

1 JOHN D. WINER, SBN 091078
2 SHAWN D. TILLIS, SBN 224539
3 WINER, McKENNA & BURRITT, LLP
4 1999 Harrison Street, Suite 600
Oakland, California 94612
Tel: (510) 433-1000
Fax: (510) 433-1001

5 Attorneys for Plaintiff

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/26/2017 at 02:29:40 PM

Clerk of the Superior Court
By Ivana Salas, Deputy Clerk

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN DIEGO – UNLIMITED JURISDICTION

10
11 JANNETTE DOE,

12 Plaintiff,

13 vs.

14 STEPHAN KEMPIAK, M.D.; THE
15 PERMANENTE MEDICAL GROUPS;
16 KAISER FOUNDATION HEALTH PLAN,
17 INC.; KAISER FOUNDATION HOSPITALS;
18 SOUTHERN CALIFORNIA PERMANENTE
19 MEDICAL GROUP; and DOES 1-25,
20 Inclusive,

21 Defendant(s).

Case No. 37-2017-00019334-CU-MM-NC

COMPLAINT FOR DAMAGES

1. Medical Malpractice – Professional Negligence;
2. Intentional Infliction of Emotional Distress;
3. Assault;
4. Battery;
5. Sexual Battery (Cal. Civ. Code §1708.5);
6. Sexual Harassment (Cal. Civ. Code §51.9);
7. Violence or Intimidation Based on Sex (Cal. Civ. Code §51.7);
8. Gender Violence & Sexual Assault (Cal. Civ. Code § 52.4);
9. Fraud

PLAINTIFF DEMANDS TRIAL BY JURY

22 Plaintiff JANNETTE DOE for her Complaint against Defendants STEPHAN
23 KEMPIAK, M.D.; THE PERMANENTE MEDICAL GROUPS; KAISER FOUNDATION
24 HEALTH PLAN, INC.; KAISER FOUNDATION HOSPITALS; SOUTHERN CALIFORNIA
25 PERMANENTE MEDICAL GROUP; and DOES 1 to 25, inclusive (hereafter collectively referred
26 to as “Defendants”) alleges as follows:

27 //

28 //

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3

4
5
6
7
8
9

0

- 1
- 2
- 3
- 4
- 5
- 6
- 7

8
9
0
1

2
3
4

5
6

7
8

1 8. Defendant KAISER FOUNDATION HOSPITALS is a licensed California medical
2 health care services business entity, form unknown, doing business in San Diego County.

3 9. Defendant SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP is a
4 licensed California medical health care services business entity, form unknown, doing business in
5 San Diego County.

6 10. Hereinafter Defendants THE PERMANENTE MEDICAL GROUPS, KAISER
7 FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS, and SOUTHERN
8 CALIFORNIA PERMANENTE MEDICAL GROUP shall be collectively referred to as "KAISER."

9 11. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
10 DOES 1 to 25, inclusive, and therefore sues said defendants by such fictitious names. Each
11 fictitiously named defendant is in some manner responsible for the injuries and damages complained
12 of herein. Plaintiff will amend this Complaint to allege the true names and capacities of such
13 defendants when they are ascertained.

14 12. Plaintiff is informed and believes, and thereon alleges, that at all times relevant hereto
15 each Defendant was the agent, employee, servant, and joint venturer of each of the remaining
16 Defendants, and that in doing the things hereafter alleged was acting within the course, scope, and
17 authority of such agency, employment and joint venture in the transaction of the business of the
18 remaining Defendants, and with the consent and permission of each of the other Defendants.

19 13. By the doctrine of *respondeat superior*, Plaintiff alleges that Defendants KAISER,
20 and DOES 1 to 25 are responsible and liable to Plaintiff for the acts of DR. KEMPIAK as to each of
21 the causes of action hereinafter alleged.

22 14. By the doctrine of ratification, Plaintiff alleges that Defendants KAISER, and DOES
23 1 to 25 are directly responsible and liable to the Plaintiff for the acts of DR. KEMPIAK and other
24 agents of KAISER, as to each of the causes of action hereinafter alleged.

25 15. Each Defendant, when acting as a principal, was negligent in the selection and hiring
26 of each and every other Defendant as an agent, employee, servant and joint venturer. Defendants
27 KAISER, and DOES 1 to 25 were negligent and/or reckless in that they knew or should have known
28

1 about DR. KEMPIAK's acts of and propensity to commit negligent and intentional tortious acts
2 against patients and failed to take immediate and appropriate corrective action.

3 16. Defendants, and each of them, are jointly and severally liable for Plaintiff's damages
4 as stated herein.

5 **FIRST CAUSE OF ACTION**
6 **AGAINST ALL DEFENDANTS, AND EACH OF THEM, FOR**
7 **MEDICAL MALPRACTICE— PROFESSIONAL NEGLIGENCE**

8 17. Plaintiff herein repeats, realleges, and incorporates by reference as though fully set
9 forth at length the allegations set forth in paragraphs 1 through 16 of this Complaint, except for the
10 paragraphs that are inconsistent with a cause of action for Medical Malpractice— Professional
11 Negligence.

12 18. For convenience and economy, hereinafter all the Kaiser entities shall sometimes be
13 referred to collectively as "KAISER."

14 19. Plaintiff is a 23 year high school graduate who, given her history of being abandoned
15 and sexually abused and repeatedly having her life threatened, is reticent to question or challenge
16 authority figures like doctors, which makes her an easy mark, susceptible to further abuse.

17 20. Concerning the medical condition that is the subject of this complaint, Plaintiff first
18 attended Kaiser Permanente on June 23, 2015. For about six months prior to this visit, Plaintiff, who
19 was 21 years old at that time, had what she believed were ingrown hair follicles in her pubic hair, but
20 not close to her vulva. She would shave and the area became inflamed, she believed because her
21 hair was so thick. Her Kaiser coverage had dropped for a short period of time so she went to a clinic
22 and saw a general practitioner, who told Plaintiff that she needed to see a dermatologist. Once
23 Plaintiff regained her Kaiser coverage she called KAISER's San Marcos dermatology department to
24 make an appointment.

25 21. At all times relevant herein Defendants, and each of them, knew or should have
26 known from her medical history that Plaintiff was a particularly psychologically vulnerable patient.
27 By virtue of their professional education, skills, and training Defendants knew, or should have
28 known, that people such as Plaintiff suffering from the type of problems she presented were
particularly susceptible to being influenced and manipulated by persons like DR. KEMPIAK, and

1 that DR. KEMPIAK's failure to exercise due care in the performance of his care and treatment of
2 Plaintiff would cause her severe emotional distress. Defendants, and each of them, knew from
3 Plaintiff's medical history charts that she suffered from psychological conditions that made it
4 difficult for Plaintiff to resist or avoid abusive circumstances, particularly abuse by persons with
5 authority such as doctors. Her conditions also made her made more likely to be harmed by the same.

6 22. Commencing on or about June 23, 2015, and continuing thereafter until the
7 relationship of doctor-patient was terminated in approximately July 31, 2016, Defendants, and each
8 of them, so negligently and carelessly treated, adjusted, diagnosed, and cared for Plaintiff so as to
9 proximately cause her physical and mental condition to worsen. Such negligent and careless
10 treatment included, but was not limited to:

- 11 A. KAISER failing to set up adequate or any policies and procedures for
12 monitoring the care and treatment of patients;
- 13 B. KAISER failing to set up adequate or any policies and procedures to supervise
14 its staff, including DR. KEMPIAK;
- 15 C. KAISER failing to use reasonable care in vetting DR. KEMPIAK prior to his
16 becoming a KAISER physician and in periodically evaluating him during his
17 employment;
- 18 D. KAISER failing to properly train DR. KEMPIAK and other staff, in treating
19 patients, including regarding establishing and maintaining professional
20 boundaries;
- 21 E. KAISER failing to properly supervise and discipline DR. KEMPIAK for prior
22 unprofessional conduct towards female patients;
- 23 F. KAISER allowing DR. KEMPIAK to examine Plaintiff in the first place,
24 despite knowing about his history of unprofessional conduct towards female
25 patients and Plaintiff's psychological condition;
- 26 G. KAISER allowing DR. KEMPIAK to be alone with female patients in the
27 examination room, including Plaintiff;
- 28

- 1 H. KAISER failing to adequately train, advise, and supervise their staff to
2 recognize and report inappropriate and negligent behavior;
- 3 I. DR. KEMPIAK failing to take an adequate history of Plaintiff's presenting
4 medical condition;
- 5 J. DR. KEMPIAK failing to properly consider Plaintiff's past medical history
6 and illnesses during his treatment of her;
- 7 K. DR. KEMPIAK failing to maintain firm boundaries with a psychologically
8 vulnerable patient;
- 9 L. DR. KEMPIAK failing to properly treat Plaintiff's medical conditions
10 including, but not limited to, her follicles condition and other symptomology;
- 11 M. DR. KEMPIAK failing to recommend a qualified neutral physician to
12 continue medical treatment of Plaintiff once he lost objectivity in his
13 treatment of Plaintiff;
- 14 N. DR. KEMPIAK not attempting to treat Plaintiff for her presenting problems
15 but, rather, developing his own agenda for treatment;
- 16 O. DR. KEMPIAK giving Plaintiff medical advice regarding her condition
17 without performing a proper examination;
- 18 P. DR. KEMPIAK providing improper medical treatment to Plaintiff;
- 19 Q. KAISER failing to ensure or require that a medical assistant was present
20 during DR. KEMPIAK's examination of Plaintiff;
- 21 R. DR. KEMPIAK non-sexually touching Plaintiff while Plaintiff was on the
22 examination table;
- 23 S. DR. KEMPIAK examining Plaintiff with his un-sanitized bare hands;
- 24 T. DR. KEMPIAK asking Plaintiff to disrobe in front of him;
- 25 U. DR. KEMPIAK improperly prescribing medications to Plaintiff—medications
26 that were inappropriate for Plaintiff's condition;
- 27 V. DR. KEMPIAK staring into Plaintiff's eyes and smiling at her while he was
28 touching her genitalia;

- 1 W. DR. KEMPIAK improperly administering injections at or near Plaintiff's
2 genitalia;
- 3 X. DR. KEMPIAK causing Plaintiff's presenting condition to worsen by failing
4 to properly treat and advise regarding her presenting condition;
- 5 Y. After removing an ingrown hair, DR. KEMPIAK improperly stitching an area
6 near Plaintiff's vagina, thereby causing Plaintiff's condition to worsen and
7 Plaintiff to suffer excruciating pain.
- 8 Z. DR. KEMPIAK failing to refer Plaintiff to a specialist once it became clear
9 that Plaintiff's condition was worsening;
- 10 AA. KAISER failing to allow Plaintiff to be examined a female dermatologist after
11 Plaintiff asked for one;
- 12 BB. KAISER failing to ask Plaintiff why she wanted to see a female dermatologist
13 instead of DR. KEMPIAK and instead convincing Plaintiff that she should
14 continue with DR. KEMPIAK;
- 15 CC. Defendants continuing to treat Plaintiff even when she was physically and
16 emotionally deteriorating;
- 17 DD. KAISER negligently hiring, retaining, and supervising DR. KEMPIAK who it
18 knew or should have known sexually abused female patients.

19 23. DR. KEMPIAK examined and otherwise treated Plaintiff approximately seven times
20 between June 2015 and August 2016. On every occasion, Plaintiff never saw DR. KEMPIAK wash
21 his hands, either before or after procedures, and he never wore gloves.

22 24. In addition, during each visit, DR. KEMPIAK would make Plaintiff take off her bra
23 or take off her gown entirely in front of him.

24 25. During her treatment relationship with DR. KEMPIAK, Plaintiff asked the KAISER
25 staff twice if she could see a female doctor instead of DR. KEMPIAK. However, the scheduler told
26 her that all of the female dermatologists were booked and told Plaintiff that DR. KEMPIAK is such a
27 great doctor that she should just stay with him. The scheduler explained that DR. KEMPIAK was
28 actually her own doctor and was great.

1 26. During Plaintiff's second visit with him, DR. KEMPIAK informed Plaintiff that she
2 had folliculitis and that he would help her get rid of it. He explained to Plaintiff that he had dealt
3 with cases like this before. He promised Plaintiff that if she didn't get better in six months that he
4 would send her to someone who could "laser off" the folliculitis. However, despite Plaintiff telling
5 DR. KEMPIAK that the treatment and medications weren't working and she was in great pain and
6 doing even worse, DR. KEMPIAK never referred to someone who could laser off the folliculitis or,
7 for that matter, any other specialist. Neither did he ever consult with anyone regarding Plaintiff's
8 condition. Instead, DR. KEMPIAK got upset and blamed Plaintiff for the lack of improvement. He
9 promised Plaintiff that he was fighting for her to be able to see the other doctor for the laser
10 treatment. He said, however, that she would have to try more creams before she would qualify for
11 the laser treatment.

12 27. All of the above allegations, which are not meant to be exhaustive, but only examples
13 of Defendants' inappropriate conduct, constitute actions and omissions below the standard of care in
14 the community and exist wholly and separately from the sexually inappropriate acts alleged in other
15 parts of this Complaint.

16 28. Defendants, and each of them, breached their fiduciary duty to Plaintiff.

17 29. As a proximate result of the conduct of Defendants, as alleged above, Plaintiff's
18 physical and mental conditions worsened, causing Plaintiff severe emotional distress, physical injury
19 and permanent mental injury and other general damages.

20 30. As a proximate result of the conduct of Defendants, as alleged above, Plaintiff has
21 incurred and will incur in the future, medical and other related out-of-pocket expenses in a sum
22 unknown at this time. Plaintiff will seek damages for medical bills, past and future, and other related
23 past and future expenses according to proof at the time of trial.

24 31. As a proximate result of the conduct of Defendants, as alleged above, Plaintiff has
25 sustained and will sustain in the future, lost wages and loss of earning capacity in a sum unknown at
26 this time.

27 WHEREFORE, Plaintiff prays for judgment as set forth below.
28

SECOND CAUSE OF ACTION
AGAINST ALL DEFENDANTS, AND EACH OF THEM, FOR
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

32. Plaintiff herein repeats, realleges, and incorporates by reference as though fully set forth at length the allegations set forth in paragraphs 1 through 16 of this Complaint, except for paragraphs that are inconsistent with a cause of action for Intentional Infliction of Emotional Distress.

June 23, 2015

33. During Plaintiff's first visit to KAISER and with DR. KEMPIAK on June 23, 2015, a polite middle-aged woman took Plaintiff back to an examining room. The woman asked Plaintiff some questions about her symptoms while typing into a computer and then gave her a long gown to put on without explaining what clothes to leave on, if any. After giving Plaintiff the gown, she walked out of the room and did not return despite the fact that she knew that this would be something very close to the equivalent of a gynecological exam. Knowing that the doctor would examine her pubic area, Plaintiff decided to strip down to her bra, take her panties off, and put on the gown.

34. When DR. KEMPIAK came in she noted that he was tall, and seemed perfectly normal and professional. For reasons that she did not understand, DR. KEMPIAK, asked Plaintiff to take off her bra. He then checked her breasts, explaining he wanted to "see if there are bumps on your breasts." DR. KEMPIAK then asked to examine Plaintiff. He put the table all the way back so that Plaintiff was lying flat on her back. He opened Plaintiff's gown and examined her pubic area. He told her that he thought he knew what her problem was but would have to test a sample to know for sure. He then took out a knife like instrument and took out a whole follicle and stitched the area. He then asked her to put her gown back on, gave her a card to call and told her what dates that he would be available. He then told her to call for an appointment. She went home and called for an appointment.

//

//

1 **August 4, 2015**

2 35. The second appointment began the same way. The office's medical assistant brought
3 Plaintiff back to the examining room pulled out a computer and asked some questions. Plaintiff
4 explained that she had gotten worse and was having increased inflammation outside of the vaginal
5 area. The woman then handed Plaintiff a gown and left. DR. KEMPIAK came into the room
6 appearing very happy to see Plaintiff and rubbed Plaintiff's thigh and asked how she was doing.
7 Plaintiff explained that she was getting worse. Once again DR. KEMPIAK told Plaintiff that he
8 needed to check her nipples and asked her to take her bra off. Plaintiff complied and then laid back
9 on the table. As part of DR. KEMPIAK's breast "examination", this time he rubbed Plaintiff's
10 breasts in a circular fashion, much more like he was playing with them than the first time. This
11 lasted for about ten seconds, once again under the guise that he was looking for bumps. DR.
12 KEMPIAK then explained that he needed to take out the stitches, which he did, and it did in fact
13 hurt. Plaintiff was crying due to the discomfort of this procedure and her overall discomfort with her
14 condition. Of significance, on this occasion and all occasions Plaintiff never saw DR. KEMPIAK
15 wash his hands, either before or after procedures, and he never wore gloves.

16 36. After this, DR. KEMPIAK informed Plaintiff that she had folliculitis and that he
17 would help her get rid of it. He explained to Plaintiff that he had dealt with cases like this before.
18 He promised Plaintiff that if she didn't get better in six months that he would send her to someone
19 who could laser off the folliculitis. He told Plaintiff that he would have to take pictures on his cell
20 phone to prove that the creams weren't working, which he did. He then, under the guise of a
21 reassuring gesture, rubbed Plaintiff's thigh almost to her buttocks. This was over her gown. DR.
22 KEMPIAK then explained to Plaintiff that she needed to go down to the pharmacy and pick up the
23 ointment he prescribed and told her to go to the front and make an appointment to come back in a
24 few weeks.

25 **September 3, 2015**

26 37. This third appointment began in the same manner as all of the others. DR.
27 KEMPIAK came in and asked Plaintiff to take off her bra. He then propped up the examining table
28

1 so that Plaintiff was sitting back rather than lying down. This time the breast exam lasted about 10
2 seconds of probing. Plaintiff explained that she was getting worse and worse.

3 **October 13, 2015**

4 38. The fourth appointment began the same way as all of the others. Once again, Plaintiff
5 was doing even worse, and explained that to the woman, who recorded it in the computer, handed
6 Plaintiff a gown and left the room. When DR. KEMPIAK came in he asked Plaintiff how she was
7 doing, and she cried and explained that the medications weren't working and she was doing even
8 worse. DR. KEMPIAK seemed upset by this news. He promised Plaintiff that he was fighting for
9 her to be able to see the other doctor for the laser treatment. He said, however, that he would have to
10 try more creams and take more pictures before she would qualify for the laser treatment. This time,
11 for the first time, DR. KEMPIAK asked Plaintiff to take her gown off completely, which she did.
12 The explanation for the necessity of this was that he needed to check her entire body to insure that
13 there were not bumps somewhere beside her pubic area. For this supposed purpose DR. KEMPIAK
14 touched every part of Plaintiff's body including her breasts and buttocks, which he grabbed. He
15 actually lifted up Plaintiff's buttocks to check out her anal area. As in other appointments DR.
16 KEMPIAK opened up Plaintiff's vagina to look for bumps, but this time it felt different.

17 39. Plaintiff rationalized DR. KEMPIAK's behavior by thinking to herself that he was
18 just doing his job. However, she thought she'd be more comfortable with a female doctor. So this
19 time when Plaintiff went to the front desk to schedule the next appointment and told the scheduler
20 that she really wanted a female doctor from now on. The scheduler told her that all of the female
21 dermatologists were booked and told Plaintiff that DR. KEMPIAK is such a great doctor that she
22 should just stay with him. The scheduler explained that DR. KEMPIAK was actually her own
23 doctor and was great. Six weeks later she called again asking for a female doctor, and was told that
24 not only were there no female doctors available and that she'd have to wait till February to see DR.
25 KEMPIAK because he was not available till then.

26 **February 16, 2016**

27 40. Plaintiff's next appointment was on February 16, 2016. This appointment began the
28 same as others with the woman taking a short history and leaving. Plaintiff's symptoms had become

1 even more intense. Once again, DR. KEMPIAK came in and asked Plaintiff to take off her bra.
2 However, rather than "examining" her breasts at this point he just asked her to lie down. He then
3 told Plaintiff that he needed to check her vaginal area, noting that her symptoms had indeed gotten
4 worse. DR. KEMPIAK then explained to Plaintiff that he needed to make her sweat to see if the hair
5 follicles "come up." First he rubbed Plaintiff's breasts and then stuck a finger into Plaintiff's vagina
6 and began fingering her. As always he didn't wash his hands and he wasn't wearing gloves. He
7 fingered her in a circular motion. With his other hand he then fingered her clitoris. Plaintiff began
8 crying. DR. KEMPIAK asked her if she was uncomfortable and Plaintiff replied that she was, in
9 fact, uncomfortable. However, DR. KEMPIAK continued saying that he needed her to sweat to see
10 if the hairs would rise. Plaintiff's only response was to cry, look up at the ceiling, praying for it to
11 soon be over. Nothing felt good about this. Plaintiff felt like she wanted to die. Plaintiff tried not to
12 make eye contact with DR. KEMPIAK, but when she finally did he was smiling at her, and said "I
13 just need to make you sweat." Part of Plaintiff forced herself to believe that he is a doctor and
14 knows what he is doing and she kept saying to herself "just sweat...just sweat". Plaintiff believes
15 that this went on for about five minutes. At that point he took his fingers out and said that she was
16 not sweating so that he was not seeing anything pop up. He said it as if it was Plaintiff's fault that
17 she didn't sweat and that she was being a bad patient.

18 41. Even after this exam DR. KEMPIAK didn't wash his hands, though there was a sink
19 in the room. However, Plaintiff washed her hands. DR. KEMPIAK prescribed some new creams
20 and explained to Plaintiff that next time she needed to sweat. Plaintiff was so confused and unsure
21 of herself that she accepted the fact that it was, in fact, her fault that she didn't sweat and that she
22 really messed up the appointment.

23 **April 7, 2016**

24 42. Plaintiff next appointment with DR. KEMPIAK was on April 7, 2016. Once again,
25 DR. KEMPIAK had Plaintiff lie down on the examining table. He told her again that she needed to
26 sweat and this time he inserted two fingers into her vagina. While he was fingering her he began
27 rubbing Plaintiff's nipples asking her if that felt good. Plaintiff replied that it did not feel good and
28 that he was hurting her. His response was to state that she wasn't sweating. Plaintiff replied that she

1 didn't think that she could sweat. He only played with her clitoris for a short time on this occasion,
2 focusing on her breasts while fingering her vagina in a circular motion for about five minutes. This
3 appointment ended the same way as the prior one with Plaintiff feeling that she had been a bad
4 patient because she didn't sweat. Once again there was no hand washing on DR. KEMPIAK's part,
5 and he didn't wear gloves.

6 43. When Plaintiff went to the front desk to make another appointment she once again
7 asked for a female doctor and she was once again told that there were not any available, without the
8 woman asking why she wanted a female doctor.

9 44. Following this appointment, DR. KEMPIAK called Plaintiff personally and left a
10 message to make sure she was coming in for the next visit (he had called Plaintiff personally before
11 a prior appointment).

12 **July 20, 2016**

13 45. Plaintiff next visit with DR. KEMPIAK occurred on July 20, 2016. During this visit,
14 DR. KEMPIAK stuck four fingers into Plaintiff's vagina. This time it hurt so much that Plaintiff
15 began crying and even screamed in pain loud enough for everyone in the dermatology department to
16 hear. While Plaintiff was crying and screaming in pain, DR. KEMPIAK could only state, "Sweetie,
17 why aren't you sweating?" continuing to finger her for another few minutes.

18 46. Rather than going to the front desk and schedule another appointment or pick up her
19 medicine, or have any hope that she would get the promised laser appointment, Plaintiff went
20 straight home with the idea that she would kill herself. She had never been in more emotional or
21 physical pain in her life. At home she got a knife. She was living with her mother who was in
22 another room sleeping. About 1:00 a.m. Plaintiff called her sister who didn't answer. Thankfully,
23 Plaintiff decided to call a hotline for sexual assault. She had decided that if they didn't answer she
24 would kill herself, but fortunately they answered. They were able after some time to talk Plaintiff
25 down and pleaded with her to contact the police pointing out to her that this could be happening to
26 little girls.

27 47. Although she was quite scared, Plaintiff called the police and told them what had
28 happened. Plaintiff is a 23 year high school graduate who, given her history of being abandoned and

1 sexually abused and repeatedly having her life threatened, is reticent to question or challenge
2 authority figures like doctors, which makes her an easy mark, susceptible to further abuse. Her
3 default psychological mechanism is to dissociate from the abuse.

4 48. The conduct of DR. KEMPIAK in this respect was intentional, outrageous, malicious,
5 and done for the purpose of causing Plaintiff to suffer humiliation, mental anguish, and severe
6 emotional distress.

7 49. The despicable conduct of DR. KEMPIAK as alleged above was done with the intent
8 to cause injury to Plaintiff and was done willfully, with a conscious disregard for Plaintiff's rights.

9 50. KAISER and DOES 1-25, and each of them, ratified DR. KEMPIAK's actions and
10 failed to act to prevent his actions, despite having knowledge that he was unfit to treat and/or be
11 alone with female patients. KAISER and DOES 1-25 knew, or should have known, that his
12 inappropriate conduct was occurring.

13 51. Defendants, and each of them, knew that Plaintiff was a particularly psychologically
14 vulnerable person and would be severely harmed by DR. KEMPIAK's conduct.

15 52. DR. KEMPIAK's conduct in this respect did not arise out of the treatment
16 relationship but rather existed wholly and separately from the treatment relationship. The sexual
17 misconduct as described above was not part of Plaintiff's medical treatment.

18 53. As a direct and proximate result of the unlawful conduct described above, Plaintiff
19 has suffered, and will continue to suffer special damages in the form of past and future medical costs
20 and expenses to be proven at the time of trial.

21 54. As a direct and proximate result of the unlawful conduct of Defendants and each of
22 them, Plaintiff has suffered, and continues to suffer, general damages including but not limited to
23 shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress and other
24 damages to be proven at the time of trial.

25 55. As a proximate result of the conduct of Defendants, as alleged above, Plaintiff has
26 sustained and will sustain in the future, lost wages and loss of earning capacity in a sum unknown at
27 this time.

28 WHEREFORE Plaintiff prays for judgment as set forth below.

FOURTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS, AND EACH OF THEM, FOR BATTERY

63. Plaintiff herein repeats, realleges, and incorporates by reference as though fully set forth at length the allegations set forth in paragraphs 1 through 62 of this Complaint, except for the paragraphs that are inconsistent with a cause of action for Battery.

64. In doing the acts set forth in detail above, DR. KEMPIAK acted with intent to cause harmful or offensive contact with the body of Plaintiff, and offensive or harmful contact directly resulted each and every time he touched Plaintiff.

65. DR. KEMPIAK acted with intent to cause harmful or offensive contact with the body of Plaintiff, and offensive or harmful contact directly resulted each and every time he touched Plaintiff.

66. Plaintiff did not consent to DR. KEMPIAK's offensive touching.

67. DR. KEMPIAK's conduct alleged herein was intentional, outrageous, and malicious and committed for the purpose of causing Plaintiff to suffer humiliation, mental anguish, and severe physical and emotional distress.

68. DR. KEMPIAK's conduct in this respect did not arise out of the treatment relationship but rather existed wholly and separately from the treatment relationship. The sexual misconduct as described above was not part of Plaintiff's medical treatment.

69. KAISER and DOES 1-25, and each of them, ratified DR. KEMPIAK's actions and failed to act to prevent his actions, despite having knowledge that he was unfit to treat and/or be alone with female patients. KAISER and DOES 1-25 knew, or should have known, that his inappropriate conduct was occurring.

70. As a direct, proximate, and foreseeable result of Defendants' conduct, Plaintiff has been injured as previously set forth.

WHEREFORE Plaintiff prays for judgment as set forth below.

//

//

//

1 **FIFTH CAUSE OF ACTION**
2 **AGAINST ALL DEFENDANTS, AND EACH OF THEM, FOR SEXUAL BATTERY**
3 **(Cal. Civ. Code § 1708.5)**

4 71. Plaintiff herein repeats, realleges, and incorporates by reference as though fully set
5 forth at length the allegations set forth in paragraphs 1 through 70 of this Complaint, except for the
6 paragraphs that are inconsistent with a cause of action for Sexual Battery.

7 72. DR. KEMPIAK engaged in harmful and/or offensive touching of Plaintiff with her
8 “intimate parts” and engaged in harmful and/or offensive contact with Plaintiff’s “intimate parts,” as
9 defined by California Civil Code section 1708.5.

10 73. DR. KEMPIAK’s conduct in this respect did not arise out of the treatment
11 relationship but rather existed wholly and separately from the treatment relationship. The sexual
12 misconduct as described above was not part of Plaintiff’s medical treatment.

13 74. KAISER and DOES 1-25, and each of them, ratified DR. KEMPIAK’s actions and
14 failed to act to prevent his actions, despite having knowledge that he was unfit to treat and/or be
15 alone with female patients. KAISER and DOES 1-25 knew, or should have known, that his
16 inappropriate conduct was occurring.

17 75. As a direct, proximate, and foreseeable result of Defendants’ conduct, Plaintiff has
18 been injured as previously set forth.

19 WHEREFORE Plaintiff prays for judgment as set forth below.

20 **SIXTH CAUSE OF ACTION**
21 **AGAINST ALL DEFENDANTS FOR**
22 **SEXUAL HARASSMENT (Cal. Civ. Code § 51.9)**

23 76. Plaintiff herein repeats, realleges, and incorporates by reference as though fully set
24 forth at length the allegations set forth in paragraphs 1 through 75 of this Complaint, except for the
25 paragraphs that are inconsistent with a Cause of Action for Sexual Harassment.

26 77. A business, service, and professional relationship existed between Plaintiff and
27 Defendants.

28 78. DR. KEMPIAK made sexual advances, solicitations, and sexual requests of Plaintiff
that were unwelcome and persistent.

1 79. Due to her vulnerable psychological state, the shock resulting from DR. KEMPIAK's
2 conduct, Plaintiff was not able to terminate the relationship without tangible hardship.

3 80. Defendant DR. KEMPIAK's conduct was done within the course and scope of his
4 employment by KAISER, DOES 1-25, and each of them.

5 81. KAISER and DOES 1-25, and each of them, ratified DR. KEMPIAK's actions and
6 failed to act to prevent his actions, despite having knowledge that he was unfit to treat and/or be
7 alone with female patients. KAISER and DOES 1-25 knew, or should have known, that his
8 inappropriate conduct was occurring.

9 82. As a direct, proximate, and foreseeable result of Defendants' conduct, Plaintiff has
10 been injured as previously set forth.

11 WHEREFORE Plaintiff prays for judgment as set forth below.

12 **SEVENTH CAUSE OF ACTION**

13 AGAINST ALL DEFENDANTS FOR VIOLENCE & INTIMIDATION BASED ON SEX (Cal. Civ. Code §51.7)

14 83. Plaintiff herein repeats, realleges, and incorporates by reference as though fully set
15 forth at length the allegations set forth in paragraphs 1 through 82 of this Complaint except for the
16 paragraphs that are inconsistent with a Cause of Action for Violence Threat or Intimidation Based on
17 Sex.

18 84. At all times relevant herein KAISER and DR. KEMPIAK knew from her medical
19 history that Plaintiff was a particularly psychologically vulnerable patient. By virtue of their
20 professional education, skills, and training Defendants, and each of them, knew, or should have
21 known, that people such as Plaintiff suffering from the type of problems she presented were
22 particularly susceptible to being influenced and manipulated by persons like DR. KEMPIAK, and
23 that DR. KEMPIAK's failure to exercise due care in the performance of his care and treatment of
24 would cause Plaintiff severe emotional distress. DEFENDANTS, and each of them, knew from
25 Plaintiff's medical history charts that she suffered from psychological conditions that made it
26 difficult for Plaintiff to resist or avoid abusive circumstances, particularly abuse by persons with
27 authority such as doctors. Her conditions also made her made more likely to be harmed by the same.
28

85. When DR. KEMPIAK saw her, Plaintiff was in extreme pain and was desperate for treatment.

86. In doing the acts alleged herein, DR. KEMPIAK is liable to Plaintiff under Cal. Civ. Code §51.7, using violence, threat, and/or intimidation based on Plaintiff's sex.

87. KAISER and DOES 1-25, and each of them, ratified DR. KEMPIAK's actions and failed to act to prevent his actions, despite having knowledge that he was unfit to treat and/or be alone with female patients. KAISER and DOES 1-25 knew, or should have known, that his inappropriate conduct was occurring.

88. As a direct, proximate, and foreseeable result of Defendants' conduct, Plaintiff has been injured as previously set forth.

WHEREFORE, Plaintiff prays for judgment as set forth below.

EIGHTH CAUSE OF ACTION

AGAINST ALL DEFENDANTS FOR GENDER VIOLENCE & SEXUAL ASSAULT (Cal. Civ. Code § 52.4)

89. Plaintiff herein repeats, realleges, and incorporates by reference as though fully set forth at length the allegations set forth in paragraphs 1 through 88 of this Complaint except for the paragraphs that are inconsistent with a Cause of Action for Gender Violence

90. Under section 52.4 “Gender Violence” includes either (1) An act that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, committed at least in part based on the gender of the victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction *or* (2) a physical intrusion or invasion of a sexual nature under coercive conditions. *See* Cal. Civ. Code §52.4 (c) (1) and (2). DR. KEMPIAK’s conduct is sufficient to constitute Battery. Section 243 of the California Penal Code defines Battery as “any willful and unlawful *use of force or violence* upon the person of another.”

91. On information and belief, DR. KEMPIAK, is a heterosexual male. It is axiomatic that he would not have sexually abused a male patient. He targeted Plaintiff because of gender or sex. The first prong of section 52.4 is, therefore, satisfied.

1 92. With respect to the second, alternative prong, fondling a female patient's breasts and
2 vagina, including inserting multiple bare fingers in it—without consent—constitutes “a physical
3 intrusion or invasion of a sexual nature.” When it is done by a doctor to a particularly psychological
4 vulnerable patient who is naked and in severe pain, it is also sufficiently coercive. The second
5 prong of section 52.4 is, therefore, alternatively satisfied.

6 93. DR. KEMPIAK KAISER and DOES 1-25, and each of them, ratified DR.
7 KEMPIAK's actions and failed to act to prevent his actions, despite having known that he was unfit
8 to treat and/or be alone with female patients. KAISER and DOES 1-25 knew, or should have
9 known, that his inappropriate conduct was occurring.

10 94. As a direct, proximate, and foreseeable result of Defendants' conduct, Plaintiff has
11 been injured as previously set forth.

12 WHEREFORE Plaintiff prays for judgment as set forth below.

13 **NINTH CAUSE OF ACTION**

14 AGAINST ALL DEFENDANTS, AND EACH OF THEM, FOR FRAUD

15 95. Plaintiff herein repeats, realleges, and incorporates by reference as though fully set
16 forth at length the allegations set forth in paragraphs 1 through 94 of this Complaint, except for the
17 paragraphs which are inconsistent with a cause of action for Fraud.

18 96. At all times herein relevant, DR. KEMPIAK and DOES 1 to 25 acted falsely and
19 fraudulently and with the intent to deceive Plaintiff by, among other things, telling Plaintiff through
20 statements and conduct that his sexual battery and assault—which included fingering her to make
21 her sweat—was a legitimate part of medical treatment when DR. KEMPIAK knew it was not.

22 97. DR. KEMPIAK made promises that he never intended to keep; made representations
23 that he knew were not true; and concealed things from Plaintiff that Plaintiff had a right to know
24 about in deciding to bear particular risks and continue to treat with him.

25 98. Defendant, in making such representations, intended that Plaintiff should rely on said
26 representations as an inducement to continue her relationship with him, including her therapy
27 relationship.

28 99. Plaintiff believed in and justifiably relied upon the representations of Defendant and

1 was thereby induced to participate and continue treating with him.

2 100. A doctor has a duty to disclose fully and completely relevant information, including
3 personal interest or conflict as well as potential risks or dangers posed by particular medical
4 procedures or treatment methodologies and any material concealment or misrepresentation will
5 amount to fraud sufficient to entitle a party injured in therapy to a cause of action. *See Nelson v.*
6 *Guant* (1981) 125 Cal. App. 3d 623, 634; see also *Hobart v. Hobart Estate Co.* (1945) 26 Cal. 2d
7 412, 433 (claim for fraud may be based on a non-disclosure or concealment of a material fact when
8 there is some kind of fiduciary or special relationship).

9 101. As a result of Defendant's failures to disclose and intentional concealment, Plaintiff
10 was injured.

11 102. Plaintiff did not discover the fraud and deceit practiced upon her by Defendants, and
12 each of them, as herein alleged until after the date that her injury was caused by Defendants, and
13 within three years of the filing of this Complaint. *See Nelson v. Guant* (1981) 125 Cal. App. 3d 623,
14 635, 636 (fraud claim against doctor fell under fraud statute of limitations, not MICRA's Code of
15 Civil Procedure section 340.5).

16 103. DOES 1 to 25, and each of them, ratified DR. KEMPIAK's actions and failed to act
17 to prevent his actions, despite knowing that he was unfit to treat and/or be alone with female
18 patients. DOES 1 to 25 knew, or should have known, that his inappropriate conduct was occurring.

19 104. As a direct and foreseeable result of the fraud of Defendants and the deceit upon
20 Plaintiff, she was damaged as previously set forth.

21 **PRAYER FOR RELIEF**

22 Plaintiff prays for judgment against all Defendants as follows:

23 1. For compensatory damages according to proof at the time of trial as to all Causes of
24 Action;

25 2. For general damages for physical and mental pain and suffering and emotional distress
26 in a sum to be proved at the time of trial as to all Causes of Action;

27 3. For attorneys' fees on the Fifth through Eighth Causes of Action, inclusive. *See Cal.*
28 *Civ. Codes* §§1708.5(b), 52(b), and 52.4(a);

4. For punitive damages on the Fifth through Eighth Causes of Action, inclusive;
5. For prejudgment interest pursuant to statute;
6. For costs of suit herein; and
7. For such other and further relief as the Court deems proper.

DATED: May 26, 2017

WINER, McKENNA & BURRITT, LLP

By: 

JOHN D. WINER
SHAWN D. TILLIS
Attorneys for Plaintiff