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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

17 JANE DOE 1, individually and on behalf
18 of all similarly situated,

19 Class Plaintiff,

20 v.

21 UNIVERSITY OF SOUTHERN
22 CALIFORNIA, a California Corporation;
23 USC ENGEMANN STUDENT HEALTH
24 CENTER, entity form unknown; ERIC
25 COHEN STUDENT HEALTH CENTER OF
26 USC, entity form unknown; GEORGE
27 TYNDALL, M.D., an individual; and DOES
28 1-100.

Defendants.

Case No.:

CLASS ACTION

COMPLAINT FOR:

- 1 **1 NEGLIGENCE**
- 2 **2. NEGLIGENCE PER SE**
- 3 **3. GENDER VIOLENCE (VIOLATION**
4 **OF CIVIL CODE § 52.4)**
- 5 **4. BATTERY;**
- 6 **5. GROSS NEGLIGENCE AND/OR**
7 **WANTON AND RECKLESS**
8 **MISCONDUCT;**
- 9 **6. INVASION OF PRIVACY**
- 10 **7. INTENTIONAL INFLICTION OF**
11 **EMOTIONAL DISTRESS**
- 12 **8. CONCEALMENT**
- 13 **9. NEGLIGENT MISREPRESENTATION**
- 14 **10. AIDING AND ABETTING**

JURY TRIAL DEMANDED

1 Plaintiff Jane Doe 1 (“Plaintiff”) is a victim of a sexual battery. As such, she is entitled
2 to protect her identity in this public filing by not disclosing her name. Plaintiff, individually and
3 on behalf of all others similarly situated, make the following allegations based upon information
4 and belief, except as to those allegations specifically pertaining to Plaintiff and her counsel,
5 which are based on personal knowledge. Plaintiff brings this action for restitution and monetary
6 damages against defendants University Of Southern California, USC Engemann Student Health
7 Center, Eric Cohen Student Health Center of USC (collectively, “USC” or “USC Defendants”),
8 George Tyndall, M.D. and Does 1 through 100 (collectively, “Defendants”), demanding a trial
9 by jury.

10 **JURISDICTION AND VENUE**

11 1. This Court has jurisdiction over this action pursuant to section 410.10 of the Code
12 of Civil Procedure. Plaintiff brings this action to recover damages and to seek restitution and
13 other relief available at law or in equity on her own behalf and on behalf of all persons within the
14 class defined herein. All of the acts and omissions complained of in this action took place in the
15 State of California. Plaintiff asserts no claims under federal law.

16 2. Venue is proper in this Court pursuant to sections 395 and 395.5 of Code of Civil
17 Procedure because the injuries to the persons complained of herein occurred in the County of
18 Los Angeles and because Defendants transact business and may be found within Los Angeles
19 County. The course of conduct, breaches, violations, and unlawful patterns and practices alleged
20 herein occurred in Los Angeles County.

21 **THE PARTIES**

22 3. This case is being filed anonymously because of the extremely sensitive
23 nature of the conduct involved and damages suffered by Plaintiff and others similarly
24 situated.

25 4. Plaintiff Jane Doe 1 (“Plaintiff”) is a resident of Los Angeles County,
26 California and a citizen of California. Plaintiff was a student at the University of Southern
27 California (“USC”) where she sought gynecological care through the USC student health
28 clinic system and was examined by defendant George Tyndall on one or more occasions

1 from approximately 2014 to 2016. Plaintiff, who had never seen a OBGYN prior to Dr.
2 Tyndall, was subjected to sexual harassment and inappropriate touching during those
3 examinations.

4 5. Plaintiff is informed and believes and thereon alleges that Defendants
5 UNIVERSITY OF SOUTHERN CALIFORNIA, USC ENGEMANN STUDENT HEALTH
6 CENTER, ERIC COHEN STUDENT HEALTH CENTER OF USC, and DOES 1 through
7 100 (hereinafter collectively “USC Defendants”) and at all relevant times herein mentioned
8 was and are:

- 9 (a) A California corporation or other entity, form unknown;
- 10 (b) A citizen of California;
- 11 (c) Having its principal place of business in California; and
- 12 (d) Doing business in Los Angeles County, California.

13 6. At all times relevant, defendant GEORGE R. TYNDALL, M.D. was the actual
14 and/or apparent, duly authorized agent, servant and/or employee of the USC Defendants and
15 carried on a gynecological medical practice in Los Angeles, California. Defendant TYNDALL
16 is a resident of Los Angeles, California.

17 7. The true names and capacities, whether individual, corporate, partnership,
18 associate, or otherwise, of Defendants Does 1 through 100, inclusive (“Doe Defendants”),
19 are unknown to Class Plaintiff who therefore sues these Doe Defendants by such fictitious
20 names pursuant to CODE OF CIV. PROC. § 474. Class Plaintiff will seek leave to amend this
21 Complaint to allege their true names and capacities when they are ascertained.

22 8. Class Plaintiff is informed and believes and thereon alleges that each of the
23 Defendants named in this Complaint, including each of the Doe Defendants, is responsible
24 in some manner for one or more of the events and happenings, and proximately caused the
25 injuries and damages, hereinafter alleged.

26 9. Class Plaintiff is informed and believes and thereon alleges that each of the
27 Defendants named in this Complaint, including each of the Doe Defendants, is, and at all
28 relevant times herein mentioned was, the agent, servant, and/or employee of each of the

1 other Defendants, and that each Defendant was acting within the course and scope of his,
2 her, or its authority as the agent, servant, and/or employee of each of the other Defendants.
3 Consequently, each Defendant is jointly and severally liable to Class Plaintiff and the other
4 members of the Class for the damages sustained as a proximate result of their conduct.

5
6 **CLASS ALLEGATIONS**

7 10. Plaintiff brings this action on behalf of herself and as representatives of all
8 others who are similarly situated. This action satisfies the numerosity, commonality,
9 typicality, adequacy, predominance, and superiority requirements of Section 382 of the
10 Code of Civil Procedure. Plaintiff seeks certification of a California Class which is initially
11 defined as follows:

12 *All women who are citizens of California and who were examined by*
13 *George Tyndall, M.D. at the University of Southern California (the*
14 *“California Class”).*

15 11. Excluded from each of the above classes are Defendants, including any entity
16 in which Defendants have a controlling interest, are a parent or subsidiary, or which are
17 controlled by Defendants, as well as the officers, directors, affiliates, legal representatives,
18 predecessors, successors, and assigns of Defendants. Also excluded are the judges and
19 court personnel in this case and any members of their immediate families.

20 12. Plaintiff reserves the right to amend or modify the above class definition with
21 greater specificity or division into subclasses after having had an opportunity to conduct
22 discovery.

23 13. This action has been brought and may be properly maintained on behalf of the
24 class proposed herein under section 382 of the California Code of Civil Procedure.

25 14. Numerosity. The members of the class are so numerous that joinder of all
26 members is impractical. Plaintiff is informed and believes that there are thousands of
27 members of the class. The precise number of class members can be ascertained from
28

1 Defendants' records.

2 15. Commonality and Predominance. There are questions of law and fact common
3 to the class, which predominate over any questions affecting individual members of the
4 class. These common questions of law and fact include, without limitation:

5 a. Whether Tyndall engaged in a sexual harassment, assault, and battery;

6 b. Whether Tyndall's sexual harassment, assault and battery was
7 committed within the scope of his employment at USC;

8 c. Whether Tyndall invaded the privacy of Plaintiff and the members of
9 the Class;

10 d. Whether the USC Defendants had knowledge of Tyndall's sexual
11 harassment, assault, and battery;

12 e. Whether the USC Defendants facilitated, aided and abetted Tyndall's
13 pattern and practice of sexual harassment, assault, and battery;

14 f. Whether the USC Defendants engaged in conduct designed to suppress
15 and/or conceal complaints or reports regarding Tyndall's conduct;

16 g. Whether the USC Defendants negligently retained or supervised
17 Tyndall; and

18 h. Whether Plaintiff and the members of the Class have been damaged by
19 the wrongs complained of herein, and if so, the measure of those damages and the
20 nature and extent of other relief that should be afforded.

21 16. Typicality. Plaintiff's claims are typical of the claims of the Class she seeks
22 to represent. Plaintiff and all Class members were exposed to uniform practices and
23 sustained injuries arising out of and caused by Defendants' conduct.

24 17. Adequacy. Plaintiff is committed to the vigorous prosecution of this action
25 and have retained competent counsel experienced in the prosecution of class actions.

26 Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect
27 the interests of the Class.
28

1 18. Superiority. A class action is superior to other available methods for the fair
2 and efficient adjudication of this controversy. Since the amount of each individual Class
3 member's claim is small relative to the complexity of the litigation, and due to the financial
4 resources of Defendants, no Class member could afford to seek legal redress individually
5 for the claims alleged herein. Therefore, absent a class action, Class members will continue
6 to suffer losses and Defendants' misconduct will proceed without remedy. Even if Class
7 members themselves could afford such individual litigation, the court system could not.
8 Given the complex legal and factual issues involved, individualized litigation would
9 significantly increase the delay and expense to all parties and to the Court. Individualized
10 litigation would also create the potential for inconsistent or contradictory rulings. By
11 contrast, a class action presents far fewer management difficulties, allows claims to be heard
12 which might otherwise go unheard because of the relative expense of bringing individual
13 lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive
14 supervision by a single court.

15 19. Finally, Plaintiff knows of no difficulty that will be encountered in the
16 management of this litigation which would preclude its maintenance as a class action.

CONDUCT ALLEGATIONS

17
18
19 20. Defendant GEORGE R. TYNDALL, M.D. was an obstetrician-gynecologist who
20 was licensed to practice medicine in the State of California from 1986 to the present, and was
21 hired by USC in 1989 following completion of residency in gynecology and obstetrics.

22 21. For over 30 years, Defendant TYNDALL practiced obstetrics and gynecology as
23 an actual and/or apparent agent, servant and/or employee of USC through the student health
24 clinic.

25 22. At all times relevant hereto, agents, servants, medical staff members, and/or
26 employees of USC including Defendant TYNDALL, were acting in the course and scope of their
27 authority, agency, service and/or employment for USC Defendants.

1 23. Upon information and belief, beginning in the 1990's, USC began receiving
2 reports from USC students and employees of USC regarding concerns about Defendant
3 TYNDALL's conduct and "treatment," yet USC failed to take any action in response to such
4 complaints. USC Defendants received numerous complaints of serious misconduct, including
5 sexual misconduct by TYNDALL made to TYNDALL's supervisors and other administrators
6 employed by the USC Defendants, including but not limited to, the executive director of the
7 USC ENGEMANN STUDENT HEALTH CENTER and other university officials.

8 24. Rather than addressing and properly investigating the complaints, including
9 taking appropriate disciplinary action and/or terminating the employment of TYNDALL, the
10 USC Defendants kept the complaints secret to avoid negative publicity despite their actual
11 knowledge of such misconduct, so that for over 30 years, Defendant TYNDALL had unfettered
12 access to young female students through the student health clinics at USC.

13 25. The USC Defendants hid the complaints despite the fact that many of the
14 complaints came directly from its own employees and staff, including nurses and medical
15 assistants who were physically present during the examinations as "chaperones," and witnessed
16 the sexual misconduct firsthand. Despite receiving years of serious complaints of significant
17 misconduct about TYNDALL, including sexual misconduct, the USC Defendants failed to take
18 any meaningful action to address the complaints until they were finally forced to in June 2016.

19 26. Upon information and belief, the complaints made to the USC Defendants
20 included, but are not limited to, TYNDALL taking photographs of his female patients' genitals
21 without any medical purpose, making suggestive comments about patients' bodies during
22 gynecological examinations, and often touching their bodies in a manner that had no medical
23 purpose, requiring young women to lie fully nude on the table during gynecological
24 examinations and making improper and sexual comments about their bodies. These fully nude
25 examinations served no legitimate medical purpose.

26 27. At all times relevant herein, Plaintiff and other members of the Class are or were
27 young female students attending USC who sought gynecological care through the USC student
28 health system and were patients of defendant TYNDALL during his tenure at USC. Plaintiff and

1 other members of the Class had no reason to suspect Defendant TYNDALL was anything other
2 than a competent and ethical physician.

3 28. Knowing that Plaintiff and other members of the Class were trusting and
4 vulnerable, Defendant TYNDALL used his position of authority to require Plaintiff and other
5 members of the Class to fully disrobe for no reasonable medical purpose, engage in touching,
6 fondling and groping of Plaintiff and Class members' breasts and other parts of their bodies
7 while making suggestive and improper comments, engage in nonconsensual vaginal penetration,
8 nonconsensual sexual touching and fondling of the vaginal and genital region for the purpose of
9 sexual arousal, sexual gratification, and/or sexual abuse. Defendant TYNDALL also made
10 racially discriminatory and sexually harassing comments.

11 29. Through his position with USC, Defendant TYNDALL used his position of
12 authority as a medical professional to take hundreds of nonconsensual and medically
13 unwarranted photographs of female genitalia under the guise of medical "treatment."

14 30. Defendant TYNDALL particularly targeted young students, many of whom were
15 foreign students, who were frequently unfamiliar with the nature of gynecological examinations
16 as a result of their youth, inexperience, and/or cultural background. Many of these young women
17 did not know that what TYNDALL was doing during the examinations was not proper protocol
18 and did not realize he was engaging in sexual misconduct, sexually violating them and/or taking
19 advantage of them

20 31. Defendant TYNDALL carried out these acts without fully explaining the
21 "treatment" or obtaining informed consent of Plaintiff and other members of the Class.

22 32. All of Defendant TYNDALL's acts were conducted under the guise of providing
23 medical care at the UNIVERISTY OF SOUTHERN CALIFORNIA.

24 33. The failure to give proper notice or to obtain consent for the purported
25 "treatment" from Class Plaintiffs robbed them of the opportunity to reject the "treatment."

26 34. Defendant TYNDALL used his position of trust and confidence in an abusive
27 manner causing Class Plaintiffs to suffer a variety of injuries including shock, humiliation,
28

1 emotional distress and related physical manifestations thereof, embarrassment, loss of self-
2 esteem, disgrace, and loss of enjoyment of life.

3 35. Upon information and belief, in the 1990's USC Defendants were also put on
4 notice of Defendant TYNDALL's actions after receiving complaints from USC employees,
5 including nurses, medical staff, students and chaperones concerning both the photographs of
6 female genitalia and the disturbing sexual behavior toward patients.

7 36. Upon information and belief, despite complaints to USC representatives, the
8 concerns and allegations went unaddressed in violation of reporting policies and procedures and
9 in a manner that was reckless, deliberately indifferent, and grossly negligent. Specifically, the
10 medical director of the student clinic took the camera away from defendant TYNDALL but did
11 nothing further to investigate or take corrective action regarding defendant TYNDALL's
12 behavior.

13 37. Upon information and belief, because USC took no action to investigate the
14 complaints and took no corrective action regarding TYNDALL's actions, Plaintiff and other
15 members of the Class were sexually assaulted, harassed, abused, and molested by Defendant
16 TYNDALL by unnecessary vaginal digital penetration, by unnecessary and non-medical
17 touching and groping their breasts and other areas of their body, and by sexual comments and
18 statements.

19 38. Upon information and belief, in or around June of 2016, complaints about
20 TYNDALL were made to the executive director USC's rape crisis center, known as Relationship
21 and Sexual Violence Prevention and Services, and photographs of female genitalia were found in
22 TYNDALL's office.

23 39. Only at this time did Defendant USC place defendant TYNDALL on
24 administrative leave and investigate the 2016 complaints through their OED, Office of
25 Compliance, Risk Management and an outside consulting firm, determining defendant
26 TYNDALL "exhibited unprofessional and inappropriate behavior" and that his pelvic exams
27 were outside "current standards of care."
28

1 40. Upon information and belief, following the investigation Defendant TYNDALL
2 was permitted to quietly “retire” from USC with an unknown amount of settlement money.

3 41. At no time did Defendant USC inform Plaintiff, the public or any other students
4 or patients of the concerns that led to Defendant TYNDALL being relieved from his duties at
5 USC and his subsequent “retirement.”

6
7 **FIRST CAUSE OF ACTION**

8 **NEGLIGENCE**

9 **(Against USC Defendants and DOES 1-100)**

10 42. Plaintiff realleges and incorporates by reference the allegations contained in the
11 previous paragraphs of this Complaint, as though fully set forth herein and, to the extent
12 necessary, plead this cause of action in the alternative.

13 43. From 1989 through 2017, TYNDALL was an actual and/or apparent, duly
14 authorized agent, servant and/or employee of USC Defendants and DOES 1-100 providing
15 services through the USC student health center system. USC Defendants and each of them were
16 responsible to assure and maintain patient safety and privacy for USC students who received
17 treatment from their agents, servants, and/or employees, including specifically but not limited to
18 Defendant TYNDALL.

19 44. The USC Defendants and DOES 1 through 100 owed a duty to provide safe
20 environment and reasonable services offered to Plaintiff and other members of the Class because
21 they were students at the University of Southern California and were invited to obtain services at
22 the USC student health center. The USC Defendants had a special relationship with the Plaintiff
23 and members of the Class based upon their position as students and patients of the USC student
24 health center. The duty to warn and provide reasonable and safe care to Plaintiff and other
25 female student patients arose from offering those services to students who had a special, trusting
26 and confidential relationship with the USC Defendants.

27 45. The USC Defendants and DOES 1 through 100 breached their duties of care to
28 Plaintiff and other members of the Class by allowing TYNDALL to come into contact with them

1 without warning of TYDNALL's prior, improper misconduct towards female patients; by
2 negligently supervising and retaining TYNDALL, whom the USC Defendants allowed to have
3 access to Plaintiff and other members of the Class without warning; and by concealing from
4 Plaintiff and members of the Class, their families, the public, the California Medical Board and
5 law enforcement that TYNDALL was sexually harassing, sexually battering and sexually
6 assaulting student female patients, and by holding TYNDALL out to Plaintiff, other students,
7 members of the Class, the public, staff, and others as being of high moral character, in good
8 standing.

9 46. The USC Defendants and DOES 1 through 100 further breached their duties to
10 Plaintiff by failing to properly investigate the numerous complaints made against TYNDALL,
11 and failing to disclose such facts to plaintiff, the community, law enforcement and the California
12 Medical Board.

13 47. Upon information and belief, TYNDALL engaged in improper, unlawful and
14 unprofessional conduct by photographing his patients' genitalia without consent or authorization,
15 inappropriate touching and fondling, including, but not limited to nonconsensual vaginal
16 penetration, nonconsensual sexual touching and fondling of the vaginal area and nonconsensual
17 touching, fondling and groping of Plaintiff's and other members of the class's breasts and other
18 parts of their bodies while making suggestive and erotic comments, and additional boundary
19 violations during his care and treatment of the members of the class.

20 48. The negligence of USC Defendants and each of them, includes but is not limited
21 to:

- 22 (a) Negligently failing to properly supervise and oversee defendant TYNDALL;
- 23 (b) Negligently credentialing Defendant TYNDALL;
- 24 (c) Knew or should have known about Defendant TYNDALL's perverse activity but
25 negligently failing to report, stop and/or prevent its continuation;
- 26 (d) Negligently failing to observe Defendant TYNDALL's perverse activity;
- 27 (e) Negligently failing to train staff to recognize and report perverse conduct of this
28 type and/or;

1 (f) Negligently failing to have or enforce policies and procedures that would prevent
2 this type of perversion; and/or

3 (g) Negligently failing to respond to complaints and reports by staff regarding
4 TYNDALL's behavior.

5 49. The USC Defendants and each of them further breached the applicable standards
6 of reasonable care on a continuing basis by:

7 (a) Failing to properly investigate Defendant TYNDALL during his employment
8 and/or association with the Defendants;

9 (b) Failing to properly investigate reports of misconduct;

10 (c) Failing to take appropriate actions to ensure the safety and privacy of patients
11 who came under Defendant TYNDALL's care;

12 (d) Failing to appropriately credential, qualify, select, investigate, monitor and
13 supervise Defendant TYNDALL;

14 (e) Continuing Defendant TYNDALL's privileges and employment when they knew
15 or should have known that he engaged in wrongful, unlawful and outrageous conduct including,
16 but not limited to, the photography of the Class Plaintiffs, without authorization or consent, in
17 addition to engaging in boundary violations, and/or violating other standards of care and/or
18 internal protocols, rules, systems, and procedures.

19 50. As a direct, proximate, immediate and foreseeable result of the Defendants'
20 conduct, the Class Plaintiffs have and/or will suffer permanent economic and non-economic
21 damages including but not limited to: (a) Great indignity, humiliation, shame, mortification and
22 other injuries to their physical, mental, emotional and nervous systems; (b) Severe mental
23 anguish and psychological distress; (c) The past, present and future cost of medical care,
24 including but not limited to therapy and psychological counseling; and (d) Lost earnings and
25 diminished earnings capacity, all in an amount not yet ascertained, but which exceeds the
26 minimum jurisdictional limits of this Court.

1 **SECOND CAUSE OF ACTION**
2 **NEGLIGENCE PER SE - VIOLATIONS OF**
3 **Cal. Equity in Higher Education Act (Cal. Ed. Code, §§ 66270, et. seq.)**
4 **(Against All Defendants)**

5 51. Plaintiff realleges and incorporates by reference the allegations contained in the
6 previous paragraphs of this Complaint, as though fully set forth herein and, to the extent
7 necessary, plead this cause of action in the alternative.

8 52. California Education Code Section 231.5 states, *inter alia*, “all persons, regardless
9 of their sex, should enjoy freedom from discrimination of any kind in the educational institutions
10 of the state. The purpose of this section is to provide notification of the prohibition against
11 sexual harassment as a form of sexual discrimination.”

12 53. Class Plaintiffs are “persons” under the statutory language of Education Code
13 Section 231.5 as stated herein above and for whose protection the statute, ordinance or regulation
14 was adopted.

15 54. Defendant USC is an educational institution within the state of California and
16 subject to the California Equity in Higher Education Act.

17 55. Defendant TYNDALL’s actions and conduct were carried out under one of
18 Defendant USC programs, which provides services to students, athletes, and the public.

19 56. Defendant TYNDALL’s conduct and actions toward Class Plaintiffs, that being
20 nonconsensual digital vaginal penetration, touching of Class Plaintiffs’ vaginal area, and
21 touching and fondling of Class Plaintiffs’ breasts and other areas of the body constitutes sex
22 discrimination and harassment under California Education Code Section 231.5.

23 57. Upon information and belief, as early as the 1990s, an “appropriate person” at
24 Defendant USC had actual knowledge of sexual assault, harassment, abuse, and molestation
25 committed by Defendant TYNDALL. Specifically, the USC Defendants were notified about
26 Defendant TYNDALL’s behavior by students and/or clinic staff from the 1990s on more than
27 one occasion, including specific notifications of unwarranted photographs taken of female
28 patient genitalia and unwarranted fondling and sexual comments during medical examinations.

1 58. The USC Defendants failed to carry out their duties to investigate and take
2 corrective action following such complaints until 2016, as required under the California
3 Education Code.

4 59. Upon information and belief, Defendant TYNDALL became subject to new
5 institutional guidelines, one of which – it is believed – was that Defendant TYNDALL’s camera
6 used to take unwarranted and non-medically necessary photographs of female genitalia was
7 taken away.

8 60. Upon information and belief, despite imposing this restriction based upon this
9 disturbing behavior, USC Defendants failed to adequately supervise Defendant TYNDALL even
10 though the USC Defendants had actual knowledge Defendant TYNDALL posed a substantial
11 risk of additional sexual abuse and harassment of females to whom he had unfettered access.

12 61. Between the dates of approximately 1989 and 2016, the USC Defendants acted in
13 a deliberate, grossly negligent, and/or reckless manner when they failed to reasonably respond to
14 Defendant TYNDALL’s sexual assaults and sex-based harassment of Class Plaintiffs on school
15 premises.

16 62. The USC Defendants’ failure to promptly and appropriately investigate and
17 remedy and respond to the sexual assaults and harassment after they received notice subjected
18 Class Plaintiffs to further harassment and a sexually hostile environment, effectively denying
19 them all access to educational opportunities at USC, including medical care.

20 63. As a direct, proximate, immediate and foreseeable result of the Defendants’
21 conduct, the Class Plaintiffs have and/or will suffer permanent economic and non-economic
22 damages including but not limited to: (a) Great indignity, humiliation, shame, mortification and
23 other injuries to their physical, mental, emotional and nervous systems; (b) Severe mental
24 anguish and psychological distress; (c) The past, present and future cost of medical care,
25 including but not limited to therapy and psychological counseling; and (d) Lost earnings and
26 diminished earnings capacity, all in an amount not yet ascertained, but which exceeds the
27 minimum jurisdictional limits of this Court.

1 **THIRD CAUSE OF ACTION**
2 **GENDER VIOLENCE - VIOLATION OF CALIF. CIVIL CODE §52.4**
3 **(Against All Defendants)**

4 64. Plaintiff realleges and incorporates by reference the allegations contained in the
5 previous paragraphs of this Complaint, as though fully set forth herein and, to the extent
6 necessary, plead this cause of action in the alternative.

7 65. At all relevant times mentioned in this complaint, California Civil Code § 52.4
8 was in full force and effect and was binding on Defendants.

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

12 67. For purposes of Civil Code § 52.4, gender violence is a form of sex discrimination
13 and means any of the following;

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

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

21 68. It is alleged Defendant TYNDALL intentionally and without the Class Plaintiffs'
22 consent made unpermitted, harmful, and offensive sexual and/or other physical intrusion,
23 invasion or contact with the Class Plaintiffs in violation of Civil Code § 52.4. . At all relevant
24 times, Defendant TYNDALL acted as a duly authorized agent and/or employee of the USC
25 Defendants.

26 69. Defendant TYNDALL carried out such actions and conduct as an employee,
27 agent and/or representative of USC and were carried out under one of Defendant USC programs,
28 which provides medical treatment to students, athletes, and the public.

1 70. Defendants are liable and vicariously liable for defendant TYNDALL's conduct.

2 71. As a result of the conduct of the Defendants, and each of them, the Class
3 Plaintiffs sustained severe emotional distress and physical pain, emotional anguish, fear, anxiety,
4 humiliation, embarrassment and other physical and emotional injuries, damages (both economic
5 and noneconomic) and permanent disability, in the past, present and future, for which this claim
6 is made. The injuries suffered by the Class Plaintiffs are substantial, continuing and permanent.

7 72. Defendants' conduct as described herein was despicable and was committed
8 maliciously, fraudulently and/or oppressively with the wrongful intention of injuring Class
9 Plaintiffs and with a willful and conscious disregard of the rights of Class Plaintiffs, justifying an
10 award of punitive damages.

11
12 **FOURTH CAUSE OF ACTION**

13 **BATTERY**

14 **(Against All Defendants)**

15 73. Plaintiff realleges and incorporates by reference the allegations contained in the
16 previous paragraphs of this Complaint, as though fully set forth herein and, to the extent
17 necessary, plead this cause of action in the alternative.

18 74. It is alleged Defendant TYNDALL intentionally and without the Class Plaintiffs'
19 consent made unpermitted, harmful, and offensive sexual and/or other contact with the Class
20 Plaintiffs. At all relevant times, Defendant TYNDALL acted as a duly authorized agent and/or
21 employee of the Defendants.

22 75. These contacts would offend an ordinary person's reasonable sense of personal
23 dignity, and constituted an intentional, unpermitted touching of the Class Plaintiffs.

24 76. Defendant TYNDALL carried out such actions and conduct as an employee,
25 agent and/or representative of USC and were carried out under one of Defendant USC programs,
26 which provides medical treatment to students, athletes, and the public.

27 77. Defendants are liable and vicariously liable for defendant TYNDALL's conduct.
28

1 78. As a result of the conduct of the Defendants, and each of them, the Class
2 Plaintiffs sustained severe emotional distress and physical pain, emotional anguish, fear, anxiety,
3 humiliation, embarrassment and other physical and emotional injuries, damages (both economic
4 and noneconomic) and permanent disability, in the past, present and future, for which this claim
5 is made. The injuries suffered by the Class Plaintiffs are substantial, continuing and permanent.

6 79. Defendants' conduct as described herein was despicable and was committed
7 maliciously, fraudulently and/or oppressively with the wrongful intention of injuring Class
8 Plaintiffs and with a willful and conscious disregard of the rights of Class Plaintiffs, justifying an
9 award of punitive damages.

10
11 **FIFTH CAUSE OF ACTION**

12 **GROSS NEGLIGENCE**

13 **(Against All Defendants)**

14 80. Plaintiff realleges and incorporates by reference the allegations contained in the
15 previous paragraphs of this Complaint, as though fully set forth herein and, to the extent
16 necessary, plead this cause of action in the alternative.

17 81. The USC Defendants owed Class Plaintiffs a duty to use due care to ensure their
18 safety and freedom from sexual assault, harassment, abuse, and molestation while interacting
19 with their employees, representatives, and/or agents, including Defendant TYNDALL.

20 82. Defendant TYNDALL owed Class Plaintiffs a duty of due care in carrying out his
21 duties in a reasonable safe manner as an employee, agent, and/or representative of the USC
22 Defendants.

23 83. By seeking medical treatment from Defendant TYNDALL in the course of his
24 employment, agency, and/or representation of the USC Defendants, a special, confidential, and
25 fiduciary relationship between Class Plaintiffs and Defendant TYNDALL was created, resulting
26 in Defendant TYNDALL owing Class Plaintiffs a duty to use due care.

27 84. USC Defendants' failure to adequately supervise Defendant TYNDALL,
28 especially after USC knew or should have known of complaints regarding his nonconsensual

1 sexual touching, harassment, boundary violations and assaults during examinations was so
2 reckless as to demonstrate a substantial lack of concern for whether an injury would result to
3 Class Plaintiffs.

4 85. Defendant TYNDALL's conduct in sexually assaulting, harassing, abusing, and
5 violating Class Plaintiffs in the course of his employment, agency, and/or representation of the
6 USC Defendants and under the guise of rendering medical care was so reckless as to demonstrate
7 a substantial lack of concern for whether an injury would result to Class Plaintiffs.

8 86. The USC Defendants' conduct demonstrated a willful disregard for precautions to
9 ensure Class Plaintiffs' safety.

10 87. The USC Defendants' conduct as described above, demonstrated a willful
11 disregard for rights of Class Plaintiffs.

12 88. The USC Defendants breached duties owed to Class Plaintiffs and were grossly
13 negligent when they conducted themselves by the actions described above, said acts having been
14 committed with reckless disregard for Class Plaintiffs' health, safety, Constitutional and/or
15 statutory rights, and with a substantial lack of concern as to whether an injury would result.

16 89. As a result of the conduct of the Defendants, and each of them, the Class
17 Plaintiffs sustained severe emotional distress and physical pain, emotional anguish, fear, anxiety,
18 humiliation, embarrassment and other physical and emotional injuries, damages (both economic
19 and noneconomic) and permanent disability, in the past, present and future, for which this claim
20 is made. The injuries suffered by the Class Plaintiffs are substantial, continuing and permanent.

21 90. Defendants' conduct as described herein was despicable and was committed
22 maliciously, fraudulently and/or oppressively with the wrongful intention of injuring Class
23 Plaintiffs and with a willful and conscious disregard of the rights of Class Plaintiffs, justifying an
24 award of punitive damages.

1 **SIXTH CAUSE OF ACTION**
2 **INVASION OF PRIVACY**
3 **(Against All Defendants)**

4 91. Plaintiff realleges and incorporates by reference the allegations contained in the
5 previous paragraphs of this Complaint, as though fully set forth herein and, to the extent
6 necessary, plead this cause of action in the alternative.

7 92. Class Plaintiffs allege Defendant TYNDALL intruded upon the Class Plaintiffs'
8 solitude, seclusion or private affairs and concerns by photographing their gynecological and/or
9 other examinations, treatment and/or care without authorization or consent. This intrusion is
10 highly offensive to a reasonable individuals, such as the Class Plaintiffs, and was totally
11 unwarranted and unjustified, constituting invasion of privacy, and a violation of The Health
12 Insurance Portability and Accountability Act (HIPAA).

13 93. Defendant TYNDALL carried out such actions and conduct as an employee,
14 agent and/or representative of USC and were carried out under one of Defendant USC programs,
15 which provides medical treatment to students, athletes, and the public.

16 94. USC Defendants are liable and vicariously liable for defendant TYNDALL's
17 conduct.

18 95. As a direct and proximate result of the conduct of the Defendants, and each of
19 them, the Class Plaintiffs sustained severe emotional distress and physical pain, emotional
20 anguish, fear, anxiety, humiliation, embarrassment and other physical and emotional injuries,
21 damages (both economic and noneconomic) and permanent disability, in the past, present and
22 future, for which this claim is made. The injuries suffered by the Class Plaintiffs are substantial,
23 continuing and permanent.

24 96. Defendants' conduct as described herein was despicable and was committed
25 maliciously, fraudulently and/or oppressively with the wrongful intention of injuring Class
26 Plaintiffs and with a willful and conscious disregard of the rights of Class Plaintiffs, justifying an
27 award of punitive damages.

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2 **SEVENTH CAUSE OF ACTION**
3 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
4 **(Against All Defendants)**

5 97. Plaintiff realleges and incorporates by reference the allegations contained in the
6 previous paragraphs of this Complaint, as though fully set forth herein and, to the extent
7 necessary, plead this cause of action in the alternative.

8 98. Class Plaintiffs allege that Defendant TYNDALL's ongoing conduct was
9 intentional and/or reckless when he photographed Class Plaintiffs during their gynecological
10 and/or other examinations and/or care without authorization or consent and engaged in sexual
11 touching, harassment, boundary violations and assaults. It is asserted that Defendant
12 TYNDALL's conduct involved was extreme, outrageous and unreasonable and occurred when
13 he acted as a duly authorized agent and/or employee of the USC Defendants. As a result, the
14 Class Plaintiffs sustained severe emotional distress resulting in physical manifestations, physical
15 pain, emotional anguish, fear, anxiety, humiliation, embarrassment and other physical and
16 emotional injuries, damages (both economic and non-economic) and permanent disability, in the
17 past, present and future, for which this claim is made. The injuries suffered by the Class
18 Plaintiffs are substantial, continuing, and permanent.

19 99. Defendant TYNDALL carried out such actions and conduct as an employee,
20 agent and/or representative of USC and were carried out under one of Defendant USC programs,
21 which provides medical treatment to students, athletes, and the public.

22 100. USC Defendants are liable and vicariously liable for TYNDALL's conduct.

23 101. The emotional distress that has been sustained by the Class Plaintiffs was the
24 natural and proximate result of the ongoing wrongful, unlawful and outrageous conduct on the
25 part of the Defendants as alleged herein.

26 102. As a direct and proximate result of the conduct of the Defendants, and each of
27 them, the Class Plaintiffs sustained severe emotional distress and physical pain, emotional
28 anguish, fear, anxiety, humiliation, embarrassment and other physical and emotional injuries,

1 damages (both economic and noneconomic) and permanent disability, in the past, present and
2 future, for which this claim is made. The injuries suffered by the Class Plaintiffs are substantial,
3 continuing and permanent.

4 103. Defendants' conduct as described herein was despicable and was committed
5 maliciously, fraudulently and/or oppressively with the wrongful intention of injuring Class
6 Plaintiffs and with a willful and conscious disregard of the rights of Class Plaintiffs, justifying an
7 award of punitive damages.

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9 **EIGHTH CAUSE OF ACTION**
10 **CONCEALMENT**
11 **(Against USC Defendants)**

12 104. Plaintiff realleges and incorporates by reference the allegations contained in the
13 previous paragraphs of this Complaint, as though fully set forth herein and, to the extent
14 necessary, plead this cause of action in the alternative.

15 105. Class Plaintiffs were students at the UNIVERSITY OF SOUTHERN
16 CALIFORNIA at all relevant times and were also patients at the student health center(s) on the
17 campus of the University of Southern California.

18 106. The USC Defendants had a fiduciary relationship with Plaintiff based upon the
19 facts stated herein. The USC Defendants and DOES 1 through 100 were duty bound to act with
20 the utmost good faith for the benefit of Plaintiff and other class members given that they were
21 students at the University of Southern California and also patients at the student health center(s).

22 107. The USC Defendants intentionally failed to disclose to Plaintiff and other
23 members of the Class that it had received numerous complaints about TYNDALL's prior
24 misconduct towards female patients during gynecological examinations. Moreover, the USC
25 Defendants failed to take any disciplinary action against TYNDALL, failed to adequately
26 investigate the complaints against TYNDALL and failed to notify law enforcement and the
27 California Medical Board of TYNDALL's prior misconduct toward patients for over 30 years,
28 and instead made false representations that that Defendant TYNDALL was a competent medical

1 doctor who was trustworthy to perform safe routine gynecological examinations within the
2 appropriate standards of care through the USC student health clinic services.

3 108. When USC concealed such information and made such representations described
4 herein, Class Plaintiffs reasonably relied upon such false representations. As a result of the USC
5 Defendants' actions, Plaintiff and other members of the Class did not know of the concealed
6 facts. The USC Defendants intended to deceive Plaintiff by concealing the facts. Had the USC
7 Defendants disclosed the omitted information, Plaintiff and other members of the Class
8 reasonably would have behaved differently, and would not have undergone the gynecological
9 examination with TYNDALL.

10 109. As a proximate result of Defendants' false, misleading and deceitful
11 representations and promises and/or concealments, and Class Plaintiffs' reasonable and
12 justifiable reliance thereon, Class Plaintiffs sustained severe emotional distress and physical
13 pain, emotional anguish, fear, anxiety, humiliation, embarrassment and other physical and
14 emotional injuries, damages (both economic and noneconomic) and permanent disability, in the
15 past, present and future, for which this claim is made. The injuries suffered by the Class
16 Plaintiffs are substantial, continuing and permanent.

17 110. Defendants' conduct as described herein was despicable and was committed
18 maliciously, fraudulently and/or oppressively with the wrongful intention of injuring Class
19 Plaintiffs and with a willful and conscious disregard of the rights of Class Plaintiffs. USC
20 Defendants, Defendant TYNDALL and DOES 1-100 inclusive, subjected Class Plaintiffs to
21 cruel and unjust hardship, and via intentional misrepresentation, deceit, or concealment of
22 material facts, Defendants as aforesaid intended to deprive Class Plaintiffs of property or legal
23 rights all to the detriment of Class Plaintiffs and to the financial benefit of Defendants.

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1 **NINTH CAUSE OF ACTION**
2 **NEGLIGENT MISREPRESENTATION**
3 **(Against USC Defendants)**

4 111. Plaintiff realleges and incorporates by reference the allegations contained in the
5 previous paragraphs of this Complaint, as though fully set forth herein and, to the extent
6 necessary, plead this cause of action in the alternative.

7 112. USC Defendants and DOES 1-100, inclusive, represented to Class Plaintiffs that
8 Defendant TYNDALL was a competent medical doctor who would perform safe, routine
9 gynecological examinations within the appropriate standards of care and was therefore
10 trustworthy to have unfettered access to female students through the USC student health clinic
11 services.

12 113. Defendants' representation to Class Plaintiffs that Defendant TYNDALL was a
13 competent medical doctor who was trustworthy to perform safe, routine gynecological
14 examinations within the appropriate standards of care through the USC student health clinic
15 services was false. Defendant TYNDALL photographed Class Plaintiffs during their
16 gynecological and/or other examinations and/or care without authorization or consent and
17 engaged in sexual touching, harassment, boundary violations and assaults.

18 114. When USC Defendants represented to Class Plaintiffs that Defendant TYNDALL
19 was a competent medical doctor who was trustworthy to perform safe routine gynecological
20 examinations within the appropriate standards of care through the USC student health clinic
21 services, they had no reasonable grounds for believing the representation to be true.

22 115. For a significant period of time prior to the events giving rise to Class Plaintiffs'
23 action herein, Defendant TYNDALL engaged in conduct demonstrating he was did not perform
24 safe, routine gynecological examinations, insofar as he photographed female patients during their
25 gynecological and/or other examinations and/or care without authorization or consent and
26 engaged in sexual touching, harassment, boundary violations and assaults of female patients
27 under the guise of providing treatment and examinations.

1 116. USC Defendants, by and through its employees, personnel, medical and clinic
2 staff were on actual and constructive notice of Defendant TYNDALL's conduct in
3 photographing female patients during their gynecological and/or other examinations and/or care
4 without authorization or consent and engaging in nonconsensual sexual touching, harassment,
5 boundary violations and assaults of female patients, and were aware of multiple complaints and
6 allegations of such regular practice and conduct by Defendant TYNDALL.

7 117. Despite having received complaints and allegations regarding the disturbing
8 behavior of Defendant TYNDALL as alleged herein above, Defendants USC by and through its
9 managing agents, directors, and medical staff concealed such information from the USC student
10 community and instead made false representations that that Defendant TYNDALL was a
11 competent medical doctor who was trustworthy to perform safe routine gynecological
12 examinations within the appropriate standards of care through the USC student health clinic
13 services.

14 118. When USC concealed such information and made such representations described
15 herein, Class Plaintiffs reasonably relied upon such representations.

16 119. As a proximate result of Defendants' false, misleading and deceitful
17 representations and promises and/or concealments, and Class Plaintiffs' reasonable and
18 justifiable reliance thereon, Class Plaintiffs sustained severe emotional distress and physical
19 pain, emotional anguish, fear, anxiety, humiliation, embarrassment and other physical and
20 emotional injuries, damages (both economic and noneconomic) and permanent disability, in the
21 past, present and future, for which this claim is made. The injuries suffered by the Class
22 Plaintiffs are substantial, continuing and permanent.

23 120. Defendants' conduct as described herein was despicable and was committed
24 maliciously, fraudulently and/or oppressively with the wrongful intention of injuring Class
25 Plaintiffs and with a willful and conscious disregard of the rights of Class Plaintiffs. USC
26 Defendants, Defendant TYNDALL and DOES 1-100 inclusive, subjected Class Plaintiffs to
27 cruel and unjust hardship, and via intentional misrepresentation, deceit, or concealment of
28

1 material facts, Defendants as aforesaid intended to deprive Class Plaintiffs of property or legal
2 rights all to the detriment of Class Plaintiffs and to the financial benefit of Defendants.

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4 **TENTH CAUSE OF ACTION**
5 **AIDING AND ABETTING**
6 **(Against USC Defendants)**

7 121. Plaintiff realleges and incorporates by reference the allegations contained in the
8 previous paragraphs of this Complaint, as though fully set forth herein and, to the extent
9 necessary, plead this cause of action in the alternative.

10 122. USC Defendants and DOES 1-100, inclusive, knew that Defendant TYNDALL
11 had engaged in and would engage in battery, willful misconduct, gross negligence, invasion of
12 privacy, sexual harassment, assault and abuse and other conduct that put the safety, health and
13 welfare of Class Plaintiffs at risk.

14 123. USC Defendants and DOES 1-100, inclusive, gave substantial assistance to
15 Defendant TYNDALL in performing such battery, willful misconduct, gross negligence,
16 invasion of privacy, sexual harassment, assault and abuse and other conduct that put the safety,
17 health and welfare of Class Plaintiffs at risk.

18 124. USC Defendants and DOES 1-100, inclusive, and its employees, personnel,
19 medical staff and managing agents were on actual and constructive notice of Defendant
20 TYNDALL's prior misconduct and abusive behavior as more fully set forth herein above and
21 had received multiple complaints and allegations regarding Defendant TYNDALL's conduct and
22 behavior.

23 125. USC Defendants and DOES 1-100, inclusive, and its employees, personnel,
24 medical staff and managing agents were aware that such conduct and behavior by Defendant
25 TYNDALL as more fully set forth herein above, represented a routine practice by TYNDALL.

26 126. USC Defendants and DOES 1-100, inclusive, and its employees, personnel,
27 medical staff and managing agents did not take action or in any way appropriately respond to the
28 complaints and allegations raised regarding the conduct and behavior of Defendant TYNDALL

1 and permitted Defendant TYNDALL continued unfettered access to young and vulnerable
2 female patients through the USC student health clinic system.

3 127. As a proximate result of USC Defendants' actions and inactions as aforesaid,
4 Class Plaintiffs sustained severe emotional distress and physical pain, emotional anguish, fear,
5 anxiety, humiliation, embarrassment and other physical and emotional injuries, damages (both
6 economic and noneconomic) and permanent disability, in the past, present and future, for which
7 this claim is made. The injuries suffered by the Class Plaintiffs are substantial, continuing and
8 permanent.

9 128. Defendants' conduct as described herein was despicable and was committed
10 maliciously, fraudulently and/or oppressively with the wrongful intention of injuring Class
11 Plaintiffs and with a willful and conscious disregard of the rights of Class Plaintiffs. USC
12 Defendants, Defendant TYNDALL and DOES 1-100 inclusive, subjected Class Plaintiffs to
13 cruel and unjust hardship, and via intentional misrepresentation, deceit, or concealment of
14 material facts, Defendants as aforesaid intended to deprive Class Plaintiffs of property or legal
15 rights all to the detriment of Class Plaintiffs and to the financial benefit of Defendants.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 3 1. For general damages in a just and reasonable amount in excess of the
4 jurisdictional minimum of this court;
- 5 2. For special damages according to proof;
- 6 3. For punitive damages according to proof;
- 7 4. For civil penalties as provided by law;
- 8 5. For reasonable attorneys' fees and costs of said suit;
- 9 6. For prejudgment interest, according to proof; and
- 10 7. For such other and further relief as the Court deems just and proper.

11 Dated: May 24, 2018

ARIAS SANGUINETTI WANG & TORRIJOS LLP

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14 By: 

15 _____
MIKE ARIAS (SNB 115385)
16 ARNOLD WANG (SBN 204431)
ALFREDO TORRIJOS (SBN 222458)
17 KATHERINE HARVEY-LEE (SNB 216135)

18 *Counsel for Plaintiffs*

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JURY TRIAL DEMAND

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

Dated: May 24, 2018

ARIAS SANGUINETTI WANG & TORRIJOS LLP

By:



MIKE ARIAS (SNB 115385)
ARNOLD WANG (SBN 204431)
ALFREDO TORRIJOS (SBN 222458)
KATHERINE HARVEY-LEE (SNB 216135)

Counsel for Plaintiffs

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