defined by that statute to include "mail, television, radio,  
27 newspaper, book, list or directory, Internet, or other electronic  
28 communication."

1           86. Plaintiffs are informed and believe, and thereon  
2 allege, that Defendants' advertising on freeway billboards, bus  
3 placards, Internet, Facebook, mail, television, radio, and  
4 newspapers has and does contain false, fraudulent, misleading  
5 and/or deceptive statements and images, which are likely to  
6 deceive consumers, including, but not specifically limited to:

7           a) Use of photographs of models without clearly stating  
8 in a prominent location in easily readable type the fact that the  
9 photograph or image is that of a model;

10           b) Use of "before" and "after" photographs of patients,  
11 without specifying in a prominent location in easily readable  
12 type size what procedures were performed on that patient;

13           c) Use of "before" and "after" photographs of patients  
14 without including comparable views that are not distorted by  
15 favorable poses, lighting, or other features of presentation, and  
16 which fail to include a statement that the same "before" and  
17 "after" results may not occur for all patients;

18           d) Makes a claim either of professional superiority or  
19 of performing services in a superior manner, which claims cannot  
20 be substantiated with objective scientific evidence, including,  
21 but not specifically limited to, "Top Surgeons, who performs more  
22 successful Lap Band surgeries than anyone in California"; "Top  
23 Surgeons has proven to be the leader in Lap Band surgery"; "Diets  
24 Fail - The Lap Band Works!"; the Lap Band surgery is "Safe";

25           e) Makes claims that are intended or are likely to  
26 create false or unjustified expectations of favorable results,  
27 including, but not specifically limited to "Lose 50 pounds or  
28 more with the Lap Band!".

1 **G. Defendants Have Engaged in Insurance Fraud:**

2 87. *Business & Professions Code* § 810 prohibits doctors  
3 from knowingly presenting, or causing to be presented, any false  
4 or fraudulent claim for payment by insurance. *Penal Code* § 550  
5 also makes this practice a crime.

6 88. Plaintiffs are informed and believe, and thereon  
7 allege, that Defendants have, and continue to cause false and  
8 fraudulent bills to be presented to Plaintiffs' insurance  
9 companies for procedures, supplies and treatment which the  
10 Defendants did not provide to the Plaintiffs, for the express  
11 purpose of inducing the Plaintiffs' insurance companies to pay  
12 those fraudulent bills for the Defendants' financial gain. These  
13 fraudulent billing practices include, but are not specifically  
14 limited to, billing for a "recovery room" when in fact Plaintiffs  
15 were transferred from the operating room directly into a  
16 wheelchair and not into a hospital bed in a post-operative  
17 recovery room; billing for "sleep study", when in fact no  
18 legitimate sleep study was ever performed; billing for multiple  
19 surgeons to perform the same Lap Band procedure; billing for the  
20 "free" seminar; billing for "liver biopsy", when no legitimate  
21 medical reason existed for such procedure; billing for "hiatal  
22 hernia repair", when no legitimate medical reason existed for  
23 such procedure; billing excessive amounts for all procedures,  
24 which in some cases ranges into the hundreds of thousands of  
25 dollars, when the Lap Band surgery was advertised to cost between  
26 \$12,500 and \$15,000.

27 89. Further, Plaintiffs are informed and believe that  
28 Defendants charged the Plaintiffs and their insurers

1 substantially difference charges for the same procedures,  
2 supplies and facilities.

3 **H. Defendants Have Operated their ASC's at Times Without Proper**  
4 **Accreditation in Violation of California Law:**

5 90. *Health & Safety Code* § 1248.1 governs the operation an  
6 ambulatory surgical center ("ASC") in California. This statute  
7 provides that "no association, corporation, firm, partnership, or  
8 person shall operate, manage, conduct or maintain an outpatient  
9 setting in this state, unless the setting is one of the  
10 following:"

11 a) An outpatient setting that is certified to  
12 participate in the Medicare program; or

13 b) An outpatient setting accredited by an accreditation  
14 agency approved by the Division of Licensing of the Medical Board  
15 of California.

16 91. Plaintiffs are informed and believe, and thereon allege  
17 that ALMONT AMBULATORY SURGERY CENTER, INC., lost its  
18 certification to participate in the Medicare program on June 4,  
19 2009. Further, ALMONT's accreditation from the AAAHC was revoked  
20 in February, 2009. Subsequently, ALMONT received accreditation  
21 from the American Association for Accreditation of Ambulatory  
22 Surgery Facilities, Inc. ("AAAASF"), but that accreditation was  
23 revoked on April 27, 2009. Plaintiffs are informed and believe  
24 that thereafter, ALMONT, or its successor BEVERLY HILLS SURGERY  
25 CENTER applied, but was turned down, by the Institute for Medical  
26 Quality. Thereafter, ALMONT, or its successors, BEVERLY HILLS  
27 SURGERY CENTER and/or NEW LIFE SURGERY CENTER obtained  
28 preliminary accreditation from the Joint Commission on or about

1 July 8, 2009, but did not obtain full accreditation until October  
2 7, 2009.

3 92. Plaintiffs are informed and believe, and thereon allege  
4 that Defendants operated ALMONT, BEVERLY HILLS SURGERY CENTER  
5 and/or NEW LIFE SURGERY CENTER during times when they had no  
6 accreditation or certification in violation of *Health & Safety*  
7 *Code* § 1248.1.

8 93. Further, Plaintiffs are informed and believe, and  
9 thereon allege that Defendants have not, and do not meet the  
10 standard for accreditation required in *Health & Safety Code* §  
11 1248.15, including, but not specifically limited to, lack of a  
12 written transfer agreement with local acute care hospitals,  
13 permitting surgery by surgeons who do not have admitting  
14 privileges at local acute care hospitals, and failure to maintain  
15 clinical records of patients.

16 **I. Defendants Have Violated California's Anti-Kickback Law:**

17 94. *Business & Professions Code* § 650 provides "the offer,  
18 delivery, receipt or acceptance by an person licensed under this  
19 Division...of any rebate, refund, commission, preference,  
20 patronage dividend, discount, or other consideration, whether in  
21 the form of money or otherwise, as compensation or inducement for  
22 referring patients, clients, or customers to any person,  
23 irrespective of any membership, proprietary interest, or co-  
24 ownership in or with any person to whom these patients, clients  
25 or customers are referred is unlawful."

26 95. Plaintiffs are informed and believe, and thereon  
27 allege, that Defendants, JULIAN and MICHAEL OMIDI, have received  
28 and continue to receive compensation from 1 800 GET THIN, LLC,

1 ALMONT AMBULATORY SURGERY CENTER, INC., ANTELOPE VALLEY SURGICAL  
2 CENTER, INC., BEVERLY HILLS SURGERY CENTER, LLC, CALIFORNIA  
3 HOSPITAL MANAGEMENT & COLLECTIONS, INC., LAP BAND SPECIALISTS,  
4 LLC, SKIN CANCER AND RECONSTRUCTIVE SURGERY SPECIALISTS OF  
5 BEVERLY HILLS, SKIN CANCER AND RECONSTRUCTIVE SURGERY SPECIALISTS  
6 OF VALENCIA, SURGERY CENTER MANAGEMENT, LLC, NEW LIFE SURGERY  
7 CENTER, LLC and WOODLAKE AMBULATORY SURGERY CENTER, INC., and  
8 DOES 1-50, for surgical procedures performed at these facilities.  
9 Further, Plaintiffs are informed and believe, and thereon allege,  
10 that the call center employees of 1-800-GET-THIN are paid  
11 commission or other incentive-based compensation for every  
12 patient they refer to one of the Defendants' alter-ego ASC's for  
13 a surgical procedure.

14 J. Defendants Have Violated the Patients' Access to Their  
15 Medical Records:

16 96. *Health & Safety Code § 123100, et seq.*, requires the  
17 Defendants to allow any patient to inspect their medical records  
18 within five (5) days after receipt of a written request.  
19 Further, Defendants are obligated to provide copies of any  
20 patients medical records withing fifteen (15) days after receipt  
21 of a written request, and may charge a fee for making such  
22 copies.

23 97. Plaintiffs are informed and believe, and thereon  
24 allege, that Defendants have violated this statute repeatedly by  
25 refusing to allow Plaintiffs to inspect and copy their medical  
26 records, despite written demand to do so.

27 ///

28 ///

1 V.

2 CLASS ALLEGATIONS

3 98. Plaintiffs bring this action on behalf of themselves  
4 and all persons in California who paid money to Defendants for  
5 Lap-Band surgical consultations and surgeries within three (3)  
6 years prior to filing this Complaint.

7 99. Plaintiffs are informed and believe that the group of  
8 similarly situated persons in this class action numbers in the  
9 thousands. According to 1-800-GET-THIN, its marketing campaign  
10 has generated "over 100,000 telephonic inquiries (to the phone  
11 number of "1-800-GET-THIN) resulting in over 10,000 scheduled  
12 surgeries" in the last fifteen months. Because Defendants  
13 operate in eleven (11) different cities between Beverly Hills to  
14 San Diego in multiple counties, individual joinder of each  
15 plaintiff is impractical. The disposition of claims of the class  
16 members in a single action will provide substantial benefits to  
17 all parties and to the Court.

18 100. The claims of the Plaintiffs are typical of the claims  
19 of the class, because they, like all members, contracted with the  
20 Defendants for Lap-Band consultations and surgeries and have  
21 suffered an injury-in-fact and have lost money as a result of the  
22 Defendants' unfair competition and false advertising and  
23 violations of the CLRA. Plaintiffs and the class members would  
24 not have paid money to the Defendants or had their Lap Band  
25 surgeries or pre-operative procedures performed by the Defendants  
26 or their agents had they known the truth about the Defendants as  
27 herein alleged.

28 ///

1           101. The factual and legal bases of Defendants' misconduct  
2 are common to all class members and represent a common pattern of  
3 deception and misconduct resulting in injury to the Plaintiffs  
4 and all class members they represent.

5           102. There are many questions of law and fact common to the  
6 representative Plaintiffs and the members, and those questions  
7 substantially predominate over any questions that may affect  
8 individual members. Common questions include, but are not  
9 limited to, the following:

10           a) Whether the Defendants have violated *Health & Safety*  
11 *Code* §§ 123100, 1248.1, & 1248.15; *Business & Professions Code* §§  
12 650, 651 & 810, and *Penal Code* § 550.

13           b) Whether Defendants' active concealment of and/or  
14 failure to disclose that not all of their surgeons are "board  
15 certified" and/or have disciplinary action taken against their  
16 medical licenses is likely to mislead or deceive members of the  
17 public;

18           c) Whether Defendants' active concealment of and/or  
19 failure to disclose the true risks, including morbidity rates,  
20 warnings, precautions, side effects and contraindications of the  
21 Lap-Band surgical procedures performed by the Defendants'  
22 surgeons is likely to mislead or deceive members of the public;

23           d) Whether Defendants' representation that the Lap-Band  
24 surgery is a "one hour outpatient procedure" is likely to mislead  
25 or deceive members of the public;

26           e) Whether Defendants' representation that  
27 "TopSurgeons, who performs more successful Lap-Band surgeries  
28

1 than anyone else in California" is likely to mislead or deceive  
2 members of the public;

3 f) Whether Defendants' representation that "TopSurgeons  
4 has proven to be the leader in Lap-Band surgery, offering  
5 positive results and proven doctors" is likely to mislead or  
6 deceive members of the public;

7 g) Whether Defendants' active concealment of and/or  
8 failure to disclose that on or about June 4, 2009, the United  
9 States Department of Health & Human Services notified Defendants  
10 that ALMONT AMBULATORY SURGERY CENTER, operated by the Defendants  
11 to perform their surgeries no longer met the requirements for  
12 participation as an Ambulatory Surgical Center in the Medicare  
13 program based upon ALMONT's loss of accreditation by the American  
14 Association for Accreditation of Ambulatory Surgery Facilities,  
15 Inc., and for health and safety violations contained in a 22-page  
16 report following an onsite inspection performed by the California  
17 Department of Health Services, which concluded that the  
18 deficiencies "are of such a character as to pose immediate  
19 jeopardy to the health and safety of your patients" is likely to  
20 mislead or deceive members of the public;

21 h) Whether Defendants' active concealment and/or  
22 failure to disclose material facts alleged in sub-paragraphs (a)  
23 through (f) above is unlawful within the meaning of the UCL, in  
24 that it constitutes a violation of § 17500;

25 I) Whether Defendants engaged in false advertising  
26 within the meaning of the UCL and § 17500 when they represented,  
27 through their advertising as alleged herein, that their Lap-Band  
28 surgical services possessed characteristics, approval,