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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA
(UNLIMITED JURISDICTION)**

LENA SHIBLAK

Plaintiff,

v.

ALAN COHEN, M.D.;
MATT HERSHCOVITCH, M.D.
C/V ENT SURGICAL GROUP,
SOUTHERN CALIFORNIA SINUS
INSTITUTE; and WEST HILLS
SURGICAL CENTER, LTD.; and DOES 1 to 50

Defendants.

Case No. 56-2022-00562866-CU-FR-VTA

**COMPLAINT FOR MEDICAL
BATTERY AND
FRAUD/ALTERNATIVE
MEDICAL NEGLIGENCE CLAIM**

**Electronically
FILED**

by Superior Court of California
County of Ventura

02/01/2022

Brenda L. McCormick
Executive Officer and Clerk

Brenda L. McCormick
Cristal Alvarez
Deputy Clerk

1 Comes now the Plaintiff, Lena Shiblak, by counsel, and for her complaint against the
2 Defendants herein, alleges and states:

3 **Nature of Action**

4 This cause of action seeks damages from the defendants for medical battery and fraud, the
5 Defendants and their agents having fraudulently induced the plaintiff to undergo an unnecessary
6 functional endoscopic sinus surgery ("FESS"). Alternatively, the Plaintiff also claims medical
7 negligence against the Defendants. The Medical Group and Surgical Center Defendants are
8 alleged to have negligently failed to properly supervise Doctors Cohen and Hershcovitch and
9 negligently credentialed them to perform surgery at their facilities.

10 **Parties**

11 1. Plaintiff, Lena Shiblak, is a resident of Simi Valley, California. At all times
12 relevant herein, she was a 20-year-old student and patient of the Defendants.

13 2. Defendant Alen Cohen, M.D. ("Dr. Cohen") is believed to be a resident of West
14 Hills or Simi Valley. He is a duly licensed physician specializing in Otolaryngology/ENT Sinus
15 Surgery. He is believed to be an employee, principal, and/or agent of Defendants C/V ENT
16 Surgical Group ("C/V ENT"), and Southern California Sinus Institute ("SCSI"). He is also
17 believed to have an interest in Defendant West Hills Surgical Center, Ltd. ("West Hills").

18 3. Defendant Matt Hershcovitch ("Dr. Hershcovitch") is believed to be a resident of
19 West Hills or Simi Valley and is a duly licensed physician who is also an Otolaryngologist (ENT)
20 who specializes in rhinoplasty surgery. He is believed to be an employee, principal and/or agent
21 of Defendants C/V ENT and SCSI. He is also believed to have an interest in West Hills.

22 4. Defendant C/V ENT is a medical group which employs or is controlled by
23 Defendants Dr. Cohen and Dr. Hershcovitch and is liable for the conduct of Dr. Cohen and Dr.
24 Hershcovitch pursuant to the doctrine of *respondeat superior*. C/V ENT maintains a medical
25 office in West Hills, California where the conduct of the Defendants took place. Plaintiff is
26 ignorant of the true name of C/V ENT, which operates under a fictitious business name, but will
27 amend this Complaint to allege its true name when ascertained.
28

5. Defendant SCSI is also a medical group which employs or is controlled by Doctors Cohen and Hershcovitch and is liable for the conduct of Doctors Cohen and Hershcovitch pursuant to the doctrine of *respondeat superior*. SCSI maintains an office in West Hills, California, at the same address as C/V ENT. Plaintiff is ignorant of the true name of SCSI, which operates under a fictitious business name, but will amend this Complaint to allege its true name when ascertained.

6. Defendant West Hills is a California limited partnership that operates a surgical center in West Hills, California. The medical battery/surgery at issue here took place at this surgery center. West Hills has a duty to credential the surgeons who perform surgeries at West Hills and has a duty to supervise those surgeons.

7. Plaintiff is ignorant of the true names and capacities of the defendants sued as “Does 1 through 50” and therefore sues these defendants by fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible in some manner for the occurrences and damages alleged herein.

Jurisdiction

8. This court has jurisdiction over the parties and this cause of action; as the conduct of the parties causing injury to Plaintiff occurred in this County.

9. This Court further has jurisdiction over the alternative medical negligence claim. As a condition precedent to filing suit (pursuant to California Code of Civil Procedure, Title 2, Chapter 5, Section 364(a)-(c)), Plaintiff served the Defendants with a Notice of Intention to Sue on October 13, 2021, which Notice is attached as Exhibit “A”.

Factual Allegations

10. On December 9, 2020, Plaintiff presented to Dr. Hershcovitch to obtain treatment of her nose, as she had broken her nose playing sports as a child. Dr. Hershcovitch determined, after ordering a sinus CT scan on 12/09/2020, the patient needed a rhinoplasty as well as a septoplasty. At that same office visit, Dr. Hershcovitch introduced Plaintiff to Dr. Cohen who would be performing the septoplasty.

1 11. Both Doctors Hershcovitch and Cohen reviewed Plaintiff's sinus CT scans at that
2 first office visit and were aware, or should have been aware, that Plaintiff had no appreciable sinus
3 disease which would merit any recommendation for FESS.

4 12. Dr. Cohen then made several false statements to the patient (which were also
5 documented in Dr. Cohen's office note and later surgical report), as follows:

- 6 a) That Plaintiff's 12/09/2020 sinus CT scan showed extensive sinus disease
7 throughout all of her sinuses, namely, her frontal recesses and bilateral frontal
8 sinuses, her anterior and posterior bilateral ethmoid sinuses, her osteomeatal
9 complexes/maxillary ostia and her maxillary sinuses. These statements were false,
10 as the 12/09/2020 sinus CT scan actually showed that her sinuses and sinus
11 openings were clear and unobstructed with no signs of sinus disease or
12 inflammation of the linings of her sinuses;
- 13 b) That Plaintiff had chronic sinusitis per the 12/09/2020 sinus CT scan so as to
14 fraudulently induce her to consent to unnecessary FESS.

15 13. Dr. Cohen fraudulently induced Plaintiff to undergo unnecessary FESS to enrich
16 himself and the remaining defendants. Plaintiff ultimately underwent bilateral frontal
17 sinusotomies, bilateral maxillary antrostomies, bilateral ethmoidectomies, and bilateral
18 sphenoidotomies, essentially eight unnecessary sinus surgeries which are routinely billed
19 separately by the sinus surgeon and his medical groups.

20 14. On January 11, 2021, the patient presented to West Hills for the rhinoplasty and
21 unnecessary FESS. According to the Operative Note, Dr. Cohen's unnecessary sinus surgeries
22 were assisted by Dr. Hershcovitch. In this Operative Note, Dr. Cohen also falsely stated that
23 Plaintiff had previously undergone maximal medical therapy (which routinely consists of three to
24 four weeks of oral antibiotics, antihistamines, topical nasal steroid sprays, and, at times, oral
25 steroids.) This Operative Note statement was false, as the patient had not undergone conservative
26 maximal medical therapy (which, in patients with actual chronic sinusitis, can open the sinuses to
27 allow the patient to avoid invasive FESS).

1 15. In both Dr. Hershcovitch's and Dr. Cohen's Operative Notes, they also represented
2 that they placed spreader grafts during their surgeries. A subsequent repair of Dr. Hershcovitch's
3 poorly performed rhinoplasty revealed, per the subsequent surgeon, that no spreader grafts
4 (presumably billed to Plaintiff) were placed during Defendants' surgeries such that these
5 Operative Note statements were also false.

6 **Count I: Medical Battery Against**

7 **Defendants Cohen, Hershcovitch, C/V ENT and SCSI**

8 16. Plaintiff incorporates, by reference, as if fully set forth herein, the material
9 allegations continued in paragraphs 1 through 14 above.

10 17. Defendants conduct in making false statements to Plaintiff to fraudulently induce
11 the Plaintiff to undergo an unnecessary FESS for their own profit vitiates the Plaintiff's consent to
12 the procedures and constitutes a medical battery which is outside the scope of California Code of
13 Civil Procedures, Title 2, Chapter 5, Section 364.

14 18. As principals and agents of C/V ENT and SCSI, the knowledge of Doctors Cohen
15 and Hershcovitch that they had committed a medical battery upon the patient is imputed to C/V
16 ENT and SCSI which are liable for their principals'/agents' conduct.

17 19. By reason of Defendants medical battery, Plaintiff has suffered injuries and
18 damages, including, but not limited to unnecessary medical expenses, past and future medical
19 expenses, pain, suffering, mental anguish, permanent scarring to her sinuses, and a permanent
20 impairment of the natural function of her sinuses.

21 **Count II: Fraud against Defendants**

22 **Cohen, Hershcovitch, C/V ENT and SCSI**

23 20. Plaintiff incorporates by reference, as if fully set forth herein, the material
24 allegations contained in paragraphs 1 through 18 above.

25 21. As detailed in Paragraphs 11, 13 and 14 above, Defendants Cohen and
26 Hershcovitch made false statements to the Plaintiff and knew those statements were false!
27 Plaintiff relied on those statements to her detriment, as described herein.

22. As principals and agents of C/V ENT and SCSi, the knowledge of Doctors Cohen and Hershcovitch that they had perpetrated a fraud upon the Plaintiff is imputed to C/V ENT and SCSi which are liable for their principals'/agents' conduct.

23. By reason of Defendants' fraudulent statements and conduct, Plaintiff has suffered injuries and damages, including, but not limited to unnecessary medical expenses, past and future medical expenses, pain, suffering and mental anguish, permanent scarring to her sinuses, and a permanent impairment of the natural function of her sinuses.

**Count III: Alternative Medical Negligence Against
Doctors Hershcovitch and Cohen, C/V ENT and SCSi**

24. Plaintiff incorporates, by reference, as if fully set forth herein, the material allegations contained in paragraphs 1 through 22 above.

25. Alternatively, Defendants negligently, grossly overread Plaintiff's sinus CT scan as showing extensive sinus disease throughout her sinuses, when her sinuses were essentially clear and the natural openings to her sinuses were open and patent.

26. Alternatively, Defendants recommended FESS to the patient when FESS was not indicated.

27. Alternatively, Defendants neglected to install spreader grafts during their surgeries even though these were represented to have been placed per Defendants' Operative Notes.

28. Alternatively, Defendants negligently performed the septoplasty and rhinoplasty which had to be corrected by a subsequent surgeon.

29. Alternatively, by reason of Defendants' negligence, the Plaintiff suffered injuries and damages as afore-mentioned.

**Count IV: Negligent Supervision and Credentialing
Against Defendant West Hills**

30. Plaintiff incorporates, by reference, as if fully set forth herein, the material allegations contained in paragraphs 1 through 28 above.

31. West Hills has a duty to supervise and properly credential and screen all surgeons who perform surgeries at its facility, including Defendant Doctors Hershcovitch and Cohen. As

part of a proper credentialing process, West Hills must ensure its surgeons are competent to perform the procedures and of good moral character so as not to preform unnecessary surgical procedures. West Hills must access and document National Data Bank information as well as evidence of past malpractice suits, licensure issues, hospital privilege issues of Defendants Cohen and Hershcovitch.

32. West Hills had in its possession the 12/09/2020 sinus CT scan of the Plaintiff before the surgeries, as Dr. Cohen used stereotactic guidance during the FESS, according to his Operative Note. Stereotactic guidance uses the electronic images from the sinus CT scan to create a "road map" for the sinus surgeon. Thus, West Hills knew or should have known that Plaintiff's planned FESS was not indicated or necessary.

33. A hospital, and likewise, a surgical center like West Hills, must exercise reasonable care towards its patients and must provide procedures, policies, facilities, supplies, and qualified personnel reasonably necessary for the treatment of its patients.

34. West Hills negligently supervised Defendant Doctors Hershcovitch and Cohen which permitted them to perform an unnecessary FESS upon the Plaintiff.

35. Upon information and belief, West Hills had knowledge of Defendant physicians' propensity to perform unnecessary sinus procedures on patients preceding the plaintiff, such that West Hills negligently credentialed and supervised Doctors Hershcovitch and Cohen.

36. Upon information and belief, Doctors Cohen and Hershcovitch were principals of West Hills. As principals of West Hills, the knowledge of Doctors Cohen and Hershcovitch that they had committed fraud, a medical battery, and medical malpractice upon the Plaintiff is imputed to West Hills which is liable for its principals'/agents' conduct.

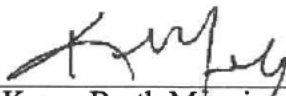
37. By reason of West Hills' negligence, Plaintiff suffered injuries and damages as afore-mentioned.

WHEREFORE, Plaintiff prays for judgment against the Defendants in an amount which will justly compensate her for her injuries and damages, for the costs of this action, and for all other relief just and proper in the premises.

1 Dated: February 1, 2022

GIBBS LAW GROUP LLP

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4 By:


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Attorneys for Plaintiff

EXHIBIT A

VENTURA SUPERIOR COURT ACCEPTED THROUGH ELECTRONIC SUBMISSION 02-01-2022 at 11:10:10 AM

9414 7266 9904 2963 1284 44 CERTIFIED MAIL® ARTICLE NUMBER	US Postal Service® Certified Mail® Receipt <i>Domestic Mail Only</i> <i>No Insurance</i> <i>Coverage Provided</i>	Postage	\$	Postmark Here
		Certified Mail Fee	\$	
		Return Receipt Fee (Endorsement Required)	\$	
		Restricted Delivery Fee (Endorsement Required)	\$	
		Total Postage & Fees	\$	
		Sent To: Alen Cohen M.D / Matt Hershcovitch MD. CLV ENT Surgical Group Southern California Sinus Institute 7345 Medical Center Dr., Ste. 510 West Hills, CA 91307		
PS Form 3800, April 2015		SEE REVERSE FOR INSTRUCTIONS		2

9414 7266 9904 2963 1284 51 CERTIFIED MAIL® ARTICLE NUMBER	US Postal Service® Certified Mail® Receipt <i>Domestic Mail Only</i> <i>No Insurance</i> <i>Coverage Provided</i>	Postage	\$	Postmark Here
		Certified Mail Fee	\$	
		Return Receipt Fee (Endorsement Required)	\$	
		Restricted Delivery Fee (Endorsement Required)	\$	
		Total Postage & Fees	\$	
		Sent To: West Hills Surgical Center 7240 Medical Center Dr. West Hills, CA 91307		
PS Form 3800, April 2015		SEE REVERSE FOR INSTRUCTIONS		2

**NOTICE OF INTENTION TO COMMENCE
MEDICAL BATTERY AND ALTERNATIVE
MEDICAL NEGLIGENCE CLAIMS**

October 13, 2021

To: Alen Cohen, M.D.
Matt Hershcovitch, M.D.
C/V ENT Surgical Group
Southern California Sinus Institute
7345 Medical Center Dr., Suite 510
West Hills, CA 91307

West Hills Surgical Center
7240 Medical Center Dr.
West Hills, CA 91307

Pursuant to California Code of Civil Procedure Title 2, Chapter 5, Section 364(a)-(c), you are hereby notified that Lena Shiblak intends to commence medical battery and alternative medical negligence claims against the afore-mentioned.

The bases of the Medical Battery Claim include, but are not limited to the following:

1. The patient, Lena Shiblak presented to the prospective defendants for rhinoplasty on or about December 9, 2020, under the care of Dr. Hershcovitch. She was also seen by Dr. Cohen who was to perform a septoplasty.

2. The patient was fraudulently induced to consent to Functional Endoscopic Sinus Surgery ("FESS") by the prospective defendants via their misrepresentations:

a) That her 12/09/2020 sinus CT scan showed extensive sinus disease throughout her frontal recesses and sinuses, her anterior and posterior ethmoid sinuses, her osteomeatal complexes/maxillary ostia, and her maxillary sinuses. These statements to the patient were false, as her sinuses were clear with no signs of sinus disease/inflammation

per the sinus CT scan, which false statements have been confirmed by a Board-Certified Otolaryngologist, and,

b) Falsely stated to the patient that she had chronic sinusitis so as to fraudulently induce her to consent to FESS.

3. In Dr. Cohen's Operative Note relative to the FESS surgery on January 11, 2021, Dr. Cohen, assisted by Dr. Hershcovitch, falsely stated, as a basis for FESS, that the patient had undergone maximal medical therapy, when she had not.

4. Performed unnecessary sinus surgery on the patient for profit and not for the patient's health.

5. Misstated in the Operative Note that spreader grafts were constructed and placed when no spreader grafts were placed, as confirmed by a subsequent surgeon who performed a revision rhinoplasty.

As the basis for the patient's alternative medical negligence claims, the prospective defendants:

1. Negligently overread the patient's sinus CT scan as showing extensive sinus disease throughout her sinuses, when her sinuses were essentially clear and her sinus ostia were open and patent;

2. Negligently recommended FESS to the patient when FESS was not indicated.

Doctors Cohen and Hershcovitch are believed to be agents of and have an ownership interest in C/V ENT Surgical Group, Southern California Sinus Institute, and West Hills Surgical Center which are liable for their conduct. These corporate defendants failed to supervise Doctors Cohen and Hershcovitch and negligently credentialed them.

The patient suffered injuries as the result of undergoing unnecessary FESS, including, but not limited to weeks of post-operative pain, suffering and disfigurement, permanent scarring to her sinus mucosa which could lead to future sinus problems, the unnecessary removal of bony trabeculations and mucosa (and cilia), unnecessary medical bills and related expenses, and emotional distress now knowing that she was medically battered, further resulting in a life-long distrust of health care providers. The patient was also required to undergo revision rhinoplasty as the result of Defendants' negligence with pain and suffering as a result.

This notice is based upon the facts as presently known. There may be other or additional injuries, damages and expenses still to be ascertained, which will be included in the complaint.

The Gibbs Law Group, LLP

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