



1 (As to all causes of Action against All Defendants)

2 Plaintiff avers and complains against the Defendants and each  
3 of them as follows:

4 1. At all times relevant hereto, Rebecca Glover (hereafter  
5 "Plaintiff"), is an individual who was and is a resident of San  
6 Diego County, in the State of California.

7 2. At all times relevant hereto, upon information and  
8 belief and thereupon alleged, Defendant, Planned Parenthood of San  
9 Diego And Riverside Counties (hereafter "Defendants" or "PPSDRC"),  
10 is now, and at all times mentioned in this complaint was, a  
11 corporation incorporated and doing business in the City of San  
12 Diego, County of San Diego, and with its principal place of  
13 business in the County of San Diego, State of California. Upon  
14 information and belief and thereupon alleged, PPSDRC was and is  
15 owned, controlled and/or an agent of Defendant Planned Parenthood  
16 Federation Of America, Inc.

17 3. At all times relevant hereto, upon information and  
18 belief and thereupon alleged, Defendant, Planned Parenthood  
19 Federation Of America, Inc. (hereafter "Defendants" or "PPFA"), is  
20 now, and at all times mentioned in this complaint was, a national  
21 corporation incorporated in the State of New York, and doing  
22 business in the City of San Diego, County of San Diego, and with  
23 its principal place of business in City of New York, State of New  
24 York. Upon information and belief and thereupon alleged, PPFA  
25 owns, operates, controls, and/or is the agent of PPSDRC at all  
26 times relevant.  
27

28 4. PPFA and PPSDRC are hereafter collectively referred to

1 as "Defendants" or "Planned Parenthood."

2 5. At all times relevant hereto, upon information and  
3 belief and thereupon alleged, Defendant, Katharine Sheehan is an  
4 individual who was and is a resident of San Diego County, in the  
5 State of California. She is hereafter referred to collectively  
6 with the other Defendants as "Defendants" or as "Sheehan." Upon  
7 information and belief and thereupon alleged, Sheehan was and is  
8 the medical director of PPSDRC, is a general practice physician,  
9 and is a board certified physician in the areas of OB/GYN only.

10 6. Upon information and belief, and thereupon alleged,  
11 Sheehan is not board certified or qualified to treat and/or  
12 diagnose cancer patients and/or cervical cancer. Upon information  
13 and belief and thereupon alleged, Sheehan is not a board certified  
14 oncologist and/or gynecological oncologist.

15 7. Upon information and belief and thereupon alleged, DOES  
16 2 through 100 are physicians, nurses, and/or other medical staff  
17 or employee of Defendants, licensed by the State of California to  
18 practice medicine and/or nursing and/or provide medical care in  
19 California, with their principal place of practice located in San  
20 Diego County, California.

21  
22 **FACTUAL BACKGROUND: PPSDRC AND PPEFA**

23 8. Defendants and each of them offer various reproductive  
24 and/or women's health services. Planned Parenthood markets and  
25 bills itself as the "nation's leading sexual and reproductive  
26 healthcare advocate and provider." Its services include abortion  
27 procedures; emergency contraception; screening for breast,  
28 cervical and testicular cancers; and counseling.

1           9.    On its website, PPSDRC states, "Since 1963, [PPSDRC] has  
2 been providing confidential, comprehensive, high-quality medical  
3 services to the communities of San Diego and Riverside. [PPSDRC]  
4 prides itself on offering the highest standard of care possible at  
5 each of our 18 clinics."

6           10. Among other things, PPSDRC promises on its website, "We  
7 will tell you exactly what you need to do next about [an] abnormal  
8 Pap smear."

9           11. Upon information and belief and thereupon alleged,  
10 PPSDRC has been cited by the State of California Department of  
11 Health for one or more deficiencies in its care and recordkeeping  
12 within the last four years.

13           12. Upon information and belief and thereupon alleged, PPFA  
14 provides medical directives to PPRDC regarding treatment and is  
15 required to "act in harmony" with the rules, medical procedures,  
16 and directives of PPFA. See attached Exhibit A, a true and  
17 correct copy of PPSDRC bylaws, the contents of which are  
18 incorporated herein by reference.

19           13. Upon information and belief and thereupon alleged  
20 PPSDRC's bylaws state that PPSDRC must "operate its programs to  
21 reflect the unity of interest" with PPFA and must act in  
22 "conformance with the Standards of Affiliation" set forth by PPFA  
23 to include abiding by all medical standards established by the  
24 National Medical Committee of PPFA. See Exhibit A.

25           14. Upon information and belief and thereupon alleged, PPFA  
26 maintains offices in California and/or uses the same offices as  
27 PPSDRC, uses the same employees as PPSDRC to include but not  
28

1 limited to Defendant Sheehan, and employs the same counsel such as  
2 in this action.

3 15. Upon information and belief and thereupon alleged,  
4 Sheehan not only acts as the medical director of PPSDRC but is  
5 also employed by PPFA to act as a member of PPFA's National  
6 Medical Committee and an "affiliate reviewer" for PPFA.

7 16. Plaintiff is informed and believes, and on the basis of  
8 that information, alleges that at all times mentioned in this  
9 complaint, the Doe Defendants were and are the agents and  
10 employees of Defendants PPSDRC and PPFA, and in doing the things  
11 alleged in this complaint were acting within the course and scope  
12 of that agency and employment.

13 17. At the present time, Plaintiff does not know the true  
14 names and capacities of the Defendants sued herein as Does 2  
15 through 100, and therefore sues these Defendants by such  
16 fictitious names. Plaintiff will seek leave of the court to amend  
17 this complaint to aver their true names and capacities when  
18 ascertained.

19 18. Plaintiff is informed and believes, and thereon alleges,  
20 that each of the Defendants, including the fictitiously named  
21 Defendants were the duly authorized agents of each of the other  
22 Defendants, and in doing the things herein mentioned, Defendants,  
23 and each of them were acting within the course and scope of their  
24 agency and employment and that all acts, omissions, breaches,  
25 defaults, negligence, or other misconducts as alleged in this  
26 Complaint were committed with knowledge, permission and consent of  
27 the other Defendants, and in doing the things herein mentioned.  
28

1 Defendants, and each of them, were acting within the course and  
2 scope of their agency and employment and that all acts, omissions,  
3 breaches, defaults, negligence or other misconduct as alleged in  
4 this Complaint were committed with knowledge, permission, and  
5 consent of the other Defendants or were subsequently ratified by  
6 them, including fictitiously named Defendants and each of them.

7 19. Upon information and belief, each fictitiously named  
8 Defendant is in some manner responsible for the occurrences  
9 alleged in this cross-complaint and proximately caused the damages  
10 as alleged herein.

11 20. Upon information and belief, at all times herein  
12 mentioned, each Defendant acted individually and/or as the  
13 successor, agent, co-conspirator, aider, abettor, joint venturer,  
14 alter ego, third-party beneficiary, employee, officer, director or  
15 representative of the other Defendants and, in doing the things  
16 hereinafter alleged, acted within the course and scope of such  
17 agency, employment or conspiracy and with the consent, permission  
18 and authorization of each of the remaining Defendants.

19 21. Upon information and belief, all actions of each  
20 Defendant as alleged in the claims for relief stated herein were  
21 ratified and approved by every other Defendant or their officers,  
22 directors or managing agents.

23 22. Whenever and wherever reference is made in this  
24 Complaint to any act or failure to act by a Defendant or  
25 Defendants, such allegations and reference shall also be deemed to  
26 mean the acts and/or failures to act by each Defendant acting  
27 individually, jointly, and severally.  
28

1 23. All of the acts and conduct herein below described of  
2 each and every Defendant was duly authorized, ordered, and  
3 directed by the respective and collective Defendant employers, and  
4 the officers and management level employees of said employer(s).  
5 In addition thereto, said employers participated in the  
6 aforementioned acts and conduct of its said employees, agents, and  
7 representatives and each of them; and upon completion of the  
8 aforesaid acts and conduct of said employees, agents and  
9 representatives, the Defendants respectively and collectively,  
10 ratified, accepted the benefits of, condoned, lauded, acquiesced,  
11 authorized and otherwise approved of each and all of the said acts  
12 and conduct of the aforementioned corporate employees, agents and  
13 representatives.  
14

15 24. At all times herein mentioned, Defendants and each of  
16 them were the agents and employees of Defendants and, in doing the  
17 things hereinafter alleged, were acting the scope of their agency  
18 and employment with the permission and consent of Defendants and  
19 each of them.

20 Medical Background Information<sup>1</sup>

21 25. According to Quest Diagnostic Services, Cervical cancer  
22 occurs when abnormal cells on the cervix grow out of control. It  
23 is usually found at a very early stage through a Pap test.

24 26. Most cervical cancer is caused by a virus called human  
25 papillomavirus, or "HPV."  
26

27 <sup>1</sup> All information in this section, unless stated on information and belief,  
28 stems from the Quest Diagnostic Patient Library or the Planned Parenthood  
website/medical protocols produced to date. Unilab, one of the labs believed  
to have received and reviewed the pap smear results of Plaintiff now operates  
under the Quest Diagnostics name,

1           27. Upon information and belief and thereupon alleged,  
2 symptoms of cervical cancer may include: 1) bleeding from the  
3 vagina that is not normal; 2) a change in one's menstrual cycle  
4 that one cannot explain; 3) bleeding when something comes in  
5 contact with one's cervix, such as during sex; 4) pain during sex;  
6 and/or 5) vaginal discharge that is tinged with blood.

7           28. Upon information and belief and thereupon alleged,  
8 symptoms that may occur when cervical cancer has progressed  
9 include: 1) anemia because of abnormal vaginal bleeding; 2)  
10 ongoing pelvic, leg, or back pain; 3) urinary problems like  
11 incontinence because of blockage of a kidney; or 4) weight loss.

12           29. According to PPSDRC's website, the Pap smear (hereafter  
13 "Pap test") is a screening test to look for cancer of the cervix.  
14 The cervix is the knobby, shorter end of the uterus and protrudes  
15 into the upper part of the vagina.

16           30. PPSDRC's website states that during a "Pap test" exam,  
17 the clinician takes samples of the cells of the cervix. This is  
18 done with a wooden spatula (like a popsicle stick) and a special  
19 brush. There are two types of cells we want to check. Squamous  
20 cells are usually on the outer surface of the cervix (this is  
21 where the spatula is used). The second type of cells is columnar  
22 cells inside the cervical canal (which is where the brush is  
23 used).

24           31. PPSDRC's website states, "if your Pap smear shows  
25 dysplasia, this means that there are cells on the cervix that are  
26 turning abnormal and could turn to cancer if nothing is done."  
27 (emphasis added).  
28

1 32. Dysplasia means, per PPSDRC's website, in Latin,  
2 "abnormal growth."

3 33. During a Pap test, according to PPSDRC's website, the  
4 doctor scrapes a small sample of cells from the surface of the  
5 cervix to look for cell changes. If a Pap test shows abnormal cell  
6 changes, the doctor may do other tests to look for precancerous or  
7 cancer cells on one's cervix.

8 34. A Colposcopy is a test to look at the vagina and cervix  
9 through a lighted magnifying tool (colposcope). The colposcope  
10 magnifies the view 2 to 60 times so the doctor can see any  
11 problems that would be missed by the naked eye. A camera can be  
12 hooked to the colposcope to take pictures or videos of the vagina  
13 and cervix for a permanent record.

14 35. The doctor will put vinegar (acetic acid) and sometimes  
15 iodine (Lugol's solution) on the vagina and cervix with a swab or  
16 cotton balls to see areas of abnormal cells more clearly. Samples  
17 of the abnormal cells (biopsies) can be collected and looked at  
18 under a microscope.  
19

20 36. LEEP stands for Loop Electro-Excisional Procedure. A  
21 thin wire loop is used to remove the abnormal tissue from the  
22 cervix. LEEP cauterizes the cervix in the process to control  
23 bleeding and it leaves a piece of tissue that can be sent to the  
24 lab to confirm that all abnormal tissue was removed.

25 37. Upon information and belief and thereupon alleged, the  
26 prognosis for patients with cervical cancer is markedly affected  
27 by the extent of disease at the time of diagnosis. Upon  
28 information and belief, and thereupon alleged, the earlier

1 cervical cancer is detected, the more likely it can be cured and  
2 the more options a patient has in regards to treating it.

3 38. Upon information and belief and thereupon alleged,  
4 cervical cancer is classified in stages that are determined by the  
5 size of the cancer and how far it has spread to nearby tissues and  
6 other organs, such as the lungs, the liver, or bones. Upon  
7 information and belief and thereupon alleged Stage IIIB cervical  
8 cancer means that the cancerous tumor has progressed to such an  
9 extent that it extends onto the pelvic sidewall or causes a  
10 blocked kidney or nonfunctioning kidney.

11 39. Upon information and belief and thereupon alleged,  
12 cervical cancer is a progressive disease which progresses from one  
13 stage to the next as time goes by and/or if left untreated.  
14

#### 15 The Treatment of Rebecca Glover

16 40. On or about September 13, 2005 Plaintiff was referred to  
17 Defendants after a Pap test she had come back with abnormal  
18 results.

19 41. Between on or about October 25, 2005 to on or about June  
20 27, 2006, Plaintiff employed Defendants and DOES 2 through 100, to  
21 examine, diagnose, prescribe medicine, treat, and care for a  
22 problem involving her well-being and to perform any necessary  
23 treatment of this problem.

24 42. Specifically, on or about October 25, 2005, Plaintiff  
25 went to Defendants and each of them for medical care, advice, and  
26 treatment related to her abnormal Pap test results. Defendants and  
27 each of them performed another Pap test which also came back with  
28 abnormal results.

1 43. Defendants and each of them informed Plaintiff that she  
2 had an abnormal Pap test and that additional medical procedures  
3 were needed to further diagnose and/or treat Plaintiff. She was  
4 not told that she had cancer and/or that she ran the risk that her  
5 condition could turn into cancer should she forgo or delay any  
6 recommended treatment. She also was not referred to any  
7 oncologist, gynecological oncologist, and/or any third party  
8 medical professional for a second opinion and/or who was more  
9 qualified to diagnose and treat cervical cancer.

10 44. Upon information and belief and thereupon alleged,  
11 Defendants and each of them to include but not limited to Sheehan  
12 misdiagnosed Plaintiff as having "Mild Dysplasia" and/or HPV in or  
13 about October of 2005.

14 45. She was not told that she had cervical cancer, that she  
15 was at high risk for cervical cancer, and/or that the Defendants  
16 suspected she had cancer.

17 46. A notation in Plaintiff's medical records at or about  
18 October 25, 2005 and/or October 31, 2005 state "cancer vs. HPV"  
19 and "growth on entire cervix...extreme abnormal presentation."  
20 (emphasis added). Sheehan herself noted, "sounds suspicious for  
21 higher grade lesion—entire (cervix) involved." On or about  
22 November 4, 2005, it is noted in Plaintiff's medical chart, "CIN I  
23 in all 4 quads." Plaintiff's medical records indicate Sheehan also  
24 recommended LEEP to treat Plaintiff and/or to further diagnose  
25 Plaintiff's condition.  
26

27 47. LEEP was never performed on Plaintiff.

28 48. Plaintiff went to Defendants for medical assistance and

1 treatment related to her negligently diagnosed condition at  
2 various times between October 24, 2005 and June 27, 2006 including  
3 but not limited to October 24, 2005; on or about November 4, 2005;  
4 on or about December 20, 2005; on or about March 4, 2006; on or  
5 about May 5, 2006; on or about May 23, 2006; on or about May 30,  
6 2006; on or about June 6, 2006; and, on or about June 27, 2006.

7 49. Plaintiff also contacted Defendants and/or was contacted  
8 by Defendants at various times during this time period via  
9 telephone for further medical assistance and advice.

10 50. Defendants have and continue to withhold all of  
11 Plaintiff's records from her and thereby there may be additional  
12 parties and/or dates of treatment or phone calls by which  
13 Plaintiff is unaware at this time due to Defendants' refusal to  
14 turn over all medical records to Plaintiff.

15 51. Despite complaining to Defendants that she had  
16 experienced abnormal bleeding, pain during sex, and/or bleeding  
17 after intercourse during this time period, Defendants assured  
18 Plaintiff again and again that she did not have cervical cancer.

19 52. Remarks in Plaintiff's medical chart during the relevant  
20 time period also note possible or actual excessive bleeding by  
21 Plaintiff, complaints of anemia, lower back pain, and complaints  
22 of incontinence by Plaintiff.

23 53. Upon information and belief and thereupon alleged, such  
24 complaints are known symptoms of cervical cancer and Defendants  
25 knew or should have known as such and should have, in such a  
26 situation, referred Plaintiff to a specialist to further diagnose  
27 and/or treat Plaintiff.  
28

1 54. Defendants assured Plaintiff again and again that she  
2 did not have cervical cancer. Upon information and belief and  
3 thereupon alleged "C.Battles," "K. Matthews" aka "Kate Matthews"  
4 and/or Sheehan made such assurances.<sup>2</sup>

5 55. In fact, during the entire time between October 25, 2005  
6 and June 27, 2006, Defendants and each of them performed only one  
7 Pap test on Plaintiff despite the fact that their medical  
8 protocols and procedures required otherwise. Upon information and  
9 belief and thereupon alleged, a Pap test is the best, most  
10 effective way to diagnose whether someone has cervical case and/or  
11 whether abnormal cells have developed into cervical cancer.

12 56. Upon information and belief and thereupon alleged,  
13 Defendants, in fact, had noted in Plaintiff's medical chart that  
14 Pap tests were to be performed every 4-6 months or more, meaning a  
15 Pap Test should have been done again in or about February of  
16 2006(4 months after first test), April of 2006 (6 months after  
17 first test), and/or June of 2006 (8 months after first test).  
18 However, this was never done.

19 57. Defendants did nothing to refer Plaintiff to a medical  
20 care provider qualified to diagnose whether she did, in fact, have  
21 cervical cancer.  
22

23 58. During none of Plaintiff's visits to Defendants'  
24

25 <sup>2</sup> Plaintiff has not been able to discover the true names of all  
26 such Defendant employees who made such assurances because of  
27 Defendants refusal to turn over all of Plaintiff's medical records  
28 and/or to identify the names of all employees who provided medical  
advice or care to Plaintiff or whose illegible signatures appear  
on the medical records that were produced to Plaintiff.

1 facilities and/or phone calls made to Plaintiff/by Plaintiff, did  
2 Defendants provide Plaintiff with sufficient information regarding  
3 her condition, inform her that they were not qualified to treat  
4 cervical cancer, and/or inform her of the risks of refusing,  
5 delaying, and/or not getting treatment.

6 59. Upon information and belief and thereupon alleged,  
7 Defendants also negligently failed to follow its own procedures  
8 and medical protocols for treating Plaintiff and thereby failed to  
9 provide treatment that Defendants and each of them were aware that  
10 Plaintiff required if she were to in fact have "Mild Dysplasia"  
11 and/or "HPV." Upon information and belief and thereupon alleged,  
12 Defendants did nothing in regards to care or follow up for  
13 Plaintiff between December 21, 2005 and March 3, 2006.

14 60. Upon information and belief and thereupon alleged,  
15 Plaintiff's condition worsened as a result of the misdiagnosis and  
16 the failure of Defendants to follow their own medical protocols  
17 and guidelines.

18  
19 **The Attempt to Conceal Plaintiff's Condition**  
20 **and Defendants' Negligence**

21 61. Upon information and belief and thereupon alleged,  
22 Defendants, in fact, refused to provide treatment, schedule any  
23 appointments for Plaintiff, or do anything in regards to providing  
24 medical care for Plaintiff between December 21, 2005 to March 3,  
25 2006 despite their knowledge that failure to provide treatment to  
26 Plaintiff and/or follow up with her care could worsen her  
27 condition and/or violated their own procedures, policies and  
28 medical protocols.

1           62. Upon information and belief and thereupon alleged,  
2 Defendants have refused to turn over all medical records for this  
3 time period because either Defendants want to conceal their  
4 negligence and/or because Defendants did nothing in regards to  
5 providing medical care to Plaintiff during this time period in  
6 violation of its own policies and despite known risks to  
7 Plaintiff's health.

8           63. Defendants and each of them negligently diagnosed  
9 Plaintiff's medical problems and thereafter negligently and, upon  
10 learning of their negligence, fraudulently recommended and  
11 performed medical procedures which Plaintiff did not need and/or  
12 which caused her further medical complications. It is believed  
13 that on or about May 2, 2006, Defendants discovered their  
14 negligence and attempted to cover it up thereafter.

15           64. Upon information and belief and thereupon alleged, the  
16 reason for this fraud was to hide Defendants' own negligence and  
17 to prevent Plaintiff from pursuing any legal remedy against  
18 Defendants.

19           65. Upon information and belief and thereupon alleged, if  
20 Plaintiff died prior to realizing the negligence of Plaintiff,  
21 then she could not pursue any legal remedies against the  
22 Defendants and/or their negligence would never be discovered.

23           66. Defendants and each of them negligently and later  
24 fraudulently misrepresented the severity and nature of Plaintiff's  
25 medical problems as well as the treatment options available to  
26 her, causing her to forgo necessary medical treatment or  
27 procedures she otherwise would have obtained but for the negligent  
28

1 and/or fraudulent diagnosis, recommendations, and representations  
2 of Defendants and each of them.

3 67. Plaintiff's relationship with Defendants and each of  
4 them did not end until Plaintiff was informed by a third party  
5 medical provider that she, in fact, actually had Stage IIIB  
6 cervical cancer and not what Defendants had misdiagnosed her as  
7 having. Upon information and belief and thereupon alleged, this  
8 did not occur until the beginning of July 2006, on or about July  
9 6, 2006. Plaintiff began radiation treatment with one or more  
10 third party medical providers thereafter, rather than return to  
11 Defendants for medical treatment she did not need and could not  
12 provide.

13  
14 68. Plaintiff has and continues to suffer pain, discomfort,  
15 and other symptoms related to the negligent examination,  
16 diagnosis, prescription of medicine, treatment, and care provided  
17 by the Defendants and each of them.

18 69. Among other things, by the time Plaintiff discovered the  
19 negligence and fraud of Defendants, it was determined that she had  
20 cervical cancer which, upon information and belief, could have  
21 been treated at its early stages by less invasive procedures but  
22 had progressed so far that certain medical treatment options were  
23 no longer available. Further, by the time Plaintiff discovered the  
24 negligence and/or fraud of the Defendants, and each of them, her  
25 cervical cancer had progressed all the way to Stage IIIB cervical  
26 cancer.

27 70. Upon information and belief and thereupon alleged,  
28 Defendants and each of them discovered at some point after they

1 began treating Plaintiff, that she had been misdiagnosed and was  
2 receiving treatments that she did not need, had incorrectly been  
3 told to forgo certain treatments, and/or Defendants were providing  
4 treatments that were worsening her condition.

5 71. Upon information and belief and thereupon alleged,  
6 Defendants and each of them, attempted to cover up their  
7 negligence and continued to misrepresent the nature of Plaintiff's  
8 medical problems and/or provide false medical advice as well as  
9 provide treatment and/or medical procedures they knew or should  
10 have known she did not need and/or would make her medical  
11 condition(s) worse.

12 72. Upon information and belief and thereupon alleged,  
13 Defendants were under a duty to refer Plaintiff to a specialist  
14 but did not do so. Upon information and belief and thereupon  
15 alleged, Defendants were under a duty to inform Plaintiff of the  
16 risks of delaying or refusing recommended treatment but failed to  
17 do so.

18 73. Upon information and belief and thereupon alleged,  
19 Defendants and each of them were under a duty to inform Plaintiff  
20 that she needed to obtain a new medical provider between December  
21 21, 2005 and March 3, 2006 rather than abandon her during this  
22 time period. Defendants and each of them did not provide  
23 sufficient notice for Plaintiff to obtain another medical  
24 practitioner.<sup>3</sup>

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25  
26  
27  
28 <sup>3</sup> As discovery is just beginning in this matter and in light of Defendants'  
ongoing refusal to produce all of Plaintiff's records in this matter,  
Plaintiff specifically reserves the right to make a motion for leave to amend  
this Complaint pursuant to CCP § 425.13 so that a claim for punitive damages

1 74. Upon information and belief and thereupon alleged,  
2 Defendants and each of them negligently allowed employees who were  
3 not medically qualified or licensed to advise, counsel, treat, and  
4 manage the care of Plaintiff. (See attached Exhibit B).

5 Discovery of Defendants' Conduct And Notice of Claim

6 75. Plaintiff was unaware of Defendants' negligent and/or  
7 fraudulent acts until she was properly diagnosed thereafter by  
8 other third party professionally licensed medical providers in or  
9 about the beginning of July of 2006.

10 76. Upon information and belief and thereupon alleged,  
11 Defendants and each of them intentionally and fraudulently  
12 concealed their negligent acts as well as the true nature of  
13 Plaintiff's injury so that Plaintiff could not through the use of  
14 reasonable diligence have previously discovered the nature or  
15 cause of her injuries until in or about July of 2006 or later.

16 77. Any and all applicable statute of limitations in this  
17 matter, should be and requested, if so required, to be tolled due  
18 to the fraudulent acts of Defendants which include actively  
19 concealing the facts and documents revealing those facts from  
20 Plaintiff, the delayed discovery of any and all injuries as a  
21 result of the fraud of Defendants, and/or pursuant to Code of  
22 Civil Procedure section 364.

23 78. Among other things, as more fully alleged below, upon  
24 information and belief and thereupon alleged, Defendants and each

25  
26  
27 and/or the intentional torts of intentional infliction of emotional  
28 distress/fraud can be made if so applicable and necessary. No claim for  
punitive damages as to any claim is made at this time.

1 of them have intentionally withheld some or all of Plaintiff's  
2 medical records and other such documents even after they were  
3 requested so as to prevent Plaintiff from discovering the  
4 negligence and fraud of Defendants.

5 79. On or about March 22, 2007, Plaintiffs served notice,  
6 pursuant to Code of Civil Procedure section 364, to Defendants of  
7 their intention to sue them for professional negligence. Pursuant  
8 to California law, this demand served to stay all applicable  
9 statute of limitations for 90 days or more.<sup>4</sup>

10 **FIRST CAUSE OF ACTION:**

11 **(Professional Negligence)**

12 **(As to all Defendants and Does 2-100)**

13 80. Plaintiff repeats and re-alleges paragraphs 1-79,  
14 inclusive as though fully set forth herein.

15 81. As described more fully above, Plaintiff employed  
16 Defendants and DOES 2 through 100, and retained them for  
17 compensation to examine, diagnose, prescribe medicine, treat, and  
18 care for a problem involving her well-being and to perform any  
19 necessary medical treatment to treat her medical problem(s).  
20

21 82. As described more fully above, Defendants and each of  
22 them owed a duty of care to Plaintiff which they breached.

23 83. As a proximate result of the negligence of Defendants,  
24 and each of them, Plaintiff has sustained injury to her health,  
25 strength, and activity, all of which injuries have caused, and  
26 continue to cause, Plaintiff great mental, physical, and nervous  
27

1 pain and suffering. Plaintiff is informed and believes and  
2 thereon alleges that such injuries will result in some permanent  
3 disability and/or injury to her. As a result of such injuries,  
4 Plaintiff has sustained general damages.

5 84. As a further proximate result of the negligence of  
6 Defendants, and each of them, Plaintiff has incurred and will  
7 continue to incur medical and related expenses to include but  
8 not limited to the loss of wages, all to her special damage.  
9 Plaintiff is thus entitled to damages according to proof at  
10 trial.

11 **SECOND CAUSE OF ACTION:**

12 **VIOLATION OF CAL.EVID.CODE § 1158:**

13 **(FAILURE TO PRODUCE MEDICAL RECORDS)**

14 **(As to all Defendants and Does 2-100)**

15 85. Plaintiff repeats and re-alleges paragraphs 1-84,  
16 inclusive as though fully set forth herein.

17 86. Evidence Code section 1158 states a clear public  
18 policy of permitting a patient, before filing any action, to  
19 inspect and to copy any medical records concerning the patient.

20 87. The legislative purpose behind the enactment is not  
21 stated, but its apparent goal is to permit a patient to evaluate  
22 the treatment he or she received before determining whether to  
23 bring an action against the medical provider.

24 88. Section 1158 also enables the patient to seek freely  
25 advice concerning the adequacy of medical care and to create a  
26 medical history file for the patient's information or subsequent  
27 use.  
28

1 89. It operates to prevent a medical provider from  
2 maintaining secret notes which can be obtained by the patient  
3 only through litigation and potentially protracted discovery  
4 proceedings.

5 90. On or about March 22, 2007, Plaintiff made a request  
6 pursuant to California Evidence Code 1158 to provide any and all  
7 of her medical records to include but not limited to billing  
8 records.

9 91. Upon information and belief and thereupon alleged,  
10 Defendants and each of them, failed to provide all such  
11 documents and, in fact, intentionally withheld the majority of  
12 such medical records so as to further their cover up regarding  
13 Plaintiff, as more fully alleged above.

14 92. Discovery has commenced in this matter and Defendants  
15 and each of them continue to withhold documents to include  
16 billing records and/or other records created between December  
17 21, 2005 to March 3, 2006 from Plaintiff. In or about October of  
18 2007, Defendants produced some medical records which were not  
19 previously disclosed to Plaintiff after her initial request in  
20 March of 2007. Upon information and belief and thereupon  
21 alleged, these records were intentionally withheld from  
22 Plaintiff.

23 93. In doing as such, Defendants and each of them have  
24 violated this section of the law and Plaintiff's rights  
25 accordingly.

26 94. Plaintiff thereby requests any and all attorney's fees  
27 and costs associated with filing this action to enforce this  
28

1 provision of the law as to each and all of the Defendants.  
2 Plaintiff further seeks sanctions and/or an order of the Court  
3 and/or injunction requiring Defendants to comply with this  
4 provision of the law.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment on its complaint  
7 as follows:

- 8 (1) Compensatory damages;
- 9 (2) Statutory damages;
- 10 (3) General damages according to Proof;
- 11 (4) Special damages according to Proof;
- 12 (5) Consequential damages;
- 13 (6) Attorney's fees and costs of the suit herein;
- 14 (7) Injunctive Relief;
- 15 (8) All other relief as the Court may deem just.

16  
17  
18 DATED: November 5, 2007 HANDAL & ASSOCIATES

19  
20 By:   
21 Pamela C. Chalk, Esq.