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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10
11 NATALIE WEST,

12 *Plaintiff,*

13 vs.

14 JAY W. CALVERT, M.D., an individual;
15 JAY CALVERT MD INC, an organization;
16 ROXBURY SURGICAL ASSOCIATES A
17 MEDICAL CORPORATION, an
18 organization; ROX SURGERY CENTER
19 NEWPORT BEACH LLC, an organization;
20 ROXBURY CLINIC AND SURGERY
21 CENTER INC, an organization;
22 UNIVERSITY OF SOUTHERN
23 CALIFORNIA, an organization; LISA
24 PULVER, CRNA, an individual;
25 SEDATES, INC., an organization; ZIYAD
26 HAMMOUDEH, M.D., an individual; and
27 DOE 1 through DOE 200, inclusive.

28 *Defendants.*

Case No. BC708415

Judge Elaine W. Mandel
Department P

SECOND AMENDED COMPLAINT

1. **Fraud;**
2. **Medical Battery;**
3. **Breach of Contract; and**
4. **Forcible Sexual Penetration of an Unconscious Person With a Foreign Object, Cal. Penal Code Section 289(D)(1))**

JURY TRIAL DEMANDED

1 Plaintiff Natalie West (“Plaintiff”), based upon personal knowledge as to herself and
2 her own acts, and upon information and belief as to all other matters, complains and alleges
3 against Defendants Jay W. Calvert, M.D.; Jay Calvert MD Inc; Roxbury Surgical Associates,
4 A Medical Corporation; Rox Surgery Center Newport Beach LLC; Roxbury Clinic and
5 Surgery Center Inc; the University of Southern California; Lisa Pulver, CRNA; Sedates, Inc.;
6 Ziyad Hammoudeh, M.D.; and Doe 1 through Doe 200, inclusive (collectively “Defendants”)
7 as follows:

8 **INTRODUCTION**

9 1. Plaintiff brings this action to expose a complex—and very lucrative—scheme
10 whereby, upon information and belief, Defendant Jay W Calvert, M.D., (“Calvert”) a well-
11 known Beverly Hills Plastic Surgeon (who promotes himself as a very skilled and very
12 expensive cosmetic surgeon) worked in concert with the other Defendants in an orchestrated
13 scheme of insurance fraud (the “Calvert Scheme”). Upon information and belief, under this
14 scheme, Calvert’s patients, who, like Plaintiff, were typically seeking cosmetic surgery, were
15 subjected to multiple, unconsented, unnecessary and damaging medical and surgical
16 procedures (the “Subsequent Procedures”) for one simple reason: so that Calvert and his
17 affiliates could reap the proceeds of fraudulent—but extremely profitable—billing practices.
18 Upon information and belief, in some instances, the Subsequent Procedures were performed
19 upon his victims not by Calvert himself (as his patients were led to believe), but rather by
20 students, residents and fellows from the University of Southern California (“USC”), and from
21 the Keck School of Medicine of USC in particular, working under the direction and control of
22 Calvert and USC.

23 2. Unbeknownst to Plaintiff, and upon information and belief, to Calvert’s other
24 victims, at all relevant times, Calvert and USC were intimately connected: (A) Calvert served
25 as a Clinical Associate Professor at USC; (B) Calvert’s private outpatient surgery center,
26 Defendant Roxbury Clinic and Surgery Center Inc (“Roxbury Clinic”) was a hands--on
27 training center for USC medical students, residents and fellows; (C) the USC Resident
28 Cosmetic Clinic (which was operated at least in part by USC staff and which offered “a wide

1 variety of procedures at a discounted price”¹) was located in “Calvert’s state-of-the-art
2 outpatient center”² (*i.e.*, the Roxbury Clinic); and (*D*) Calvert co-directed the University of
3 Southern California (USC) MarinaRox Aesthetic Surgery Fellowship. Plaintiff’s ignorance at
4 all relevant times of the intimate relationship between Calvert and USC is understandable.
5 Although two USC websites, www.uscplasticsurgery.com/cosmetic-clinic/ and
6 <https://uscresidentcosmetic.wordpress.com/page/>, made plain Calvert’s and USC’s affiliation,
7 Calvert was not so forthcoming. Upon information and belief, Calvert never disclosed any of
8 his USC connections anywhere on his website, www.drcalvert.com; never reveal his affiliation
9 with USC in any of the disclosure and consent forms given to his patients; and never provided
10 any indication that USC students, residents, and fellows trained or practiced medicine at the
11 Roxbury Clinic. In short, upon information and belief, Calvert tried to prevent his patients
12 from learning that he was, effectively, operating a medical training facility for USC (for which
13 he presumably received considerable compensation from USC). Likewise, upon information
14 and belief, Calvert sought to hide the fact that USC trainees were honing their medical and
15 surgical skills on his patients, without their knowledge or their consent.

16 **JURISDICTION AND VENUE**

17 3. This Court has jurisdiction over this matter pursuant to the California
18 Constitution, Article XI, § 10, which grants the Superior Court “original jurisdiction in all
19 causes except those given by statute to other courts.” The statutes under which this action is
20 brought do not specify any other basis for jurisdiction. This Court also has jurisdiction
21 pursuant to California Code of Civil Procedure (“CCP”) § 410.10, because at all relevant
22 times, Defendants had their principal places of business, transacted business, and committed
23 the acts alleged in California.

24 4. Venue is appropriate in Los Angeles County because Defendants did and are
25 doing business in Los Angeles County. In one way or another, each of the Defendants

27 ¹ <http://www.uscplasticsurgery.com/cosmetic-clinic/> visited on May 9, 2019.

28 ² *Id.*

1 participated in, or was responsible for, medical procedures performed on Plaintiff in Los
2 Angeles County; and the claims arose here.

3 **THE PARTIES**

4 5. Plaintiff Natalie West, a 53-year old woman, was at all relevant times a resident
5 of Las Vegas, Nevada. However, as discussed below, from approximately 2013 through 2017,
6 she regularly traveled to Los Angeles, California to obtain medical care.

7 6. Defendant University of Southern California (“USC”) describes itself as a
8 “private, not-for profit, major research university,” with its principal place of business in Los
9 Angeles County, California. USC contains within it a vast large umbrella of affiliated entities
10 and organizations, including the Keck School of Medicine of USC, which will be named as
11 Doe defendants when the names and capacities of the same are ascertained.

12 7. Defendant Jay W. Calvert, M.D. (NPI # 1831201193) (“Calvert”) is, and, at all
13 relevant times, was a physician licensed to practice in California. Upon information and belief,
14 at all relevant times, Calvert practiced Plastic Surgery both at his private surgical center in
15 Beverly Hills, Roxbury Clinic, and at his private surgical center in Newport Beach, Rox
16 Newport Beach Center (defined below). Upon further information and belief, Calvert is a
17 prominent Faculty Member of USC’s Keck School of Medicine’s Plastic and Reconstructive
18 Surgery Division, with named leadership responsibility that included being involved in the
19 communication and coordination of USC students’, residents’, and fellows’ participation in
20 surgery to be performed on Calvert’s surgery patients.

21 8. Defendant Jay Calvert MD Inc (NPI # 1003048406) (“JCMD”) is, upon
22 information and belief, a California corporation and Calvert’s corporate alter ego under which
23 he sometimes bills for his services.

24 9. Defendant Roxbury Surgical Associates, A Medical Corporation (NPI #
25 1518079862) (“RSA”) is, upon information and belief, a California corporation controlled and
26 owned in whole or part by Calvert, and which, upon further information and belief, was at all
27 relevant times located at 465 Roxbury Drive, in Beverly Hills California, at the same address
28 as defendant Roxbury Clinic.

1 10. Defendant Rox Surgery Center Newport Beach LLC (NPI # 1750719183)
2 (“Rox Newport Beach Center”) is, upon information and belief, an outpatient surgical center
3 owned and operated by Calvert in whole or part. Upon information and belief, Rox Newport
4 Beach Center is located at 617 Westcliff Dr. #207, Newport Beach, CA 92660

5 11. Defendant Roxbury Clinic and Surgery Center Inc (“NPI # 1003001967)
6 (“Roxbury Clinic”) is, upon information and belief, an outpatient surgical center owned and
7 operated by Calvert in whole or part. Upon information and belief, Roxbury Clinic is located
8 at 465 North Roxbury Drive, Suite 1001, Beverly Hills, CA 90210. Upon further information
9 and belief, Roxbury Clinic also operates with USC under the name “ROX Clinic for Aesthetic
10 & Reconstructive Surgery in Beverly Hills.”

11 12. Upon information and belief, Calvert operates JCMD, Roxbury Clinic, ROX
12 Newport Beach Center, RSA, and perhaps other entities under a common plan or scheme,
13 without a logical and consistent principle separating those entities. Accordingly, those
14 entities are sometimes hereinafter referred collectively as the “Calvert Entities.”

15 13. Defendant Lisa Pulver, CRNA (NPI # 1699895326) (“Pulver”) is an individual.
16 Upon information and belief, at all relevant times, Pulver was a Certified Registered Nurse
17 Anesthetist (“CRNA”), licensed to practice in California. Upon further information and belief,
18 Pulver frequently worked as a CRNA at the Roxbury Clinic and the Rox Newport Beach
19 Center.

20 14. Defendant Sedates, Inc. (NPI # 1831439678) (“Sedates”) was, upon
21 information and belief, at all relevant times, a California Corporation controlled in whole or
22 part by Pulver through which, upon further information and belief, Pulver billed for her
23 services as a CRNA.

24 15. Defendant Ziyad Hammoudeh, M.D. (NPI # 1154564656) (“Hammoudeh”) is,
25 upon information and belief, a physician licensed to practice medicine in California. Upon
26 further information and belief, Hammoudeh, who specializes in plastic surgery, was one of
27 two University of Southern California (USC) MarinaRox Aesthetic Surgery Fellows from
28 2016 to 2017.

1 20. In mid-2013, Plaintiff saw a television show called “The Doctors.” In that
2 show, Dr. Andrew Orden, a Beverly Hills Cosmetic Surgeon, discussed rebuilding noses with
3 the patients’ own rib bones and cartilage. Plaintiff became hopeful her nose could finally be
4 restored, using only her own body parts. She promptly made plans to travel from Las Vegas,
5 where she lived, to Los Angeles, to see Dr. Orden, to discuss the procedure with him and to
6 find out if it could be used to finally rebuild the tip of her nose to more closely resemble how it
7 had looked before her accident.

8 21. Plaintiff contacted Dr. Orden’s office and provided him with the medical
9 information he requested. After doing so, Plaintiff learned that Dr. Orden felt Plaintiff should
10 seek to have her nose rebuilt by Dr. Orden’s colleague, Calvert.

11 **B. THE CALVERT SURGERY**

12 22. Plaintiff traveled from Las Vegas, Nevada to Los Angeles, on or about June 19,
13 2013, to meet Calvert for an “Initial Consultation”. The Initial Consultation took place at
14 Defendant Roxbury Clinic. Plaintiff later learned that Roxbury Clinic is, upon information and
15 belief, jointly owned by Calvert and Dr. Orden.

16 23. After filling out initial forms and providing Calvert’s administrative staff
17 member, Cerissa Giovanni (“Giovanni”), with Plaintiff’s insurance information, Plaintiff met
18 with Calvert to discuss Plaintiff’s expectations for surgery intended to rebuild the tip of
19 Plaintiff’s nose. During the June 19, 2013 Initial Consultation, Plaintiff was accompanied by
20 her husband, Christopher West, and visited with Calvert for approximately ½-1 hour at
21 Roxbury Clinic. Plaintiff and her husband discussed with Calvert that, given the severe
22 complications Plaintiff had experienced after her prior surgeries, which had left her without the
23 tip of her nose and some bone material on the left side of her nose, the *only* surgery to which
24 Plaintiff would consent was the reconstruction of the tip of her nose, using her own body
25 materials. In sum, Calvert knew from the outset of his Initial Consultation with Plaintiff on or
26 about June 19, 2013, that the only surgical procedure Plaintiff wanted or needed was the repair
27 of the tip of her nose and missing bone on the left side of Plaintiff’s nose, using Plaintiff’s own
28 body materials.

1 24. Following the Initial Consultation, Plaintiff decided to have Calvert perform the
2 surgery to rebuild the tip of Plaintiff’s nose using her own body parts (the “Calvert Surgery”),
3 finally repairing the damage Plaintiff had suffered in the accident years earlier. Although
4 Plaintiff had provided Calvert’s staff with her health insurance information at their request,
5 both Plaintiff and her husband told Calvert they would be paying for the full cost of the
6 Calvert Surgery, estimated to be \$24,900, out of pocket. Having lived with her nose disfigured
7 for almost 15 years, Plaintiff told Calvert’s office that she wanted to undergo the surgery as
8 quickly as possible.

9 25. On or about July 8, 2013, Plaintiff was given, and signed, an estimated cost
10 sheet, which indicated that Plaintiff would pay Calvert \$20,000 to perform the surgery, plus
11 \$3,000 for the operating room, and \$1,900 for anesthesia, for a total of \$24,900, out-of-pocket,
12 for the Calvert Surgery. Thereafter, Plaintiff spoke by telephone from either Nevada or Utah to
13 Calvert’s staff in Los Angeles, and provided Calvert’s staff with her debit card information so
14 that that could withdraw the full amount of \$24,900 directly from Plaintiff’s bank in three
15 installments, made over three days.

16 26. The Calvert Surgery took place on August 6, 2013. Following the Calvert
17 Surgery, Calvert told Plaintiff that the Calvert Surgery had been a complete success, but that
18 Calvert needed to do two “tweaks” in a second surgery, in order to complete the Calvert
19 Surgery as requested and fully paid for by Plaintiff.

20 27. Upon information and belief, Calvert used the Calvert Surgery to “beta test”
21 what would become a pattern of massive insurance fraud perpetrated by Calvert against
22 Plaintiff’s insurers. In fact, despite already having been paid *in full, in cash, by Plaintiff*, for
23 the Calvert Surgery, Calvert, the Calvert Entities (including Roxbury Clinic and RSA), and
24 Sedates **also** fraudulently billed Plaintiff’s insurer, “Golden Rule PPO” United Healthcare, a
25 total of \$199,602.16 for the Calvert Surgery. Upon information and belief, Calvert, the
26 Calvert Entities, and Sedates used false diagnoses (such as “airway obstruction”) to deceive
27 Plaintiff’s health insurer into erroneously concluding that her cosmetic surgery was actually
28 medically necessary.

1 28. Upon information and belief, Golden Rule PPO was located in Salt Lake City,
2 Utah, and thus health care providers located in California had to submit insurance claims to it
3 by mail or else electronically, either via fax or over the internet. In 2015, Plaintiff switched
4 health insurers from Golden Rule PPO to Sierra Health. Upon information and belief, Sierra
5 Health was located in Las Vegas, Nevada, and thus health care providers located in California
6 also had to submit insurance claims to it by mail or else electronically, either via fax or over
7 the internet

8 29. Of the \$199,602.16 in fraudulent claims that were, upon information and belief,
9 submitted to Golden Rule PPO in 2013 just for the Calvert Surgery, Calvert, the Calvert
10 Entities, and Sedates in aggregate actually *collected* \$88,542.57. Upon information and belief,
11 particularly in light of the fact that Plaintiff had already personally paid the full cost of the
12 Calvert Surgery—\$24,900—in cash, the entire \$88,542.57 actually collected by Calvert, the
13 Calvert Entities, and Sedates was fraudulently obtained from Plaintiff’s health insurance
14 company without her knowledge or consent. Moreover, upon information and belief, by
15 billing *both* Plaintiff *and* her insurance company for the Calvert Surgery, Calvert, the Calvert
16 Entities, and Sedates intentionally engaged in a double billing scheme that fraudulently
17 deprived Plaintiff of approximately \$12,900 in cash. ³

18 **C. TWELVE MORE PROCEDURES OVER THE NEXT FOUR YEARS**

19 30. Upon information and belief, after the first Calvert Surgery and once Calvert
20 realized the extent of Golden Rule PPO generosity in paying claims, instead of simply
21 performing the two “tweaks” that Calvert had initially told Plaintiff she needed and had
22 already paid cash for, Calvert decided to exploit Plaintiff for all she (or, more accurately, her
23 health insurance) was worth by repeatedly persuading her to undergo additional procedures.

24
25
26 ³ In or about November 2013, while visiting the Roxbury Clinic, Plaintiff accidentally overheard members
27 of Calvert’s staff celebrating the huge sum that Golden Rule PPO had paid on her behalf for the Calvert Surgery.
28 Upon information and belief, when Calvert learned what Plaintiff had heard, he instructed Giovanni to arrange a
\$12,000 payment (by check) from one of his corporate alter egos to Plaintiff, and Giovanni did so. Plaintiff
received this check along with a written explanation of this “refund” that she found confusing and did not
understand. Because she did not yet suspect that Calvert was less than entirely honest, Plaintiff simply accepted
the explanation at face value and deposited the check into her bank account without further thought.

1 Ultimately, Plaintiff would undergo approximately 12 additional surgeries or medical
2 procedures (“Subsequent Procedures”), each of which, upon information and belief, included
3 multiple unconsented procedures, and many of which, upon information and belief, were
4 actually performed by USC students, residents, or fellows (who, once identified, will be named
5 as Defendants Doe 1-200), rather than by Calvert himself.

6 31. Shortly before each of the 12 Subsequent Procedures, either Giovanni or Jenny
7 Gittler (“Gittler”), another member of Calvert’s staff, discussed financial arrangements with
8 Plaintiff. Each time, Plaintiff was explicitly told that, although Calvert would perform the
9 relevant Subsequent Procedure at no charge, Plaintiff would have to pay out-of-pocket for both
10 the operating room and for anesthesia. (Combined, these charges typically ranged from \$1,000
11 to \$2,000 per Subsequent Procedure.) As instructed by Giovanni or Gittler, Plaintiff always
12 paid these charges herself. However, during each of these conversations, Plaintiff always
13 expressly asked whether her health insurance company would cover for at least part of the
14 charges for the operating room and anesthesia; in response, Giovanni and Gittler uniformly
15 told Plaintiff that, no, her health insurance would not pay for anything at all. Upon
16 information and belief, Calvert employed both Giovanni and Gittler, and thus exercised
17 complete control over what each woman told Plaintiff. Upon information and belief, Calvert
18 specifically instructed both Giovanni and Gittler to always (falsely) tell Plaintiff that her health
19 insurance would not pay for anything.

20 32. Knowing that Pulver owned Sedates, each time that Plaintiff spoke with Pulver
21 (*i.e.*, each time that Pulver herself provided the anesthesia for a Subsequent Procedure),
22 Plaintiff also asked Pulver whether her health insurance would cover at least a portion of
23 Sedates’ charges. Pulver invariably lied to Plaintiff, claiming she would not receive any
24 insurance for her work as CRNA for Plaintiff’s Subsequent Procedures and that Plaintiff
25 herself was paying the entire cost for Pulver’s services.

26 33. Believing Giovanni, Gittler, and Pulver, at all relevant times, Plaintiff had no
27 idea that, in reality, Calvert, the Calvert Entities, and Sedates were routinely submitting claims
28 to, and receiving substantial payments from, her health insurer. In fact, Plaintiff only

1 discovered these insurance claims and payments in 2018, after she had left Calvert's practice,
2 and only because she proactively contacted her health insurers seeking this information.

3 34. Upon information and belief, Calvert, the Calvert Entities, and Sedates
4 consistently and deliberately lied to Plaintiff about the possibility that her health insurance
5 might pay for either the operating room or the anesthesia, and repeatedly insisted that Plaintiff
6 pay for both the operating room and the anesthesia out of her own pocket. Upon information
7 and belief, Calvert, the Calvert Entities, and Sedates were all the while secretly submitting
8 fraudulent insurance claims for each of the 12 Subsequent Procedures and, in aggregate,
9 receiving hundreds of thousands of dollars in payments from Plaintiff's health insurers. Upon
10 information and belief, Calvert, the Calvert Entities, and Sedates thus defrauded Plaintiff by
11 engaging in a double billing scheme, to wit: insisting that, prior to each Subsequent Procedure,
12 Plaintiff had to pay out-of-pocket for charges that Calvert, the Calvert Entities, and Sedates
13 always fully intended to submit, and in fact did submit, to her health insurance.

14 35. For the privilege of being subjected to approximately 12 Subsequent
15 Procedures, upon information and belief, Plaintiff personally paid Calvert, the Calvert Entities,
16 and Sedates about \$16,000 in all, never knowing, upon information and belief, that
17 collectively, they were fraudulently submitting over \$520,000 in claims to Plaintiff's health
18 insurers and fraudulently collecting over \$330,000 in insurance payments.

19 36. Upon information and belief, Calvert insisted that Plaintiff return to Calvert's
20 various offices for 12 Subsequent Procedures primarily so that he could essentially treat
21 Plaintiff's PPO health insurance policies as his own personal ATM machine. Upon
22 information and belief, Calvert either directly, or indirectly through Giovanni and/or Gittler,
23 told Plaintiff that he would perform each of the Subsequent Procedures free of charge in order
24 to induce her to return his practice, instead of seeking superior—but costly—medical care
25 elsewhere. Likewise, upon further information and belief, Calvert repeatedly discouraged
26 numerous other plastic surgeons from treating Plaintiff themselves so that she would have no
27 alternative but to continue in his care, thereby allowing him to continue raking in huge
28 payments from her health insurers.

1 37. Upon information and belief, Calvert instructed his staff to pressure new
2 patients, such as Plaintiff, who only wanted cosmetic surgery to nonetheless provide him with
3 their health insurance information, simply so that he could misuse it. Specifically, upon
4 information and belief, Calvert performed, or allowed USC students, residents, and fellows to
5 perform, unnecessary, un-needed, and ultimately harmful procedures on Plaintiff because he
6 suspected or knew that, based on his apparently automatic (and, in Plaintiff’s case, false)
7 diagnoses of “airway obstruction” or “chronic airway obstruction,” those procedures would be
8 covered by her health insurance. In fact, however, Plaintiff never raised “airway obstruction”
9 as a concern to Calvert at any time; likewise, Calvert never discussed anything regarding
10 “airway obstruction” with Plaintiff at any time.

11 **D. PLAINTIFF WAS SEXUALLY ASSAULTED DURING HER FOURTH**
12 **PROCEDURE**

13 38. Plaintiff underwent her fourth surgical procedure with Calvert on September
14 16, 2014. Like the others, upon information and belief, this surgery was only to involve parts
15 of Plaintiff’s body that are above her neck. Upon information and belief, Pulver was the
16 CRNA who provided the anesthesia for the procedure.

17 39. After the surgery, Plaintiff was sent to the post-op recovery room. When she
18 was ready, with assistance from a Roxbury Clinic staff member, Plaintiff stood up from her
19 gurney. Immediately and inexplicably, she felt a heavy, bloody discharge from her vagina.
20 Embarrassed, Plaintiff asked the nurse for appropriate feminine hygiene products, which the
21 nurse gave her. Plaintiff inquired whether such heavy vaginal bleeding was normal, and the
22 nurse vaguely replied that anesthesia can sometimes trigger ordinary menstrual bleeding.

23 40. Unfortunately, Plaintiff – who had never before had any gynecological
24 problems – was not experiencing ordinary menstrual bleeding. Rather, Plaintiff experienced
25 severe cramping, heavy blood clotting and heavy, bloody discharge from her vagina. *This*
26 *continuously lasted for approximate six weeks with severe pain and large blood clots*
27 *discharged from Plaintiff’s vagina.*

1 41. On or about November 11, 2014, after the bleeding had continued for weeks,
2 Plaintiff visited her regular OB/GYN in Las Vegas for a “D&C.” After the procedure,
3 Plaintiff’s OB/GYN informed Plaintiff that while performing her D&C procedure, he had
4 trouble seeing into her uterus because one side was black and full of clots. Plaintiff’s
5 OB/GYN could not even speculate as to what could have caused such unusual and distressing
6 findings. Her OB/GYN also told Plaintiff that, had Plaintiff given him prior permission, he
7 would have performed a hysterectomy on Plaintiff then and there.

8 42. Upon information and belief, during Plaintiff’s September 16, 2014 surgery at
9 the Roxbury Clinic, while she under anesthesia, a Doe defendant (upon information and belief,
10 most likely one of USC’s students, residents, or fellows, each of whom are required to perform
11 various procedures a certain number of times on actual patients in order to progress in their
12 training) attempted to practice some unknown medical procedure involving Plaintiff’s uterus
13 *without her prior knowledge or consent*. Plaintiff experienced, and still experiences, severe
14 emotional trauma from being intimately violated while she was unconscious.

15 43. Plaintiff had never given Calvert, the Calvert Entities, or any employee thereof,
16 or any of USC’s students, residents, or fellows—or anyone else, for that matter—permission to
17 undertake any procedure that would involve penetration or surgery or any other procedure
18 involving her vagina.

19 44. Upon information and belief, while Plaintiff was under anesthesia (and thus
20 completely unconscious), the health care providers involved in Plaintiff’s care, including but
21 not limited to Calvert, Roxbury Clinic, RSA, Sedates, Pulver, and Does 1-200, had a duty to
22 ensure that Plaintiff was not sexually assaulted. Likewise, by placing its students, residents
23 and fellows in Calvert’s surgical suite, USC assumed responsibility for ensuring that none of
24 its students, residents, or fellows inflicted such egregious harm on an unconscious woman.

25 45. Upon information and belief, a gynecologist associated with USC shares space
26 with Calvert at Roxbury Clinic. Upon further information and belief, that gynecologist was
27 one of the members of defendant RSA, and may have performed unconsented procedures
28 upon Plaintiff, either by himself or with the assistance of Calvert, USC students, residents, or

1 fellows, or with defendants Doe 1-200. Plaintiff did not consent to any gynecologist
2 performing any procedures upon Plaintiff while in Calvert's care. Once Plaintiff determines
3 whether that gynecologist ever performed any procedures upon Plaintiff, directed such
4 procedures by others or was any way involved in such procedures, he may also be added as a
5 named defendant.

6 **E. PLAINTIFF UNDERWENT A "GHOST SURGERY" PERFORMED BY**
7 **HAMMOUDEH**

8 46. The Subsequent Procedures went on for a period of approximately 4 years.
9 During that time, although Plaintiff *never* agreed to allow any USC students, residents,
10 fellows, or anyone than Calvert to perform any surgery on her. Nonetheless, almost every
11 time that Plaintiff arrived at either the Roxbury Clinic or the Rox Newport Beach Center
12 outpatient surgical facility, she saw various random individuals in white coats who appeared to
13 be physicians walking in and out of the surgery room. Plaintiff is informed and believes that
14 these people (which include Doe defendants) were actually USC students, residents and/or
15 fellows who were training under Calvert and, upon information and belief, performed an
16 unknown number of the Subsequent Procedures that Plaintiff underwent.

17 47. Over time, Plaintiff became increasingly terrified of visiting Calvert because
18 each Subsequent Procedure made her sicker and sicker. Accordingly, at some point in March
19 2016, Plaintiff began contacting other cosmetic surgeons in Utah, Nevada, and California to
20 see if she could go to them to fix the ongoing damage seemingly being caused by Calvert.

21 48. Before the surgery Calvert insisted Plaintiff undergo in May of 2017, and
22 notwithstanding any patient privacy policies, upon information and belief, Calvert found out
23 that Plaintiff was trying to replace him. Shortly before the May 31, 2017 Subsequent
24 Procedure, Calvert confronted Plaintiff, saying "Oh, so no one else is going to help you huh?"
25 "Guess it's just *you* and *me*..."

26 49. Much to Plaintiff's dismay, Calvert's "guess" was incorrect: it *wasn't* just him
27 and Plaintiff, as Plaintiff later discovered.

1 50. On May 31, 2017, Plaintiff underwent another Subsequent Procedures
2 performed (she thought) by Calvert. Upon information and belief, on the preceding day, May
3 30, 2017, Plaintiff signed a “Consent for Surgical Care” form in which she specifically
4 authorized and requested Calvert to perform the specified procedure. Plaintiff complied with
5 all of Calvert’s pre-operative instructions.

6 51. About a month later, on June 29, 2017, Plaintiff called Giovanni because she
7 was concerned about excessive swelling from fluid caused, upon information and belief, by a
8 severe allergic reaction. Giovanni promptly responded by telling Plaintiff that Calvert was in
9 Dubai, but that she would see if Ziyad Hammoudeh had left yet (to travel outside Los
10 Angeles), because (Giovanni told Plaintiff) Hammoudeh had performed Plaintiff’s May 31,
11 2017 Subsequent Procedure. Giovanni also mentioned to Plaintiff that that was Hammoudeh’s
12 last surgery before he completed his fellowship. Giovanni then told Plaintiff that, if she was
13 able to reach Hammoudeh, she would ask him to call Plaintiff in order to explain what had
14 been done in surgery.

15 52. About an hour later on June 29, 2017, Hammoudeh called Plaintiff.
16 Hammoudeh told Plaintiff that he had not put anything new into her nose (upon information
17 and belief, thereby tacitly confirming that he had operated on Plaintiff). He then told Plaintiff
18 to go to a doctor’s office or emergency room, and ask that a needle be put into her skin to drain
19 the fluid from her nose. Finally, Hammoudeh asked Plaintiff to send him a picture of the
20 lumps that were forming on her nose, which she promptly did. After receiving the picture
21 from Plaintiff, Hammoudeh called Plaintiff a second time and told her that he had anticipated
22 the swelling she was experiencing. He then said that Plaintiff should not worry about the
23 lumps on her nose, but to “give it five to six months.”

24 53. Many months later, Plaintiff found a prescription for pain medicine that her
25 husband had picked up from CVS Pharmacy on June 1, 2017 (the day after her May 31, 2017
26 Subsequent Procedure) but that she had never needed to take. Upon examination, Plaintiff
27 noticed that the medication had been prescribed by “Hammoudeh, Ziyad S,” and that,
28 according to the receipt attached to the prescription, Hammoudeh’s address was “4644 Lincoln

1 Boulevard, Marina Del Rey, CA 902926391.” Upon information and belief, 4644 Lincoln
2 Boulevard, Marina Del Rey, CA 90292-6391 is one of the locations where the University of
3 Southern California (USC) MarinaRox Aesthetic Surgery Fellows practice medicine.

4 54. Although Hammoudeh—not Calvert—apparently performed the May 31, 2017
5 Subsequent Procedure on Plaintiff, upon information and belief, it was Calvert—not
6 Hammoudeh—who submitted a claim for \$2,641.76 to Plaintiff’s health insurance company
7 for the surgery.

8 55. Plaintiff has no recollection of ever even meeting Hammoudeh, much less
9 discussing her medical condition with him. Plaintiff was shocked and dismayed to learn from
10 Giovanni about a month after her May 31, 2017 Subsequent Procedure that Calvert had
11 delegated the surgery to another physician without her knowledge and consent. Plaintiff was
12 *never* was informed that Hammoudeh—or anyone other than Calvert himself—would be
13 performing surgery on her. Moreover, had she been asked, Plaintiff would *never* have
14 consented to have Hammoudeh—or anyone other than Calvert—operate on her.

15 56. The practice of substituting surgeons without a patient’s knowledge or consent
16 is known as “ ‘ghost surgery’ because the doctor to whom informed consent was given was not
17 the surgeon who performed the surgery. In that circumstance, the [New Jersey Supreme]
18 Court concluded that surgeon did not have the plaintiff’s informed consent.” *Howard v.*
19 *University of Medicine and Dentistry*, 172 N.J. 537 (2002) (citing *Perna v. Pirozzi*, 92 N.J.
20 446, 463 n.3, 464-465 (1983) and Judicial Council of the American Medical Ass’n, Op. 8.12
21 (1982)). Lacking the patient’s informed consent, the surgeon who performs “ghost surgery”
22 commits the tort of medical battery on the patient. *Id.* In such cases, “the plaintiff was entitled
23 to ‘recover for all injuries proximately caused by the mere performance of the operation,
24 whether the result of negligence or not... [I]f the patient suffers no injuries except those that
25 may be foreseen from the operation, he then is entitled at least to nominal damages and, in an
26 appropriate case, may be entitled to damages for mental anguish resulting from the belated
27 knowledge that the operation was performed by a doctor to whom he had not given
28 consent.” *Id.* (Internal citations omitted).

1 57. Since discovering that, apparently, a complete stranger performed surgery on
2 her without her knowledge or consent, Plaintiff has suffered extreme mental anguish. In light
3 of this information, Plaintiff continually feels betrayed by Calvert (whom she had every reason
4 to believe would perform her surgery himself); continually feels violated by the fact that one
5 or more total stranger(s) were permitted—indeed, upon information and belief, encouraged by
6 both Calvert and USC—to cut her body open, *see Perna v. Pirozzi*, 92 N.J. 446, 461-64 (1983)
7 (“Even more private than the decision who may touch one's body is the decision who may cut
8 it open and invade it with hands and instruments.”); and continually feels tremendous anxiety,
9 wondering who else Calvert may have allowed to perform surgery on her in order to fulfill his
10 obligation to USC to train its students, residents, and fellows. Additionally, Plaintiff
11 experienced extreme fear—if not outright terror—upon hearing Calvert say that the only way
12 to repair the damage caused by the May 31, 2017 surgery was to allow Calvert to perform a
13 “nose flap” operation (which, upon information and belief, is an extremely invasive and almost
14 gruesome procedure).

15 58. Plaintiff also suffered considerable physical injuries that were proximately
16 caused by Hammoudeh’s medical battery upon her. For example, she endured:

- 17 (a) Extreme pain and suffering due to her severe allergic reaction to
18 materials used during the unconsented surgery, as well as extreme swelling of her face that
19 lasted for approximately six months;
- 20 (b) Severe pressure headaches caused by the build-up of fluid in her face;
- 21 (c) Painful new lumps of inflamed tissue appearing all over her nose;
- 22 (d) Extensive infections that did not respond to oral antibiotics, requiring
23 Plaintiff to receive IV steroid and Benadryl infusions twice a day and IV antibiotics three
24 times every day for at least six months (for which she had to have a private nurse come to her
25 home every three days to change the site of her IV). Worse, the IV antibiotics caused her
26 muscles and joints to ache, making it very difficult for her to walk; the steroids caused a
27 significant weight gain; and the Benadryl caused extreme chronic fatigue. And, because she
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1 was dependent upon the IV medications, she was effectively unable to travel (or even leave her
2 house) for at least six months, so she had to miss major family events and gatherings, and

3 (e) The formation of scar tissue around her eyes, resulting in an impaired
4 ability to focus on objects or see clearly.

5 59. In addition, Hammoudeh's ghost surgery proximately caused Plaintiff to incur
6 significant expenses. For example, she had to pay:

7 (a) At least \$15,000 out of pocket for the private nurse, the IV antibiotics,
8 medical supplies, and frequent blood tests;

9 (b) \$400 to Dr. Richard Protzel, a pathologist who, for reasons that are not
10 entirely clear, attended the May 31, 2017 surgery;

11 (c) \$1750 for the operating room and anesthesia for the May 31 surgery;
12 and

13 (d) Approximately \$1,000 for four nights at a hotel near the Roxbury
14 Clinic, plus miscellaneous travel expenses.

15 60. When Hammoudeh committed medical battery on Plaintiff, he was a University
16 of Southern California (USC) MarinaRox Aesthetic Surgery Fellow, and thus, upon
17 information and belief, either an employee or an agent of both USC and "Rox Center" (a/k/a
18 the Roxbury Clinic). Accordingly, upon information and belief, Hammoudeh was subject to
19 both USC's and the Rox Center's control and authority. Furthermore, upon information and
20 belief, Hammoudeh was acting within the scope of his employment with, and/or his authority
21 as agent for, both USC and the Rox Center when he harmed Plaintiff by committing the
22 intentional tort of medical battery.

23 **CLAIMS AND CAUSES OF ACTION**

24 **COUNT I**

25 **FRAUD**

26 **(AGAINST CALVERT, THE CALVERT ENTITIES, PULVER, SEDATES, USC,**
27 **AND DOE 1 THROUGH DOE 200)**

28 61. The preceding factual statements and allegations are incorporated by reference.

1 62. Calvert, the Calvert Entities, Pulver and Sedates each made false
2 representations to Plaintiff that harmed her. Specifically, each represented to Plaintiff that her
3 health insurance would not cover any charges for operating rooms or anesthesia. Each of their
4 representations was false, and Calvert, the Calvert Entities, Pulver and Sedates each knew that
5 their representation was false when he/she/it made it. Moreover, Calvert, the Calvert Entities,
6 Pulver and Sedates intended that Plaintiff would rely on their representations, and Plaintiff, in
7 fact, did reasonably rely on their representations. As a result, Plaintiff was harmed, because
8 she paid for the applicable charges out-of-pocket, when in fact her health insurer would have
9 paid for at least some of the charges. Plaintiff's reliance on Calvert's, the Calvert Entities',
10 Pulver's and Sedates' false representation was a substantial factor causing her harm. Thus,
11 Calvert, the Calvert Entities, Pulver and Sedates each committed fraud.

12 63. In addition, Calvert, the Calvert Entities, Pulver and Sedates each had a
13 fiduciary physician/patient-based relationship with Plaintiff. Regrettably, Calvert, the Calvert
14 Entities, Pulver and Sedates each intentionally failed to disclose to Plaintiff that they were
15 submitting fraudulent claims to her health insurers, and were receiving large sums from her
16 insurers. Plaintiff herself did not know about the insurance claims or payments, because
17 Calvert, the Calvert Entities, Pulver and Sedates each intended to deceive Plaintiff by
18 concealing those facts. Had Plaintiff known about the health insurance claims and payments,
19 she reasonably would have behaved differently, by refusing to pay for the charges herself.
20 Plaintiff was harmed as a result of unnecessarily paying the charges, and Calvert's, the Calvert
21 Entities', Pulver's and Sedates' concealment was a substantial factor in causing Plaintiff's
22 harm. Thus, again, Calvert, the Calvert Entities, Pulver and Sedates each committed fraud.

23 64. Calvert also committed fraud by intentionally and deceptively billing Plaintiff's
24 health insurer for the May 31, 2017 Subsequent Procedure – a procedure which Hammoudeh
25 (and not Calvert) had performed.

26 65. At all relevant times, USC employed Calvert as a Clinical Associate Professor
27 charged with training USC's students, residents, and fellows how to perform plastic surgery.
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COUNT III
BREACH OF CONTRACT
(AGAINST CALVERT)

10 71. The preceding factual statements and allegations are incorporated by reference.

11 72. By signing the “Consent for Surgical Care” form referenced above in
12 paragraph 50, as well as signing numerous other documents provided by Calvert’s staff,
13 shortly before the May 31, 2017 Subsequent Procedure, Plaintiff entered into an express
14 contract with Calvert that created a physician/patient relationship and included
15 Calvert’s promise that he would be the surgeon performing the procedure.

16 73. Plaintiff performed her obligations under the contract when she paid for her
17 health care services and complied with Calvert’s pre-operative instructions. Calvert,
18 however, breached his contractual obligation to personally performing the surgical
19 procedure on Plaintiff.

20 74. As a direct and proximate result of Calvert’s failure to perform the
21 procedure himself, but instead to allow Hammoudeh to perform the procedure without
22 Plaintiff’s knowledge or consent, Plaintiff has been harmed and has suffered, and will
23 continue to suffer, damages and injuries.

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COUNT IV
FORCIBLE SEXUAL PENETRATION OF AN UNCONSCIOUS PERSON WITH A
FOREIGN OBJECT (CAL. PENAL CODE SECTION 289(D)(1))
(AGAINST CALVERT, ROXBURY CLINIC, USC, PULVER. SEDATES,
AND DOE 1 THROUGH 200)

75. The preceding factual statements and allegations are incorporated by reference.

76. Under the doctrine of res ipsa loquitor, Plaintiff is entitled to a presumption that she was the victim of forcible sexual penetration of an unconscious person with a foreign object, in violation of Cal Penal Code Section 289(D)(1). As described above, following surgery on September 16, 2014, Plaintiff experienced severe cramping, heavy blood clotting and heavy, bloody discharge from her vagina for at least six weeks; her regular OB/GYN

1 informed her that her half of her uterus was inexplicably black and full of clots. Such harm
2 ordinarily would not have occurred unless someone forcibly penetrated her vagina and uterus
3 with an unknown foreign object. The harm occurred while Plaintiff was sedated and
4 unconscious due to anesthesia and was under the care and control of Calvert, the Roxbury
5 Clinic, Pulver, and Sedates. And, Plaintiff's voluntary actions clearly did not cause or
6 contribute to the events that harmed her. Accordingly, Plaintiff has established that Calvert,
7 the Roxbury Clinic, Pulver, and Sedates negligently caused her harm.

8 77. In addition, Calvert's negligent treatment of Plaintiff occurred within the scope
9 of his employment with USC. Accordingly, USC is vicariously liable for Calvert's negligent
10 conduct.

11 **RELIEF REQUESTED**

12 78. The preceding factual statements and allegations are incorporated by reference.

13 79. **DAMAGES.** As a direct and proximate result of Defendants' wrongful actions,
14 inaction, omissions, and want of ordinary care that directly and proximately harmed Plaintiff,
15 Plaintiff suffered (and will continue to suffer) actual, consequential, incidental, and statutory
16 damages and other injury and harm. Plaintiff also is entitled to equitable relief, including,
17 without limitation, disgorgement and restitution. Plaintiff's damages were foreseeable by
18 Defendants and exceed the minimum jurisdictional limits of this Court. All conditions precedent
19 to Plaintiff's claims have been performed and occurred.

20 80. **Punitive Damages.** Plaintiff also is entitled to punitive damages from
21 Defendants, as punishment and to deter such wrongful conduct in the future, pursuant to, *inter*
22 *alia*, Cal. Civ. Code § 56.35 and California common law.

23 81. **Injunctive Relief.** Pursuant to, *inter alia*, California Civil Code § 56.35,
24 California Civil Code § 1798.84(e), and Cal. Bus. & Prof. Code § 17203, Plaintiff also is
25 entitled to injunctive relief in multiple forms. All conditions precedent to Plaintiff's claims for
26 relief have been performed and occurred.

27 82. **Attorneys' Fees, Litigation Expenses and Costs.** Plaintiff also is entitled to
28 recover her attorneys' fees, litigation expenses and court costs in prosecuting this action pursuant

1 to, *inter alia*, California Civil Code § 56.35, and other authority. All conditions precedent to
2 Plaintiff's claims for relief have been performed and occurred.

3 **WHEREFORE**, Plaintiff respectfully requests that upon final trial or hearing,
4 judgment be awarded against Defendants for:

- 5 (i) actual, incidental, consequential, and nominal damages to be determined by the
6 trier of fact;
- 7 (ii) statutory damages;
- 8 (iii) punitive damages;
- 9 (iv) equitable relief, including restitution, disgorgement of all amounts by which
10 Defendants have been unjustly enriched;
- 11 (v) pre- and post-judgment interest at the highest legal rates applicable;
- 12 (vi) appropriate injunctive relief;
- 13 (vii) attorneys' fees and litigation expenses;
- 14 (viii) costs of suit; and
- 15 (ix) such other and further relief that the Court deems just and proper.

16 **JURY DEMAND**

17 Plaintiff respectfully demands a trial by jury on all of her claims and causes of action so
18 triable.

19 Dated: May 10, 2019

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