

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Kristin Escalante

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

THE DENTISTS INSURANCE COMPANY,

Plaintiff,

vs.

PLANNED PARENTHOOD, ET AL. and
DOES 1 through 20, inclusive,

Defendants.

Case No.: **19STCV39804**

Assigned for all Purposed to Dept.:
The Honorable Judge
[Unlimited Civil Case]

COMPLAINT FOR DAMAGES

- 1) NEGLIGENCE**
- 2) PRIVATE NUISANCE**
- 3) TRESPASS**

Trial Date: None Set.

COMES NOW PLAINTIFF, THE DENTISTS INSURANCE COMPANY ("Plaintiff"), who is informed and believes and thereon alleges against the Defendants and Does 1-20, Inclusive, and each of them as follows:

1. Plaintiff is a corporation organized and existing under the laws of the State of California, and is and was at all times mentioned herein, qualified to do business in the State of California.

2. The true names and capacities, whether individual, corporate, associate, or otherwise and the true involvement of Defendants sued herein as DOES 1-20, Inclusive, are unknown to Plaintiffs who therefore sue said Defendants by such fictitious names and will amend this Complaint to show the true names, capacities, and involved when ascertained.

1 Plaintiff is informed and believes, and thereon alleges, that each of the Defendants designated
2 as DOE is legally responsible in some manner for the events and happenings herein referred to
3 and thereby legally caused the damages herein alleged.

4 3. Plaintiffs are informed and believe that at all relevant times alleged herein each
5 of the Defendants were the employer, employee, agent, servant, principal, partner, joint
6 venture, franchisee, aider and abettor, alter ego, co-conspiracy or subsidiary of the other
7 Defendants and at all relevant times alleged herein acted within the course and scope of such
8 employment, agency, service, partnership, joint venture, franchise, enterprise, alter ego
9 relationship and/or conspiracy and with the knowledge and approval of said co-Defendants.

10 4. Jurisdiction of this court is proper because all acts and omissions alleged herein
11 took place at 916 W. Burbank Blvd., Burbank, California 91506, in the County of Los Angeles,
12 State of California.

13 5. At all times herein mentioned Defendant, PLANNED PARENTHOOD, is and
14 was an entity in the city of Los Angeles, county of Los Angeles, State of California doing
15 business at 916 W. Burbank Blvd., Suite M, Burbank, California 91506.

16 6. At all times herein mentioned, Plaintiffs are informed and believe and allege
17 thereon that Defendants were leasing property located at 916 W. Burbank Blvd., Suite M,
18 Burbank, California 91506 (“the subject property”) that was private property under the control
19 of Defendants; and Plaintiff’s insured, Plaintiff’s insured, Zarabian and Kohanof Foothill DDS
20 Dental Corp. were tenants in the same building but located in Suite A, underneath Defendants
21 suite.

22 7. Plaintiffs are informed and believe and allege thereon that, on October 9, 2018,
23 Plaintiff’s insured witnessed water flowing onto its premises from a toilet that had overflowed
24 that was owned and controlled by Defendants, PLANNED PARENTHOOD, and DOES 1-20,
25 inclusive. The subject toilet that overflowed is maintained/leased/owned and/or controlled by
26 Defendants, PLANNED PARENTHOOD, and DOES 1-20.

27 8. The subject toilet that overflowed is maintained/leased/owned and/or controlled
28 by Defendants, PLANNED PARENTHOOD, and DOES 1-20, is directly above the Plaintiff’s

1 insured's suite, and on or about October 9, 2018 water from the toilet was flooding through the
2 ceiling of the Plaintiff's insured's suite, because Plaintiff's insured's suite sits beneath the
3 Defendant's suite. Plaintiff is informed and thereon alleges the subject toilet that overflowed
4 and causing flooding into Plaintiff's insured's suite which suffered extensive damage as a result
5 of this flooding.

6 9. Plaintiff's insured maintained property insurance with Plaintiff at the time of the
7 above described water loss incident. Plaintiff fulfilled its obligations pursuant to the insurance
8 agreement ("the Policy") between Plaintiff and its insured and reimbursed its insured for the
9 losses from this incident. The damages to the subject property at least total \$296,148.54, and
10 continuing, assigned to Plaintiff for collection.

11 10. Plaintiff's insured, Zarabian and Kohanof Foothill DDS Dental Corp.,
12 maintained an insurance policy with Plaintiff, covering, among other things, Plaintiff's insured,
13 Zarabian and Kohanof Foothill DDS Dental Corp.'s business personal property. Plaintiff
14 fulfilled its obligations pursuant to the insurance agreement between Plaintiff and Plaintiff's
15 insured, Zarabian and Kohanof Foothill DDS Dental Corp., and reimbursed Plaintiff's insured,
16 Zarabian and Kohanof Foothill DDS Dental Corp. for its losses arising from the above-
17 described incident. Plaintiff now seeks recovery, by way of a subrogation claim, for damages
18 sustained in reimbursing the Insured for its losses in the approximate amount of \$296,148.54
19 inclusive of Plaintiff's insured, Zarabian and Kohanof Foothill DDS Dental Corp.'s deductible;
20 plus *Stearman* damages, other costs, and pre-judgment interest from the date of loss, according
21 to proof at trial.

22 **FIRST CAUSE OF ACTION FOR NEGLIGENCE**

23 **[Against All Defendants]**

24 11. Plaintiff incorporates by reference paragraphs 1 through 10 as though fully set
25 forth herein.

26 12. Defendants, PLANNED PARENTHOOD, and DOES 1-20, inclusive, had a duty
27 to use reasonable care with respect to the toilet that overflowed in Defendants' suite on or about
28 October 9, 2018, when it failed and released water, flooding Plaintiff's insured's suite. The failure

1 of Defendants, PLANNED PARENTHOOD, and DOES 1-20, inclusive, in improperly
2 controlling the toilet, caused damage to Plaintiff's insured's property. Defendants, PLANNED
3 PARENTHOOD, and DOES 1-20, inclusive, did not take proper safety measures to reduce or
4 avoid the damage that occurred on or about October 9, 2018, to Plaintiff's insured's property.

5 13. As a result of the negligence of Defendants and each of them, Plaintiff's insured
6 sustained at least \$ \$296,148.54 in damages, with further monetary damages expected, and will
7 be according to proof at the time of trial. Plaintiff paid on behalf of its insured, thus far, the
8 amount of at least \$296,148.54, and further monetary damages are expected and will be
9 according to proof at trial. Plaintiff fulfilled its obligations pursuant to the insurance agreement
10 between Plaintiff and Plaintiff's insured, for the property damage losses. Plaintiff now seeks
11 recovery, by way of a subrogation claim, for the indemnity and other damages Plaintiff paid to or
12 on behalf of its insured in the approximate amount of \$296,148.54, and pending, plus other
13 miscellaneous damages, costs, and pre-judgment interest from the date of loss, according to proof
14 at trial.

15 **SECOND CAUSE OF ACTION –PRIVATE NUISANCE**

16 ***(Civil Code §3479; Against All Defendants)***

17 14. Plaintiff incorporates by reference paragraphs 1 through 13 as though fully set
18 forth herein.

19 15. At all times herein mentioned, Plaintiff's insured leased property at 916 W.
20 Burbank Blvd., Suite A, in Burbank, California that was damaged when the toilet controlled by
21 Defendants, PLANNED PARENTHOOD, and DOES 1-20, inclusive, failed and released water
22 and caused a flood to Plaintiff's insured's property.

23 16. Defendants' liability is predicated on California *Civil Code* §3479, which gives
24 Plaintiff a statutory basis for claims of liability against Defendants. California *Civil Code*
25 §3479 states: "Anything which is injurious to health, including, but not limited to, the illegal
26 sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the
27 free use of property, so as to interfere with the comfortable enjoyment of life or property, or
28 unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or

1 river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.”
2 By causing the subject property to flood, Defendants obstructed Plaintiff’s insured’s free use of
3 its property.

4 17. By failing to control the toilet from overflowing on or about October 9, 2018,
5 Defendants, PLANNED PARENTHOOD, and DOES 1-20, inclusive, created and/or permitted
6 a condition to exist that was an obstruction to the free use of property, which interfered with the
7 comfortable enjoyment of life and/or property, within the meaning of *California Civil Code*
8 §3479.

9 18. At all times herein mentioned, Plaintiff’s insured properly leased and occupied
10 Suite A at the subject property.

11 19. The condition of Plaintiff’s insured’s business located at 916 W. Burbank Blvd.
12 Suite A, Burbank, California after the flood interfered with Plaintiff’s insured’s use and/or
13 enjoyment of property, in that the premises was flooded and was unable to be utilized and
14 occupied, within the meaning of *California Civil Code* §3479.

15 20. Plaintiff’s insured did not consent to Defendants’ conduct.

16 21. An ordinary person would be reasonably annoyed or disturbed by the conduct of
17 Defendants because the flooding rendered the Suite uninhabitable.

18 22. Plaintiff’s insured was harmed by the flooding of its business, and Plaintiff was
19 harmed by having to reimburse the insured for the losses from the flooding incident.

20 23. Defendants’ conduct was a substantial factor in causing Plaintiff and Plaintiff’s
21 Insured’s harm; if Defendants had properly controlled the toilet in its Suite, Plaintiff’s insured’s
22 business would not have flooded, and the damage would not have occurred.

23 24. Accordingly, Plaintiff now seeks reimbursement from Defendants, PLANNED
24 PARENTHOOD, and DOES 1-20, inclusive, due to the Private Nuisance, all damages paid by
25 or assigned to Plaintiff in the amount of at least \$296,148.54, and continuing, plus costs and
26 pre-judgment interest thereon at the legal rate from the date of loss. Plaintiff now seeks
27 recovery, by way of a subrogation claim, for the indemnity and other damages Plaintiff paid to or
28 on behalf of its insured in the approximate amount of \$296,148.54, and pending, plus other

1 miscellaneous damages, costs, and pre-judgment interest from the date of loss, according to proof
2 at trial.

3 **THIRD CAUSE OF ACTION –TRESPASS**

4 **[Against All Defendants]**

5 25. Plaintiff incorporates by reference paragraphs 1 through 24 as though fully set
6 forth herein.

7 26. As a result of failing to control the toilet on or about October 9, 2018, by
8 Defendants, PLANNED PARENTHOOD, and DOES 1-20, inclusive, a flood occurred at
9 Plaintiff's insured's leased premises at Suite A, 916 W. Burbank Blvd., Burbank, California.

10 27. As a result of defendant's wrongful acts described above, water flooded
11 Plaintiff's insured's business. Plaintiff's insured leased the subject property at 916 W. Burbank
12 Blvd., Suite A, Burbank, California. Defendants, PLANNED PARENTHOOD, and DOES 1-
13 20, inclusive, although not intending to do so, negligently entered Plaintiff's insured's property
14 with excessive water, without permission for the entry and the entry by Defendants,
15 PLANNED PARENTHOOD, and DOES 1-20, inclusive exceeded their permission and was a
16 substantial factor in causing Plaintiff's insured's and Plaintiff's harm.

17 28. Plaintiff's insured did not consent to the conduct of defendants nor did they
18 consent to the flooding of their space.

19 29. Plaintiff, as a result of the Trespass, indemnified its insured for repairs,
20 restoration and/or replacement of property damaged due to this water loss. Plaintiff's damages
21 are \$296,148.54, and continuing. Plaintiff now seeks recovery, by way of a subrogation claim,
22 for the indemnity and other damages Plaintiff paid to or on behalf of its insured in the approximate
23 amount of \$296,148.54, and pending, plus other miscellaneous damages, costs, and pre-judgment
24 interest from the date of loss, according to proof at trial.

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1 PRAYER

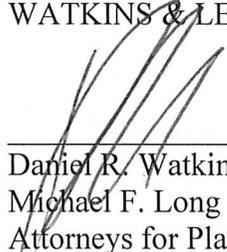
2 WHEREFORE, Plaintiff prays for judgment against Defendants, PLANNED
3 PARENTHOOD, and DOES 1-20, inclusive, and each of them, as follows:

- 4 1. For all damages legally caused by Defendants' acts or omissions; in the
5 amount of at least \$296,148.54, and continuing, according to proof at trial;
- 6 2. For costs of suit incurred herein;
- 7 3. For pre-judgment interest according to law, according to proof at trial; and
- 8 4. For such other and further relief as the Court may deem proper.
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12 DATED: November 7, 2019

WATKINS & LETOFSKY, LLP

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14 By: 

15 Daniel R. Watkins
16 Michael F. Long
17 Attorneys for Plaintiff,
18 THE DENTISTS INSURANCE
19 COMPANY
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