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ELECTRONICALLY

**FILED**

Superior Court of California,  
County of San Francisco

**03/24/2023**

**Clerk of the Court**

BY: KAREN VALDES

Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN FRANCISCO**

11 JANE DOE and

12 JOHN DOE

13 Plaintiffs,

14 v.

15 SUTTER HEALTH, a corporation;

16 AMITA KACHRU, MD;

17 ANNA KOGAN, MD;

18 LILY PEMBERTON, MD;

19 NOELLE BRODEUR, CNM;

20 LILIANA CORREA, CNM;

21 VANESSA EVERS, CNM;

22 JODI WINEMILLER, CNM;

23 ELIZABETH GARRETT, RN;

24 MABELBA OGUNDELE, RN; and

25 DOE DEFENDANTS 1 through 50,

26 inclusive,

27 Defendants.

CASE NO.: CGC-21-595416

**FIFTH AMENDED COMPLAINT FOR:**

1. FRAUDULENT DECEIT
2. NEGLIGENT MISREPRESENTATION
3. MEDICAL BATTERY
4. SEXUAL BATTERY
5. ABUSE OF DEPENDENT ADULT
6. FALSE IMPRISONMENT
7. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
8. VIOLATION OF CALIFORNIA CONSTITUTIONAL RIGHT TO PRIVACY
9. INVASION OF PRIVACY
10. NEGLIGENT HIRING, SUPERVISION, AND RETENTION
11. GENDER-RELATED VIOLENCE
12. LOSS OF CONSORTIUM
13. MEDICAL MALPRACTICE

**DEMAND FOR JURY TRIAL**

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1 Plaintiffs Jane Doe and John Doe,<sup>1</sup> by and through their counsel, based on their experience and  
2 investigation, as well as the independent investigation of counsel, and upon information and belief,  
3 claim and allege as follows:

4 **I. INTRODUCTION**

5 1. Sutter Health said all the right things about birth. In its YouTube videos. On its website.  
6 In its patient pamphlets and on its birth plan form. On its Facebook page, in its Instagram posts, and  
7 within its Twitter feed. Through those various modes of communication, Sutter Health made very  
8 clear representations about the brand of birthing care it offered. Sutter Health promised privacy. It  
9 professed expertise in the American College of Nurse Midwives (“ACNM”) model of evidence-based,  
10 low-intervention care. It promised round-the-clock midwifery support—including support for a  
11 multitude of pushing positions, for freedom of movement, and for non-pharmacologic pain relief. It  
12 said that it supported physiologic birth and that it respected the dignity and autonomy of birthing  
13 patients, as required by medical ethics and American law.

14 2. That branding was a beacon for Jane and John Doe. It was the mode of birth they  
15 wanted. And just to be sure that the public representations matched up with reality, before they chose  
16 Sutter Health, Jane asked its clinicians and staff many questions about the care that Sutter Health  
17 offered. She focused in particular on three birthing requirements: (a) privacy, meaning as few people  
18 as possible in the birthing suite and definitely no men in the room; (b) support for physiologic birth,

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19  
20 <sup>1</sup> Plaintiffs have filed this Complaint under pseudonyms to protect their privacy because the matter involves allegations  
21 of obstetric, midwifery, gender-related, and sexual violence against a health care patient at a California hospital. The  
22 matter is sensitive and highly personal, and anonymity is necessary to preserve privacy. *See Doe v. Lincoln Unified Sch.*  
23 *Dist.*, 188 Cal. App. 4th 758, 766-67 (2010) (noting such parameters and discussing the “countless published state court  
24 decisions where one or more of the parties have used fictitious names” in litigation; also quoting *Does I thru XXIII v.*  
25 *Advanced Textile Corp.*, 214 F. 3d 1058, 1067 (9th Cir. 2000) for the proposition that “federal courts ‘have permitted  
26 plaintiffs to use pseudonyms . . . when identification creates a risk of retaliatory physical or mental harm [citations] . . .  
27 [and, among other instances,] when anonymity is necessary ‘to preserve privacy in a matter of sensitive and highly  
28 personal nature’ [citations]”); *see also Doe v. City of Los Angeles*, 42 Cal. 4th 531 (2007) (former Boy Scouts  
proceeded as Doe plaintiffs in case with allegations of sexual assault by a police officer); *Starbucks Corp. v. Super. Ct.*,  
168 Cal. App. 4th 1436, 1452 n.7 (2008) (“The judicial use of ‘Doe plaintiffs’ to protect legitimate privacy rights has  
gained wide currency, particularly given the rapidity and ubiquity of disclosures over the World Wide Web.”); *Jane Doe*  
*8015 v. Super. Ct.*, 148 Cal. App. 4th 489 (2007) (plaintiff with HIV proceeded as Doe); *Doe v. Saenz*, 140 Cal. App. 4th  
960 (2006) (convicted felons proceeded as Doe plaintiffs); *Doe v. Bakersfield City Sch. Dist.*, 136 Cal. App. 4th  
556 (2006) (Doe plaintiff alleged sexual abuse by a former guidance counselor); *Hooper v. Deukmejian*, 122 Cal. App.  
3d 987, 993 (1981) (class representative proceeded as John Doe in case involving marijuana).

1 including support for varied pushing positions and freedom of movement; and (c) evidence-based care  
2 that included non-pharmacologic pain relief and ongoing support. The information she received was  
3 reassuring. It was clear that, out of the vast array of choices in the Bay Area for birth, Sutter Health  
4 offered what the Does wanted. Turning down a host of other places and caregivers, they chose Sutter  
5 Health’s Mission Bernal Women’s Clinic and its birth center.

6 3. Throughout their prenatal course, which occurred entirely under the care of Sutter  
7 Health, the Does continued their due diligence. At prenatal appointments, in childbirth classes, and  
8 when interacting with clinicians and staff at Sutter Health’s Mission Bernal Women’s Clinic, they  
9 continued to ask pointed questions to ensure that the platitudes Sutter Health proffered in public  
10 reflected the reality of what happened in the hospital. Jane reiterated her three birthing necessities and  
11 received reassurances that Sutter Health could and would protect her privacy and offer round-the-  
12 clock, evidence-based, midwifery support for physiologic birth. It seemed that Sutter Health’s top  
13 ranking by *Bay Area Parent* as a “Best of the Best” place to birth in the San Francisco / Marin area—  
14 an accolade that Sutter Health highlighted in its social media and on its website—was well deserved.  
15 What the Does did not expect was a bait and switch.

16 4. Based on the representations and confirmations of Sutter Health, its agents, ostensible  
17 agents, and employees, the Does then made critical decisions about where and how to birth their baby.  
18 Tragically, and shamefully, when it mattered, when Jane was in labor and birthing her baby, it turned  
19 out that none of those representations were true. Sutter Health, and its agents, ostensible agents, and  
20 employees, quite literally broke all of their promises.

21 5. But Sutter Health’s behavior and that of its agents, ostensible agents, and employees  
22 went far beyond those breaches in trust. Not only did they fail to do what they said they would do,  
23 they committed acts of violence—obstetric, midwifery, gender-based, and sexual violence—against  
24 Jane Doe.

25 6. Those violations were traumatic. They caused, directly and quite foreseeably, severe,  
26 lasting, and likely permanent harms to the Does. The Does bring this action as a result of those  
27 breaches and the harms that befell them—harms that were directly and proximately caused by  
28 Defendants.

1 **II. PARTIES**

2 7. PLAINTIFFS JANE DOE and JOHN DOE are residents of California. Jane Doe is  
3 between the ages of 18 and 64 years old. At all relevant times, Jane Doe was a patient under the care  
4 of Sutter Health and its agents, ostensible agents, and employees.

5 8. DEFENDANT SUTTER HEALTH is a California corporation. The events described in  
6 this Complaint occurred at or in connection with the Sutter Health Mission Bernal Women’s Clinic  
7 and Sutter Health’s California Pacific Medical Center Birth Center, Van Ness Campus (“CPMC Birth  
8 Center”). Both are located in San Francisco, California. The CPMC Birth Center is part of Sutter  
9 Health’s California Pacific Medical Center (“CPMC”), which is a 24-hour health facility.

10 9. Upon information and belief, the following individuals are (or were during the relevant  
11 time period) members of the medical staff of Sutter Health hospitals and clinics who specialize in  
12 obstetrics and gynecology: AMITA KACHRU, MD; ANNA KOGAN MD; and LILY PEMBERTON,  
13 MD. Upon information and belief, the following individuals are members of the medical staff of Sutter  
14 Health hospitals and clinics who specialize in midwifery: NOELLE BRODEUR, CNM; LILIANA  
15 CORREA, CNM; VANESSA EVERS, CNM; and JODI WINEMILLER, CNM. Upon information  
16 and belief, ELIZABETH GARRETT, RN, is a labor and delivery nurse at the CPMC Birth Center and  
17 MABELBA OGUNDELE, RN, is a nurse at that facility.

18 10. Plaintiffs are ignorant of the true names and capacities of the defendants sued herein  
19 under the fictitious names DOE DEFENDANTS ONE through FIFTY inclusive. Plaintiffs have some  
20 information about certain Doe Defendants. Plaintiffs are also informed and believe that: DOE  
21 DEFENDANT #1 is a female labor and delivery nurse; DOE DEFENDANT #2 is a female certified  
22 nurse-midwife; DOE DEFENDANT #3 (“The Man”) is a male; DOE DEFENDENT #4 is a female  
23 labor and delivery nurse; and DOE DEFENDENT #5 is a female labor and delivery nurse. DOE  
24 DEFENDANTS #6-50 may be discovered in due course. When ascertained, Plaintiff will amend this  
25 Complaint to allege the true names and capacities of Doe Defendants.

26 11. Plaintiffs are informed and believe, and on that basis allege, that at all relevant times,  
27 each of the individually named and fictitiously named Defendants conspired, aided and abetted,  
28 contributed to, and acted as agents, ostensible agents, or employees of Sutter Health with respect to the

1 commission of the acts and omissions complained of herein, that each acted within the course and  
2 scope of granted authority, and that each is and was, in some manner, responsible for, participated in,  
3 or contributed to the events described in this Complaint. Therefore, in addition to its corporate  
4 liability, Sutter Health has legal responsibility for all such Defendants, and Defendants, and each of  
5 them, are jointly and severally liable for the injuries complained of herein.

6 **III. GENERAL ALLEGATIONS**

7 **A. Sutter Health and its Birth Care**

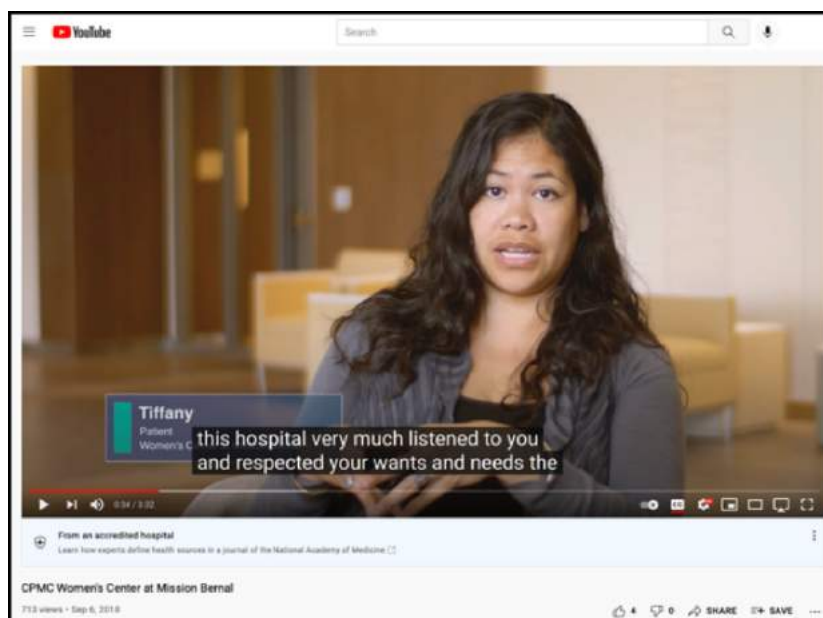
8 **1. Sutter Health’s public representations about its birth care**

9 **12. Sutter Health’s YouTube videos.** Sutter Health has posted several videos on YouTube  
10 about the care it offers pregnant people. Jane recalls seeing the video entitled, “CPMC Women’s  
11 Center at Mission Bernal,” and Jane and John recall seeing two “360 Tour” videos. These three videos  
12 were important to Jane and John because it gave them a clear impression of what they could expect if  
13 they chose to seek care at Sutter Health.

14 **13. YouTube video #1, “CPMC Women’s Center at Mission Bernal” (September 6,**  
15 **2018).** Jane remembers seeing the video entitled, “CPMC Women’s Center at Mission Bernal.”<sup>2</sup> The  
16 video bears this description: “The Women’s Center helps women design their personal birthing plan,  
17 and specializes in low-intervention childbirth. You can choose to work with a midwife or an OB  
18 doctor, and have a doula to support you.” Over the course of three minutes and 32 seconds, a sparkling  
19 soundtrack sets an optimistic and happy tone as patients, midwives, and doctors give glowing  
20 testimonials about the Women’s Center. A patient named Tiffany says, “We switched over to the  
21 Women’s Center because we had heard from many people this hospital very much listened to you and  
22 respected your wants and needs.” Anna L. Altshuler, M.D., an obstetrician-gynecologist who is  
23 identified as the Medical Director of the Mission Bernal Women’s Center says, “We are truly a  
24 collaborative practice, which is also quite unique. Our patients have the option of receiving care with  
25 midwives or the doctors or both.” Hannah Epstein, CNM, who is identified as the Lead Midwife at the  
26 Mission Bernal Women’s Center, explains that “all” of the “team members that you meet, from the  
27 MEs [phonetic] that you meet when you walk in the door, all the way through the labor and delivery

28 \_\_\_\_\_  
<sup>2</sup> Available at <https://www.youtube.com/watch?v=-V-7Wso5pVw>. Sutter Health also refers to this entity as a “Women’s Clinic.”

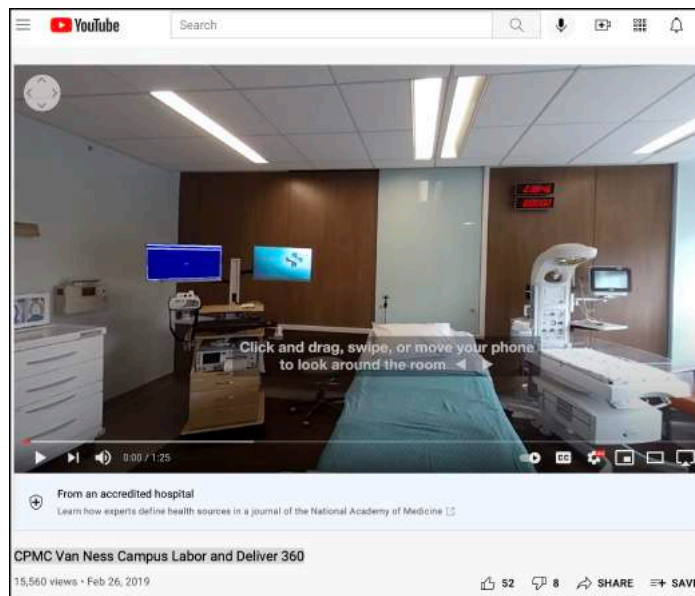
1 nurses and certainly our obstetricians, really believe in this model of care. We've all made it our  
2 mission to take care of women in a way that's respectful of the patient and what they hope and what  
3 they want for their pregnancy." Dr. Altshuler then says that they "really try to tailor the care for each  
4 patient, spend the time to figure out what their preferences are, how we can meet those needs, and just  
5 take it one patient at a time." Later, a patient named Jessica remarks, "You're not just a body. You're  
6 not gonna be rushed out of the hospital." A patient named Caroline says, "It feels like you have a  
7 community of care at a place where people are going to take care of you, really get to know you."  
8 Tiffany returns, stating, "We sat together and worked on our birthing plan so that we had agency in  
9 deciding how we wanted to give birth." Dr. Tirun A. Gopal, M.D., an obstetrician-gynecologist at the  
10 Women's Center at Mission Bernal, discusses pain support. Dr. Gopal says, "The Women's Health  
11 Center offers alternative complementary modalities to help cope with the pain, namely ayurveda, a  
12 herb-based lifestyle-change dietary form of medicine. And also acupuncture for pain during labor in  
13 people who are averse to taking an epidural." There are discussions about pediatric needs,  
14 collaboration across specialties, and the Women's Center at Mission Bernal's "mission." Toward the  
15 end of the video, Tiffany returns and says that her birth was "a very amazing and special experience  
16 for me" and that "if we give birth again, I will definitely give birth again at the Women's Center."  
17 The video closes with Jessica describing how her mother held the newborn right before the baby was  
18 placed on Jessica's chest. She says, "It was amazing. I can't even talk about it without tearing up." A



1 screengrab from this video appears above.<sup>3</sup>

2 14. Jane remembers how the patients' recollections of their births made her feel. She, too,  
3 wanted to have a birth that was amazing, one that summoned tears of joy when she talked about it.  
4 And she remembers how connected she felt to Dr. Altshuler. During her prenatal care, when Jane  
5 received vaccinations, she noticed a vaccination stamp in her records with Dr. Altshuler's name.  
6 Seeing Dr. Altshuler's name in her records gave Jane a sense of comfort because it was a direct and  
7 personal connection to the YouTube video. She felt reassured that the statements made in that video,  
8 including those by Dr. Altshuler, were honest, predictive, and reliable. Jane, too, could expect that  
9 Sutter Health would tailor her care, spend time to figure out her preferences, determine how the  
10 clinical care team would meet her needs, and "just take it one patient at a time." Birth at Sutter Health  
11 would be compassionate and personal. After all, the patient named Jessica said, "You're not just a  
12 body. You're not gonna be rushed out of the hospital."

13 15. **YouTube video #2, "CPMC Van Ness Campus Labor and Deliver 360" (February**  
14 **26, 2019).** Both Jane and John remember watching the Sutter Health YouTube video dated February  
15 26, 2019, and entitled, "CPMC Van Ness Campus Labor and Deliver 360."<sup>4</sup> Amazingly, this video  
16 allows the viewer to see a place that is generally out of public view by using the mouse or a  
17 touchscreen to click and drag, swipe, or move the phone to "look" around the room. A screengrab of



28 <sup>3</sup> All screengrabs in this Complaint were taken by the Undersigned Counsel.

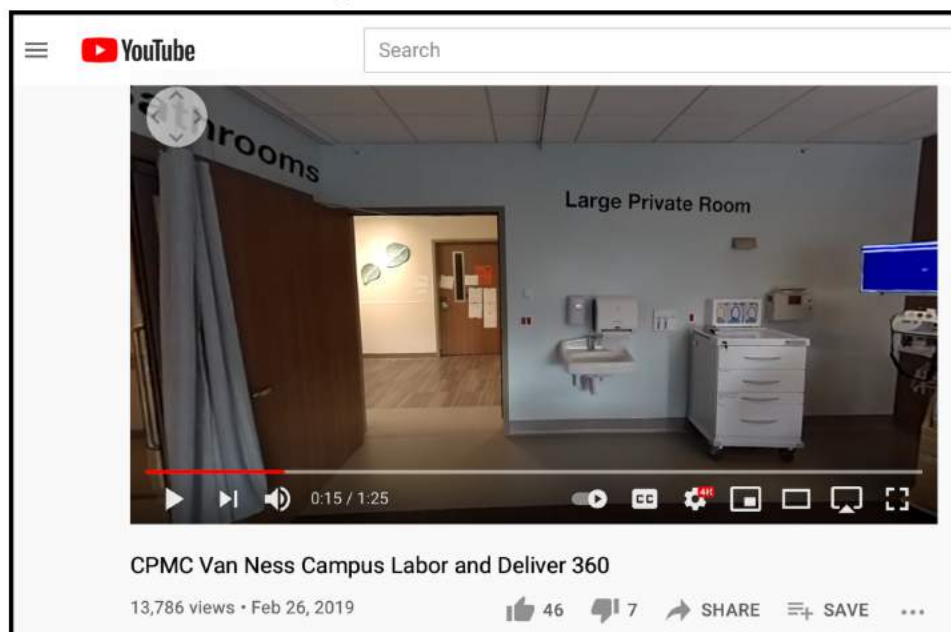
<sup>4</sup> Available at <https://youtu.be/d6e0ZewXqUM>.



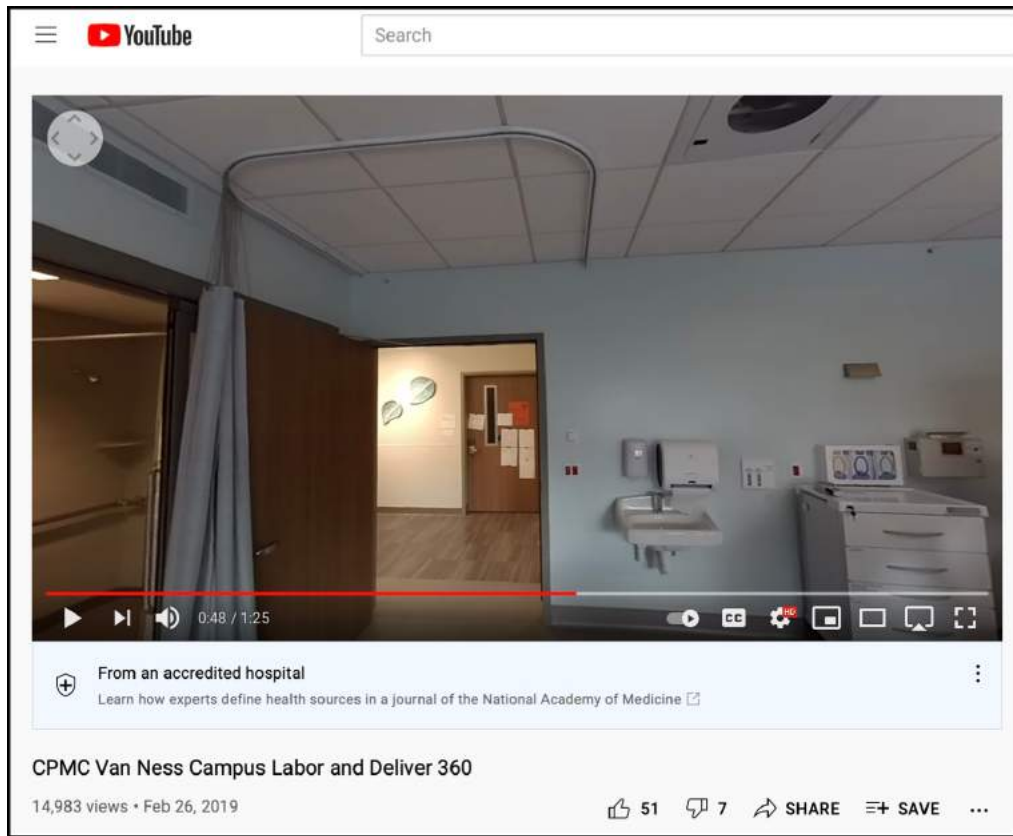
1 the click-and-drag frame from the video is above.

2 16. When the video plays, a cheerful female voice narrates: “This is one of our labor and  
3 delivery rooms.” As a nurse brings a birthing ball into the room, the voice chirps, “Take a look around.  
4 The rooms are large and spacious with lots of natural light and use of the outdoors. Each room is  
5 completely private with its own bathroom and shower. There is a comfy, completely adjustable bed for  
6 mom and seating for visitors who can’t wait to meet the newest member of your family. A spouse or  
7 adult guest can stay overnight on the couch. Next to the bed—see the computer station? That provides  
8 your caregiver secure access to your electronic health record, so you have peace of mind knowing that  
9 everyone on your team is up to date with your medical history and specific needs. Throughout your  
10 stay, there is always a team of highly trained and experienced nurses and staff available to support you  
11 through the laboring process. Over to the side, you’ll see the baby warming unit. All newborn care can  
12 usually be completed right in your room. Our team is trained to support your feeding preferences and  
13 assist you with breastfeeding guidance, if desired. Our goal is to create a comfortable, safe, supportive  
14 environment for you to rest and relax as much as possible while you’re having your baby. Don’t be  
15 surprised if we even fluff your pillow for you. Call or click today to set up a tour, and we’ll happily  
16 answer any questions you might have.” It was a very attractive proposition to Jane and John.

17 17. When a viewer moves a mouse to the left, a text overlay appears on the wall with the  
18 words, “Large Private Room.” A screengrab of this frame from the video is below.



1           18.     Another view shows the privacy curtain and its U-shaped track around the entirety of  
2 the door. A screengrab of this frame from the video is below.

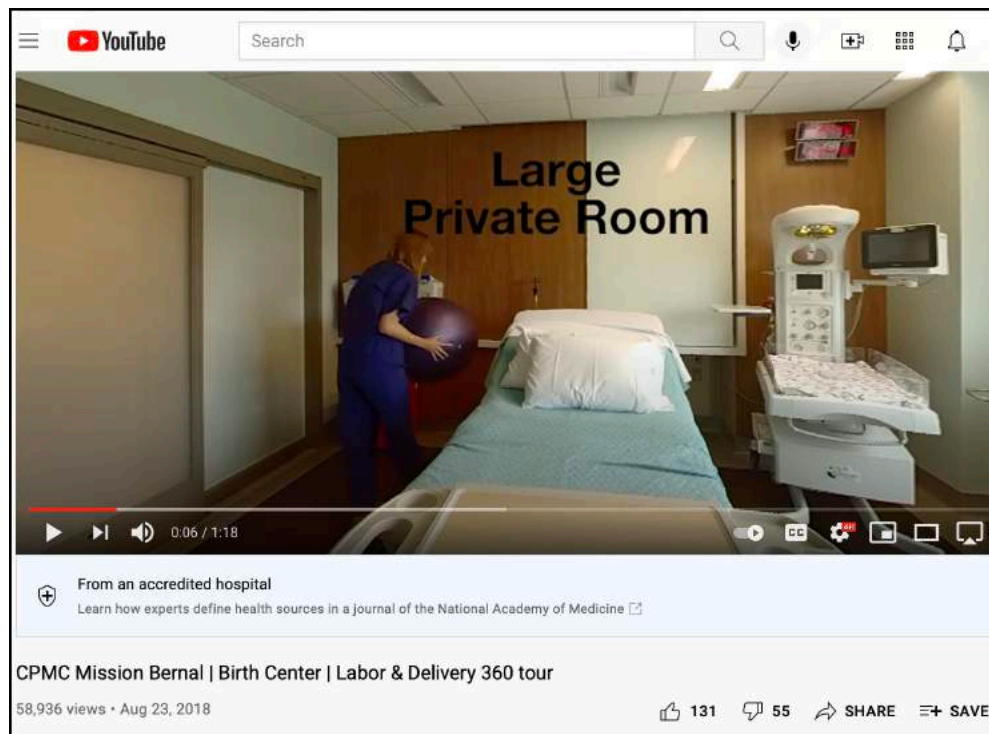


17           19.     Jane’s requirement for privacy cannot be overstated. It was of the utmost importance to  
18 her that her privacy be respected when she birthed her baby. The prospect of a “large private room”  
19 with a wide door that could be closed and a full curtain was very reassuring to Jane.

20           20.     **YouTube video #3, “CPMC Mission Bernal | Birth Center | Labor & Delivery 360**  
21 **tour” (August 23, 2018).** Both Jane and John remember watching the Sutter Health YouTube video  
22 dated August 23, 2018, and entitled, “CPMC Mission Bernal | Birth Center | Labor & Delivery 360  
23 tour.”<sup>5</sup> Here, too, the viewer can click and drag, swipe, or move the phone to look around the room.  
24 The description states, “The Mission Bernal Campus offers a network of doctors, midwives and doulas  
25 so you can customize your birth plan. Take a tour of the center by registering online or calling (415)  
26 641-6996.” This video begins in the same way as the prior video, with a person in blue scrubs bringing  
27 a birthing ball into the room. Again, there is a text overlay that says, “Large Private Room.” A  
28

<sup>5</sup> Available at <https://youtu.be/tKx3SqQWf2E>.

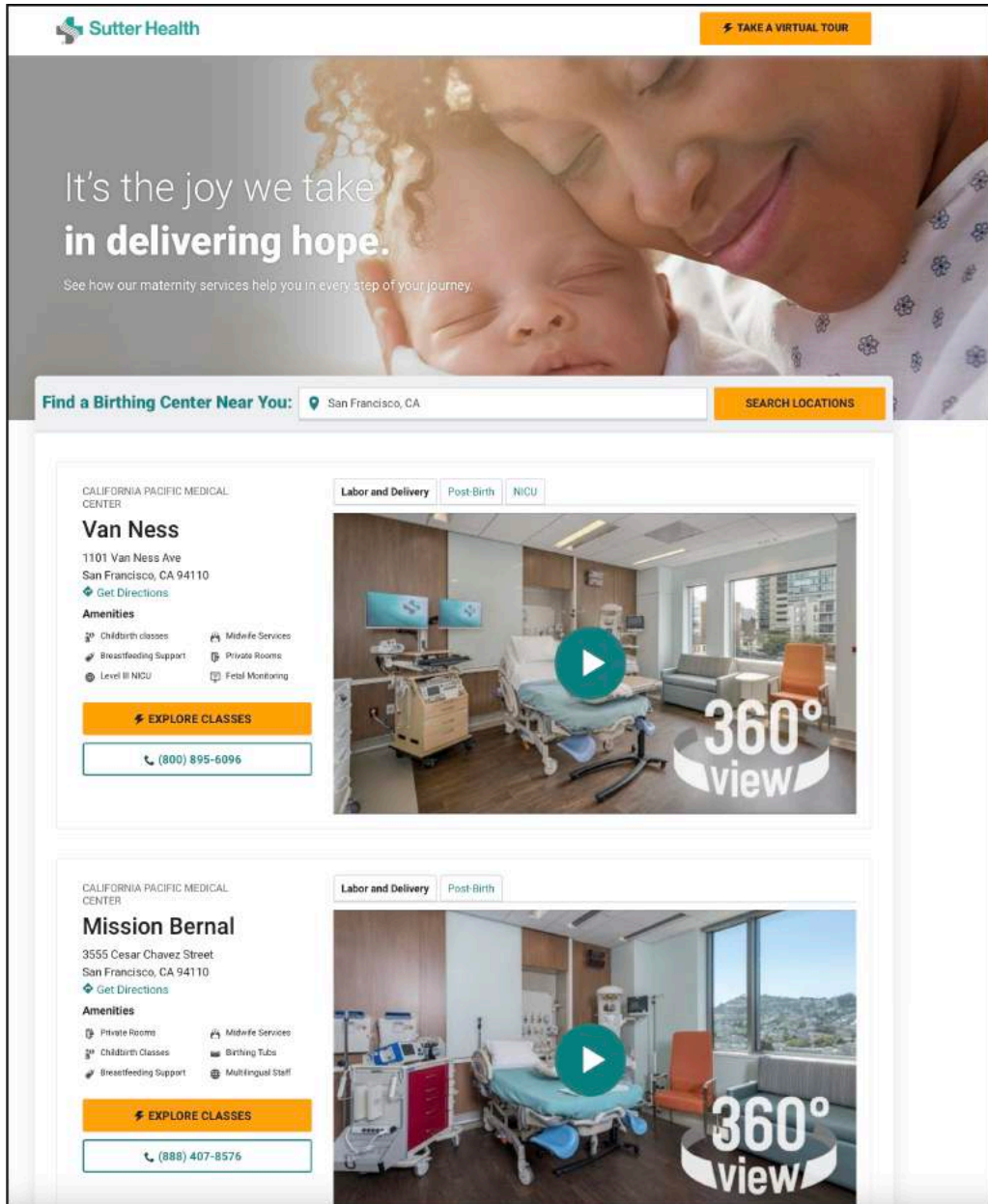
1 screengrab from this video is below.



15 21. The same cheerful female voice narrates. She states, in part, “Throughout your stay,  
16 there is always a team of highly trained and experienced midwives, physicians, nurses, and staff  
17 available to support you through the laboring process.” It seems like a hotel—a hotel where you give  
18 birth. This video ends with the same line, “We even fluff your pillow for you,” and the video shows a  
19 Sutter Health staff member actually fluffing the pillow.

20 22. **Sutter Health’s website.** Elsewhere online, Sutter Health makes similar  
21 representations, and it gives additional details about the care it offers. At [www.sutterhealth.org/  
22 lp/birthing-tour](http://www.sutterhealth.org/lp/birthing-tour), the user finds a banner image of a woman smiling blissfully with a cherubic newborn  
23 pressed against her cheek, and the site states, “It’s the joy we take **in delivering hope**. See how our  
24 maternity services help you in every step of your journey.” (Emphasis in original.) Users can type in  
25 their location and find a Sutter Health birthing center near them. After the location is entered, the site  
26 presents the 360°-view virtual-tour videos.

27 23. A screengrab of a search for “San Francisco, CA” appears below and illustrates how  
28 that search connects the user to the two YouTube 360°-view videos detailed above. That pathway was  
how Jane and John found the two 360°-tour videos that they watched.



24. The Does scoured Sutter Health’s website. They saw that, throughout its website, it promised privacy. The site was peppered with the word “private.” “Upon admission,” it explained, “you will be taken into one of our private labor and delivery rooms, where you will stay during labor, the birth of your baby and during the recovery period immediately after birth.”<sup>6</sup> It described “[p]rivate,

<sup>6</sup> Available at <https://www.sutterhealth.org/services/pregnancy-childbirth/preparing-for-your-delivery-CPMC>.

1 comfortable labor rooms,”<sup>7</sup> “labor-delivery-recovery rooms [that] provide a homelike, private  
2 atmosphere[,]”<sup>8</sup> and “a welcoming, home-like environment with spacious, private rooms.”<sup>9</sup> Even  
3 better, the Van Ness campus even offered “private rooms with views[.]”<sup>10</sup> And privacy remained the  
4 watchword for CMPC Birth Center families even after the birth. As the website noted, “After you have  
5 recovered from the delivery of your baby, you will be moved to a private recovery room where you  
6 and your baby will stay until you are ready to go home.”<sup>11</sup> If there was one message, it was that a  
7 Sutter Health birth would be **private**.

8         25. Sutter Health’s website also includes a statement entitled, “Patient Rights and  
9 Responsibilities.” It is available at: [https://www.sutterhealth.org/for-patients/patient-rights-](https://www.sutterhealth.org/for-patients/patient-rights-responsibilities)  
10 [responsibilities](https://www.sutterhealth.org/for-patients/patient-rights-responsibilities). It begins with this language: “As a patient receiving services from a Sutter Health  
11 network hospital, you should be aware of your rights and responsibilities, which are supported and  
12 protected by our care teams.” It includes, in relevant part, the rights to:

- 13         • “Considerate and respectful care, and to be made comfortable. You have the right to  
14         respect for your cultural, psychosocial, spiritual, and personal values, beliefs, and  
15         preferences.”
- 16         • “Know the name of the licensed healthcare practitioner acting within the scope of his or  
17         her professional licensure who has primary responsibility for coordinating your care,  
18         and the names and professional relationships of physicians and nonphysicians who will  
19         see you.”
- 20         • “Receive information about your health status, diagnosis, prognosis, course of  
21         treatment, prospects for recovery and outcomes of care (including unanticipated  
22         outcomes) in terms you can understand. You have the right to effective communication  
23         and to participate in the development and implementation of your plan of care. You  
24         have the right to participate in ethical questions that arise in the course of your care,  
25         including issues of conflict resolution, withholding resuscitative services, and forgoing

26 <sup>7</sup> Available at <https://www.sutterhealth.org/services/pregnancy-childbirth/family-birth-centers>.

27 <sup>8</sup> Available at <https://www.sutterhealth.org/services/pregnancy-childbirth/CPMC-labor-delivery>.

28 <sup>9</sup> Available at <https://www.sutterhealth.org/find-location/facility/CPMC-birth-center-van-ness-campus>.

<sup>10</sup> Available at <https://www.sutterhealth.org/find-location/facility/CPMC-van-ness-campus>.

<sup>11</sup> Available at <https://www.sutterhealth.org/services/pregnancy-childbirth/preparing-for-your-delivery-CPMC>.

1 or withdrawing life-sustaining treatment.”

- 2 • “Make decisions regarding medical care, and receive as much information about any
- 3 proposed treatment or procedure as you may need in order to give informed consent or
- 4 to refuse a course of treatment. Except in emergencies, this information shall include a
- 5 description of the procedure or treatment, the medically significant risks involved,
- 6 alternate courses of treatment or nontreatment and the risks involved in each, and the
- 7 name of the person who will carry out the procedure or treatment.”
- 8 • “Request or refuse treatment, to the extent permitted by law.”
- 9 • “Reasonable responses to any reasonable requests made for service.”
- 10 • “Appropriate assessment and management of your pain, information about pain, pain
- 11 relief measures and to participate in pain management decisions.”
- 12 • “Have personal privacy respected. Case discussion, consultation, examination and
- 13 treatment are confidential and should be conducted discreetly. You have the right to be
- 14 told the reason for the presence of any individual. You have the right to have visitors
- 15 leave prior to an examination and when treatment issues are being discussed. Privacy
- 16 curtains will be used in semi-private rooms.”
- 17 • “Receive care in a safe setting, free from mental, physical, sexual or verbal abuse and
- 18 neglect, exploitation or harassment.”
- 19 • “Be free from restraints and seclusion of any form used as a means of coercion,
- 20 discipline, convenience or retaliation by staff.”
- 21 • “Reasonable continuity of care and to know in advance the time and location of
- 22 appointments, as well as the identity of the persons providing the care.”

23 26. This statement about patient rights is even more robust than the statement that  
24 California, pursuant to Title 22 of the California Code of Regulations, Section 70707, requires  
25 hospitals and medical staffs to adopt. For example, the California regulation notes that patients have  
26 the right to “[c]onsiderate and respectful care.” Sutter Health’s version of that right is more expansive,  
27 as noted in the first bullet point of this paragraph above. On that point, Sutter Health says this: You  
28 have the right to “[c]onsiderate and respectful care, and to be made comfortable. You have the right to

1 respect for your cultural, psychosocial, spiritual, and personal values, beliefs, and preferences.”

2 Importantly, Title 22 of the California Code of Regulations, at Section 70707(d), states, “All hospital  
3 personnel shall observe these patients’ rights.”

4 **27. Individual Healthcare Providers’ Statements on the Sutter Health Website.**

5 Plaintiffs are informed and believe that, in addition to Sutter Health’s overall responsibility, the named  
6 individual Defendants in this action represent themselves on the Sutter Health website, take ownership  
7 over and responsibility for those representations, and generally exercise agency over the  
8 representations about themselves, just as Plaintiffs are informed and believe that the named individual  
9 Defendants exert agency over and responsibility for the posts about the entity for which they work and  
10 about themselves at every social media channel in which they appear.

11 28. There is a webpage for Defendant Brodeur at the sutterhealth.org website.<sup>12</sup> That  
12 webpage states that the address for Defendant Brodeur is the Mission Bernal Women’s Clinic and that  
13 her hospital affiliation is the CPMC. It also states, “She believes that every woman has the right to  
14 quality healthcare that promotes autonomy and respect.”

15 29. There is a webpage for Defendant Evers at the sutterhealth.org website.<sup>13</sup> That webpage  
16 states that the address for Defendant Evers is the Mission Bernal Women’s Clinic and that her hospital  
17 affiliation is the CPMC. It also states that Defendant Evers “became a nurse-midwife to help empower  
18 women through patient-centered, low-intervention care.”

19 30. There is a webpage for Defendant Winemiller at the sutterhealth.org website.<sup>14</sup> That  
20 webpage states that the address for Defendant Winemiller is the Mission Bernal Women’s Clinic and  
21 that her hospital affiliation is the CPMC.

22 31. Plaintiffs are informed and believe that Liliana Correa, CNM, no longer works at Sutter  
23 Health’s Mission Bernal Women’s Clinic, as her information is not linked to the Sutter Health  
24 webpage for the Mission Bernal Women’s Clinic. However, Plaintiffs are informed and believe that  
25 during her time at the clinic, Defendant Correa represented herself in a substantially similar way on the  
26 website.

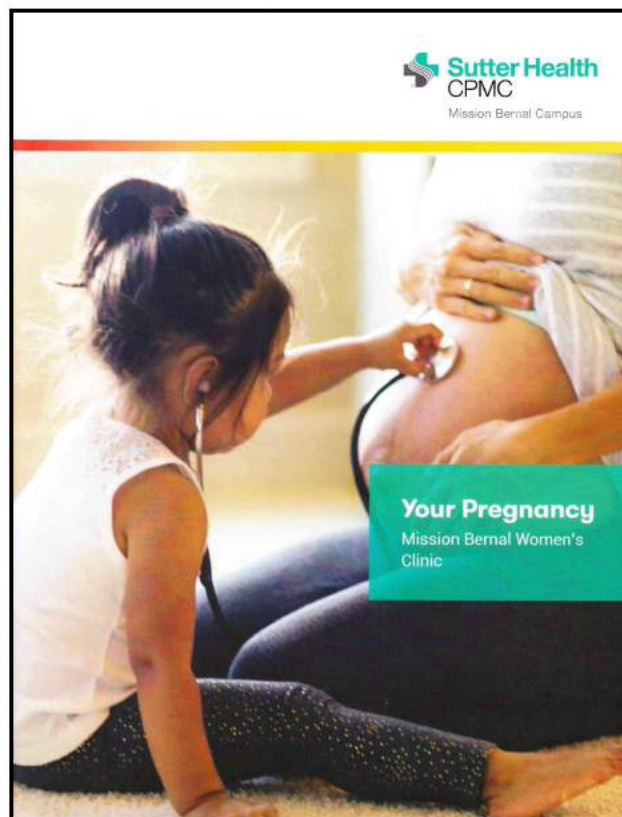
27 \_\_\_\_\_  
28 <sup>12</sup> Available at <https://www.sutterhealth.org/find-clinician/noelle-brodeur>.

<sup>13</sup> Available at <https://www.sutterhealth.org/find-clinician/vanessa-evers>.

<sup>14</sup> Available at <https://www.sutterhealth.org/find-clinician/jodi-winemiller>.

1           32.     The Mission Bernal Women’s Clinic obstetrician/gynecologists also appear on the  
2 sutterhealth.org website. There is a webpage for Defendant Kogan.<sup>15</sup> The page lists her address as the  
3 address of the Mission Bernal Women’s Clinic: 1580 Valencia St., Suite #508, San Francisco. The  
4 webpage also lists Defendant Kogan’s hospital affiliation as CPMC. There is no webpage for  
5 Defendant Pemberton. Plaintiffs are informed and believe that this defendant no longer works at the  
6 Mission Bernal Women’s Clinic and CPMC, but they are also informed and believe that a  
7 substantially similar webpage for Defendant Pemberton that made similar representations about her  
8 working at the Mission Bernal Women’s Clinic and the CPMC appeared on the Sutter Health website  
9 during the time that Defendant Pemberton worked at its clinic and facilities.

10           33.     **Sutter Health OB/GYN Patient Handout.** The Does received a handout from Sutter  
11 Health CPMC entitled, “Your Pregnancy: Mission Bernal Women’s Clinic.” They reviewed and relied  
12 on the information in this document. On the cover, there is an image of a toddler using a stethoscope to  
13 “listen” to a pregnant person’s abdomen. Here is a screengrab of the handout cover:



<sup>15</sup> Available at <https://www.sutterhealth.org/find-clinician/dr-anna-kogan>.



1 34. Inside this document, the messaging is consistent with Sutter Health’s communications  
2 on other channels. On the page with the number “2” in the lower right-hand corner, under the title,  
3 “Who We Are,” there is the following language: “We are a team of highly trained certified nurse-  
4 midwives and OB/GYN doctors who provide a unique collaborative practice to meet the needs of  
5 patients with both uncomplicated and high-risk pregnancies.” In the middle of the page, there is  
6 information under four headings: Collaborative Practice, Patient Centered, Appropriate Intervention,  
7 and Evidence-based Care. In the center, there is an icon of a heart with the word, “Patient.” A  
8 screengrab of this page from the handout given to the Does is below.



1           35. Under the heading, “Collaborative Practice,” the text states, “Doctors and midwives  
2 participate equally in the care of all patients. Midwives are experts in low risk and uncomplicated  
3 pregnancy and childbirth, while MDs are available 24/7 if things become more complicated. This  
4 philosophy of collaboration extends to our work with pediatricians, social workers, anesthesiologists,  
5 Defendants and beyond. Everyone on our team collaborates to provide the safest and most complete  
6 care.”

7           36. Under the heading, “Patient Centered,” the text states, “It’s essential to us that you and  
8 your family are active participants in making the decisions that will be both safest and most fulfilling  
9 for you.”

10           37. Under the heading, “Appropriate Intervention,” the text states, “Our group is committed  
11 to honoring pregnancy as a largely healthy, natural process that usually requires little to no  
12 intervention from your medical team. We don’t perform procedures or recommend interventions  
13 universally, but tailor them to what’s needed on an individual basis.”

14           38. Under the heading, “Evidence-based Care,” the text states, “Practice of medicine  
15 should be based on firm data rather than anecdote, tradition, intuition or belief. We consistently review  
16 the latest research on common pregnancy issues, discuss how new research should influence our  
17 patient care, and bring the most up-to-date information to our conversations with you.” For clarity, the  
18 phrase, “Evidence-based care,” means the findings in the published academic medical literature that  
19 are based on **data** from high-quality scientific studies, like randomized double-blinded trials, not  
20 tradition or culture or personal preference or luck.<sup>16</sup>

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21  
22 <sup>16</sup> For example, the Johns Hopkins Medicine, Division of General Internal Medicine, website explains, “Evidence-based  
23 medicine is the integration of best research evidence with clinical expertise and patient values. Evidence-based medicine  
24 is an interdisciplinary approach which uses techniques from science, engineering, biostatistics and epidemiology, such as  
25 meta-analysis, decision analysis, risk-benefit analysis, and randomized controlled trials to deliver ‘the right care at the  
26 right time to the right patient.’ (Source: AHRQ) Evidence-Based Medicine (EBM) aims for the ideal that healthcare  
27 professionals should make “conscientious, explicit, and judicious use of current best evidence” in their everyday  
28 practice. The practice of evidence-based medicine uses systematic reviews of the medical literature to evaluate the best  
evidence on specific clinical topics (evidence synthesis). The evidence is then translated into practice by medical  
practitioners who select treatment options for specific cases based on the best research, patient preferences and  
individual patient characteristics (knowledge translation). Evidence-based medicine practitioners engage in life-long  
learning and are committed to the continuing education of professionals and patient communities.” See Johns Hopkins  
Medicine, Division of Internal Medicine, Evidence-Based Medicine, [https://www.hopkinsmedicine.org/gim/  
research/method/ebm.html](https://www.hopkinsmedicine.org/gim/research/method/ebm.html). “AHRQ” is the Agency for Healthcare Research and Quality, and it is one of twelve agencies  
within the United States Department of Health and Human Services.

1           39.     **Mission Bernal Women’s Clinic Facebook Page.** Sutter Health’s social media sites  
 2 offer more detail about the care it offers birthing people. The Mission Bernal Women’s Clinic has a  
 3 Facebook page that discusses the “collaborative care model,” where “midwives and doctors work  
 4 together to deliver evidence based, low intervention care.” The Does remember reviewing the  
 5 Facebook page and posts, and a screengrab of the page header appears below.<sup>17</sup> The post that follows  
 6 boasts of “one of the lowest cesarean section rates in San Francisco” and says, “Our goal is to provide  
 7 you with safe, compassionate, high-quality care throughout your pregnancy, childbirth, postpartum,  
 8 and beyond.” It also states that Sutter Health’s nurse-midwives are available to patients “around the  
 9 clock.”



<p><b>Mission Bernal Women's Clinic</b></p> <p><b>i</b> Our team shares a philosophy of providing family-centered obstetric and gynecological care. <u>In our collaborative care model, midwives and doctors work together to deliver evidence based, low intervention care.</u> We are proud to have one of the lowest cesarean section rates in San Francisco and to offer trial of labor after cesareans. We also offer virtual appointments and virtual midwife-led childbirth education groups. We work hard to include partners and other family members in our patients' care and to tailor your prenatal and gynecological care to your unique needs.</p> <p>Our goal is to provide you with safe, <u>compassionate, high-quality care</u> throughout your pregnancy, childbirth, postpartum, and beyond. We believe <u>that childbearing is a normal process,</u> and that it can be an empowering experience for women and their families.</p>	<p>Women interested in midwifery care can request to see a midwife; you may select one particular midwife, or choose to meet all of our midwives during your pregnancy, thereby increasing the likelihood that you will be attended by someone you know in labor.</p> <p>Throughout your pregnancy and birth, you will be attended by a nurse-midwife unless medical issues arise. Medical issues may require you to see a physician at some point, but our nurse-midwives can also consult or work collaboratively with our obstetricians in case of pregnancy complications. Our <u>nurse-midwives attend the majority of vaginal births and are available to you around the clock.</u></p> <p>Our Mission Bernal Women's Clinic nurse-midwives provide care throughout a lifespan. We would love to take care of you after your baby is born for routine gynecological exams and birth control, pre-conceptual counseling, and later for peri-menopausal support.</p> <p>Cesarean section rate: 21.3% (U.S. rate: 32.2%, according to the CDC) <b>See Less</b></p>
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26           40.     Plaintiffs are informed and believe that, at all relevant times, in addition to the name of

28 <sup>17</sup> Red underlining in any screengrab in this Complaint does not appear in the original post and has been added by counsel for ease of reference.

1 Sutter Health appearing on and throughout the Facebook page and posts, in addition to all other media  
2 channels, including but not limited to Instagram, LinkedIn, Twitter, and YouTube, the named  
3 individual Defendants bore responsibility for and took ownership over the content and administration  
4 of this Facebook page, including but not limited to approving the posts, endorsing the posts, writing  
5 the posts, editing the posts, allowing the posts that reference an individual or quote that individual to  
6 remain available to the public, planning the posts, posting the posts, and monitoring the comments.  
7 Logically, if any individual clinician did not approve / endorse / write / post / or otherwise put her  
8 imprimatur on a Facebook post or item of Facebook content, then posts from years ago would not still  
9 available to the public. They would have been removed. But they remain available, even months or  
10 years after a post. The representations about the care promised to pregnant patients and the public  
11 continue to be made both by allowing prior posts to remain up on the Facebook page and by posting  
12 more representations with similar if not identical messaging. With regard to the posts about  
13 themselves, Plaintiffs are informed and believe that all named individual Defendants took ownership  
14 over and responsibility for the content of the post and the representations to the public.

15 41. The first several posts are dated September 2, 2016, and a screengrab appears below.  
16 These posts publicize the hospital location (CPMC, “A Sutter Health Affiliate,” St. Luke’s Campus),  
17 the plans for “our new hospital!”, group prenatal care, and the clinicians. In a September 2, 2016, post  
18 shown below, the text states, “We have a lovely group of midwives and OB/GYNs who work together  
19 to deliver evidence based, low intervention obstetric and gynecological care. Here they are!”



1 42. The full post includes over a dozen photographs of these clinicians, and photographs of  
2 Defendants Evers, Winemiller, Kogan, and Pemberton are there.

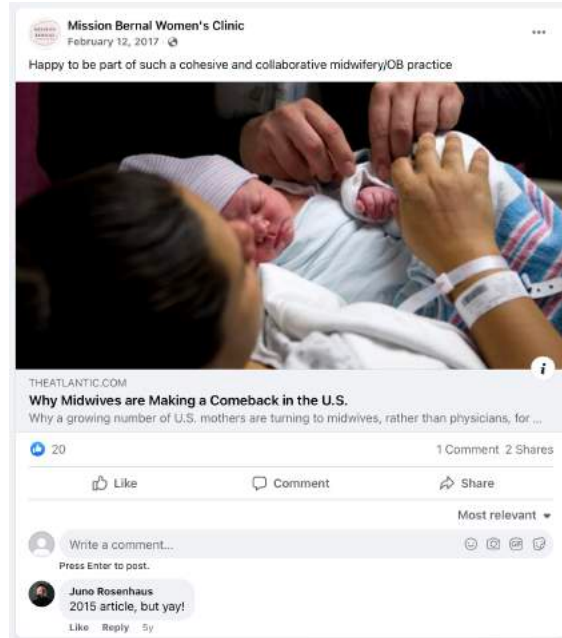
3 43. A Facebook post that is dated September 23, 2016, invites members of the public to a  
4 “Meet and Greet” to “[m]eet our midwives and doctors, learn about our practice philosophy, and tour  
5 the labor and delivery floor.” A hyperlink that appears in the post takes the user to the Sutter Health  
6 CPMC page, which is available at <https://www.sutterhealth.org/CPMC>. A screengrab of a portion of  
7 that page appears below.



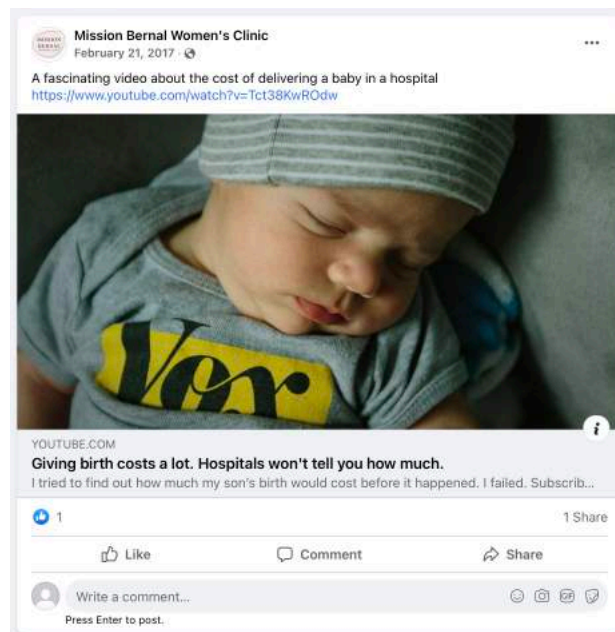
17 44. A Facebook post from October 3, 2016, publicizes a Practice Bulletin from the  
18 American College of Obstetricians and Gynecologists regarding vaginal birth after previous cesarean  
19 delivery and notes, “[A]s of October 1, we are officially offering TOLACs again (trial of labor after  
20 cesarean)!!” A screengrab of this post appears below.



1           45.     On February 12, 2017, the Mission Bernal Women’s Clinic posted an article from *The*  
2 *Atlantic* entitled, *Why Midwives are Making a Comeback in the U.S.* and stated, “Happy to be part of  
3 such a cohesive and collaborative midwifery/OB practice[.]” A screengrab of this post appears below.



15           46.     On February 21, 2017, the Mission Bernal Women’s Clinic posted a video “about the  
16 cost of delivering a baby in a hospital[.] which itself has the caption, “Giving birth costs a lot.  
17 Hospitals won’t tell you how much.” A screengrab of this post appears below.



1           47.     On February 24, 2017, the Mission Bernal Women’s Clinic posted an article with the  
2 headline, “10+ Powerful NSFW<sup>18</sup> Photos From The 2017 Birth Photo Competition Prove That Moms  
3 Are Badass.” A screengrab of this post appears below.



13           48.     On March 2, 2017, the Mission Bernal Women’s Clinic published a Facebook post  
14 inviting the public to an open house “Meet and Greet” “in the Griffin room to meet some of our  
15 midwives and OBs, learn more about our practice philosophy, and tour L&D.” Plaintiffs are informed  
16 and believe that “tour L&D” means to tour the labor and delivery area of the facility. A screengrab of  
17 this post appears below, and the hyperlink directs the user to the page that appears at  
18 <https://www.sutterhealth.org/CPMC>.



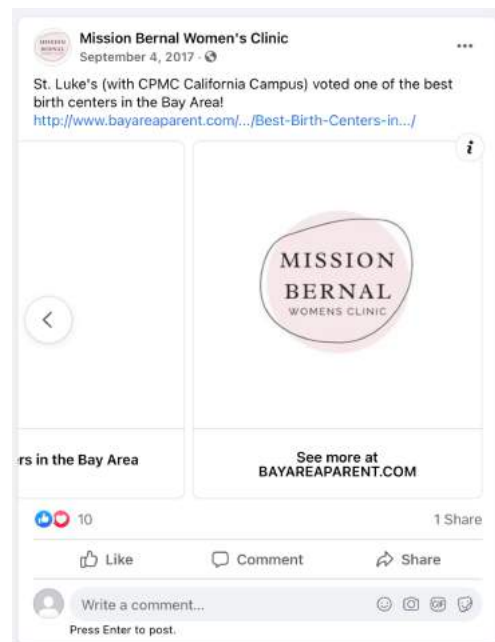
28 <sup>18</sup> According to a dictionary, the acronym NSFW stands for “Not Safe For Work” or “Not Suitable For Work,” serving as a warning not to click the post at a place of employment. See <https://www.merriam-webster.com/dictionary/NSFW>.

1           49.     A Facebook post at the Mission Bernal Women’s Clinic page, shown below, publicizes  
2 an article about the maternal mortality rate in California and states, “Here at St. Luke’s we have  
3 implemented the CMQCC toolkit in order to standardize our management of emergencies and  
4 decrease risk of cesarean section.”



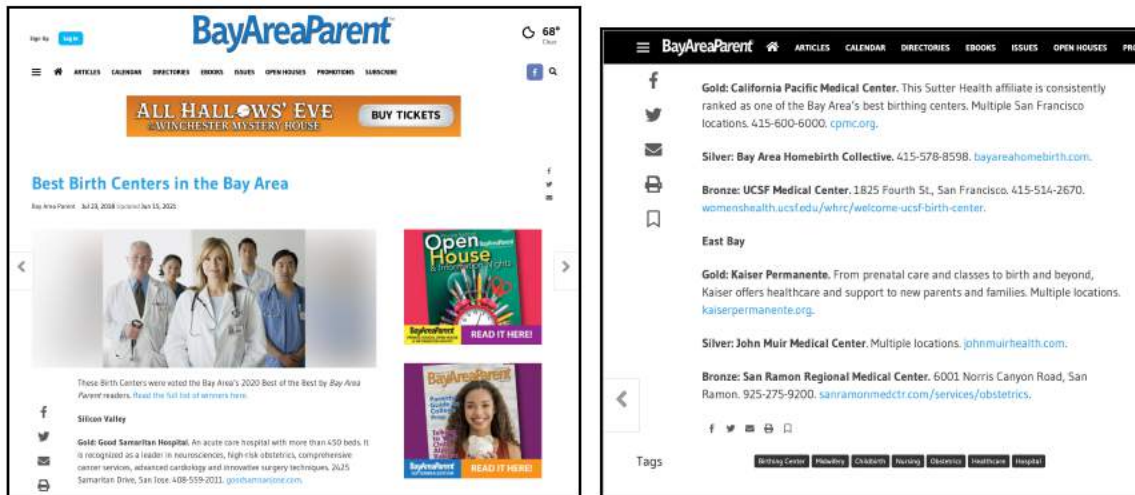
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15           50.     A Facebook post at the Mission Bernal Women’s Clinic page dated September 4, 2017,  
16 shares news about rankings in the publication, *Bay Area Parent*, for the best birth centers. A  
17 screengrab of this post appears below.

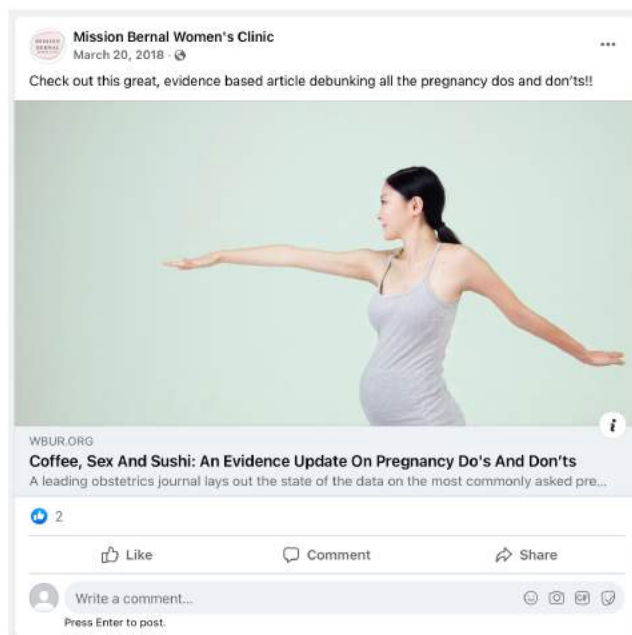




1 Clicking that post takes the visitor to the *Bay Area Parent* website. As the screengrabs below  
 2 illustrates, the most current version of that article states that Sutter Health’s CPMC has a “gold”  
 3 ranking, and it notes, “This Sutter Health affiliate is consistently ranked as one of the Bay Area’s best  
 4 birthing centers.” Jane remembers being extremely impressed by this distinction, and it reassured her  
 5 that the Mission Bernal Women’s Clinic was truly among the best—if not *the* best.



14 51. A Facebook post by Mission Bernal Women’s Clinic dated March 20, 2018, invites  
 15 readers to “[c]heck out this great, evidence[-]based article debunking all the pregnancy dos and  
 16 don’ts!!” A screengrab of the post appears below.



1           52.     A Facebook post by Mission Bernal Women’s Clinic dated March 30, 2018 publicizes  
2 what it calls a “[g]reat article about an exhibit at the NY MOMA featuring over 2000 photos of  
3 women in labor.” The post includes a photograph of a nude pregnant person in labor who is squatting  
4 and using another person’s body as support. Based on the image, the person is not in a hospital bed,  
5 and a blue Chux disposable underpad for catching liquids appears near her. She is not on her back with  
6 her legs in stirrups; she is being supported in a non-lithotomy position for giving birth.



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16           53.     A Facebook post by Mission Bernal Women’s Clinic dated April 4, 2018, offers a two-  
17 page handout from Sutter Health CPMC about The Women’s Center at CPMC’s Mission Bernal  
18 Campus. A screengrab of the post is below. Clicking on the images brings up the full-page document,  
19 where the viewer can find the following statements:

- 20           •     “Our nurse-midwives are trained in labor support.”
- 21           •     “American Academy of Nursing research shows most labors don’t need to be  
22           monitored constantly. Instead, nurses can listen to the baby periodically to  
23           accommodate freedom of positions and movement.”
- 24           •     “ We provide foundational prenatal care, evaluation, education and support. Each  
25           session also offers one-on-one time with the nurse-midwife to discuss more personal  
26           issues, such as test results.”
- 27           •     “ Our Midwifery Program offers you access to highly trained nurse-midwives who  
28           partner with you throughout your pregnancy and delivery, focusing on your personal

wellness.”

- “We are the only prenatal service in San Francisco that offers midwifery care for all our patients 24 hours a day, seven days per week.”

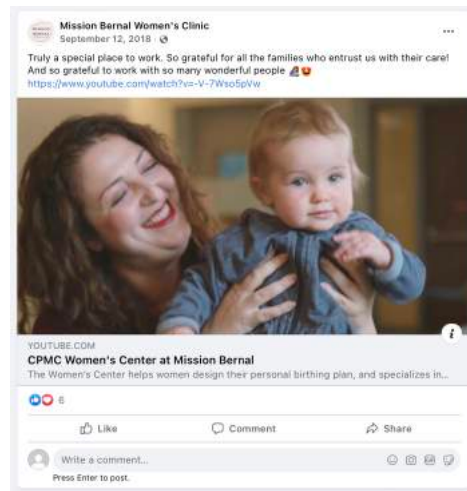
The handout radiates a veneer of spa-like holistic wellness, offering free prenatal yoga classes to all Sutter Health CPMC Women’s Center patients, along with prenatal and postpartum massage therapy.



54. The second side of that document explains Sutter Health’s approach to women’s health and gynecology, stating that the institution is with women “across your lifespan.” It reiterates its best-practices approach to obstetric care, tying it to gynecologic care and emphasizing consistency of approach in all women’s health needs. It states that “our providers are proud to offer all of our patients respectful, non-judgmental and evidence-based gynecologic care.” It embraces language that sends a message of respect for patients and paints a clear picture that Sutter Health honors patient dignity, autonomy, and agency. In relevant part, Sutter Health states that it provides:

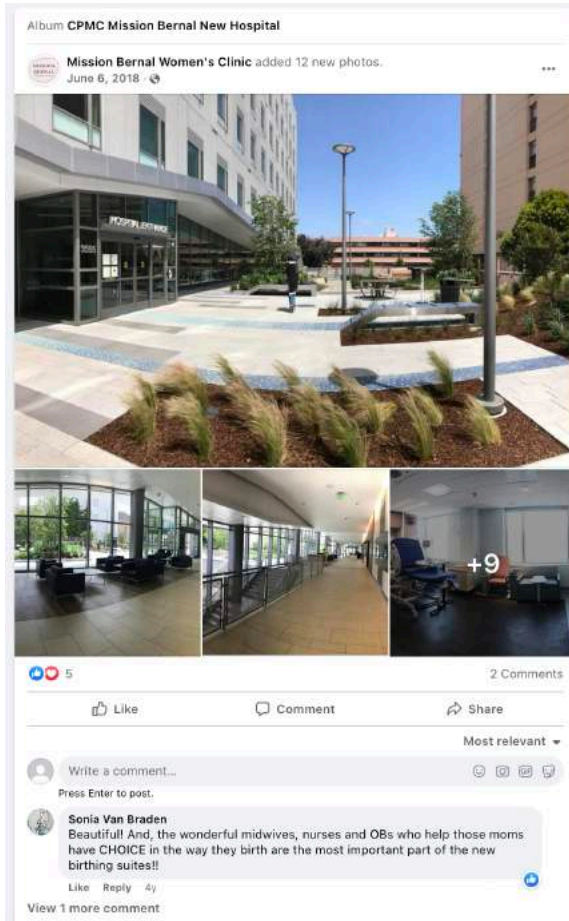
- “Respectful and welcoming care to all patients”
- “Support” that it is “Nonjudgmental” and “Respectful”
- With a goal of “optimizing your health for future pregnancy”

55. Additional posts at the Mission Bernal Women’s Clinic’s Facebook page endorse this messaging of holistic, personalized, respectful care that centers the pregnant patient and the baby and professes a reverence for birth, birth plans, and the birth process. It also offers labor tips that discuss positions and movements. Several screengrabs with such posts appear below.



56. Comments are monitored at this Facebook page. For example, on June 6, 2018, the

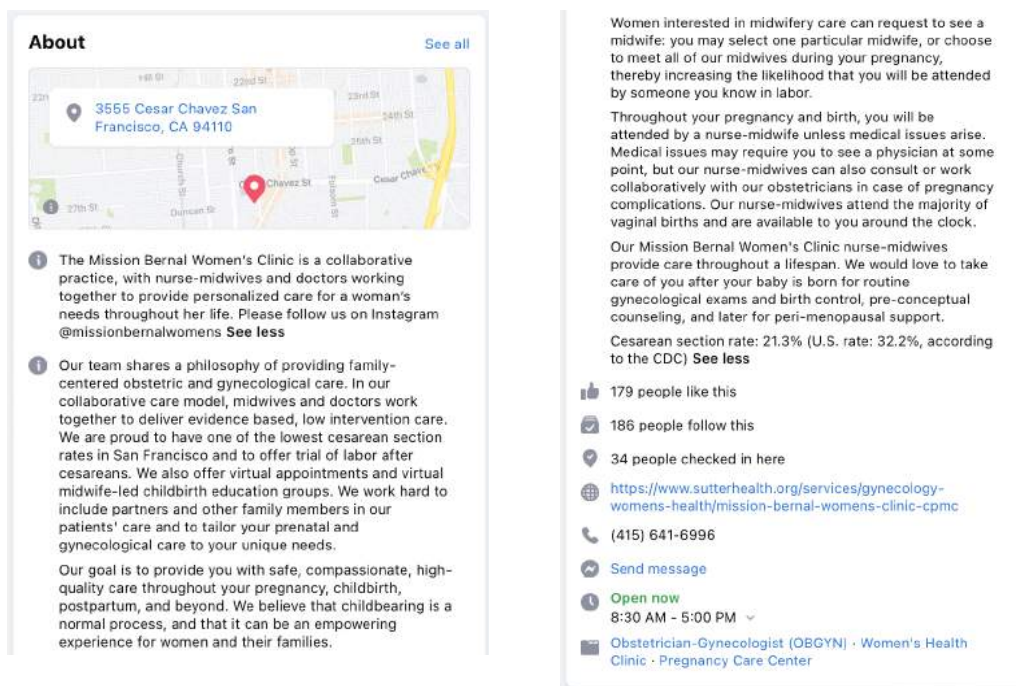
1 page gave a “thumbs up” response to a commenter who stated, in response to photos of the new  
2 hospital facility, “Beautiful! And, the wonderful midwives, nurses and OBs who help those moms  
3 have CHOICE in the way they birth are the most important part of the new birthing suites!!” A  
4 screengrab of this post appears below.



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57. The Mission Bernal Women’s Clinic’s Facebook page also makes public representations about the clinicians who work there. The Mission Bernal Women’s Clinic describes itself on Facebook this way: “The Mission Bernal Women’s Clinic is a collaborative practice, with nurse-midwives and doctors working together **to provide personalized care for a woman’s needs throughout her life**. Please follow us on Instagram @missionbernalwomens[.]” (Emphasis added.) In the section for additional information, it states, “Our team shares a philosophy of providing family-centered obstetric and gynecological care. In our collaborative care model, midwives and doctors work together to deliver evidence based, low intervention care. We are proud to have one of the lowest cesarean section rates in San Francisco and to offer trial of labor after cesareans. We also offer virtual

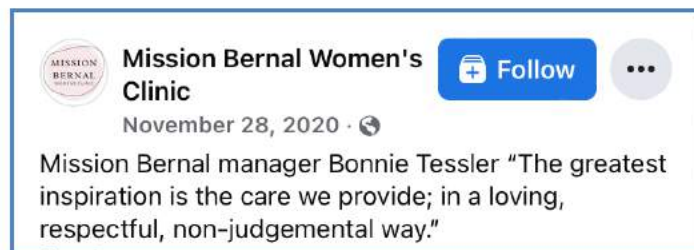
1 appointments and virtual midwife-led childbirth education groups. We work hard to include partners  
2 and other family members in our patients' care and to tailor your prenatal and gynecological care to  
3 your unique needs. Our goal is to provide you with safe, compassionate, high-quality care throughout  
4 your pregnancy, childbirth, postpartum, and beyond. We believe that childbearing is a normal process,  
5 and that it can be an empowering experience for women and their families. Women interested in  
6 midwifery care can request to see a midwife: you may select one particular midwife, or choose to meet  
7 all of our midwives during your pregnancy, thereby increasing the likelihood that you will be attended  
8 by someone you know in labor. Throughout your pregnancy and birth, you will be attended by a nurse-  
9 midwife unless medical issues arise. Medical issues may require you to see a physician at some point,  
10 but our nurse-midwives can also consult or work collaboratively with our obstetricians in case of  
11 pregnancy complications. Our nurse-midwives attend the majority of vaginal births and are available  
12 to you around the clock. Our Mission Bernal Women's Clinic Nurse-midwives provide care  
13 throughout a lifespan. We would love to take care of you after your baby is born for routine  
14 gynecological exams and birth control, pre-conceptual counseling, and later for peri-menopausal  
15 support. Cesarean section rate: 21.3% (U.S. rate: 32.2%, according to the CDC).” A screengrab of this  
16 section (in two parts) of the Mission Bernal Women's Clinic Facebook page appears below.



1           58. Defendants employed by Sutter Health appear in videos available at the Mission Bernal  
2 Women’s Clinic Facebook page. Appearing in dark blue scrubs with the text overlay, “Rachel Palac,  
3 Labor and Delivery Nurse, CPMC Mission Bernal,” the text posted on the Mission Bernal Women’s  
4 Clinic Facebook page that accompanies the video states, “Mission Bernal L&D Nurse Rachel Palac  
5 speaks about our historical roots and what it means to welcome and provide excellent care to everyone  
6 in the community.” In this video, she states that, no matter your background, “We treat everyone with  
7 the same amount of respect and love.” At the end of the video, there is an overlay with the logo,  
8 “Sutter Health CPMC Mission Bernal Campus” and a tagline, “Remarkable care. Remarkably close.”  
9 A screengrab of a still from this video appears below.

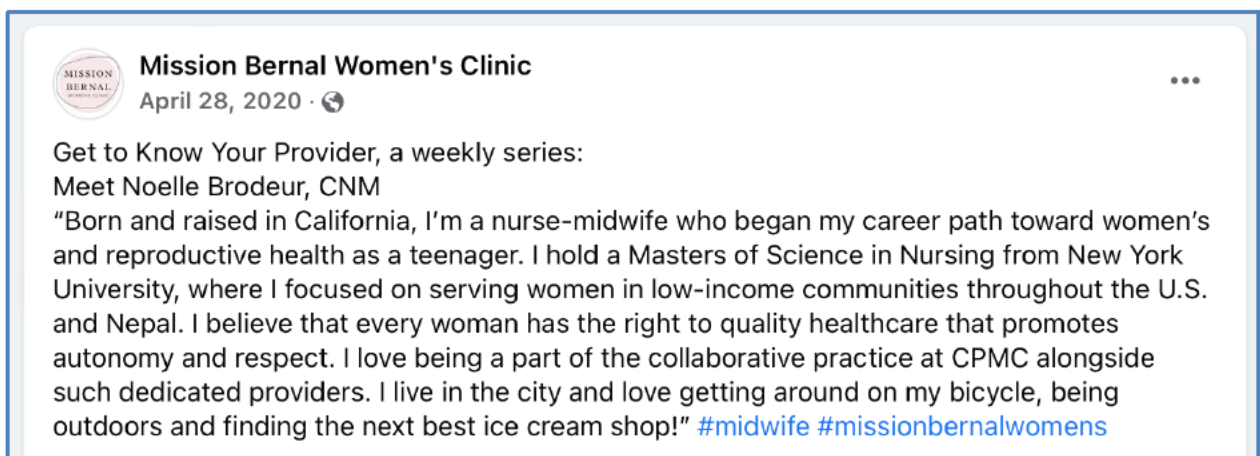


18           59. In another video, the administrative manager of the Mission Bernal Women’s Clinic,  
19 which also refers to itself as the Women’s Center at Mission Bernal, states, “The greatest inspiration is  
20 the care we provide in a loving, respectful, non-judgmental way to all patients regardless of gender,  
21 race, ethnicity, ability to pay.” The same final frame with the Sutter Health CPMC Mission Bernal  
22 Campus logo and tagline appears in this video. A screengrab of the text that appears on Facebook and  
23 accompanies the video appears below.



1           60.     On April 4, 2018, under the heading, “The St. Lukes [sic] Midwives and Doctors!,” a  
2 post states, “This is our lovely team of midwives and doctors.” Photos of the following named  
3 individual Defendants appear: Defendant Brodeur, Defendant Winemiller, Defendant Pemberton,  
4 Defendant Correa, and Defendant Kogan.

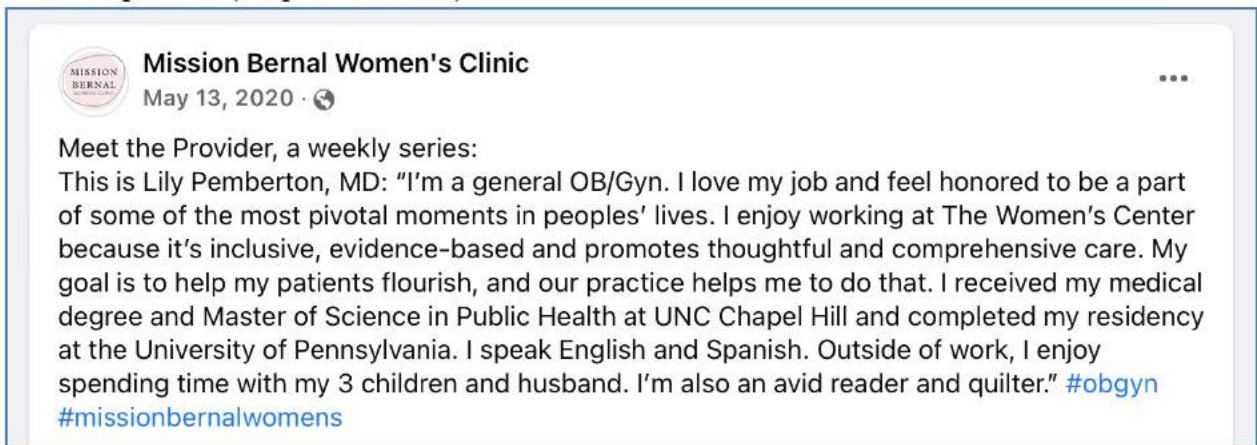
5           61.     On April 28, 2020, as part of its weekly series entitled, “Meet the Provider,” a post  
6 appeared about Defendant Brodeur. A screengrab of the English text of the post appears below, and it  
7 states, quoting Defendant Brodeur, “Born and raised in California, I’m a nurse-midwife who began my  
8 career path toward women’s and reproductive health as a teenager. I hold a Masters of Science in  
9 Nursing from New York University, where I focused on serving women in low-income communities  
10 throughout the U.S. and Nepal. **I believe that every woman has the right to quality healthcare that**  
11 **promotes autonomy and respect.** I love being a part of the collaborative practice at CPMC alongside  
12 such dedicated providers. I live in the city and love getting around on my bicycle, being outdoors and  
13 finding the next best ice cream shop!” (Emphasis added.)



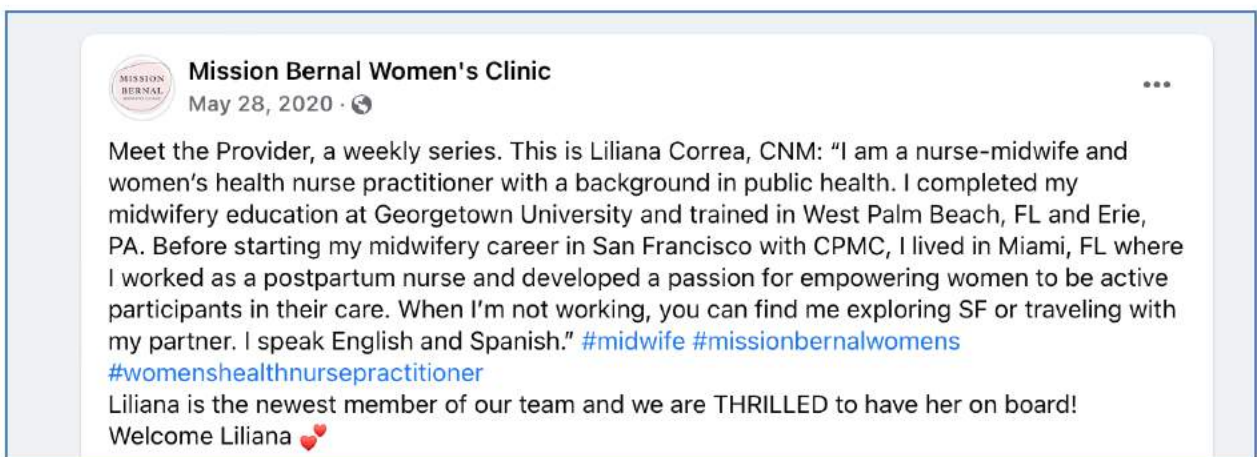
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22           62.     On May 13, 2020, a post appeared about Defendant Pemberton. A screengrab of the  
23 English text of the post appears below, and it states, quoting Defendant Pemberton, “I’m a general  
24 OB/Gyn. I love my job and feel honored to be a part of some of the most pivotal moments in peoples’  
25 lives. I enjoy working at The Women’s Center because it’s inclusive, **evidence-based and promotes**  
26 **thoughtful and comprehensive care. My goal is to help my patients flourish, and our practice**  
27 **helps me to do that.** I received my medical degree and Master of Science in Public Health at UNC  
28 Chapel Hill and completed my residency at the University of Pennsylvania. I speak English and



1 Spanish. Outside of work, I enjoy spending time with my 3 children and husband. I'm also an avid  
2 reader and quilter." (Emphasis added.)

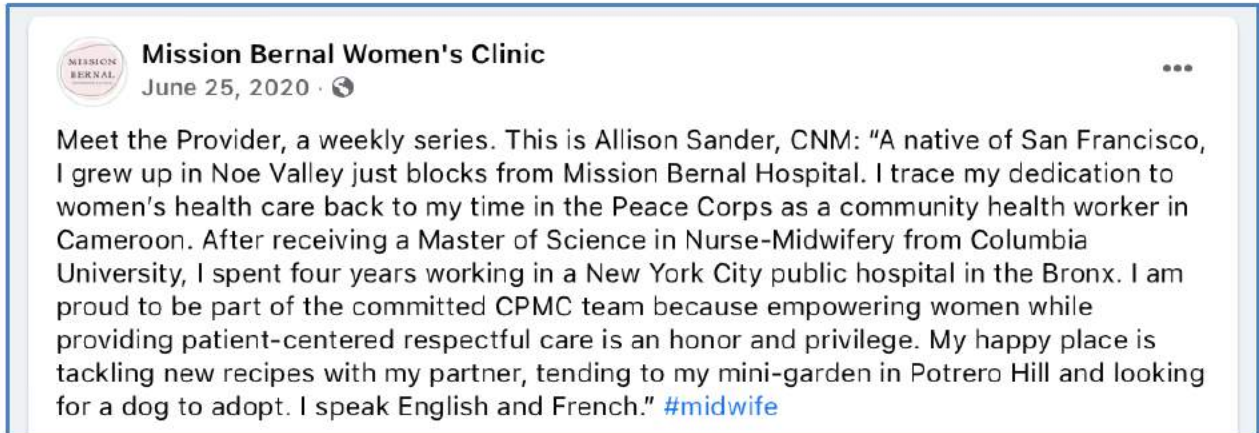


14 63. On May 28, 2020, a post appeared about Defendant Correa. A screengrab of the  
15 English text of the post appears below, and it states, quoting Defendant Correa, "I am a nurse-midwife  
16 and women's health nurse practitioner with a background in public health. I completed my midwifery  
17 education at Georgetown University and trained in West Palm Beach, FL and Erie, PA. Before starting  
18 my midwifery career in San Francisco with CPMC, I lived in Miami, FL where I worked as a  
19 postpartum nurse and **developed a passion for empowering women to be active participants in  
20 their care.** When I'm not working, you can find me exploring SF or traveling with my partner. I speak  
21 English and Spanish." (Emphasis added.)



63. On June 25, 2020, a Facebook post appeared about Allison Sander, CNM, the midwife  
who taught the childbirth education class that the Does attended. In it, she states, "I am proud to be  
part of the committed CPMC team because empowering women while providing patient-centered

1 respectful care is an honor and a privilege.” A screengrab of the text of this post appears below.

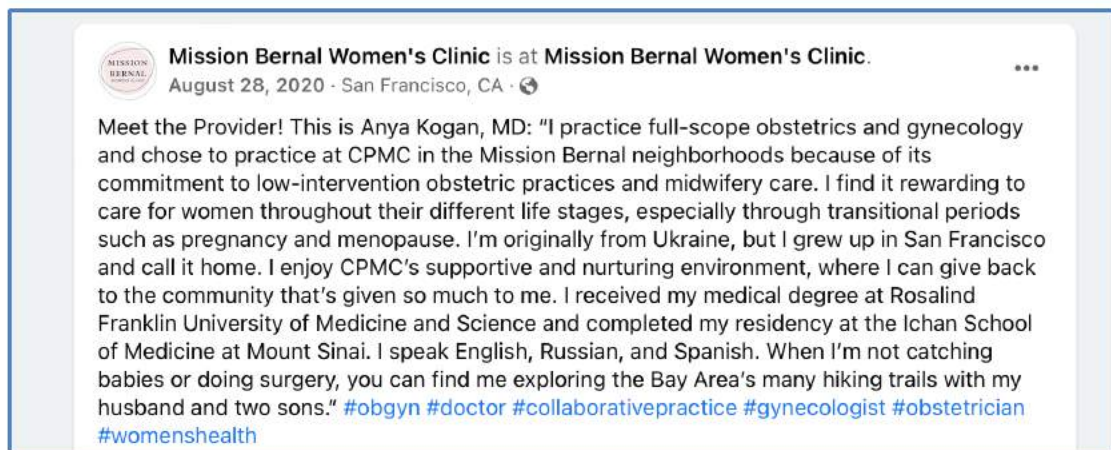


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10 65. On July 18, 2020, another post appeared about Defendant Pemberton. A screengrab of  
11 the English text of the post appears below, and it states, “Did you know that the providers at  
12 #missionbernalwomens take care of twin pregnancies? Our team of OBGyns and midwives is well  
13 equipped to care for your twin pregnancy. We collaborate with the Maternal Fetal Medicine specialists  
14 at the Sutter Pacific Medical Foundation as needed- our network of high risk [sic] specialists is  
15 available to provide you and your babies with excellent care, while you continue to receive the  
16 benefits of our practice’s **low tech** [sic], **high touch** [sic] **philosophy of care**. Pictured here are twins  
17 Lily and Oren, born at St Luke’s Hospital in 2017 under the expert care of Drs. Gopal, Pemberton, and  
18 Altshuler and Midwife Elyse. It takes a village!” (Emphasis added.)



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26 66. On August 28, 2020, a post appeared about Defendant Kogan. The English text of the  
27 post appears below, and it states, quoting Defendant Kogan, “I practice full-scope obstetrics and  
28 gynecology and **chose to practice at CPMC in the Mission Bernal neighborhoods because of its**

1 **commitment to low-intervention obstetric practices and midwifery care.** I find it rewarding to care  
2 for women throughout their different life stages, especially through transitional periods such as  
3 pregnancy and menopause. I'm originally from Ukraine, but I grew up in San Francisco and call it  
4 home. I enjoy CPMC's **supportive and nurturing environment**, where I can give back to the  
5 community that's given so much to me. I received my medical degree at Rosalind Franklin University  
6 of Medicine and Science and completed my residency at the Icahn School of Medicine at Mount Sinai.  
7 I speak English, Russian, and Spanish. When I'm not catching babies or doing surgery, you can find  
8 me exploring the Bay Area's many hiking trails with my husband and two sons." A screengrab of the  
9 text portion of the post appears below.



18 67. There are also representations that the Mission Bernal Women's Clinic is a  
19 "collaborative practice of nurse-midwives and OB-GYNs." A screenshot of such a post is below.



1 68. **Sutter Health on Twitter.** The same messaging can be found on Twitter at the handle  
2 @SutterHealth. Although the Does are not members of Twitter, they do remember seeing  
3 @SutterHealth tweets that were included in Google search results. In a tweet dated February 14, 2020,  
4 Sutter Health appears to be promoting its OB/GYN care by intimating that such care is  
5 “uncomfortable” and that “you’ll always be treated with care and respect.” A screengrab of the tweet  
6 is below.



16 69. Sutter Health has also tweeted about its nurses, midwives, and OBGYNs being  
17 “focused on your personal wellness every step of the way” and being “dedicated to making you feel  
18 comfortable,” including with its therapy dogs. Screengrabs of those tweets, from September 11, 2018,  
19 and March 11, 2020, respectively, are shown below.



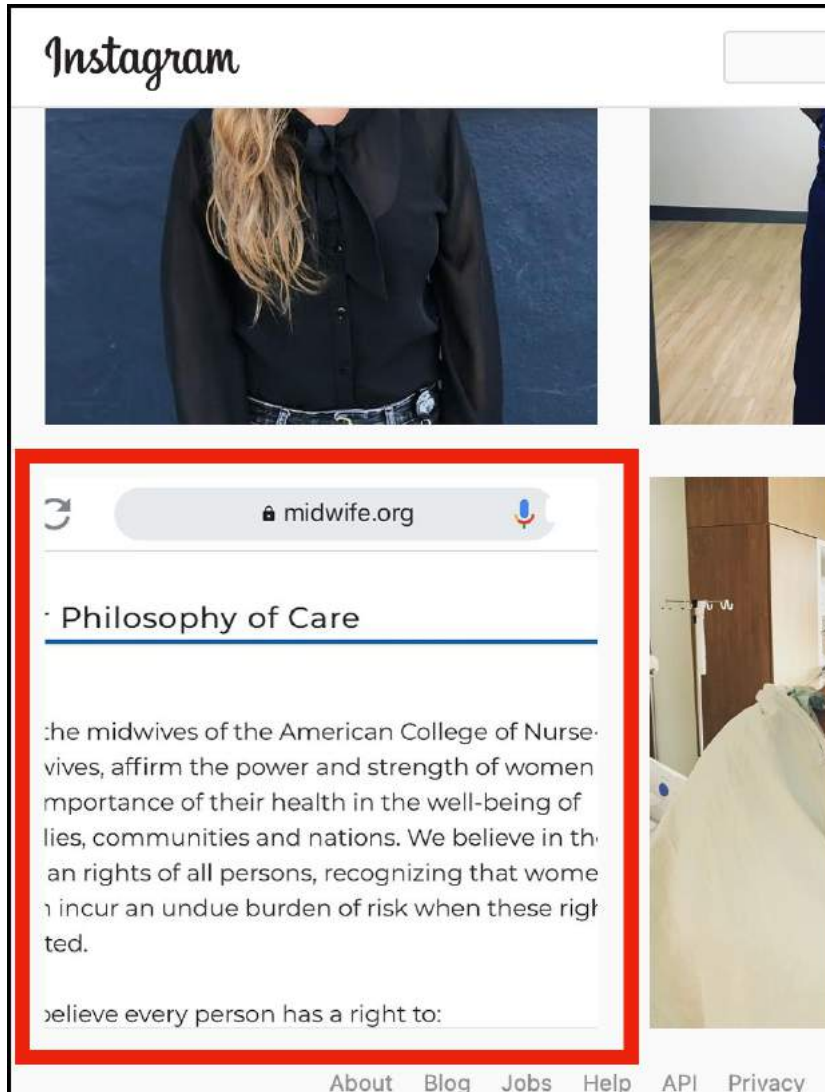
1           70.     On February 6, 2020, @SutterHealth posted an article where its CEO, Sarah Krevans,  
2 “shares her thoughts with @Thrive on valuing the dignity of every person and ensuring the care they  
3 receive reflects this.”



14           71.     **The @missionbernalwomens Instagram feed.** Sutter Health’s Mission Bernal  
15 Women’s Clinic has an Instagram account, and its handle is @missionbernalwomens. Although the  
16 Does are not members of Instagram, they do remember seeing @missionbernalwomens posts that were  
17 included in Google search results.

18           72.     Plaintiffs are informed and believe that, at all relevant times, the Defendant healthcare  
19 providers who work at the Mission Bernal Women’s Clinic—and Plaintiffs are informed and believe  
20 that all named individual Defendants worked at the aforementioned clinic during the relevant time  
21 period—ran the Instagram channel, endorsed the representations made on the channel, represented  
22 themselves on the Instagram channel, planned the content for the Instagram channel, and, as with all  
23 social media posts about themselves, took ownership over and responsibility for the content of the post  
24 and the representations to the public.

25           73.     On April 27, 2020, the Sutter Health’s Mission Bernal Women’s Clinic’s Instagram  
26 account posted a screenshot from www.midwife.org, the official website of the ACNM on “the  
27 midwifery model of care.” On the feed view, the post looks like this (the red box has been added by  
28 counsel for ease of identification):



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19 When an Instagram user clicks on that post, the image remains, and additional text, written by Mission  
20 Bernal Women’s Clinic, appears. It states, “What is ‘the midwifery model of care’ practiced by our  
21 providers? These are our guiding principles, as laid out so eloquently by The American College of  
22 Nurse Midwives #midwife #acnm[.]” The post highlights the opening paragraph of the ACNM’s  
23 philosophy of care statement, noting, “We believe in the basic human rights of all persons, recognizing  
24 that women often incur an undue burden of risk when these rights are violated.” The ACNM statement  
25 is available at <https://www.midwife.org/Our-Philosophy-of-Care>, and, among other things, it notes that  
26 midwifery “respects human dignity,” utilizes “the best evidence,” believes in the “therapeutic use of  
27 human presence,” and values “skillful communication.” It centers on “informed choice, shared  
28 decision making, and the right to self determination.”

1           74.     On April 28, 2020, a post that quotes Defendant Brodeur appeared on Instagram, and it  
2 quotes her as stating, “I believe that every woman has the right to quality healthcare that promotes  
3 autonomy and respect.” A screengrab of the post appears below.



20           75.     On May 28, 2020, an Instagram post appeared at the Mission Bernal Women’s Clinic  
21 channel about Defendant Correa. In it, she is quoted as saying, “I am a nurse-midwife and women’s  
22 health nurse practitioner with a background in public health. I completed my midwifery education at  
23 Georgetown University and trained in West Palm Beach, FL and Erie, PA. Before starting my  
24 midwifery career in San Francisco with CPMC, I lived in Miami, FL where I worked as a postpartum  
25 nurse and developed a passion for empowering women to be active participants in their care. When  
26 I’m not working, you can find me exploring SF or traveling with my partner. I speak English and  
27 Spanish.” The hashtag “#midwife” follows the post. A screengrab of the text portion of the post  
28 appears below.



76. On August 28, 2020, an Instagram post appeared at the Mission Bernal Women’s Clinic channel about Defendant Kogan. In it, she is quoted as saying, “I practice full-scope obstetrics and gynecology and chose to practice at CPMC in the Mission Bernal neighborhoods because of its commitment to low-intervention obstetric practices and midwifery care. I find it rewarding to care for women throughout their different life stages, especially through transitional periods such as pregnancy and menopause. I’m originally from Ukraine, but I grew up in San Francisco and call it home. I enjoy CPMC’s supportive and nurturing environment, where I can give back to the community that’s given so much to me. I received my medical degree at Rosalind Franklin University of Medicine and Science and completed my residency at the Icahn School of Medicine at Mount Sinai. I speak English,



1 Russian, and Spanish. When I'm not catching babies or doing surgery, you can find me exploring the  
2 Bay Area's many hiking trails with my husband and two sons." A screengrab with a portion of the text  
3 from this post appears below.



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26 77. In another Instagram post at the Mission Bernal Women's Clinic page, Defendant Evers  
27 represents that she "became a nurse-midwife and women's health nurse practitioner to empower  
28 women through patient-centered, low-intervention care." Her post also states that the hospital "strives


1 to be evidence-based.”




20 78. **LinkedIn.** Defendants have also made public representations on their LinkedIn pages about their beliefs, work experience, and place of work. These pages come up on Google searches.

21 79. At her LinkedIn page, Defendant Winemiller states that “[s]he was drawn to Mission  
22 Bernal’s Women’s Clinic because it is centered around a collaborative, midwifery-led model of care  
23 that is deeply rooted in the community, women’s choices, and supporting families with evidence-based  
24 education and care. She is proud that all of the team members, including the OB-GYN MD’s truly  
25 support this midwife model of care.”<sup>19</sup> A screengrab of the relevant portion of this page appears  
26 below.  
27  
28

<sup>19</sup> <https://www.linkedin.com/in/jodi-winemiller-07170b15>.

1  **Jodi Winemiller**  
Lead Certified Nurse Midwife at Mission Bernal Hospital, Sutter Health-CPMC

2 **Experience**

3  **Lead Certified Nurse Midwife**  
Sutter Health - Full-time  
Jul 2013 - Present - 9 yrs  
Mission Bernal Hospital, Sutter Health-CPMC

4 Jodi is the lead certified nurse-midwife practicing full scope midwifery care at the Mission Bernal  
5 Campus of Sutter Health-CPMC in the Mission District of San Francisco. She joined the Mission Bernal  
6 Women's Clinic (then known as St. Luke's) in 2013. She is a mother of twins born at Mission Bernal  
7 hospital and has a background in public health. She was drawn to Mission Bernal Women's Clinic  
8 because it is centered around a collaborative, midwifery-led model of care that is deeply rooted in the  
9 community, women's choices, and supporting families with evidence-based education and care. She is  
10 proud that all of the team members, including the OB-GYN MD's, truly support this midwife model of  
11 care. In addition to providing care during pregnancy, birth, and the postpartum period, the Women's  
12 Clinic also offers full scope GYN care including breast health, women's health screening, GYN surgery,  
13 and contraception. Jodi is the site's lead clinician for the Latino Women's Breast Health Program and the  
14 Every Woman Counts breast and cervical cancer screening program. She greatly enjoys offering group  
15 prenatal care in both English and Spanish.

10 80. The messaging was clear, both from individual Defendants and Defendant Sutter  
11 Health: When it came to birth, the promise was of supportive, low-intervention, evidence-based  
12 midwifery care and respect for patient privacy, dignity, and autonomy. Those representations were  
13 consistent over time and across platforms. The speakers followed the same script, and that consistency  
14 made the entire operation, from the individuals to the place itself, seem reliable and trustworthy. These  
15 were people and a place that a reasonable person could believe. They made representations about  
16 medical care, including midwifery care, that were held out to the public as reliable.

17 **2. Sutter Health's private representations about its birth care**

18 81. Jane and John Doe were nearly sold. This was the kind of birth they wanted: private,  
19 evidence-based, low-intervention midwifery care. The low rates of C-section were reassuring. Sutter  
20 Health and its Mission Bernal Women's Clinic and birth center seemed ideal. Still, the Does gave  
21 serious consideration to other options in the Bay Area. They had choices—teaching institutions, other  
22 OB/GYNs and midwives, other birthing centers, and home birth. Notably, Stanford and UCSF were  
23 not a fit because medical students and residents could play a role in the birth, and it was unlikely that  
24 all of them would be female. Jane's requirement for privacy could not be met at a teaching institution.  
25 Also, because residents need to practice procedures, an implicit bias toward unnecessary medical and  
26 obstetric interventions might exist. The birth, then, might not be guided by evidence and science but,  
27 rather, by culture and bureaucracy. In contrast, Sutter Health publicly represented that its care was  
28 guided by evidence and science, not by culture and bureaucracy.

1           82. Jane communicated her unequivocal requirements for birth throughout her prenatal  
2 course: privacy, meaning, among other things, as few people in the birthing suite as possible and  
3 definitively no men; evidence-based birth with few interventions, if truly necessary; various pushing  
4 positions and not the on-the-back lithotomy position; round-the-clock midwifery support with many  
5 non-pharmaceutical modalities for pain treatment; and being seen as a person whose choices are  
6 valued and respected. Before finally settling on Sutter Health, Jane also spoke with a staff member of  
7 the Mission Bernal Women’s Center. She asked if it would be a problem to have only female  
8 clinicians as her caregivers. If so, she would choose care elsewhere.

9           83. Jane was told that her request was not unusual and that the Mission Bernal Women’s  
10 Center nurses and midwives were female. Jane understood that there was one male obstetrician on  
11 staff, but the odds that he would attend her birth seemed low. Not only would he need to be on call on  
12 that particular day, but her medical needs would also need to rise to the level of requiring an  
13 obstetrician. Throughout her pregnancy, Jane told numerous Sutter Health clinicians and staff that she  
14 affirmatively declined care from male caregivers unless she was specifically told about that individual  
15 and his role prior to his appearance and then specifically consented to his presence. Individuals to  
16 whom Jane communicated that decision include but are not limited to: the Sutter Health personnel who  
17 answered the (415) 641-6996 line and made Jane’s appointments; Defendant Pemberton at Jane’s  
18 prenatal appointments; Defendant Brodeur at Jane’s prenatal appointments; Allison Sander, CNM,  
19 during Sutter Health’s childbirth-education classes; the nurse-midwives with whom Jane interacted  
20 during her labor, as well as Defendant Garrett, also during Jane’s labor.

21           84. A Sutter Health employee who answered the Sutter Health phone number (415) 641-  
22 6996 told Jane that a birthing suite in the CPMC Birth Center was guaranteed only if she chose the  
23 Mission Bernal Women’s Center for her prenatal care. In other words, if she chose a private, non-  
24 Sutter-Health-employed obstetrician as her clinician, she might have access to a birthing suite when it  
25 was time to birth her baby—but, then again, she might not. There was a risk that she would be turned  
26 away while in labor. Like the other information that Sutter Health held out to the public, that piece of  
27 information was crucial: If Jane wanted to guarantee—basically, reserve—a birthing suite in the  
28 private, home-like atmosphere where she would be given 24/7 midwifery support, including a private

1 shower for water therapy during labor, acupuncture to help with painful contractions, a birthing ball  
2 and a midwife to sit with her during labor and help her navigate through it, and a beautiful birth that  
3 she and her husband would remember fondly for the rest of their lives, she would need to choose  
4 Sutter Health to provide all of her prenatal care.

5         85.     Because Jane loved what she had learned about birthing at the Sutter Health’s San  
6 Francisco birth centers, she deliberately and thoughtfully decided not to choose a private obstetrician  
7 who had privileges at the CPMC Birth Center, another OB/GYN or midwife who had access to a  
8 different facility, or a home-birth midwife. Sutter Health’s Birth Centers had everything Jane might  
9 need but would tailor care to her, informing her of her choices every step of the way, and ensuring that  
10 all of the care offered to her was evidence-based and necessary. And so, she chose the Mission  
11 Bernal Women’s Center for their care and delivery.

12         86.     Jane did try to engage with a male caregiver. Though Jane told the Sutter Health  
13 scheduling staff that she did not want receive care from a male clinician, one of her early prenatal  
14 appointments was made with Dr. Gopal, the male obstetrician-gynecologist who spoke in a Sutter  
15 Health YouTube video that Jane had seen, as noted above. Jane was told that Dr. Gopal was the only  
16 male obstetrician-gynecologist on the staff of the Sutter Health Mission Bernal Women’s Clinic. Even  
17 though this appointment was by phone, Jane recalls feeling uncomfortable engaging in discussions  
18 with him. After that appointment, Jane communicated, once again, to Sutter Health’s scheduling staff  
19 that she did not want any male care providers. They communicated that they understood her decision,  
20 that it would be honored, and that it was not an unusual request. In fact, Jane recalls them normalizing  
21 her decision by telling her that many of the clinic’s patients ask for female clinicians only.

22         87.     Throughout her prenatal course with Sutter Health, Jane continued to ask thoughtful  
23 questions to Sutter Health’s clinicians and staff about the experience that she could anticipate at the  
24 birthing suite. She asked about birthing positions. She reiterated her absolute requirement for no men  
25 in the room, aside from John. She reviewed the panoply of non-pharmaceutical options that Sutter  
26 Health offered for pain support. Jane did not want to expose her baby to any unnecessary medications.  
27 She had not ingested medication or alcohol, not even cooking with it, throughout her pregnancy  
28 because she wanted to offer what she understood to be the healthiest, safest environment for her baby.

1           88.     Like any consumer, that was the best that the Does could do. The reality is that  
2 choosing a birth attendant and a birth center is a kind of market failure: information a consumer really  
3 needs is hidden from view and completely inaccessible. A consumer cannot watch other people giving  
4 birth at Sutter Health under the care of its nurse-midwives. Unlike buying a car, a consumer cannot  
5 take the birthing suite and the Sutter Health staff out for a test drive. The Does had to rely entirely on  
6 Sutter Health’s public and private representations about its birth centers and clinicians. Even diligent  
7 consumers like Jane and John were, literally and figuratively, in Sutter Health’s hands. It’s a bit like  
8 getting on a plane: You just have to hope that the pilots are properly trained, that the flight attendants  
9 will not behave inappropriately or dangerously, and that an airline’s team can get you safely home.

10           89.     To help them learn as much as they could about birth and become able and informed  
11 participants in the shared decision-making model of Sutter Health, the Does participated in the  
12 Mission Bernal Women’s Center’s childbirth classes. Among other things, they learned about all of  
13 the pushing positions that the Sutter Health midwives would support and how the bed in the birthing  
14 suite was designed to accommodate those varied positions. The ability to use different positions was  
15 so important to Jane that she specifically asked Allison Sander, CNM, who taught the childbirth class,  
16 about whether Sutter Health and its nurses and midwives really did have the skillset to support birthing  
17 people’s choice to be in various pushing positions. Ms. Sander’s answer was an unequivocal, “Yes.”  
18 One of the childbirth classes even included a handout with more than a dozen pushing positions that  
19 would be supported. Ms. Sander also noted that the bed moved into different configurations to support  
20 the birthing person’s preferences for pushing positions.

21           90.     During the COVID-19 pandemic, the birth center for Mission Bernal Women’s Center  
22 patients became a COVID ward. Birthing patients were moved to the CPMC Birth Center, Van Ness  
23 campus. There were no bathtubs in which to labor at that facility—and that was one of the physical  
24 attributes of the space that had attracted the Does to it—but Jane was so committed to Sutter Health’s  
25 philosophy of care that she let go of the idea of a tub. The CPMC Birth Center did have a shower for  
26 water therapy during labor, so she took solace in knowing that water therapy would still be available.  
27 Regardless of the location, Jane stood firm in her commitment to a gentle, private, and supported birth;  
28 she did not want to deliver her baby while lying on her back, with her legs rendered immobile and

1 displayed in stirrups, while a room full of strangers, including men, stared at her vagina and engaged in  
2 non-evidence-based practices, like counting to ten, while screaming at her to push. As long as that  
3 wasn't part of the plan—which it would not be because Sutter Health followed evidence-based  
4 midwifery practices that supported physiologic birth and protected patient dignity and autonomy—  
5 Jane could forego the bathtub. Doulas were no longer available.

6 91. Ms. Sander also instructed her childbirth education students about the importance of  
7 creating a birth plan. The Does followed that instruction, and they went to the Sutter Health website to  
8 download its two-page form entitled, “My Preferences for Labor and Birth.”<sup>20</sup>

9 92. That document includes three sections with bullet points under the heading, “Some  
10 things to know about our philosophy[.]” It states: “We believe in shared decision making”; “Our care  
11 team supports joint decision making for all medical care provided to you and your baby.”; “We will  
12 help you understand your options so you can make informed decisions.”; “Our care team will do  
13 everything we can to support you in delivering vaginally.”; “We will help you identify effective

**My Preferences for Labor and Birth** Sutter Health

Welcome to Labor and Delivery

Name \_\_\_\_\_  
Date of Birth \_\_\_\_\_ Due Date \_\_\_\_\_  
Physician/Midwife \_\_\_\_\_ Pediatrician/Family Doctor \_\_\_\_\_  
Hospital \_\_\_\_\_  
My Labor Support Team:  
(Please include partner, doula, friends, relatives or children who will be present)

Having a baby is an exciting time, and it comes with many decisions. Some of your decisions before and during childbirth may increase your chance of having a vaginal delivery, so it's best to discuss them with your doctor or midwife and partner well in advance of your delivery.

**Some decision points to consider:**

- The benefits of waiting for labor to begin on its own.
- The optimal time in labor to go to the hospital.
- The different ways to monitor your baby's heart rate during labor (monitoring at set times [intermittent], is preferred for low-risk pregnancies).
- The benefits of having continuous labor support by a trained caregiver like a doula. Continuous labor support improves your chance of a vaginal birth.
- The different ways to cope with labor.
- The different ways to support the progression of labor.
- The different ways to stay hydrated and maintain strength during labor.
- The benefits of walking and moving freely during labor (kneeling, standing, sitting, leaning, using the birth ball, etc.), as long as it's safe and possible.
- The most effective ways for pushing around the time of birth.

Although most women need very little intervention during childbirth, those with certain medical conditions may need procedures such as continuous monitoring, induction of labor, or cesarean birth to ensure a healthy delivery.

**Some things to know about our philosophy:**

- We believe in shared decision-making.
- Our care team supports joint decision making for all medical care provided to you and your baby.
- We will help you understand your options so you can make informed decisions.
- We believe a vaginal birth is best for low-risk pregnancies.
- Our care team will do everything we can to support you in delivering vaginally.
- We will help you identify effective methods to cope with labor.
- We will encourage you to move as much as you like while in labor (walking, standing, sitting, kneeling, using the birth ball, etc.), as long as it's safe and possible.
- We believe in keeping families together. If you and your baby are during wait:
- Clamping and cutting of the umbilical cord will be delayed.
- You and your baby will have skin-to-skin contact after delivery.
- Breastfeeding will be encouraged within the first hour after birth.
- Breastfeeding will be supported.
- New parents and their baby will remain together throughout their hospital stay.

Please bring the form with you to the hospital and review it with your care team as labor progresses.

**My Preferences for Labor and Birth. Check all categories that apply.**

**Environment**

- I would like to limit the number of guests in my room while I am in labor.
- I have invited the following guests to my room during labor: \_\_\_\_\_
- I would like to have the lights dimmed during labor.
- I plan to bring music.

**Food and fluids**

- I would prefer to avoid IV fluids and will keep hydrated by drinking fluids.
- I do not mind receiving IV hydration during labor.
- If an IV is medically necessary, I would like to have my IV capped off (saline locked) so I can move more freely.
- If it is safe for me to do so, I would like to eat lightly during labor.

**Labor**

- I prefer as few cervical exams as possible.
- If my bag of water is not broken, I prefer regular cervical exams so I know how labor is progressing.
- I prefer to move around as much as possible or change positions to support my labor progress.
- If labor is progressing normally, I prefer to be patient and wait to proceed until I am without medication to speed it up.
- I would prefer to wait for the amniotic membrane bag to rupture to rupture spontaneously.

**Coping with Labor**

- I would like to attempt an unmedicated labor.
- Please inform me of all methods available for coping with labor, so I can make the best decision.
- I would like to have the option of using the shower to cope with labor.
- I plan to use intravenous medication during active labor (if Medicated).

**Additional Preferences** \_\_\_\_\_

**Monitoring the baby**

- I prefer to have my baby monitored at set times (intermittently), not continuously.
- If my baby needs to be continuously monitored, I prefer portable monitoring (if available and if my condition permits me to move freely).

**Birth**

- I would like to push in a position of my choosing (squatting, kneeling, side lying, etc.).
- I would like to use a mirror to view the birth of my baby.
- I, or \_\_\_\_\_, would like to cut the umbilical cord.
- I'm planning to bank my baby's cord blood.
- I would like to take my placenta home with me.

**Cesarean birth**

- I would like my support person to stay with me as much as possible.
- I would like to be able to watch the birth of my baby.
- I would like to have skin-to-skin contact with my baby in the operating room.

**Newborn care**

- I plan to exclusively breastfeed my baby. Please do not give my baby formula.
- I would like to keep my baby with me at my bedside.
- If my baby needs to leave my side for any reason, I or \_\_\_\_\_ would like to accompany my baby and remain present for all procedures.

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25 methods to cope with labor.”; and “We will encourage you to move as much as you like while in labor  
26 (walking, standing, sitting, kneeling, using the birth ball, etc.), as long as it's safe and possible.”  
27 Screenshots of Defendant Sutter Health's birth plan template appear above.

28  
<sup>20</sup> Available at: <https://www.sutterhealth.org/pdf/services/pregnancy-childbirth/birth-preferences-form.pdf>

1 93. The Does completed the Sutter Health form for their birth plan carefully, giving great  
2 thought to their informed decisions. It appears below, and it is a single page. As the form instructs at  
3 the bottom of page one in italics, the Does brought it with them to the hospital and planned to “review  
4 it with [their] care team as labor progresses” to ensure that Jane’s informed decisions were clear to  
5 Sutter Health clinicians and staff whom she may encounter for the first time at the CPMC Birth Center  
6 when it was time to meet their baby. Jane ticked the boxes for numerous statements, and some of them  
7 she even underlined or added an exclamation point for emphasis. As is shown in the screenshot of  
8 Jane’s birth plan below, at the bottom of the page, in the section marked, “Additional Preferences,”  
9 she wrote, “**I DO NOT WANT ANY MALE CARE PROVIDERS!**”

My Preferences for Labor and Birth. Check all categories that apply.

**Environment**

- I would like to limit the number of guests in my room while I am in labor.
- I have invited the following guests to my room during labor: \_\_\_\_\_
- I would like to have the lights dimmed during labor.
- I plan to bring music.

**Food and fluids**

- I would prefer to avoid IV fluids and will keep hydrated by drinking fluids.
- I do not mind receiving IV hydration during labor.
- If an IV is medically necessary, I would like to have my IV capped off (saline locked) so I can move more freely.
- If it is safe for me to do so, I would like to eat lightly during labor.

**Labor**

- I prefer to have cervical exams as possible.
- If my bag of water is not broken, I prefer regular cervical exams so I know how labor is progressing.
- I prefer to move around as much as possible or change positions to support my labor progress.
- If labor is progressing normally I prefer to be patient and let it proceed on its own without medication to speed it up.
- I would prefer to wait for the amniotic membrane (bag of waters) to rupture spontaneously.

**Coping with Labor**

- I would like to attempt an unmedicated labor.
- Please inform me of all methods available for coping with labor, so I can make the best decision.
- I would like to have the option of using the shower to cope with labor. IF POSSIBLE
- I plan to use intravenous medication during active labor (IV Medication).

**Monitoring the baby**

- I plan to use an epidural during active labor.
- I am considering using IV medication and/or having an epidural, but will decide when I am in active labor.

**Monitoring the baby**

- I prefer to have my baby monitored at set times (intermittently), not continuously.
- If my baby needs to be continuously monitored, I prefer portable monitoring (if available and if my condition permits me to move freely).

**Birth**

- I would like to push in a position of my choosing (squatting, kneeling, side lying, etc.).
- I would like to use a mirror to view the birth of my baby.
- I, or \_\_\_\_\_ would like to cut the umbilical cord.
- I'm planning to bare my baby's cord blood.
- I would like to take my placenta home with me.

**Cesarean birth**

- I would like my support person to stay with me as much as possible. MY HUSBAND
- I would like to be able to watch the birth of my baby.
- I would like to have skin-to-skin contact with my baby in the operating room.

**Newborn care**

- I plan to exclusively breastfeed my baby. Please do not give my baby formula.
- I would like to keep my baby with me at my bedside.
- If my baby needs to leave my side for any reason, I, or MY HUSBAND would like to accompany my baby and remain present for all procedures.

**Additional Preferences** I DO NOT WANT ANY MALE CARE PROVIDERS!

25  
26 **B. What Happened to Jane at Sutter Health’s CPMC Birth Center**

27 **1. Jane’s labor begins**

28 94. Jane Doe went into labor on October 19, 2020. She was 39 weeks pregnant. When Jane’s contractions began early that morning, the Does revisited the Sutter Health website to remind



1 themselves of the 5/1/1 pattern that they had learned about in Sutter Health’s childbirth-education  
2 classes and read about on its website. They were told, both in class and via the site, that this pattern  
3 was a hallmark of true labor. “5/1/1” is a shorthand for contractions that are five minutes apart, lasting  
4 for about 60 seconds, and over the course of several hours.

5 95. Jane and John reviewed the information from Sutter Health about this 5/1/1 pattern  
6 because they wanted to ensure that presented for care at the proper time. Because they live outside of  
7 San Francisco, they did not want to present too early and then be sent home. It was a long drive  
8 between their home and the CPMC Birth Center. About 50 miles, and the roads are difficult. Jane and  
9 John recall that several of the roads were undergoing major construction, and those roads they  
10 included potholes and other obstacles that promised a ride that would jostle Jane and John. That would  
11 present a particular problem for Jane as she experienced contractions. It would make the discomfort  
12 worse.

13 96. Throughout the day, Jane and John monitored Jane’s contractions. The 5/1/1 pattern  
14 emerged in the afternoon. They kept monitoring Jane’s contractions, noting that they were becoming  
15 stronger, longer, and closer together. Around dinner time, they picked up Indian food. Jane was not  
16 particularly hungry.

17 97. That evening, in the 8:00 p.m. hour, Jane called the CPMC Birth Center at (415) 641-  
18 6996. Though it was difficult for her to breathe through the contractions, she managed to speak to  
19 Defendant Winemiller, one of the Sutter Health Mission Bernal Women’s Clinic certified nurse-  
20 midwives. Defendant Winemiller spent about 30 minutes on the phone with Jane. After observing her  
21 labor by phone, Defendant Winemiller instructed Jane to come to the CPMC Birth Center. Jane was  
22 now in severe pain. Because of the road conditions, the car ride to the CPMC Birth Center was  
23 extremely painful.

24 98. The Does were excited about meeting their baby. They were grateful for what they  
25 anticipated to be outstanding support and care. They arrived at the Sutter Health CPMC’s emergency  
26 department, which is open 24-hours a day, every day, in the evening of October 19, 2020. Jane went  
27 into the facility via wheelchair. The initial intake process took a very long time. Jane’s contractions  
28 were extremely painful throughout the waiting periods, and she longed for the labor support and non-

1 pharmacological pain relief that Sutter Health had promised, like “[s]howers, birth balls and other  
2 tools to help reduce pain during labor.”<sup>21</sup> Jane was admitted to the health facility. Finally, Jane was  
3 taken to the obstetrics triage area.

4 99. Defendant Winemiller was there. Jane told her that she was experiencing severe pain  
5 with the contractions. Defendant Winemiller responded by giving Jane two choices: Jane could stay in  
6 the hospital if she accepted morphine, or she could go home. Defendant Winemiller did not explain  
7 any risks about whether morphine would be advisable for Jane or her baby or how that was an  
8 evidence-based option, and she did not offer another option for handling the pain. Jane and John were  
9 perplexed. Where was the midwifery support and non-pharmacologic pain relief? Instead, it was  
10 morphine or leave. Because under no circumstances did Jane wish to travel along those problematic  
11 roads to return home, Jane took the morphine. According to Defendant Winemiller, Jane had no other  
12 choice. No one, including Defendant Winemiller, explained how morphine could affect Jane’s labor,  
13 what risks it posed to Jane or her baby, or how it might impact Jane’s delivery. This was the first  
14 pharmaceutical medicine that Jane had taken for her entire pregnancy, and Jane really didn’t want it.  
15 She wanted the 24/7 midwifery support, the evidence-based recommendations, and the alternative  
16 methods of coping with discomfort during labor. But Jane also did not want to be sent home.

17 100. Jane acquiesced to morphine and achieved some pain relief for a short time. As the  
18 morphine wore off, the pain returned, along with nausea. At this point, Jane was entirely ready for  
19 admission to one of the CPMC Birth Center’s “private, comfortable labor rooms”<sup>22</sup> that “provide a  
20 homelike, private atmosphere.”<sup>23</sup> It was also time for the round-the-clock midwifery support and non-  
21 pharmacologic pain relief that Sutter Health had promised. But that was not what happened.

22 101. Another certified nurse-midwife, Defendant Evers, told Jane that even though her  
23 contractions were regular and her cervix had dilated, that dilation was not far enough along for a  
24 hospital stay. Rather than offer support for the physiologic process of labor, Defendant Evers told Jane  
25 that she could only stay in the facility if she agreed to another medical intervention—either a  
26 membrane sweep or Pitocin. No one explained to the Does why such interventions were recommended

27 \_\_\_\_\_  
28 <sup>21</sup> Available at <https://www.sutterhealth.org/services/pregnancy-childbirth/family-birth-centers>.

<sup>22</sup> Available at <https://www.sutterhealth.org/services/pregnancy-childbirth/family-birth-centers>.

<sup>23</sup> Available at <https://www.sutterhealth.org/services/pregnancy-childbirth/CPMC-labor-delivery>.

1 or why Jane was not being offered the brand of support that Sutter Health had represented, in both  
2 public and private communications, that it provided as part and parcel of its mission and its brand. The  
3 Does then explained to Defendant Evers that their home was 50 or so miles away and that the bumpy  
4 condition of the roads that made up that trek exacerbated Jane's severe, intractable pain. Defendant  
5 Evers communicated to the Does that admission to the CPMC Birth Center was not an option and that  
6 the Does could not remain in the facility unless Jane agreed to an intervention that would, Defendant  
7 Evers said, speed up her labor. If Jane declined, she would be sent home. Sutter Health's focus on  
8 speeding up Jane's labor with unnecessary and unwanted medical and pharmacologic interventions  
9 had begun, as did Sutter Health's all-or-nothing, accept-it-or-leave, clinical practice that its nurse-  
10 midwives employed. It is difficult to imagine a less evidence-based, less midwifery-compliant, and  
11 less supportive brand of care. But the worst was yet to come.

12       102. From their own research, the Does knew that Pitocin would intensify Jane's already  
13 extreme, unsupported, and unmanaged pain, and, by a mechanism that was never explained to the  
14 Does, increase the risk of C-section. Jane declined Pitocin and requested admission to a birthing suite  
15 for midwifery support, a birthing ball, a shower—anything on the list of options that Sutter Health had  
16 advertised as available to laboring people.

17       103. Defendant Evers made it clear that the only option was this: Agree to a membrane  
18 sweep or Pitocin—or leave. When the Does explained, again, that they lived far beyond the city,  
19 Defendant Evers deflected and remarked that the Does could find a place to stay in San Francisco.  
20 The Does told her that they had no place to stay, and they explained that the only housing option they  
21 knew of in the area was Jane's 92-year-old grandmother. Her home was not an option as a general  
22 matter, and it was also during COVID. Having now been in a medical facility, it seemed even more  
23 unreasonable to then show up at Jane's elderly grandmother's home. It was really not an option.  
24 Again, the Does explained the dilemma: If they left, they would have to drive 50+ miles away, and the  
25 road conditions exacerbated Jane's pain. They also explained that there was no pain relief at home,  
26 and though John was supportive, he was not a certified nurse-midwife with various pain-relief tools,  
27 like acupuncture or sterile water injections or even just the soothing presence of an expert in  
28 physiologic birth by Jane's side, in his armamentarium and within his scope of expertise.

1           104. Jane made multiple requests to remain in the hospital while her labor progressed so she  
2 could have midwifery support and appropriate non-pharmacologic pain management. Again, for her  
3 entire pregnancy, she had knowingly chosen to use non-pharmacologic methods to manage pain, even  
4 the discomfort of a headache, because she was always thinking about her baby. But Defendant Evers’  
5 answer was a firm “no.” Jane would need to leave unless she agreed to some intervention to speed up  
6 labor. To bargain for the opportunity to stay in the facility, Jane acquiesced to a membrane sweep. It  
7 seemed like the lesser of two evils. After that coerced intervention, Jane’s cervical dilation was 3 cm,  
8 and her contractions continued to be regular and sustained in the 5/1/1 pattern that had emerged hours  
9 earlier and been sustained for many hours prior to her arrival at the CPMC Birth Center and that she  
10 and John had learned in Sutter Health’s childbirth classes as was a meaningful marker of labor.

11           105. Sutter Health did not hold up its end of even that small bargain. Jane’s cervical dilation  
12 status still did not merit admission to a birthing suite, expectant management, and the “coaching and  
13 comfort” that the facility professes to support.<sup>24</sup> Jane pleaded with Defendant Sutter Health to permit  
14 her to remain in the hospital with the benefit of the support it promised to offer. Defendant Evers  
15 denied Jane’s requests.

16           106. In the midst of the haggling, Jane was subjected to many vaginal exams—she  
17 remembers as many as five at this point in her labor. At one point during her labor, a nurse whose  
18 identity is currently unknown subjected Jane to a vaginal exam using non-sterile blue gloves, and  
19 Defendant Correa berated Jane for “allowing” her to do so. Jane had no choice about these exams. No  
20 one ever Jane informed about the purpose of so many exams or offered an opportunity to decline them.

21           107. At this point, Jane was also experiencing nausea, and she had been actively vomiting.  
22 Even with that clinical picture made clear and the reality of the long drive communicated, Defendant  
23 Evers ordered a wheelchair to escort Jane out of the hospital. Jane was distraught and asked Defendant  
24 Evers why she had to agree to Pitocin to stay, how Pitocin increased the risk of C-section, why that  
25 medical intervention was indicated in her situation. Jane received vague answers. She also asked  
26 Defendant Evers why she could not just sit in a shower to help with her pain and why no nurse-  
27 midwife would simply sit with her during her labor, helping her breathe through contractions and  
28

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<sup>24</sup> <https://www.sutterhealth.org/services/pregnancy-childbirth/CPMC-labor-delivery>.

1 more, as nurse-midwives do.

2 108. There was also discussion about Jane not being in enough pain because she was not  
3 moaning enough. Defendant Evers demonstrated the kind of moaning that, according to Defendant  
4 Sutter Health, indicates when a laboring person is really in pain. Because the sounds that Jane was  
5 making were different than the moaning that Defendant Evers had demonstrated, Defendant Evers  
6 concluded that Jane was not experiencing severe pain.

7 109. Against that backdrop and with Jane declining Pitocin, Defendant Evers sent Jane  
8 home. Jane told Defendant Evers that she was in so much pain, that she could not go home, and that  
9 she had just vomited. Defendant Evers' mind was made up. She discharged Jane while Jane was  
10 nauseous, vomiting, and in intractable pain during active labor.

11 110. On their way out of the facility, Defendant Evers told the Does that they could go  
12 somewhere else, like Stanford. Of course, the Does had chosen the CPMC Birth Center because of  
13 what they had learned and were told about its evidence-based, low-intervention midwifery care, its  
14 supportive personnel, and its respect for privacy—that “Large Private Room” and all it offered. They  
15 had relied on the Sutter Health's public and private representations to them when they made that  
16 choice, and Stanford was still not a viable option for Jane because, as a teaching hospital, it did not  
17 meet her needs for birth.

18 111. Defendant Evers discharged Jane on the morning of October 20, 2020. Dr. Pemberton,  
19 who had cared for Jane during her prenatal course, signed off on that decision without seeing Jane.  
20 Sadly, Jane had gone out of her way to make most of her prenatal care appointments with Dr.  
21 Pemberton so she would have a relationship with an obstetrician in case one was needed. During one  
22 of her last prenatal care appointments, Dr. Pemberton discussed the possibility of being on call when  
23 Jane went into labor so that she could provide oversight and care to her. She was, in fact, in the  
24 hospital when Jane was there. But she never saw Jane, never discussed Defendant Evers' discharge  
25 decision with Jane, or intervened because Defendant Evers' decision was entirely inappropriate.

26 **2. Jane is sent home in intractable pain, vomiting, and in active labor**

27 112. Defendant Evers sent Jane home and told her to “relax,” “take a bath,” and “go for a  
28 walk.” None of those hands-off suggestions were remotely possible because of a clinical picture that

1 included pain so severe that Jane could not actually walk. These automated platitudes were  
2 mismatched to the clinical reality. To address Jane’s nausea and vomiting, Defendant Evers gave her  
3 two emesis bags. Defendant Evers told Jane said that one bag was for the car ride and the other one  
4 was for use at home.

5 113. Jane describes the car ride home as “a nightmare.” Once again, poor conditions on  
6 various roads made her already-unbearable pain even worse. When they arrived home, John helped  
7 Jane get out of the car—Jane could not get out of the car, move, or walk on her own—and into their  
8 bed, where she remained motionless as a way to manage the pain. She suffered over the next five  
9 hours and continued to vomit. At that point, John called the CPMC Birth Center at (415) 641-6996.  
10 He spoke to Defendant Evers. He described the situation. Defendant Evers said that they could not  
11 return to the facility. Defendant Evers told John to tell Jane to “relax,” “take a bath,” and “go for a  
12 walk,” all of which were out of the question. The call ended, and the Does remained at home.

13 114. Sometime later, John called the CPMC Birth Center at (415) 641-6996 yet again  
14 because Jane was in so much pain. Jane described what she was experiencing to Defendant Evers.  
15 Again, Defendant Evers told Jane that she was not permitted to return to the facility. But Jane got on  
16 the phone. She advocated for herself and begged Defendant Evers to allow her to return. Finally,  
17 Defendant Evers relented. Jane could return.

18 115. Again, Jane Doe struggled to the car, and the Does traveled the 50+-mile journey with  
19 extreme road conditions to the CPMC Birth Center. Jane’s contractions had never abated, and neither  
20 had her pain. It was now the evening of October 20.

### 21 3. Jane returns to the hospital

22 116. When Jane returned to the hospital, she was exhausted and wanted midwifery support.  
23 She had been vomiting throughout the day. There was another very long intake process while her  
24 insurance was verified once again and papers were brought to her to sign. She remained in severe pain.  
25 When she was finally admitted to the obstetrics triage area, a Sutter Health nurse said something like,  
26 “Now we will take care of you.” Another Sutter Health nurse remarked that Jane should never have  
27 been sent home. Finally, Jane was admitted to one of the CPMC Birth Center’s “private,” “spacious,”  
28 “homelike,” “comfortable,” and “welcoming” labor-delivery-recovery rooms.

1           117. The room was extremely cold. Everyone remarked on how cold it was. Jane was  
2 freezing. Instead of being moved to a room without a heating malfunction, she was given as many as  
3 six blankets to labor under. Then, with every vaginal exam—and there continued to be many—she was  
4 uncovered, naked from the waist down, and exposed to the cold. No one ever asked Jane for  
5 permission to do these vaginal exams or gave her a choice about them. The temperature remained  
6 unreasonably frigid overnight and for about half of the next day.

7           118. Another certified nurse-midwife, Defendant Brodeur, whom Jane worked with during  
8 some of her prenatal care appointments, then artificially ruptured Jane’s membranes. She did it with  
9 her fingers, without explaining what she was doing, and without obtaining consent to do so. Jane was  
10 not expecting to have her membranes ruptured, and she was surprised, even shocked, that that had  
11 occurred. Jane was familiar with the idea of using an instrument, with consent, to rupture membranes  
12 artificially, but she was unfamiliar with the idea of fingers for that purpose. Defendant Brodeur  
13 remarked that the amniotic fluid had meconium staining. Jane asked many questions about finding.  
14 Jane was concerned, even alarmed, about why this staining was present and what the finding meant  
15 about her baby’s health and well-being. Defendant Brodeur and another nurse who was also in the  
16 room both said that the finding was “no problem,” and they repeated that conclusion several times.

17           119. Jane wanted to be sure that she understood the situation. She was always thinking about  
18 her baby. Jane asked if she needed antibiotics. Defendant Brodeur said that she did not need them, and  
19 none were offered. Jane also asked about the likelihood of a vaginal birth and if she needed to  
20 anticipate a different plan. Defendant Brodeur and the nurse said that there was no reason not to  
21 anticipate a normal vaginal delivery. Because these answers were abrupt and did not help Jane  
22 understand why meconium would be present and why it was no problem, she asked a few more  
23 questions about it. However, she stopped when she had the distinct feeling that Defendant Brodeur and  
24 the nurse were getting annoyed.

25           120. Throughout her labor, Jane reminded Sutter Health clinicians and personnel about the  
26 three requirements that had led her and John to choose the CPMC Birth Center several months earlier  
27 and that she had repeated and reiterated throughout her pregnancy to the Sutter Health team. Privacy,  
28 meaning as few people as possible in the room and, without question, women only. Freedom of

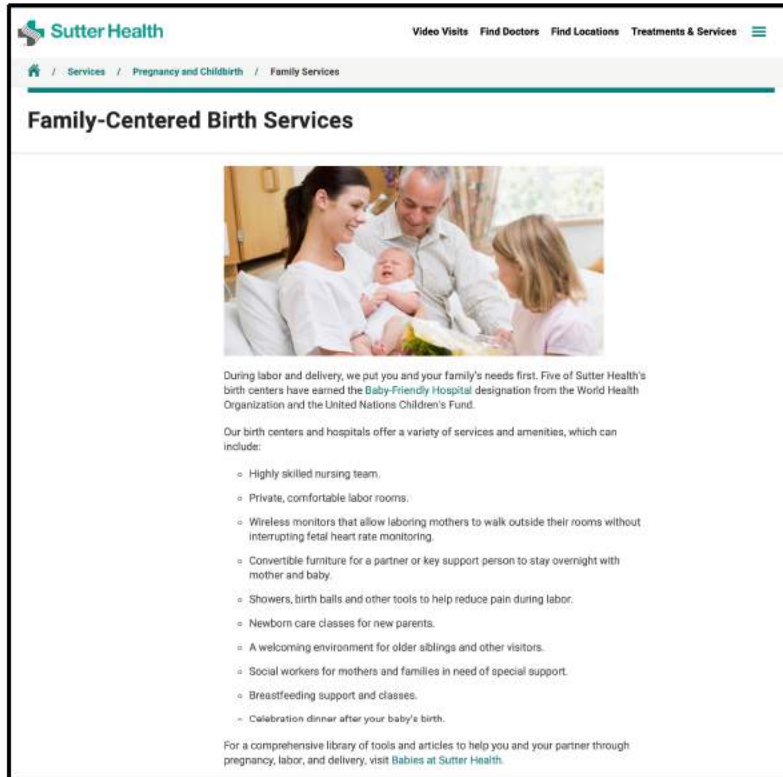
1 movement and varied pushing positions. Evidence-based midwifery care. During Sutter Health  
2 prenatal appointments and childbirth education classes, the Does had been told to write down those  
3 decisions and anything else they decided about their birth in their one-page birth plan. They brought  
4 that document to the CPMC Birth Center with them, even after they were sent home. They had it with  
5 them the entire time. Little did they know that taking the time to complete the form and relying on it in  
6 any way was entirely pointless.

7 121. Although one of the aforementioned Sutter Health YouTube videos said, “Our goal is  
8 to create a comfortable, safe, supportive environment for you to rest and relax as much as possible  
9 while you’re having your baby[,]” nothing about the environment felt comfortable, safe, or supportive.  
10 The situation remained uncomfortable and tense. Around this time, a labor and delivery nurse  
11 performed yet another vaginal exam—this was the exam done with the non-sterile blue gloves. She  
12 remarked that Jane was around 7 to 8 centimeters dilated. Oddly, as noted above, Defendant Correa  
13 later rebuked Jane for allowing a Defendant to examine her with non-sterile blue gloves, as if Jane was  
14 supposed to manage the nursing staff. Another nurse berated John for falling asleep on the coach. He  
15 was exhausted, and he was softly snoring. That nurse also told him to stop snoring. Both Jane and  
16 John had the distinct feeling that they were doing things wrong: not dilating fast enough; snoring.

17 122. Yet, Defendant Sutter Health’s communications had made clear that the birthing  
18 person, the baby, and her family would be the center of attention. A page from its website states,  
19 “During labor and delivery, we put you and your family’s needs first. Five of Sutter Health’s birth  
20 centers have earned the Baby-Friendly Hospital designation from the World Health Organization and  
21 the United Nations Children’s Fund.”

22 123. But up until this point, Jane, John, and their baby’s needs were not put first. In fact,  
23 Jane had to bargain and beg for everything. A screengrab of the page available on Sutter Health’s  
24 website at <https://www.sutterhealth.org/services/pregnancy-childbirth/family-birth-centers>, which is  
25 titled, “Family-Centered Birth Services,” appears below.  
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15           **4.       Jane receives none of the support that Sutter Health promised, and,**  
16           **instead, faces more coercion and escalating threats**

17           124.     Jane's labor continued without the midwifery support that Sutter Health had promised.  
18     None had been offered or given during her entire experience at the CPMC Birth Center, and it was  
19     clear that none would be forthcoming. Jane had an epidural placed. Her labor continued. Her cervix  
20     dilated to 10 cm. It was now the afternoon of October 21.

21           125.     A third midwife, Defendant Correa, now interacted with Jane. Defendant Correa told  
22     Jane that, although her cervix had dilated to 10 cm, cervical lip was still on one side of the baby's  
23     head. Defendant Correa stated that this cervical lip needed to be moved. She then forcibly moved that  
24     cervical lip without telling Jane why such an intervention was necessary, and she did not ask for  
25     permission to do so. She just did it, and Jane did not consent to it.

26           126.     A nurse, Defendant Garrett, entered the room. When Defendant Garrett saw Defendant  
27     Correa, she seemed surprised. Defendant Correa then stated that Defendant Brodeur, the midwife who  
28     seemed to have been assigned to Jane, had delivered another baby.

1           127. Jane was told that it was time to start pushing. Jane had no urge to push. Defendant  
2 Correa and Defendant Garrett took Jane’s blankets away and pulled her hospital gown up to just under  
3 her breasts. She was naked from that breast-line down, except for a pair of socks. Jane was not told  
4 that her gown and blanket would be removed, and she was offered no choice about it. It happened  
5 abruptly. She was also not given a sheet or other material that would offer her a modicum of privacy.

6           128. The Does urgently wanted to communicate the birth plan to the Sutter Health clinicians  
7 in their orbit. They had interacted with several midwives, and it was unclear if they would be  
8 interacting with even more nurse-midwives and nurses. Jane asked John to give her their birth plan. He  
9 did. Jane then told Defendant Correa that she wanted to discuss their birth plan. Again, as shown  
10 above, it is a single 8½” × 11” page. Jane held that birth plan in front of Defendant Correa with an  
11 outstretched hand. Defendant Correa pushed it back at Jane. She did not take it, and she did not read it.  
12 Additional requests to discuss the birth plan were ignored, as was the birth plan itself.

13           129. Because Defendant Correa did not review the Does’ birth plan, Jane turned to  
14 Defendant Garrett for help and to reiterate her most pressing concern: With the exception of her  
15 husband, Jane had decided that no male individuals could be in the birthing suite. Defendant Garrett  
16 did not respect Jane’s words. On the room’s whiteboard, Defendant Garrett wrote, “Female providers  
17 preferred.” That phrase mischaracterized Jane’s statement as a tepid preference. It was not. Jane had  
18 made an informed decision regarding her medical care, and that decision had been acknowledged as  
19 such by Sutter Health clinicians and staff. In fact, privacy during labor and delivery—which included  
20 only female personnel in the room—was a critically important reason that the Does had chosen the  
21 Sutter Health CPMC Birth Center in the first instance. That decision was also clearly written on her  
22 birth plan. Of course, Jane was reasonable about the issue: She was willing to accept a male clinician  
23 under certain circumstances with advance knowledge and consent, and she did consent to a having a  
24 male anesthesiologist place the epidural. However, Jane did not want strange men to observe her as  
25 she bore down and gave birth.

26           130. Jane still had no urge to push. But Defendant Correa told her to lie down on her back  
27 and start pushing. Although Jane was made to feel as if she was racing a clock, Defendant Correa did  
28 not inform Jane about a time limit that Sutter Health had established for pushing or about the medical

1 evidence on time limits for pushing in her clinical situation. Jane did not know that if she started  
2 pushing, a two-hour clock would be started, and when the clock struck two hours, she would be  
3 required to submit to a C-section.

4 131. Further, as she had decided earlier in her pregnancy and made exceedingly clear to  
5 Sutter Health personnel, Jane did not want to be on her back for pushing. Jane explained to Defendant  
6 Correa and Defendant Garrett that her prenatal providers and she had agreed—as is consistent with  
7 evidence-based and midwifery care—that she could push and birth in any position that her body  
8 needed. That should not have been an issue because, on Sutter Health’s website and elsewhere, the  
9 Sutter Health CPMC Birth Center promotes its support of different pushing positions, and Jane had  
10 specifically discussed this issue at the prenatal class led by Sutter Health’s Allison Sander, CNM. The  
11 materials for that class even included a handout with illustrations of people in many different pushing  
12 positions. On their hands and knees. On their side. Squatting. But when it actually came time to push,  
13 Sutter Health failed to follow-through on its representations.

14 132. After discussing pushing positions, Jane was directed to remain in the position that  
15 Defendant Correa and Defendant Garrett wanted her to be in—on her back—and to spread her legs  
16 widely, a position that was extremely uncomfortable for her, even with an epidural. She was told to  
17 push. There was no choice. She had to obey. So, she pushed. She pushed while lying on her back, but  
18 she kept explaining that she did not want to be in that position. Jane kept pleading to at least be  
19 allowed for another position to push. She still did not have the urge to push. But Jane was ignored.  
20 She needed to obey. At some point Defendant Garrett even started to engage John in a small-talk  
21 conversation instead of discussing the care with Jane. But Jane did not give up. Jane kept pleading to  
22 at least be allowed for another position to push. At some point Jane just turned over to get into a  
23 kneeling position. Defendant Correa and Defendant Garrett were totally overwhelmed to see Jane to  
24 be in a kneeling position. But Jane felt good in that position, and she had very good control over her  
25 body, including her legs. She now felt her contractions. Jane recalls thinking that the two to three  
26 pushes that she was in that position were effective. But Defendant Correa stated that she could not see  
27 anything or feel Jane’s contractions. Defendant Correa and Defendant Garrett then forced Jane to lay  
28 on her back. Defendant Correa never explained why she could not reposition herself to accommodate

1 Jane or why she needed to feel Jane’s contractions.

2 133. Again, Jane was directed to remain in the position that Defendant Correa and  
3 Defendant Garrett wanted her to be in—on her back—and to spread her legs widely, a position that  
4 was extremely uncomfortable for her, even with an epidural. While pushing, Jane pleaded with  
5 Defendant Correa that she at least being able to push in another position. Defendant Correa mentioned  
6 that theoretically, a side-lying would be possible, but did not actually offer this position or any support  
7 for her to change the position at all. So Jane kept pleading for being allowed to change back into the  
8 kneeling position, and Defendant Garrett now allowed her to be in a side-lying position, but again, for  
9 a few minutes, just one or two pushes. (It must be noted that the very idea that it was up to Sutter  
10 Health personnel to “allow” Jane to do anything is itself jarring.) Defendant Correa made it known,  
11 once again, that she felt uncomfortable because she could not see well or feel Jane’s contractions. Jane  
12 was offered no support to change positions or given any direction to make her pushing efforts more  
13 effective. This was a situation that Jane feared and why she conducted careful research about what  
14 Sutter Health offered in terms of support for pushing positions and evidence-based midwifery care.

15 134. After not more than about 90 minutes of pushing time, whereas, due to the  
16 circumstances described above, Jane had just a few minutes for actual pushing, Defendant Correa left  
17 the room and told Jane to keep pushing without her. Defendant Garrett did nothing but count to five  
18 when Jane tried to push through contractions by herself. Jane continued to push for a couple of  
19 minutes with no support or direction, lying on her back, with only her husband helping her. All of this,  
20 Jane felt, was highly uncomfortable for Jane and not effective at all.

21 135. When Defendant Correa returned, she announced that a pediatrics team would be  
22 coming into the suite. She did not explain why. There was no discussion. Jane told Defendant Correa  
23 that she did not want a pediatrics team in the room. She reiterated for the umpteenth time that she  
24 wanted to give birth in the presence of her husband and only a minimum number of people—a  
25 midwife and a nurse, and, if necessary, an obstetrician. Jane told Defendant Correa, very clearly, that  
26 an audience—especially an unknown male—would make her feel too insecure and totally exposed,  
27 which would hamper her ability to birth her baby. Defendant Correa then said that they would have the  
28 pediatrics team wait behind the door curtain. Defendant Correa said that once the baby was born, she

1 would cover Jane up, offering privacy for her genitalia, and then let the pediatrics team go to the  
2 warmer to examine the baby. No one explained why an entire pediatrics team was needed, how large  
3 the team would be, who these individuals were, and what role each person would play.

4 136. Defendant Correa left the room again and told Jane again to keep pushing without her.  
5 Defendant Garrett again did nothing but count to five when Jane tried to push through contractions by  
6 herself. Jane continued to push again just for a couple of minutes with no support or direction, lying on  
7 her back, with only her husband helping her. All of this, Jane felt, was highly uncomfortable for Jane  
8 and not effective at all.

9 137. Defendant Correa left the room again and told Jane to keep pushing. Soon after, while  
10 Jane was pushing—still lying on her back with her legs spread wide open—a new clinical team made  
11 up of people whom Jane had never met barged into the room. Without any warning, this team marched  
12 past the curtain and straight to the front of Jane’s bed. (Of note, no one ever asked for permission to  
13 come into the room and walk past the curtain. The curtain was simply moved out of the way, and it  
14 never really impeded the flow of foot traffic. It was simply decorative.) This team assembled between  
15 her legs, standing there as Jane was trying to push on her own. Jane was alarmed. She became very  
16 anxious. Thoughts raced through her mind: What were they doing in the room? Why were they there?  
17 Why were they coming toward her, and what were they going to do to her?

18 138. This new clinical team included a new nurse, **Doe Defendant #1**, a new midwife, **Doe**  
19 **Defendant #2**, who was a woman with blond, curly hair, and obstetrician **Amita Kachru, MD**.  
20 Defendant Kachru stated that they were the new team and that they would “take over now.” No one  
21 explained to Jane or John what was going on, and it was perplexing because the name of the attending  
22 obstetrician on the dry-erase board in the birthing suite was **Anna Kogan, MD**, which meant that  
23 Defendant Kogan, who never even introduced herself to Jane or engaged in any history or physical  
24 exam, was supposed to be caring for Jane and overseeing the midwives. The tension in the room rose.  
25 Defendant Kachru then announced that they were going to do a C-section “now.” Jane was panicking.  
26 She said, “What? Why? I don’t want this!” She was in acute and severe distress. As the team moved  
27 toward Jane’s bed, Jane believed that they were going to take her, without her consent, to the operating  
28 room. Jane’s panic intensified. Defendant Kachru stated that Jane had developed a slight fever and that

1 the baby’s heartrate had increased. Defendant Kachru did not explain why these findings, even if true,  
2 were indications for a C-section. She did not examine Jane. She did not offer any alternatives. There  
3 was no discussion. It was an ultimatum.

4 139. As the team was about to move the bed, Jane said, “Oh no! I don’t want this!” Jane  
5 looked for Defendant Correa, as perhaps she could explain that Jane had only been pushing for a  
6 relatively short amount of time, and that she really had been pushing alone, without midwifery  
7 support, because Defendant Correa was in and out of the room. She also wanted Defendant Correa to  
8 tell this team about their agreement that any new Sutter Health personnel would remain behind the  
9 curtain until after the baby was born and after Defendant Correa covered up Jane’s genitalia. But  
10 Defendant Correa had disappeared.

11 **5. Jane says “no”—again and again and again—but is restrained and**  
12 **subjected to violence, including sexual violence by an unknown male**

13 140. Jane’s contractions continued, and she wanted to keep pushing. Jane was still lying on  
14 her back, still mostly naked, now begging to have more time to push her baby out. Defendant Kachru  
15 just stated, matter-of-factly, “Two hours are up.” Here again, no one explained to Jane why two hours  
16 was the allotted time or how that was an evidence-based guideline. In fact, it is not an evidence-based  
17 guideline. Jane told Defendant Kachru that she wanted to continue pushing.

18 141. At this point, the situation began to spiral out of control. Jane’s already threadbare  
19 sense of autonomy and dignity was dwindling ominously. As her contractions continued, Jane pleaded  
20 for time to push the baby out. Those contractions continued while she advocated for herself and her  
21 baby. Jane had the distinct feeling in her body that her baby was close to being born, and she said as  
22 much in no uncertain terms to Defendant Kachru. Jane also told Defendant Kachru that she wanted to  
23 keep trying to give birth vaginally. Defendant Kachru said that the only way Jane could avoid a C-  
24 section was to have a vacuum-assisted delivery.

25 142. Jane said, “No.”

26 143. Jane pleaded for more time to push. She explained to Defendant Kachru that she still  
27 had the power and energy to keep pushing and that she was not exhausted or tired. Jane was an  
28 athlete—a collegiate-level swimmer with a national rank. She knew her body well. Jane told

1 Defendant Kachru, again, that she had the feeling in her body that her baby was close to being born,  
2 that it might not take long at all, and that she was left without midwifery support for pushing for quite  
3 a long time. The bargaining and debating and begging continued. Jane tried so hard to prevent  
4 Defendant Kachru from operating on her or moving forward with an instrumental delivery, all while  
5 being on her back in a totally exposed position and with three or four staff people whom she had never  
6 met just watching her, saying nothing.

7 144. The conversation went in circles. Jane pleaded over and over and over again for more  
8 time. Defendant Kachru stated, “We want to do a C-section now.” Jane said, “No! I don’t want this!  
9 Why?” Defendant Kachru kept saying, “Time is up.” The Does are informed and believe that less than  
10 two hours had gone by. Jane still had no idea why the baby’s heartrate being “up,” as Defendant  
11 Kachru had stated, meant that Jane must have a C-section to help the baby. Jane felt strong. Even with  
12 the epidural, Jane had control over her legs and was not numb. But no one helped Jane. No midwife,  
13 no nurse, no staff person—no one—listened to her pleas, helped her get off of her back, or honored her  
14 clearly stated “no.”

15 145. Jane recalls Defendant Kachru stating, “We will give you one last chance to avoid a C-  
16 section, which is a vacuum-assisted delivery.” Again, Jane said, “No.” Defendant Kachru made her  
17 power over the situation clear. Jane recalls Defendant Kachru stating, “It’s going to be either a C-  
18 section or a vacuum-assisted delivery.” Jane said, “No! I do not want this!” Jane recalls Defendant  
19 Kachru replying, “The vacuum is your only last chance or we will do a C-section—so do you want the  
20 vacuum?” Again, Jane said, “I do not want this!”

21 146. Someone performed an ultrasound on Jane. Defendant Kachru called the pediatrics  
22 team into the room. Jane stated that she wanted privacy and that she and Defendant Correa had agreed  
23 to a plan for privacy. Defendant Kachru was dismissive, saying that the most she could do was to ask  
24 the team to stay behind the baby warming station, which was next to Jane’s bed. When Jane repeated  
25 that she didn’t want this, Defendant Kachru said that the pediatrics team could look away from the  
26 delivery. Jane told her that if it was absolutely necessary, then a pediatrician could enter the room  
27 before the birth, but only the pediatrician. Everyone else could wait inside the room but behind the  
28 curtain. The distance between the curtain and the baby warmer was exceedingly short. Defendant

1 Kachru said nothing. Jane asked, specifically, whether it would be a pediatrician only or if there would  
2 be more people. Jane recalls Defendant Kachru saying that she didn't know who the pediatrician on  
3 duty was, which didn't answer Jane's question.

4 147. Still naked from the waist down and feeling tremendous pressure and vulnerability,  
5 Jane repeated once again, "No male person unless it's the pediatrician." Defendant Kachru did not  
6 respond. No one spoke to Jane, discussed anything about choices for her and her baby, acknowledged  
7 that she had declined the surgical and instrumental options, or paid any attention to her needs or  
8 choices.

9 148. All of a sudden, the lights in the room were turned on. A previously dimmed space  
10 became very, very bright. Blindingly bright. Glaringly bright. Jane was still on her back—where she  
11 had been for the vast majority of the time because Defendant Correa and Defendant Garrett would not  
12 support her in any other pushing position. No one expressed concern about the position of Jane's body  
13 or the risks that remaining in that position for an extended period of time posed to Jane and the baby.  
14 No one helped Jane move off of her back, even to her side, while the instruments for the vacuum  
15 delivery were being readied.

16 149. The supposedly private and serene birthing suite where care was so personalized and  
17 caregivers so attentive that they might just fluff your pillow for you was now basically a circus.  
18 Unknown people filed into the room. None were introduced to Jane. None introduced themselves to  
19 Jane. None stayed behind the curtain as promised. They infiltrated the space, jockeying for position by  
20 the baby warmer. They ignored the privacy curtain, just inviting themselves into the room and  
21 breezing past it. Jane's vagina was pointed toward the door, in full view of everyone who stepped past  
22 the curtain.

23 150. Then, all at once, Doe Defendant #1 and Doe Defendant #2 grabbed Jane's ankles,  
24 pushed her legs back, and put her legs in the stirrups. They held her ankles to the point of restraint,  
25 affixing her legs in the stirrups. Jane was unable to move. Without permission, they took her socks off.  
26 Jane's last shred of privacy and dignity was gone.

27 151. Defendant Kachru sat in between Jane's legs. Jane was extremely uncomfortable, both  
28 physically and emotionally. She was in a state of acute stress and panic, exponentially more panicked



1 than before. She feared for her life and the life of her baby. Then Defendant Kachru pushed a vacuum  
2 extractor up into Jane’s vagina. Jane felt her perineum twitch, following by a burning sensation. It was  
3 unbearably painful, and Jane did not consent to any of it.

4 152. While restrained in that position, and while Defendant Kachru was doing something to  
5 her vagina, without any notice or warning, Jane noticed even more people filing into the room. They  
6 were all females, and they came in discreetly, staying close to the walls until stopping at the corner  
7 where the baby’s warming station was positioned. No one introduced them to her.

8 153. And then it happened. The very thing that Jane feared most of all. **Doe Defendant #3**  
9 (**“The Man”**), an unknown male who wore Sutter Health attire, entered the room. Instead of staying  
10 behind the curtain or even scurrying quietly to the baby warmer, The Man strolled past the foot of  
11 Jane’s bed. When he saw her wide-open legs, he paused to stare at her exposed vagina. No one  
12 introduced him, and he did not introduce himself. At no point during or after the birth did anyone  
13 explain who The Man was or why he had entered the room. He positioned himself next to Jane’s bed,  
14 on the left, behind her husband, John, and by her shoulder. He had no clinical reason to be anywhere  
15 near Jane, and, as it turned out, her played no clinical role in either her or the baby’s care.

16 154. It is difficult to describe how unbelievably distressed Jane was by The Man’s presence.  
17 She yelled, “Oh no, I do not want this!” No one responded. Defendant Kachru, Defendant Garrett, and  
18 anyone else in the room could have done any number of things to protect Jane’s dignity and privacy,  
19 including telling The Man to leave or just stay behind the curtain, as promised and in line with the  
20 most important thing that Jane conveyed to Sutter Health and its personnel throughout her pregnancy:

21 **PRIVACY.**

22 155. But nobody told The Man to leave. No one told him to get behind the curtain. Instead,  
23 Defendant Garrett, who was on the upper right side of Jane’s bed, without Jane’s consent, put a towel  
24 over the upper half of Jane’s face, covering her eyes so she could no longer see. Not only was Jane  
25 physically restrained and stranded on her back, but she was now rendered blind. Doe Defendant #1  
26 and Doe Defendant #2, who were still restraining Jane by the ankles, then pushed Jane’s legs far, far  
27 back toward her shoulders and up past her ears. No one asked for Jane’s consent, and she did not give  
28 anyone permission to move her body in this way. She had said “no” to all of this over and over again.

1           156. John was instructed to push against Jane’s head and her back. John felt tremendous  
2 pressure to obey. He felt numb. Jane’s body was bent into a U-shape. Her legs were in a V-shape. The  
3 staff shouted very loudly at her to “push,” which she did, still trying obey and to function in order  
4 avoid the threatened C-section. All the while, Jane knew The Man was near her. She had never felt  
5 more humiliated in her entire life. Jane felt that her and her baby’s lives were in danger. She wanted to  
6 disappear. Her mind had frozen, but she was noticing everything that was going on. Her stress level  
7 was beyond extreme. She was just trying to function.

8           157. After a significant period of time had passed since she had entered the room, Defendant  
9 Kachru yanked the vacuum, and the baby, hard. With her first yank, the baby’s head came out. In that  
10 moment, Defendant Garrett removed the towel that was covering Jane’s eyes. Jane was blinded by the  
11 glaring lights. Jane saw all those people looking at her while she was lying on her back, mostly naked,  
12 totally exposed, and restrained. There were three people by the baby-warming station. The Man was  
13 right near John, next to her head on her left side. Doe Defendant #1 and Doe Defendant #2 were still  
14 holding her legs tightly by the ankles in the stirrups. Defendant Kachru was sitting in between Jane’s  
15 legs, and Defendant Garrett was still next to her head on the right side. There were at least eight Sutter  
16 Health personnel in the room. Jane had no idea why there were required to be there and why all of  
17 them ignored her when she said, over and over, “No.”

18           158. With her legs still in a V-shape and her body in a curved U-shape, people shouted very  
19 loudly at Jane to “push,” which she did. With the vacuum, Defendant Kachru yanked again—so hard  
20 that Jane felt her vagina being torn apart. The pain was exquisite. It was so painful that it made her  
21 scream. That scream was so jarring that it startled the onlookers. Jane looked down between her legs  
22 and saw her baby fly out of her across the table.

23           159. The baby had been born. The baby was 7 pounds, 1 ounce. It was 7:08 p.m. on October  
24 21, 2020.

25           160. The baby was taken to the warmer and examined. John was asked to go to the baby-  
26 warming station. He did, but he walked back and forth between the baby and Jane. Jane needed  
27 support. What had just happened was horrific. She felt dehumanized. She hoped that, at least now  
28 because the baby was born, the circumstances would improve. But they didn’t. She had to keep her

1 legs in those stirrups, with her vagina completely exposed to everybody in the room. Sutter Health  
2 personnel kept going in and out of the room without any warning or notice. Jane felt like she was in a  
3 busy, brightly lit hotel lobby with a revolving door. She saw how all those people did, in fact, look at  
4 her bare vagina. And more pain and humiliations were yet to come.

5 161. Defendant Kachru forcibly removed Jane's placenta. Without saying anything,  
6 Defendant Kachru pressed on Jane's abdomen many times and then just said, "Placenta's out." Jane  
7 did not consent to that procedure. Defendant Kachru did not tell Jane what she was doing, and she did  
8 not ask for permission. To Jane, it seemed like Defendant Kachru was moving as quickly as possible  
9 through a checklist of tasks. Then, very forcefully and, again, without telling Jane or asking for  
10 consent, Defendant Kachru inserted a catheter into Jane's urethra. That procedure was extremely  
11 painful, and Jane told her to stop. Everyone in the room looked at Jane, but no one helped her or took  
12 action to stop what was going on. The pain that Jane felt with the catheter insertion is present to this  
13 day. Jane did not consent to any of these medical interventions.

14 162. Then Defendant Kachru rammed an injection into Jane's pelvis. Then she started  
15 suturing. Jane did not consent these procedures. Jane felt a very sharp, burning pain, and she told  
16 Defendant Kachru about this pain. Defendant Kachru did not respond. Jane kept asking about this  
17 pain, again and again, because it was so intense. Jane asked, "Why is this so painful?" Again, Jane  
18 noticed how people in the room looked at her. Defendant Kachru kept suturing and did not respond to  
19 Jane. But Jane kept asking what was happening. She cried, "Why is this so painful?" Jane was  
20 desperate. She said, "It is so painful! Why are you doing this?" She pointed to the area in question  
21 with her finger. But Defendant Kachru did not stop and, referring to the location that Jane had  
22 identified, said, "I'm not doing anything there." She continued suturing. There was no pain treatment  
23 or further assessment of that particular pain. Jane just had to endure it.

24 163. Then Defendant Kachru asked Jane if she wanted an IUD. At a prenatal visit, Jane had  
25 already told Dr. Pemberton that she did not want an IUD. She felt uncomfortable having to decline  
26 again, especially after just giving birth under horrific circumstances that felt life-threatening to her,  
27 where she was still totally exposed to an audience. It was another disappointing reminder that  
28 Defendant Kachru had not read anything about her, even though there were computers available, even

1 in the room, that were supposed to allow everyone to stay up to date on the patient's history and care.  
2 Jane declined the IUD.

3 164. The Man remained in the room. Aside from John, he was the only male in the room. He  
4 had taken no action that indicated that he had any role or that he served any purpose. Suddenly, while  
5 Defendant Kachru was addressing Jane's vaginal lacerations, Jane watched The Man reposition  
6 himself. Inexplicably, he began moving from Jane's shoulder toward her feet. John was by the baby  
7 warmer, attending to his newborn. Jane's legs were still in the stirrups and spread wide. She was still  
8 naked from below her breasts. The Man walked along the left side of her body. He was very close to  
9 her bed. Then he paused as he neared the stirrups.

10 165. And then the most unthinkable thing happened. In a hospital. By a Sutter Health  
11 employee. To a woman who had given birth, by unconsented vacuum extraction of her baby, moments  
12 earlier. ***Jane felt The Man's hand press into her left buttock.*** She vividly remembers the feeling. She  
13 remembers the shape of his hand. She remembers that it was warm. That contact was not in the area  
14 where Defendant Kachru was working, and she was working with both hands and wearing gloves. No  
15 one else was close to the bed. Jane did not consent to The Man touching her body. Jane had not  
16 consented to his presence.

17 166. Then Jane saw The Man bend toward Defendant Kachru and turn his head to take a  
18 long look between Jane's legs. He had a complete frontal view of Jane's naked body and her postnatal  
19 vagina, legs splayed sideways in stirrups. His eyes widened, and Jane saw him grimace in disgust.

20 167. Defendant Kachru turned her head and looked at The Man. She seemed surprised. They  
21 did not speak. The Man looked startled when he noticed Defendant Kachru look at him, and he quickly  
22 left the room. After he left, Defendant Kachru looked up at Jane. In a gesture of total resignation and  
23 horror, Jane laid her head back on the bed. Her legs were still in the stirrups. At some point, Defendant  
24 Kachru removed the catheter and left. Jane was left to wonder why no one covered her up after the  
25 birth, why there was such a rush to suture, why all of these people were still in the room, and who all  
26 of those people were. No one followed up with Jane about these events.

27 168. The Does stayed in that birthing suite for several hours because the recovery rooms  
28 were occupied. But the humiliations continued. Jane said that she needed to urinate. She wanted to use

1 the private bathroom, and she said that she felt physically able to do so. Jane said that she felt  
2 sensation in her legs and that she just needed support to walk to the bathroom. **Doe Defendant #4**, a  
3 nurse, told Jane that she was not allowed to leave the bed and that she had to urinate into a bed pan.  
4 Jane could not leave the bed without assistance, so, once again, she had no choice about her privacy,  
5 her autonomy, or her location. Then another Defendant, **Doe Defendant #5**, without telling Jane or  
6 asking for permission, just pressed on Jane’s abdomen. Jane did not consent to having Doe Defendant  
7 #5 press on her abdomen. Everyone in the room watched.

8 169. After several hours, Jane was moved to a recovery room. There, in the immediate post-  
9 partum period, **Mabelba Ogundele, RN**, kept telling Jane that she had to display her vagina. She  
10 removed Jane’s blanket without consent, and Jane feared that she would touch her body. Defendant  
11 Ogundele’s role and clinical reasons for this observation were never explained. She said things like,  
12 “Show me your vagina,” and “I want to see your vagina.” Jane had to obey, and she feared what new  
13 violence would be visited upon her if she didn’t.

14 170. Eventually, the Does and their baby went home.

### 15 C. Jane and John’s Injuries Emerge

16 171. Soon after the birth, Jane started to experience flashbacks of The Man and other events  
17 surrounding the birth. Jane sought professional help. She was diagnosed with acute stress reaction and  
18 Postpartum Post-Traumatic Stress Disorder (“Postpartum PTSD”). Postpartum PTSD is now part of  
19 her daily reality, and it is unrelenting.

20 172. Jane was thoroughly traumatized by Defendant Sutter Health’s betrayal. Jane was  
21 uncared for, abandoned, sent home, left in pain, not supported, required to submit to unnecessary  
22 medical interventions to speed up her labor, not offered evidence-based or midwifery care, held  
23 against her will, subjected to strangers touching her body and sticking things—from their fingers to a  
24 vacuum—into her vagina without consent. She was subjected to threats of major abdominal surgery,  
25 forced to stay on her back for a prolonged period of time, not allowed to be in positions that were  
26 promised to her. Her legs were splayed and held in stirrups against her will, then shoved up to her ears,  
27 with Sutter Health personnel gazing at her naked body and her genitalia and never so much as offering  
28 even a sheet to give her the smallest vestige of privacy. A vacuum was used to extract her baby from

1 her body without her consent, and then a man who played no clinical role at all pressed his palm into  
2 her naked buttock. While stories of obstetric violence are always shocking, Jane’s story marks a new  
3 low for the field. Perhaps even more shocking, Jane’s story involves midwifery violence and breach of  
4 nearly every promise that Defendant Sutter Health and its personnel made about her and her baby’s  
5 care.

6 173. Jane has been and remains in therapy for Postpartum PTSD. She has symptoms every  
7 day. The Man haunts her. She cannot forget his presence, his actions, his eyes, and his touch. She is  
8 also haunted by the way that she was mistreated and utterly disregarded by all of the Defendants and  
9 the Sutter Health system during the birth of her first baby. These symptoms include but are not limited  
10 to flashbacks that enter her mind at entirely unpredictable times. Those flashbacks take several forms.  
11 They include pictures appearing in her mind, like a slideshow that she tries to unsee. They also include  
12 more intrusive flashbacks where her body relives the feelings of terror and fear that she experienced in  
13 the moment. She even catches herself yelling, “Oh no, I do not want this!” Her mind is busy with these  
14 battles all day, which impacts her ability to live life in any normal way. She cannot have a social life  
15 because she fears that these flashbacks will occur, and she cannot predict the kind of flashback, the  
16 duration of the flashback, or the intensity of the flashback. Sometimes she just freezes and cannot do  
17 anything. She cannot sleep normally, and she needs to stay up until 3 or 4 a.m. to tire herself out so she  
18 will collapse from exhaustion.

19 174. Jane’s Postpartum PTSD is also triggered by everyday objects. Recall that, right after  
20 the bright lights in the birthing suite were switched on without warning, her legs were pinned back, the  
21 threat of a C-section loomed, the vacuum was used, The Man’s gaze washed over her—over all of her,  
22 exactly as she had feared and in the most profound violation of her privacy. Predictably, lights are now  
23 a trigger for her Postpartum PTSD symptoms. Many kinds of lights—car headlights, ceiling lights,  
24 streetlights, and even light switches. She tries to avoid them, but they are everywhere.

25 175. Jane’s Postpartum PTSD symptoms are also triggered by seeing bare legs. She dislikes  
26 going out of her house because she fears seeing people’s legs, which is problematic in California  
27 because people wear shorts, short skirts, and the like all year long. She tries to look away from people  
28 if she needs to leave the house. Jane has been unable to change her baby’s diapers since his birth

1 because her flashbacks are triggered when she sees his legs. John has done nearly all of the diaper  
2 changes for the baby’s entire life. There were 10 or so diaper changes that Jane tried before she  
3 realized that she could not do them without an onslaught of flashbacks.

4 176. The flashbacks are the worst when Jane sees her own bare legs. As previously  
5 mentioned, Jane was a competitive swimmer. Nowadays, when she swims (which she can do  
6 somewhat even though the physical pain, described below, persists), she wears a swimsuit that  
7 completely covers her legs. When she gets dressed, she tries to avoid seeing her legs and puts on  
8 tights—black opaque tights—to cover them up. She then wears a skirt over the tights. On hot days, she  
9 might wear a very long skirt without tights to give herself a break from the heat. But her legs must be  
10 covered. Because every time she takes a shower, gets dressed, uses the bathroom, or engages in any  
11 activity where she might see her legs, those legs trigger flashbacks to what Sutter Health and its  
12 personnel did to her at the CPMC Birth Center. To Jane and John, it was not a birth center. It was a  
13 detention and torture center.

14 177. Jane tries to hide what is going on in her mind, but it is difficult. It takes a significant  
15 amount of energy to try to keep her mind in check, and the unpredictable nature of the flashbacks  
16 contributes to the difficulty. Jane is keenly aware that this new reality is affecting her relationships to  
17 other people, so she has avoided socializing with other people since the incident, and that this new  
18 reality is especially affecting her marriage for the worse. Jane’s distress is there, but she has to pretend  
19 and act as if everything is fine. It has become a job. She is constantly trying to change what happened  
20 to her, trying to change the outcome, and she relives the horror every single day.

21 178. In short, for Jane, normal life is impossible. And that has had an indescribable effect on  
22 her life. As John puts it, “The impact of PTSD on our lives has been devastating.” There is no cure for  
23 Postpartum PTSD, and it affects all aspects of a person’s life, including health and life span.

24 179. Jane has been diagnosed with massive injuries—pudendal nerve neuralgia, vaginal  
25 burning, pelvic floor dysfunction, and muscle spasticity. Regarding the nerve pain, it has been internal  
26 and external, and it has radiated down her left leg, through her tailbone, and to her lower back,  
27 localizing predominantly on the left side. Plaintiff cannot do activities in the way that they were done  
28 before the nerve injury. The pain from the injury can flare up unpredictably, intermittently, and

1 randomly, and the flares are additional triggers for the PP-PTSD. She remains on alert for pain, which,  
2 in turn, serves as a stark reminder of her trauma. The pain from the injury can flare up unpredictably,  
3 intermittently, and randomly, and the flares are additional triggers for the PP-PTSD. When there is a  
4 PP-PTSD trigger, Plaintiff must move her mind away from the PP-PTSD images and flashbacks,  
5 which requires enormous effort, energy, and attention. She must also cope with the bodily sensations  
6 that are caused by the PP-PTSD. Because the nerve injury can flare at any time, and that flare triggers  
7 the mental injury, Plaintiff lives in a vicious cycle of physical and emotional distress. It is like being  
8 trapped in your own mind and body, and it impacts every aspect of Plaintiff's life. There is no cure for  
9 Jane's physical injuries.

10 180. The PP-PTSD also affects Plaintiff's physical body. She feels the fear, shame,  
11 humiliation, helplessness, and restraint in her body that she felt at the time throughout the incident.  
12 The exposure of her vagina, displayed with her legs spread and held back, with the light from above  
13 directed toward her vagina like a spotlight, with the foot of the bed pointed toward the door (and not  
14 the wall or anywhere but the door), to all who were present, without any semblance of privacy or  
15 concern for her privacy, is always with her. And then, on top of all of this trauma is what Doe #3 did  
16 to Plaintiff. It is a life-threatening humiliation, helplessness, shame, alarm, fear—all combined—that is  
17 with her and in her all the time. Her body is in the place of people staring at her, putting their hands  
18 and objects inside of her genitals, and restraining her by very tightly holding her legs back and spread  
19 widely, and it manifests in her body as tension, stress, alarm, fear, and dehumanization. This PP-PTSD  
20 also manifests as pain in her urethra and perineum.

21 181. Because of these horrific physical and psychological injuries, Jane has not had sexual  
22 intercourse with John since the birth. The Does had enjoyed healthy sexual relations prior to the  
23 incident, and that is now impossible due to and since the incident.

24 182. Jane is a completely transformed and debilitated shadow of her former self. John has  
25 suffered the loss of the wife he knew, as well as his own psychological trauma. As a result of what he  
26 witnessed and experienced at Sutter Health, and now living with the aftermath, John suffers from  
27 anxiety and depression.

28 183. The Does relied on Sutter Health's representations, from the public to the private, from



1 the YouTube videos, website pages, and social media posts to its handout about the facility to the  
2 responses that Sutter Health staff gave to Jane’s thoughtful questions, throughout her pregnancy,  
3 including the labor and delivery. They trusted what Sutter Health and its personnel told them, and they  
4 made choices based on those representations. They were betrayed, abused, and discarded. At no point  
5 was Jane offered midwifery care. No midwife stayed with her. They were in and out of the room. Jane  
6 was given medication and told that her labor needed to be sped up. She was not given any reason why.  
7 And then she was subjected to violence—obstetric, midwifery, gender-based, and sexual violence.

8 184. The great tragedy here is that the birth of their baby could have been the most joyous  
9 experience of the Does’ lives. As Anna Altshuler, MD, Medical Director of the Women’s Center at  
10 CPMC Mission Bernal, says in one of Sutter Health’s YouTube videos, “Birth is an exciting,  
11 emotional, meaningful event, so we want to celebrate and champion it[.]”<sup>25</sup> Jane remembers seeing  
12 that video, and Dr. Altshuler’s words impacted her decision to choose Sutter Health. There were so  
13 many choices; why wouldn’t she choose a place that professed such profound respect for birth and  
14 reverence for the birthing individual? Certainly, the birth of Jane and John’s baby could have been  
15 exciting, emotional, and meaningful. But it wasn’t. It was impersonal. It was cruel. It was traumatic. It  
16 was damaging. It was a lie. From the moment the Does arrived, the environment was hostile and cold,  
17 literally and figuratively. The caregivers were anything but givers of care. The Does’ birth is perhaps  
18 best characterized by precisely no evidence-based care, no midwifery care, and a theme of no consent,  
19 topped off by ongoing threats, a grotesque use of force, and sexual abuse. It left them with severe  
20 injuries that will be with them for the rest of their lives. It is shameful. And it was entirely  
21 unnecessary.

22 185. What Sutter Health served up was little more than a conveyor-belt experience, prepped  
23 and packaged on a fixed and inflexible schedule of an institutional assembly line, with resulting  
24 foreseeable harm. Informed consent and informed refusal were illusory—nothing more than a hollow  
25 hope. Their requests and pleas were ignored. Midwifery support was a sham. They were abandoned,  
26 and the “care” that they received came in the form of bargains and threats, with none of it even  
27 vaguely resembling the support that the CPMC Birth Center promises to the public generally or  
28

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<sup>25</sup> Available at <https://www.youtube.com/watch?v=k4K1NqAURAY>.

1 promised to the Does specifically. All this in a hospital that holds itself out as a beacon of birth care  
2 and made specific assurances throughout the course of Jane’s pregnancy—and even during her labor—  
3 that her rights to self-determination, to privacy, and to consent would remain intact. To the contrary,  
4 Sutter Health and its personnel ran roughshod over Jane Doe, damaging her body, making her fear for  
5 her life and the life of her baby, invading her privacy, taking advantage of her in what may very well  
6 have been the vulnerable moment of her life, leaving nothing but damage—lasting damage, both  
7 physical and psychological—in their wake. And from people and an institution that are supposed to do  
8 no harm.

9 186. When recounting her ordeal at the CPMC Birth Center, Jane gets teary and has to  
10 pause. John rubs her back. It is difficult for her find the right words to capture what happened to her.  
11 Then she says, quite firmly, “I feel like it was a gang rape, and everyone in the room from Sutter  
12 Health contributed to that.”

13 **IV. VIOLATIONS OF LAW ALLEGED**

14 **FIRST CAUSE OF ACTION**

15 **FRAUDULENT DECEIT (CAL. CIV. CODE § 1709 et seq.)**

16 **BY PLAINTIFFS AGAINST SUTTER HEALTH & AMITA KACHRU, MD**

17 187. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
18 preceding paragraphs, inclusive.

19 188. **Misrepresentation.** Both publicly and privately, Defendant Sutter Health, its agents,  
20 ostensible agents, and employees (collectively, “Sutter Health System”) made representations that  
21 important facts were true that were actually false, concealed or failed to disclose facts, and/or made  
22 promises with no intent to perform them. Here is a non-exhaustive list of the Sutter Health’s  
23 misrepresentations that the Does relied on to their detriment, which occurred before the birth and, in  
24 some instances, are ongoing:

25 a) Birth plan statements by Defendant Sutter Health on which Jane and John relied:

- 26 i. “We believe in shared decision making[.]” There was no shared decision  
27 making. Jane was coerced and threatened. The situation was one of extreme  
28 duress.

- 1           ii.    “Our care team supports joint decision making for all medical care provided to  
2           you and your baby.” There was no joint decision making. Jane was threatened,  
3           over and over, with a C-section and a vacuum-assisted delivery. She did not  
4           consent to either, yet the baby was delivered by vacuum.
- 5           iii.    “We will help you understand your options so you can make informed  
6           decisions.” No one helped Jane understand her options.
- 7           iv.    “We believe a vaginal birth is best for low-risk pregnancies[.]” During Jane’s  
8           time at the Sutter Health CPMC Birth Center, Sutter Health Personnel did not  
9           behave in a way that evidences a belief in vaginal birth. They did not offer  
10          support that would maximize the possibility of vaginal birth.
- 11          v.    “Our care team will do everything we can to support you in delivering  
12          vaginally.” The Sutter Health clinicians and personnel who attended to Jane did  
13          not support vaginal delivery. They did not support her with midwifery care  
14          during labor. They did not support different pushing positions. They did not  
15          protect her privacy.
- 16          vi.    “We will help you identify effective methods to cope with labor.” The Sutter  
17          Health Personnel who attended to Jane did not help her identify effective  
18          methods to cope with labor. In fact, Defendant Evers sent her home in active  
19          labor.
- 20          vii.    “We will encourage you to move as much as you like while in labor (walking,  
21          standing, sitting, kneeling, using the birth ball, etc.), as long as it’s safe and  
22          possible.” The Sutter Health Personnel who attended to Jane did not encourage  
23          her to move as much as she liked while in labor. In fact, they prevented her  
24          from doing so.

25    b) Birth plan decisions by Jane and John Doe:

- 26          i.    “I prefer as few cervical exams as possible.” Jane was subjected to numerous  
27          cervical exams. These exams were unnecessary.
- 28          ii.    “I prefer to move around as much as possible or change positions to support my

1 labor progress.” Jane was not permitted to move around as much as possible or  
2 change positions to support her labor progress.

3 iii. “If labor is progressing normally I prefer to be patient and let it proceed on its  
4 own without medication to speed it up.” Jane was not permitted to let labor  
5 proceed on its own. She had to agree to speed up labor or be sent home.

6 iv. “I would prefer to wait for the amniotic membrane (bag of waters) to rupture  
7 spontaneously.” Defendant Brodeur ruptured Jane’s membranes without  
8 consent, and she did so with her fingers.

9 v. “I would like to attempt an unmedicated labor.” Jane had to accept medication  
10 during labor. She was threatened with being sent home during active labor, and,  
11 indeed, she was sent home during active labor even after she accepted  
12 medications that she did not want or need.

13 vi. “Please inform me to all methods available for coping with labor, so I can make  
14 the best decision.” No one informed Jane of all methods available for coping  
15 with labor so she could make the best decision. Midwifery-based support was  
16 unavailable to her.

17 vii. “I would like to have the option of using the shower to cope with labor.” Jane  
18 was never offered the option of using the shower to cope with labor.

19 viii. “I would like to push in a position of my choosing (squatting, kneeling, side  
20 laying, etc.)” Jane was not permitted to push in positions of her choosing, and  
21 she was held down on her back against her will for pushing.

22 ix. “Additional Preferences: **I DO NOT WANT ANY MALE CARE**  
23 **PROVIDERS!**” An unknown male who played no clinical role in Jane’s care or  
24 the baby’s care was allowed to enter the room, gape at her vagina, position  
25 himself by her body, and then sexually assault her in the moments after she had  
26 given birth.

27 c) Statements made in Sutter Health video available on YouTube and dated September 6,  
28 2018 that Jane viewed and relied on:

- 1                   i. Anna L. Altshuler, M.D.: “We’ve all made it our mission to take care of women  
2                   in a way that’s respectful of the patient and what they hope and what they want  
3                   for their pregnancy.” The Sutter Health System did not provide any care to Jane  
4                   that was respectful or what she hoped and wanted for her pregnancy, despite the  
5                   fact that she had communicated those hopes and wants throughout her  
6                   pregnancy and during her labor.
- 7                   ii. Anna L. Altshuler, M.D.: “[W]e really try to tailor the care for each patient,  
8                   spend the time to figure out what their preferences are, how we can meet those  
9                   needs, and just take it one patient at a time.” None of Jane’s needs were met,  
10                  and no one took the time to figure out her preferences. Defendant Correa pushed  
11                  her one-page birth plan back at her, and Defendant Garrett wrote “female  
12                  providers preferred” on the dry-erase board, which was not an accurate  
13                  representation of Jane’s requirement for birth. Given that four midwives were  
14                  involved in Jane’s ordeal, the Sutter Health System did not “just take it one  
15                  patient at a time.” They were dealing with multiple patients, like a train station  
16                  with too many cars and passengers.
- 17                  iii. Dr. Tirun A. Gopal, M.D., an obstetrician-gynecologist at the Women’s Center  
18                  at Mission Bernal, same video as noted above: “The Women’s Health Center  
19                  offers alternative complementary modalities to help cope with the pain, namely  
20                  ayurveda, a herb-based lifestyle-change dietary form of medicine. And also  
21                  acupuncture for pain during labor in people who are averse to taking an  
22                  epidural.” Jane was not offered acupuncture for pain during labor. In fact, the  
23                  only pain treatment that she was offered was pharmacologic, and she had  
24                  affirmatively declined such options throughout her pregnancy to provide what  
25                  she determined to be the safest and healthiest environment for her baby.
- 26                  d) Statements made in Sutter Health video available on YouTube and dated February 26,  
27                  2019, that Jane and John viewed and relied on:
- 28                  i. Narration: “Throughout your stay, there is always a team of highly trained and

1 experienced Defendants and staff available to support you through the laboring  
2 process.” The team that Jane interacted with was not highly trained and  
3 experienced, and they did not support her through the laboring process.

4 ii. Narration: “Our goal is to create a comfortable, safe, supportive environment for  
5 you to rest and relax as much as possible while you’re having your baby.” The  
6 Sutter Health System created an environment that was the antithesis of  
7 comfortable, safe and supportive. Instead of resting and relaxing, Jane was  
8 subjected to behaviors that were extremely stressful, a state that contributed to  
9 her iatrogenic injuries.

10 iii. Text overlay on wall: “Large Private Room.” The room was not private. People  
11 came in and out of the room, paying no attention to the door curtain, with no  
12 regard for Jane’s privacy. When the baby was extracted by vacuum from Jane’s  
13 body, there was at least eight Sutter Health personnel in the room, including a  
14 man who played no clinical role in anyone’s care and who proceeded to  
15 sexually assault Jane. There was nothing private about this room.

16 e) Statements made in Sutter Health video available on YouTube and dated August 23,  
17 2018 that Jane and John viewed and relied on:

18 i. Text overlay on wall: “Large Private Room.” As noted above, the room was not  
19 private.

20 ii. Narration: “Throughout your stay, there is always a team of highly trained and  
21 experienced midwives, physicians, nurses, and staff available to support you  
22 through the laboring process.” No team of highly trained and experienced  
23 midwives, physicians, nurses, and staff supported Jane through the laboring  
24 process. She was left in a freezing cold room under six blankets to labor alone,  
25 and the only time that Sutter Health personnel interacted with her was when  
26 they disturbed her and subjected her to unnecessary and non-evidence-based  
27 vaginal exams to check the status of her cervix. Further, a “highly trained and  
28 experienced” midwife would have been able to support Jane in many pushing

1 positions, not just the one that Defendant Correa could handle—on her back.

2 f) Sutter Health website, statement entitled, “Patient Rights and Responsibilities” that  
3 Jane and John viewed and relied on:

- 4 i. Patients have the right to “[c]onsiderate and respectful care, and to be made  
5 comfortable.” None of the “care” provided to Jane was considerate or  
6 respectful. She was never made comfortable. In fact, when she was in  
7 intractable pain and pleading for midwifery support, Defendant Evers refused to  
8 admit her to a birthing suite and sent her home. There is nothing considerate,  
9 respectful, or comfortable about being threatened with an unnecessary C-section  
10 and then subjected to a vacuum extraction delivery without consent.
- 11 ii. Patients have the right to “respect for your cultural, psychosocial, spiritual, and  
12 personal values, beliefs, and preferences.” Jane said no to the C-section and the  
13 vacuum numerous times. Sutter Health personnel, including Defendant Kachru,  
14 ignored that decision and did whatever they wanted to her body, whether or not  
15 she consented to it, whether or not it could lead to severe damage, and whether  
16 or not it was an evidence-based practice. That was not a practice that showed  
17 respect for Jane’s personal preferences. Jane had made it clear throughout her  
18 pregnancy and during her labor that she did not want to be on her back during  
19 pushing. Defendant Correa, Defendant Garrett, Defendant Kachru, and Does 1,  
20 2, 4, and 5 forced Jane to stay on her back for an extended period of time. That  
21 was not a practice that showed respect for Jane’s personal preferences.
- 22 iii. Patients have the right to “[k]now the name of the licensed healthcare  
23 practitioner acting within the scope of his or her professional licensure who has  
24 primary responsibility for coordinating your care, and the names and  
25 professional relationships of physicians and nonphysicians who will see you.”  
26 To this day, Jane does not know the names and professional relationships of all  
27 the nonphysicians, including The Man, who entered the birthing suite without  
28 her permission.

- 1           iv.    Patients have the right to “[r]eceive information about your health status,  
2           diagnosis, prognosis, course of treatment, prospects for recovery and outcomes  
3           of care (including unanticipated outcomes) in terms you can understand.” Jane  
4           did not receive information about her or her baby’s health status in terms she  
5           could understand as to why, all of a sudden, it was time for a C-section at all or  
6           in terms that she could understand. Jane did not receive information about why  
7           all of those pre-admission interventions, like the membrane sweep or the risks  
8           of Pitocin, in terms she could understand. She remains perplexed about the need  
9           for such interventions and why midwifery care was not offered as advertised.
- 10          v.    Patients “have the right to participate in ethical questions that arise in the course  
11          of your care, including issues of conflict resolution[.]” To the extent that  
12          declining a C-section and a vacuum extraction present an ethical question,  
13          which the Does do not concede, Jane was not a participant in those decisions,  
14          and there was no effort to discuss the conflict between Defendant Kachru and  
15          Jane. Defendant Kachru was the doctor. Defendant Kachru held the sharp  
16          instruments. Jane was mostly naked and entirely vulnerable. Jane did not  
17          participate in any conflict resolution about this matter. She just kept bargaining,  
18          pleading, and saying no.
- 19          vi.   Patients have the right to “[m]ake decisions regarding medical care[.]” Sutter  
20          Health personnel disregarded Jane’s decisions regarding her own medical care  
21          by forcing her to submit to a vacuum delivery, and they disregard the decision  
22          when she said “no” to the vacuum and Defendant Kachru did it anyway. No one  
23          stood up for Jane.
- 24          vii. Patients have the right to “[r]equest or refuse treatment, to the extent permitted  
25          by law.” The Sutter Health System did not respect Jane’s informed refusals of  
26          care, including but not limited to her refusal of a vacuum-assisted delivery of  
27          her baby. Jane’s decisions were permitted by law.
- 28          viii. Patients have the right to “[a]ppropriate assessment and management of your



1 pain, information about pain, pain relief measures and to participate in pain  
2 management decisions.” There was no appropriate assessment and management  
3 of Jane’s pain. Defendant Evers told Jane that she was not really in a lot of pain  
4 because she wasn’t moaning loudly enough. That is not an appropriate  
5 assessment of Jane’s pain. It was also not an appropriate management course to  
6 give Jane morphine as first-line pain support in a practice that professes to be  
7 expert in midwifery.

8 ix. Patients have the right to “[h]ave personal privacy respected. Case discussion,  
9 consultation, examination and treatment are confidential and should be  
10 conducted discreetly. You have the right to be told the reason for the presence  
11 of any individual. You have the right to have visitors leave prior to an  
12 examination and when treatment issues are being discussed. Privacy curtains  
13 will be used in semi-private rooms.” Jane’s personal privacy was not respected.  
14 There was nothing confidential about eight or more Sutter Health personnel in  
15 the room. Jane was not told about the reason for the presence of these  
16 individuals. Jane begged for the members of the pediatrics team to wait behind  
17 the curtain and enter the room after the baby was born. They didn’t.

18 x. Patients have the right to “[r]eceive care in a safe setting, free from mental,  
19 physical, sexual or verbal abuse and neglect, exploitation or harassment.” While  
20 in the second stage of labor, Jane felt extremely unsafe, and she was not free  
21 from mental, physical, sexual or verbal abuse and neglect, exploitation or  
22 harassment. Around the time that Defendant Kachru was threatening to forced  
23 Jane to submit to an unnecessary C-section and then used the vacuum on Jane  
24 without her consent, Jane felt like her life and the life of her baby were in  
25 danger. There was nothing safe about it. Jane was also sexually abused in the  
26 Sutter Health birthing suite.

27 xi. Patients have the right to “[b]e free from restraints and seclusion of any form  
28 used as a means of coercion, discipline, convenience or retaliation by staff.”

1 Doe Defendants 1 and 2 physically restrained Jane by holding her legs in place  
2 by the ankles and then shoving her legs up to her ears. Jane was not free from  
3 restraints. Defendant Correa and Defendant Garrett forced Jane to stay on her  
4 back for pushing because Defendant Correa couldn't see into Jane's vagina or  
5 feel Jane's contractions. These restraints were used as a means of convenience  
6 by the Sutter Health staff.

7 g) Sutter Health CPMC Mission Bernal Campus handout entitled, "Your Pregnancy:  
8 Mission Bernal Women's Clinic[.]" that Jane and John relied on:

- 9 i. "Midwives are experts in low risk and uncomplicated pregnancy and childbirth .  
10 . . . Everyone on our team collaborates to provide the safest and most complete  
11 care." The Sutter Health midwives that interacted with Jane did not display  
12 expertise in low-risk and uncomplicated childbirth. They behaved as if they  
13 knew nothing about midwifery care and, rather, behaved as if they were frazzled  
14 OB/GYN residents who have no time to sit with a woman during her labor.
- 15 ii. "It's essential to us that you and your family are active participants in making  
16 the decisions that will be both safest and most fulfilling for you." Jane was not  
17 an active participant in making decisions about her delivery. She declined the  
18 use of the vacuum. No one cared. The vacuum, along with the endless parade of  
19 stress, and forcing her to remain on her back led to a situation that was  
20 affirmatively not safest and most fulfilling. Jane is traumatized. She is also  
21 physically damaged. Those outcomes do not reflect safe and fulfilling care.

22 h) Defendant Sutter Health Mission Bernal Women's Clinic Facebook page that Jane and  
23 John viewed and relied on: Post stating, "Our team shares a philosophy of providing  
24 family-centered obstetric and gynecological care. In our collaborative care model,  
25 midwives and doctors work together to deliver evidence based, low intervention care."  
26 To the contrary. What Jane was subjected to was non-evidence based, high-intervention  
27 intrusions that were entirely unnecessary. It wasn't care at all, and it didn't match up  
28 with what the Sutter Health System represented its experience for birthing people to be.

1 Notably, adherence to a two-hour “clock” in Jane’s clinical situation was not evidence-  
2 based.

3 i) Two-page handout from Sutter Health CPMC on which Jane and John viewed and  
4 relied:

- 5 i. “Our nurse-midwives are trained in labor support.” The Defendant nurse-  
6 midwives demonstrated no training in labor support.
- 7 ii. “[N]urses can listen to the baby periodically to accommodate freedom of  
8 positions and movement.” The named CNM Defendants did not accommodate  
9 freedom of positions and movement, and neither did Defendant Kachru.
- 10 iii. “Our Midwifery Program offers you access to highly trained nurse-midwives[.]”  
11 Nothing about the behavior of the Defendant nurse-midwives or Doe Defendant  
12 #2, and possibly additional Doe Defendants, suggest that they were highly  
13 trained.
- 14 iv. “We are the only prenatal service in San Francisco that offers midwifery care  
15 for all our patients 24 hours a day, seven days per week.” Jane did not receive  
16 midwifery care. These people call themselves midwives, but they do not behave  
17 like midwives who follow ACNM standards and guidelines at all.
- 18 v. “Respectful and welcoming care to all patients;” “Support” that it is  
19 “Nonjudgmental” and “Respectful;” a goal of “optimizing your health for future  
20 pregnancy.” None of the Sutter Health System’s care was respectful or  
21 welcoming. In fact, Jane felt unwelcome from the start. There was no support,  
22 and there was nothing respectful about the nurses’, nurse-midwives’,  
23 obstetricians’, and staff’s behavior, including Defendant Ogundele, at all.

24 j) Information conveyed during Jane’s prenatal course of care.

- 25 i. The Does were told via phone by an individual working at the Mission Bernal  
26 Women’s Clinic that the only way to guarantee that Jane could have her birth at  
27 a Sutter Health Birth Center was by agreeing to use the Mission Bernal  
28 Women’s Clinic for prenatal care. Jane did not want to roll the dice while she

1 was in labor and needing to birth and just cross her fingers and hope for  
2 admission to one of Sutter Health’s birthing suites. Like any reasonable person  
3 who would be experiencing labor, Jane wanted a firm about the plan of care and  
4 a guarantee place of care; she wanted the guarantee that she was told was only  
5 available by using Mission Bernal Women’s Clinic for her prenatal care. She  
6 knew that other health care providers were available to her for that care, but she  
7 was enticed by and relied on the various representations about the birthing suite  
8 and the care that came with it. Notably, the advertising about the birthing suite  
9 was not just for something like a hotel room—a place to rent out for personal  
10 use—it was for a complete birthing experience with certain health care  
11 providers and a particular mode of care.

12 ii. Also during Jane’s prenatal course, the Does relied on the representations and  
13 promises made by Mission Bernal Women’s Clinic personnel, including the  
14 named obstetric and midwifery Defendants, about privacy, freedom of  
15 movement and support for pushing positions of her choice, and evidence-based,  
16 low-intervention, expert care, like who would attend to her during her labor and  
17 birth (including but not limited to her requirement of no men other than her  
18 husband in the room without her express permission), how they would attend to  
19 her, what she could expect during the process, when admission and other  
20 milestones would occur, and where she would be throughout. The Does also  
21 relied on the representations made during the prenatal education classes,  
22 including but not limited to pushing positions.

23 iii. Further, during her prenatal course, the obstetrician and midwives reiterated the  
24 representations made to the public via the various Sutter Health website pages,  
25 handouts, social media channels, and the like about the evidence-based, low-  
26 intervention, and respectful brand of care that the Does could expect and would  
27 receive. Notably, Defendant Pemberton made specific representations about  
28 how she would interact with and care for Jane during her labor and delivery—

1 none of which actually came to pass.

2 k) Information conveyed during Jane’s perinatal and postnatal course.

3 i. Once Jane was finally admitted to the freezing cold birthing suite, the midwives  
4 and Defendant Garrett made various representations to her and John Doe about  
5 protecting her privacy, including but not limited to: keeping the curtain by the  
6 door drawn, by keeping men out of the space, keeping her body covered by a  
7 sheet or similar unless a portion of it needed to be exposed for a clinical reason,  
8 recovering that exposed body part when the clinical need had subsided, ensuring  
9 that any pediatrics team and/or other new personnel would wait behind the  
10 curtain until she had birthed the baby, and covering her body after the baby was  
11 born. Also, they all made representations to the Does about supporting Jane’s  
12 freedom of movement, including but not limited to encouraging and/or  
13 “allowing” her to be in a pushing position of her choice and like she had seen  
14 and had been discussed in the prenatal class. They also made representations to  
15 her about how her labor was progressing, expectations about vaginal delivery,  
16 and the health and well-being of the baby whom Jane had protected, cared for,  
17 and nurtured over the preceding nine months.

18 189. **Statements made by Defendant MDs and CNMs.** Plaintiffs are informed and believe  
19 that, in addition to Defendant Sutter Health, all named Defendant MDs and CNMs were responsible  
20 for the social media content of the Mission Bernal Women’s Clinic and that they endorsed, planned,  
21 wrote, edited, failed to correct or remove, allowed, and/or appeared quoted in social media content  
22 representing past and present facts pertaining to the care of pregnant patients and/or their births at the  
23 Mission Bernal Women’s Clinic social media sites and on the Sutter Health website. In addition to the  
24 messaging and promised being made over those channels that they do not personally appear in, the  
25 individual MDs and CNMs made misrepresentations by way of quotes personal to them. All of these  
26 Defendants hold themselves out to the public as experts in their respective fields of obstetrics,  
27 midwifery, and birth medicine. Social media posts for which Plaintiffs are informed and believe that  
28 the following Defendants are responsible are detailed above and discuss, for example, evidence-based

1 medicine, respectful care, empowering care, low-intervention care, personalized care, family-centered  
2 care, compassionate care, and the round-the-clock midwifery support that pregnant patients can expect  
3 if they choose Sutter Health and its clinics and facilities from an array of other birthing options. They  
4 also discuss the importance of respectful care and the efforts at the hospital to decrease C-section rates.  
5 They show the beauty of a supported birth, like women squatting outside of the bed to give birth, and a  
6 reasonable person would be left with the notion that such a beautiful birth was accessible to them and  
7 would be supported by the Defendants, too. That marketing does not mirror reality.

8 **a. Defendant Kogan**

- 9
- 10 • How: Via posts to social media on the Sutter Health Mission Bernal Women’s Clinic  
11 social sites including by not limited to her quote in the August 28, 2020, Instagram  
12 post, which states that CPMC has a “supportive and nurturing environment.” The  
13 CPMC environment was not supportive or nurturing for Jane Doe.
  - 14 • When: Prior to October 21, 2020, and ongoing. Defendant Kogan’s “Meet the  
15 Provider!” post is dated August 28, 2020.
  - 16 • Where: Sutter Health Mission Bernal Women’s Clinic social media channels; Sutter  
17 Health website.
  - 18 • To whom: The public, including the Does.
  - 19 • By what means: Written statements and video representations.

20 **b. Defendant Pemberton**

- 21 • How: Via posts to social media on the Sutter Health Mission Bernal Women’s Clinic  
22 social sites including by not limited to her quote Instagram posts in which she was  
23 quoted representing that Women’s Center is “inclusive” and “evidence-based,” that her  
24 personal goal is “to help my patients flourish[.]” and that her patients benefit from her  
25 and the Sutter Health Mission Bernal Women’s Clinic’s “low tech, high touch  
26 philosophy of care.” Plaintiffs are informed and believe that Defendant Pemberton also  
27 appeared at public meet and greets to discuss the “practice philosophy” of the Sutter  
28 Health Mission Bernal Women’s Clinic. Jane Doe did not experience inclusive or  
evidence-based care, and “low tech, high touch” options, like water therapy or birthing

1 balls, were not part of her care.

- 2 • When: Prior to October 21, 2020, and ongoing. Defendant Pemberton’s “Meet the  
3 Provider!” Instagram post is dated May 13, 2020.
- 4 • Where: Sutter Health Mission Bernal Women’s Clinic social media channels; Sutter  
5 Health website. Also during discussions with Jane Doe that took place at prenatal care  
6 appointments.
- 7 • To whom: The public, including the Does, and to Jane Doe in the prenatal care setting.
- 8 • By what means: Written statements and video representations.
- 9 • Further, during prenatal care visits, Defendant Pemberton made specific statements to  
10 Jane about the care that she would receive at the Sutter Health CPMC Birth Center—  
11 namely, that the care was evidence based, that midwifery support was available around  
12 the clock, that Jane’s privacy would be respected, that no men would be in the room  
13 when Jane gave birth, and Jane would be supported by the clinicians and staff to push  
14 in various positions that did not render her on her back. However, as detailed at length  
15 in this Complaint, those facts were not true, and Plaintiffs are informed and believe that  
16 Defendant Pemberton had no reasonable grounds for believing that the representations  
17 were true when she made them. Jane reasonably relied on those representations when  
18 continuing care with Sutter Health and deciding to come to its birth center, and those  
19 fraudulent statements were substantial factors in causing Jane’s Postpartum PTSD and  
20 pelvic nerve injury. Defendant Pemberton also failed to tell Jane that Sutter Health had  
21 a policy that laboring patients would not be admitted to the birth center until they were  
22 dilated to 6 centimeters, and it was not reasonable to withhold that information from  
23 Jane, as it impacted her decision to continue care with Sutter Health.

24 **c. Defendant Brodeur**

- 25 • How: Via the Sutter Health website and posts to social media on the Sutter Health  
26 Mission Bernal Women’s Clinic channels including by not limited to her quote in the  
27 April 28, 2020, Instagram post, which states, “I believe that every woman has the right  
28 to quality healthcare that promotes autonomy and respect. I love being a part of the

1 collaborative practice at CPMC alongside such dedicated providers.” Jane Doe was not  
2 treated with respect and her autonomy was disregarded by Defendant Brodeur, and the  
3 care did not reflect dedication. Also, contrary to her public-facing statements,  
4 Defendant Brodeur’s behavior did not reflect that of a reasonable midwife who is  
5 following ACNM and other guidelines publicized on the Sutter Health Mission Bernal  
6 Women’s Clinic social media channels.

- 7 • When: Prior to October 21, 2020, and ongoing. Defendant Brodeur’s Instagram post is  
8 dated April 28, 2020.
- 9 • Where: Sutter Health Mission Bernal Women’s Clinic social media channels; Sutter  
10 Health website. Also during discussions with Jane Doe that took place at prenatal care  
11 appointments.
- 12 • To whom: The public, including the Does, and to Jane Doe in the prenatal care setting.
- 13 • By what means: Written statements and video representations. Also verbal  
14 representations made at prenatal visits.
- 15 • Further, during prenatal care visits, like Defendant Pemberton, Defendant Brodeur  
16 made specific statements to Jane about the care that she would receive at the Sutter  
17 Health CPMC Birth Center—namely, that the care was evidence based, that midwifery  
18 support was available around the clock, that Jane’s privacy would be respected, that no  
19 men would be in the room when Jane gave birth, and Jane would be supported by the  
20 clinicians and staff to push in various positions that did not render her on her back.  
21 However, as detailed at length in this Complaint, those facts were not true, and  
22 Plaintiffs are informed and believe that Defendant Pemberton had no reasonable  
23 grounds for believing that the representations were true when she made them. Jane  
24 reasonably relied on those representations when continuing care with Sutter Health and  
25 deciding to come to its birth center, and those fraudulent statements were substantial  
26 factors in causing Jane’s Postpartum PTSD and pelvic nerve injury. Defendant  
27 Pemberton also failed to tell Jane that Sutter Health had a policy that laboring patients  
28 would not be admitted to the birth center until they were dilated to 6 centimeters, and it



1 was not reasonable to withhold that information from Jane, as it impacted her decision  
2 to continue care with Sutter Health.

3 **d. Defendant Correa**

- 4 • How: Via posts to social media on the Sutter Health Mission Bernal Women’s Clinic  
5 social sites including by not limited to Defendant Correa’s quote in the May 28, 2020  
6 Instagram post, which states, “I am a Defendant and women’s health Defendant  
7 practitioner with a background in public health. I completed my midwifery education at  
8 Georgetown University and trained in West Palm Beach, FL and Erie, PA. Before  
9 starting my midwifery career in San Francisco with CPMC, I lived in Miami, FL where  
10 I worked as a postpartum Defendant and developed a passion for empowering women  
11 to be active participants in their care.” Contrary to her public-facing statements,  
12 Defendant Correa’s behavior did not reflect that of a reasonable midwife who is  
13 following ACNM and other guidelines publicized on the Sutter Health Mission Bernal  
14 Women’s Clinic’s social media channels and “empowering women to be active  
15 participants in their care.” To the contrary, Defendant Correa demanded that Jane  
16 acquiesce to her needs—like being unable to “see” in pushing positions that Jane  
17 wanted to use to birth her baby and not even communicating with Jane about why she  
18 left Jane’s care during the birth.
- 19 • When: Prior to October 21, 2020, and ongoing. Defendant Brodeur’s Instagram post is  
20 dated May 28, 2020.
- 21 • Where: Sutter Health Mission Bernal Women’s Clinic social media channels; Sutter  
22 Health website.
- 23 • To whom: The public, including the Does, and to Jane Doe during her labor and  
24 delivery regarding the representation that she would protect her privacy and ensure that,  
25 among other things, the pediatrics team did not come into the room and that a sheet  
26 would be placed over Jane’s body and genital area before they did so.
- 27 • By what means: Written statements and video representations.
- 28 • Further, during Jane’s labor, Defendant Correa personally promised Jane that she would

1 ensure that the pediatrics team remained behind the privacy curtain, which would be  
2 pulled closed, by the door to protect Jane’s privacy during the birthing process,  
3 ensuring that her nearly naked body and exposed vagina with a baby’s head crowing  
4 insider of it was not on public view. Defendant Correa also specifically promised Jane  
5 that she would cover the lower half of her body, including her vagina, with a sheet after  
6 the baby had been born but before the pediatrics team emerged from behind the curtain,  
7 again to protect Jane’s privacy. Jane reasonably relied on those promises, and  
8 Defendant Correa broke them. Plaintiffs are informed and believe that Defendant  
9 Correa had no reasonable grounds for believing that the representations were true when  
10 she made them. In fact, Defendant Correa disappeared after making those promises, and  
11 those broken promises and the ensuring the invasion of privacy were substantial factors  
12 in causing Jane’s Postpartum PTSD and pelvic nerve injury.

13 **e. Defendant Evers**

- 14 • How: Via posts to social media on Sutter Health Mission Bernal Women’s Clinic  
15 channels and the Sutter Health website, including but not limited to the page with her  
16 biography, which states that she “became a Defendant to help empower women through  
17 patient-centered, low-intervention care.” Contrary to her public-facing statements,  
18 Defendant Evers’ behavior did not reflect that of a reasonable midwife who is  
19 following ACNM and other guidelines publicized on the Sutter Health Mission Bernal  
20 Women’s Clinic social media channels, and she did not (neither did any other clinicians  
21 or staff) “help empower” Jane “through patient-centered, low-intervention care,” as  
22 stated on her biography page at the Sutter Health website.
- 23 • When: Prior to October 21, 2020, and ongoing.
- 24 • Where: Sutter Health Mission Bernal Women’s Clinic social media channels; Sutter  
25 Health website.
- 26 • To whom: The public, including the Does.
- 27 • By what means: Written statements and video representations.

28 **f. Defendant Winemiller**

- 1 • How: Via the Sutter Health website and posts to social media on the Sutter Health  
2 Mission Bernal Women’s Clinic channels as well as Defendant Winemiller’s LinkedIn  
3 page, which states that she “was drawn to Mission Bernal’s Women’s Clinic because it  
4 is centered around a collaborative, midwifery-led model of care that is deeply rooted in  
5 the community, women’s choices, and supporting families with evidence-based  
6 education and care. She is proud that all of the team members, including the OB-GYN  
7 MD’s[,] truly support this midwife model of care.” Contrary to her public-facing  
8 statements, Defendant Winemiller’s behavior did not reflect that of a reasonable  
9 midwife who is following ACNM and other guidelines publicized on the Sutter Health  
10 Mission Bernal Women’s Clinic social media channels, and Jane Doe’s experience did  
11 not reflect the “collaborative, midwifery-led model of care that is deeply rooted in the  
12 community, women’s choices, and supporting families with evidence-based education  
13 and care,” not by her or by “all of the team members.” Jane’s autonomy and choices  
14 were disregarded by the midwives as well as the OB/GYNs, and such behavior is not  
15 reflective of what Defendant Winemiller called, on her LinkedIn page, the “midwife  
16 model of care.”
- 17 • When: Prior to October 21, 2020, and ongoing.
- 18 • Where: Sutter Health Mission Bernal Women’s Clinic social media channels; LinkedIn;  
19 Sutter Health website.
- 20 • To whom: The public, including the Does.
- 21 • By what means: Written statements and video representations.

22 190. By virtue of using their degrees after their names (MD, CNM) and working in a  
23 relevant clinical medical field, these individuals held themselves out as having superior knowledge  
24 and expertise about obstetrics, midwifery, and/or birth. They present themselves as being specially  
25 qualified to make statements about birth, which makes the representations more salient and  
26 trustworthy than had they come from an individual without their social and professional standing.  
27 They are speaking about what members of the public can expect from a place to which the public has  
28 no access—as noted above, there are no live-streams from the Sutter Health Mission Bernal Women’s

1 Clinic or the Sutter Health CPMC Birth Center that the public can watch to observe births and ensure  
2 that the public representations made about patients' experiences and the promises about the care  
3 offered are true. As medical professionals, they are in a position of trust, and members of the public  
4 justifiably rely on their statements.

5 191. Jane Doe was a patient of the Mission Bernal Women's Clinic, she was a patient of the  
6 practice, which means that she was a patient of each and every clinician who worked at that clinic. She  
7 agreed, by becoming a patient there, to see any of the physicians and/or midwives for care, and, in  
8 turn, she was a patient of each and every physician and midwife of the clinic. Because of the sanctity  
9 of the clinician/patient relationship, all of the MD and CNM Defendants were in a confidential  
10 relationship with Jane Doe, and they were her fiduciaries. Their statements are held to a higher  
11 standard than any random member of the public.

12 192. The aforementioned themes can be traced in social media posts as well as private  
13 representations, all described above, to the Does. Given what transpired, all were misrepresentations  
14 that the Does relied on to their detriment.

15 193. Similarly, the Sutter Health System failed to disclose important facts. As healthcare  
16 providers, the Sutter Health System had a fiduciary relationship with Jane Doe, and there is, in all  
17 healthcare settings, an inherent asymmetry of information and power. They had a duty to disclose  
18 things that were true. For example, if Sutter Health has a practice or a policy of not admitting patients  
19 until a certain stage of cervical dilation, then that information needs to be disclosed. Because if  
20 admission is not possible until 6 cm, then pregnant people will be laboring without midwifery support  
21 until the cervix reaches that target. Or if the meconium that was found was truly some ominous sign,  
22 then that information needed to be disclosed to Jane. It wasn't. Because Jane was a patient of the  
23 Mission Bernal Women's Clinic, unlike a patient who simply showed up to the Sutter Health CPMC  
24 Van Ness campus Birth Center to give birth under the auspices of a non-Sutter Health physician or  
25 physician/midwife group, every MD and CNM of the Mission Bernal Women's Clinic had a duty to  
26 disclose and not withhold facts to Jane about her clinical course. If there was an issue with her labor or  
27 delivery, then they could not conceal it from her without engaging in misrepresentation that sounds in  
28 fraudulent deceit. The duty of disclosure is separate and apart from any medical malpractice claim.

1           194. Similarly, during Jane’s perinatal course, the Does relied on the information that was  
2 presented to them about the status of Jane’s labor and the health of the baby. The Does are informed  
3 and believe that Defendants, including Defendant Garrett, concealed from and/or failed to disclose to  
4 them important and relevant facts about that status. As health care professionals, all Defendants are  
5 experts in positions of trust, and they are, collectively, part of an expert health care system that directly  
6 or indirectly, expressly or impliedly, made the at-issue representations to the Does, concealed from or  
7 failed to disclose to the Does various facts that they had a duty to disclose, and/or made promises to  
8 the Does with no intention to perform them.

9           195. **Knowledge of Falsity or Reckless Disregard (Scienter).** Plaintiffs are informed and  
10 believe and thereupon allege that Defendants’ training, policies, and procedures were inconsistent with  
11 their public and private communications about the care that would be provided at Sutter Health, Sutter  
12 Health’s Mission Bernal Women’s Clinic, and Sutter Health’s CPMC Birth Center. Further, Plaintiffs  
13 are informed and believe and thereupon allege that, at the time the Sutter Health and the individually  
14 named Defendants made these representations, they either knew that they were false or that they were  
15 made recklessly—without knowing whether they were true or false, or without a reasonable ground for  
16 believing them to be true.

17           196. **Intent to Induce Reliance.** The Does, like reasonable people, relied on representations  
18 that appeared in public forums and spaces as well as those made to them during personal interactions  
19 with Sutter Health, its clinicians, and staff, including but not limited to the other Defendants. There is  
20 no reason for Sutter Health, the MDs, or the CNMs to make any representations if the intent was for  
21 people to simply ignore them. Naturally, the goal of marketing, publicity, and sharing information  
22 about Sutter Health’s services, beliefs, and accolades, as well as information about the various  
23 clinicians, caregivers, and staff, including the philosophy and expectations for those who choose to  
24 become patients of the Sutter Health Mission Bernal Women’s Clinic and birth at a Sutter Health birth  
25 center, is for the public to rely on that information and then seek care at Sutter Health and, specifically,  
26 the Mission Bernal Women’s Clinic, not just for their birth, but for a lifetime—for them and their  
27 entire family. Plaintiffs are informed and believe that competition for pregnant patients both for  
28 prenatal care and for birth services is fierce and that Sutter Health, the Mission Bernal Women’s

1 Clinic, and the MDs and CNMs who run it and work there aim to attract patients / clients. All of the  
2 statements come from the medical community and/or members of it, and this community and these  
3 clinicians hold an esteemed position of expertise, trust, and a duty to patients of honesty and  
4 reliability. These are confidential and fiduciary relationships.

5       197. **Actual and Justifiable Reliance.** The Does actually and justifiably relied on the  
6 Defendants' promises and misrepresentations when choosing the place to birth and continuing Jane's  
7 course of care. Had the Defendants disclosed to the Does that the clinicians and staff would not—for  
8 example—follow evidence-based birth care, that it would not offer 24/7 midwifery care, that it would  
9 not follow the midwifery model of care, or that it would not offer robust non-pharmacologic support  
10 for labor discomfort, the Does could have corrected course and sought care elsewhere or chosen to  
11 birth at home. They continued to seek care at Defendants' places of business and with Defendants  
12 because they relied on what was said about the birth care offered. Similarly, when Jane was in labor,  
13 the Does relied on the Defendants yet again, not only for the representations made about the birth care  
14 that the Does could expect but also that the Defendants would disclose information about the clinical  
15 status of Jane and the Does' baby.

16       198. Indeed, at all relevant times, the Defendants had fiduciary duties to Jane Doe and  
17 superior knowledge of the misrepresentations and nondisclosures. There was no way for the Does to  
18 discover the falsity of Defendants' representations or that any information was being withheld from  
19 them. Even so, they did ask pointed questions to the Defendants about the representations at every turn  
20 because they were, indeed, basing decisions about their lives and health—and their baby's life and  
21 health—on those very representations.

22       199. Further, the Does sought treatment from Sutter Health, the Sutter Health Mission  
23 Bernal Women's Clinic, and the promise that, if Jane agreed to have prenatal care at that clinic that  
24 she would have a reserved space to birth at the Sutter Health CPMC Birth Center. The Does relied on  
25 the public and private representations—all of which contributed to and, in fact, created the brand  
26 reputation of the clinicians, the Sutter Health Mission Bernal Women's Clinic, the Sutter Health  
27 CPMC's birth centers, and Sutter Health itself—about what they could expect, count on, anticipate  
28 during labor and delivery. Nearly nothing that occurred lined up with the representations, not the

1 representations to the public and not personally to the Does. The representations influenced the Does'  
2 actions, just as they would influence any reasonable person's actions, and the Does had no reason to  
3 believe that the representations were untrue.

4         200. Sutter Health, the Sutter Health Mission Bernal Women's Clinic, and the CPMC Birth  
5 Centers are not the only shows in town for what was represented—among other things, a place where  
6 evidence-based birth with midwifery support for the physiologic process of birth was the mission, the  
7 promise, and the care provided—but the public and private representations made by Defendants,  
8 singularly and collectively, did align most with what the Does were seeking for not only their prenatal  
9 care but also their perinatal course. Importantly, because of those representations, the Does did not  
10 pursue other options that were available to them—options including but not limited to seeking care  
11 with an obstetrician in a private practice, securing a place to labor and deliver at another birth center,  
12 or choosing to birth at home with a midwife or other health care provider.

13         201. **Causation.** In all, Defendants' misrepresentations were an actual, proximate, and  
14 foreseeable cause of Jane Doe's emotional and physical harms as well as John Doe's emotional harms.  
15 The gap between expectation and reality was enormous, and the promises and representations did not  
16 align with the reality. The Does' reliance on those representations and nondisclosures was a substantial  
17 factor in causing the harms from which they now suffer. All of what transpired—the lack of evidence-  
18 based care, the lack of midwifery support, the lack of appropriate nursing support, the constant duress,  
19 the coercion, the unconscionable stress that was foisted on a pregnant woman and her baby, the forced  
20 interventions, the requirement to stay on her back, the prolonged length of time on which she was  
21 forced to stay on her back, the unconsented touching, the threats of violence and actual infliction of  
22 violence, among other things—was a psychological, physiological, hormonal, anatomical, and  
23 mechanical set-up for entirely foreseeable iatrogenic injuries. Had the Does known that the Defendants  
24 would not follow through on their representations, they would have made another choice out of many  
25 in the Bay Area for prenatal care and birth support.

26         202. **Harm.** Jane and John are irreparably damaged. The harms are extensive and ongoing.

27         203. **Sutter Health Bears Responsibility.** Sutter Health bears corporate liability for its own  
28 fraudulent deceit, and the entity is also vicariously liable for fraudulent deceit because Plaintiffs are

1 informed and believe and thereupon allege that the non-corporate Defendants were agents, ostensible  
2 agents, or employees of Sutter Health and, at all relevant times, were acting in the course of their  
3 agency or employment.

4 **SECOND CAUSE OF ACTION**

5 **NEGLIGENT MISREPRESENTATION (Cal. Civ. Code § 1709 et seq.)**

6 **BY PLAINTIFFS AGAINST SUTTER HEALTH & AMITA KACHRU, MD**

7 204. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
8 preceding paragraphs, inclusive.

9 205. In the event that Defendants' behavior fails to meet the intent required for fraudulent  
10 deceit, the allegations discussed in the First Cause of Action at least meet the standard for negligence  
11 because Plaintiffs are informed and believe that Defendants' training, policies, and procedures were  
12 inconsistent with their marketing, and, therefore, that Defendants knew or should have known that  
13 Plaintiffs would not receive the care, treatment, experience, etc. that they reasonably expected based  
14 on Defendants' representations. Plaintiffs are also informed and believe that Defendants knew of  
15 complaints about the care provided at the Sutter Health CPMC Birth Center that belied the public and  
16 private representations on which the Does relied.

17 206. **Sutter Health Bears Responsibility.** Sutter Health bears corporate liability for  
18 negligent misrepresentation. The entity is also vicariously liability because Plaintiffs are informed and  
19 believe and thereupon allege that the non-corporate Defendants were agents, ostensible agents, and/or  
20 employees of Sutter Health and, at all relevant times, were acting in the course of their agency and/or  
21 employment.

22 **THIRD CAUSE OF ACTION**

23 **MEDICAL BATTERY**

24 **BY PLAINTIFF JANE DOE AGAINST SUTTER HEALTH; AMITA KACHRU, MD;**

25 **NOELLE BRODEUR, CNM; LILIANA CORREA, CNM; AND DOE DEFENDANTS**

26 207. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
27 preceding paragraphs, inclusive.

28 208. **Medical Procedures Without Consent.** Jane did not consent to the medical



1 procedures that Defendants named in this cause of action inflicted upon her, and these instances of  
2 nonconsensual contact offended Jane’s sense of autonomy, agency, and dignity. Jane did not consent  
3 to innumerable vaginal exams performed on her by named and Doe Defendants, including the Doe  
4 Defendant who performed a vaginal exam without sterile gloves. Jane did not consent to having  
5 Defendant Brodeur rupture her membranes. Jane did not consent to having Defendant Correa forcibly  
6 move her cervical lip over the baby’s head. Jane did not consent to being forced to stay on her back in  
7 a lithotomy-type pushing position by Defendant Correa and Defendant Garrett. Jane did not consent to  
8 being touched and moved out of the side-lying pushing position by Defendant Correa and Defendant  
9 Garrett. In fact, Jane specifically stated to them that she wished to be in a kneeling or squatting  
10 position—definitely not on her back. Jane did not consent to Defendant Garrett and Defendant Correa  
11 taking her gown from her for the start of pushing, as Plaintiffs are informed and believe that it was for  
12 their own convenience as clinicians to “see” the birth process, leaving Jane almost completely naked  
13 and exposed. Jane did not consent to Defendant Garrett holding her leg up while she was in the side-  
14 lying pushing position during the second stage of labor. Jane did not consent to being forced by Doe  
15 Defendant #1 and Doe Defendant #2 to remain on her back during the second stage of labor. Jane did  
16 not consent to Doe Defendant #1 and Doe Defendant #2 holding her legs in place by her ankles,  
17 pushing them far past her shoulders, and holding them there, while she was confined to her back. Jane  
18 did not consent to Doe Defendant #5 pushing on her abdomen to force her to void. Jane did not  
19 consent to the vacuum used by Defendant Kachru. Jane said no. Jane said no, no, no, no, no. Jane said,  
20 “I do not want this.” Jane did not consent to an episiotomy that she is informed and believes and  
21 thereupon alleges that Defendant Kachru performed on her. Jane did not consent to the catheter that  
22 Defendant Kachru forced up her urethra and into her bladder after the baby was born. Jane did not  
23 consent to a perineal laceration or to the events that increased the likelihood of that outcome. Jane did  
24 not consent to Defendant Kachru suturing that laceration. Jane Doe did not consent.

25       209.   **Causation.** The Defendants’ conduct was a substantial factor in causing Jane’s physical  
26 and psychological injuries.

27       210.   **Harms.** As detailed above, Jane was emotionally and physically harmed.

28       211.   **Sutter Health Bears Responsibility.** In addition to the named and pseudonymous

1 Defendants in this cause of action, Sutter Health bears its own corporate liability as well as vicarious  
2 liability because Plaintiffs are informed and believe and thereupon allege that those individuals were  
3 agents, ostensible agents, and/or employees of Sutter Health and, at all relevant times, were acting in  
4 the course of their agency and/or employment.

5 **FOURTH CAUSE OF ACTION**

6 **SEXUAL BATTERY (Cal. Civ. Code §1708.5)**

7 **BY PLAINTIFF JANE DOE AGAINST DOE DEFENDANT #3 [THE MAN]**

8 212. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
9 preceding paragraphs, inclusive.

10 213. **Intent.** Doe Defendant #3 (“The Man”) acted with intent to cause harmful or offensive  
11 contact with an intimate part of Jane. He entered the birthing suite and positioned himself near Jane.  
12 He had no clinical reason to be anywhere near Jane. If he had a clinical reason to be in the room for  
13 the newborn, then he could have remained behind the curtain until after the baby was born and then  
14 moved behind the patient bed to the baby. He did not. He positioned himself next to Jane, by her left  
15 shoulder, after walking in front of her open vagina and staring at her body. Then, after the baby had  
16 been born, when John had moved away from his position by Jane’s left shoulder to the baby warmer,  
17 The Man made his move. He placed his open palm and outstretched fingers on Jane’s exposed left  
18 buttock. He did not slip. He was not trying to brace himself from a fall. It was no accident. It was  
19 intentional. And he acted surreptitiously, while others in the room were occupied—attending to the  
20 newborn, entering data at the computer, suturing Jane’s perineum. No one was watching him, and, as a  
21 health care worker, no one would suspect him of anything either.

22 214. **Intimate Part.** California Civil Code section 1708.5(d) defines, for purposes of the  
23 section, “intimate part” as “the sexual organ, anus, groin, or buttocks of any person, or the breast of a  
24 female.” The Man touched Jane’s left buttock. By definition, The Man touched an intimate part of  
25 Jane’s body.

26 215. **Harmful or Offensive Contact.** The contact was harmful because it, along with the  
27 parade of horrors that occurred in that birthing suite, traumatized Jane. Further, that contact was  
28 offensive because it undermines any reasonable sense of personal dignity. It occurred *in a hospital*,

1 within the ostensibly “private” birthing suite. It occurred *in a hospital bed*, by someone who appeared  
2 to be a member of the healthcare team, who had not been introduced to her, after she had just given  
3 birth under extreme duress, and he did it while she was naked, with her legs splayed in stirrups, and  
4 while her vagina was being sutured. She was completely helpless, and she had just experienced birth  
5 trauma. It is difficult to imagine contact that would have been more offensive.

6 216. **No Consent.** Like the litany of non-consensual events that occurred at Sutter Health  
7 and by the Sutter Health System, Jane did not consent to The Man’s contact with her body. Jane did  
8 not consent to his presence.

9 217. **Damages.** Jane was harmed by this contact. It is a centerpiece of the ongoing and  
10 unrelenting Postpartum PTSD, including flashbacks, from which she now suffers every day and  
11 throughout the day. There is no cure for Postpartum PTSD.

12 218. **Punitive Damages.** Defendant’s conduct meets the statutory standard for punitive  
13 damages. The behavior was intentional, malicious, wanton, oppressively, fraudulent and/or reckless,  
14 and it exhibited a conscious disregard for Jane’s rights.

15 **FIFTH CAUSE OF ACTION**

16 **ABUSE OF DEPENDENT ADULT**

17 **(CAL. WELF. & INST. CODE § 15600 et seq.)**

18 **BY PLAINTIFF JANE DOE AGAINST SUTTER HEALTH; AMITA KACHRU, MD; ANNA**  
19 **KOGAN, MD; LILY PEMBERTON, MD; NOELLE BRODEUR, CNM; LILIANA CORREA,**  
20 **CNM; VANESSA EVERS, CNM; JODI WINEMILLER, CNM; AND DOE DEFENDANTS**

21 219. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
22 preceding paragraphs, inclusive.

23 220. **A Dependent Adult.** Jane Doe is between the ages of 18 and 64 years old. She was  
24 admitted as an inpatient to Sutter Health’s CPMC, which is a 24-hour health facility.

25 221. **Defendants Subjected Jane to Physical Abuse, Neglect, and/or Abandonment.** The  
26 California Welfare and Institutions Code provides definitions for these terms. Pursuant to Section  
27 15610.63 of that code, “physical abuse” includes but is not limited to the following: battery (as defined  
28 in Section 242 of the Penal Code), unreasonable physical constraint, sexual battery (as defined in

1 Section 243.4 of the Penal Code). Pursuant to Section 15610.05 of that code, “abandonment” means  
2 the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of  
3 that person under circumstances in which a reasonable person would continue to provide care and  
4 custody. Pursuant to Section 15610.57 of that code, “neglect” includes the negligent failure of any  
5 person having the care or custody of an elder or a dependent adult to exercise that degree of care that a  
6 reasonable person in a like position would exercise, and it includes failure to provide medical care for  
7 physical and mental health needs, and failure to protect from health and safety hazards. The plight of  
8 Jane Doe fits these categories.

9         222. In terms of “physical abuse,” Jane was subjected to medical battery by Defendant  
10 Correa (unconsent movement of cervical lip), Defendant Brodeur (unconsented rupture of  
11 membranes), Defendant Kachru (unconsented operative delivery) as well as Doe Defendants who  
12 performed vaginal exams without consent, who held her legs in place and forced her to stay on her  
13 back while Defendant Kachru was forcibly inserting a machine into her vagina, and who pushed on  
14 her abdomen without consent. Jane was subjected to “unreasonable physical constraint” when  
15 Defendants Garrett and Correa forced Jane into unwanted pushing positions and would not allow her  
16 to move her body into other pushing positions. For any birthing person, such physical constraints are  
17 unreasonable, and they are especially unreasonable for Jane—person who clearly verbalized her need  
18 to move freely during birth. Further, birthing people need to be free to move to effectuate physiologic  
19 birth, which was what Sutter Health professed to support and, in reliance on those representations,  
20 what Jane chose. Jane was also subjected to “unreasonable physical constraint” by Doe Defendants #1  
21 and #2, who held her legs in stirrups by the ankles and then forced her legs back, all the way to her  
22 ears, rendering movement out of that position impossible, and by Doe Defendants #4 and #5, who  
23 insisted that Jane void into a bedpan, in the middle of the birthing suite, while others in attendance  
24 watched, pushed on her abdomen, and refused to assist or support her in moving to the bathroom. Jane  
25 was subjected to sexual battery by Doe Defendant #3.

26         223. The Defendants’ behavior meets the statutory definition of “abandonment,” and, in  
27 light of the circumstances, none of them acted reasonably as a general matter or reasonably in light of  
28 their professional obligations and Sutter Health’s public representations about the obstetrics care that a

1 patient could expect. With regard to Defendants Pemberton, Kogan, Evers, and Winemiller, their  
2 behavior represents desertion or willful forsaking of Jane, and they all had care responsibilities for her.  
3 Their choices of behavior were not reasonable under the circumstances, as follows:

- 4 a. **Defendant Pemberton.** It was not reasonable under the circumstances for  
5 Defendant Pemberton to fail to speak to Jane or assess her clinical status while  
6 approving Defendant Evers’ decision, which Plaintiffs are informed and believe that  
7 Defendant Pemberton did, to send Jane home and block her admission to a birthing  
8 suite. The circumstances include the information that Jane provided to Defendant  
9 Evers—that Jane’s home was approximately 50 miles away, that the bumpy roads  
10 magnified her pain, and that she was experiencing severe pain and nausea. Jane was  
11 in labor, and she had requested admission to a birthing suite for the midwifery  
12 support that Defendant Sutter Health had advertised, including but not limited to  
13 non-pharmacologic pain support and hydrotherapy to help with her severe pain. It  
14 was also not reasonable for Defendant Pemberton to approve sending Jane home  
15 given that Sutter Health, the Mission Bernal Women’s Clinic, and its clinicians,  
16 including Defendant Pemberton, both individually and by association, had publicly  
17 represented themselves as supporters of physiologic birth with a panoply of non-  
18 pharmacologic pain support (including acupuncture and hydrotherapy) and  
19 midwifery care available 24 hours a day, seven days a week. Further, Defendant  
20 Pemberton had provided prenatal care to Jane and made representations about how  
21 she would care for Jane during her labor and delivery if she happened to be on duty  
22 at the time. Not only was Defendant Pemberton’s behavior not reasonable in light  
23 of the circumstances, but it meets the definition of abandonment under the  
24 Dependent Abuse Act because approving a certified nurse midwife’s decision to  
25 block Jane’s admission to a birthing suite, itself not reasonable under the  
26 circumstances, represents desertion or willful forsaking—abandonment—of a  
27 laboring patient by a person who had care responsibilities for the patient. A  
28 reasonable person, as well as a reasonable obstetrician, would have behaved

1 differently. A reasonable obstetrician would have laid eyes and hands on the  
2 patient, especially one she had cared for during the prenatal course, before  
3 approving her to be sent home—against the patient’s wishes—in labor, in severe  
4 pain, and vomiting. A reasonable obstetrician would have admitted Jane to a  
5 birthing suite and would not have forced her, earlier in the process, to pick between  
6 a medical intervention that she did not want and going home. Defendant Pemberton  
7 truly abandoned Jane, a reality that is all the more troubling, even astonishing,  
8 given that Defendant Pemberton had told Jane that she would care for her if she  
9 presented in labor her shift. Defendant Pemberton deserted Jane Doe.

10 b. **Defendant Kogan.** Given that Defendant Kogan was the attending physician for a  
11 patient in labor whose birth plan stated that she wanted as few cervical exams as  
12 possible, to move around as much as possible or change positions to support her  
13 labor progress, to allow labor to progress physiologically, to be fully informed  
14 about all options, to use the shower to cope with labor, and to push in positions of  
15 her choosing, and given the background of all that Sutter Health and its Mission  
16 Bernal Women’s Clinic had represented about the birth care that a patient could  
17 expect, it was not reasonable for the attending obstetrician to fail to meet Jane and  
18 to oversee how her birth plan and the reality of her experience were aligning.  
19 Oversight is the role of the attending obstetrician, both under California law and per  
20 the standard of care, and to fail to provide oversight and even meet the patient  
21 represents desertion of the patient. A reasonable attending obstetrician would have  
22 behaved differently—she would have met the patient and checked in on her during  
23 her in-patient stay. Failing to meet the patient, speak to the patient, and lay hands on  
24 the patient is failure to provide care, and such a failure rises to the level of  
25 abandonment under Section 15610.05 of the California Welfare and Institutions  
26 Code because a reasonable attending obstetrician would not have been missing in  
27 action. Defendant Kogan deserted Jane Doe.

28 c. **Defendant Evers.** Defendant Evers abandoned Jane when she forced her to

1 “choose” between a medical intervention that she did not want or to go home, and  
2 when summoned a wheelchair to have her summarily escorted from the hospital.  
3 Such behavior is reminiscent of the “patient dumping” that led to the Emergency  
4 Medical Treatment and Labor Act. It was not reasonable, and it was abandonment  
5 of the patient in her care, to send Jane home to a place that was 50 or so miles away,  
6 over bumpy roads, in labor, experiencing severe pain, and to give her two emesis  
7 basins to vomit into, like parting gifts, as she was escorted out of the building. One  
8 was for vomiting during the car ride home and one for when she arrived home. It  
9 was not reasonable for a certified nurse-midwife to behave in this way when her  
10 patient clearly needed care. And it was especially unreasonable for a certified nurse-  
11 midwife to behave in this way while working for an institution that, in its public  
12 marketing, promised panoply of non-pharmacologic pain support (including  
13 acupuncture and hydrotherapy) at all times of the day. A reasonable certified nurse  
14 midwife would not have sent Jane home, and that behavior rises to the level of  
15 abandonment or willful forsaking of the patient in her care. Indeed, the Merriam-  
16 Webster dictionary defines “desertion,” in relevant part, as “abandonment without  
17 consent” and “an act of deserting,”<sup>26</sup> which itself means “to withdraw from,”<sup>27</sup>  
18 which is precisely what Defendant Evers did. Defendant Evers abandoned Jane.

- 19 d. **Defendant Winemiller.** Defendant Winemiller abandoned Jane when she failed to  
20 offer bonified midwifery support and instead told Jane that she could only stay in  
21 the Jane could stay in the hospital if she accepted morphine. If she refused  
22 morphine, then she had to go home. Under the circumstances, a reasonable certified  
23 nurse-midwife would not have behaved that way, as she left Jane without midwifery  
24 care. Defendant Winemiller left Jane in the lurch, which another way that the  
25 Merriam-Webster dictionary defines the term “desert.”<sup>28</sup> Recall that the applicable  
26 statute defines abandonment as the desertion or willful forsaking of a dependent  
27

28 <sup>26</sup> <https://www.merriam-webster.com/dictionary/desertion>.

<sup>27</sup> <https://www.merriam-webster.com/dictionary/deserting>.

<sup>28</sup> <https://www.merriam-webster.com/dictionary/desert>.

1 adult by anyone having care or custody of that person under circumstances in which  
2 a reasonable person would continue to provide care and custody. Failure of a  
3 certified nurse-midwife to provide midwifery care—and telling a patient to accept  
4 morphine or go home is affirmatively *not* midwifery care—is unreasonable under  
5 Jane’s clinical circumstances, and it is certainly not reasonable against the backdrop  
6 of all that Defendant Sutter Health had publicly advertised about its round-the-clock  
7 midwifery care. Defendant Winemiller was aware that Jane was experiencing  
8 severe pain with the contractions. Jane’s birth plan made her wishes clear, and she  
9 voiced her need for midwifery support and non-pharmacologic pain relief. By  
10 failing to provide the care that a reasonable certified nurse-midwife would provide,  
11 Defendant Winemiller willfully forsook and abandoned Jane.

12 224. In terms of “neglect,” from the moment she arrived at Sutter Health CPMC, Jane was in  
13 labor and in intractable pain. She was so dependent on others for her basic needs, like walking, that  
14 she needed a wheelchair to move her from the car to the emergency department upon arrival. She was  
15 dependent on the clinicians and staff assigned to her and charged with the duty to care for her  
16 throughout the timeline of her experience at Sutter Health CPMC Van Ness facility. Even when she  
17 felt ready to begin resuming normal adult activities, like using the bathroom, the Sutter Health nurses  
18 insisted that she void into a bedpan, thus illustrating how they were going to attend to her basic  
19 needs—in that instance, whether she consented to it or not. During the labor and delivery, Jane relied  
20 on the caretaking of the clinicians and staff for fundamental needs like walking, moving her body from  
21 one position to another, urinating, coping with pain, and protecting her dignity, autonomy, and  
22 privacy. The people who were in the position of care for her—the Defendants named in this cause of  
23 action—failed to exercise that degree of care that a reasonable obstetrician, nurse-midwife, and  
24 obstetric nurse would exercise, including the failure to provide the medical and midwifery care that  
25 she actually needed and not coercing her into interventions that she didn’t. That coercion and the full  
26 panoply of obstetric violence represents a failure to provide for Jane’s physical and mental health  
27 needs, leading directly to pelvic nerve damage and Postpartum PTSD, as well as the failure to protect  
28 her from the health and safety hazards that foreseeably led to those signature injuries.



1           225. All Defendants noted in this cause of action failed to exercise the degree of care that a  
2 reasonable person in a like position would exercise—a reasonable CNM, a reasonable nurse, or a  
3 reasonable OB/GYN—and these Defendants failed to provide medical care for Jane’s physical and  
4 mental health needs. They also failed to protect Jane from the health and safety hazards that  
5 foreseeably led to the iatrogenic harms from which she now suffers. Specifically, Defendant Kogan  
6 failed to oversee Jane’s care and did not intervene when Jane was being subjected to coerced care, lack  
7 of non-pharmacologic support for pain, and lack of midwifery support to cope with labor, all of which  
8 endangered Jane’s health and safety. Defendant Pemberton neglected Jane when she allowed her to be  
9 sent home while in labor, experiencing intractable pain, and while vomiting—without even evaluating  
10 or speaking to her. Such behavior represents a failure to provide appropriate and reasonable medical  
11 care for Jane’s physical and mental health needs, and it also represents a failure to protect her from  
12 health and safety hazards.

13           226. **Causation / Damages.** This abuse of a dependent adult caused Jane to suffer the  
14 physical and emotional harms that have been detailed at great length. The Sutter Health System denied  
15 or withheld the services that it promised, like evidence-based midwifery care and honoring a patient’s  
16 informed refusal, either with knowledge that injury was substantially certain or with a conscious  
17 disregard of the high probability of such injury.

18           227. **Punitive Damages.** Defendants’ conduct meets the statutory standard for punitive  
19 damages. The behavior was intentional, malicious, wanton, oppressively, fraudulent and/or reckless,  
20 and it exhibited a conscious disregard for Jane’s rights and well-being.

21           228. **Sutter Health Bears Responsibility.** Sutter Health bears its own corporate liability as  
22 well as vicarious liability because Plaintiffs are informed and believe and thereupon allege that those  
23 individuals were agents, ostensible agents, and/or employees of Sutter Health and, at all relevant  
24 times, were acting in the course of their agency and/or employment. Further, Plaintiffs are informed  
25 and believe that Sutter Health has a pattern and practice of allowing poorly trained and inexperienced  
26 midwives to attend births, that it is aware or should be aware that it is not offering evidence-based  
27 care, and that the harms that befell Jane and John were due to the Sutter Health System’s pattern of  
28 deliberate indifference or actual intent to subject patients to risks of harm.

1 **SIXTH CAUSE OF ACTION**

2 **FALSE IMPRISONMENT**

3 **BY PLAINTIFF JANE DOE AGAINST AMITA KACHRU, MD, AND DOE DEFENDANTS**

4 229. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
5 preceding paragraphs, inclusive.

6 230. **Confinement of Plaintiff.** Defendants used actual force, threats of force, physical  
7 barriers, fraud or deceit, unreasonable duress, physical restraint and/or failure to release to deprive  
8 Jane of her freedom of movement. For example, Jane was intentionally compelled to birth on her back,  
9 a position that she did not want to use or remain in, throughout the pushing stage of labor. Jane was  
10 intentionally deprived of her liberty when Doe Defendant #1 and Doe Defendant #2 moved Jane's legs  
11 into stirrups and held her by the ankles, forcing her, once again, to remain on her back. Jane was  
12 intentionally deprived of her freedom of movement when Doe Defendant #1 and Doe Defendant #2  
13 moved her legs up past her shoulders. Jane was intentionally deprived of her liberty when Defendant  
14 Garrett covered her eyes with a towel. In these instances, which are illustrative and not necessarily  
15 exhaustive, Jane feared that she would be deprived of liberty—and she was. It is expected that  
16 evidence other methods of confinement may be revealed during discovery, even confinement of which  
17 Jane may be currently unaware.

18 231. Defendant Kachru intentionally deprived Jane of her liberty when she threatened,  
19 several times, to perform a C-section on her and when she continued to make such threats after Jane  
20 said no. After Jane said no several times, Defendant Kachru then threatened Jane with a C-section or a  
21 vacuum. Jane feared that she would be taken against her will to an operating theater where she would  
22 be forced to undergo major abdominal surgery. That fear was reasonable. Among other things, Sutter  
23 Health clinicians and staff had not actually listened to Jane's wishes, needs, or clinical reality  
24 throughout her time at the CPMC Birth Center and because Defendant Kachru did, in fact, insert a  
25 vacuum into Jane's vagina without consent. When Defendant Kachru made that intentional movement,  
26 she also deprived Jane of her liberty, just as she did when she catheterized Jane and sutured her  
27 perineal lacerations because Jane could not actually go anywhere other than where Defendant Kachru  
28 wanted her to be. Ironically, Jane had maintained throughout her pregnancy and labor that she did not

1 want to give birth on her back.

2           232. Jane was deprived of her liberty when Doe Defendant #4 and Doe Defendant #5  
3 insisted that Jane void into a bedpan, in the middle of the birthing suite, while others in attendance  
4 watched, and when they refused to assist or support her in moving to the bathroom. They told her that  
5 she could not leave the bed.

6           233. By words and conduct, these Defendants lead Jane to fear, quite reasonably, that she  
7 could not exert any autonomy over her own body. Notably, it was not physically possible for Jane to  
8 simply get up and leave: there were far too many Sutter Health staffers who had their own clear idea of  
9 how Jane's baby was going to be extracted from her body, making it wholly unreasonable for Jane to  
10 think she'd just make a run for the door. And, in reality, that's not something that a naked woman with  
11 an epidural catheter lodged in her lower back who is in the midst of contractions and trying valiantly  
12 to birth a baby, or just having birthed a baby, can do. Jane was told that she had to stay on her back.  
13 She was moved into that position, and she was forced to stay in that position, held there by two Doe  
14 Defendants by her ankles. Jane was also told that she could not leave the bed to go to the bathroom.

15           234. **Confinement for an Appreciable Time.** These deprivations of liberty occurred  
16 throughout the second and third stages of labor, which took several hours. More specifically, Jane is  
17 informed and believes and thereupon alleges the following timelines: Doe Defendant #1 and Doe  
18 Defendant #2, Jane confined to her back for over 15 minutes. Her legs were pushed up by her ears for  
19 approximately ten minutes. Defendant Kachru threatened Jane with a C-section or a vacuum for  
20 approximately 30 minutes. Defendant Kachru then used the vacuum on Jane without her consent for  
21 approximately 10 minutes. The Doe Defendant required Jane to void into a bedpan for appropriately  
22 10 minutes.

23           235. **Intent.** The Defendants behaved intentionally to cause the confinement even if they  
24 did not intend to cause harm or did not act with malice or evil motive. There is no reasonable  
25 explanation for their words and conduct other than to cause Jane to believe that she did not have a  
26 choice about where and how to move her body, that she really was going to have to stay on her back,  
27 against her will, and that she really was going to give birth via C-section or vacuum delivery—whether  
28 she consented to that course or not. Any apprehension that she had was reasonable because, as it

1 turned out, she really had no choice about what happened to her. Jane made her needs clear, and Jane  
2 said no to medical interventions that she did not want. She said, “I do not want this.” Defendants  
3 proceeded anyway.

4 236. **Lack of Consent.** Jane did not consent to any of the aforementioned behaviors.

5 237. **Causation.** Defendants’ conduct was a substantial factor in causing Jane’s harm.  
6 Defendants’ threats of force, generalized duress, actual force, and physical restraint created endocrine,  
7 anatomical, and mechanical stressors and reactions that led to entirely foreseeable damage to Jane’s  
8 body and mind.

9 238. **Harm.** As detailed above, Jane was gravely harmed.

10 **SEVENTH CAUSE OF ACTION**

11 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

12 **BY PLAINTIFFS AGAINST SUTTER HEALTH; AMITA KACHRU, MD; ANNA KOGAN,**  
13 **MD; LILY PEMBERTON, MD; NOELLE BRODEUR, CNM; LILIANA CORREA, CNM;**  
14 **VANESSA EVERS, CNM; JODI WINEMILLER, CNM; ELIZABETH GARRETT, RN; AND**  
15 **DOE DEFENDANTS**

16 239. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
17 preceding paragraphs, inclusive.

18 240. **Outrageous Conduct by the Defendant.** Defendants’ conduct was beyond outrageous.  
19 No reasonable person in this society would expect, condone, or tolerate what happened to Jane, as  
20 John watched, at the CPMC Birth Center. The conduct that Jane was forced to endure—during what  
21 could have been one of the most joyous days of her life—was so extreme that, by any reasonable  
22 measure, it exceeded all bounds of that usually tolerated in a civilized society. Recall that Sutter  
23 Health advertised that its clinicians and staff “really try to tailor the care for each patient, spend the  
24 time to figure out what their preferences are, how we can meet those needs, and just take it one patient  
25 at a time,” that “[y]ou’re not just a body,” that “[y]ou’re not gonna be rushed out of the hospital,” and  
26 that the CPMC Birth Center offers “a community of care at a place where people are going to take care  
27 of you, really get to know you.”<sup>29</sup> And the following behaviors occurred in a hospital that was  
28

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<sup>29</sup> See Sutter Health’s video on YouTube at <https://www.youtube.com/watch?v=-V-7Wso5pVw>.

1 required, by law, to adhere to a patient’s bill of rights and that created its own more robust and  
2 comprehensive patient’s bill of rights, as discussed *supra* in paragraphs 25 and 26. That patient’s bill  
3 of rights includes the right to “[c]onsiderate and respectful care,” the right to “[k]now the name of the  
4 licensed healthcare practitioner . . . who will see you[,]” the right to “effective communication and to  
5 participate in the development and implementation of your plan of care[,]” the right to “[m]ake  
6 decisions regarding medical care,” and the right to “receive as much information about any proposed  
7 treatment or procedure as you may need in order to give informed consent or to refuse a course of  
8 treatment.” There was also the handout that the Does received that promised the following:

**Who We Are**

We are a team of highly trained certified nurse-midwives and OB/GYN doctors who provide a unique collaborative practice to meet the needs of patients with both uncomplicated and high-risk pregnancies.

**Collaborative Practice**

Doctors and midwives participate equally in the care of all patients. Midwives are experts in low risk and uncomplicated pregnancy and childbirth, while MDs are available 24/7 if things become more complicated. This philosophy of collaboration extends to our work with pediatricians, social workers, anesthesiologists, nurses and beyond. Everyone on our team collaborates to provide the safest and most complete care.

**Appropriate Intervention**

Our group is committed to honoring pregnancy as a largely healthy, natural process that usually requires little to no intervention from your medical team. We don't perform procedures or recommend interventions universally, but tailor them to what's needed on an individual basis.

**Patient Centered**

It's essential to us that you and your family are active participants in making the decisions that will be both safest and most fulfilling for you.

**Evidence-based Care**

Practice of medicine should be based on firm data rather than anecdote, tradition, intuition or belief. We consistently review the latest research on common pregnancy issues, discuss how new research should influence our patient care, and bring the most up-to-date information to our conversations with you.

**Patient**

1           241. But here is a non-exhaustive list of behaviors by Defendants, and on their own and  
2 certainly with that patient’s bill of rights, Sutter Health’s marketing, the handout, the birth plan, and  
3 more setting expectations, these actions, alone and certainly collectively, are so extreme as to exceed  
4 all bounds of that usually tolerated in a civilized society, especially by healthcare professionals:

- 5           • Threatening Jane multiple times with major and unnecessary abdominal surgery  
6           (Defendant Kachru).
- 7           • Using a vacuum without consent to deliver Jane’s baby (Defendant Kachru).
- 8           • Allowing a man who played no clinical role in the room and to position himself next to  
9           Jane, setting himself up to touch her naked buttock (Defendant Sutter Health,  
10           Defendant Kachru, Defendant Garrett, Defendant Correa, Doe Defendants).
- 11          • Invading her privacy and not taking reasonable steps to protect Jane’s privacy  
12           (Defendant Sutter Health, Defendant Kachru, Defendant Garrett, Defendant Correa,  
13           Doe Defendants).
- 14          • Failing to pull the curtain closed when Jane was pushing her baby out and completely  
15           exposed, which is within the responsibility of an obstetrics nurse (Defendant Garrett).
- 16          • Failing to inform Jane about the people who were coming into the room while she was  
17           pushing, another behavior that is within the responsibility of an obstetrics nurse  
18           (Defendant Garrett).
- 19          • Failing to offer evidence-based medical care, supportive nursing care, or any midwifery  
20           care at all after the Does relied on representations about those standards, especially  
21           after Jane was in labor and had no other reasonable care alternatives (Defendant Kogan,  
22           Defendant Pemberton, Defendant Brodeur, Defendant Correa, Defendant Evers,  
23           Defendant Garrett, Defendant Ogundele, Defendant Winemiller).
- 24          • Physically confining Jane (Defendant Correa, Defendant Garrett, Defendant Kachru,  
25           Defendant Ogundele, Doe Defendants).
- 26          • Removing Jane’s gown without consent and not allowing her to wear her own gown  
27           (Defendant Correa and Defendant Garrett).
- 28          • Leaving Jane naked from the breast-line down, with legs splayed, and her vagina

1 exposed to everyone who walked in the door (Defendant Correa and Defendant  
2 Garrett), as well as not having a policy that requires otherwise (Defendant Sutter  
3 Health).

- 4 • Forcing Jane to “choose” between no care and a non-evidence-based, non-midwifery-  
5 based, and totally unnecessary intervention like morphine, a membrane sweep, and  
6 Pitocin, which is no choice at all (Defendant Winemiller, Defendant Evers, Defendant  
7 Pemberton).
- 8 • Sending Jane home, a home known to be 50+ miles away and along bumpy roads,  
9 while she was in active labor, vomiting, and experiencing intractable pain (Defendant  
10 Pemberton and Defendant Evers).
- 11 • Engaging in behaviors and practices that created a significant risk of clinician-imposed  
12 harm (all Defendants).
- 13 • Failing to follow ACNM or ACOG guidelines, as promised (Defendant CNMs and  
14 MDs, respectively).
- 15 • Setting an arbitrary, non-evidence-based two-hour time limit for pushing and doing so  
16 without any warning or information (Defendant Sutter Health, Defendant Correa,  
17 Defendant Kogan, Defendant Kachru).
- 18 • Failing to support varied pushing positions, including the positions that Jane stated  
19 worked best for her body (Defendant Garrett, Defendant Correa, Doe Defendants,  
20 Defendant Kogan, Defendant Kachru).
- 21 • Covering Jane’s eyes with a towel while failing to intervene and attempt to stop the  
22 other Sutter Health employees, agents, and/or ostensible agents from imposing  
23 interventions on or touching Jane without consent, which is within the responsibility of  
24 an obstetrics nurse (Defendant Garrett)
- 25 • Ripping Jane’s blanket away from her during the immediate postpartum period and  
26 demanding that she “show me your vagina,” while other postpartum nurses behaved  
27 entirely differently and without engaging in threatening, outrageous, and violent  
28 behaviors (Defendant Ogundele). A trained obstetric nurse commanding a postpartum

1 patient to “show me your vagina” while forcibly whisking her blanket away, like the  
2 other behaviors detailed above, is so extreme as to exceed all bounds of that usually  
3 tolerated in a civilized community, especially in a postpartum setting.

- 4 • Performing internal vaginal exams without consent and without offering Jane Doe an  
5 opportunity to decline them (Defendant certified nurse-midwives, Defendant nurses,  
6 and Doe Defendants).
- 7 • Failing, as the attending obstetrician, to assess Jane’s clinical status while approving  
8 Defendant Evers’ decision to send Jane to a home that was 50 or so miles away via a  
9 drive along bumpy roads while in labor, experiencing severe pain and nausea, and  
10 requesting admission to a birthing suite for non-pharmacologic support and midwifery  
11 assistance, especially after telling Jane that she would care for her if Jane came to the  
12 hospital during her shift. (Defendant Pemberton)
- 13 • Failing, as the attending obstetrician, to assess Jane’s clinical status, review her birth  
14 plan, see how many cervical exams were being done, check in on her progress, oversee  
15 the nurses and midwives on her watch, assess whether Jane was getting the care she  
16 requested, and to take the most basic step to meet the patient in her care (Defendant  
17 Kogan).
- 18 • Blocking Jane’s admission to a birthing suite while she was while in labor,  
19 experiencing severe pain and nausea, and requesting admission to a birthing suite for  
20 non-pharmacologic support (like a shower) and midwifery assistance, especially given  
21 all that Defendant Sutter Health had advertised about its birth care (Defendants Evers,  
22 Winemiller, and Pemberton).

23 242. **Reckless Disregard.** Defendants are health care providers. They are keenly aware of  
24 the emotional and physical vulnerability that goes hand in hand with being a patient in a hospital—  
25 vulnerability that is heightened exponentially when giving birth, especially a first birth. Either they  
26 knew that their conduct would probably result in emotional distress or, perhaps worse for healthcare  
27 workers, they gave little or no thought to the probable effects of their conduct. It was intentional,  
28 knowing, or oblivious to the obvious.



1           243. In 1926, at the Harvard Medical School, renowned physician Dr. Francis Peabody told  
2 the medical students, “One of the essential qualities of the clinician is interest in humanity, for the  
3 secret of the care of the patient is in caring for the patient.” This sentiment has been incorporated into  
4 the art of medicine for nearly 100 years. It is the essence of working in healthcare.

5           244. Defendants did not care for the patient. Either they intended to cause emotional distress,  
6 or they recklessly disregarded the probability of causing it. The care that they were required to  
7 provide, both by Sutter Health policy and pursuant to California law (22 CAL. CODE REGS. § 70707), is  
8 not a secret. Among other things, patients at facilities within the Sutter Health network have the right  
9 to considerate and respectful care. They have the right to be made comfortable. They have the right to  
10 respect for their cultural, psychosocial, spiritual, and personal values, beliefs, and preferences. They  
11 have the right to receive information about their health status, diagnosis, prognosis, and course of  
12 treatment in terms they can understand. They have the right to effective communication and to  
13 participate in the development and implementation of their plan of care. They have the right to  
14 participate in ethical questions that arise in the course of their care. They have the right to make  
15 decisions regarding medical care. They have the right to receive care in a safe setting, free from  
16 mental, physical, sexual or verbal abuse and neglect, exploitation, or harassment. They have the right  
17 to be free from restraints and seclusion of any form used as a means of coercion, discipline,  
18 convenience, or retaliation by staff. There is no exception for pregnant women, and any such  
19 exception would be a violation of a host of state and federal laws. Disregarding one of these rights  
20 would have been problematic, but disregarding all of them was either intentional or reckless. In fact,  
21 caring for a patient in labor who is experiencing severe pain and discomfort—and who had been led to  
22 believe that the institution supported physiologic birth with a panoply of non-pharmacologic options to  
23 manage discomfort, including acupuncture and hydrotherapy, with hands-on and evidence-based  
24 midwifery care available 24 hours a day, seven days a week—is particularly reckless. Any reasonable  
25 person would have been severely distressed under these circumstances, and no reasonable person in  
26 our civilized community should be expected to endure what Jane Doe endured, especially against the  
27 backdrop of the expectations that Defendants themselves established.

28           245. Defendants abused a position of power and authority over a patient who was in a state

1 of extreme vulnerability. That reality represents a betrayal of trust as a fiduciary and professional, and  
2 it was a substantial factor in causing Jane Doe, foreseeably, to suffer severe and likely lifelong  
3 physical injuries that, by virtue of their severity and impact, lead to emotional distress. Reasonable  
4 patients should be able to expect reasonable obstetricians, midwives, and nurses to provide the care  
5 they promised and to attend to the patient before them. The Defendants showed reckless disregard of  
6 the iatrogenic harm that they would likely cause, and, indeed, Plaintiffs are informed and believe that  
7 the birthing community (including obstetricians, midwives, and nurses) is well aware of the risks of  
8 traumatizing the birthing patient. Defendant Sutter Health promised a nurturing, evidence-based,  
9 supportive birth center where patients and clinicians make decisions hand-in-hand. It did not promise a  
10 place where the patient would first be barred entry to promised care and then ignored and manhandled,  
11 figuratively and literally, where the birth plan that Defendant Sutter Health told the Does to take the  
12 time to write would be an annoyance, pushed aside and also ignored.

13       246.   **Severe Emotional Distress.** As described at length in this Complaint, Jane and John’s  
14 emotional distress is severe and enduring. Jane has Postpartum PTSD and lives with constant and  
15 unpredictable flashbacks that are so severe that she cries out to try to alter the course of what the Sutter  
16 Health System did to her. She and John have been unable to have sexual intercourse, and that fact,  
17 along with the Postpartum PTSD and the other manifestations of physical damage to Jane’s body, has  
18 harmed their marriage—itsself an emotional burden. Similarly, John’s emotional distress is severe and  
19 enduring, and it requires psychiatric care and medication. This state of play has continued unabated for  
20 over a year. No reasonable people in civilized society should be expected to endure these harms,  
21 especially subsequent to the birth of a child. The severity of the distress may never lessen or disappear,  
22 relegating them to a lifelong struggle with emotional harm.

23       247.   **Causation.** The outrageous conduct that occurred at Sutter Health from October 19-21,  
24 2020, was a substantial factor in causing the Does’ severe and unrelenting emotional distress. This  
25 distress did not predate the birth. It began shortly after the birth and has continued.

26       248.   **Harm.** As discussed at length and throughout this document, Jane and John Doe were  
27 severely harmed. Their damages are extensive and ongoing.

28       249.   **Sutter Health Bears Responsibility.** In addition to the named and pseudonymous

1 Defendants in this cause of action, Sutter Health bears its own corporate liability as well as vicarious  
2 liability because Plaintiffs are informed and believe and thereupon allege that those individuals were  
3 agents, ostensible agents, and/or employees of Sutter Health and, at all relevant times, were acting in  
4 the course of their agency and/or employment.

5 **EIGHTH CAUSE OF ACTION**

6 **VIOLATION OF CALIFORNIA CONSTITUTIONAL RIGHT TO PRIVACY**  
7 **BY PLAINTIFF JANE DOE AGAINST SUTTER HEALTH; ELIZABETH GARRETT, RN;**  
8 **NOELLE BRODEUR, CNM; LILIANA CORREA, CNM; AMITA KACHRU, MD;**  
9 **AND DOE DEFENDANTS.**

10 250. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
11 preceding paragraphs, inclusive.

12 251. Article 1, Section 1, of the California Constitution codifies the right to privacy as an  
13 inalienable right. In this state, the constitutional right to privacy includes a right to autonomy—the  
14 right to make intimate personal decisions and conduct personal activities without observation,  
15 intrusion, or interference.

16 252. Defendants violated Jane’s right to privacy under the California constitution when they  
17 failed to honor her right to decline intrusions of her body. Defendant Kachru, Defendant Correa,  
18 Defendant Garrett, Doe Defendant #1, and Doe Defendant #2 usurped Jane’s privacy right when she  
19 said no to the vacuum and no to being on her back, and they ignored her. All Defendants invaded her  
20 right to privacy when she stated, again and again, that she did not want any men in the room unless he  
21 was the pediatrician, and they ignored her, allowing an unknown male into the room and letting him  
22 position himself by her bed after walking past and gazing at her naked body. Defendants invaded her  
23 right to privacy when they collectively failed to cover her with a sheet or a drape, and they did so  
24 again when they collectively pushed the privacy curtain aside and walked unannounced into the room.  
25 And they invaded her right to privacy when they left her in a position where her vagina was in full  
26 view of anyone and everyone who walked into the room.

27 253. **Reasonable Expectation of Privacy.** Jane’s expectations that her decisions about her  
28 body would be honored and her ability to birth without unwanted observers, intruders, or interference

1 were reasonable. In fact, they were set by Sutter Health through its various exhortations that it offered  
2 private birthing suites in a private setting with respect for dignity, autonomy, and privacy, and her  
3 expectations were squarely in line with the protections enumerated in Sutter Health’s statement of  
4 patients’ rights that were visible throughout the facility. And even if The Man was somehow necessary  
5 for the baby, he could have remained behind the curtain until the baby was born, and then he could  
6 have attended to the baby by walking behind Jane and respecting her right to privacy. Jane could not  
7 have been clearer throughout her pregnancy and during her entire labor that she did not want men in  
8 the room. Any of the various healthcare workers who made their way into the suite could have taken  
9 even the most modest of steps to protect Jane’s privacy. But no one covered her with a sheet, pulled  
10 the curtain by the door, said who they were or why they were in the room. She was entirely  
11 disregarded, even when she said “no” to the proposed medical interventions.

12       254.   **Egregious Breach of Social Norms.** These invasions of privacy were so serious in  
13 nature, scope, and actual impact that they constituted an egregious breach of social norms, even within  
14 the hospital setting. There was nothing private about Sutter Health’s “private” birthing suite. There  
15 was nothing respectful about “care” that disregarded Jane’s very clear decisions, choices that she  
16 stated clearly, emphatically, and repeatedly. It is difficult to imagine a scenario that would be a more  
17 egregious breach of even the social norms of a hospital with its focus on personal and informational  
18 privacy than what Jane experienced at the CPMC Birth Center—total disregard of her autonomy,  
19 bodily integrity, and privacy.

20       255.   **Substantial Factor.** Defendants’ behavior was not just a substantial factor in bringing  
21 about the invasion of Jane’s privacy right; it was the only factor.

22       256.   **Harm.** The breathtaking invasion of Jane’s right to privacy constitutes the harm.

23       257.   **Sutter Health Bears Responsibility.** In addition to the named and pseudonymous  
24 Defendants in this cause of action, Sutter Health bears its own corporate liability as well as vicarious  
25 liability because Plaintiffs are informed and believe and thereupon allege that those individuals were  
26 agents, ostensible agents, and/or employees of Sutter Health and, at all relevant times, were acting in  
27 the course of their agency and/or employment.

28   ///

1 **NINTH CAUSE OF ACTION**

2 **INVASION OF PRIVACY**

3 **BY PLAINTIFF JANE DOE AGAINST SUTTER HEALTH;**

4 **AMITA KACHRU, MD; AND DOE DEFENDANTS**

5 258. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
6 preceding paragraphs, inclusive.

7 259. **Reasonable Expectation of Privacy.** Jane had a reasonable expectation that her  
8 privacy would be respected in Sutter Health’s “private” birthing suite. Sutter Health’s personnel failed  
9 to introduce themselves, and they failed to explain what they were doing and why. They allowed a  
10 man who had no clinical role to play in Jane’s care view her naked body and position himself near her,  
11 even after she had made her requirement of no men in the birthing suite incredibly clear throughout  
12 her pregnancy, labor, and delivery.

13 260. By any measure, birth is an incredibly personal and private matter, and any intrusion  
14 into the birthing space is, by definition, highly offensive—especially so to Jane since her paramount  
15 birthing requirement was protection of her privacy. Sutter Health clinicians and staff were even  
16 required by Sutter Health’s own bill of patients’ rights to honor Jane’s privacy. They disregarded her.  
17 The entry of Defendant Kachru and the Doe Defendants into the birthing suite, with Defendant Kachru  
18 announcing that she was going to perform a C-section without any warning or introduction and with  
19 the various Doe Defendants just filing into the room, leaving the door wide open, and observing Jane  
20 without consent is simply abhorrent. More to the point, it violated her right to privacy under the  
21 common law.

22 261. **Sutter Health Bears Responsibility.** In addition to the named and pseudonymous  
23 Defendants in this cause of action, Sutter Health bears its own corporate liability as well as vicarious  
24 liability because Plaintiffs are informed and believe and thereupon allege that those individuals were  
25 agents, ostensible agents, and/or employees of Sutter Health and, at all relevant times, were acting in  
26 the course of their agency and/or employment.

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1 **TENTH CAUSE OF ACTION**

2 **NEGLIGENT HIRING, SUPERVISION, OR RETENTION**

3 **BY PLAINTIFF JANE DOE AGAINST SUTTER HEALTH**

4 262. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
5 preceding paragraphs, inclusive.

6 263. **Hiring.** Sutter Health hired, supervised, and retained the Defendants named and  
7 fictitiously named in this Complaint to provide, respectively, evidence-based and low-intervention  
8 obstetric, midwifery, obstetric nursing, and other related care within a model of physiologic birth.  
9 Sutter Health hired The Man to provide some kind of medical attention, and discovery will need to be  
10 conducted as to background checks, training, and supervision of this individual. These hiring decisions  
11 represent failures of due diligence and a failed system that allows inept, ill-trained, and inexperienced  
12 midwives and obstetric nurses to attend births. Sutter Health’s negligent hiring, supervision, and  
13 retention practices allowed a doctor like Kachru to completely ignore a competent patient’s refusal of  
14 care. These individuals should never have been hired or should have been fired long ago.

15 264. **Duty of Care.** Sutter Health owed duty of care to Jane Doe in hiring and supervising  
16 the obstetricians, midwives, nurses, and other staff who work in the CPMC Birth Center to avoid  
17 exposing her to an unreasonable risk of harm. Not only do these individuals, as agents, ostensible  
18 agents, and employees need to be appropriately licensed, but, to align with Sutter Health’s public and  
19 private representations about the quality and scope of the birth care it provided, these individuals  
20 needed to, within the scope of their licenses, have, among other things: ample experience observing  
21 and attending physiologic birth; a demonstrable understanding of and a clear commitment to follow  
22 birth-related medical evidence; a demonstrable understanding of medical ethics and law as related to  
23 prenatal and perinatal care and potential conflicts; and a demonstrable understanding of and  
24 commitment to follow relevant national standards and guidelines. Anything less would be foisting  
25 incompetence with regard to its representations about the care provided by its Mission Bernal  
26 Women’s Clinic and within its CPMC Birth Center upon the unknowing public.

27 265. **Breach.** Given what transpired, Sutter Health breached that duty of care. The  
28 obstetricians, midwives, nurses, and other staff who interacted with Jane Doe were unfit and

1 incompetent to provide the kind of obstetric, midwifery, obstetric nursing, and general medical care  
 2 that Sutter Health represented it provided through its Mission Bernal Women’s Clinic and within its  
 3 CPMC Birth Center. Had Sutter Health conducted a reasonable investigation of the individuals that it  
 4 hired who then interacted with the Does, or had it offered reasonable supervision of those individuals,  
 5 it would have been aware of the glaring problems at its facilities and with its personnel that led  
 6 directly to Jane Doe’s harms. In short, Sutter Health knew or should have known that hiring and  
 7 retaining these individuals created a risk of iatrogenic birth injury and trauma.

8         266.   **Cause.** The behaviors of Sutter Health’s agents and employees were substantial factors  
 9 in causing Jane Doe’s harms. Had its personnel been competent to support a birthing woman with  
 10 actual midwifery care and related expertise for physiologic birth, the harms would not have occurred.

11         267.   **Harm.** Jane Doe suffers from iatrogenic birth injury and trauma. These harms were  
 12 entirely foreseeable, and the medical and lay literature are rife with similar stories. Any reasonable  
 13 hospital or birth center would be on notice of such harms and keep its commitment to prevent them  
 14 front and center of its responsibilities to birthing people and the general public. Sutter Health is  
 15 directly liable for its negligence here.

16   **ELEVENTH CAUSE OF ACTION**

17   **GENDER-RELATED VIOLENCE (CAL. CIV. CODE § 52.4)**

18         **BY PLAINTIFF JANE DOE AGAINST AMITA KACHRU, MD; NOELLE BRODEUR, CNM;**  
 19   **LILIANA CORREA, CNM; AND DOE DEFENDANTS**

20         268.   Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
 21 preceding paragraphs, inclusive.

22         269.   **Forceful Criminal Act.** Jane was subjected to several forceful acts—assault, battery,  
 23 sexual battery, lewd or lascivious acts—that constitute crimes under California law. While only the  
 24 district attorney can bring criminal charges, make no mistake: the acts details in this Complaint  
 25 involved the use, attempted use, or threatened use of physical force against Jane. The acts are detailed  
 26 at length above in each cause of action that is a crime under California law, but to reiterate some of the  
 27 egregious behaviors, Jane was restrained against her will, forced to remain on her back, touched  
 28 without consent, threatened with (among other things) major abdominal surgery and a mechanical

1 instrument to extract her child from her vagina, and she was then forced to void into a bedpan in front  
2 of others. Plaintiffs are informed and believe and thereupon allege that Defendant Kachru cut an  
3 episiotomy without Jane's consent. In the context of Jane's story, these are forceful criminal acts.

4       270. **Physical Act of Sexual Nature under Coercive Conditions.** The Man subjected Jane  
5 to a physical act of a sexual nature by placing an open palm on her naked left buttock. The conditions  
6 in which he executed the physical act were, in this case, necessarily coercive: Jane was a patient in a  
7 hospital, naked in a hospital bed, confined within a birthing suite, while tethered to a fetal monitor,  
8 epidural, and other medical paraphernalia, during the immediate postpartum period.

9       271. **Based on Gender.** Obstetric violence is a manifestation of violence against women.  
10 Pursuant to the statute, gender is defined as a person's sex, gender identity, and gender expression.  
11 With regard to obstetric violence, because no cisgender man in the history of humankind has ever  
12 birthed a baby, only women, non-binary persons, and trans men are available as targets for such abuse.  
13 Thus, necessarily, obstetric violence is gender-related violence. Additional information about obstetric  
14 violence can be found in the claim for violation of the Ralph Civil Rights Act of 1976, and that  
15 information is incorporated by reference herein.

16       272. **Causation.** As detailed throughout, the at-issue Defendants' conduct was a substantial  
17 factor in causing harm to Jane.

18       273. **Damages.** Jane's harms are extensive and ongoing.

## 19 **TWELFTH CAUSE OF ACTION**

### 20 **LOSS OF CONSORTIUM**

#### 21 **BY PLAINTIFF JOHN DOE AGAINST ALL DEFENDANTS**

22       274. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
23 preceding paragraphs, inclusive.

24       275. **A Valid and Lawful Marriage.** John and Jane are married, and they were married, in a  
25 valid and lawful marriage, at the time of the events described in this Complaint.

26       276. **Tortious Injury to Jane.** As described at length in this Complaint and realleged and  
27 incorporated by reference herein, Jane suffers from numerous tortious injuries.

28       277. **John Suffers from Loss of Consortium.** In addition to suffering from the emotional



1 distress that Defendants inflicted on him, John Doe has been harmed by the negligent and intentional  
2 injuries that Defendants caused his wife, Jane, to suffer. Because Jane now suffers from Postpartum  
3 PTSD and severe pelvic injuries, John suffers from the loss of love, companionship, comfort, care,  
4 assistance, protection, affection, society, and moral support. He has lost a partner in operating and  
5 maintaining their home. He also suffers from the loss of the enjoyment of sexual relations and physical  
6 intimacy. There is no cure for Jane’s injuries, so John will suffer for the foreseeable future.

7 278. **Causation / Damages.** As described in detail in the prior paragraphs of this Complaint,  
8 all of which have been realleged and incorporated by reference, the Defendants are the direct,  
9 proximate, and foreseeable cause of John’s suffering.

10 **THIRTEENTH CAUSE OF ACTION**

11 **MEDICAL MALPRACTICE**

12 **BY PLAINTIFF JANE DOE AGAINST SUTTER HEALTH; ANNA KOGAN, MD;**  
13 **LILY PEMBERTON, MD; NOELLE BRODEUR, CNM; LILIANA CORREA, CNM;**  
14 **VANESSA EVERS, CNM; JODI WINEMILLER, CNM; ELIZABETH GARRETT, RN;**  
15 **MABELBA OGUNDELE, RN; AND DOE DEFENDANTS**

16 279. Plaintiffs reallege and incorporate by reference each of the allegations set forth in all  
17 preceding paragraphs, inclusive.

18 280. **90-Day Notice Requirement.** Pursuant to statute, Jane Doe has complied with the 90-  
19 day notice-of-intent-to-sue requirement. *See* CAL. CODE CIV. PRO. § 364. The 90-day notice letters  
20 were sent by United States Postal Service (certified mail) to all Defendants on October 16, 2021.

21 281. **Duty of Care.** Healthcare providers must possess and exercise the reasonable degree of  
22 knowledge and skill that is ordinarily possessed and exercised by other members of the profession in  
23 similar circumstances. The at-issue Defendants are healthcare providers, and, thus, they had a duty of  
24 care to Jane. As to the Defendants who work at the Mission Bernal Women’s Center, as well as their  
25 actual or ostensible employer, the duty of care arose when Jane began her prenatal course as their  
26 patient, and that duty was ongoing. As to the other Defendants in this cause of action, the duty arose  
27 when Jane entered their care. Further, the at-issue Defendants are specialists in birth-related and  
28 women’s care: they are obstetrician/gynecologists, certified nurse-midwives, and obstetric nurses. As

1 such, they are held to a heightened standard of learning and skill.

2       282. Jane Doe was a patient of the Sutter Health Mission Bernal Women’s Clinic, which  
3 means that she was a patient *of the practice* and, thus, a patient of each and every clinician who  
4 worked at that clinic. She was a patient of Defendant Kogan, Defendant Pemberton, Defendant  
5 Brodeur, Defendant Correa, Defendant Evers, Defendant Winemiller, and all other clinicians, like Dr.  
6 Tirun A. Gopal, whom she saw at one point for prenatal care. She was a patient of these clinicians  
7 from the moment she entered prenatal care until that relationship was formally ended, if it ever was.

8       283. Just as Jane agreed, by becoming a patient of the Sutter Health Mission Bernal  
9 Women’s Clinic, to see any of the physicians and/or midwives for care, in turn, she was a patient of  
10 each and every physician and midwife of the clinic. All of the MD and CNM Defendants were in a  
11 fiduciary relationship with Jane Doe by virtue of her being a patient of the Sutter Health Mission  
12 Bernal Women’s Clinic, and that duty is in addition to any additional duties they had to laboring  
13 patients who present at the Sutter Health CPMC Birth Center for labor and delivery care without  
14 having first been a patient of the Sutter Health Mission Bernal Women’s Clinic.

15       284. **Breach.** The at-issue Defendants breached their duty of care to Jane Doe; they  
16 breached the standard of care. They failed to possess and/or use the degree of learning and skill  
17 ordinarily possessed by obstetricians, certified nurse-midwives, obstetric nurses, and health care  
18 employers and providers, respectively, and they failed to use reasonable diligence and best judgment  
19 in the exercise of skill and application of learning. As detailed above, in addition to failing to do what  
20 they had promised publicly and privately throughout Jane’s prenatal course, among other things, the  
21 midwives did not offer Jane Doe evidence-based, low-intervention support that followed the standards  
22 set by the profession and by the ACNM. Giving her an “option” of morphine or going home breaches  
23 the applicable standard of care. So does failing to support her during labor, failing to honor her  
24 freedom of movement and follow her informed decision—one consistently throughout the course of  
25 her pregnancy—to push in positions other than on her back, failing to respond to her needs, failing to  
26 honor her dignity and privacy, failing to offer non-pharmacologically-based pain support, failing to  
27 help her into a shower, failing to assist her in changing positions, failing to offer her a birthing ball,  
28 and generally failing to be “with woman”—which is literally what “midwife” means—during the

1 entirety of this incident. The obstetric nurses breached the standard of care set by the profession by,  
2 among other things, failing to offer adequate nursing support to Jane Doe, failing to honor her  
3 decisions, and failing to treat her with requisite respect, professionalism, and attention.

4 285. Defendants Kogan and Pemberton breached the standard of care set by the profession  
5 and by the American College of Obstetricians and Gynecologists when, among other things, they  
6 failed to meet the patient who was on their watch, failed to supervise the nurse-midwives assigned to  
7 Jane, and failed completely to attend to the Jane at all. The very definition of what it means to be **the**  
8 **attending physician** is to be the captain of the ship, to bear the responsibility for everything that goes  
9 on regarding the patient. By failing to speak to Jane, evaluate Jane, perform even the most cursory  
10 history and physical in this clinical setting, especially when Jane was experiencing intractable pain and  
11 having to make medical decisions without fulsome information, these obstetricians breached the  
12 standard of care. Section 2746.5 of the California Business and Professions Code is clear about  
13 regulation of the practice of midwifery: “As used in this chapter, the practice of nurse-midwifery  
14 constitutes the furthering or undertaking by any certified person, **under the supervision of a licensed**  
15 **physician and surgeon who has current practice or training in obstetrics**, to assist a woman in  
16 childbirth so long as progress meets criteria accepted as normal.” (Emphasis added.) This standard,  
17 and more, was unmet in the situation of Jane Doe.

18 286. Further, Plaintiffs are informed and believe that obstetricians working at the Sutter  
19 Health CPMC Birth Center engage in shift work, so it is not inconsistent to have several different  
20 attending physicians at the helm of care over a 36- or 48-hour period. Plaintiffs are informed and  
21 believe that Defendant Pemberton was an attending physician for Jane during a portion of the time  
22 during which Jane was at the Sutter Health CPMC facility, and, by virtue of her name being listed as  
23 the attending obstetrician on the white dry-erase board in her hospital room, Plaintiffs are informed  
24 and believe that Defendant Kogan was also an attending physician during the relevant time period.  
25 Again, so it is perfectly clear, the attending physician is responsible for everything that happens on her  
26 watch regarding the patient, including things that should have happened but did not and things that did  
27 happen but should not have happened.

28 287. The Defendants breached the standard of care by, among other things, failing to admit

1 Jane when she presented for admission and adhering to a two-hour pushing timeline for a primiparous  
2 patient with an epidural—and holding fast to that insistence against the patient’s expressed, informed,  
3 and consistent decision to decline the timeline—and failing to allow Jane to push in her choice of  
4 position. These Defendants also failed when they did not stand up for and protect Jane when  
5 Defendant Kachru and Doe Defendants, among other things, threatened Jane with a C-section, directed  
6 that Jane be held down, held Jane down, moved Jane in ways that she did not consent to, and  
7 continued to touch her body after she said “no” over and over and over again. They remained silent as  
8 Jane was “treated” without any consent. If they were on shift, they had a duty to intervene and to aid.  
9 The MD and CNM Defendants, as well as Defendant Sutter Health, had an ongoing duty to ensure that  
10 training of those who attend or are present during births was such that they would recognize breaches  
11 of informed consent, intervene, and render aid.

12       288.   **Causation.** Defendants’ professional negligence was a substantial factor in bringing  
13 about the harms, detailed at length, from which Jane is suffering. Those injuries are signature injuries  
14 of a traumatic birth, and the breaches of the respective standards of care were a psychological,  
15 physiological, hormonal, anatomical, and mechanical set-up for entirely foreseeable iatrogenic injuries  
16 to Jane Doe. In other words, Jane was subjected to psychological, physiological, hormonal,  
17 anatomical, and mechanical stressors, including a complete lack of the promised midwifery support  
18 and non-pharmacologic pain relief, that put her at an increased risk for the very injuries from which  
19 she now suffers. Notably, certified nurse-midwives, like those named here, including Defendant  
20 Winemiller, have a duty that continues beyond a single interaction, like a discussion about whether  
21 morphine is indicated for pain relief. A nurse-midwife needs to follow the standards of the profession  
22 as articulated by, among other places, the ACNM, and the duties include providing support and care  
23 *throughout the labor process*. It is a continuing responsibility, not one that is discharged in discrete  
24 interactions. The Defendant nurse-midwives failed to meet that standard of care. Shockingly,  
25 Defendant Evers sent Jane home while in labor and in intractable pain, and Plaintiffs are informed and  
26 believe that Defendant Pemberton signed off on that decision, even though she knew who Jane was,  
27 had cared for her during the prenatal period, and did not even bother to evaluate her during the  
28 relevant time period.

