

1 Carlos X. Colorado, Esq. (SBN 231031)  
2 HODES MILMAN, LLP  
3 9210 Irvine Center Drive  
4 Irvine, CA 92618  
5 Tel: (949) 640-8222  
6 Fax: (949) 336-8114  
7 [ccolorado@hodesmilman.com](mailto:ccolorado@hodesmilman.com)

8 Liaison Counsel for Plaintiffs

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

11 Coordination Proceeding  
12 Special Title (CRC 3.550(b))

13 Children's Dental Group Cases

JUDICIAL COUNCIL COORDINATION  
NO: JCCP 4917  
Hon. Glenda Sanders, Judge

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT TO CLAIM  
PUNITIVE DAMAGES AGAINST DENTIST  
DEFENDANTS PURSUANT TO C.C.P. §  
425.13 [Filed Concurrently with Declaration of  
Alan H Gluskin]**

Master Complaint Filed: February 8, 2018  
1st Bellwether Trial Date: January 13, 2020

Hearing Date: September 20, 2019  
Hearing Time: 1:30 p.m.  
Dept.: CX101

19 TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that on September 20, 2019, at 1:30 p.m., in Department CX101 of  
21 this court, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, before the Honorable Glenda  
22 Sanders, Plaintiffs in the above-entitled Coordination Proceeding, by and through their undersigned  
23 Liaison Counsel, will and hereby do move pursuant to Civil Code section 3294, and Code of Civil  
24 Procedure sections 425.13, 473, and 576 for an order granting leave to amend Plaintiffs' currently  
25 operative Complaint to include a prayer for punitive and exemplary damages against the Dentist  
26 Defendants.  
27

28 This Motion is made on the grounds that Defendants have exhibited a clear conscious disregard

1 for patient safety amounting to malice as defined in Civil Code section 3294. Defendants' conduct  
2 exceeds a mere departure from the standard of care, and requires an imposition of significant punitive  
3 damages to deter Defendants and others similarly situated from engaging in such despicable behavior.  
4 Please take notice that, by this motion, Plaintiffs seek punitive damages against ALL CDG dentist  
5 defendants based on the allegations contained herein that they all engaged in the same conduct through  
6 concerted action and omission.

7 As set forth more fully in the accompanying brief, the motion should be granted because the  
8 Dentist Defendants have committed a long and horrific parade of fraud and/or malice and/or oppression  
9 demonstrating a substantial probability that plaintiffs will prevail on a claim for punitive damages  
10 under Civil Code Section 3294 by, among other things, the following, any one of which would  
11 separately mandate that Plaintiffs be entitled to allege punitive damages:

12 (1) Engaging in the unlicensed and/or unlawful practice of dentistry and/or facilitating,  
13 conspiring, and/or aiding and abetting in its occurrence, in violation of B&P Code Section 1680, for  
14 which criminal and civil penalties may be imposed under B&P Code Section 1701;

15 (2) Engaging in a pattern and practice of excessively over-treating infants, toddlers, and very  
16 young children, and/or facilitating, conspiring, and/or aiding and abetting in its occurrence, in violation  
17 of B&P Code Section 1680, for which criminal and civil penalties may be imposed under B&P Code  
18 Section 725 (a) –(b);

19 (3) Engaging in a pattern and practice obtaining fees for dental services by fraud, and/or  
20 facilitating, conspiring, and/or aiding and abetting in its occurrence, in violation of B&P Code Section  
21 1680;

22 (4) Disregarding, ignoring, and failing to follow and implement Medi-Cal Dental Handbook –  
23 Manual of Criteria, setting forth guidelines for administering Nitrous Oxide to children under 13 years  
24 of age only if they are uncooperative, and/or aiding and abetting in its occurrence, in violation of B&P  
25 Code Section 1680;

26 (5) Engaging in a pattern and practice of making deceptive and/or false and/or fraudulent  
27 claims for health-care benefits, and/or aiding and abetting in its occurrence, by falsifying records  
28 related to the purported use of Nitrous Oxide, in violation of B&P Code Section 1680, and for which

1 criminal penalties may be imposed under Penal Code Section 550 -- involving at least 115 patient cases  
2 implicating at least 15 of the Dentist Defendants;

3 (6) Disregarding, ignoring, and failing to follow and implement guidelines for infection control  
4 including water quality testing, maintenance, and monitoring of dental water units, and/or facilitating,  
5 conspiring, and/or aiding and abetting in their occurrence, in violation of then applicable Centers For  
6 Disease Control Guidelines For Infection Control, creating unsanitary and highly dangerous office  
7 conditions, in violation of B&P Code Section 1680 -- relating to 13 autoclave spore test failures  
8 involving 12 failures in 6 months with 4 consecutive monthly failures;

9 (7) Disregarding, ignoring, and failing to follow and implement standards within Code of  
10 Regulations 1005 (b) (17) to limit the transmission of diseases in dental offices, and/or aiding and  
11 abetting in their occurrence, in violation of B&P Code Section 1680;

12 (8) Concealing from the parents of the child patients information relating to the contaminated  
13 water and resulting outbreak of Mycobacterium Infections; and (9) Engaging in the foregoing unlawful,  
14 wrongful, and despicable misconduct to enable a financial profit scheme designed and calculated to  
15 target, and take advantage of, underprivileged infants, toddlers, and very young children in low-income  
16 Hispanic communities.

17 This Motion will be based on this Notice; the attached Memorandum of Points and Authorities;  
18 the attached Declarations of Alan H. Gluskin and Carlos X. Colorado, and the exhibits attached thereto;  
19 all pleadings and documents on file in this matter and any oral evidence presented at the hearing on this  
20 motion.

21 Dated: June 12, 2019

HODES MILMAN, LLP

22  
23 By: /s/ Carlos X. Colorado  
24 Carlos X. Colorado, Esq.  
25 Plaintiffs' Liaison Counsel  
26  
27  
28

**TABLE OF CONTENTS**

1

2 I. INTRODUCTION .....4

3 II. STATEMENT OF FACTS .....4

4 A. Gruenbaum Transforms CDG’s Public Health-Minded Pediatric Dentistry Practice Into

5 Profit-Driven Investment Vehicle for Private Gain .....4

6 B. The CDG Dentists Overtreat .....7

7 C. CDG Dentists Elect to Downgrade Infection Control to a Low Priority at CDG.....9

8 D. The CDG Dentists Consent to Rent Out Their Licenses to Non-Dentists In Exchange for

9 the Promise of Greater Profits..... 12

10 1. Dentists Do Not Communicate with Parents ..... 12

11 2. The CDG Dentists Authorize Billing Claims to be Submitted on their Behalf to

12 Denti-Cal for Reimbursement Which Misstate Facts Justifying Payments..... 13

13 E. CDG Keeps Vital Information Relating to the Contamination and Resulting Infection

14 Away from the Parents..... 15

15 III. LEGAL ARGUMENT ..... 16

16 A. CCP section 425.13 Generally ..... 16

17 B. Evidentiary Requirements ..... 17

18 C. Clear and Convincing Standard..... 18

19 D. Plaintiff Can Establish a *Prima Facie* Entitlement to Punitive Damages..... 19

20 1. Transforming CDG From A Public Health Community Clinic to an Investment

21 Vehicle For Private Gain At the Expense of the Patients Demonstrates Malice and

22 Oppression. .... 20

23 2. Overtreating Children to Drive Up Profits Demonstrates Malice and Oppression. .... 21

24 3. Electing to Make Infection Control a Low Priority Item Demonstrates Malice and

25 Oppression. .... 21

26 4. Turning over the Practice of Dentistry to Non-Dentists Demonstrates Fraud and

27 Oppression. .... 22

28

1           5.    Concealing Contaminated Water and an Outbreak of Mycobacterium Infections  
2                    Demonstrates Fraud and Oppression. ....23  
3 IV.    CONCLUSION.....23  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**Cases**

*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017 ..... 18

*Aquino v. Superior Court* (1993) 21 Cal.App.4th 847..... 18

*Bell v. Sharp Cabrillo Hospital* (1989) 212 Cal.App.3d 1034 ..... 19

*Bommareddy v. Superior Court* (1990) 222 Cal.App.3d 1017 ..... 19

*Butler v. Collins* (1859) 12 Cal. 457 ..... 19

*College Hospital v. Superior Court* (1994) 8 Cal.4th 704..... 17, 18, 20

*Hoch v. Allied-Signal, Inc.* (1994) 24 Cal.App.4th 48..... 18

*J.R. Norton Co. v. General Teamsters, Warehousemen & Helpers Union Local 890* (1989) 208  
Cal.App.3d 430 ..... 19

*Looney v. Superior Court* (1993) 16 Cal.App.4th 521 ..... 16, 17, 18

*Monge v. Superior Court* (1986) 176 Cal.App.3d 503 ..... 19

*Taylor v. Superior Court* (1979) 24 Cal.3d 890 ..... 19

**Statutes**

Business and Professions Code section 1680(a)..... 23

Business and Professions Code section 1680(ad)..... 22

Business and Professions Code section 1680(p)..... 21

Business and Professions Code section 725(b)..... 21

Business and Professions Code section 1625(e)..... 22

Civil Code section 3294..... 16, 18, 19, 20

Code of Civil Procedure section 425.13 ..... 16, 17

Penal Code section 550(a)(6)..... 23

**Other Authorities**

CACI 201 ..... 18

**Regulations**

California Code of Regulations, § 1005(b), Minimum Standards for Infection Control..... 22

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs should be allowed to amend their complaint to add punitive damages allegations  
4 against the Dentist Defendants pursuant to Civil Code section 3294, and Code of Civil Procedure  
5 sections 425.13, 473, and 576 because the CDG dentists engaged in conduct reflecting malice,  
6 oppression and fraud, leading to severe damages in a vulnerable client population (underprivileged  
7 children).

8 CDG is a tale of two clinics: the community dentists with a public health mission envisioned by  
9 founder Scott Jacks, and the investment flip dreamed up by former attorney Sam Gruenbaum; the child-  
10 friendly fun place advertised to a Hispanic clientele, and the threat to public safety created by hands-off  
11 dentists willing to hand off major clinical tasks to assistants, so the dentists could concentrate on  
12 meeting the ever-increasing production demands set by management.

13 This motion is an effort to square the competing visions, because the CDG dentists’ “pass the  
14 buck” and “bury your head in the sand” attitudes are unacceptable in the practice of dentistry and must  
15 have consequences for them, as they had for the hundreds of children injured by defendants’ conduct.

16 **II. STATEMENT OF FACTS**

17 **A. Gruenbaum Transforms CDG’s Public Health-Minded Pediatric Dentistry**  
18 **Practice Into Profit-Driven Investment Vehicle for Private Gain**

19 In 1983, Dr. Scott Jacks, who is “very involved in the local community,” opens up his dental  
20 clinic in South Gate, seeking to address the “significant access-to-care barriers for underprivileged and  
21 underinsured children” in southeastern L.A. County, “in an area where few or no doctors made a choice  
22 to practice.” [See Declaration of Carlos X. Colorado (“Colorado Decl.”), Ex. A (Fehmer Depo. Tr.) at  
23 15:10-11, 13-14, 17-18, Ex. B (“Remembering Dr. Scott Jacks”).] Dr. Jacks hires John Fehmer, who  
24 shares his goal of having “a private business that ha[s] a public health mission.” [Ex. A (Fehmer Depo.  
25 Tr.) at 15:21-22.] Dr. Jacks and Mr. Fehmer decide that they “never want[] to set the financial goals as  
26 the primary priority of the business.” [Id. at 64:14-16.] Instead, they believe that, if they provide good  
27 quality care, patients “will come, they will recommend, and the business will grow, and we will be  
28 productive as a result of that, not the other way around.” [Id. at 64:21-23.] “In fact, over the years,

1 many, many times,” Dr. Jacks resists “grow[th] for the sake of growth. And he [tells] people -- and he  
2 sa[ys] it over and over again -- *the last thing I would ever want is for our group to become the Western*  
3 *Dental of pediatric dentistry.*” [*Id.* at 81:14-15, 17-21 (emphasis added).] For example, Dr. Jacks never  
4 sends around memos urging dentists to treat more patients. [Ex. C (Diaz Depo. Tr.) at 161:22-162:1,  
5 Ex. D (Nguyen Depo. Tr.) at 91:17-21 and 118:20-23.]

6 In September 2014, Dr. Jacks and Mr. Fehmer meet with Samuel Gruenbaum, former Western  
7 Dental CEO, to discuss his experience with the provision of vision services at dental clinics. [*Id.* at  
8 43:4-25.] The day after this meeting, October 1, 2014, Dr. Jacks unexpectedly dies. [Ex. E (Marsha  
9 Jacks Depo. Tr.) at 48:19-20, 83:20-84:4.] On or about October 8, 2014, one week after Dr. Jacks’  
10 death, Gruenbaum sends the Jacks’ daughter Lauren a “Business points” memo in support of  
11 Gruenbaum’s proposal to be given unfettered access to CDG operations, so that Gruenbaum could  
12 advise the family, including by “provid[ing] input regarding private equity company investments in  
13 dental companies and investment bankers/advisers for dental companies.” [*See* Colorado Decl. at Ex. F  
14 (exhibit to Defendants’ opposition to motion for determination of privilege.)]

15 Gruenbaum preys upon Mrs. Jacks’ vulnerability following Dr. Jacks’ death and her uneasiness  
16 with making business decisions to remove Fehmer and insinuate himself to replace him. [Ex. A  
17 (Fehmer Depo. Tr.) at 84:23-85:10; *see also*, Ex. E (Marsha Jacks Depo. Tr.) at 68:19-20 (“Scott died,  
18 and I got stuck with these dental offices”), 84:3-4 (“My husband died. Everything got thrown in my  
19 lap”).] On March 10, 2015, Mr. Fehmer is taken out of his position as CEO. [Ex. A (Fehmer Depo. Tr.)  
20 at 95:6-10.] By April 30, 2015, he is off the payroll. [*Id.* at 95:11-13.] In the letter notifying him of  
21 his removal, Mrs. Jacks tells Mr. Fehmer that she intends to appoint Gruenbaum as interim president  
22 and CEO. [Ex. E (Marsha Jacks Depo. Tr.) at 123:19-124:4.]

23 Shortly after the takeover, on April 4, 2015 Gruenbaum’s team notifies all dentists, managers  
24 and treatment coordinators that each office will now receive “daily dashboard” reports that track,  
25 among other things, daily productivity dentist productivity by doctor and by office. [*See* Colorado  
26 Decl., Ex. G (Sakamoto Memo).] The “dashboards” track each time payment checks are received from  
27 Denti-Cal, the number of patients seen in the office, the number of patient visits, and “\$/Visit,” defined  
28 as the “Average production per visit.” [*Id.*] The reports generated by the system display the dentist



1 performance figures side by side in a chart that summarizes their production month by month and  
2 dentist by dentist. [See Colorado Decl., Ex. H (Defense Production Exhibit 170).]

3 On May 22, 2015, Gruenbaum’s team notifies CDG managers and dentists of new procedures  
4 being put in place “In an effort to drive performance and improve overall efficiency within the  
5 organization[.]” [See Colorado Decl., Ex. I (Deposition Exhibit 110).] The plan requires “All Office  
6 Managers, Doctors and Treatment Coordinators” to attend monthly meetings at every office, where the  
7 attendees will review daily Flash reports “summarizing Month-to-Date (MTD), Year-to-Date (YTD)  
8 and Prior Year-to-Date (PYTD) performance” figures. [Id.]

9 With these tools in hand, dentists and senior management must engage in monthly reviews of:

- 10 • Doctor productivity
- 11 • Labor analysis
- 12 • Payroll management
- 13 • Supply management
- 14 • Collections
- 15 • Ortho performance

16 [Id.] In his transmittal to Marsha Jacks, Gruenbaum brags that these procedures “are new developments  
17 for the offices.” [Id.]

18 On January 21, 2016, Gruenbaum sends an email to “All Doctors and Office Managers” at  
19 CDG’s ten locations setting forth the “Office Proficiency Expectations for 2016.” [See Colorado Decl.,  
20 Ex. J (Depo Exhibit 59).] Gruenbaum states that “we hope to see the office perform at high levels in all  
21 respects, including production.”<sup>1</sup> [Id.] He announces that, based on a review of “production levels by  
22 office,” management “intend[s] to provide you with information every month regarding what appear to  
23 be reasonable levels of production[.]” [Id.] Gruenbaum instructs that the information should be used to  
24 set “goals, expectations and guidelines for the performance of your offices.” [Id.]

25 On March 10, 2016, Gruenbaum sends an email to CDG dentists and office managers with the  
26 subject line, “Production levels -- message from Sam G: need to excel!!!” [See Colorado Decl., Ex. K  
27 (Depo Exhibit 96).] In the body of the message, Gruenbaum writes, “I’m writing to share with you my  
28 wish and focus regarding production levels.” [Id.] After complaining about the levels of production,

---

<sup>1</sup> Generally, “production” refers to the value of procedures performed by a doctor or under her supervision that the doctor can therefore bill for. [Ex. C (Diaz Depo. Tr.) at 138:10-15; Ex. M (Abraham Depo. Tr.) at 244:12-24.]

1 Gruenbaum exhorts, “I ask and urge that you make your best efforts to produce at optimal levels[.] [*Id.*]  
 2 He continues, “It’s simple enough to say we are a business and we have to focus on productivity and  
 3 profitability. That requires a focus on production.” [*Id.*] He goes on, “I ask that everyone focus and  
 4 push themselves to do a bit more than you are,” and discloses that “I will soon be coming to every  
 5 office to meet with each and everyone of you to discuss these and other goals and developments.” [*Id.*]  
 6 The following day, Anaheim clinic manager Elma Irving sends an email to dentists at that clinic. [*Id.*]

7 One of the recipients of Gruenbaum’s original email and Ms. Irving’s forward is Dr. Lisa  
 8 Nguyen. [*Id.*] Dr. Nguyen is asked at her deposition and testifies as follows:

9 Q. Did you at the time feel that you could produce more *without overtreating*.

10 A. *No*.

11 [Ex. D (Nguyen Depo. Tr.) at 156:1-2 (emphasis added).]

12 Nevertheless, on June 2, 2016, the dentists are advised that their compensation will be  
 13 incentivized as they will now “receive a higher percentage of production than you had been receiving.”  
 14 [See Colorado Decl., Ex. L (Depo Exhibit 63).] Dentists are told that “The new formula is based on a  
 15 tiered system with higher compensation percentage applied on incremental levels of average daily  
 16 production”—i.e., the more the dentists produce, the more the more generously they are rewarded. [*Id.*]

17 **B. The CDG Dentists Overtreat**

18 Dr. Alan Gluskin, professor and co-chair of the Department of Endodontics at University of the  
 19 Pacific, Arthur A. Dugoni School of Dentistry, currently a Fellow of the International College of  
 20 Dentists and the American College of Dentists, believes that CDG dentists overtreat, based on his  
 21 review of some of the dental records for children receiving treatment at the clinic. Dr. Gluskin  
 22 specifically finds that that the following pulpotomies by CDG dentists are questionable or unnecessary:

No.	Dentist	Patient	Treatment	Tooth	Necessary?	Adequate?
1.	Dr. Diaz	J. Cardoso	BRC, SSC	E	No	No
2.			BRC, SSC	F	No	No
3.		F. Ahmadi	BRC, SSC	K	Questionable	No
4.			BRC, SSC	J	Questionable	No
5.		D. Cruz	<b>BRC, SSC</b>	K	No	No opinion
6.			BRC, SSC	T	No	No opinion
7.		M. Domingo	BRC, SSC	L	No	No opinion
8.			BRC, SSC	D	No	No opinion
9.			BRC, SSC	E	No	No opinion

No.	Dentist	Patient	Treatment	Tooth	Necessary?	Adequate?
10.	Diaz cont'd	M. Domingo cont'd	BRC, SSC	F	No	No opinion
11.			BRC, SSC	G	No	No opinion
12.		A. Feldblumb	BRC, SSC	A	No	No opinion
13.			BRC, SSC	T	No	No opinion
14.		Y. Hernandez	BRC, SSC	A	No	No opinion
15.			BRC, SSC	S	No	No opinion
16.			BRC, SSC	T	No	No opinion
17.		J. Jin	BRC, SSC	A	No	No (BRC)
18.			BRC, SSC	K	No	No (BRC)
19.		A. Perez	BRC, SSC	A	No	No opinion
20.			BRC, SSC	B	No	No opinion
21.		S. Rico	BRC, SSC	J	No	No opinion
22.			BRC, SSC	K	No	No opinion
23.			BRC, SSC	L	No	No opinion
24.		M. Rodriguez	BRC, SSC	L	No	No opinion
25.			BRC, SSC	S	No	No opinion
26.	Dr. Abraham	V. Quintero	BRC, SSC	B	Questionable	No opinion
27.			BRC, SSC	S	Questionable	No (BRC)
28.			BRC, SSC	T	Questionable	No opinion
29.		C. Chavez	BRC, SSC	A	No (BRC)	No
30.			BRC, SSC	T	No (BRC)	No
31.		E. Flores	BRC, SSC	S	No	No
32.			BRC, SSC	I	No	No
33.			BRC, SSC	K	No	No
34.		J. Gomez	BRC, SSC	T	No (BRC)	No
35.		Y. Ortiz	BRC, SSC	B	No	No
36.	Abraham cont'd	Y. Ramirez	BRC, SSC	B	No (BRC)	Questionable
37.			BRC, SSC	T	No (BRC)	Questionable
38.			BRC, SSC	L	No (BRC)	No
39.			BRC, SSC	J	No (BRC)	Questionable
40.			BRC, SSC	K	No (BRC)	Questionable
41.			BRC, SSC	D	No (BRC)	Questionable
42.			BRC, SSC	E	No (BRC)	Questionable
43.			BRC, SSC	F	No (BRC)	Questionable
44.		N. Taherkhani	BRC, SSC	A	No	No
45.			BRC, SSC	B	No	No
46.			BRC, SSC	I	No	No
47.			BRC, SSC	J	No	No
48.			BRC, SSC	K	No	No
49.			BRC, SSC	M	No (BRC)	No (BRC)
50.			BRC, SSC	R	No (BRC)	No (BRC)
51.			BRC, SSC	S	No	No

1 [See Declaration of Dr. Alan Gluskin, and Exhibits B - E thereto.] Dr. Gluskin finds that Dr. Diaz and  
2 Dr. Abraham performed unnecessary pulpotomies on sixteen of the twenty-five patients whose records  
3 he reviews, including bellwether plaintiffs Jason Cardoso and Valeria Quintero. [Id.]

4 **C. CDG Dentists Elect to Downgrade Infection Control to a Low Priority at CDG.**

5 The dentists at CDG know the importance of infection control and the potential for harm if  
6 sufficient controls are not followed. [Ex. C (Diaz Depo. Tr.) at 200:5-14 (water used during treatments  
7 comes in contact with blood supply); Ex. D (Nguyen Depo. Tr.) at 136:8-14 (failure of the autoclave in  
8 baby root canal potential source of infection); Ex. M (Abraham Depo. Tr.) at 271:15-19 (patient safety  
9 one of the important things she needs to provide her patients).] Yet, the CDG dentists take a laissez-  
10 faire attitude toward safety and infection control and prevention. Dr. Minsky does not agree that safety  
11 is the primary responsibility of the dentist in caring for and treating the patient. [Ex. N (Minsky Depo.  
12 Tr.) at 37:22-25.] Dr. Minsky has the ultimate authority regarding the sterilization and disinfection of  
13 water line units at CDG Anaheim but he does not involve himself in training employees of the  
14 management company tasked to carry out infection control. [Id. at 144:16-24.] He believes it  
15 appropriate to have nondental professionals training medical assistants in infection control and  
16 prevention. [Id. at 147:6-9.] He is unfamiliar with the arrangements in place; for example, he is not sure  
17 whether the management company owns the sterilization equipment. [Id. at 151:22-152:3.] He testifies  
18 that he believes the water lines are appropriately cared for and managed in the time frame of January of  
19 2016 to September of 2016, but he cannot specify what gives him that assurance. [Id. at 104:24-105:9.]  
20 He does not recall if he ever directly observes employees flushing the water lines. [Id. at 148:9-15.] He  
21 does not initiate any policies in infection control. [Id. at 145:2-6.]

22 The other dentists reflect the same lack of interest and concern. Dr. Nguyen considers herself  
23 not personally responsible in any manner whatsoever for the safety and the cleanliness of the dental  
24 water at CDG. [Id. at 161:9-12.] Asked what steps she takes to ensure that all her instruments used  
25 during a procedure are sterile, she unhesitatingly responds “None.” [Id. at 202:3-5.] Asked what steps  
26 she takes in 2016 to insure the instruments she uses in a baby root canal are sterile, she likewise  
27 responds “None.” [Id. at 202:6-10.] She does not know if the dental unit waterlines at Anaheim are  
28 disinfected in 2016 prior to the infection outbreak. [Ex. D (Nguyen Depo. Tr.) at 40:5-8.] She never

1 has any discussions or communications of any type regarding infection control between May 2015 and  
2 September 2016 with the person she believes to be in charge of infection control during that time  
3 period. [*Id.* at 115:24-116:3.] She does not know about site surveys for infection control in 2016. [*Id.* at  
4 129:17-19.] In 2016, she is unaware of any specifics of dental unit waterline assessment or disinfection.  
5 [*Id.* at 161:6-8.] She cannot cite specifics regarding anything any CDG employee does to ensure that  
6 clean water is used at all times for dental procedures at CDG Anaheim. [*Id.* at 40:9-15.]

7 Her colleague, Dr. Abraham, does not know the difference between disinfection and  
8 sterilization. [Ex. M (Abraham Depo. Tr.) at 251:15-17.] She does not know the distinction between  
9 “infection control” and “infection prevention.” [*Id.* at 387:4-13.] She knows that dental assistants are  
10 involved in disinfecting water lines but does not know the details of their responsibilities or who is  
11 responsible for the task. [*Id.* at 97:12-20.] Like Dr. Nguyen, she takes a hands-off approach; Dr.  
12 Abraham describes her responsibility for consulting manufacturer specifications to determine the best  
13 method for maintaining acceptable quality this way:

14 *This is not something that I would have done, because I don't own this company.*

15 *The company has protocols and steps to carry out that. Um, I'm just an*  
16 *employee at the company.*

17 [*Id.* at 409:17-20 (emphasis added).]

18 When she moves to CDG Anaheim, Dr. Abraham does not know who is the head of infection  
19 control there. [*Id.* at 97:1-4.] She assumes someone has the responsibility but does not inquire to find  
20 out. [*Id.* at 97:5-11.] She does not know whether the infection control program at Anaheim is any  
21 different than at other CDG offices. [*Id.* at 248:18-21.] She does not know whether CDG uses  
22 germicides to treat their dental unit water as set forth in CDC recommendations. [*Id.* at 404:16-25.]  
23 Although she testifies to witnessing dental assistants conducting sterilization procedures, she cannot  
24 describe what those procedures entail. [*Id.* at 248:22-250:9.] She does not recall whether she sees them  
25 sterilize the inner tubing of the dental unit water line [*id.* at 250:13-17]; whether the sterilization  
26 involved the inner or outer tubing [*id.* at 250:18-21]; she does not know whether the inner tubing  
27 waterline of a dental unit can be sterilized [*id.* at 250:22-25.]  
28

1 Dr. Abraham admits that she does not know the protocol for when there are multiple spore test  
2 failures, as there were here. [*Id.* at 393:8-17.] She does not recall whether the Dental Practice Act  
3 requires that autoclaves be spore tested weekly. [*Id.* at 397:17-24.] She learns that the inner tubing of  
4 the dental unit, through which water flows to the drill, can develop biofilm internally through this case,  
5 but not prior to it [*Id.* at 399:3-15 and 403:20-404:8.] She is not aware of any site surveys for infection  
6 control at CDG in 2016. [*Id.* at 119:10-12.]

7 CDG’s infection control program does not focus the dentists’ attention on water lines. The  
8 subject of infection control or dental unit water lines is not mentioned at quarterly meetings before July  
9 2016. [Ex. D (Nguyen Depo. Tr.) at 229:14-17.] Dr. Abraham does not recall anyone at CDG ever  
10 providing her with any type of written document that stated infection prevention was an important goal  
11 and priority at CDG. [Ex. M (Abraham Depo. Tr.) at 272:10-15.] She is not aware of the protocol for  
12 testing dental unit water lines at Anaheim in 2016, assuming one existed. [*Id.* at 119:20-23.] She does  
13 not receive training from CDG regarding “water quality, biofilm formation, water treatment methods,  
14 and appropriate maintenance protocols for water delivery systems,” as recommended by the CDC. [*Id.*  
15 at 406:2-9.] Nor is she aware of any literature at CDG relative to infection prevention and control,  
16 disinfecting instruments or disinfecting water lines. [*Id.* at 32:14-20.] Similarly, Dr. Nguyen does not  
17 recall if the employee manual has any sections relating to infection control. [Ex. D (Nguyen Depo. Tr.)  
18 at 220:9.12.] She does not recall any other document available to staff relating to infection control. [*Id.*  
19 at 220:13-16.]

20 Although Dr. Diaz claims to have taken classes on infection control, he cannot produce any  
21 certificates of completion to certify that he has taken any of them [Ex. C (Diaz Depo. Tr.) at 46:16-20].  
22 Dr. Diaz testifies that he does not document the continuing education classes he takes to demonstrate he  
23 is fulfilling the requirement. [*Id.*, at 50:22-51:6.] He admits that, if the Dental Board puts him to task to  
24 show he is compliant, “I probably would be a little hard pressed to prove it.” [*Id.*, at 51:13-19.] He  
25 cannot specify any courses on infection control within the last six years [*id.*, at 47:9-11 and 47:24-  
26 48:2]; he cannot say the location for such classes [*id.*, at 47:12-14 and 48:3-4]; and he has “no  
27 knowledge, no recollection” of the instructor of such classes [*id.*, at 47:15-18 and 48:6-8]. In fact, Dr.  
28

1 Diaz can provide “no information” about taking classes in the last six years dealing with infection  
2 control. [*Id.*, at 48:10-13.]

3 According to a report from the Centers for Disease Control and Prevention, the “[Orange  
4 County Health Care Agency] concluded that the outbreak was associated with insufficient treatment of  
5 dental unit waterline output water.” [See Ex. O (DSGRUB001866).]

6 **D. The CDG Dentists Consent to Rent Out Their Licenses to Non-Dentists In**  
7 **Exchange for the Promise of Greater Profits.**

8 By their inattention to non-delegable duties, CDG dentists turn over the practice of dentistry to  
9 non-dentists in multiple ways, but we will highlight two areas that are noteworthy: in communication  
10 with their clients and in their billing practices. Other ways the dentists turn over their practice are  
11 alluded elsewhere: primarily, they do not push back against management demands for increased  
12 production, they allow the corporate owners to take over hiring and to manage the practice, and they do  
13 no report known misconduct to the dental board. This enabling mentality is exemplified by the conduct  
14 described below.

15 **1. Dentists Do Not Communicate with Parents**

16 The dentists at CDG do not place much stock in their obligations to communicate with the  
17 parents of the children they treat: for instance, Dr. Minsky believes there is no need to inform parents  
18 their children’s procedures are videotaped: “I would not have obtained consent. It wasn’t my  
19 obligation to do that, because I was not providing the dentistry.” [Ex. N (Minsky Depo. Tr.) at 54:24-



1 55:6.]

2 Previous page—Illustration: screenshot of videotaped procedure of Carson plaintiff Victor  
3 Gomez shows restraint device being put over child at the start of treatment. [Ex. P (Screenshot).]

4 Like the other dentists, Dr. Abraham does not provide parents any written literature when  
5 performing baby root canals. [Ex. M (Abraham Depo. Tr.) at 27:13-17.] Parents do not actually talk to  
6 the dentists about their children’s treatment, but to dental assistants. [Ex. Q (Trejo Depo. Tr.) at 22:18-  
7 24 and 58:22-59:4; Ex. R (Martinez Depo. Tr.) at 32:16-24, 52:5-11 and 86:3-11; Ex. S (Quintero  
8 Depo. Tr.) at 28:5-17, 29:21-30:10 and 47:19-23.] Parents are routinely kept out of treatment rooms  
9 while their children undergo procedures. [Ex. T (Gomez Depo. Tr.) at 55:23-56:6; Ex. R (Martinez  
10 Depo. Tr.) at 32:3-10, 85:24-86:2 and 87:4-13; Ex. S (Quintero Depo. Tr.) at 38:16-22, 58:5-11 and 17-  
11 21.] The parents sign consent forms but, at times, they are provided English language forms when the  
12 parents only speak Spanish. [Ex. R (Martinez Depo. Tr.) at 35:14-19.] In those situations, parents take  
13 the assistants at their word regarding the forms’ contents. [*Id.* at 35:20-36:1.] Other times, parents are  
14 made to sign consent forms without reading the forms, so they do not know what they are consenting  
15 to. [Ex. Q (Trejo Depo. Tr.) at 48:25-49:3.]

16 The parents are kept in the dark regarding the water contamination concerns at CDG. Dr.  
17 Abraham does not believe it is necessary to convey to parents that there have been repeated spore test  
18 failures at the clinic. [Ex. M (Abraham Depo. Tr.) at 394:3-395:22.] The parents are uniformed about  
19 water related matters in general. [Ex. T (Gomez Depo. Tr.) at 200:19-25 and 201:24-202:1; Ex. U  
20 (Avila Depo. Tr.) at 125:3-126:14 and 128:13-21; Ex. Q (Trejo Depo. Tr.) at 96:15-21, 97:7-98:5 and  
21 98:18-99:4; Ex. R (Martinez Depo. Tr.) at 102:1-103:5, 105:20-106:5, 106:20-107:1, 107:19-108:7, and  
22 109:1-4; Ex. S (Quintero Depo. Tr.) at 154:7-23, 156:12-18, 157:2-12, 158:4-11.) Some of the parents  
23 will first learn about water contamination at CDG when they hear it reported in the news or hear it from  
24 subsequent treaters after their children become infected. [Ex. U (Avila Depo. Tr.) at 120:20-121:18; Ex.  
25 Q (Trejo Depo. Tr.) at 88:9-89:7; Ex. S (Quintero Depo. Tr.) at 141:25-142:16.]

26 **2. The CDG Dentists Authorize Billing Claims to be Submitted on their Behalf**  
27 **to Denti-Cal for Reimbursement Which Misstate Facts Justifying Payments.**

28 In various instances at CDG, minor patients are evaluated during their examinations using a



1 rating system that ranks the children’s behavior from B1 (most well behaved) to B5 (most difficult to  
 2 control). [See Ex. V (deposition exhibit 95).] Denti-Cal will only reimburse nitrous for uncontrollable  
 3 children; but, during treatment, the children are evaluated as well-behaved. For example, Ashley  
 4 Alvarado, one of the coordinated plaintiffs, is rated as a “B-1” for her behavior during her visit on July  
 5 14, 2015 in her Treatment Record. [See Ex. V at p. 95-1.] To Dr. Nguyen, the treating dentist, “that  
 6 means 80 percent, they were fairly good.” [Ex. D (Nguyen Depo. Tr.), 19:3-5.] Similarly, a detailed  
 7 summary for the examination on that date describes Ashley as “B1 – cooperative, calm, responsive,  
 8 tolerant to Trx [treatment].” [See Ex. V at p. 95-2, bottom.] However, a Treatment Authorization  
 9 Request (TAR) to Denti-Cal—a billing submission—for the administration of nitrous oxide to Ashley  
 10 describes her behavior on July 14, 2015 as a “young uncontrollable PT [patient] ... nitrous required.”  
 11 [Id. at p. 95-3, lines 10-11.] Dr. Nguyen is forced to admit under oath that the Denti-Cal submission is  
 12 “inconsistent” with her description of the patient’s behavior during treatment. [Ex. D (Nguyen Depo.

Tr.), 20:23-21:5.]

1            Illustration: The internal forms (left) show “B1” and “B1- Cooperative, Calm, Responsive,  
2 Tolerant to Treatment” child, but the Denti-Cal billing submission for the same patient indicates a  
3 “Young uncontrollable patient – nitrous required.” (From Exhibit 95)

---

4            Exhibit 95 relates to eight patients: Ashley Alvarado, Giovanni Castillo, Bahteli Feldblumb,  
5 Brianna Hernandez, Azucena Meza, Brandon Morales, Luis Munoz, and Jocelyn Ruiz. But Plaintiffs  
6 have similar documentation relating to many more minor patients. In total, a similar pattern is found in  
7 at least 115 cases. [See Colorado Decl. ¶24, Ex. W (B1 with Nitrous, Restraints, and  
8 “Uncontrollable”).] The total cases include patients treated by Dr. Trinh Thuy Pham (32 cases found so  
9 far), Dr. David Michael Diaz (22 cases), Dr. Allison Lynnae Olex (20 cases), Dr. Lisa Vo Nguyen (13  
10 cases), Dr. Pamela Abraham (13 cases), Dr. James Kidong Cho (3 cases), Dr. Avishan Kolahdouz  
11 Nasiri (2 cases), Dr. Maria Helena Lima (2 cases), and Dr. Olivia Nguyen (2 cases). [*Id.*] At least one  
12 case is identified for each of six other doctors. [*Id.*]

13            **E. CDG Keeps Vital Information Relating to the Contamination and Resulting**  
14            **Infection Away from the Parents.**

15            The inattentiveness to infection control by CDG dentists and staff has consequences. Spore  
16 tests on March 16, June 7, June 14 (2 different sterilizers), July 5, July 12 (2 different sterilizers),  
17 August 9, September 19 (3 different sterilizers), December 9, and December 17, 2016 on CDG  
18 sterilizers all come back positive. [See Ex. X (Deposition Exhibit 143), p. 7.] The thirteen autoclave  
19 spore test failures are significant because, according to former manager Mr. Fehmer, a single failure  
20 would warrant immediate corrective action. [Ex. A (Fehmer Depo. Tr.) at 114:8-19.], while, here,  
21 twelve such failures occur in six months, four of them over four months in a row. But Dr. Abraham  
22 does not believe it is necessary to provide this information to parents [Ex. M (Abraham Depo. Tr.) at  
23 394:3-395:22]—and neither does anybody else at CDG, as parents are never notified.

24            On July 1, 2016, Elma Irving sends an internal memo to various CDG officials, including Dr.  
25 Minsky, reporting about a “handful of patients” with infections due to baby root canals or stainless steel  
26 crowns performed “at least 1 month ago” [see Ex. Y (Deposition exhibit 116)]—the first of the  
27 infections at issue in this litigation. According to the memo Dr. Diaz believes the cause could be that  
28 the “instruments that we use are not properly sterile.” [*Id.*]

1 Dr. Lisa Nguyen learns of the first mycobacterium infection at CDG around that time. [Ex. D  
2 (Nguyen Depo. Tr.) at 161:13-163:1.] She discusses the case with Dr. Tina Pham. [*Id.*, at 164:4-10.]  
3 Dr. Nguyen knows the patient has undergone three pulpotomies and tells Elma Irving in July that she  
4 thinks the infection was related to the sterilization equipment. [*Id.*, at 169:1-170:4.] Dr. Minsky,  
5 however, does not accept Ms. Irving’s basic conclusion that there are even infections. [Ex. N (Minsky  
6 Depo. Tr. at pp. 100-101).] Thus, despite the internal discussions in which two doctors—Dr. Diaz and  
7 Dr. Nguyen—express their view that the infections were caused by failures of sterilization, CDG does  
8 not disclose the fact of the infections or their cause to the public until September 2016.

9 However, CDG, knowing the truth about the water quality at its Anaheim clinic, provides  
10 bottled drinking water for its dentists and staff there. [Ex. C (Diaz Depo. Tr.) at 178:8-19.]

### 11 **III. LEGAL ARGUMENT**

#### 12 **A. Code of Civil Procedure section 425.13 Generally**

13 Pursuant to Code of Civil Procedure section 425.13, where a medical-malpractice plaintiff  
14 demonstrates a substantial probability that she will prevail on a claim for punitive damages under Civil  
15 Code section 3294, the court may allow plaintiff to file an amended complaint seeking punitive  
16 damages. In evaluating a *C.C.P.* § 425.13 motion, the weight of the proffered evidence, and defendants’  
17 ability to supply contrary allegations, is not in issue before the court. In *Looney v. Superior*  
18 *Court* (1993) 16 Cal.App.4th 521, the court made very clear that the only required showing was a set of  
19 facts that, if credited by the trier of fact, would sustain a favorable verdict: “We therefore conclude that,  
20 in the words of the *Hung* court, it is only necessary that plaintiff provide “a sufficient prima facie  
21 showing of facts to sustain a favorable decision if the evidence submitted by the [plaintiff] is credited.”  
22 [citation omitted] The trial court is not required to make any factual determination or to become  
23 involved in any weighing process beyond that necessarily involved in deciding whether a prima facie  
24 case for punitive damages exists. Once the court concludes that such a case can be presented at trial it  
25 must permit the proposed amended pleading to be filed.” [*Looney v. Superior Court*, supra, 16  
26 Cal.App.4th 521 at 539]. Here, plaintiffs can demonstrate that they are entitled to punitive damages at  
27 this stage because defendant’s conduct, if accepted by the trier-of-fact, establishes a prima facie  
28 showing of “malice, oppression or fraud,” as required under *Civil Code* § 3294.

1                   **B. Evidentiary Requirements**

2                   Code of Civil Procedure section 425.13 imposes an evidentiary procedure upon plaintiffs  
3 seeking to claim punitive damages against health care providers. Section 425.13 provides in relevant  
4 part:

5                   (a) In any action for damages arising out of the professional negligence of a  
6 health care provider, no claim for punitive damages shall be included in a  
7 complaint or other pleading unless the court enters an order allowing an amended  
8 pleading that includes a claim for punitive damages to be filed. The court may  
9 allow the filing of an amended pleading claiming punitive damages on a motion  
by the party seeking the amended pleading and on the basis of the supporting and  
opposing affidavits presented that the plaintiff has established that there is a  
substantial probability that the plaintiff will prevail on the claim pursuant to  
Section 3294 of the Civil Code.

10                  The standard for section 425.13 motions was defined by the California Supreme Court in  
11 *College Hospital v. Superior Court* (1994) 8 Cal.4th 704. While the statutory requirement of  
12 establishing “a substantial probability that the plaintiff will prevail” seems to suggest that a plaintiff  
13 must convince the trial court that a jury will probably award punitive damages, this is *not* the test.  
14 Rather, the Supreme Court held that under section 425.13, trial courts are **not** authorized to weigh the  
15 merits of the claim or consider its likely outcome at trial. (*Id.* at p. 719.) The *College Hospital* court  
16 recounted the decisional evolution of the standards imposed by section 425.13 and set forth the  
17 guidelines for determining whether the statutory requirement has been met. The hospital argued that  
18 section 425.13 contained a vigorous weighing test and that punitive damages claims should be barred if  
19 not highly likely to succeed at trial. (*Id.* at p. 714.) The Court rejected this interpretation: “[T]he  
20 statutory language hardly compels this unusual interpretation. Section 425.13(a) does not expressly  
21 instruct the trial court to ‘weigh’ evidence or make an ‘independent’ assessment of its relative  
22 strength.” (*Id.* at p. 715.) **[S]ection 425.13(a) does not authorize the trial court to reject a well-pled  
23 and factually supported punitive damage claim simply because the court believes the evidence is  
24 not strong enough for probable success before a jury.** [*Id.* at 709 (emphasis added).]

25                  Section 425.13 was also interpreted in *Looney v. Superior Court* (1993) 16 Cal.App.4th 521:

26                  We therefore conclude that, in the words of the *Hung* court, it is only necessary  
27 that plaintiff provide “a sufficient prima facie showing of facts to sustain a  
28 favorable decision if the evidence submitted by the [plaintiff] is credited.” The  
trial court is not required to make **any factual determination** or to become  
involved in any weighing process beyond that necessarily involved in deciding  
whether a prima facie case for punitive damages exists. Once the court

1 concludes that such a case can be presented at trial, it **must** permit the proposed  
2 pleading to be filed. [*Id.* at 539 (emphasis added), citing *Hung v. Lehfelddt* (1992)  
8 Cal.App.4th 908, 931]

3 The *Looney* court also stated, “In making this judgment, the trial court’s consideration of the  
4 defendant’s opposing affidavits does not permit a weighing of them against the plaintiff’s supporting  
5 evidence, but only a determination that they do not, as a matter of law, defeat the evidence.” *Id.* at 539.  
6 The court referred to a summary judgment motion wherein “[c]redibility determinations, the weighing  
7 of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a  
8 judge, whether he is ruling on a motion for summary judgment or for a directed verdict.” *Ibid.*  
9 Opposing evidence is **not** “weighed” against the plaintiff’s evidence. Defense evidence can be  
10 considered only to the extent it is (1) uncontradicted; and (2) fills “blank areas” in the plaintiff’s  
11 showing. *Aquino v. Superior Court* (1993) 21 Cal.App.4th 847, 856.

12 Plaintiff does **not** have the burden of demonstrating a **winning** case. Rather, in ruling on a  
13 motion for leave to assert a punitive damage claim against a physician, the trial court must simply  
14 determine whether the plaintiff’s evidence, if believed by the jury, is sufficient to establish that the  
15 defendant acted with fraud, malice, or oppression. If it is, the court **must** grant the motion. *College*  
16 *Hospital, supra*, 8 Cal.4th at p. 719, fn. 6; *Looney, supra*, 16 Cal.App.4th at p. 539.

### 17 C. Clear and Convincing Standard

18 For punitive damages, Civil Code section 3294 requires “clear and convincing” evidence of  
19 fraud, malice, or oppression. Accordingly, in ruling on a section 425.13 motion, the court must “view  
20 [plaintiff’s] evidence through the prism of the ‘clear and convincing’ evidentiary burden....” *Looney,*  
21 *supra*, 16 Cal.App.4th at p. 540. This does **not** mean that the evidence must be clear and convincing to  
22 the trial judge. It is not a subjective test. Rather, the court must determine “whether the evidence  
23 presented is such that a jury applying that evidentiary standard could reasonably find” for the plaintiff.  
24 (*Hoch v. Allied-Signal, Inc.* (1994) 24 Cal.App.4th 48, 60. Although the “clear and convincing”  
25 evidentiary standard is a stringent one, it does not impose an obligation to ‘prove’ a case for punitive  
26 damages in a §425.13 motion. See *American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton*  
27 (2002) 96 Cal.App.4th 1017, 1049. Rather, under CACI 201, “clear and convincing” simply means  
28 that “it is highly probable that the fact is true.”

1                   **D. Plaintiff Can Establish a *Prima Facie* Entitlement to Punitive Damages**

2                   The elements necessary to establish a *prima facie* case of entitlement to punitive damages are  
3 present in this case. An award of punitive damages is contingent upon a finding of a defendant’s  
4 malice, oppression, or fraud, as defined by Civil Code §3294: “In an action for the breach of an  
5 obligation not arising from contract, where it is proven by clear and convincing evidence that the  
6 defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual  
7 damages, may recover damages for the sake of example and by way of punishing the defendant.”

8                   An intentional tort cause of action is not the sole sufficient legal predicate, as demonstrated by  
9 the plain language of section 3294(c)(1): a negligence cause of action is also sufficient where conscious  
10 disregard for safety is established. Case law is in accord: “[a]bsent a statutory prohibition, punitive  
11 damages may be awarded on what is traditionally considered a negligence cause of action if the  
12 conduct amounts to despicable conduct carried on with conscious disregard of the safety of others.”  
13 (*Bommareddy v. Superior Court* (1990) 222 Cal.App.3d 1017, 1021, *overruled on other grounds in*  
14 *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 190.)  
15 Negligence perpetrated with the requisite conscious disregard of the probable dangerous consequences  
16 permits a trier of fact to impose punitive damages. (*Taylor v. Superior Court* (1979) 24 Cal.3d 890,  
17 895; *Bell v. Sharp Cabrillo Hospital* (1989) 212 Cal.App.3d 1034, 1038.)

18                   As such, “Malice” and “oppression” may be inferred from the circumstances of a defendant’s  
19 conduct. (*Monge v. Superior Court* (1986) 176 Cal.App.3d 503, 511.) Evidence establishing a  
20 conscious disregard of rights is evidence indicating that the defendant was aware of the probable  
21 consequences of his acts and willfully and deliberately failed to avoid those consequences. *J.R. Norton*  
22 *Co. v. General Teamsters, Warehousemen & Helpers Union Local 890* (1989) 208 Cal.App.3d 430,  
23 444. “Fraud is a tort of stealth and deception. By its very nature, fraud is never committed in the clear  
24 light of day. ***Fraudulent intent is necessarily shown by inference from facts***, rather than as a fact  
25 expressly proven.” *Butler v. Collins* (1859) 12 Cal. 457, 464 (emphasis added).

1                                   **1. Transforming CDG From A Public Health Community Clinic to an**  
2                                   **Investment Vehicle For Private Gain At the Expense of the Patients**  
3                                   **Demonstrates Malice and Oppression.**

4                   To convert a public service community clinic into a cash machine for individuals seeking a fast  
5 return on their investments is a cruel bait-and-switch, particularly when, as here, it is done with blatant  
6 disregard of the adverse impact on a vulnerable client population. Certainly, such conduct evidences  
7 malice, defined in Civil Code section 3294 to mean 1) conduct which is intended by the defendant to  
8 cause injury to the plaintiff or 2) despicable conduct which is carried on by the defendant with a willful  
9 and conscious disregard of the rights or safety of others. Further, the reference to “despicable” conduct  
10 in section 3294 with regards to the definition of “malice” represents a new substantive limitation on  
11 punitive damage awards. *College Hospital Inc. v. Superior Court* (1994) 8 Cal. 4th 704, 725. Used in  
12 its ordinary sense, the adjective “despicable” is a powerful term that refers to circumstances that are  
13 “base,” “vile,” or “contemptible.” 4 Oxford English Dict. (2d ed. 1989) p. 529. *Id.* The word  
14 “despicable” in Civil Code section 3294 plainly indicates that absent an intent to injure the plaintiff,  
15 “malice” requires more than a “willful and conscious” disregard of the plaintiffs’ interests. *Id.* The  
16 additional component of “despicable conduct” must be found. *Id.*

17                   Here, the manner in which CDG’s public service mission was silently rescinded, with the  
18 acquiescence of its dentists, with no engagement in the process and no resistance to the hostile takeover  
19 by a non-dentist who promises prosperity and financial stability in exchange for ceding control, shows  
20 base, vile, and contemptible conduct. There is willful and conscious disregard of the rights or safety of  
21 others because, from the outset, all of the metrics that are put into place are geared toward assuring  
22 greater financial performance and profit. None are designed to track instances of compromised patient  
23 safety or well-being. The same conduct also constitutes oppression, defined by Section 3294(c) to  
24 mean despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of  
25 that person’s rights, because of the injury and risk of injury faced by the minor children as a  
26 consequence.

1                                   **2. Overtreating Children to Drive Up Profits Demonstrates Malice and**  
2                                   **Oppression.**

3                   Overtreatment is always wrong. The Business and Professions Code classifies “[t]he clearly  
4 excessive prescribing or administering of drugs or treatment” as “[u]nprofessional conduct.” B&P Code  
5 § 1680(p). This section provides that “Any person who violates this subdivision is guilty of a  
6 misdemeanor[.]” *Id.*; *see also* B&P Code § 725(b) (“Any person who engages in repeated acts of  
7 clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor.”)  
8 Here, the offense is exacerbated by the bald profit motive that drives the increase in procedures.  
9 Dentists are motivated by dashboard charts that display their performance against the “superstars” at  
10 the clinics where they work, and are financially rewarded for their complicity.

11                   The result of their solicitousness to the business plan that replaces the professional judgment  
12 that should normally govern a dental clinic is the obvious pattern of unnecessary procedures—of  
13 interest here, pulpotomies. In their haste to drive up numbers, many of the procedures, even where  
14 necessary, are also performed inadequately, all to the detriment of the minors subjected to them. Where  
15 treatments bear the risk of severe infections, the same conduct also constitutes oppression.

16                                   **3. Electing to Make Infection Control a Low Priority Item Demonstrates**  
17                                   **Malice and Oppression.**

18                   Infection control is a nondelegable duty in the dental profession. Since 2003, the CDC has  
19 recommended that, aside from having a designated dentist or other dental professional assigned as  
20 coordinator of the infection control program, “*creating and maintaining a safe work environment*  
21 *ultimately requires the commitment and accountability of all [dental health care personnel].*”  
22 Morbidity and Mortality Weekly Report (MMWR), Recommendations and Reports (RR), December  
23 19, 2003 / Vol. 52 / No. RR-17, at p. 3. In fact, the CDC recommends that a “dentist or other [dental  
24 health care personnel]” at a dental practice who is “knowledgeable or willing to be trained” should be  
25 designated “infection-control coordinator,” and made responsible for “coordinating” an infection  
26 control program based on a “written” protocol designed “to prevent or reduce the risk of disease  
27 transmission.” MMWR Vol. 52 No. RR-17, at p. 3. Similarly, California regulations require that “All  
28 [dental health care personnel] shall comply with infection control precautions and enforce ... minimum



1 precautions to protect patients and [dental health care personnel] and to minimize the transmission of  
2 pathogens in healthcare settings[.]” See California Code of Regulations, § 1005(b), Minimum  
3 Standards for Infection Control.

4 The CDG dentists assign these duties to dental assistants supervised by a non-dental  
5 professional, while the dentists themselves, including the chief dental officer, remain aloof and  
6 uninvolved in the process. They ignore all the regulations and recommendations in this area, including  
7 the CDC’s recommendation that that dental health care providers “should be familiar also with the  
8 hierarchy of controls that categorizes and prioritizes prevention strategies,” MMWR Vol. 52 No. RR-  
9 17, at p. 3, and that “the number of bacteria in water used as a coolant/irrigant for nonsurgical dental  
10 procedures should be as low as reasonably achievable and, at a minimum, <500 CFU/mL” and that  
11 “[r]emoval or inactivation of dental waterline biofilms requires use of chemical germicides,” *id.* at p.  
12 29. The Business and Professions Code classifies “the knowing failure to protect patients by failing to  
13 follow infection control guidelines of the board” as “Unprofessional conduct.” B&P Code § 1680(ad).  
14 But at CDG, ignoring infection controls was just part of the business model.

15 **4. Turning over the Practice of Dentistry to Non-Dentists Demonstrates Fraud**  
16 **and Oppression.**

17 Engaging in the unlicensed practice of dentistry or facilitating its occurrence is strongly  
18 disapproved of in the rules and regulations that govern the industry. The Business and Professions Code  
19 states that “*a person practices dentistry* within the meaning of this chapter *who does any one or more*  
20 *of the following:* ... (e) *Manages or conducts as manager*, proprietor, conductor, lessor, or otherwise,  
21 a place where dental operations are performed.” B&P Code §1625(e). The Business and Professions  
22 Code classifies as “*Unprofessional conduct ... The aiding or abetting of any unlicensed person to*  
23 *practice dentistry.*” B&P Code § 1680(c). Here, foisting responsibilities proper to dentists, such as  
24 communicating with clients, onto non-dentists, is not simply a dereliction of duties; it serves the greater  
25 scheme of optimizing profits and leaving dentists free to dedicate themselves to the singular purpose of  
26 driving up production while staff pick up the slack.

27 Submitting falsified claims to Denti-Cal is obviously fraud. The California Penal Code makes it  
28 unlawful to “Knowingly make or cause to be made any false or fraudulent claim for payment of a

1 health care benefit.” Penal Code § 550(a)(6). Additionally, the Business and Professions Code  
2 classifies as “Unprofessional conduct ... The obtaining of any fee by fraud or misrepresentation.” B&P  
3 Code § 1680(a). According to the Medi-Cal Dental Program Provider Handbook (“Handbook”),  
4 Procedure D9230, the provision of nitrous oxide is reimbursable without prior authorization “*for*  
5 *uncooperative patients* under the age of 13.” Handbook Proc. D9230(3)(a). “Written documentation  
6 for payment for patients age 13 or older- shall indicate the physical, behavioral, developmental or  
7 emotional condition that prohibits the patient from responding to the provider’s attempts to perform  
8 treatment.” D9230(2).

9         Additionally, in California, only a dentist can bill for the provision of dental services and submit  
10 claims to Denti-Cal for payment. [See Ex. N (Jerry Minsky deposition transcript) at 153:7-9, 19-21.]  
11 Others working in the management of a dental practice may process and send the bills in for payment,  
12 but only a dentist may provide the services being billed for. [*Id.* at 153:22-154:9.] Under this  
13 arrangement, the dentists are ultimately responsible for ensuring that Denti-Cal is not billed  
14 inappropriately. [*Id.* at 155:15-21.] The staff assisting dentists should not bill for something that a  
15 dentist did not approve. [*Id.* at 155:12-14.] But at CDG, these rules apparently do not apply.

16                                 **5. Concealing Contaminated Water and an Outbreak of Mycobacterium**  
17   **Infections Demonstrates Fraud and Oppression.**

18         While they sipped bottled water due to fears of exposure to contamination, the CDG dentists did  
19 nothing to inform their clients of the danger, waiting until mid-September to disclose the fact of the  
20 infection outbreak, when they knew as early as June that serious infections were being caused by  
21 (over)treatment at the clinic. While they knew that the water they were afraid to imbibe could already  
22 be circulating in their children patients’ bloodstream, they still did not deem important to inform the  
23 parents about the nature and extent of the contamination and of the risks possibly bearing down on the  
24 families. This conduct is outrageous and the deliberate withholding of material information contains all  
25 the markers for fraud and oppression on the part of the CDG dentists.

26                                 **IV. CONCLUSION**

27         For all of the foregoing reasons, Plaintiffs respectfully request to be allowed to amend their  
28 complaint to add punitive damages allegations against the dentist defendants in this case.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: June 12, 2019

HODES MILMAN, LLP

By: /s/ Carlos X. Colorado  
Carlos X. Colorado, Esq.  
Plaintiffs' Liaison Counsel

**DECLARATION OF CARLOS X. COLORADO**

I, Carlos X. Colorado, hereby declare as follows:

1. I am Liaison Counsel for Plaintiffs in this Coordination Proceeding. I am over the age of eighteen years old and I have personal knowledge of all the matters asserted herein, except as to those matters stated upon information and belief. If called as a witness, I could and would competently testify thereto.

2. The deposition of John Fehmer was taken in this matter on May 3, 2019 and I personally attended the proceedings. A true and correct copy of excerpts of the transcript of the Fehmer deposition is attached hereto as **Exhibit A**.

3. Attached hereto as **Exhibit B** is a true and correct copy of the print out of a page from the CDG website entitled “Remembering Dr. Scott Jacks,” available online at <https://childrensdentalgroup.com/remembering-dr-scott-jacks/> (verified on June 12, 2019).

4. The deposition of David Diaz, DDS was begun in this matter on February 25, 2019. A true and correct copy of excerpts of the transcript of the Diaz deposition is attached hereto as **Exhibit C**.

5. The deposition of Lisa Nguyen, DDS was begun in this matter on March 18, 2019 and I personally attended the proceedings. A true and correct copy of excerpts of the transcript of the Nguyen deposition is attached hereto as **Exhibit D**.

6. The deposition of Marsha Jacks was begun in this matter on March 22, 2019 and I personally attended the proceedings. A true and correct copy of excerpts of the transcript of the Jacks deposition is attached hereto as **Exhibit E**.

7. Attached hereto as **Exhibit F** is a true and correct copy of the document attached as Exhibit B to the Declaration of Carole E. Reagan in Opposition to Plaintiffs’ Motion for Determination of Disputed Privilege Claim, filed in this matter on June 3, 2019. It reflects a memorandum from Sam Gruenbaum dated October 8, 2014, over which defendants no longer assert privilege.

1           8.       Attached hereto as **Exhibit G** is a true and correct copy of an April 4, 2015  
2 memorandum from Chris Sakamoto to All DDSs, Office Managers & TCs re: “New Daily  
3 Dashboard,” produced by Defendants in response to plaintiffs’ discovery requests in this matter.

4           9.       Attached hereto as **Exhibit H** is a true and correct copy of a document produced by  
5 Defendants in response to plaintiffs’ discovery requests in this matter, entitled “Daily Dashboard AH  
6 Anaheim,” served through Case Anywhere on May 29, 2019.

7           10.      Attached hereto as **Exhibit I** is a true and correct copy of a May 22, 2015 email from  
8 Sam Gruenbaum to Marsha Jacks re: “Operations Reviews” produced by Defendants in response to  
9 plaintiffs’ discovery requests and marked as Deposition Exhibit 110 in this matter.

10          11.      Attached hereto as **Exhibit J** is a true and correct copy of a January 21, 2016  
11 memorandum from Sam Gruenbaum to All Doctors and Office Managers re: “Office Proficiency  
12 Expectations for 2016” produced by Defendants in response to plaintiffs’ discovery requests and  
13 marked as Deposition Exhibit 59 in this matter.

14          12.      Attached hereto as **Exhibit K** is a true and correct copy of a March 11, 2016 email  
15 from Elma Irving to Drs. Diaz, Abraham, Pham, Olex and Nguyen re: “Production levels -- message  
16 from Sam G: need to excel!!!” produced by Defendants in response to plaintiffs’ discovery requests  
17 and marked as Deposition Exhibit 96 in this matter.

18          13.      Attached hereto as **Exhibit L** is a true and correct copy of a June 2, 2016 email from  
19 Dr. Jerry Minsky to Dr. Abraham re: “Modification of Compensation Formula” produced by  
20 Defendants in response to plaintiffs’ discovery requests and marked as Deposition Exhibit 63 in this  
21 matter.

22          14.      The deposition of Pamela Abraham, DDS was taken in this matter on March 11, 2019  
23 and April 15, 2019 and I personally attended the proceedings. A true and correct copy of excerpts of  
24 the transcript of the Abraham deposition is attached hereto as **Exhibit M**.

25          15.      The deposition of Jerry Minsky, DDS was begun in this matter on March 27, 2019 and I  
26 personally attended the proceedings. A true and correct copy of excerpts of the transcript of the  
27 Minsky deposition is attached hereto as **Exhibit N**.

1           16. Attached hereto as **Exhibit O** is a true and correct copy of a document produced by  
2 Defendants as DSGRUB001866 in response to plaintiffs’ discovery requests in this matter, entitled  
3 “Assessment of Dental Unit Waterline Management at a Clinic Experiencing an Outbreak of Non  
4 tuberculous Mycobacteria Infections among Children who Received Pulpotomy Procedures --- Orange  
5 County, California, February 2017.”

6           17. Attached hereto as **Exhibit P** is a true and correct copy of screenshot from a video  
7 produced by Defendants as “TXROOM2 12-09-16.avi” in response to plaintiffs’ discovery requests in  
8 this matter, constituting a recording of treatment received at CDG’s Carson clinic by my client Victor  
9 Gomez on or about December 9, 2016.

10           18. The deposition of Leticia Trejo, guardian *ad litem* for minor plaintiff Jennifer Jimenez  
11 was taken in this matter on December 12, 2018 and I personally attended the proceedings. A true and  
12 correct copy of excerpts of the transcript of the Trejo deposition is attached hereto as **Exhibit Q**.

13           19. The deposition of Maria Martinez, guardian *ad litem* for minor plaintiff Jason Cardoso  
14 was taken in this matter on December 14, 2018 and I personally attended the proceedings. A true and  
15 correct copy of excerpts of the transcript of the Martinez deposition is attached hereto as **Exhibit R**.

16           20. The deposition of Nancy Quintero, guardian *ad litem* for minor plaintiff Valeria Quintero  
17 was taken in this matter on January 15, 2019 and I personally attended the proceedings. A true and  
18 correct copy of excerpts of the transcript of the Quintero deposition is attached hereto as **Exhibit S**.

19           21. The deposition of Gabriela Gomez, guardian *ad litem* for minor plaintiff Alejandrina  
20 Avila was taken in this matter on November 28, 2018. A true and correct copy of excerpts of the  
21 transcript of the Gomez deposition is attached hereto as **Exhibit T**.

22           22. The deposition of Manuel Alejandro Avila, guardian *ad litem* for minor plaintiff  
23 Alejandrina Avila was taken in this matter on November 29, 2018. A true and correct copy of excerpts  
24 of the transcript of the Avila deposition is attached hereto as **Exhibit U**.

25           23. Attached hereto as **Exhibit V** is a true and correct copy of a document marked as  
26 Deposition Exhibit 95, consisting of pages from dental and billing records relating to various plaintiffs  
27 in this matter. It was marked during the deposition of Dr. Nguyen cited above. Exhibit V (Deposition  
28

1 Exhibit 95) relates to eight patients: Ashley Alvarado, Giovanni Castillo, Bahteli Feldblumb, Brianna  
2 Hernandez, Azucena Meza, Brandon Morales, Luis Munoz, and Jocelyn Ruiz.

3 24. Plaintiffs have similar documentation relating to many more minor patients. In total, a  
4 similar pattern is found in at least 115 cases. These additional cases are summarized in the document I  
5 have caused to be prepared and attach hereto as **Exhibit W**.

6 25. Attached hereto as **Exhibit X** is a true and correct copy of a document that was marked  
7 as Deposition Exhibit 143 to the deposition of Mr. Fehmer taken on May 3, 2019 described above.

8 26. Attached hereto as **Exhibit Y** is a true and correct copy of a July 1, 2016 email from  
9 “Elma” to Dr. Jerry Minsky re: “MISC !!!” produced by Defendants in response to plaintiffs’  
10 discovery requests and marked as Deposition Exhibit 116 in this matter.

11 I declare under penalty of perjury of the laws of the State of California that the foregoing is true  
12 and correct.

13 Executed on June 12, 2019, at Long Beach, California.

14  
15 

16 \_\_\_\_\_  
17 Carlos X. Colorado, Esq.