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13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17
18 JANE DOE K.G., JANE DOE T.F.,
19 and JANE DOE B.S., individually
20 and on behalf of all others similarly
21 situated,

21 Plaintiffs,

22 v.

23 PASADENA HOSPITAL
24 ASSOCIATION, LTD., d/b/a
25 HUNTINGTON MEMORIAL
26 HOSPITAL, and PATRICK
27 SUTTON, M.D.;

26 Defendants.

Case No. 2:18-cv-8710

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiffs Jane Doe K.G., Jane Doe T.F., and Jane Doe B.S. (“Plaintiffs”), on
2 behalf of themselves and all others similarly situated, file this class action against
3 Huntington Memorial Hospital (“Huntington Hospital” or “Huntington”) and
4 Patrick Sutton, M.D. (“Sutton”), and allege as follows:

5 **NATURE OF THE ACTION**

6 1. This is a class action on behalf of individuals who were sexually
7 abused, harassed, and molested by Defendant Dr. Patrick Sutton, while they were
8 patients in his care at Huntington Hospital.

9 2. Trust is an essential part of the relationship between physician and
10 patient. “Without trust, how could a physician expect patients to reveal the full
11 extent of their medically relevant history, expose themselves to the physical exam,
12 or act on recommendations for tests or treatments?”¹

13 3. “Presumed consent is a critical manifestation of trust that makes
14 possible much of routine doctor visits.”² Absent a presumption of trust, patients
15 might avoid essential medical care.

16 4. “Important as it is to measure trust in individual clinicians and the
17 actions and circumstances that affect it, it is equally important, in today’s health
18 system, to study (empirically and normatively) trust and trustworthiness in
19 organizations and institutions.”³

20 5. Patrick Sutton, M.D. violated this trust by taking advantage of female
21 patients who sought women’s-health-related medical care from a
22 gynecologist/obstetrician at Huntington Hospital. These women were highly
23 vulnerable: naked or partially unclothed in a closed examination room with the

24 ¹ Susan Dorr Goold, MD, MHSA, MA, *Trust, Distrust and Trustworthiness: Lessons from the Field*, 17 J. GEN. INTERNAL MED. 79, 79–81 (2002) (citations
25 omitted).

26 ² *Id.*, citing Ruth Faden & Tom Beauchamp, A HISTORY AND THEORY OF
27 INFORMED CONSENT 274–80 (Oxford Univ. Press 1986).

28 ³ *Id.*

1 expectation that physical contact would occur for medical treatment only in
2 accordance with the standard of care.

3 6. Sutton used his position of trust and authority at Huntington to
4 sexually abuse Plaintiffs on multiple occasions, by engaging in acts that include but
5 are not limited to: inappropriate and not-medically-necessary sexualized touching
6 during gynecological examinations and treatment, lewd and threatening sexualized
7 questions and comments to patients during examinations and outside the medical
8 setting, in public places.

9 7. As is typical with sexual predators, Sutton had a pattern of behavior
10 and a common course of conduct that he exhibited towards all his victims,
11 including Plaintiffs and Class members.

12 8. Over the years that Sutton has been employed by Huntington,
13 numerous Class members have made eerily similar complaints about his
14 inappropriate, abusive, and harassing behavior, including, but not limited to: Sutton
15 making suggestive comments about patients' bodies during gynecological
16 examinations; touching patients' bodies in a manner that had no medical purpose;
17 improper touching; crude sexual comments; and intrusive questions about their
18 bodies and sexual habits.

19 9. Huntington had a duty to ensure that Sutton used his trusted position
20 consistent with the standard of care and to ensure that Sutton did not violate that
21 trust by abusing and harassing patients.

22 10. As a medical doctor, and as an employee of Huntington, Sutton owed
23 Plaintiffs and Class members a duty of due care in carrying out medical treatment.

24 11. Despite the fact that Huntington has publicly admitted that it received
25 numerous complaints of Sutton's sexually abusive behavior, dating back to at least
26 1998, Huntington actively and deliberately concealed Sutton's sexual abuse for
27 years, continuing to grant Sutton unfettered access to the female Huntington
28 patients in his care, all to protect Huntington's reputation and financial coffers.

1 12. Plaintiffs seek appropriate relief on behalf of the other individuals who
2 experienced similar mistreatment by Sutton and Huntington.

3 **JURISDICTION AND VENUE**

4 13. The Court has subject matter jurisdiction over this action under the
5 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because: (a) Plaintiffs
6 seeks to represent a nationwide class of the hundreds, or thousands, of individuals
7 sexually abused, harassed, and molested by Defendant Dr. Patrick Sutton, (b) the
8 amount in controversy exceeds \$5,000,000, excluding interest and costs, (c) the
9 proposed class consists of more than 100 individuals, and (d) none of the
10 exceptions under the subsection applies to this action.

11 14. This Court has personal jurisdiction over Defendants. They conduct
12 substantial business in this District and intentionally availed themselves of the laws
13 and markets of this District. A significant portion of the acts and omissions
14 complained of occurred in the District, and Plaintiffs and many class members
15 suffered harm in the District.

16 15. Venue is proper in this District under 28 U.S.C § 1391 because a
17 substantial part of the events or omissions giving rise to the claims occurred in this
18 District.

19 **PARTIES**

20 *Plaintiffs*

21 16. Given the sensitive nature of their claims, Plaintiffs are using
22 pseudonyms in this litigation to protect their privacy. If required by the Court,
23 Plaintiffs will seek permission to proceed under these pseudonyms.

24 17. Plaintiff Jane Doe K.G. is a resident of Flagstaff, Arizona, and a
25 citizen of the United States.

26 18. Plaintiff Jane Doe T.F. is a resident of Palmdale, California, and a
27 citizen of the United States.
28

1 19. Plaintiff Jane Doe B.S. is a resident of Claremont, California, and a
2 citizen of the United States.

3 Defendants

4 20. Defendant Patrick Sutton, M.D. was and is a resident of Altadena,
5 California, and a citizen of the United States.

6 21. In or about 1989, Sutton started working at Huntington Hospital as an
7 obstetrician/gynecologist. At all relevant times, Sutton was an actual and/or
8 apparent, duly authorized agent, servant, and/or employee of Defendant Huntington
9 Hospital and carried on an obstetrics/gynecological medical practice in Pasadena,
10 California, as part of his employment.

11 22. Defendant Pasadena Hospital Association, Ltd. d/b/a Huntington
12 Memorial Hospital is a California nonprofit corporation having its principal place
13 of business in California; and doing business in Los Angeles County, California.

14 23. Upon information and belief, each of the Defendants named in this
15 Complaint is responsible in some manner for one or more of the events and
16 happenings, and proximately caused the injuries and damages, hereinafter alleged.
17 Consequently, each Defendant is jointly and severally liable to Plaintiffs and the
18 Class members for the damages sustained as a proximate result of their conduct.

19 **FACTUAL ALLEGATIONS**

20 **A. The standard of care for the obstetrical treatment of pregnant**
21 **women.**

22 24. The standard of care is the level at which the average, prudent
23 provider in obstetrics and gynecology would practice. It is how similarly qualified
24 practitioners would have managed the patient's care under the same or similar
25 circumstances.

26 25. Gathering health information in a clinical and unobtrusive manner is
27 essential for building patient trust, creating an accurate history, and identifying
28 potential health concerns. The standard of care in gynecology is to afford the

1 patient as much modesty as possible. Doctors should begin by taking a patient’s
2 health history in a private setting while the patient is fully clothed and prior to any
3 physical examination.⁴

4 26. Taking a patient’s medical history does not include invasive questions
5 concerning sexual “likes” and “dislikes.” At the outset of a gynecology patient visit,
6 the physician should take a gynecologic medical history, including sexual history,
7 before the patient disrobes. A brief set of screening questions relating to sexual
8 history is adequate to determine whether a problem exists that requires further
9 inquiry, namely whether the patient has sexual concerns, is having sexual relations,
10 has a new partner or sexual contacts, uses protection from pregnancy and sexually
11 transmitted infections, would like to be screened for sexually transmitted infections,
12 needs contraception or preconceptional counseling, or is currently experiencing or
13 has experienced previous sexual abuse. Doctors are expected to afford patients
14 equal treatment and objective, non-judgmental counseling regardless of their sexual
15 orientation or history.⁵

16 27. Informed consent is required. The decision to perform an internal
17 pelvic examination, breast examination, or both should be made by the physician
18 and the patient after shared communication and decision-making.

19 28. Presence of chaperones. In addition, chaperones are often present as a
20 precautionary measure for pelvic examinations.

21
22
23 ⁴ Daniela A. Carusi, MD, MSc, *The Gynecologic History and Pelvic Examination*,
24 UpToDate, Last Updated Mar. 27, 2017 (last accessed Aug. 15, 2018)(available at
25 [https://www.uptodate.com/contents/the-gynecologic-history-and-pelvic-](https://www.uptodate.com/contents/the-gynecologic-history-and-pelvic-examination)
26 [examination](https://www.uptodate.com/contents/the-gynecologic-history-and-pelvic-examination)).

27 ⁵ Committee Opinion, Health Care for Lesbians and Bisexual Women, No. 525
28 (May 2012), [https://www.acog.org/Clinical-Guidance-and-Publications/Committee-](https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Lesbians-and-Bisexual-Women)
[Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-](https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Lesbians-and-Bisexual-Women)
[Lesbians-and-Bisexual-Women](https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Lesbians-and-Bisexual-Women).

1 29. Hygiene is important. Doctors should wash their hands before
2 touching patients and they should wear gloves during pelvic and breast exams.

3 30. Diagnoses and records. All diagnoses should follow proper testing, and
4 recommended treatments and medications should be in accordance with standard,
5 up-to-date methods and research. All information from a patient's history and exam
6 should be accurately recorded.

7 **B. Women entrusted their medical care to Huntington Hospital.**

8 31. Dr. Sutton has enjoyed a long career at Huntington Hospital, working
9 there as a gynecologist obstetrician for more than three decades. Many of his
10 patients were attracted by the prestige and infrastructure of the Hospital, and hoped
11 to deliver their babies at Huntington. During his tenure at Huntington Hospital,
12 however, Sutton has systematically violated the trust of vulnerable pregnant women
13 who sought his care.

14 32. Even after Sutton was the subject of four sexual misconduct
15 complaints before the Medical Board of California ("Medical Board"), and several
16 disciplinary measures taken against him, Sutton was allowed to practice medicine at
17 Huntington, and was included in a list of doctors on call to deliver babies at the
18 hospital. He was even elected as the chair of Huntington Hospital's Obstetrics and
19 Gynecology Department and was due to assume control of the department in
20 January 2019. Only after the recent public attention brought by a fifth sexual
21 misconduct complaint before the Medical Board did Huntington remove him from
22 the list of on call doctors and remove his leadership role.

23 **C. Sutton and Huntington Hospital's abuse of trust and violation of**
24 **the standard of care.**

25 33. Allegations of sexual misconduct against Sutton go back decades. Five
26 of these cases have resulted in lawsuits or complaints being brought before the
27 Medical Board of California, about which Huntington Hospital must have been
28 aware.

1 34. In 1998, a female patient complained to the Medical Board that Sutton
2 had made inappropriate sexual comments, slipped his hand under her pants, and
3 slipped two fingers in her vagina. He was not wearing gloves, nor was there a nurse
4 present. After an investigation, the board accused Sutton of gross negligence and
5 sexual misconduct for “needlessly and inappropriately sexualizing her physical
6 examination.”

7 35. In 2005, while still on probation from the 1998 incident, Sutton was
8 accused by two female patients of sexual battery and sexual harassment in a Los
9 Angeles County Superior Court lawsuit. The women alleged improper touching,
10 crude sexual comments and intrusive questions about their bodies and sexual habits.
11 That accusation resulted in a confidential settlement.

12 36. Following a 2008 appointment with Sutton, another patient
13 complained to the medical board about him. The woman said that Sutton asked her
14 a series of explicit and inappropriate questions about her sexual practices and
15 instructed her to call him to share “a fantasy or ‘any new sexual adventure.’” In a
16 settlement with the Medical Board, Sutton was placed on probation for three years
17 and ordered to enroll in psychotherapy as well as another class on maintaining
18 professional boundaries.

19 37. In the most recent accusation, the Medical Board alleged that Sutton in
20 2016 told a woman seeking treatment for a cyst “that he really could not see ‘down
21 there’ because she was really hairy,” according to the Board filing. After Sutton’s
22 female office assistant left the room to answer a telephone, according to the
23 Medical Board filing, the doctor asked the woman, “Do you have sex?” She replied,
24 “No,” adding that she had an abusive relationship and now dedicated her life to her
25 kids. Sutton continued pressing her, according to the court papers, asking, “Do you
26 enjoy orgasms, you are a very beautiful woman?” The patient, who was wearing a
27 paper gown, “was intimidated and did not know how to get out of the situation,” the
28 Medical Board filing said.

1 38. This behavior violates the standard of care, and comports with
2 Plaintiffs' descriptions of their interactions with Sutton. Sutton's sexual misconduct
3 while at Huntington Hospital has therefore been well documented and known to
4 Huntington for more than a decade.

5 **D. Plaintiffs' Experiences**

6 Jane Doe K.G.

7 39. In 1998, Jane Doe K.G. learned that she was pregnant. She sought an
8 Ob-Gyn, and she was delighted to find Sutton, a doctor who was on her insurance
9 and who was associated with Huntington Memorial Hospital. Jane Doe K.G. found
10 the facilities beautiful and wanted to deliver her baby there.

11 40. Jane Doe K.G. went to her first pregnancy appointment with her
12 husband. Dr. Sutton reviewed the sonogram with them and confirmed the
13 pregnancy.

14 41. During her subsequent visits, however, Sutton's behavior became
15 inappropriate. He frequently made "arousal-type" sounds while examining her, and
16 told her that she was a beautiful woman and that her husband must love her
17 "boobs." At almost every visit, Sutton asked about her sex life with her husband,
18 saying that sex was good for her and the baby, and that she should not ignore her
19 husband's desires.

20 42. On December 27, 1998, Sutton induced Jane Doe K.G.'s labor two
21 weeks early because he was going on vacation.

22 43. Following Jane Doe K.G.'s delivery, she next saw Sutton at her post-
23 partum visit some weeks later. She brought her infant to the appointment, but not
24 her husband.

25 44. During that visit, Dr. Sutton performed a vaginal exam on Jane Doe
26 K.G., which she was not expecting at the time. There was no nurse in the room.
27 During the exam, he commented that she was "tight" and that her husband must
28 love it. He also made strange "arousal-type" sounds. He then barraged her with

1 questions about how frequently she and her husband had sex and about the
2 difference between how it felt pre- and post-partum.

3 45. Sutton next groped Jane Doe K.G.'s breasts and told her that he
4 wanted to "play with them." He added, "your husband must love to rub his penis
5 there," "they are beautiful," and that he wished he "had a pair."

6 46. Jane Doe K.G. has thus been damaged by Sutton and Huntington
7 Hospital's actions.

8 Jane Doe T.F.

9 47. In May 1990, Jane Doe T.F. learned that she was pregnant with her
10 first child. She called her insurance company and asked for a nearby Ob-Gyn, and
11 she was referred to Dr. Sutton.

12 48. At each visit, a nurse would bring Jane Doe T.F. to the exam room and
13 ask initial questions. The nurse would then leave, and Sutton would conduct the
14 examination alone, with no one else in the room. Given that this was her first
15 pregnancy, she did not know that this was not normal.

16 49. Over the course of Jane Doe T.F.'s visits, Sutton began to make a
17 series of inappropriate comments which became more sexually suggestive over
18 time. Sutton was also "touch-feely" during the exams. He asked her about her
19 relationship with her husband, and details related to sex and orgasms. When she
20 asked him whether sex was safe to have during pregnancy, he responded, "the more
21 sex, the better." Sutton has a constant preoccupation with sex. He also told her that
22 she was "quite tight down there," and referred to her breasts as "perky little things."

23 50. On one occasion, Jane Doe T.F. called Sutton's office to ask if she was
24 allowed to take medicine for her migraine headaches while pregnant. Sutton
25 returned the call and told her that instead of taking medication for her migraine, she
26 should masturbate in order to make the blood rush to her head, which according to
27 him would stop the migraine. He told her to call him and let him know if she was
28

1 able to achieve orgasm through masturbation. Jane Doe T.F. did not follow his
2 suggestion, nor did she contact him again about the topic.

3 51. On February 3, 1991, Jane Doe T.F. delivered her child at Huntington
4 Memorial Hospital.

5 52. During Jane Doe T.F.'s post-natal visit with Sutton, he examined her
6 episiotomy results and remarked that her "husband is going to love this."

7 53. Jane Doe T.F. has thus been damaged by Sutton and Huntington
8 Hospital's actions.

9 Jane Doe B.S.

10 54. In 1991, Jane Doe B.S. learned that she was pregnant with her second
11 child.

12 55. Because she was not receiving regular gynecological care at the time,
13 Jane Doe B.S. found Dr. Sutton on a list of obstetricians provided to her by her
14 health insurance.

15 56. During each office visit with Sutton, a female nurse would accompany
16 Jane Doe B.S. into the room, but she would immediately leave before Sutton
17 entered. Sutton always examined Jane Doe B.S. alone, with no one else in the
18 room.

19 57. Dr. Sutton did not wear gloves while examining Jane Doe B.S.

20 58. Over the course of her visits, Sutton made constant inappropriate
21 comments. He told her that she had a "young, tight uterus," and that her "boyfriend
22 must love that." He continually referred to Jane Doe B.S.'s husband as her
23 boyfriend, even though she reminded him each time that he was her husband.
24 Sutton also told her that she was likely to have a C-section, which would be a
25 shame because it would scar her "beautiful body."

26 59. On one occasion, Sutton told Jane Doe B.S. that he was going to listen
27 to her heartbeat, but proceeded to place his stethoscope on her nipple.
28

1 60. Jane Doe B.S. has thus been damaged by Sutton and Huntington
2 Hospital's actions.

3 **E. The statute of limitations is tolled based on the continuing**
4 **violations doctrine and fraudulent concealment.**

5 61. Sutton concealed the existence of Plaintiffs' claims and the fact that
6 Plaintiffs had a cause of action against Sutton and/or Huntington Hospital at the
7 time his sexual assaults occurred by making material representation(s) to Plaintiffs
8 involving a past or existing fact, including by misrepresenting that his acts and/or
9 conduct were for a legitimate medical purpose and/or conformed to accepted
10 medical practice.

11 62. When Sutton made the material representation(s), he knew that they
12 were false in that he knew that the examinations were not proper, appropriate,
13 legitimate, and/or considered within standard of care by any physician of any
14 specialty and/or gynecology or obstetrics.

15 63. Sutton made the material representation(s) with the intent that the
16 material representation(s) should be acted upon by Plaintiffs and the Class in that
17 Plaintiffs and Class members should believe that the examinations were proper,
18 appropriate, and legitimate; should not believe that they had been sexually
19 assaulted; should not believe that they had been sexually assaulted so that he could
20 prevent discovery of his sexual assaults; should continue to be seen by him so that
21 he could continue to sexually assault them; should not question and/or report the
22 conduct to appropriate authorities; and should not reasonably believe and not be
23 aware of a possible cause of action that they have against Sutton and/or Huntington
24 Hospital.

25 64. Plaintiffs and Class members acted in reliance upon the material
26 representation(s) in that they:

27 a. Reasonably believed that the examinations were proper,
28 appropriate, and legitimate;

1 b. Reasonably did not believe that they had been sexually
2 assaulted;

3 c. Did not believe that they should question and/or report the
4 conduct to appropriate authorities; and,

5 d. Did not reasonably believe that they had and were not aware of
6 a possible cause of action that they had against Sutton and/or Huntington Hospital.

7 65. Directors, managers, supervisors, physicians, nurses, and chaperones
8 at Huntington Hospital took affirmative steps to fraudulently conceal Sutton's
9 misconduct, including, but not limited to, by depressing complaints made by
10 patients, and continuing to allow Sutton to treat female patients despite knowledge
11 of his misconduct.

12 66. The actions and inactions of Sutton and Huntington Hospital
13 constituted fraudulent concealment.

14 67. The statute of limitations for each of Plaintiffs' causes of actions was
15 equitably tolled, and Defendants are equitably estopped from asserting the statute of
16 limitations as a defense, by reason of their wrongful conduct.

17 68. As part of Defendants' wrongful attempt to conceal Sutton's
18 propensity to sexually abuse female patients, and his past sexual abuse, from public
19 scrutiny and criminal investigation, Defendants implemented various measures with
20 the intent and effect of making Sutton's conduct harder to detect and ensuring that
21 other student-patients with whom he came into contact, including Plaintiffs, would
22 be sexually abused and assaulted, including:

23 a. Permitting Sutton to remain in a position of authority and trust
24 after Huntington Hospital knew or should have known that he molested and
25 harassed his female patients;

26 b. Scheduling female patients for appointments with Sutton,
27 including appointments without a nurse or chaperone present, despite being aware
28 of his improper conduct;

1 c. Granting Sutton unfettered access to and control over patients
2 even when he was purporting to provide extremely sensitive gynecological
3 treatment, thereby allowing Tyndall to physically and sexually interact with female
4 patients, including Plaintiffs;

5 d. Holding out Sutton to Plaintiffs, other Huntington patients, and
6 the public at large as a trustworthy person of good moral character who was capable
7 and worthy of being granted unsupervised access to the patients of Huntington
8 Hospital;

9 e. Failing to disclose and actively concealing Sutton's prior record
10 of misconduct, sexual abuse, harassment, and molestation, and his propensity to
11 commit such acts towards patients, from its patients, the public at large, and law
12 enforcement;

13 f. Failing to investigate or otherwise confirm or deny such facts
14 about Sutton, including prior complaints, claims, and investigations relating to
15 sexual abuse suffered at his hands;

16 g. Failing to implement reasonable safeguards to avoid acts of
17 unlawful sexual conduct by Sutton, such as by avoiding placement of Sutton in
18 functions or environments in which he would necessarily have intimate contact with
19 female patients; and

20 h. Failing to implement systems or procedures to supervise or
21 monitor doctors to ensure that they did not molest or abuse patients in Defendants'
22 care and, further, that they report all reasonable suspicions of sexual assault or
23 battery to law enforcement as mandated by Section 11160 of the California Penal
24 Code.

25 69. At all times pertinent to this action, Sutton was an agent, apparent
26 agent, servant, and employee of Huntington Hospital and operated within the scope
27 of his employment and his negligence is imputed to Huntington.
28

1 70. Defendants engaged in, joined in, and conspired with each other in
 2 carrying out the tortuous and unlawful activities herein described. Each Defendant
 3 is legally responsible for the occurrences herein alleged, and Plaintiff's damages, as
 4 herein alleged, were proximately caused by all Defendants.

5 71. Plaintiffs and Class members did not know, could not have reasonably
 6 known, and were not reasonably aware of a possible cause of action that they had
 7 against Sutton and/or Huntington until the October 2018 publication of a story
 8 about Sutton's misconduct in the Los Angeles Times.

9 **CLASS ACTION ALLEGATIONS**

10 72. Pursuant to Federal Rule of Civil Procedure 23(b)(3) and 23(c)(4),
 11 Plaintiffs bring this action on behalf of themselves and the following class of others
 12 who are similarly situated:

13 Nationwide Class: All women who were treated by Dr. Patrick Sutton
 14 during his employment by Huntington Hospital (the "National Class").

15 73. Excluded from the class are Defendants, their affiliates and
 16 subsidiaries, and their officers, directors, partners, employees, and agents; class
 17 counsel, their immediate family members, and employees of their firms; counsel for
 18 Defendants, their immediate family members, and employees of their firms; and
 19 judicial officers assigned to this case and their staffs and immediate family
 20 members.

21 74. Plaintiffs reserve the right to amend or modify the above class
 22 definition with greater specificity or division into subclasses after having had an
 23 opportunity to conduct discovery.

24 75. The Class consists of hundreds, if not thousands, of women, making
 25 joinder impracticable, in satisfaction of Fed. R. Civ. P. 23(a)(1). The exact size of
 26 the Class and the identities of the individual members are ascertainable through
 27 records maintained by Huntington.
 28

1 76. Numerosity. The members of the class are so numerous that their
2 individual joinder is impracticable. Upon information and belief, there are
3 thousands of class members, whose names and addresses are readily available from
4 Defendants' records.

5 77. Commonality. There are questions of law and fact common to the
6 class, which predominate over any questions affecting individual members of the
7 class.

8 78. Typicality. Plaintiffs' claims are typical of the other Class members'
9 claims because Plaintiffs and Class members were subjected to the same wrongful
10 conduct and damaged in the same manner.

11 79. Existence and Predominance of Common Questions of Fact and Law.
12 This action involves common questions of law and fact that predominate over any
13 questions affecting individual class members, including, without limitation:

14 a. Whether Defendants owed a duty to Plaintiffs and Class
15 members to protect their health and safety and not to violate their trust;

16 b. Whether Defendants breached their duties to Plaintiffs and Class
17 members;

18 c. Whether Huntington Hospital knew of Sutton's misconduct, but
19 continued to protect him and allow him access and opportunity to sexually abuse
20 women;

21 d. Whether Defendants are liable for gender violence, in violation
22 of the California Civil Code, § 52.4;

23 e. Whether Defendants are liable for invasion of privacy;

24 f. Whether Defendants are liable for sexual harassment, in
25 violation of California Civil Code, § 51.9;

26 g. Whether Defendants are liable for sexual assault;

27 h. Whether Defendants are liable for sexual battery, in violation of
28 California Civil Code, § 1708.5;

- 1 i. Whether Defendants are liable for negligence;
- 2 j. Whether Defendants are liable for gross negligence and/or
- 3 wanton and reckless misconduct;
- 4 k. Whether Defendants are liable for negligent supervision;
- 5 l. Whether Defendants are liable for negligence *per se*;
- 6 m. Whether Defendants are liable for negligent hiring/retention;
- 7 n. Whether Defendants are liable for negligent failure to warn,
- 8 train or educate; and
- 9 o. Whether Plaintiffs and Class members suffered harm as a result
- 10 of Defendants' violations and, if so, the appropriate measure of damages,
- 11 restitution, or rescission.

12 80. Adequacy of Representation. Plaintiffs are adequate class
13 representatives. Their interests do not conflict with the interests of the other Class
14 members they seek to represent. Plaintiffs have retained counsel competent and
15 experienced in complex class action litigation, and they intend to prosecute this
16 action vigorously. Plaintiffs and their counsel will fairly and adequately pursue and
17 protect the interests of the class.

18 81. Superiority. A class action is superior to all other available means for
19 the fair and efficient adjudication of this controversy. The highly sensitive and
20 private nature of the facts involved here counsels toward providing a class vehicle
21 to adjudicate these claims. The damages or other financial detriment suffered by
22 Plaintiffs and the other class members are relatively small compared to the burden
23 and expense that would be required to individually litigate these claims. As a result,
24 it would be impracticable for class members to seek redress individually.
25 Individualized litigation would also create a potential for inconsistent or
26 contradictory judgments and increase the delay and expense to all parties and the
27 court system. By contrast, the class action device presents far fewer management
28

1 difficulties and provides the benefits of single adjudication, economy of scale, and
2 comprehensive supervision by a single court.

3 82. Particular Issues. The claims of Plaintiffs and Class members involve
4 common issues that may be adjudicated on a classwide basis pursuant to Rule
5 23(c)(4).

6 **FIRST CLAIM FOR RELIEF**
7 **GENDER VIOLENCE, Cal. Civ. Code § 52.4**
8 **(Against Defendants Sutton and Huntington Hospital)**

9 83. Plaintiffs restate and incorporate herein by reference the preceding
10 paragraphs as if fully set forth herein.

11 84. California Civil Code § 52.4 declares, in pertinent part, that any person
12 subjected to gender violence may bring a civil action for damages against any
13 responsible party, and may seek actual, compensatory, and punitive damages
14 therefor, or any other appropriate relief.

15 85. For purposes of Cal. Civ. Code § 52.4, gender violence is a form of
16 sex discrimination and means any of the following:

17 a. An act that would constitute a criminal offense under state law
18 that has as an element the use, attempted use or threatened use of physical force
19 against the person of another, committed at least in part based on the gender of the
20 victim, whether or not the act has resulted in a criminal complaint, charge,
21 prosecution, or conviction.

22 b. A physical intrusion or physical invasion of a sexual nature
23 under coercive conditions, whether or not the act has resulted in a criminal
24 complaint, charge, prosecution, or conviction.

25 86. Upon information and belief, Sutton intentionally and without consent
26 of Plaintiffs or Class members, made unpermitted, harmful, and offensive sexual
27 and/or other physical intrusion, invasion, or contact with Plaintiffs and Class
28

1 members in violation of Cal. Civ. Code § 52.4. At all relevant times, Defendant
2 Sutton acted as a duly authorized agent and/or employee of Huntington Hospital.

3 87. Defendant Sutton carried out such actions and conduct as an employee,
4 agent, and/or representative of Huntington, which provides medical treatment to the
5 public.

6 88. Defendant Huntington Hospital is liable and vicariously liable for
7 Defendant Sutton's conduct.

8 89. As a result of the conduct of the Defendants, Plaintiffs and the Class
9 members sustained severe emotional distress and physical pain, emotional anguish,
10 fear, anxiety, humiliation, embarrassment, and other physical and emotional
11 injuries, and damages (both economic and noneconomic), in the past, present and
12 future, for which this claim is made. The injuries suffered by Plaintiffs and the
13 Class members are substantial, continuing, and permanent.

14 90. Defendants' conduct as described herein was despicable and was
15 committed maliciously, fraudulently, and/or oppressively with the wrongful
16 intention of injuring Plaintiffs and the Class members and with a willful and
17 conscious disregard of their rights, justifying an award of punitive damages.

18 91. As a proximate result of Sutton's acts, Plaintiffs and the Class
19 members are entitled to actual damages, compensatory damages, punitive damages,
20 injunctive relief, any combination of those, or any other appropriate relief. Plaintiffs
21 and the Class members are also entitled to an award of attorney's fees and costs
22 pursuant to Cal. Civ. Code § 52.4.

23 **SECOND CLAIM FOR RELIEF**
24 **SEXUAL HARASSMENT, Cal. Civ. Code § 51.9)**
25 **(Against Defendants Sutton and Huntington)**

26 92. Plaintiffs restate and incorporate herein by reference the preceding
27 paragraphs as if fully set forth herein.
28

1 93. During Plaintiffs and the Class members' time as patients in the care
2 of Defendants Sutton and Huntington, Sutton intentionally, recklessly, and
3 wantonly made sexual advances, solicitations, requests, demands for sexual
4 compliance of a hostile nature based on Plaintiffs and the Class members' gender
5 that were unwelcome, pervasive, and severe, including but not limited to Sutton
6 groping and fondling Plaintiffs' and the Class members' breasts and vaginas, and
7 making lewd and inappropriate comments and propositions of a sexual nature, all
8 under the supervision of Defendant Huntington Hospital, and acting in the course
9 and scope of his agency with Defendant Huntington Hospital.

10 94. The incidents of abuse and harassment outlined herein above took
11 place while Plaintiffs and Class members were under the control of Sutton and
12 Huntington, in its capacity and position as supervisor of its own physicians, medical
13 professionals, and staff.

14 95. During Plaintiffs' and the Class members' time as patients in the care
15 of Defendants Sutton and Huntington, Sutton intentionally, recklessly, and
16 wantonly did acts which resulted in harmful and offensive contact with intimate
17 parts of their persons, including but not limited to, using his position of authority
18 and trust to force Plaintiffs and Class members to endure Sutton's inappropriate
19 sexual touching and comments.

20 96. Because of Plaintiffs' and the Class members' patient relationships
21 with Sutton and Huntington, Plaintiffs and the Class members were unable to easily
22 terminate the relationship they had with Defendant Sutton.

23 97. Because of Sutton's position of authority and trust, physical seclusion
24 of Plaintiffs and the Class members, and Plaintiffs' and Class members' mental and
25 emotional states, Plaintiffs and Class members were unable to, and did not and
26 could not, give consent to such acts.

27
28

1 98. Even though Defendant Huntington Hospital knew or should have
2 known of these activities by Sutton, Huntington did nothing to investigate,
3 supervise, or monitor Sutton to ensure the safety of the patients in their care.

4 99. Because of Plaintiffs' and Class members' patient relationships with
5 Defendants, Plaintiffs and Class members were unable to easily terminate the
6 doctor-patient relationships they had with Defendants.

7 100. A corporation is a "person" within meaning of Cal. Civ. Code § 51.9,
8 which subjects persons to liability for sexual harassment within a business, service,
9 or professional relationship, and such an entity defendant may be held liable under
10 this statute for the acts of its employees. Further, principles of ratification apply
11 when the principal ratifies the agent's originally unauthorized harassment, as is
12 alleged to have occurred herein.

13 101. Defendants' conduct (and the conduct of their agents) was a breach of
14 their duties to Plaintiffs and Class members.

15 102. As a result of the above-described conduct, Plaintiffs and Class
16 members suffered and continue to suffer great pain of mind and body, shock,
17 emotional distress, physical manifestations of emotional distress including
18 embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment
19 of life; have suffered and continue to suffer and were prevented and will continue to
20 be prevented from performing daily activities and obtaining the full enjoyment of
21 life; and/or have incurred and will continue to incur expenses for medical and
22 psychological treatment, therapy, and counseling.

23 **THIRD CLAIM FOR RELIEF**
24 **SEXUAL ASSAULT**
25 **(Against Defendant Sutton)**

26 103. Plaintiffs restate and incorporate herein by reference the preceding
27 paragraphs as if fully set forth herein.
28

1 104. Defendant Sutton, in doing the things herein alleged, including
2 intending to subject Plaintiffs and Class members to numerous instances of sexual
3 abuse and molestation during their time in the care of Defendants Sutton and
4 Huntington, beginning in or around 1989, and lasting for the duration of Plaintiffs'
5 and Class members' time as patients in Defendants' care, through or around
6 October 2018, were intended to cause harmful or offensive contact with Plaintiffs
7 and Class members' persons, or intended to put Plaintiffs and Class members in
8 imminent apprehension of such contact.

9 105. In doing the things herein alleged, Defendants put Plaintiffs and Class
10 members in imminent apprehension of a harmful or offensive contact by Sutton and
11 actually believed that Sutton had the ability to make harmful or offensive contact
12 with Plaintiffs' and Class members' persons.

13 106. Plaintiffs and the Class members did not consent to Sutton's intended
14 harmful or offensive contact with Plaintiffs and Class members' persons, or intent
15 to put Plaintiffs and Class members in imminent apprehension of such contact.

16 107. In doing the things herein alleged, Sutton violated Plaintiffs' and Class
17 members' rights, pursuant to Cal. Civ. Code § 43, of protection from bodily
18 restraint or harm, and from personal insult.

19 108. In doing the things herein alleged, Sutton violated his duty, pursuant to
20 Cal. Civ. Code § 1708, to abstain from injuring the person of Plaintiffs and Class
21 members or infringing upon their rights.

22 109. As a result of the above-described conduct, Plaintiffs and Class
23 members have suffered and continue to suffer great pain of mind and body, shock,
24 emotional distress, physical manifestations of emotional distress including
25 embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment
26 of life; have suffered and continue to suffer and was prevented and will continue to
27 be prevented from performing daily activities and obtaining the full enjoyment of
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1 life; and/or have incurred and will continue to incur expenses for medical and
2 psychological treatment, therapy, and counseling.

3 110. Plaintiffs and Class members are informed and based thereon allege
4 that the conduct of Defendants was oppressive, malicious, and despicable in that it
5 was intentional and done in conscious disregard for the rights and safety of others,
6 and were carried out with a conscious disregard of their right to be free from such
7 tortious behavior, such as to constitute oppression, fraud, or malice pursuant to Cal.
8 Civ. Code § 3294, entitling Plaintiffs and Class members to punitive damages
9 against Defendants in an amount appropriate to punish and set an example of
10 Defendants.

11 **FOURTH CLAIM FOR RELIEF**
12 **SEXUAL BATTERY, Cal. Civ. Code § 1708.5**
13 **(Against Defendant Sutton)**

14 111. Plaintiffs restate and incorporate herein by reference the preceding
15 paragraphs as if fully set forth herein.

16 112. During Plaintiffs' and Class members' time as patients in the care of
17 Defendants Sutton and Huntington, Sutton intentionally, recklessly, and wantonly
18 did acts which were intended to, and did result in harmful and offensive contact
19 with intimate parts of Plaintiffs and Class members' persons, including but not
20 limited to being subjected to numerous instances of sexual harassment and abuse by
21 Sutton, beginning in or around 1989, and lasting for the duration of Plaintiffs and
22 Class members' time as patients in Defendants' care, all while Sutton acted in the
23 course and scope of his agency and employment with Huntington Hospital.

24 113. Sutton performed the aforementioned acts with the intent to cause a
25 harmful or offensive contact with intimate parts of Plaintiffs and Class members'
26 bodies, which would offend a reasonable sense of personal dignity. Further, said
27 acts did cause a harmful or offensive contact with intimate parts of Plaintiffs' and
28 Class members' persons that would offend a reasonable sense of personal dignity.

1 114. Defendant Sutton carried out such actions and conduct as an employee,
2 agent, and/or representative of Huntington, which provides medical treatment to the
3 public.

4 115. Because of Sutton's position of authority and trust as a physician, and
5 their mental and emotional state as his patients, Plaintiffs and Class members did
6 not give meaningful consent to such acts.

7 116. As a direct, legal, and proximate result of the acts of Sutton and
8 Huntington, Plaintiffs and Class members sustained serious and permanent injuries
9 to their persons, all of this damage in an amount to be shown according to proof
10 and within the jurisdiction of the Court.

11 117. As a direct result of the sexual abuse by Sutton, Plaintiffs and Class
12 members have difficulty in reasonably or meaningfully interacting with others,
13 including those in positions of authority over them such as doctors, and in intimate,
14 confidential, and familial relationships, due to the trauma of the sexual abuse
15 inflicted upon them by Defendants Sutton and Huntington. This inability to interact
16 creates conflict with Plaintiffs and Class members' values of trust and confidence in
17 others, and has caused Plaintiffs and Class members substantial emotional distress,
18 anxiety, nervousness, and fear. As a direct result of the sexual abuse and
19 molestation by Sutton, Plaintiffs and Class members suffered immensely, including,
20 but not limited to, encountering issues with a lack of trust, various psychological
21 sequelae, depressive symptoms, anxiety, nervousness, and self-medicating
22 behavior.

23 118. Upon information and belief, the conduct of Sutton was oppressive,
24 malicious, and despicable in that it was intentional and done in conscious disregard
25 for the rights and safety of others, and was carried out with a conscious disregard of
26 Plaintiffs' and Class members' right to be free from such tortious behavior, such as
27 to constitute oppression, fraud, or malice pursuant to Cal. Civ. Code § 3294,
28

1 entitling Plaintiffs and Class members to punitive damages against Sutton in an
2 amount appropriate to punish and set an example of Sutton.

3 **FIFTH CLAIM FOR RELIEF**
4 **NEGLIGENCE**
5 **(Against Defendant Huntington Hospital)**

6 119. Plaintiffs restate and incorporate herein by reference the preceding
7 paragraphs as if fully set forth herein.

8 120. From approximately 1989 through 2018, Sutton was an actual and/or
9 apparent, duly authorized agent, servant, and/or employee of Huntington Hospital,
10 providing medical treatment and services through the Huntington system.
11 Defendant Huntington Hospital knew and/or should have known that Sutton had
12 and was capable of sexually, physically, and mentally abusing and harassing
13 Plaintiffs or other victims.

14 121. Defendant Huntington Hospital had special duties to protect the
15 Plaintiffs and Class members, when such individuals were patients entrusted to
16 Defendants' care. Plaintiffs and Class members' care and health were entrusted to
17 Defendants. Defendant Huntington Hospital voluntarily accepted the entrusted care
18 of Plaintiffs and Class members. As such, Defendant Huntington Hospital owed
19 Plaintiffs and Class members a special duty of care that medical professionals
20 dealing with vulnerable medical patients owe to protect them from harm. The duty
21 to protect and warn arose from the special, trusting, confidential, and fiduciary
22 relationship between Defendant Huntington Hospital and Plaintiffs and Class
23 members.

24 122. Defendant Huntington breached its duty of care to Plaintiffs and Class
25 members by allowing Sutton to come into contact with Plaintiffs and Class
26 members without effective supervision; by failing to adequately hire, supervise, and
27 retain Sutton whom they permitted and enabled to have access to Plaintiffs and
28 Class members; by concealing from Plaintiffs and Class members, the public, and

1 law enforcement that Sutton was sexually harassing, molesting, and abusing
2 patients; by holding Sutton out to Plaintiffs and Class members as being of high
3 moral and ethical repute, in good standing and trustworthy; and by failing to report
4 Sutton's misconduct to the California Medical Board.

5 123. Defendant Huntington Hospital further breached its duties to Plaintiffs
6 and Class members by failing to investigate or otherwise confirm or deny such facts
7 of sexual abuse by Sutton, failing to reveal such facts to Plaintiffs and Class
8 members, the community and law enforcement agencies, and by placing Sutton into
9 a position of trust and authority, holding him out to Plaintiffs, Class members, and
10 the public as being in good standing and trustworthy.

11 124. Defendant Huntington Hospital breached its duty to Plaintiffs and
12 Class members by failing to adequately monitor and supervise Defendant Sutton
13 and failing to prevent Defendant Sutton from committing wrongful sexual acts with
14 medical patients, including Plaintiffs and Class members. Defendant Huntington's
15 past records of sexual misconduct by Sutton caused Defendant Huntington Hospital
16 to know, or gave it information where it should have known, of Sutton's incapacity
17 to serve as a physician – especially an obstetrician/gynecologist – providing for the
18 safe care of female patients.

19 125. As a direct, proximate, and foreseeable result of the above-described
20 conduct, Plaintiffs and Class members have suffered and continue to suffer great
21 pain of mind and body, shock, emotional distress, physical manifestations of
22 emotional distress including embarrassment, loss of self-esteem, disgrace,
23 humiliations, and loss of enjoyment of life; has suffered and continues to suffer and
24 was prevented and will continue to be prevented from performing daily activities
25 and obtaining the full enjoyment of life; may sustain loss of earnings and earning
26 capacity; and may incur expenses for medical and psychological treatment, therapy,
27 and counseling.
28

1 132. Huntington Hospital's conduct demonstrated a willful disregard for
2 precautions to ensure Plaintiffs and Class members' safety.

3 133. Huntington Hospital's conduct demonstrated a willful disregard for
4 Plaintiffs and Class members' rights.

5 134. Huntington Hospital breached duties owed to Plaintiffs and Class
6 members and was grossly negligent when it conducted itself by the actions
7 described above, said acts having been committed with reckless disregard for
8 Plaintiffs and Class members' health, safety, Constitutional, and/or statutory rights,
9 and with a substantial lack of concern as to whether an injury would result.

10 135. As a result of Defendant's conduct, Plaintiffs and Class members
11 sustained severe emotional distress and physical pain, emotional anguish, fear,
12 anxiety, humiliation, embarrassment, and other physical and emotional injuries, and
13 damages (both economic and noneconomic), in the past, present and future, for
14 which this claim is made. The injuries suffered by Plaintiffs and Class members are
15 substantial, continuing, and permanent.

16 136. Defendants' conduct as described herein was grossly negligent and/or
17 wanton and reckless because it was despicable and was committed maliciously,
18 fraudulently, and/or oppressively with the wrongful intention of injuring Plaintiffs
19 and Class members and with a willful and conscious disregard of Plaintiffs and
20 Class members' rights, justifying an award of punitive damages.

21 **SEVENTH CLAIM FOR RELIEF**
22 **NEGLIGENT SUPERVISION**
23 **(Against Defendant Huntington Hospital)**

24 137. Plaintiffs restate and incorporate herein by reference the preceding
25 paragraphs as if fully set forth herein.

26 138. By virtue of Plaintiffs and Class members' special relationship with
27 Defendant Huntington, and Huntington's relationship with Defendant Sutton,
28 Defendant Huntington Hospital owed Plaintiffs and Class members a duty to

1 provide reasonable supervision of Sutton, to use reasonable care in investigating
2 Sutton background, and to provide adequate warning to Plaintiffs and Class
3 members of Sutton's dangerous propensities and unfitness. As an organization
4 responsible for, and entrusted with, the welfare of patients, Huntington had a duty
5 to protect, supervise, and monitor both the Plaintiffs and Class members from being
6 preyed upon by sexual predators, and to supervise and monitor Sutton such that he
7 would not be placed in seclusion with vulnerable medical patients, including the
8 Plaintiffs and Class members.

9 139. Huntington expressly and implicitly represented that its physicians,
10 faculty, and staff, including Sutton, were not a sexual threat to those individuals and
11 others who would fall under Sutton's influence, control, direction, and care.

12 140. Defendant Huntington Hospital, by and through its respective agents,
13 servants, and employees, knew or should have known of Sutton's dangerous and
14 exploitive propensities and that Sutton was an unfit agent and physician. Despite
15 such knowledge, Defendant Huntington Hospital negligently failed to supervise
16 Sutton in his position of trust and authority as a physician and authority figure over
17 patients, such that he was able to commit wrongful acts of sexual misconduct
18 against Plaintiffs and Class members. Defendant Huntington Hospital failed to
19 provide reasonable supervision of Sutton, failed to use reasonable care in
20 investigating Sutton, and failed to provide adequate warning to Plaintiffs of
21 Sutton's dangerous propensities and unfitness. Defendant Huntington Hospital
22 further failed to take reasonable steps to ensure the safety of patients, including
23 Plaintiffs and Class members, from sexual harassment, molestation, and abuse.

24 141. At no time during the periods of time alleged herein did Defendant
25 Huntington Hospital have in place a reasonable system or procedure to investigate,
26 supervise physicians or staff, including Sutton, to prevent sexual harassment,
27 molestation, and abuse of those individuals, nor did they implement a system or
28

1 procedure to oversee or monitor conduct toward patients and others in Defendant
2 Huntington Hospital's care.

3 142. Defendant Huntington Hospital were aware or should have been aware
4 of how vulnerable medical patients – especially ob/gyn patients -- were to sexual
5 harassment, molestation, and abuse by physicians and other persons of authority
6 within Defendant Huntington Hospital.

7 143. Defendant Huntington Hospital was put on notice, knew, and/or should
8 have known that Sutton had previously engaged and was continuing to engage in
9 unlawful sexual conduct with patients and had committed other felonies, for his
10 own personal sexual gratification, and that it was foreseeable that he was engaging,
11 or would engage in illicit sexual activities with or make entirely inappropriate
12 sexual statements to Plaintiffs and Class members, and others, under the cloak of
13 the authority, confidence, and trust, bestowed upon him by Defendant Huntington
14 Hospital.

15 144. Defendant Huntington Hospital was placed on actual or constructive
16 notice that Sutton had molested and made entirely inappropriate sexual statements
17 to other patients during his employment with Defendant Huntington Hospital.
18 However, Defendant Huntington Hospital did not reasonably investigate, supervise,
19 or monitor Sutton to ensure the safety of the patients.

20 145. Defendant Huntington Hospital's conduct was a breach of its duties to
21 Plaintiffs and Class members.

22 146. Defendant Huntington Hospital breached its duty to Plaintiffs by, *inter*
23 *alia*, failing to adequately monitor and supervise Sutton and prevent and stop
24 Sutton from committing wrongful sexual acts with or making entirely inappropriate
25 sexual statements to patients, including Plaintiffs and Class members.

26 147. As a result of the above-described conduct, Plaintiffs and Class
27 members have suffered and continue to suffer great pain of mind and body, shock,
28 emotional distress, physical manifestations of emotional distress including

1 embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment
2 of life; have suffered and continue to suffer and were prevented and will continue to
3 be prevented from performing daily activities and obtaining the full enjoyment of
4 life; may sustain loss of earnings and earning capacity, and/or may incur expenses
5 for medical and psychological treatment, therapy, and counseling.

6 **EIGHTH CLAIM FOR RELIEF**
7 **NEGLIGENT HIRING/RETENTION**
8 **(Against Defendant Huntington Hospital)**

9 148. Plaintiffs restate and incorporate herein by reference the preceding
10 paragraphs as if fully set forth herein.

11 149. By virtue of Plaintiffs' and Class members' special relationship with
12 Defendants, and Huntington's relation to Sutton, Defendant Huntington Hospital
13 owed Plaintiffs and Class members a duty to not hire or retain Sutton, given his
14 dangerous and exploitive propensities, which Defendant Huntington Hospital knew
15 or should have known about had it engaged in a reasonable, meaningful, and
16 adequate investigation of his background prior to his hiring or retaining him in
17 subsequent positions of employment.

18 150. Defendant Huntington Hospital expressly and implicitly represented
19 that the physicians, including Defendant Sutton, were not a sexual threat to patients
20 and others who would fall under Defendant Sutton's influence, control, direction,
21 and guidance.

22 151. At no time during the periods of time alleged did Defendant
23 Huntington Hospital have in place a reasonable system or procedure to investigate,
24 supervise, and monitor its physicians and healthcare professionals, including
25 Sutton, to prevent pre-sexual grooming or sexual harassment, molestation, and
26 abuse of patients nor did they implement a system or procedure to oversee or
27 monitor conduct toward patients and/or others in Defendant Huntington Hospital's
28 care.

1 152. Defendant Huntington Hospital was aware or should have been aware
2 and understand how vulnerable female patients were to sexual harassment,
3 molestation, and abuse by physicians and other persons of authority within the
4 control of Defendant Huntington Hospital prior to Plaintiffs' and Class members'
5 sexual abuse by Sutton.

6 153. Defendant Huntington Hospital was put on notice, and should have
7 known, that Sutton had previously engaged and continued to engage in unlawful
8 sexual conduct with patients, and was committing other felonies, for his own sexual
9 gratification, and that it was, or should have known it would have been, foreseeable
10 that he was engaging, or would engage in illicit sexual activities with or making
11 entirely inappropriate sexual statements to Plaintiffs and Class members, under the
12 cloak of his authority, confidence, and trust, bestowed upon him through Defendant
13 Huntington Hospital.

14 154. Even though Defendant Huntington Hospital knew or should have
15 known of these sexually illicit activities and statements by Sutton, Defendant
16 Huntington Hospital failed to use reasonable care in investigating Defendant Sutton
17 and did nothing to reasonably investigate, supervise, or monitor Sutton to ensure
18 the safety of its patients.

19 155. Defendant Huntington Hospital's conduct was a breach of its duties to
20 Plaintiffs and Class members.

21 156. As a result of the above-described conduct, Plaintiffs and Class
22 members suffered and continue to suffer great pain of mind and body, shock,
23 emotional distress, physical manifestations of emotional distress including
24 embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment
25 of life; have suffered and continues to suffer and were prevented and will continue
26 to be prevented from performing daily activities and obtaining the full enjoyment of
27 life; will sustain loss of earnings and earning capacity, and/or have incurred and
28

1 will continue to incur expenses for medical and psychological treatment, therapy,
2 and counseling.

3 157. Defendant Huntington Hospital owed Plaintiffs and Class members a
4 duty to take reasonable protective measures to protect Plaintiffs and Class members
5 and other patients from the risk of sexual harassment, molestation, and abuse by
6 Defendant Sutton by properly warning, training, or educating Plaintiffs and Class
7 members and other about how to avoid such a risk.

8 158. Defendant Huntington Hospital breached its duty to take reasonable
9 protective measures to protect Plaintiffs and other patients from the risk of sexual
10 harassment, molestation, and abuse by Defendant Sutton, such as the failure to
11 properly warn, train or educate Plaintiffs and Class members about how to avoid
12 such a particular risk that Sutton posed—of sexual misconduct.

13 159. Defendant Huntington Hospital breached its duty to take reasonable
14 protective measures to protect Plaintiffs and Class members from the risk of sexual
15 harassment, molestation, and abuse by Defendant Sutton, by failing to supervise
16 and stop its employees, including Sutton, from committing wrongful sexual acts
17 with patients, including Plaintiffs and Class members.

18 160. As a result of the above-described conduct, Plaintiffs and Class
19 members suffered and continue to suffer great pain of mind and body, shock,
20 emotional distress, physical manifestations of emotional distress including
21 embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment
22 of life; has suffered and continues to suffer and were prevented and will continue to
23 be prevented from performing daily activities and obtaining the full enjoyment of
24 life; will sustain loss of earnings and earning capacity, and/or have incurred and
25 will continue to incur expenses for medical and psychological treatment, therapy,
26 and counseling.

1 **NINTH CLAIM FOR RELIEF**
2 **NEGLIGENT FAILURE TO WARN, TRAIN, or EDUCATE**
3 **(Against Defendant Huntington Hospital)**

4 161. Plaintiffs restate and incorporate herein by reference the preceding
5 paragraphs as if fully set forth herein.

6 162. Defendant Huntington Hospital owed Plaintiffs and Class members a
7 duty to take reasonable protective measures to protect them and other patients from
8 the risk of sexual harassment, molestation, and abuse by Defendant Sutton by
9 properly warning, training, or educating Plaintiffs and Class members and other
10 about how to avoid such a risk.

11 163. Defendant Huntington Hospital breached its duty to take reasonable
12 protective measures to protect Plaintiffs, Class members and other patients from the
13 risk of sexual harassment, molestation, and abuse by Defendant Sutton, such as the
14 failure to properly warn, train, or educate Plaintiffs and Class members and other
15 patients about how to avoid such a particular risk that Sutton posed—of sexual
16 misconduct.

17 164. Defendant Huntington Hospital breached its duty to take reasonable
18 protective measures to protect Plaintiffs, Class members, and other patients from
19 the risk of sexual harassment, molestation, and abuse by Defendant Sutton, by
20 failing to supervise and stop its employees, including Sutton, from committing
21 wrongful sexual acts with patients, including Plaintiffs and Class members.

22 165. As a result of the above-described conduct, Plaintiffs and Class
23 members have suffered and continue to suffer great pain of mind and body, shock,
24 emotional distress, physical manifestations of emotional distress including
25 embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment
26 of life; have suffered and continue to suffer and were prevented and will continue to
27 be prevented from performing daily activities and obtaining the full enjoyment of
28 life; will sustain loss of earnings and earning capacity, and/or have incurred and

1 will continue to incur expenses for medical and psychological treatment, therapy,
2 and counseling.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs, individually and on behalf of the Class defined
5 above, respectfully requests that the Court:

6 A. Certify this action as a class action under Rule 23 of the Federal Rules
7 of Civil Procedure, appoint Plaintiffs as class representatives, and appoint the
8 undersigned counsel as class counsel;

9 B. Award Plaintiffs and Class members compensatory, restitutionary,
10 rescissory, general, consequential, punitive, and/or exemplary damages in an
11 amount to be determined at trial;

12 C. Award pre-judgment interest as permitted by law;

13 D. Enter appropriate equitable relief;

14 E. Award reasonable attorneys' fees and costs, as provided for by law;
15 and

16 F. Grant such other and further relief as the Court deems just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs demand a trial by jury on all issues so triable.

19
20 Dated: October 10, 2018 Respectfully submitted,

21 By: 

22 Jonathan D. Selbin (Bar No. 170222)

23 Annika K. Martin (*pro hac vice* pending)

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