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FILED
SAN MATEO COUNTY
MAR 10 2016
Clerk of the Superior Court
DEPUTY CLERK

5 Attorneys for Plaintiff
6 **MARK ROE**

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SAN MATEO**

CIV537723

10 **MARK ROE,**

CASE NO.

11 Plaintiffs,

COMPLAINT FOR DAMAGES

12 vs.

- (1) Negligence
- (2) Negligent Hiring/Retention
- (3) Negligent Supervision/Failure to Warn
- (4) Premises Liability
- (5) Battery
- (6) Sexual Battery
- (7) Intentional Infliction of Emotional Distress

13 **STANFORD HEALTH CARE; ROBERT**
14 **LASTINGER; and DOES 1 THROUGH 25,**
15 **INCLUSIVE,**

15 Defendants.

DEMAND FOR JURY TRIAL

BY FAX

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20 COMES NOW Plaintiff MARK ROE, by and through his undersigned attorneys, for causes
21 of action against Defendants, and each of them, hereby alleges as follows:

22 1. All acts, occurrences and transactions hereafter mentioned occurred in the City of
23 Redwood City, County of San Mateo, State of California.

24 2. At all relevant times herein, Plaintiff MARK ROE (hereinafter "Plaintiff") was, and
25 is currently, a competent adult and resident of the State of California.

26 3. Plaintiff is informed and believes, and upon such information alleges, that
27 Defendant STANFORD HEALTH CARE at all relevant times herein was, and is now, a
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1 corporation organized and existing under the laws of the State of California, with its principal place
2 of business located at 300 Pasteur Drive H3200, in the City of Stanford, County of Santa Clara,
3 State of California at all relevant times herein did, and does currently, govern, own, operate and
4 control the Stanford medical facility located at 450 Broadway Street in the City of Redwood City,
5 County of San Mateo, State of California.
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7 4. At all relevant times herein, Defendant ROBERT LASTINGER was, and is believed
8 to be currently, an individual residing within the County of Alameda. At all relevant times herein,
9 Defendant ROBERT LASTINGER (hereafter "LASTINGER") was an employee of Defendants
10 STANFORD HEALTH CARE and DOES 1-10, and each of them. Plaintiff is informed and
11 believes, and upon such information alleges, that LASTINGER was hired, trained, retained,
12 supervised, and held out to be an employee of Defendants STANFORD HEALTH CARE and
13 DOES 1-10, and each of them, and as such, routinely had access to individuals at the premises
14 before, during, and after surgery, in their most vulnerable states. At all relevant times herein,
15 LASTINGER was acting within the course and scope of his employment for Defendants
16 STANFORD HEALTH CARE and DOES 1-10, and each of them.
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18 5. Plaintiff is unaware of the true names and capacities of Defendants sued in this
19 Complaint as DOES 1 through 25, inclusive, and therefore sues these Defendants by such fictitious
20 names. Plaintiff will amend this Complaint to allege their true names and capacities when
21 ascertained,
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23 6. Plaintiff is informed and believes, and upon such information alleges, that each of
24 the fictitiously named Defendants is responsible in some manner, or ratified and condoned the
25 behavior and acts of each other Defendant, for the occurrences herein alleged and that Plaintiff's
26 injuries and damages herein were proximately caused by that conduct.
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7. At all times mentioned herein, each and every of the Defendants herein was the agent, ostensible agent, licensee, servant, partner, joint venturer, employer, employee, assistant, relative, or volunteer of each of the other Defendants, and each was at all times alleged herein acting in the course and scope of said agency, ostensible agency, license, service, partnership, joint venture, employment, assistance, relation, and volunteering.

8. Plaintiff alleges that at all times mentioned herein Defendants STANFORD HEALTH CARE and DOES 1-10, and each of them, were in possession of, owned, operated, managed, supervised, monitored, maintained, and controlled the medical facility premises located at 450 Broadway Street in the City of Redwood City, County of San Mateo, State of California, whereon Defendants carried on the business of operating an outpatient surgical and medical facility. Defendants STANFORD HEALTH CARE and DOES 1-10, and each of them, actively and expressly held this outpatient facility to be a safe, comfortable, and professional environment wherein individuals at the premises, including Plaintiff, could receive top-quality treatment and care.

9. Prior to March 20, 2015, LASTINGER engaged in conduct that would have provided notice to a reasonably prudent person of his propensity to engage in inappropriate sexual contact with individuals at Stanford medical facilities. His superiors at Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of them, knew or reasonably should have known, that his behavior was abnormal, troubling, and suggestive of proclivity to have inappropriate sexual contact with individuals at Stanford medical facilities. LASTINGER's conduct included, but was not limited to, inappropriately touching and fondling male individuals' genitalia while they were anesthetized, either before, during, or after various surgical procedures.

10. Despite the fact that LASTINGER engaged in conduct that would have provided notice to a reasonably prudent person of his propensity to engage in inappropriate sexual contact

1 with individuals at the premises, of which his superiors at Defendants STANFORD HEALTH
2 CARE and DOES 1 through 10, and each of them, were aware, his superiors negligently hired,
3 referred, retained, and supervised LASTINGER and failed to warn individuals at the premises of
4 LASTINGER's propensity to engage in this behavior. Further, Defendants STANFORD HEALTH
5 CARE and DOES 1 through 10, and each of them, failed to suspend, report, or fire LASTINGER
6 upon initially hearing about this disturbing behavior prior to March 20, 2015. Based on their prior
7 knowledge of LASTINGER's conduct and propensities, STANFORD HEALTH CARE and DOES
8 1 through 10, and each of them, ratified, authorized, and/or condoned the conduct of LASTINGER.

10 11. On or about March 20, 2015, Plaintiff underwent arthroscopic elbow surgery at the
11 Stanford medical facility located at 450 Broadway Street in the City of Redwood City, County of
12 San Mateo, State of California. This outpatient surgery was performed by Emilie V. Cheung, M.D.
13 and was assisted by Nathan Douglass, M.D. The anesthesiologist who treated Plaintiff during this
14 surgery was Naola S. Austin, M.D. LASTINGER was a staff member working at the Stanford
15 medical facility.

17 12. On or about March 20, 2015, LASTINGER used his position as an employee of
18 Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of them, with access
19 to individuals at the premises before, during, and after surgeries, in their most vulnerable states, to
20 engage in unlawful sexual battery of Plaintiff, among other tortious conduct, resulting in injuries
21 and damages. This behavior was witnessed by others in the surgical theater.

23 **JURISDICTION AND VENUE**

24 13. Venue is proper in the County of San Mateo under California Code of Civil
25 Procedure §395, subd. (a), on the basis that the injury that is the subject of this Complaint for
26 Damages occurred in the City of Redwood City, County of San Mateo, State of California.

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FIRST CAUSE OF ACTION

(Negligence – As Against All Defendants)

14. Plaintiff hereby re-alleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 13 of this Complaint as though fully set forth herein.

15. Defendants, and each of them, had a duty to protect Plaintiff as an individual at a Stanford outpatient surgical facility.

16. Defendants, and each of them, knew or should have known of LASTINGER's propensity to engage in inappropriate sexual contact with individuals at the premises and/or that he was an unfit agent. It was reasonably foreseeable that if Defendants breached their duty of care owed to individuals at the premises, including but not limited to Plaintiff, these individuals would be vulnerable to battery and sexual battery by LASTINGER.

17. Defendants, and each of them, breached their duty of care owed to Plaintiff by: failing to adequately hire, supervise, retain, and control LASTINGER, whom they permitted to have access to Plaintiff and other individuals at the premises; failing to adequately and competently investigate LASTINGER once complaints had been made; failing to alert law enforcement that LASTINGER may have been sexually battering individuals at the premises; failing to adequately and competently investigate LASTINGER given that past complaints had been made against him; failing to warn of LASTINGER's assaultive, dangerous, and sexually exploitative propensities after Defendants knew or had reason to know that LASTINGER had engaged in inappropriate sexual contact with individuals at the premises, thereby enabling Plaintiff to be sexually battered by LASTINGER.

18. As a further direct, legal, and proximate result of the negligence, willfulness, intent, carelessness, and recklessness of Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of them, Plaintiff was injured in his strength, health, and activity, sustaining shock and

1 injury to his nervous system, all of which have caused, and will continue to cause Plaintiff great
2 mental pain, embarrassment, humiliation, distress, anguish and suffering, all to his damage in an
3 amount to be proven at the time of trial of this action.

4 19. As a further direct, legal, and proximate result of the negligence, willfulness, intent,
5 carelessness, and recklessness of Defendants STANFORD HEALTH CARE and DOES 1 through
6 10, and each of them, Plaintiff has been, and in the future will be, required to obtain the services of
7 physicians and psychologists, obtain treatment and care, and incur medical and incidental expenses
8 in an amount to be proven at the time of trial of this action.

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10 **SECOND CAUSE OF ACTION**

11 **(Negligent Hiring/Retention – As Against Defendant STANFORD HEALTH CARE and**
12 **DOES 1 through 10)**

13 20. Plaintiff hereby re-alleges and incorporates herein by reference each and every
14 allegation contained in Paragraphs 1 through 19 of this Complaint as though fully set forth herein.

15 21. Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of
16 them, had a duty not to hire and/or retain LASTINGER given his propensity to engage in
17 inappropriate sexual conduct with individuals at the premises prior to, during, and/or after surgical
18 procedures at Stanford medical facilities.

19 22. Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of
20 them, knew or should have known of LASTINGER's propensity to engage in inappropriate sexual
21 contact with individuals at the premises and/or that he was an unfit agent.

22 23. As a further direct, legal, and proximate result of the negligence, willfulness, intent,
23 carelessness, and recklessness of Defendants STANFORD HEALTH CARE and DOES 1 through
24 10, and each of them, Plaintiff was injured in his strength, health, and activity, sustaining shock and
25 injury to his nervous system, all of which have caused, and will continue to cause Plaintiff great
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1 mental pain, embarrassment, humiliation, distress, anguish and suffering, all to his damage in an
2 amount to be proven at the time of trial of this action.

3 24. As a further direct, legal, and proximate result of the negligence, willfulness, intent,
4 carelessness, and recklessness of Defendants STANFORD HEALTH CARE and DOES 1 through
5 10, and each of them, Plaintiff has been, and in the future will be, required to obtain the services of
6 physicians and psychologists, obtain treatment and care, and incur medical and incidental expenses
7 in an amount to be proven at the time of trial of this action.

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9 **THIRD CAUSE OF ACTION**

10 **(Negligent Supervision/Failure to Warn – As Against Defendant STANFORD HEALTH**
11 **CARE and DOES 1 through 10)**

12 25. Plaintiff hereby re-alleges and incorporates herein by reference each and every
13 allegation contained in Paragraphs 1 through 24 of this Complaint as though fully set forth herein.

14 26. Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of
15 them, had duty to: provide adequate supervision of LASTINGER; use reasonable care in
16 investigating complaints of inappropriate behavior by LASTINGER; provide adequate supervision
17 and protection to individuals at the premises with whom Defendants STANFORD HEALTH CARE
18 and DOES 1 through 10, and each of them, allowed LASTINGER to have contact; provide
19 adequate warnings to the Plaintiff, and other individuals at the premises, of LASTINGER's
20 unfitness, troubling and abnormal behavior, dangerous propensities, and proclivities to engage in
21 the battery and sexual battery of individuals at the Stanford medical facility.

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23 27. Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of
24 them, knew or should have known of LASTINGER's dangerous, and exploitative propensities, that
25 he was an unfit agent, and of his proclivities to have inappropriate sexual contact with individuals
26 at the premises. It was reasonably foreseeable that if Defendants breached the duty of care owed to
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1 individuals at the premises, including but not limited to Plaintiff, the individuals at the premises
2 would be vulnerable to sexual battery by LASTINGER.

3 28. Despite receiving actual and/or constructive notice of LASTINGER's propensities
4 to engage in inappropriate sexual conduct with individuals at the premises, Defendants
5 STANFORD HEALTH CARE and DOES 1 through 10, and each of them, negligently failed to
6 supervise LASTINGER, thereby allowing him the ability and opportunity to commit wrongful acts
7 against Plaintiff. Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of
8 them, further failed to: adequately and competently investigate LASTINGER; warn individuals at
9 the premises about LASTINGER's propensities; alert law and enforcement or authorities that
10 LASTINGER may have been sexually battering individuals at the premises after Defendants
11 STANFORD HEALTH CARE and DOES 1 through 10, and each of them, knew or had reason to
12 know of his inappropriate conduct; take adequate measures to prevent future sexual battery of
13 individuals at the premises, including that which was perpetrated upon Plaintiff.
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16 **FOURTH CAUSE OF ACTION**

17 **(Premises Liability – As Against Defendant STANFORD HEALTH CARE and DOES 1**
18 **through 10)**

19 29. Plaintiff hereby re-alleges and incorporates herein by reference each and every
20 allegation contained in Paragraphs 1 through 28 of this Complaint as though fully set forth herein.

21 30. On or about March 20, 2015, while lawfully on the Stanford medical facility
22 premises located at 450 Broadway Street, Redwood City, CA, Plaintiff was sexually battered on the
23 premises by LASTINGER, an employee and/or agent of Defendants STANFORD HEALTH CARE
24 and DOES 1 through 10, resulting in injuries and damages. LASTINGER engaged in this conduct
25 while Plaintiff was sedated, in or around the surgical theater wherein Plaintiff was undergoing or
26 had just undergone arthroscopic elbow surgery.
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31. Said premises was owned, operated, maintained, monitored, inspected, supervised, instructed, controlled, managed, possessed, and designed by Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of them.

32. Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of them, failed to provide adequate safeguards against the known danger of LASTINGER engaging in inappropriate conduct with individuals at the premises before, during, and after surgeries, failing to properly supervise LASTINGER and other staff members at all times, and failing to develop, implement, and enforce rules and regulations necessary to ensure the safety of all persons lawfully on the Stanford facility premises. As a result, the premises was in a dangerous condition at the time of the conduct perpetrated upon Plaintiff, and said dangerous condition was a direct, legal, and proximate cause of Plaintiff's injury and created a reasonably foreseeable risk of the type of injury Plaintiff sustained. Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of them, had actual and/or constructive notice of the dangerous condition for a sufficient time prior to Plaintiff's injury to take measures to protect Plaintiff and others against the dangerous condition.

33. By negligently, willfully, intentionally, carelessly, and recklessly owning, operating, maintaining, monitoring, inspecting, supervising, instructing, controlling, managing, possessing, designing the premises and allowing such a dangerous condition to exist on its premises without taking appropriate and adequate measures to protect individuals at the premises, including Plaintiff, from a substantial risk of injury, Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of them, failed to conform to the standard or care required of them.

34. As a further direct, legal, and proximate result of the negligence, willfulness, intent, carelessness, and recklessness of Defendants STANFORD HEALTH CARE and DOES 1 through 10, and each of them, Plaintiff was injured in his strength, health, and activity, sustaining shock and injury to his nervous system, all of which have caused, and will continue to cause Plaintiff great

1 mental pain, embarrassment, humiliation, distress, anguish and suffering, all to his damage in an
2 amount to be proven at the time of trial of this action.

3 35. As a further direct, legal, and proximate result of the negligence, willfulness, intent,
4 carelessness, and recklessness of Defendants STANFORD HEALTH CARE and DOES 1 through
5 10, and each of them, Plaintiff has been, and in the future will be, required to obtain the services of
6 physicians and psychologists, obtain treatment and care, and incur medical and incidental expenses
7 in an amount to be proven at the time of trial of this action.
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9 **FIFTH CAUSE OF ACTION**

10 **(Battery – As Against Defendants ROBERT LASTINGER and DOES 11 through 20)**

11 36. Plaintiff hereby re-alleges and incorporates herein by reference each and every
12 allegation contained in Paragraphs 1 through 35 of this Complaint as though fully set forth herein.
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14 37. On or about March 20, 2015, Defendants LASTINGER and DOES 11 through 20,
15 and each of them, used their position as employees of Defendants STANFORD HEALTH CARE
16 and DOES 1 through 10, and each of them, at the premises to intentionally engage in unpermitted,
17 harmful, offensive, and unlawful sexual contact and battery upon the person of Plaintiff.

18 38. Plaintiff did not consent to these acts of battery.

19 39. As a direct, legal, and proximate cause of the conduct of Defendants LASTINGER
20 and DOES 11 through 20, and each of them, as herein alleged above, Plaintiff was injured in his
21 strength, health, and activity, sustaining shock and injury to his nervous system, all of which have
22 caused, and will continue to cause Plaintiff great mental pain, embarrassment, humiliation, distress,
23 anguish and suffering, all to his damage in an amount to be proven at the time of trial of this action.
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25 40. As a further direct, legal, and proximate result of the conduct of Defendants
26 LASTINGER and DOES 11 through 20, and each of them, as herein alleged above, Plaintiff has
27 been, and in the future will be, required to obtain the services of physicians and psychologists,
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1 obtain treatment and care, and incur medical and incidental expenses in an amount to be proven at
2 the time of trial of this action.

3 41. The acts of Defendants LASTINGER and DOES 11 through 20, and each of them,
4 alleged above were done maliciously, oppressively, and/or fraudulently, entitling Plaintiff to
5 recover punitive damages in an amount to be proven at the time of trial of this action.
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7 **SIXTH CAUSE OF ACTION**

8 **(Sexual Battery – As Against Defendants ROBERT LASTINGER and DOES 11 through 20)**

9 42. Plaintiff hereby re-alleges and incorporates herein by reference each and every
10 allegation contained in Paragraphs 1 through 41 of this Complaint as though fully set forth herein.

11 43. On or about March 20, 2015, Defendants LASTINGER and DOES 11 through 20,
12 and each of them, used their position as employees of Defendants STANFORD HEALTH CARE
13 and DOES 1 through 10, and each of them, at the premises to intentionally engage in unpermitted,
14 harmful, offensive, and unlawful sexual contact and battery upon the person of Plaintiff. Plaintiff
15 did not consent to these acts of sexual battery. Defendants LASTINGER and DOES 11 through
16 20's conduct against Plaintiff constitutes sexual battery within the meaning of California Civil Code
17 Section 1708.5, and resulted in significant injuries and damages to Plaintiff.
18

19 44. The acts of sexual battery willfully committed by Defendants LASTINGER and
20 DOES 11 through 20 upon Plaintiff included, but are not limited to: touching Plaintiff's genitalia
21 while Plaintiff was still anaesthetized prior to, during, and/or following arthroscopic elbow surgery.
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23 45. As a direct, legal, and proximate result of the conduct of Defendants LASTINGER
24 and DOES 11 through 20, and each of them, as herein alleged above, Plaintiff was injured in his
25 strength, health, and activity, sustaining shock and injury to his nervous system, all of which have
26 caused, and will continue to cause Plaintiff great mental pain, embarrassment, humiliation, distress,
27 anguish and suffering, all to his damage in an amount to be proven at the time of trial of this action.
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46. As a further direct, legal, and proximate result of the conduct of Defendants LASTINGER and DOES 11 through 20, and each of them, as herein alleged above, Plaintiff has been, and in the future will be, required to obtain the services of physicians and psychologists, obtain treatment and care, and incur medical and incidental expenses in an amount to be proven at the time of trial of this action.

47. The acts of Defendants LASTINGER and DOES 11 through 20, and each of them, alleged above were done maliciously, oppressively, and/or fraudulently, entitling Plaintiff to recover punitive damages in an amount to be proven at the time of trial of this action.

SEVENTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress – As Against Defendants ROBERT LASTINGER and DOES 11 through 20)

48. Plaintiff hereby re-alleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 47 of this Complaint as though fully set forth herein.

49. The conduct of Defendants LASTINGER and DOES 11 through 20, and each of them, as herein alleged was intentional, extreme, outrageous, malicious, and committed for the purpose of causing Plaintiff to suffer humiliation, mental anguish, and severe emotional distress.

50. As a direct, legal, and proximate result of the conduct of Defendants LASTINGER and DOES 11 through 20, and each of them, as herein alleged above, Plaintiff was injured in his strength, health, and activity, sustaining shock and injury to his nervous system, all of which have caused, and will continue to cause Plaintiff great mental pain, embarrassment, humiliation, distress, anguish, emotional distress, and suffering, all to his damage in an amount to be proven at the time of trial of this action.

51. As a further direct, legal, and proximate result of the Defendants LASTINGER and DOES 11 through 20's conduct as herein alleged above, Plaintiff has been, and in the future will be,

1 required to obtain the services of physicians and psychologists, obtain treatment and care, and incur
2 medical and incidental expenses in an amount to be proven at the time of trial of this action.

3 52. The acts of Defendants LASTINGER and DOES 11 through 20 as alleged above
4 were done maliciously, oppressively, and/or fraudulently, entitling Plaintiff to recover punitive
5 damages in an amount to be proven at the time of trial of this action.
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7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment as follows:


- 9 A. For general (non-economic) damages according to proof;
- 10 B. For special (economic) damages according to proof;
- 11 C. For exemplary (punitive) damages on according to proof;
- 12 D. For prejudgment interest as permitted by law;
- 13 E. For costs of suit herein;
- 14 F. For such other and further relief as the Court may deem just and proper.
- 15 G. For attorney's fee pursuant to C.C.P. §§ 1021.4 and 1021.5

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff demands a trial by jury on all issues so triable.
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22 Dated: March 4, 2016

MATIASIC & JOHNSON LLP

23
24 By: 
25 Paul A. Matiasic
26 Hannah E. Mohr
27 Attorneys for Plaintiff
28 MARK ROE