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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COUNTY OF LOS ANGELES, CENTRAL DISTRICT

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Jane Doe D.M., An Individual,

Case No.

13

Plaintiff,

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF:**

14

v.

1. Sexual Battery
2. Sexual Assault
3. Intentional Infliction of Emotional Distress
4. Sexual Harassment
5. Gender Violence
6. Negligence
7. Negligent Supervision, & Retention
8. Unfair Business Practices
9. Fraud
10. Constructive Fraud

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Pasadena Hospital Association, Ltd., Doing
 Business As Huntington Memorial Hospital, A
 16 California Domestic Nonprofit Corporation;
 The Medical Staff of Huntington Memorial
 17 Hospital, A California Corporation; Dr.
 Patrick Mark Sutton, M.D., An Individual; and
 18 DOES 1-50, Inclusive,

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Defendants.

REQUEST FOR JURY TRIAL

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INTRODUCTION

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1. Plaintiff Jane Doe D.M. brings this case against Dr. Patrick Mark Sutton, M.D., a violent sexual predator who harmed and violated her, among many other women, while she was pregnant and as she gave birth to her first child, and against Huntington Hospital, a medical facility that, together with its Medical Staff, gave cover to Dr. Sutton and allowed him to violate Plaintiff and other female patients as they gave birth at Huntington Hospital, with impunity.

2. Plaintiff selected Dr. Sutton, M.D., a medically licensed and certified obstetrician and gynecologist, as her doctor for her first pregnancy and childbirth. He was well-credentialed and had been a Medical Staff member with full privileges at Huntington Hospital for over a decade. Huntington Hospital touted Dr. Sutton as a renowned obstetrician and gynecologist on its Medical Staff whom its female patients could trust. But Huntington Hospital knew and had known for years that Dr. Sutton was a danger to the women he treated: a ticking time bomb with control issues and uncontrolled sexual and physically aggressive tendencies toward women that continuously and systematically went off. Huntington Hospital and its Medical Staff concealed and continues to conceal this information from Plaintiff and other women, while promoting Dr. Sutton as among the Hospital’s best and brightest physicians.

3. At the time, Plaintiff was unaware of Dr. Sutton’s sexually deviant and violent history. She was excited about this new experience. She developed a birth plan for a natural birth experience without surgery. She looked forward to sharing it, and shared it, with Dr. Sutton.

4. During Plaintiff’s last pre-birth appointment with Dr. Sutton, he put his fingers inside Plaintiff’s vagina. Dr. Sutton did not first discuss this procedure with Plaintiff. Later the same day, Plaintiff suffered a bloody discharge. Within days, she went into labor.

5. During the birth of Plaintiff’s child, Dr. Sutton performed a forced, medically unnecessary surgical episiotomy and cut her open so widely and deeply that she suffers severe effects to this day.

6. Plaintiff suffered and endured obstetric violence at the hands of Dr. Sutton and while in the medical care of Huntington Hospital and its Medical Staff, a gender-based form of

1 bullying, coercion, and violence committed against pregnant women by medical professionals.¹

2 7. Unfortunately, most women, including Plaintiff, are completely unaware that an
3 episiotomy is a procedure that can violate their rights and be a form of gender violence, instead
4 believing their doctor who tells them it is an accepted and normal procedure. At Huntington
5 Hospital, only Dr. Sutton and Huntington Hospital, along with its Medical Staff and directors,
6 were aware that Dr. Sutton was performing episiotomies at an alarming rate on women who were
7 not candidates for the procedure, as a means to punish certain patients.

8 8. Plaintiff is not alone in her experience. Dr. Sutton has, on information and belief,
9 violated and sexually harmed other female patients. Like a wolf in sheep's clothing, Dr. Sutton
10 wears a white doctor's coat as he bullies and coerces certain female patients, and exacts violence
11 against those who express their decision for a natural manner of delivery of their child that are
12 contrary to his own. He is a doctor who violated Plaintiff and, on information and belief, other
13 pregnant female patients, by performing violent, unnecessary procedures on their genitalia without
14 consent. He is a doctor who has also made inappropriate sexual comments towards other female
15 patients, and sexually violated other female patients during examinations. But, none of this was
16 known to Plaintiff when she selected Dr. Sutton to be her obstetrician for prenatal care and her
17 first childbirth.

18 9. Since at least 2002, Huntington Hospital and its Medical Staff have been aware
19 through multiple, non-peer review investigations, through internal, informal complaints, and other
20 means, that Dr. Sutton had a dark side that, when unleashed, caused him to act upon sexual and
21 physically violent urges toward some of his pregnant patients. Yet, the Hospital and its Medical
22 Staff did nothing to protect patients, to warn patients, or to control Dr. Sutton's behavior. For
23 years, they provided Dr. Sutton a sanctuary to engage in misconduct toward women that served
24 only his sexually and physically aggressive behavior toward pregnant women, with no medical
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26 ¹ Farah Diaz-Tello, J.D., *Invisible wounds: obstetric violence in the United States*, Reproductive
27 Health Matters, An international journal on sexual and reproductive health and rights (June 1,
28 2016): <https://www.tandfonline.com/doi/pdf/10.1016/j.rhm.2016.04.004?needAccess=true> (last
accessed October 15, 2018).

1 purpose. Huntington Hospital and its Medical Staff failed to disclose this information to female
2 patients, including Plaintiff, and instead allowed Dr. Sutton unfettered access to its female
3 patients, including Plaintiff, with Medical Staff membership and full privileges at the Hospital.

4 10. Plaintiff brings this case against the storied hospital in which she gave birth to her
5 first child and suffered obstetric violence and harm, because Huntington Hospital and its Medical
6 Staff knew of Dr. Sutton's predatory, violent and sexual acts against female patients *at least eight*
7 *years before* Plaintiff's treatment but continued to retain him as a Medical Staff member, allow
8 him unfettered hospital privileges, promote him to leadership positions within the Hospital's
9 Obstetrics and Gynecology department, and actively concealed the danger to Plaintiff. Huntington
10 Hospital and its Medical Staff had a duty to protect its patients and ensure that Dr. Sutton did not
11 subject its patients, including Plaintiff, to harm. Huntington Hospital and its Medical Staff never
12 warned Hospital patients. including Plaintiff, of Dr. Sutton's anger and sexual violence issues, and
13 failed to take other reasonable measures to protect patients from him. Instead, the Hospital and its
14 Medical Staff allowed Dr. Sutton to continue to prey on Plaintiff and other female patients because
15 it was profitable to do so. Huntington Hospital and its Medical Staff actively and deliberately
16 concealed Dr. Sutton's abuse of female patients. The Hospital and Medical Staff placed their own
17 reputation and financial interests over the safety and well-being of Plaintiff and its other patients,
18 and continues to do so. Although Huntington Hospital and its Medical Staff recently stripped Dr.
19 Sutton of a leadership role at the Hospital and will require him to have a "chaperone" when
20 treating women in the Hospital's maternity ward², he is still allowed to practice at the Hospital.

21 11. Together, Dr. Sutton and the Hospital Defendants destroyed Plaintiff's birthing
22 experience, betrayed her trust, and caused her to suffer great physical and mental anguish, on a
23 day that should have been joyous and to this day. Only now does she know and understand that the
24 conduct by Dr. Sutton toward her was part of his uncontrolled sexual and physical aggression

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26 ² See LA Times Article: *Prominent obstetrician accused of sexual misconduct removed from*
27 *leadership at Huntington Hospital and must have chaperone:*
28 [http://www.latimes.com/local/lanow/la-me-ln-huntington-hospital-doctor-investigation-20181005-](http://www.latimes.com/local/lanow/la-me-ln-huntington-hospital-doctor-investigation-20181005-story.html)
story.html (last accessed October 13, 2018).

1 Hospital's Board of Directors.³

2 15. At all relevant times, Defendant The Medical Staff of Huntington Memorial
3 Hospital ("Medical Staff"), was and is, on information and belief, a California Corporation or
4 other legal entity, with a principal place of business located at 100 West California Boulevard,
5 Pasadena, California, 91105, within Los Angeles County, California. The Medical Staff's Bylaws
6 as of 2014 state that it is responsible for the quality of medical care in the Hospital, subject to the
7 authority of the Hospital's Board of Directors.⁴ In this Complaint, Defendants Medical Staff and
8 Huntington Hospital will sometimes be referred to collectively as "Hospital Defendants".

9 16. At all relevant times, Defendant Dr. Patrick Mark Sutton, M.D. ("Dr. Sutton"), an
10 adult man, was and is, on information and belief, a resident of Altadena, California or Pasadena,
11 California, within Los Angeles County, California. According to the Medical Board of California
12 website, Dr. Sutton is presently licensed to practice medicine in California, having obtained his
13 license to practice medicine in California by the Medical Board of California on October 29, 1984.
14 He is also board-certified by the American Board of Obstetrics and Gynecology. His primary area
15 of practice is Obstetrics and Gynecology, with a secondary area of practice in Nuclear Medicine.⁵
16 At all relevant times, Dr. Sutton maintained a medical office located at 50 Alessandro Place, Suite
17 420, Pasadena, California, 91105, within Los Angeles County, California. At all relevant times,
18 and since 1989, Dr. Sutton has worked as a physician member of the Hospital's Medical Staff with
19 full privileges at Huntington Hospital in Pasadena, California, within Los Angeles County,
20 California, as a member, agent, and/or servant. Dr. Sutton was the Chair-Elect of Huntington
21 Memorial Hospital's Obstetrics and Gynecology Department⁶ until approximately October 5,

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23 ³ See Medical Staff of Huntington Memorial Hospital Bylaws (Eff. September 25, 2014),
24 Preamble: [https://www.huntingtonhospital.org/documents/Medical-Staff-Privilege-Forms/Bylaws-
Rules-Regulations-/Bylaws.pdf](https://www.huntingtonhospital.org/documents/Medical-Staff-Privilege-Forms/Bylaws-Rules-Regulations-/Bylaws.pdf) (last accessed October 20, 2018).

25 ⁴ *Id.*

26 ⁵ See Medical Board of California licensing details for Dr. Sutton:
27 <https://search.dca.ca.gov/details/8002/G/53929/3ec7f306f1f30a6f2134d37cd88af3c2> (Last
accessed: October 12, 2018).

28 ⁶ See LA Times Article "*Prominent gynecologist at Huntington Hospital again accused of sexual*

1 2018.⁷.

2 17. The Defendants sued by the fictitious names DOES 1 through 50, inclusive, are
3 persons or entities whose true names and identities are currently unknown to Plaintiff. Plaintiff
4 will amend or seek leave to amend this Complaint, as appropriate, to allege the true names and
5 capacities of these fictitiously named Defendants when they are ascertained. Plaintiff is informed
6 and believes, and thereupon alleges, that each of the fictitiously named Defendants is responsible
7 for the conduct alleged in this Complaint and that, through their conduct, the fictitiously named
8 Defendants actually and substantially caused Plaintiff's injuries and damages.

9 18. In this Complaint, Defendants Dr. Sutton, Huntington Hospital, the Medical Staff,
10 and DOES 1 through 50, inclusive, are sometimes referred to individually as "Defendant" or by
11 name, or by the shortened defined name provided herein, and are sometimes referred to
12 collectively as "Defendants," or "the Defendants."

13 19. At all times mentioned herein, each Defendant was acting as the alter ego, agent,
14 servant, representative and/or employee of each of the remaining Defendants and was at all times
15 acting within the purpose and scope of such agency and employment. In doing the acts alleged
16 herein, each Defendant, and its officers, directors, members, owners, principals, or managing
17 agents (where the defendant is a corporation, limited liability company, or other form of business
18 entity) authorized and/or ratified the conduct of each other Defendant and/or of his/her/its
19 employees.

20 20. All of the allegations contained in this Complaint are based upon information and
21 belief, except for those pertaining to Plaintiff and her counsel. Plaintiff's information and belief
22 are based upon, among other things, the investigation that Plaintiff and her counsel have
23 conducted to date. The allegations in this Complaint are substantiated by evidentiary support or

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25 *misconduct by medical board*" (October 1, 2018): <http://www.latimes.com/local/lanow/la-me-ln-medical-board-claim-huntington-20181001-story.html> (last accessed October 14, 2018).

26 ⁷ See LA Times Article "*Prominent obstetrician accused of sexual misconduct removed from*
27 *leadership at Huntington Hospital and must have chaperone*" (October 5, 2018):
28 <http://www.latimes.com/local/lanow/la-me-ln-huntington-hospital-doctor-investigation-20181005-story.html> (last accessed October 13, 2018).

1 are likely to be substantiated by evidentiary support upon further investigation and discovery.

2 **JURISDICTION AND VENUE**

3 21. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
4 section 410.10. This Court has personal jurisdiction over Dr. Sutton because he is and was, at all
5 relevant times, a citizen of this State, a resident of Altadena, California, within Los Angeles
6 County, California, and conducted business in Pasadena, California, within Los Angeles, County.
7 This Court also has personal jurisdiction over Huntington Hospital because it is a California
8 domestic non-profit corporation with its principal place of business in Pasadena, California, within
9 Los Angeles County, California. This Court also has personal jurisdiction over the Medical Staff
10 because, on information and belief, it is a California corporation or some other legal entity with its
11 principal place of business in Pasadena, California, within Los Angeles County, California.

12 22. Venue is proper in this Court per Code of Civil Procedure section 395(a) and 395.5
13 because the incidents, harm, and injuries complained of herein occurred within the County of Los
14 Angeles, California, and because Defendants reside, maintain their principle place of business,
15 and/or transact business, within Los Angeles County, California.

16 **PLAINTIFF'S EXPERIENCE**

17 23. Plaintiff became pregnant with her first child in early 2010. She chose Dr. Sutton as
18 her obstetrician for prenatal care and to help deliver her child. Plaintiff's pre-birth appointments
19 with Dr. Sutton at his office in Pasadena, California, commenced in or about April or May, 2010.
20 As Plaintiff desired to have a natural birth experience, to the greatest extent possible, she prepared
21 a written birth plan to share with Dr. Sutton. She wanted to share with Dr. Sutton her choices
22 regarding her childbirth, and thereby ensure that she and Dr. Sutton were on the same page as to
23 how the birth should occur.

24 24. As such, during one pre-birth appointment in or about October or November, 2010,
25 Plaintiff attempted to provide her written birth plan to Dr. Sutton. When she asked Dr. Sutton
26 whether she could give him her birth plan, Dr. Sutton became defensive and irritated. Dr. Sutton
27 told Plaintiff that birth plans are silly, and that he knew what he was doing.

28 25. Once in Dr. Sutton's office, Plaintiff shared her birth plan with Dr. Sutton.

1 a. She told Dr. Sutton that she would like to give birth as naturally as possible.
2 She told Dr. Sutton that she did not want to take Pitocin, a medication designed to induce and
3 advance contractions.

4 b. She told Dr. Sutton that she did not want an epidural, a pain medication,
5 unless she requested it.

6 c. She told Dr. Sutton that she did not want an episiotomy, which is a surgical
7 cutting of the perineum reserved for difficult vaginal births and to prevent rupture.

8 26. During Plaintiff's last pre-birth appointment, on or about November 19, 2010 at Dr.
9 Sutton's Pasadena office, while alone and outside the presence of a nurse or chaperone, Dr. Sutton
10 stuck two fingers deep inside of her under the guise of a vaginal examination on Plaintiff.

11 27. That same evening, on or about November 19, 2010, Plaintiff observed a bloody
12 discharge from her vagina. Plaintiff called Dr. Sutton, who told her not to worry and that it
13 sounded like it was a mucus plug.

14 28. Approximately four days later, on or about November 24, 2010, Plaintiff went into
15 labor. Plaintiff's water broke at approximately 9:00 P.M. that evening, as she was trying to
16 urinate. Plaintiff recalls feeling excited about giving birth as she and her husband traveled to
17 Huntington Hospital for the delivery of their first child.

18 29. Plaintiff arrived at the Hospital. Later, when Dr. Sutton arrived, he walked into the
19 room, placed his hands on Plaintiff's legs, which were restrained in stirrups, and cut Plaintiff's
20 perineum deeply and wide open with scissors, from the vaginal opening almost up to her anus,
21 while her child's head was already crowning and coming out.

22 30. Plaintiff delivered her child and, within approximately ten to fifteen minutes, Dr.
23 Sutton sewed her back up and then left the delivery room.

24 31. Plaintiff returned home approximately two days later, in the worst pain she had
25 ever experienced in her life. She was bleeding heavily. For approximately four days after the
26 delivery of Plaintiff's child, she could not defecate. Then, during one attempt at home, she pushed
27 and felt two to three stool pieces passing through her vagina. Plaintiff was shocked. She got a
28 mirror and observed the stool passing through her vagina.

1 32. Plaintiff called Dr. Sutton’s office and spoke with the receptionist and nurse at his
2 office. She explained what had happened and asked to see Dr. Sutton immediately.

3 33. The next day, on or about November 30, 2010 or December 1, 2010, Plaintiff was
4 examined by Dr. Sutton at his office. He visually and manually examined Plaintiff’s vagina and
5 told her that everything “looks great”, that stool sometimes comes out from the vagina after giving
6 birth, that it was normal and that it would heal. He did not order any special tests or refer her to a
7 specialist to determine whether Plaintiff had suffered a recto-vaginal fistula or other condition. He
8 provided Plaintiff with stool softeners and sent her home.

9 34. Plaintiff experienced severe physical pain in her vagina and anus for approximately
10 three months after Dr. Sutton performed the episiotomy. Plaintiff continued to pass stool through
11 her vagina. She also could no longer pass gas normally through her anus, and instead the gas
12 would pass through her vagina.

13 35. To this day, as a result of Dr. Sutton’s third or fourth degree cut during the
14 episiotomy, Plaintiff endures the passing of gas and stool through her vagina. To this day, she
15 continues to experience great hurt and anger about the experience she had with Dr. Sutton.

16 36. In or about 2017, Plaintiff was contacted by another victim of Dr. Sutton and
17 learned that she was not alone in her experience. The other victim had similarly suffered violent
18 procedures and shared that Dr. Sutton had also engaged in sexual misconduct towards patients.

19 37. Plaintiff has since learned that the treatment she received at Huntington Hospital,
20 by Hospital Defendants and at the hands of Dr. Sutton, was gender violence, concealed from her
21 and countless other women in his care, consistent with a nearly thirty year course of violent sexual
22 misconduct toward women, tied to Dr. Sutton’s control issues, and hidden by the crafty handlers at
23 Huntington Hospital and among the Medical Staff, who were protecting him and allowed
24 unknowing and unsuspecting women to be abused by Dr. Sutton for nearly three decades.

25 **DR. SUTTON’S HISTORY OF MISTREATMENT OF WOMEN**

26 38. On information and belief, in or about November, 1995, Dr. Sutton and Huntington
27 Hospital were sued by a female patient in a civil lawsuit in the Los Angeles Superior Court, Case
28 Number GCD15720.

1 39. On information and belief, in or about October, 1997, Dr. Sutton and Huntington
2 Hospital were sued by another female patient in a civil lawsuit in the Los Angeles Superior Court,
3 Case Number GC020136.

4 40. On information and belief, in or about July, 1998, Dr. Sutton and Huntington
5 Hospital were sued by another female patient in a civil lawsuit in the Los Angeles Superior Court,
6 Case Number GC021553.

7 41. On information and belief, on or about August 14, 2002, the Executive Director of
8 the Medical Board of California filed an amended accusation against Dr. Sutton in his official
9 capacity, for Dr. Sutton's alleged violation of the Medical Practice Act, California Business and
10 Professions Code sections 726, 2234 and 2266.⁸ The initial accusation was filed in or about mid-
11 2001. A patient of Dr. Sutton, Melinda W., alleged gross negligence resulting in trauma to her
12 baby's shoulder and paralysis of her child's arm at birth in 1998, as well as failure to maintain
13 adequate and accurate records. Another patient of Dr. Sutton, Ann B., alleged gross negligence
14 after her baby died following a Cesarean section in 1996 at Huntington Hospital. A third patient of
15 Dr. Sutton, Consuelo G., alleged gross negligence and sexual misconduct for making
16 inappropriate comments to her, attempting to engage in inappropriate and unprofessional
17 conversation regarding her sex life, and for needlessly and inappropriately sexualizing a physical
18 examination by digitally penetrating her during an ultrasound, between her genital labia, without
19 gloves, without permission, and without the presence of a nurse.

20 42. Huntington Hospital, together with its Medical Staff, had knowledge of these
21 complaints and, on information and belief, assisted Dr. Sutton in the defense of the Medical
22 Board's Accusation initially filed in 2001. Hospital Defendants mounted a defense for Dr. Sutton
23 that concealed his misconduct and enabled him to continue his behavior and provided him with a
24 safe haven within which to harm and abuse female patients.

25 43. The Medical Board of California disciplined Dr. Sutton by a stipulated settlement

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27 ⁸ See August 14, 2002 Amended Accusation on Medical Board of California website:
28 <http://www2.mbc.ca.gov/BreezePDL/document.aspx?path=%5cDIDOCS%5c20030221%5cDMR>
A1%5c&did=A1GXVU9B.DID (last accessed October 15, 2018).

1 and disciplinary order dated October 31, 2002, pursuant to which Dr. Sutton admitted to a failure
2 to make and maintain adequate and accurate records of patient care as to one patient.⁹ Dr. Sutton's
3 Physician's and Surgeon's Certificate was revoked, but the revocation was "stayed" and he was
4 placed on probation for four years, subject to his completion of a Physician Assessment and
5 Clinical Education Program at the UCSD School of Medicine, an annual educational course aimed
6 at correcting any areas of deficient practice or knowledge, the presence of a third party
7 "chaperone" during breast, pelvic, or ultrasound examinations, or in any other office situation
8 where the patient is not fully clothed, a professional boundaries class, among other requirements.

9 44. The 2002 Disciplinary Order states that Dr. Sutton was ordered to provide a copy
10 of the order, which attaches the Amended Allegation with detailed information regarding patient
11 complaints, to every Chief of Staff or Chief Executive Officer at every hospital where privileges
12 or membership was extended to Dr. Sutton, or any other facility where Dr. Sutton engaged in the
13 practice of medicine, among others. On information and belief, Hospital Defendants received a
14 copy of the order as well as the underlying, Amended Accusation, and was put on further notice of
15 Dr. Sutton's mistreatment of female patients as of 2002. Nevertheless, Hospital Defendants
16 permitted Dr. Sutton to practice and remain in a position of trust and authority after being put on
17 notice of his alleged sexual misconduct toward a patient.

18 45. On information and belief, in or about 2004, while Dr. Sutton was still on
19 probation, Dr. Sutton and Huntington Hospital were sued by another female patient in the Los
20 Angeles Superior Court, Case Number GC034061.

21 46. On information and belief, in or about 2005, while Dr. Sutton was still on
22 probation, he was sued by two more female patients of sexual battery and sexual harassment in a
23 civil lawsuit alleging improper touching, crude sexual comments, and intrusive questions about
24 their bodies and sexual habits. The parties appear to have reached a confidential settlement.

25 47. On information and belief, on or about December 15, 2010, the Executive Director
26 _____

27 ⁹ See December 2, 2002 Decision and Order on Medical Board of California website:
28 <http://www2.mbc.ca.gov/BreezePDL/document.aspx?path=%5cDIDOCs%5c20030221%5cDMR>
A1%5c&did=A1GXVU9B.DID (last accessed October 15, 2018).

1 of the Medical Board of California filed an amended accusation against Dr. Sutton in her official
2 capacity, for Dr. Sutton's alleged violation of the Medical Practice Act, California Business and
3 Professions Code sections 726, 2234 and 2266.¹⁰ Another patient of Dr. Sutton, W.C., alleged that
4 during a gynecological examination on or about September 29, 2008, Dr. Sutton engaged in sexual
5 abuse and/or misconduct by the manner in which he questioned the patient about her sex life and
6 when he without prompting from the patient discussed human sexuality with her using crude, non-
7 medical language while the patient was still in an exam gown, the nurse chaperone had left the
8 exam room, and the door to the exam room was closed. Dr. Sutton also was alleged to have
9 committed repeated negligent acts by having that discussion with the patient, by failing to
10 document the discussion, and by rubbing and patting his hand on the patient's legs above the
11 knees during the discussion, while the patient was still in her exam gown and after the nurse
12 chaperone had left the room. He was further charged with a failure to maintain adequate and
13 accurate medical records.

14 48. On information and belief, on or about August 22, 2011, Dr. Sutton and the
15 Hospital was sued in a civil lawsuit by another female patient, Los Angeles Superior Court Case
16 Number GC047947. The case settled and was dismissed.

17 49. On or about November 14, 2011, the Medical Board of California *again* disciplined
18 Dr. Sutton by a stipulated settlement and disciplinary order, pursuant to which Dr. Sutton again
19 admitted to a failure to make and maintain adequate and accurate records of patient care as to
20 patient W.C..¹¹ Dr. Sutton's Physician's and Surgeon's Certificate was revoked, but the revocation
21 was "stayed" and he was placed on probation for three years, subject to his completion of a
22 professional boundaries course, psychotherapy, and the presence of a third party "chaperone"

23 _____
24 ¹⁰ See December 15, 2010 Accusation on Medical Board of California website:
25 <http://www2.mbc.ca.gov/BreezePDL/document.aspx?path=%5cDIDOCs%5c20111014%5cDMR>
AAADE1%5c&did=AAADE111014222429828.DID (last accessed October 15, 2018).

26 ¹¹ See November 14, 2011 Decision and Order on Medical Board of California website:
27 <http://www2.mbc.ca.gov/BreezePDL/document.aspx?path=%5cDIDOCs%5c20111014%5cDMR>
AAADE1%5c&did=AAADE111014222429828.DID (last accessed October 15, 2018).

1 while consulting, examining, or treating female patients in his examination room, among other
2 requirements.

3 50. Again, the Disciplinary Order required Dr. Sutton to provide a copy of the order,
4 which attaches the Amended Allegation, to every Chief of Staff or Chief Executive Officer at
5 every hospital where privileges or membership was extended to Dr. Sutton, or any other facility
6 where Dr. Sutton engaged in the practice of medicine, among others.

7 51. On information and belief, in or about January, 2014, Dr. Sutton was again sued by
8 another female patient in Los Angeles Superior Court Case Number BC533206.

9 52. On information and belief, or about September 24, 2018, the Executive Director of
10 the Medical Board of California filed an accusation against Dr. Sutton in her official capacity, for
11 his alleged violation of the Medical Practice Act, California Business and Professions Code
12 sections 2234 and 2266.¹² The respondent was a patient of Dr. Sutton who commenced treatment
13 with him in or about 2010. In or about 2016, Dr. Sutton is alleged, among other things, to have
14 made inappropriate comments about Respondent's personal appearance during a discussion
15 regarding her sexual history, a critical comment regarding her pubic hair, and failed to document
16 the discussion. The case number is 800-2016-023866

17 **HUNTINGTON HOSPITAL'S FAILURE TO PROTECT PLAINTIFF**

18 **AND OTHER FEMALE PATIENTS FROM DR. SUTTON**

19 53. Despite extensive and detailed prior knowledge of Dr. Sutton's pervasive history of
20 violent and sexual misconduct towards female patients, Huntington Hospital and its Medical Staff
21 abjectly failed to protect Plaintiff and other female patients from harm.

22 54. On information and belief, Huntington Hospital's Department of Obstetrics &
23 Gynecology Rules and Regulations¹³ require patient care to be rendered by physicians who meet

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25 ¹² See Accusation on Medical Board of California website:
26 [http://www2.mbc.ca.gov/BreezePDL/document.aspx?path=%5cDIDOCs%5c20180924%5cDMR
AAAGL1%5c&did=AAAGL180924154525446.DID](http://www2.mbc.ca.gov/BreezePDL/document.aspx?path=%5cDIDOCs%5c20180924%5cDMR
AAAGL1%5c&did=AAAGL180924154525446.DID) (last accessed October 15, 2018).

27 ¹³ See, e.g., Huntington Hospital Department of Obstetrics & Gynecology Department Rules and
28 Regulations (as of October, 2015), 1.3: [https://www.huntingtonhospital.org/documents/Medical-
Staff-Privilege-Forms/Bylaws-Rules-Regulations-/OBGYNRulesRegs.pdf](https://www.huntingtonhospital.org/documents/Medical-Staff-Privilege-Forms/Bylaws-Rules-Regulations-/OBGYNRulesRegs.pdf) (as of October 20,

1 the criteria in its Medical Staff bylaws.

2 55. On information and belief, Medical Staff membership with Huntington Hospital
3 was a privilege to be extended only to those physicians who are professional competent and
4 continuously meet the qualifications, standards and requirements set forth in the Medical Staff
5 Bylaws and Rules and Regulations, so as to ensure that patients will be given quality medical
6 care.¹⁴ A member carries the burden of establishing professional competence, professional ethics,
7 and morality in character to remain in good standing, and membership is contingent on a
8 member's adherence to ethical standards of the member's professional organization.¹⁵

9 56. On information and belief, the Hospital's Medical Staff members are purportedly
10 required to provide patients with care commensurate with the standards of the medical profession,
11 free of inappropriate, sexual and physical aggression and, among other requirements, required to
12 promptly report any past or pending professional disciplinary action, voluntary or involuntary
13 denial, revocation, suspension, reduction or relinquishment of licensure, certification or
14 registration, within 30 days after the member becomes aware that such an action or preliminary
15 investigation has been initiated or of any significant developments, or final order.¹⁶ They are also
16 required to provide information about professional liability actions.¹⁷

17 57. On information and belief, the Hospital's Medical Staff has the authority to
18 summarily impose a suspension or restriction of Hospital privileges upon a determination that
19 failure to take action may result in an imminent danger to the health or safety of any patient or
20 other person.¹⁸

21 58. On information and belief, Huntington Hospital and its Medical Staff were aware
22 of Dr. Sutton's misconduct towards certain female patients, as early as 1995, because Huntington

23 _____
24 2018).

25 ¹⁴ *Id.* at 3.1, 3.2.

26 ¹⁵ *Id.* at 3.2-4 and 3.2-5.

27 ¹⁶ *Id.* at 3.5(5).

28 ¹⁷ *Id.* at 5.8-4.

¹⁸ *Id.* at 7.4-1.

1 Hospital was named as a co-defendant in no less than five civil lawsuits brought by female
2 patients in 1995, 1997, 1998, 2004, and 2011. On information and belief, the Hospital Defendants
3 were aware of Dr. Sutton's misconduct towards a female patient when she filed civil lawsuit filed
4 against Dr. Sutton and another hospital in 2014. Each instance provided an opportunity for
5 Hospital Defendants to do the right thing, to tell the truth and cast sunlight on Dr. Sutton's
6 misconduct towards female patients, and to put a stop to Dr. Sutton's misconduct. By this time,
7 Dr. Sutton was hemorrhaging badly, but the Hospital Defendants failed to even put a bandage on
8 let alone stop the bleeding. The Hospital Defendants had investigated Dr. Sutton's misconduct and
9 were aware of his violence toward pregnant women but hid and concealed his misbehavior, and
10 provided a sanctuary for the abuse of unsuspecting women and aided and enabled him to continue
11 to harm patients. In each instance, on information and belief, the Hospital Defendants instead
12 chose to conceal the misconduct.

13 59. On information and belief, by at least 2002 when the Medical Board of California
14 Filed its Amended Accusation against Dr. Sutton, and again in 2005 when Dr. Sutton was accused
15 in a civil lawsuit of sexual misconduct toward female patients, and again in 2010, when Dr. Sutton
16 was investigated and accused by the Medical Board of California of sexual misconduct toward and
17 another patient, Dr. Sutton could not possibly demonstrate his professional competence, adherence
18 to professional ethics, or morality in character, in order to remain in good standing with the
19 Hospital Defendants. Instead, Dr. Sutton had demonstrated to Hospital Defendants that he was an
20 imminent danger to patient's health and safety. Nevertheless, the Hospital Defendants retained Dr.
21 Sutton's membership and privileges at the hospital in violation of its own rules.

22 60. On information and belief, the Medical Staff Bylaws required Huntington
23 Hospital's Medical Staff to perform a review of Dr. Sutton's privileges at the Hospital upon the
24 Medical Board of California's issuance of the 2002 Disciplinary Order (nearly eight years before
25 Dr. Sutton harmed Plaintiff).¹⁹ On information and belief, the Hospital Defendants failed to
26

27 ¹⁹ See, e.g., Medical Staff of Huntington Memorial Hospital Bylaws (Effective September 25,
28 2014), 7.5: <https://www.huntingtonhospital.org/documents/Medical-Staff-Privilege->

1 protect Plaintiff and other female patients by not adequately conducting a review of Dr. Sutton's
2 privileges and revoking or suspending Dr. Sutton's Medical Staff membership and privileges at
3 Huntington Hospital, despite his misconduct toward female patients and in violation of the
4 Hospital Defendants' own rules.

5 61. On information and belief, the Medical Staff Bylaws required Huntington
6 Hospital's Medical Staff to perform a review of Dr. Sutton's privileges at the hospital upon the
7 Medical Board of California's issuance of the 2011 Disciplinary Order.²⁰ On information and
8 belief, the Hospital Defendants again failed to protect female patients by not adequately
9 conducting a review of Dr. Sutton's privileges and revoking or suspending Dr. Sutton's Medical
10 Staff membership and clinical privileges at Huntington Hospital, despite his misconduct toward
11 female patients, in violation of the Hospital Defendants' own rules.

12 62. On information and belief, when Dr. Sutton was again investigated and accused by
13 the Medical Board of California of sexual misconduct toward and another patient in September
14 2018, Dr. Sutton had demonstrated to Hospital Defendants that he was an imminent danger to
15 patient's health and safety. Nevertheless, the Hospital Defendants retained Dr. Sutton's
16 membership and privileges at the hospital in violation of their own rules.

17 63. In yet another egregious example of the Hospital Defendants' longstanding
18 concealment of Dr. Sutton's issues and its failure to protect its patients, Dr. Sutton was *promoted*
19 to a leadership position as Hospital Defendants' Chair-Elect of the Obstetrics and Gynecology
20 Department, and held out as one of the Hospital Defendants' best and brightest, despite his known,
21 pervasive history of sexual misconduct towards female patients. Dr. Sutton was only recently
22 removed from that position following the media's coverage of patient abuse by Dr. Sutton in or
23 about October, 2018, and yet the Hospital Defendants continue to retain Dr. Sutton as a Medical
24 Staff member and extend *privileges* to him at the Hospital. For nearly three decades, the Hospital
25

26 _____
Forms/Bylaws-Rules-Regulations-/Bylaws.pdf (last accessed October 20, 2018).

27 ²⁰ See, e.g., Medical Staff of Huntington Memorial Hospital Bylaws (Effective September 25,
28 2014), 7.5: <https://www.huntingtonhospital.org/documents/Medical-Staff-Privilege-Forms/Bylaws-Rules-Regulations-/Bylaws.pdf> (last accessed October 20, 2018).

1 Defendants put their own interests ahead of patient care and used their considerable resources to
2 hide and conceal the risks and truth from patient victims of Dr. Sutton.

3 **TOLLING STATUTES OF LIMITATIONS AND PUNITIVE DAMAGES**

4 64. Plaintiff re-alleges each and every preceding paragraph and incorporates them by
5 reference herein as though set forth in full herein.

6 65. The delayed discovery rule applies to toll the running of the statute of limitations
7 until Plaintiff knew, or through the exercise of reasonable care and diligence, should have known
8 of the existence of her claims against all Defendants. The nature of Plaintiff’s injuries and
9 subsequent damages, and their causal relationship to Defendants’ treatment of Plaintiff were not
10 and could not have been discovered through reasonable care and diligence. Plaintiff only became
11 aware that her mistreatment by Dr. Sutton and Hospital Defendants was sexual battery,
12 harassment, and assault and/or gender-based violence, in or about 2017, when she learned that her
13 experience was not unique, and that other female patients of Dr. Sutton had complained of Dr.
14 Sutton’s sex-based violence and misconduct.

15 66. The running of any statute of limitations has been equitably tolled by reason of
16 Defendants’ fraudulent concealment and conduct. Specifically, Dr. Sutton and Hospital
17 Defendants failed to advise Plaintiff that Dr. Sutton’s treatment of her, as described above, was not
18 based in sound medical judgment and failed to get her consent. Hospital Defendants, in turn, were
19 on notice of Dr. Sutton’s mistreatment of female patients through internal complaints, civil
20 lawsuits, investigations, and the disciplinary orders issued against him, but continued to retain him
21 on the Hospital’s Medical Staff and give him hospital privileges, and to promote him to leadership
22 positions with the Hospital Defendants. Through Defendants’ affirmative misrepresentations and
23 omissions of material facts, Defendants actively concealed from Plaintiff the true risks, harm, and
24 injuries associated with Defendants’ treatment of Plaintiff.

25 67. As a result of Defendants’ actions, Plaintiff was unaware, and could not reasonably
26 known or have learned through reasonable diligence that Plaintiff suffered injury in the manner
27 described herein, and that such injury was a substantial result of Defendants’ acts and omissions.

28 68. Defendants are estopped from relying on any statute of limitations because of their

1 concealment of the truth, quality, and nature of their treatment of Plaintiff. Defendants were under
2 a duty to disclose the true character, quality, and nature of their treatment of Plaintiff because this
3 was information that Defendants had and continue to have within their exclusive control, and
4 because Defendants knew this information was not available to Plaintiff.

5 69. The misrepresentations and active concealment by Defendants constitute a
6 continuing tort. Indeed, they continue on to this day.

7 70. The acts, conduct, and omissions of Defendants, and each of them, as alleged
8 throughout this Complaint were fraudulent, willful, and malicious and were done with a conscious
9 disregard of the rights of Plaintiff, and for the primary purpose of maintaining their reputations
10 and increasing Defendants’ financial gains from the treatment of patients. Defendants’ outrageous
11 and unconscionable conduct warrants an award of exemplary and punitive damages against each
12 Defendant in an amount appropriate to punish and make an example of each Defendant.

13 71. Defendants’ conduct was despicable, and contemptible that it would be looked
14 down upon and despised by ordinary decent people, and moreover, was carried on by Defendants
15 with willful and conscious disregard for safety, entitling Plaintiff to exemplary damages under
16 California Civil Code section 3294.

17 72. Plaintiff filed this lawsuit within the applicable limitations period of first suspecting
18 that the treatment she received by Defendants was the cause of the appreciable harm sustained by
19 Plaintiff, within the applicable limitations period of first suspecting or having reason to suspect
20 any wrongdoing, and within the applicable limitations period of first discovering the injuries.
21 Plaintiff could not, by the exercise of reasonable diligence, have discovered any wrongdoing and
22 could not have discovered the causes of the injuries at an earlier time because the injuries occurred
23 without initial perceptible trauma or harm, and when the injuries were discovered, the causes were
24 not immediately known. Plaintiff did not suspect, nor did she have reason to suspect, that
25 wrongdoing had caused the injuries until recently. Plaintiff filed this action within approximately
26 one to two years of discovering the causes of action and identities of Defendants.

27
28

1 **PLAINTIFF’S CAUSES OF ACTION AGAINST DEFENDANTS**

2 **FIRST CAUSE OF ACTION**

3 **SEXUAL BATTERY**

4 **[Cal. Civ. Code. § 1708.5]**

5 **[Against Dr. Sutton, Huntington Hospital, Medical Staff, and DOES 1 – 50, Inclusive]**

6 73. Plaintiff re-alleges Paragraphs 1 through 72, and incorporates them by reference
7 herein as though fully set forth herein. Each of the foregoing allegations in this cause of action is
8 also made against Defendant DOES 1 through 50, inclusive.

9 74. Every person is bound, without contract, to abstain from injuring the person [...] of
10 another, or infringing upon any of [...] her rights.” Cal. Civ. Code § 1708.

11 75. “A person commits a sexual battery who [...]: (1) Acts with the intent to cause a
12 harmful or offensive contact with an intimate part of another, and a sexually offensive contact with
13 that person directly or indirectly results. [and] (3) Acts to cause an imminent apprehension [of a
14 harmful or offensive contact] and a sexually offensive contact with that person directly or
15 indirectly results.” Cal. Civ. Code § 1708.5(a)(1) and (3).

16 76. “Intimate part” includes the “sexual organ, anus, groin, or buttocks of any person or
17 breast of a female” Cal. Civ. Code § 1708.5(d). “Offensive contact” is “contact that offends a
18 reasonable sense of personal dignity.” Cal. Civ. Code § 1708.5(f).

19 77. At all relevant times, Dr. Sutton intended and acted with the intent to cause a
20 harmful and/or offensive contact with Plaintiff’s most intimate parts, including but not limited to
21 Plaintiff’s vagina, perineum, and/or anus, which would offend a reasonable sense of personal
22 dignity, and such sexually offensive contact actually occurred on two separate occasions.

23 78. On or about November 19, 2010, at Dr. Sutton’s office, Dr. Sutton touched Plaintiff
24 or caused Plaintiff to be touched inside her vagina under the guise of her last “pre-birth”
25 gynecological examination, outside the presence of a nurse or other chaperone, with the intent to
26 harm or offend her personal dignity, and violated her right to freedom from intentional, harmful,
27 unconsented contact with her body. A sexually offensive contact resulted. A reasonable person in
28 Plaintiff’s situation, with knowledge of Dr. Sutton’s inappropriate intent and history of sexual

1 aggression toward women, would have been offended by the touching.

2 79. At no time during this incident did Plaintiff consent to Dr. Sutton's touching by
3 words, acts, silence, or inaction.

4 80. On or about November 25, 2010, at Huntington Hospital, Dr. Sutton touched
5 Plaintiff or caused her to be touched through a surgical episiotomy, a cutting of her perineum
6 between her vagina and anus during the delivery of her child, with the intent to harm or offend her
7 personal dignity, and violated her right to freedom from intentional, harmful, unconsented contact
8 with her body. A sexually offensive contact resulted. A reasonable person in Plaintiff's situation,
9 with knowledge of Dr. Sutton's inappropriate intent and history of sexual aggression toward
10 women, would have been offended by the touching.

11 81. At no time during this incident did Plaintiff consent to Dr. Sutton's touching by
12 words, acts, silence, or inaction. In fact, Plaintiff previously informed Dr. Sutton that she did not
13 consent to an episiotomy.

14 82. Hospital Defendants are strictly liable for Dr. Sutton's sexual battery under the
15 principles of *respondeat superior*. At all times, Dr. Sutton acted in the course and scope of his
16 agency and servitude with Hospital Defendants. Moreover, Hospital Defendants ratified Dr.
17 Sutton's sexual harassment of Plaintiff. Hospital staff, including those in leadership, doctors,
18 nurses, supervisors, and other staff members of the Hospital, and other employees and agents of
19 Hospital Defendants, had knowledge of Dr. Sutton's sexual and violent misconduct towards
20 female patients and refused to take any action. Hospital Defendants failed to properly investigate
21 or respond to complaints about Dr. Sutton's conduct. In fact, Hospital Defendants knew or should
22 have known of patient complaints regarding Dr. Sutton as early as 2002, *at least eight years*
23 *before* Plaintiff first sought treatment with Dr. Sutton and her delivery of her child at Huntington
24 Hospital. Managing agents and supervisors of Hospital Defendants hid Dr. Sutton's abuse thereby
25 permitting Dr. Sutton, often unsupervised, to continue to abuse and harm patients. Hospital
26 Defendants continued to associate with and/or extend Medical Staff membership and Hospital
27 privileges to Dr. Sutton, and continued to encourage Hospital patients to use his services.

28 83. As a direct result of Dr. Sutton's conduct, Plaintiff suffered injuries including but

1 not limited to, physical and mental pain and suffering, emotional distress, physical injuries, past
2 and future costs of medical care and treatment, and other damages, in amounts not yet ascertained
3 but which exceed the minimum jurisdictional limits of this Court.

4 84. The oppressive conduct by Dr. Sutton and Hospital Defendants was willful,
5 wanton, and malicious under California Civil Code section 3294. Dr. Sutton and Hospital
6 Defendants acted with a conscious disregard of Plaintiff’s rights, feelings, and emotional and
7 physical well-being and health. Dr. Sutton and Hospital Defendants hijacked the physician-patient
8 relationship that is predicated upon trust. Plaintiff, as a patient, was required, encouraged, and
9 induced to reveal the most private and personal details of her life and physically expose herself,
10 including her genitalia, to a physician so he could physically violate her, without her consent, and
11 under the guise that what he was doing was necessary and for the purposes of medical care. There
12 can be no greater violation of trust or harm to an individual’s psyche than to use a medical
13 examination or treatment not for the purpose of providing medical care but to further an
14 individual’s depraved, predatory, and sexually deviant behavior. Hospital Defendants had advance
15 knowledge of Dr. Sutton’s violent tendencies and sexual predation on female patients, but
16 sacrificed Plaintiff, by continuing to maintain Dr. Sutton as a Medical Staff member with Hospital
17 privileges and one of its obstetric and gynecology specialists, and by turning a blind eye to his
18 depraved, systematic misconduct towards female patients for the purposes of protecting its
19 reputation and financial gain. It was only until the Los Angeles Times investigated Dr. Sutton in
20 2018 that Hospital Defendants took any real action, and even those actions aren’t enough to
21 protect patients of the Hospital. As of today, Dr. Sutton retains his privileges at the Hospital. As
22 such, Dr. Sutton and Hospital Defendants should be liable for exemplary and punitive damages in
23 an amount according to proof at trial as punishment for their despicable conduct that subjected
24 Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff’s right to dignity and
25 bodily autonomy, and as an example to others.

26 85. Plaintiff has incurred and will continue to incur attorney’s fees and costs in the
27 prosecution of this action. Plaintiff will seek recovery of all such fees and costs to the fullest
28 extent allowable under the law in an amount to be proven at trial.

1 California Civil Code section 3294. Dr. Sutton acted with a conscious disregard of Plaintiff’s
2 rights, feelings, and emotional and physical well-being and health. Dr. Sutton hijacked the
3 physician-patient relationship that is predicated upon trust. Plaintiff, as a patient, was required,
4 encouraged, and induced to reveal the most private and personal details of her life and physically
5 expose herself, including her genitalia, to a physician so he could physically violate her, without
6 her consent, and under the guise that what he was doing was necessary for her health and for the
7 purposes of medical care. There can be no greater violation of trust or harm to an individual’s
8 psyche than to use a medical examination or treatment not for the purpose of providing medical
9 care but to further an individual’s depraved, predatory, and sexually deviant behavior. As such,
10 Dr. Sutton should be liable for exemplary and punitive damages in an amount according to proof
11 at trial as punishment for their despicable conduct that subjected Plaintiff to cruel and unjust
12 hardship in conscious disregard of Plaintiff’s right to dignity and bodily autonomy, and as an
13 example to others.

14 **THIRD CAUSE OF ACTION**

15 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

16 **[Against Dr. Sutton, Huntington Hospital, Medical Staff, and DOES 1 – 50, Inclusive]**

17 94. Plaintiff re-alleges Paragraphs 1 through 72, and incorporates them by reference
18 herein as though fully set forth herein. Each of the foregoing allegations in this cause of action is
19 also made against Defendant DOES 1 through 50, inclusive.

20 95. The Defendants’ misconduct against Plaintiff was outrageous, or so extreme as to
21 exceed all bounds of that usually tolerated in a civilized community. Dr. Sutton’s outrageous
22 conduct and violent acts towards Plaintiff was not routine, nor behavior that a woman should be
23 expected to endure and/or tolerate, particularly, as part of a trusted physician-patient relationship.
24 Hospital Defendants’ misconduct also exceeded all possible bounds of decency.

25 96. At all relevant times, Defendants intended to cause Plaintiff emotional distress, or
26 acted with reckless disregard of the probability that Plaintiff would suffer emotional distress, by
27 conduct directed at Plaintiff, as described herein. At all relevant times, Defendants knew that
28 emotional distress would probably result from their conduct or gave little or no thought to the

1 probable effects of their conduct.

2 97. Plaintiff suffered severe emotional distress from Defendants' mistreatment of her
3 during her first pregnancy and her delivery of her child, including suffering, anguish, fright,
4 horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame so substantial or long
5 lasting that no reasonable person in a civilized society should be expected to bear it, all to her
6 damage in an amount to be established according to proof at trial. Defendants' conduct was a
7 substantial factor in causing Plaintiff's severe emotional distress.

8 98. Hospital Defendants are strictly liable for Dr. Sutton's sexual battery under the
9 principles of *respondeat superior*. At all times, Dr. Sutton acted in the course and scope of his
10 agency relationship and staff membership with Hospital Defendants. Moreover, Hospital
11 Defendants ratified Dr. Sutton's sexual harassment of Plaintiff. Hospital staff, including those in
12 leadership, doctors, nurses, supervisors, and other Medical Staff members of the Hospital, and
13 other employees and agents of Hospital Defendants, had knowledge of Dr. Sutton's sexual
14 misconduct and refused to take any action. Hospital Defendants failed to properly investigate or
15 respond to complaints about Dr. Sutton's conduct. In fact, Hospital Defendants knew or should
16 have known of patient complaints regarding Dr. Sutton as early as 2002, *at least eight years*
17 *before* Plaintiff first sought treatment with Dr. Sutton and her delivery of her child at Huntington
18 Hospital. Managing agents and supervisors of Hospital Defendants hid Dr. Sutton's abuse and
19 failed to suspend or terminate his Medical Staff membership and Hospital privileges, thereby
20 permitting Dr. Sutton, often unsupervised, to continue to abuse and harm patients. Hospital
21 Defendants continued to associate with Dr. Sutton as a Medical Staff member of the Hospital, and
22 to encourage patients to use his services.

23 99. Plaintiff was harmed and suffered injuries including but not limited to, physical and
24 mental pain and suffering, emotional distress, physical injuries, past and future costs of medical
25 care and treatment, and other damages, in amounts not yet ascertained but which exceed the
26 minimum jurisdictional limits of this Court. Dr. Sutton's conduct was a substantial factor in
27 causing Plaintiff harm.

28 100. The oppressive conduct by Dr. Sutton and Hospital Defendants was willful,

1 wanton, and malicious under California Civil Code section 3294. Dr. Sutton and Hospital
2 Defendants acted with a conscious disregard of Plaintiff’s rights, feelings, and emotional and
3 physical well-being and health. Dr. Sutton and Hospital Defendants hijacked the physician-patient
4 relationship that is predicated upon trust. Plaintiff, as a patient, was required, encouraged, and
5 induced to reveal the most private and personal details of her life and physically expose herself,
6 including her genitalia, to a physician so he could physically violate her, without her consent, and
7 under the guise that what he was doing was necessary for her health and for the purposes of
8 medical care. There can be no greater violation of trust or harm to an individual’s psyche than to
9 use a medical examination or treatment not for the purpose of providing medical care but to
10 further an individual’s depraved, predatory, and sexually deviant behavior. Hospital Defendants
11 had advance knowledge of Dr. Sutton’s violent tendencies and sexual predation on female
12 patients, but sacrificed Plaintiff, by continuing to associate with Dr. Sutton as one of the
13 Hospital’s Medical Staff members and one of its obstetric and gynecology specialists, and by
14 turning a blind eye to his depraved, systematic misconduct towards female patients solely for the
15 purposes of protecting its reputation. It was only until the Los Angeles Times investigated Dr.
16 Sutton in 2018 that Hospital Defendants took any real action, and even those actions aren’t enough
17 to protect patients of the Hospital. Dr. Sutton retains his Medical Staff membership and privileges
18 at the Hospital to this day. As such, Dr. Sutton and Hospital Defendants should be liable for
19 exemplary and punitive damages in an amount according to proof at trial as punishment for their
20 despicable conduct that subjected Plaintiff to cruel and unjust hardship in conscious disregard of
21 Plaintiff’s right to dignity and bodily autonomy, and as an example to others.

22 **FOURTH CAUSE OF ACTION**

23 **SEXUAL HARASSMENT**

24 **[Cal. Civ. Code § 51.9]**

25 **[Against Dr. Sutton, Huntington Hospital, Medical Staff, and DOES 1 – 50, Inclusive]**

26 101. Plaintiff re-alleges Paragraphs 1 through 72, and incorporates them by reference
27 herein as though fully set forth herein. Each of the foregoing allegations in this cause of action is
28 also made against Defendant DOES 1 through 50, inclusive.

1 102. California Civil Code section 51.9, subdivision (a) provides a cause of action for
2 sexual harassment when certain conditions are met, as set forth by the statute, and as they exist
3 under the circumstances described herein. Damages shall be awarded as provided by Civil Code
4 section 52, subdivision (b) in such an action. Civ. Code § 51.9(b).

5 103. At all relevant times, as described herein-above, a professional relationship existed
6 between Dr. Sutton as a physician and Plaintiff as a patient. At all relevant times, as described
7 herein-above, that relationship existed under the supervision of Hospital Defendants, and within
8 the course and scope of Dr. Sutton’s agency, servitude and/or or Medical Staff membership and
9 relationship with Hospital Defendants. At all relevant times, as described herein-above, a
10 professional relationship also existed between Hospital Defendants and Plaintiff for the provision
11 of medical care by doctors, nurses, and staff members during her childbirth at the Hospital and
12 post-natal care.

13 104. At all relevant times, as described herein-above, Dr. Sutton, individually, and as an
14 agent, servant and/or Medical Staff member with Huntington Hospital, engaged in physical
15 conduct of a sexual nature or of a hostile nature based on Plaintiff’s gender status as a woman, and
16 status as a pregnant woman seeking treatment for childbirth and childbirth related conditions, that
17 were unwelcome and pervasive or severe.

18 105. At all relevant times, as described herein-above, there existed an inability by
19 Plaintiff to easily terminate the physician-patient relationship with Dr. Sutton or Hospital
20 Defendants. Specifically, Plaintiff has already selected and established a relationship with Dr.
21 Sutton and Huntington Hospital for the delivery of her first child, whose birth was impending. Dr.
22 Sutton violated Plaintiff days before her childbirth and again during childbirth. Additionally, Dr.
23 Sutton’s age, position of authority and expertise, the false sense of medical appropriateness and
24 trust created by Dr. Sutton and Hospital Defendants, the physical seclusion of Plaintiff during
25 examinations and treatment, her restraint during examination and childbirth, and Plaintiff’s
26 relatively young age as well as her mental and physical state all made such a termination difficult.

27 106. A corporation is a “person” within the meaning of California Civil Code Section
28 51.9 and may be held liable for sexual abuse. *C.R. v. Tenet Healthcare Corp.*, (2009) 169

1 Cal.App.4th 1094. Principles of ratification apply when the principal authorized the tortious act or
2 subsequently ratified an originally unauthorized harassment.

3 107. Hospital Defendants ratified Dr. Sutton’s sexual harassment of Plaintiff. Hospital
4 Medical Staff, including those in leadership, doctors, nurses, supervisors, and other medical staff
5 members of the Hospital, and other employees and agents of Hospital Defendants, had knowledge
6 of Dr. Sutton’s sexual misconduct and refused to take any action. Hospital Defendants failed to
7 properly investigate or respond to complaints about Dr. Sutton’s conduct. In fact, Hospital
8 Defendants should have known of patient complaints regarding Dr. Sutton as early as 2002, at
9 least eight years before Plaintiff first sought treatment with Dr. Sutton and her delivery of her
10 child at Huntington Hospital. Managing agents and supervisors of Hospital Defendants hid Dr.
11 Sutton’s abuse thereby permitting Dr. Sutton, often unsupervised, to continue to abuse and harm
12 patients. Hospital Defendants continued to associate with Dr. Sutton and to encourage patients to
13 use his services.

14 108. As a result of Dr. Sutton and Hospital Defendants’ conduct, Plaintiff has suffered
15 or will suffer economic loss or disadvantage or personal injury, including physical and mental pain
16 and suffering, emotional distress, physical injuries, past and future costs of medical care and
17 treatment, and other damages, in amounts not yet ascertained but which exceed the minimum
18 jurisdictional limits of this Court, or the violation of a statutory or constitutional right.

19 109. The oppressive conduct by Dr. Sutton and Hospital Defendants was willful,
20 wanton, and malicious under California Civil Code section 3294. Dr. Sutton and Hospital
21 Defendants acted with a conscious disregard of Plaintiff’s rights, feelings, and emotional and
22 physical well-being and health. Dr. Sutton and Hospital Defendants hijacked the physician-patient
23 relationship that is predicated upon trust. Plaintiff, as a patient, was required, encouraged, and
24 induced to reveal the most private and personal details of her life and physically expose herself,
25 including her genitalia, to a physician so he could physically violate her, without her consent, and
26 under the guise that what he was doing was necessary for her health and for the purposes of
27 medical care. There can be no greater violation of trust or harm to an individual’s psyche than to
28 use a medical examination or treatment not for the purpose of providing medical care but to

1 of sex discrimination and means either of the following: (1) One or more acts that would
2 constitute a criminal offense under state law that has as an element the use, attempted use, or
3 threatened use of physical force against the person or property of another, committed at least in
4 part based on the gender of the victim, whether or not those acts have resulted in criminal
5 complaints, charges, prosecution, or conviction. (2) A physical intrusion or physical invasion of a
6 sexual nature under coercive conditions, whether or not those acts have resulted in criminal
7 complaints, charges, prosecution, or conviction.” As stated in Civil Code section 52.4, subdivision
8 (d), “gender” has the meaning set forth in Civil Code section 51: “Gender means sex, and includes
9 a person’s gender identity and gender expression.” Civ. Code §§ 51(e)(5); 52.4(d). The term “sex”
10 as used in the definition of “gender”, is also defined by Civil Code section 51, subdivision (e)(5)
11 to include “pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.”

12 114. As described hereinabove, Dr. Sutton committed physical acts against Plaintiff’s
13 body that would constitute criminal offenses under state law that each have as an element the use,
14 attempted use, or threatened use of physical force against the person of another, committed at least
15 in part based on Plaintiff’s gender as a woman and/or status as a pregnant woman seeking
16 treatment for childbirth or medical conditions related to pregnancy or childbirth.

17 115. As described hereinabove, Dr. Sutton committed a physical intrusion or physical
18 invasion of a sexual nature to Plaintiff’s most intimate parts, her vagina, perineum, and/or anus,
19 under coercive conditions. Such conditions were coercive because Plaintiff was required to place
20 her trust in her physical and emotional well-being in Dr. Sutton, who was held out by Defendants
21 to be an expert in gynecology and obstetrics. Such conditions were coercive because they occurred
22 while Plaintiff was on an examination table and restrained during examinations and/or treatment.
23 Such conditions were also coercive because Dr. Sutton performed these physical intrusions or
24 invasions of her body without her consent.

25 116. While an employer may not be liable under California Civil Code section 52.4
26 merely because of its employer status, here, Hospital Defendants actively participated in the
27 physical intrusion and invasion of Plaintiff’s body during the delivery of her child at the Hospital.
28 The Hospital Medical Staff, including nurses, put Plaintiff into a delivery room and permitted Dr.

1 Sutton to commit these physical intrusions or invasions with knowledge, on information and
2 belief, that Dr. Sutton would physically violate her in a sexual manner. Hospital Defendants were
3 not only complicit in Dr. Sutton’s acts, but actively enabled and participated in the obstetric,
4 gender violence Plaintiff experienced during the delivery of her child.

5 117. Plaintiff was harmed and suffered injuries including but not limited to, physical and
6 mental pain and suffering, emotional distress, physical injuries, past and future costs of medical
7 care and treatment, and other damages, in amounts not yet ascertained but which exceed the
8 minimum jurisdictional limits of this Court. Dr. Sutton’s conduct was a substantial factor in
9 causing Plaintiff harm.

10 118. The oppressive conduct by Dr. Sutton and Hospital Defendants was willful,
11 wanton, and malicious under California Civil Code section 3294. Dr. Sutton and Hospital
12 Defendants acted with a conscious disregard of Plaintiff’s rights, feelings, and emotional and
13 physical well-being and health. Dr. Sutton and Hospital Defendants hijacked the physician-patient
14 relationship that is predicated upon trust. Plaintiff, as a patient, was required, encouraged, and
15 induced to reveal the most private and personal details of her life and physically expose herself,
16 including her genitalia, to a physician so he could physically violate her, without her consent, and
17 under the guise that what he was doing was necessary for her health and for the purposes of
18 medical care. There can be no greater violation of trust or harm to an individual’s psyche than to
19 use a medical examination or treatment not for the purpose of providing medical care but to
20 further an individual’s depraved, predatory, and sexually deviant behavior. Hospital Defendants
21 had advance knowledge of Dr. Sutton’s violent tendencies and sexual predation on female
22 patients, but sacrificed Plaintiff, by continuing to retain Dr. Sutton as one of its Medical Staff
23 members and obstetric and gynecology specialists, and by turning a blind eye to his depraved,
24 systematic misconduct towards female patients solely for the purposes of protecting its reputation.
25 It was only until the Los Angeles Times investigated Dr. Sutton in 2018 that Hospital Defendants
26 took any real action, and even those actions aren’t enough to protect patients of the Hospital. Dr.
27 Sutton retains his Hospital privileges to this day. As such, Dr. Sutton and Hospital Defendants
28 should be liable for exemplary and punitive damages in an amount according to proof at trial as

1 punishment for their despicable conduct that subjected Plaintiff to cruel and unjust hardship in
2 conscious disregard of Plaintiff’s right to dignity and bodily autonomy, and as an example to
3 others.

4 119. Plaintiff has incurred and will continue to incur attorney’s fees and costs in the
5 prosecution of this action. Plaintiff will seek recovery of all such fees and costs to the fullest
6 extent allowable under the law in an amount to be proven at trial.

7 **SIXTH CAUSE OF ACTION**

8 **NEGLIGENCE**

9 **[Against Huntington Hospital, Medical Staff, and DOES 1 – 50, Inclusive]**

10 120. Plaintiff re-alleges Paragraphs 1 through 72, and incorporates them by reference
11 herein as though fully set forth herein. Each of the foregoing allegations in this cause of action is
12 also made against Defendant DOES 1 through 50, inclusive.

13 121. Dr. Sutton has practiced medicine at Huntington Hospital with full privileges since
14 approximately 1989. At all relevant times, he was a Medical Staff member with the Hospital, and
15 an agent and servant of Hospital Defendants.

16 122. Prior to Plaintiff’s medical treatment with Dr. Sutton and Hospital Defendants,
17 Hospital Defendants knew or should have known that Dr. Sutton had engaged in misconduct
18 towards female patients, including sexual misconduct and obstetric violence, based upon prior
19 patient complaints to Hospital Defendants and to the Medical Board of California, and based upon
20 the investigations and disciplinary orders issued by the Medical Board of California in response to
21 patient complaints, copies of which were ordered to be provided to any hospital, such as Hospital
22 Defendants, where Dr. Sutton practiced or had privileges. Indeed, Hospital Defendants knew of
23 Dr. Sutton’s predatory, violent acts against patients *at least eight years before* Plaintiff’s treatment
24 but continued to retain his Medical Staff membership, allow him unfettered Hospital privileges,
25 and promote him to leadership positions within the Hospital’s Obstetrics and Gynecology
26 Department.

27 123. Hospital Defendants had a special duty of care to protect Plaintiff and other patients
28 of Dr. Sutton because they were also patients of Hospital Defendants and entrusted to their care. A

1 special relationship existed between Plaintiff and Hospital Defendants because Plaintiff was a
2 patient at the hospital for her childbirth. A duty to warn and protect Plaintiff and other female
3 patients from harm arises from this special, trusting, confidential, and fiduciary relationship
4 between the Hospital Defendants and patients.

5 124. Hospital Defendants breached their duty of care to Plaintiff by allowing Dr. Sutton
6 to treat and come into contact with Plaintiff at the Hospital by:

7 a. Failing to adequately investigate, supervise, and retain or terminate Dr.
8 Sutton as an obstetrics and gynecology specialist staff member at the Hospital;

9 b. Failing to adequately investigate numerous complaints made by female
10 patients against Dr. Sutton, and by failing to disclose such facts to Plaintiff, other patients, the
11 Medical Board of California, law enforcement, and/or the public;

12 c. Concealing from Plaintiff, other patients, the Medical Board of California,
13 law enforcement, and the public that patients of Dr. Sutton had complained of his sexual
14 harassment, sexual battery and assault, and/or obstetric violence against them, or that the Medical
15 Board of California had disciplined Dr. Sutton twice;

16 d. Failing to adequately warn Plaintiff and other patients of Dr. Sutton's prior
17 sexual misconduct, including sexual harassment, sexual assault, and sexual battery, obstetric
18 violence, and other misconduct towards female patients, or to train or educate Plaintiff and other
19 patients of ways to avoid the misconduct described herein;

20 e. Maintaining Dr. Sutton's position as a physician Medical Staff member at
21 the Hospital and holding him in good standing with full clinical Hospital privileges and in
22 leadership positions at the Hospital, despite the complaints made against him, the disturbing nature
23 of those complaints, the disciplinary actions taken by the Medical Board of California against Dr.
24 Sutton, and the imminent danger he posed to Hospital patients.

25 125. Hospital Defendants lack of any care and/or its extreme departure from what a
26 reasonably careful hospital and its medical staff would do in the same situation to prevent harm to
27 patients, including Plaintiff, constituted gross negligence.

28 126. As a direct result of these actions and omissions, Plaintiff was harmed and suffered

1 injuries including but not limited to, physical and mental pain and suffering, emotional distress,
2 physical injuries, past and future costs of medical care and treatment, and other damages, in
3 amounts not yet ascertained but which exceed the minimum jurisdictional limits of this Court.
4 Hospital Defendants’ conduct was a substantial factor in causing Plaintiff harm.

5 **SEVENTH CAUSE OF ACTION**

6 **NEGLIGENT SUPERVISION AND RETENTION**

7 **OF MEDICAL STAFF MEMBERSHIP AND HOSPITAL PRIVILEGES**

8 **[Against Huntington Hospital, Medical Staff, and DOES 1 – 50, Inclusive]**

9 127. Plaintiff re-alleges Paragraphs 1 through 72, and incorporates them by reference
10 herein as though fully set forth herein. Each of the foregoing allegations in this cause of action is
11 also made against Defendant DOES 1 through 50, inclusive.

12 128. Hospital Defendants admitted Dr. Sutton as a Medical Staff member and has
13 allowed him to practice medicine at the Hospital with clinical privileges since approximately
14 1989. At all relevant times, he was an agent and servant of the Hospital Defendants.

15 129. Hospital Defendants had a special duty of care to protect Plaintiff and other patients
16 of Dr. Sutton because they were also patients of Hospital Defendants and entrusted to their care. A
17 special relationship existed between Plaintiff and Hospital Defendants because Plaintiff was a
18 patient at the Hospital for her childbirth. A duty to warn and protect Plaintiff and other female
19 patients from harm arises from this special, trusting, confidential, and fiduciary relationship
20 between the Hospital Defendants and patients.

21 130. Hospital Defendants owed a duty of care to Plaintiff and other Hospital patients to
22 adequately investigate Dr. Sutton prior to and during his admission as a Medical Staff member of
23 the Hospital, and prior to and during his grant of Hospital rights and privileges.

24 131. Hospital Defendants also owed a duty of care to Plaintiff and other Hospital
25 patients following and during Dr. Sutton’s admission as a Medical Staff member, provision of
26 Hospital rights and privileges, to adequately supervise his conduct toward Hospital patients,
27 including Plaintiff, by among other things, adequately monitoring his examinations and treatment
28 of female patients, including Plaintiff, giving due consideration and review to receipt or notice of

1 patient complaints made to the Hospital Defendants, Medical Board of California, or law
2 enforcement about Dr. Sutton, as well as civil lawsuits, and as well as disciplinary actions taken
3 against Dr. Sutton, to ensure that he was not engaging in misconduct toward Hospital patients,
4 including Plaintiff.

5 132. Hospital Defendants also owed a duty of care to Plaintiff and other Hospital
6 patients following and during Dr. Sutton's admission to practice medicine as a Hospital Medical
7 Staff member, grant of Hospital rights and privileges, to take necessary disciplinary action and/or
8 terminate his staff membership, rights and privileges, and/or access to the Hospital and Hospital
9 patients, following receipt or notice of patient complaints made to the Hospital Defendants,
10 Medical Board of California, or law enforcement about Dr. Sutton, as well as civil lawsuits and
11 disciplinary actions taken against Dr. Sutton, to ensure that he was not engaging in misconduct
12 toward Hospital patients, including Plaintiff.

13 133. Dr. Sutton was unfit and/or or became unfit to practice medicine at the Hospital as
14 a Medical Staff member with Hospital privileges. Prior to Plaintiff's medical treatment with Dr.
15 Sutton and Hospital Defendants, Hospital Defendants knew or should have known that Dr. Sutton
16 had engaged in misconduct towards female patients, including sexual misconduct and obstetric
17 violence, based upon prior patient complaints to Hospital Defendants and to the Medical Board of
18 California, civil lawsuits, and based upon the investigations and disciplinary orders issued by the
19 Medical Board of California in response to patient complaints, copies of which were ordered to be
20 provided to any hospital, such as Hospital Defendants, where Dr. Sutton practiced or had
21 privileges. Indeed, Hospital Defendants knew of Dr. Sutton's predatory, violent acts against
22 patients *at least eight years before* Plaintiff's treatment but continued to retain him as a Medical
23 Staff member, admit him and grant him access to practice medicine at the Hospital, provide him
24 with Hospital privileges, and promote him to leadership positions within their Obstetrics and
25 Gynecology division.

26 134. Hospital Defendants breached its duty of care to Plaintiff by failing to adequately
27 investigate, supervise, and retain Dr. Sutton as an obstetrics and gynecology specialist with
28 Hospital Defendants.

1 patients against Dr. Sutton, and by failing to disclose such facts to Plaintiff, other patients, the
2 Medical Board of California, law enforcement, and/or the public;

3 c. concealing from Plaintiff, other patients, the Medical Board of California,
4 law enforcement, and the public that patients of Dr. Sutton had complained of his sexual
5 harassment, sexual battery and assault, and/or obstetric violence against them, or that the Medical
6 Board of California had disciplined Dr. Sutton;

7 d. failing to adequately warn Plaintiff and other patients of Dr. Sutton’s prior
8 sexual misconduct, including sexual harassment, sexual assault, and sexual battery, obstetric
9 violence, and other misconduct towards female patients, or to train or educate Plaintiff and other
10 patients of ways to avoid the misconduct described herein;

11 e. its maintenance of Dr. Sutton’s position as a physician Medical Staff
12 member at the Hospital and holding him in good standing and in Hospital Defendants’ leadership
13 positions at the Hospital, despite the complaints made against him, the disturbing nature of those
14 complaints, the disciplinary actions taken by the Medical Board of California against Dr. Sutton,
15 and/or the imminent danger he posed to Hospital Defendants’ patients.

16 f. These are only a few examples of Hospital Defendants’ unfair, immoral,
17 unethical, oppressive, unscrupulous, and substantially injurious conduct toward patients and
18 consumers of medical care, such as Plaintiff. Hospital Defendants violated the unfair prong of the
19 UCL because its policies and practices offend established public policy and because the harm they
20 cause to consumers greatly outweighs any benefits associated with those practices. The Hospital
21 Defendants’ conduct as alleged herein also impaired competition within the hospital industry.
22 Their conduct also prevented Plaintiff from making fully informed decisions about where to give
23 birth and obtain perinatal care.

24 142. Hospital Defendants violated the unlawful prong of the UCL because its policies
25 and practices described above, and/or the acts of Dr. Sutton as its agent and Medical Staff
26 member, violate California laws, including but not limited to Civil Code sections 43 (“every
27 person has .. the right of protection from bodily restraint or harm ...”), 52.4, and 1708.5,
28 California Business and Professions Code section 726 (sexual misconduct) and 22 C.C.R. §

1 70707(a),(b)(5),(c) and (d). Plaintiff reserves the right to allege other violations of law, which
2 constitute other unlawful business acts and practices. Such conduct is ongoing and continues to
3 this date.

4 143. Hospital Defendants violated the fraudulent prong of the UCL because its
5 misrepresentations and omissions were likely to deceive a reasonable consumer, and the
6 information would be material to a reasonable consumer. At all relevant times, Hospital
7 Defendants misrepresented to patients, including Plaintiff, that patients would receive the best
8 medical care. For example, the Hospital Defendants’ website represents that patients will receive
9 from its doctors the “highest-quality medical care” and “patient-centered service”²¹ These
10 representations were false and misleading because Hospital Defendants and Dr. Sutton did not
11 provide the best medical care to Plaintiff. Plaintiff did not consent to Dr. Sutton’s violent acts at
12 the Hospital during her childbirth. She did not have a “patient-centered” experience. Likewise, at
13 all relevant times, Hospital Defendants misrepresented to patients, including Plaintiff, that they
14 were committed to patient safety. For example, the Hospital Defendants represent that patients
15 have a right to make decisions regarding their medical care and receive as much information about
16 any proposed treatment or procedure as needed in order to give informed consent.²² However,
17 Plaintiff’s decision not to have a surgical episiotomy was ignored by Dr. Sutton at the Hospital,
18 and she was given one without any medical need or her consent. The conduct of Hospital
19 Defendants was deceptive as Plaintiff and other female patients were deceived into believing that
20 they would and in fact did receive quality and professional obstetric and gynecology services from
21 Dr. Sutton and Hospital Defendants.

22 144. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
23 conduct of Hospital Defendants’ business. Hospital Defendants’ wrongful conduct is part of a

24 _____

25 ²¹ See: www.huntingtonhospital.org/About-Us/Our-Doctors.aspx (last accessed October 16, 2018).

26 ²² See Huntington Hospital Patient Guide, Section Entitled Patient Rights (at p. 20):
27 https://www.huntingtonhospital.org/documents/Patient-Guide_8.10.2016.pdf (last accessed
28 October 16, 2018), and Huntington Hospital Patient Rights and Responsibilities (updated 9/2018):
<https://www.huntingtonhospital.org/documents/Patient-Rights/Patient-Rights-updated-2018.pdf>
(last accessed October 16, 2018).

1 pattern or generalized conduct that is still perpetuated and repeated in California today.

2 145. Plaintiff requests that this Court enter such orders or judgments for injunctive
3 relief, pursuant to Business and Professions Code section 17203, to enjoin Hospital Defendants
4 from continuing their unfair, unlawful, and/or deceptive practices by requiring them to terminate
5 all Medical Staff rights and Hospital privileges of Dr. Sutton at the Hospital, and to restore to
6 Plaintiff any money Hospital Defendants acquired by unfair competition, and for such other relief
7 as is set forth below.

8 146. Plaintiff seeks restitution for all amounts improperly obtained by Hospital
9 Defendants through the use of the above-mentioned unlawful business practices, as well as the
10 disgorgement of all ill-gotten gains and restitution on behalf of the Plaintiff.

11 147. Plaintiff has incurred and will continue to incur attorney’s fees and costs in the
12 prosecution of this action. Plaintiff will seek recovery of all such fees and costs to the fullest
13 extent allowable under the law in an amount to be proven at trial.

14 **NINTH CAUSE OF ACTION**

15 **FRAUD**

16 **[Against Dr. Sutton, Huntington Hospital, Medical Staff and DOES 1 – 50, Inclusive]**

17 148. Plaintiff re-alleges Paragraphs 1 through 72, and incorporates them by reference
18 herein as though fully set forth herein. Each of the foregoing allegations in this cause of action is
19 also made against Defendant DOES 1 through 50, inclusive.

20 149. By admitting and maintaining Dr. Sutton as a Medical Staff member of the
21 Hospital, holding him out as an agent and servant of Hospital Defendants, and allowing him to
22 undertake the medical care of patients at the Hospital, such as Plaintiff, a special, confidential, and
23 fiduciary relationship with created with Plaintiff. By holding themselves out as an established
24 hospital and excellent hospital medical staff, thereby enticing Plaintiff to deliver her child at the
25 Hospital, Hospital Defendants also created a special, confidential, and fiduciary relationship with
26 Plaintiff. As Plaintiff’s physician, Dr. Sutton also had a special and confidential relationship with
27 Plaintiff.

28 150. At all times, Defendants intentionally concealed certain facts from Plaintiff, failed

1 to disclose certain facts to Plaintiff, and/or disclosed some facts to Plaintiff but intentionally failed
2 to disclose other facts, making the disclosure deceptive, and/or disclosed certain facts that were
3 only known to one or more Defendants that Plaintiff could not have discovered, and/or prevented
4 Plaintiff from discovering certain facts, specifically regarding prior patient complaints or
5 allegations of Dr. Sutton's unlawful and/or inappropriate sexual misconduct toward female
6 patients, as alleged in this Complaint.

7 151. Huntington Hospital and its Medical Staff knew of Dr. Sutton's predatory, violent
8 and sexual acts against female patients *at least eight years before* Plaintiff's treatment but
9 continued to retain him as a Hospital Medical Staff member, continued to allow him unfettered
10 Hospital privileges, and continued to promote him to leadership positions within their Obstetrics
11 and Gynecology department. Hospital Defendants had a duty to protect Hospital patients and
12 ensure that Dr. Sutton did not subject Hospital patients, including Plaintiff, to harm. Hospital
13 Defendants never warned its patients. including Plaintiff, of Dr. Sutton's anger and sexual
14 violence issues, and failed to take other reasonable measures to protect its patients from him.
15 Instead, the Hospital and its Medical Staff allowed Dr. Sutton to continue to prey on Plaintiff and
16 other women patients because it was profitable to do so. Hospital Defendants actively and
17 deliberately concealed Dr. Sutton's abuse of female patients. The Hospital Defendants placed their
18 own reputation and financial interests over the safety and well-being of Plaintiff and other
19 patients, and continues to do so.

20 152. As a result of Defendants' concealment, Plaintiff did not know of the concealed
21 facts and thus, induced to seek medical care with Defendants. Plaintiff believed and was led to
22 believe that she was safe and would be provided with professional quality medical care by
23 Hospital Medical Staff physicians. By continuing Dr. Sutton's Medical Staff membership as a
24 physician at the Hospital, Hospital Defendants held Dr. Sutton out as a trustworthy physician who
25 was safe and morally fit to provide obstetric and gynecological treatment to its female patients,
26 including Plaintiff, at the Hospital.

27 153. Defendants intended to deceive Plaintiff by concealing these facts.

28 154. Had the omitted and concealed information been disclosed, Plaintiff reasonably

1 would have behaved differently, by selecting another obstetric and gynecology specialist or
2 hospital for perinatal care and her childbirth. Had Hospital Defendants not misrepresented,
3 suppressed, and concealed of the true nature of Dr. Sutton’s conduct as well as complaints from
4 other patients, Plaintiff would have undertaken her own investigation, which would have led to the
5 discovery of the true facts of Dr. Sutton’s misconduct and predatory behavior towards women.

6 155. Defendants, having willfully deceived Plaintiff with the intent to induce her to alter
7 her position, are liable for the injury she suffers. Civ. Code § 1709.

8 156. As a result of the above-described conduct, Plaintiff has suffered and continues to
9 suffer great pain of body and mind, shock, emotional distress, physical manifestations of
10 emotional distress including embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
11 enjoyment of life. Plaintiff suffered and continues to suffer and was prevented and will continue to
12 be prevented from performing daily activities and obtaining the full enjoyment of life. Plaintiff
13 will sustain loss of earnings and earning capacity. Plaintiff has and/or will incur continue to incur
14 expenses for medical and psychological treatment, therapy, and counseling. Defendants’
15 concealment was a substantial factor in causing Plaintiff’s harm.

16 157. Plaintiff is informed and believes and thereon alleges that Defendants’ conduct was
17 oppressive, malicious and despicable in that it was intentionally done in a conscious disregard for
18 the rights and safety of others, it purposely enabled the exploitation and violation of the trust upon
19 which the physician-patient relationship was predicated, and it was done in a conscious disregard
20 for Plaintiff’s right to be free from such tortious behavior. Hospital Defendants failed to act and
21 protect Plaintiff from Dr. Sutton despite prior knowledge of his misconduct toward Hospital
22 patients. Such actions and inactions of Dr. Sutton and Hospital Defendants constitutes oppression,
23 fraud or malice pursuant to California Civil Code section 3294. As such, Plaintiff is entitled to
24 punitive damages against Hospital Defendants and Dr. Sutton.

25 **TENTH CAUSE OF ACTION**

26 **CONSTRUCTIVE FRAUD**

27 **[Against Dr. Sutton, Huntington Hospital, Medical Staff, and DOES 1 – 50, Inclusive]**

28 158. Plaintiff re-alleges Paragraphs 1 through 72, and incorporates them by reference

1 herein as though fully set forth herein. Each of the foregoing allegations in this cause of action is
2 also made against Defendant DOES 1 through 50, inclusive.

3 159. By admitting and maintaining Dr. Sutton as a Medical Staff member with the
4 Hospital, holding him out as an agent and servant of Hospital Defendants, and allowing him to
5 undertake the medical care of Hospital patients such as Plaintiff, a special, confidential, and
6 fiduciary relationship with created with Plaintiff.

7 160. By holding themselves out as an established hospital and excellent medical staff,
8 thereby enticing Plaintiff to deliver her child at the Hospital, Hospital Defendants created a
9 special, confidential, and fiduciary relationship with Plaintiff. As Plaintiff's physician, Dr. Sutton
10 also had a special and confidential relationship with Plaintiff.

11 161. By virtue of his special and confidential relationship, Dr. Sutton, as Plaintiff's
12 physician, owed Plaintiff a duty to provide professional and appropriate medical care. He had a
13 duty to act with the upmost respect and care for Plaintiff's well-being and physical, emotional, and
14 mental health.

15 162. By virtue of their confidential, fiduciary and special relationship with Plaintiff,
16 Hospital Defendants owed Plaintiff a duty to:

17 a. Investigate, follow-up, or otherwise to confirm or deny allegations and
18 complaints of inappropriate conduct by Dr. Sutton, including sexual battery, harassment, abuse,
19 and other misconduct, as well as the basis for disciplinary actions taken against Dr. Sutton;

20 b. Reveal and otherwise disclose such facts to Plaintiff, other patients, the
21 Medical Board of California, law enforcement, and the public;

22 c. Refuse to place or maintain or retain Dr. Sutton in positions of trust and
23 authority within its Hospital;

24 d. Refuse to hold out Dr. Sutton to patients and the public as being in good
25 standing, trustworthy, and professional, and in keeping Dr. Sutton in his position as a physician,
26 staff member and in a leadership position;

27 e. Refuse to assign Dr. Sutton to positions of power and influence within its
28 Hospital; and

1 f. Disclose to Plaintiff, other patients, the Medical Board of California, law
2 enforcement, and the public the wrongful, tortious, and sexually exploitive acts that Dr. Sutton had
3 engaged in with patients.

4 163. Hospital Defendants breached their confidential, fiduciary and special duties to
5 Plaintiff. Such breaches include, but are not limited to:

6 a. Not making any reasonable investigation of Dr. Sutton’s misconduct;

7 b. Issuing no warnings or disclosures about Dr. Sutton’s misconduct (for
8 years) to patients, including Plaintiff;

9 c. Permitting Dr. Sutton to routinely be supervised only by untrained
10 chaperones, who were consistently derelict in their duty to report Dr. Sutton’s misconduct to
11 hospital administration, the Medical Board of California, law enforcement or indeed, anyone;

12 d. Making no reports of any complaints and/or allegations of Dr. Sutton’s
13 misconduct toward patients prior to or during his Medical Staff membership with Huntington
14 Hospital; and

15 e. Assigning and continuing to assign Dr. Sutton to duties as an on-call
16 physician at the Hospital, providing him with Medical Staff membership with Hospital
17 Defendants, providing him Hospital rights and privileges, placing him in a position of leadership,
18 authority and trust over patients.

19 164. Dr. Sutton breached his duties to Plaintiff by, including, but not limited to, using
20 her trust in him as a physician for the purpose of violating her person and sexually harassing and
21 battering Plaintiff for his own gratification rather than provide legitimate and professional medical
22 care.

23 165. Defendants, by breaching their duties, misled Plaintiff and gained an advantage
24 over Plaintiff in matters relating to Plaintiff’s health, safety, and emotional and physical well-
25 being. In breaching such duties, Hospital Defendants were able to maintain their status as an
26 hospital and medical staff of high moral repute, preserve their reputation, and financially prosper
27 at the expense of Plaintiff and other patients, and in violation of Hospital Defendants’ duties to
28 patients, including Plaintiff. Dr. Sutton was permitted to continue his membership and privileges

1 with Hospital Defendants due to their breaches of these duties and concealment of material facts.

2 166. At the time Hospital Defendants and Dr. Sutton engaged in such suppression and
3 concealment, it was done for the purpose of causing Plaintiff to forbear on her rights. The conduct
4 of Hospital Defendants did reasonably cause Plaintiff to forbear on her rights.

5 167. The misrepresentations, suppressions and concealment of facts by Defendants were
6 likely to mislead Plaintiff (and others) to believe that they had no knowledge of any complaints or
7 allegations against Dr. Sutton, and that there were no such complaints of unlawful conduct or
8 inappropriate behavior or sexual misconduct against Dr. Sutton, and that there was no need for
9 Plaintiff or Hospital Defendants to take action or precaution.

10 168. Defendants knew that their conduct was misleading.

11 169. Plaintiff was indeed misled and thus, induced to seek medical care at the Hospital
12 with Defendants. Plaintiff believed and was led to believe that she was safe and would be provided
13 with professional quality medical care by Hospital Defendants' Medical Staff, including doctors.
14 By continuing Dr. Sutton's Medical Staff membership as a physician member with the Hospital
15 Defendants, Huntington Hospital held Dr. Sutton out as a trustworthy physician who was safe and
16 morally fit to provide obstetric and gynecological treatment to patients, including Plaintiff.

17 170. Had Hospital Defendants not misrepresented, suppressed, and concealed of the true
18 nature of Dr. Sutton's conduct as well as complaints from other female patients, Plaintiff would
19 have undertaken her own investigation which would have led to the discovery of the true facts of
20 Dr. Sutton's misconduct and predatory behavior toward female patients.

21 171. As a result of the above-described conduct, Plaintiff has suffered and continues to
22 suffer great pain of body and mind, shock, emotional distress, physical manifestations of
23 emotional distress including embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
24 enjoyment of life. Plaintiff suffered and continues to suffer and was prevented and will continue to
25 be prevented from performing daily activities and obtaining the full enjoyment of life. Plaintiff
26 will sustain loss of earnings and earning capacity. Plaintiff has and/or will incur continue to incur
27 expenses for medical and psychological treatment, therapy, and counseling.

28 172. Plaintiff is informed and believes and thereon alleges that Defendants' conduct was

1 oppressive, malicious and despicable in that it was intentionally done in a conscious disregard for
2 the rights and safety of others, it purposely enabled the exploitation and violation of the trust upon
3 which the physician-patient relationship was predicated, and it was done in a conscious disregard
4 for Plaintiff’s right to be free from such tortious behavior. Hospital Defendants failed to act and
5 protect Plaintiff from Dr. Sutton despite prior knowledge of his misconduct toward patients. Such
6 actions and inactions of Hospital Defendants constitutes oppression, fraud or malice pursuant to
7 California Civil Code section 3294. As such, Plaintiff is entitled to punitive damages against
8 Hospital Defendants and Dr. Sutton.

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 11 1. Leave to amend the operative complaint as necessary to conform it to the evidence
12 produced at trial;
- 13 2. An order of injunctive, declaratory, or other equitable relief, including restitution,
14 as is necessary to protect the interests of Plaintiff and other patients of Defendant Huntington
15 Memorial Hospital;
- 16 3. An award of general, special, actual, compensatory, and/or statutory damages to
17 Plaintiff in amounts specified by statute or to be proven at trial;
- 18 4. An award of punitive damages pursuant to Civil Code section 3294 against
19 Defendants on Plaintiff’s 1st, 2nd, 3rd, 4th, 5th, 9th, and 10th causes of action, or as otherwise
20 permitted by law;
- 21 6. An award of attorneys’ fees and costs of suit herein pursuant to Code of Civil
22 Procedure section 1021.5, the Civil Code, Business & Professions Code sections 17200 *et seq.*, or
23 as otherwise permitted by applicable law;
- 24 7. An award of pre-judgment and post-judgment interest, to the extent allowable as
25 permitted by law;
- 26 8. For such other, further, and different relief as permitted by law or as equity and
27 justice may require.

28

BOUCHER LLP

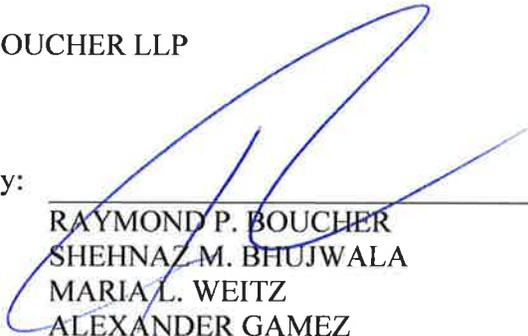
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DATED: October 24, 2018

Respectfully submitted,

BOUCHER LLP

By: 

RAYMOND P. BOUCHER
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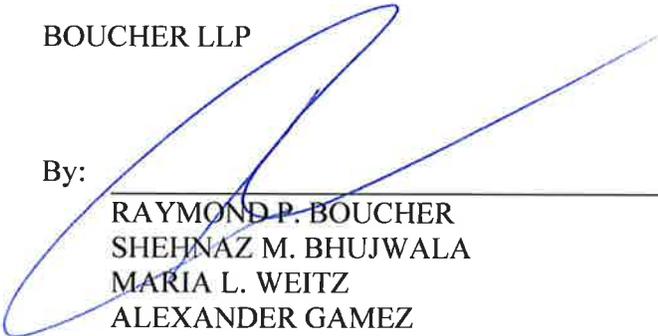
REQUEST FOR JURY TRIAL

Plaintiff Jane Doe D.M. hereby respectfully requests a trial by jury of all issues and claims against each and all of the Defendants so triable.

DATED: October 24, 2018

Respectfully submitted,

BOUCHER LLP



By:

RAYMOND P. BOUCHER
SHEHNAZ M. BHUJWALA
MARIA L. WEITZ
ALEXANDER GAMEZ

Attorneys for Plaintiff Jane Doe D.M.