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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

INTEGRATED HEALTHCARE
HOLDINGS, INC.,

Plaintiff,

vs.

MICHAEL FITZGIBBONS, M.D., and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 05CC07563

**DECLARATION OF MICHAEL
FITZGIBBONS, MD, IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO IHHI's
MOTION FOR SUMMARY
ADJUDICATION OF ISSUES**

I, MICHAEL FITZGIBBONS, MD., declare as follows:

1. At all times herein mentioned, I was and am a physician and surgeon duly licensed to practice medicine in the State of California, and am a Diplomat of the American board of internal Medicine and Infectious Diseases. I am the plaintiff in the within action. The matters stated herein are of my own personal knowledge, and I could and would so testify if called upon to do so.

2. At all times herein mentioned, I was and am a Medical Staff member in good standing of WMCSA- Santa Ana ("WMCSA"), from 1983 to the present, and was a member of the Medical Executive Committee ("MEC") of WMCSA's Medical Staff until 2006. I formerly held the position of Chief of Staff of the Medical Staff of WMCSA, 2002-2004, Vice Chief of

1 Staff of the medical staff of WMCSA, 1999-2001, and was past Secretary Treasurer of the
2 Medical Staff of WMCSA, 1997-1999. I am an infectious disease specialist and internist and
3 earned the bulk of my living at Western Medical Center, Santa Ana. Since beginning my
4 practice at WMCSA in 1983, I have seen thousands consultations and made thousands of
5 hospital visits. I see all patients who are referred to me, regardless of their station in life or their
6 ability to pay. I see patients with variety of infectious diseases and illnesses, from West Nile
7 fever, to postoperative infections, to AIDS. From 1984 to 1997, I was chairman of the infection
8 control committee at WMCSA; thereafter the committee was merged into the Clinical
9 Monitoring Committee. I was also chairman of the Clinical Monitoring Committee, chairman of
10 the Antibiotic Utilization Committee, and chairman of the Quality Improvement Committee. I
11 hold medical staff appointments at St. Joseph Hospital in Orange, Tustin Hospital, Tustin
12 Rehabilitation Hospital, UCI Medical Center, Irvine Regional Hospital and Medical Center, and
13 Chapman Medical Center. I was a board member of the Infectious Diseases Association of
14 California from 1997 to 2001. I was the chairman of the AIDS committee of that organization
15 from 1999 to 2001. I am a clinical instructor of medicine at the University of California Irvine,
16 from 1981 to the present. A true and correct copy of my Curriculum Vitae is attached hereto as
17 Exhibit "".

18 3. At all times herein mentioned, Defendant Integrated Health-Care Holdings Inc.,
19 ("IHHI") owned and controlled United Western Medical Centers, which owns and controls
20 WMCSA.

21 4. During 2004, Tenet Healthcare Corp. ("Tenet") sought to divest itself of many of
22 its California hospitals. In 2004, Tenet entered into an agreement to sell four hospitals, including
23 WMCSA to a newly formed corporation, IHHI, which it been created for the sole purpose of
24 acquiring the four hospitals. The principal shareholder of IHHI was a physician, Kali P.
25 Chaudhuri, M.D., who had previously been involved with a massive bankruptcy and medical
26 clinics in Southern California the year 2000. Dr. Chaudhuri's KPC Corporation left millions of
27 dollars in unpaid claims to doctors in Orange County in 1999 and 2000.

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1 5. I, along with many other members of the Medical Staff of WMCSA, was
2 concerned about an adverse impact on the quality of patient care at WMCSA should Dr.
3 Chaudhuri become its principal owner. As such, the Medical Staff of WMCSA took its concerns
4 to the Orange County Board of Supervisors and also to State Senator Joseph L. Dunn. Sen.
5 Dunn launched State Senate investigative hearings with respect to the acquisition of WMCSA
6 during January and February of 2005.

7 6. In an effort to appease the Medical Staff of WMCSA, on January 1st, 2005 IHHI
8 entered into an agreement (“Agreement”) with the Medical Staff of WMCSA, which included
9 me. The purpose of the Agreement was to assure that the quality of patient care provided by
10 WMCSA, and access to that care, would be maintained.

11 7. The Agreement provided the Medical Staff with input into certain financial
12 activities of IHHI. Also the Agreement required the Medical Staff at WMCSA to withdraw its
13 opposition to the acquisition and licensing of WMCSA by IHHI and agreed to publicly support
14 the acquisition of WMCSA. The Medical Staff of WMCSA performed these obligations under
15 the Agreement and the acquisition and licensing of WMCSA to IHHI took place and MCSA
16 commenced to operate under IHHI ownership in March of 2005. A true and correct copy of the
17 Agreement is attached hereto as Exhibit “”.

18 8. In May of 2005, IHHI a publicly traded company, made an SEC filing which
19 called into question the financial stability of the company. More specifically, the SEC filing
20 reported a May 2005, notice of default on its \$50 million acquisition loan and a \$30 million non-
21 revolving capital line of credit. The SEC filing was reported in the May 17th 2005 edition of the
22 *Orange County Register*. A true and correct copy of the SEC filing is attached hereto as Exhibit
23 “”. A true and correct copy of the *Orange County Register* article of May 17, 2005 is attached
24 hereto as Exhibit “”.

25 9. On or about May 19th, 2005, I sent an e-mail expressing my concern regarding the
26 financial stability of IHHI. My e-mail was sent to a limited number of individuals, whom I
27 believe could be potentially helpful to IHHI’s financial condition. I did not send or authorize the
28 e-mail to be sent to Blue Cross. I was deeply concerned regarding IHHI’s financial situation as

1 evidenced by IHHI's Security and Exchange Commission ("SEC") "Form 8-K" filing on or about
2 May 16, 2005. As a member of the Medical Executive Committee of WMCSA, I believed I had
3 an obligation to inform these individuals because I believed the hospital to be in financial
4 jeopardy due to the default and possible bankruptcy of IHHI as evidenced by the SEC filing and
5 the May 17 article in *The Orange County Register*.

6 10. I was unaware that one of the individuals to whom I sent my May 19th 2005 e-
7 mail, Terri Linn, of Hospital Partners, forwarded the e-mail to another individual, who in turn
8 forwarded it to Josh Valdez, of Blue Cross/Well point, a managed care company which was
9 engaged at the time in reviewing its contract terms with WMCSA. I had no knowledge that these
10 negotiations were taking place. Further, Blue Cross/Well point issued a letter to WMCSA, in
11 early 2005, stating that it had no intention of increasing reimbursement rates at WMCSA. Mr.
12 Valdez of Blue Cross/Well point forwarded my e-mail, without my knowledge or consent to a
13 Mr. Gonzalez who was negotiating on behalf of Western Medical Center. Mr. Valdez' only
14 comment appended to my e-mail was "FYI." Neither Mr. Valdez nor IHHI had any way to
15 confirm that the e-mail was genuine or that I was the true author of the mail.

16 11. On or about June 2nd, 2005, in my capacity as infection control adviser at
17 WMCSA, I was requested in writing by Terry Othman and personally by Corrine Jarvis to
18 participate in a mock survey in preparation for the upcoming August 2005 JCAHO Survey of
19 WMCSA. Attendance of such mock surveys was part of my paid contracted duties as infection
20 control adviser at WMCSA. I was asked to participate as infection control adviser. I
21 participated in the mock survey, which took two days. The results of the mock survey revealed
22 that WMCSA would only receive a conditional accreditation if significant changes were not
23 made prior to the upcoming actual Joint Commission survey. For months prior to the mock
24 survey, I had been a harbinger that the Joint Commission infection control standards were not
25 being addressed, which threatened patient care, health, and or safety. The negative results of the
26 mock survey were in part due to infection control violations. Based upon my concerns, on June
27 5th, 2005, I sent a confidential e-mail addressed to Western Medical Center's CEO Dan
28 Brothman, with copies to the chairman of the board of IHHI, Dr. Anil Shah; three WMCSA

1 Medical Staff leaders, the Medical Staff attorney Tom Curtis, and a copy to Sen. Joe Dunn, who
2 had been instrumental in encouraging the Medical Staff to negotiate quality of care safeguards in
3 the form of an enforceable agreement. In my confidential e-mail, I complained about the
4 relationship between WMCSA's impaired cleanliness, quality of patient care and/or safety and
5 IHHI's financing. A true and correct copy of my June 2nd, 2005 e-mail is attached hereto as
6 Exhibit "".

7 12. On or about June 9th, 2005, I received a letter from IHHI's attorney Deborah
8 Tropp, warning me that I had made actionable statements against IHHI and that if I did not desist
9 they would bring litigation against me. Without further public comment from me, on June 23rd,
10 2005, in retaliation for my health and safety complaints related to patient care set forth in my
11 May 19th, 2005 and/or my June 5th, 2005 e-mails, IHHI filed litigation against me based upon my
12 allegedly disparaging May 19th 2005 e-mail. (*Integrated Health Care Holdings Inc. v. Michael*
13 *Fitzgibbons M.D.*, and Does 1-50, inclusive, defendants, Case No.: 05 cc 07563, "the Action").
14 IHHI claimed that my e-mail stalled negotiations between IHHI and Blue Cross-Well point for a
15 higher paying managed care contract.

16 13. IHHI wrongfully commenced the action against me accusing me of (1)
17 defamation, (2) intentional interference with a contractual relationship, (3) negligent interference
18 with a contractual relationship, (4) breach of contract, (5) breach of the duty of good faith and
19 fair dealing, and (6) violation of the California unfair business practices statutes (Violation of
20 *California Business & Professions Code*, '17200 *et. seq.*) In response to the action, I cause to be
21 filed a special motion to strike under the slap statute (*California Code of Civil Procedure* section
22 425.16) ("MTS") contending that my May 19, 2005, e-mail questioning the financial condition
23 of IHHI concerned a matter of public interest under section 425.16, subdivision (c)(4), and that
24 the IHHI had failed to demonstrate a probability of prevailing, on the merits of its claims for
25 defamation, breach of contract, tortious interference, and violation of *California Business and*
26 *Professions Code* section 17200 *et seq.*, which the trial court denied. A true and correct copy of
27 my MTS, is attached hereto as Exhibit "". After the lawsuit was filed, I became an object of
28 odium in the hospital. Employees at WMCSA and Chapman Hospital whispered when I

1 approached. Many glared at me. Dan Brothman had told them in an employee forum, I was
2 trying to hurt the hospital. All of the unit directors carried that message. Larry Anderson,
3 primed by Mr. Brothman, said the same thing, "I (Dr. Fitzgibbons) was trying to hurt the
4 hospital...and I did." My consultations fell and so did my income. My referrals from physicians,
5 particularly physicians contracted with the hospital decreased to nothing. Trauma patients who
6 had been a steady source of income, dried up. I became very worried about where the \$20,000
7 per month to pay my legal bills would come from. I felt isolated. Most doctors would ask me,
8 "Why don't you just drop it?" Why don't you stop suing them?" They did not understand that I
9 could not 'drop' the lawsuit unilaterally. They also did not understand what it was about. They
10 could not believe that I was sued over an email, one email. Though some doctors were
11 sympathetic to my situation, they did not want to 'get involved' because they knew the power of
12 the hospital in determining their status both in that hospital, in other hospitals, in the profession,
13 and with the Medical Board. Blackballed from one hospital you may find difficulties at the
14 others. I went through endless conversations with doctors and employees trying to explain my
15 situation and the dire situation the management had put the hospital.

16 Why was I concerned for the hospital? I knew that Bruce Mogel, CEO of IHHI had been
17 a vice President at Doctor's Community Health Corporation, the corporation responsible for the
18 largest chain of hospital bankruptcies in U.S. history. I also knew that Dr. Kali Chaudhuri was
19 49% owner of the land and 20% owner of the stock of IHHI. Both of these individuals had
20 terrible reputations. I knew Chaudhuri had failed to pay millions of dollars in doctors' claims
21 2000 and then in 2004 he was turning up flashing millions of dollars to buy these hospitals. I
22 knew that DCHC, Mogel's former employer, had bankrupted hospitals by running them into the
23 ground with debt, while embezzling millions of dollars. Then Mogel started selling the accounts
24 of Western Medical Center. The Medical Staff thought he was following the DCHC script.
25 Hospitals are low margin businesses. They operate on profit margins of 5 to 15%. When Mr.
26 Mogel agreed to sell the hospital's accounts receivable, I became alarmed. This was just the
27 strategy DCHC had used at Boston Regional Medical Center to drive that hospital into
28 bankruptcy. Mr. Mogel sold the accounts receivable to the lender Medical Capital at a 15%

1 discount at first. Some of the 15% would come in slowly. However, just like the mortgage
2 mess, IHHI bundled the accounts of many hospital patients together weekly and sold them to
3 Medical Capital. The problem, just like in the current mortgage mess, was that it was difficult to
4 know what these account bundles were worth. Medical Capital said they were paying 85% of
5 the historic valuation of the accounts, but no one knew. Who was verifying that? For example
6 Tenet had written off some accounts as early as 60 days, according to Kathy Hammack. The
7 reason, we believed, was to make the hospital seem less profitable when it came time for capital
8 spending. In the extreme example, an account that paid at 100 % at 61 days was valued at zero if
9 it had not paid at 60 days. Medical Capital stepped right into Tenet's old valuation system,
10 valuing accounts at their 'historic' valuations. Slow paying accounts were devalued. The result
11 of selling accounts to Medical Capital was a highly discounted revenue stream. The Medical
12 Staff leadership suspected there were under the table payments to Mr. Mogel. Only a forensic
13 accountant could find them, this was after all, what Mr. Mogel had done at Alta Healthcare
14 Systems. Alta Healthcare had sued him for embezzlement, forgery and interference with their
15 business. He settled with them and paid \$225,000 to end their lawsuit. We wondered where that
16 money came from.

17 Strange things began happening in 2005. Mr. van Druff and Tom Curtis, the Medical
18 Staff lawyer, were in a meeting with Hari Lal, IHHI's general counsel. Mr. Lal threatened van
19 Druff and Curtis, saying that he had had them followed, that he knew where they ate lunch. Mr.
20 Lal stated he knew the medical leaders met at Mr. van Druff's house. Mr. Lal threatened that
21 IHHI had a \$ 1 million fund available to sue Curtis and van Druff and others. He forced them to
22 stop seeking implementation of the Agreement gained at WMCSA at the other hospitals.
23 Without the Agreement at the other hospitals IHHI could shift costs and do related party
24 transactions and suck money out of the system. Revenue from one hospital could be used to
25 fund losses at another. I began to worry not only for my financial safety, but for my personal
26 safety as well. I suspected I was being watched. I began to believe that my phone was tapped.
27 We knew that the phones at the hospital were tapped. One of the operators said that every
28 Monday, Dan Brothman received on his desk a list of telephone calls made from the institution

1 and to whom they went along with a transcript of the conversation. We believed that the doctor's
2 dining room was bugged. A very real sense of terror came over me. My family was severely
3 affected. My wife cried and became depressed. My children became concerned about my ability
4 to assist them with college. I could not spend time or visit my elderly parents as much as I
5 should. I dreaded going in to the hospital, knowing I would have to face the scowls of nurses,
6 particularly in the ICU-CCU. I also knew that my practice was being watched both outside and
7 inside the hospital. My charts, I was told, were sent out for special review.

8 14. Following the trial court's denial of my MTS, I caused to be filed an appeal of the
9 trial court's ruling, contending that my May 19 2005 e-mail questioning the financial condition
10 of IHHI concerning matter of public interest under *California Code of Civil Procedure* section
11 426, subsection (see) (4), and that IHHI had failed to demonstrate a probability of prevailing on
12 the merits of its claim for defamation breach of contract tortious interference, and violation of
13 *California Business and Professions Code* section 17200 et seq. During that time I was very
14 depressed. I faced financial ruin, with no end in sight to IHHI's malicious lawsuit. My legal
15 fees were reaching \$20,000 per month. The California Medical Association and the AMA
16 Litigation Center filed an *amicus curiae* brief on my behalf. Though corporate dollars were
17 against me, my colleagues understood that a physician's right to speak was at issue.
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21 15. On or about June 14, 2006 the Court of Appeal, Fourth district, Division III, in a
22 *de novo* review, reversed the trial court's denial of my special motion to strike, holding that my
23 e-mail message concerned a public issue; that IHHI had failed to demonstrate a probability of
24 prevailing on the merits of its claims for defamation, breach of contract, tortious interference,
25 and violation of *California Business and Professions Code* section 17200 et seq.

26 16. IHHI's lawsuit against me constituted actual malice as proved by their conscious
27 attempts to harm me and my family from 2005 to the present. IHHI knew their legal claims were
28 baseless. As noted by the Appellate Court, I did not defame them, I did not interfere with their

1 contractual relationships, I did not breach any contract, I did not breach any duty of good faith in
2 fair dealing, and I did not violate *California Business and Professions Code* section 17200.

3 17. IHHI, through Dan Brothman and others, beginning March 2005, identified
4 physicians it thought were hostile and initiated retaliation against physician leaders who were
5 deemed hostile to IHHI. I was a major target of retaliation. In a March 2005 Mark van Druff
6 met with Dan Brothman. Mr. Brothman told Mr. van Druff he knew how to handle the problem
7 of a bridling medical staff, Mr. Brothman, said he had done it before. You just sue one of them,
8 Mr. Brothman said. (declaration of Mr. van Druff) That same month, at a meeting at
9 Antonello's arranged by Mr. Brothman with medical staff leaders, and memorialized by Dr.
10 Thomas Badin, Mr. Brothman held forth. The purpose of the meeting was to help IHHI, the
11 leadership IHHI team to find out "why don't (you) like us? Why are we not liked?" Mr.
12 Brothman said IHHI leaders felt that there were 3 specific individuals who were agitators, IHHI
13 antagonists, who were constantly opposed to IHHI leaders. Mr. Brothman went on, that these
14 doctors sent out e-mails, blocked any progress at meetings IHHI put forth, and opposed IHHI at
15 every step of the way. Mr. Brothman was asked who he meant. Mr. Brothman said, "Since you
16 ask me specifically who these names are, I will tell you. Peter Wawro, Michael Fitzgibbons, and
17 Brian Cross." Mr. Brothman and IHHI then contemplated litigation against me. Dr. Jeffrey
18 Kauffman immediately advised against that course. IHHI did not listen and pursued their
19 retaliatory animus and filed a lawsuit, which was meritless.
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24 18. Malice through Purported Non-Renewal of Infection Control Contract:

25 I had a contract with Tenet to provide infection control services. My title was infection control
26 advisor. The contract was ongoing, renewed about every two years, and it had been in place for
27 over 10 years, from the time Dr. Herb Schwartz was Medical Director, in 1990 or before. I
28 received payments of \$1000 monthly under this contract from Tenet through December 2004.

1 Tenet did not pay after January 2005. When Integrated Health Care Holdings took over in
2 March of 2005 under an agreement with the medical staff, Integrated Health Care Holdings was
3 to maintain the quality of care previously existing in the hospitals—such as maintaining an
4 infection control adviser. June 2nd of 2005 officials at WMCSA requested in writing for me to
5 attend a mock survey of the hospital as outlined above as infection control advisor. I attended
6 this mock survey for two whole days and continued providing infection control advisory
7 services. I also continued to attend medical staff pharmacy and therapeutics committee and
8 Clinical Monitoring Committee meetings at Western Medical Center, which had previously been
9 paid under my contract. Hospital employees continued to ask me infection control questions and
10 seek and use my advice after IHHI took over. No one from the hospital or the Corporation ever
11 informed me that my contract was not renewed, or would not be renewed. After litigation was
12 undertaken by IHHI, June 23rd, 2005, I asked about my contract and was told it was ‘in legal.’ A
13 list of contractors was presented to the MEC by Mr. Brothman around March or April 2005. My
14 name was the only one not on the list. At this meeting I queried Mr. Brothman about the firing
15 of Dr. Brian Cross, as physician advisor/reviewer for utilization/discharge planning. I told Mr.
16 Brothman that such a termination was prohibited by our Agreement with IHHI. The MEC rose
17 up in support of my charge and Mr. Brothman abashedly recanted his decision and reinstated Dr.
18 Cross. This was the same meeting where Mr. Brothman was asked why the trauma surgeons’
19 checks were late, by Dr. Peter Wawro, member at large on the MEC. Mr. Brothman bristled at
20 the question. The next day, Mr. Brothman called Dr. Wawro and threatened him for
21 ‘embarrassing him’ in front of the MEC. Thus, WMCSA and IHHI failed to renew my contract
22 after they began litigation against me. This is supported by several facts: 1. WMCSA Medical
23 Staff officials, particularly Corrine Jarvis, requested my presence at the mock survey, June 2,
24 2005. 2. WMCSA used and continued to operate under infection control policies, which were put
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1 in place AFTER March 2005 until mid 2008. Such policies were located on each ward of the
2 hospital until mid 2008, as the policies record. I have noted, copied and photographed these
3 policies, signed by me, dated after March 2005 on the wards. I was requested, in March through
4 July 2005, by Infection Control Nurse Carole Davinroy to develop, critique, review, and sign
5 infection control policies prior to the Mock survey and the actual Joint Commission survey.
6 Thus WMCSA used my work product and services and continued to use that product until 2008,
7 and refused to pay me for that work. 3. Mr. Brothman and his administration realized that
8 termination of my contract would violate California law (B&P 2056 and H&S 1278.5), so
9 WMCSA then took the position, around July 2005, that WMCSA never renewed my contract.
10 However, WMCSA used my work product from that time until mid-2008. Mr. Brothman and his
11 employees fraudulently induced me to perform infection control services, which were part of my
12 duties under my previous contractual relationship with the hospital, then never paid me. Western
13 Medical Center's requests for my continued infection control services satisfied the contractual
14 requirements for offer, acceptance and consideration. In the WMCSA infection control policies I
15 signed in 2005, I am officially listed as 'Infection Control Advisor.' The use and display of my
16 work product indicate acceptance and 'exchange of value' which indicates a 'contract' existed.
17 IHHI's position that they never had a contract with me is disproved. IHHI's refusal to admit it
18 had a contract with me was a position necessary to avoid recognizing that they, IHHI,
19 maliciously terminated me in violation of *California Health & Safety Code* section 1278.5 and
20 *California Business & Professions Code* section 2056.

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25 19. Malice Through Non-Performance of Defense and Indemnity for Medical
26 Executive Committee ("MEC") Activities: Further acts of fraud by IHHI and WMCSA
27 followed. Western Medical Center's CEO had always promised the MEC, that the hospital
28 would defend physicians who worked on the medical executive committee. Mr. Brothman, the

1 CEO maintained that physicians were “covered” (against liability litigation) for their good faith
2 activities on the MEC. This promise was open-ended and made in front of all of the members of
3 the MEC. The promise was made in response to a demand by the MEC to see the insurance
4 policy under which the MEC were covered. When I was sued by IHHI, I asked Mr. Brothman to
5 defend me in July, 2005. This was at the MEC meeting. He refused. He contended my May 19,
6 2006 email was not part of my MEC duties. He failed to understand, that part of the litigation
7 IHHI brought against me involved breach of contract, (the contract=The Agreement). That
8 Agreement was negotiated by the MEC, of which I was a member, on behalf of the Medical
9 Staff, within the course and scope of the MEC’s duties. Mr. Brothman decided *a priori*, without
10 proper investigation, that I was not entitled to a defense by the hospital. He did not know
11 beforehand, whether IHHI or I was in the right relative to IHHI’s litigation against me. His
12 failure to properly investigate this matter indicates malice. Mr. Brothman breached his verbal
13 promise to defend the medical executive committee members. This matter also involved a
14 conflict of interest, as Mr. Brothman was acting in the interest, not of the Medical Staff, but of
15 IHHI . In addition, IHHI changed the policy holder name on the liability insurance with Hudson
16 Insurance from WMCSA to IHHI. This change nullified the insurance coverage for MEC
17 members, if they were to be sued by IHHI, as the insurance disallowed cross suits between
18 covered parties. However, the change in insurance did not absolve WMCSA of its fiduciary
19 responsibility to defend MEC members acting within the course and scope of their duties, even if
20 that meant defending them against litigation from WMCSA’s parent corporation IHHI.
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25 20. Malice through Sham Peer Review: RN Lisa Moores, WMCSA Administrative
26 Employee files false peer review documents against me: NP/RN Lisa Moores is a nurse educator
27 at WMCSA. On three occasions she reported sham peer review or false information for peer
28 review purposes to the Medical Staff Office. These reports were malicious. The retaliation was

1 malicious, because it used the color of authority to make false claims, intentionally mislead, and
2 use the peer review process to cause harm. The first incident involved me giving half a spoonful
3 of water to a female patient in ICU 19 who was “nothing by mouth” but who begged for water
4 because of thirst. After I gave the half a spoon, the nurse caring for the patient reported me and
5 filed a PAR, Professional Activities Report, which was passed by RN Moores to the Medical
6 Staff Office. The second incident again involved Lisa Moores and an attempt to use the
7 Professional Activities Report system as a means to cover up an adverse event for which the
8 hospital was culpable and harm me. It was the case of the man whose temporary pacemaker was
9 turned off and upon whom I delivered a precordial thump to resuscitate. I was charged with
10 thumping a man with ‘symptomatic bradycardia’ a clear misrepresentation, again filed by RN
11 Lisa Moores. Two physician witnesses, Dr. Camp and Dr. Wawro, and RN Brett Dahl will
12 support my contention that the temporary pacemaker was actually turned off when the patient’s
13 heart stopped.

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16 The third case was medical record 718890. I received a Jan. 24, 2006, inquiry by the Medical
17 Quality Improvement Committee about my management of medical record number: 718890. I
18 went to the Medical Staff Office and talked with Judy Harp, the quality assurance person, who is
19 a nurse reviewer. She is the only quality assurance person left, I might add. She told me that a
20 nurse had filed the complaint and that is why the case was reviewed. When I went to review the
21 chart in medical records, the Confidential Privileged Quality Improvement Peer Review Form
22 communication sheet was staring me in the face when I opened the chart. It was stapled together
23 with the complaint from the nurse. The nurse who filed this complaint, Lisa Moores, is the same
24 nurse who filed the report regarding my precordial chest thump. Patient 718890 was a male with
25 disseminated tuberculosis who presented in sepsis, with diabetes out of control. NP/RN Moores’
26 review was maliciously inaccurate in that it began “Hx: TB, anemia, negative for DM.” Further,
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1 last paragraph says, "The patient was endangered with the insulin management he received.
2 Receiving 80 units of Lantus in one day in a patient who is under stress, in ICU but not a diabetic
3 with obvious hypoglycemia requiring treatment just shortly before the Lantus was ordered." Ms.
4 Moors' review was malicious because there are at least six places in the chart where multiple
5 observers record the fact that the patient himself stated he was diabetic. Thus, any reviewer who
6 failed to note this and stated the patient was "not a diabetic" was acting through malice. The
7 patient was critically ill from sepsis and disseminated tuberculosis and died shortly after of
8 respiratory failure. Dr. Robert Steedman, Chief of Staff after me, was aware of another
9 "Professional Activities Report" which he discarded because in his opinion it was ridiculous.
10 Nevertheless this report was generated by the Nursing Staff contemporaneous with a pattern of
11 retaliation. These events took place in 2005. On January 27th, 2008, I was informed that Hector
12 Anchetta, the nursing supervisor of the 7th floor, wished to be notified immediately, if I were
13 going to perform an lancing of an abscess in the patient's room, on patient Dan Nelson, 714 bed
14 one. XXXX RN on days later told me it was because my privileges sheet did not include
15 "incision and drainage." He previously warned nurses not to talk to me about my arrest, after he
16 learned they had queried me. Lancing of cutaneous abscess is a procedure all physicians are
17 capable of performing. This was simply another attempt at harassment.

21 21. Mr. Brothman Tells Hospital Employees I Hurt The Hospital:

22 At employee forum held by Mr. Brothman after IHHI initiated litigation against me, Mr.
23 Brothman was asked why IHHI had sued me. Mr. Brothman stated that my e-mail had
24 prevented the hospital from increasing its rates from BlueCross/Wellpoint. Mr. Brothman knew
25 his statement was false and he knew that these statements were unprivileged and slanderous. Mr.
26 Brothman also had meetings with hospital department directors where he propagated the false
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1 claims that I had hurt the hospital. Nurse Candy Lockshaw, Hector Anchetta, and Mr. Val
2 Grinenko can testify to this.

3 22. Mr. Brothman Maliciously Tells Physicians I Hurt The Hospital:

4 Mr. Brothman began telling physicians and employees after the lawsuit was filed that I had
5 harmed the hospital and cost IHHI hundreds of thousands of dollars. This was a contention of
6 their lawsuit. Mr. Brothman paid for WMCSA doctors ‘focus group’ dinners in the summer of
7 2005. These focus groups involved thought leading physicians at the hospital. The focus groups
8 were held at Antonello’s restaurant near South Coast Plaza. Mr. Anderson, president of IHHI,
9 also attended. In fact, the focus groups were simply attempts to explain and propagate the
10 administration’s position – why they had sued me. They stated to the doctor group, why didn’t
11 Dr. Fitzgibbons drop the lawsuit?—falsely implying that I was the instigator of the lawsuit.
12 During these sessions they would repeat their statements that I was out to harm the hospital, that
13 they had been harmed financially by my actions, and that they wanted to be made whole. IHHI
14 officials knew these statements were untrue, as was shown by the Appellate Court, IHHI could
15 not prove I had intended to harm the hospital, because I had neither intended to harm the hospital
16 nor had I harmed the hospital. Further, I was attending medical staff committee meetings like
17 Clinical Monitoring Committee and Pharmacy and Therapeutics Committee. I was admitting
18 patients to the hospital and seeing consultations there. I did not want to hurt the hospital. Dr.
19 Tom Badin attended one of the sessions. Dr. Richard Ott, Dr. Minh Bui, Dr. Charles Osborne
20 attended other sessions. IHHI’s statements at these forums were false and unprivileged.
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25 23. My Consultations and Income Fall as a result of IHHI’s Malicious Litigation:

26 From the time of IHHI’s lawsuit until now my consultations at WMCSA and Chapman have
27 suffered as a result of the litigation. Doctors who had contracts with the hospital, Tustin Clinic,
28 Trauma surgeons, Medical Directors and others were reluctant to continue to consult me.

1 Trauma doctors reduced consultations to near zero. IHHI also retaliated against two sources of
2 consultations, Dr. Peter Wawro and Dr. Mohamed El Nachef. My income suffered and I feared I
3 would not be able to continue my practice because of decreased income in association with
4 mounting legal bills of \$20,000 per month. Some weeks I collected less than \$1500. Further,
5 the amount of time spent defending myself and preparing for the litigation, as well as attempting
6 to raise money for my defense deprived me of time to practice. I found myself spending about
7 three hours daily on lawsuit related issues: fund raising, conferences with supporters (who were
8 few), defending myself to colleagues and employees, and working on legal and factual aspects of
9 the case. As a result, clinical practice and my medical malpractice consulting income suffered.
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11 24. Mr. Brothman Maliciously Introduces Infectious Disease Competitor, Dr. Finney:

12 To hobble and hinder my practice and position at the hospital Mr. Brothman importuned another
13 infectious disease physician, Dr. Michael Finney to practice at the hospital. Dr. Finney had
14 virtually no consultation activity at WMCSA, prior to the initiation of IHHI's litigation against
15 me in 2005. After IHHI sued me, Dr. Finney told physicians and me that Mr. Brothman invited
16 him to come to the hospital. Mr. Brothman had previously contracted with Dr. Finney's wife,
17 Joan, a registered nurse, for infection control services. Carol Davinroy, the current infection
18 control nurse had worked as an employee of Joan Finney. It was an easy step for Mr. Brothman
19 to solicit Dr. Finney. Mr. Brothman promised the infection control advisory contract to sweeten
20 the proposal. Apparently the money was enough. This overcame Dr. Finney's reluctance to
21 compete against me because I had helped to train Dr. Finney and volunteered my time to do so
22 during his fellowship at UCI. For several months, Dr. Finney did not even come to the Clinical
23 Monitoring Committee, a requirement of the infection control contract, where infection control
24 issues were discussed. Further, administration tried to keep quiet the appointment of Dr. Finney
25 as infection control advisor. Dr. Finney, supported by administration, administration contracted
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1 doctors, and touted by nurse managers quickly developed an infectious disease consultation
2 private practice at WMCSA and Chapman Hospital. Dr. El Nacheff told me November 27, 2007
3 that Rishi Raman, Pharm. D. bragged to him he had acted to recruit Dr. Finney's group to
4 WMCSA. Rishi Raman was the pharmacist I reported to Dr. Cross, Chief of Staff, for
5 'practicing' medicine by making antibiotic recommendations and treating cultures without being
6 able to assess their significance and for introducing himself to patients as 'Dr. Raman.' A small
7 sample of specific incidents of steering and loss of consultation business were: November 28,
8 2007: Dr. Singh called me. He reported that a patient in the CCU, Mr. V. C., required an
9 Infectious disease consultation. The physician, Dr. M. did not know any infectious disease
10 consultants. The nurse steered him to Dr. Finney's group. Dr. Singh told me he was the decision
11 maker for consults on the case and did not want Dr. Finney's group. He contacted me.
12 November 30, 2007: Dr. Nathan pulled me aside on the sixth floor and told me that Dr. Weiss
13 told him, an intensive care nurse told Dr. Weiss, 'doctors are not calling (using) Dr. Fitzgibbons
14 anymore ("because Dr. Fitzgibbons writes unreasonable orders!") Thus the nurse felt no scruple
15 or trepidation steering Dr. Weiss to the administration 'favored' infectious disease specialist.
16 January 27, 2008. Dr. Afifi called me for an infectious disease consultation. I went to the ward,
17 and the RN Blessing told me that the consultation was canceled and the patient was referred to
18 Dr. Finney. The patient was under the control of Dr. Shah—a former Chairman of the Board of
19 IHHI. CCU nurses post Dr. Finney's associate Dr. Al Karan's card in the CCU. Dr. Finney
20 became so busy he hired another associate. Dr. Thompson.

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25 25. Public Defamation and False Light:

26 Officials of IHHI attempted to portray me in a false light. They set out to convince the public,
27 their employees and physicians that I was attempting to ruin the hospital. An IHHI official, Dr.
28 Anil Shah attended a physician advocacy conference sponsored by Orange County Medical

1 Association in April of 2006, at the Hyatt Regency Hotel in Irvine California. At the conference
2 Dr. Anil Shah, assisted by a cohort Dr. Jacob Swieden passed out copies of IHHI's litigation
3 brief to all attendees of the conference. The box in which they carried these briefs showed the
4 documents were printed at Coastal Communities Hospital printing department, a facility of IHHI.
5 Their legal brief contained many statements, which they knew were false. This dissemination of
6 false information was defamatory and unprivileged. The focus group meetings and statements to
7 the press were defamatory and unprivileged.
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9 26. IHHI Malice through Criminal Acts:

10 On June 14th the California Court of Appeals ruled in my favor in the matter of IHHI vs.
11 Fitzgibbons, dismissing IHHI's lawsuit. On June 24th an article appeared on the front page of the
12 *Orange County Register*, detailing the results of the litigation and portraying me in a favorable
13 light. Four days later IHHI's conspiracy reached its pinnacle. On June 28th, 2006, the day after
14 my birthday, my 1995 tan Toyota Camry was broken into, between the night of June 27th and
15 the afternoon of June 28th, 2006, and a gun and a pair of gloves, was planted in my car and I was
16 falsely accused of brandishing a weapon. The person who planted the gun, or a confederate,
17 called "911" on June 28, after 2pm and reported a driver brandishing a gun in a brown Camry,
18 reportedly with my license number. This report was entirely false. The reporting person cannot
19 be found. I am completely innocent of the charges of brandishing a gun, or knowingly carrying a
20 concealed weapon, or knowingly carrying a loaded weapon. June 27th 2006 was my birthday
21 and I celebrated in the usual way at home with my family. We celebrated my birthday at home.
22 We decided to go out for cake and went to the Irvine Spectrum. We parked in the large parking
23 structure next to the 405 freeway. We arrived about 9:00 PM and left about 10:30 PM. We ate
24 at Red Robin. We returned and I parked my car in the driveway and occupied myself painting in
25 my garage. My daughter left at midnight and I said goodbye to her in the driveway. I closed the
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1 garage and went in the house. My car was locked, on the uphill side space, and parked in the
2 driveway overnight. We heard nothing during the night except at 4:41 AM we received a
3 telephone call from our daughters whose airplane had landed safely. We went back to sleep and
4 awoke at 6:30 AM as usual. That morning, I was in my car about 9:00 AM and I handed my
5 jacket, which I had left in the car overnight, to my wife. I took Ridgeline to University, in Irvine
6 and then 405 Freeway to 55 North to 17th Street in Santa Ana and then to my office at 1913 E.
7 17th Street Suite 102. I arrived at the office around 9:15 AM. I parked in the back of my
8 building between an SUV and another type of car. I picked up some trash in the parking lot
9 threw it in the dumpster. I walked 100 feet to my office, entered through the back door, washed
10 my hands, and started seeing patients. It was Wednesday, one of my usual office days. I
11 completed my work at the office, said goodbye to my wife and left for the hospital to eat lunch at
12 about 2:00 PM. I thought my four minute trip to WMCSA from My Office at 1913 E. 17th St.
13 #202, June 28th was uneventful. From the time I left my office around 2 PM, I: walked to car;
14 unlocked car, put in my doctor bag in back seat, got in, started car and put down windows; called
15 the hospital 714-835-3555, talked to operator, transferred to dining room, no answer, (cell phone
16 said 2:02 PM); backed out of parking lot; drove down alley behind my building to Cherry Lane
17 (no problems); drove to stoplight Cherry Lane and 17th Street; (A mid-30s lady with long dark
18 hair in a red black and silver small Nissan van in the bank parking lot waited for me to pass; she
19 pulled into the left turn away behind a brownish gray SUV, to the left to me, in the left turn
20 Lane; no disputes or challenges, no eye contact with other drivers); waited at light on 17th Street,
21 began call to Tom Badin 714 339-9444 (cell phone said 2:04 PM) (a young boy, maybe 13 or
22 14, on a bicycle passed in the crosswalk); crossed 17th Street heading down Cabrillo (I was first
23 in the right hand lane; I began a call with Tom Badin; I crossed the intersection as a white late-
24 model Honda waits for me; there was no dispute or question of right-of-way, there was no
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1 challenge, no interaction with that driver; proceeded down Cabrillo there were two women in
2 blue scrubs walking on the left-hand side of the road.); traveled down Cabrillo, turned onto
3 Wellington, talked with Tom Badin; (finished conversation with Tom Badin before turning onto
4 Wellington; a red sedan is traveled toward me on the opposite direction on Cabrillo; I yielded the
5 right-of-way and then made my turn; a lady in a small sedan was at the corner of Wellington and
6 Cabrillo, waiting to turn left.); continued down Wellington
7
8 (There was no oncoming traffic, no disputes, and no challenges); waited at the stoplight of
9 Wellington and North Tustin Avenue (A dark skinned man in a light-colored car yielded the
10 right-of-way as I cross North Tustin Avenue.); crossed to the parking lot and stopped (No
11 disputes or challenges); rolled down window, used badge to open parking gate (No disputes or
12 challenges); pulled into parking lot, turned off car and got out
13
14 (No disputes or challenges); got progress notes from the trunk of my car (I had to flip the lever
15 on the left side at the base of the driver's seat. I did not feel or see anything different); walked
16 across lawn and down stairs to doctor's dining room; greeted Dr. Goonetilleke, cardiologist and
17 Dr. Lara Bhatnagar, obstetrician, collected my food and sat down to eat. After about 15 minutes,
18 the doctors left and several policemen entered. They asked if I was Michael Fitzgibbons and did
19 I drive a brown Camry with a specific license number. They asked if I had a weapon. I said no.
20 The officer asked me if they could look search me. I complied. They asked if I had been
21 involved in any disputes of altercations of the way to the hospital. I said no. They then asked to
22 look in my vehicle and as I had nothing to hide I said sure. That took about three minutes. We
23 went out the back door to the steps up to the parking lot and I opened the car for them. Their
24 police car was in the parking lot already and there were four or five policemen already there.
25 After I opened the car they asked me to move away from the vehicle. I asked if I could
26 telephone my attorney, as I was anticipating that this had been a false report. Things got weirder.
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1 One of the officers shouted out there is a weapon in the vehicle and the next thing I knew the cell
2 phone was knocked out my hand and my hands were being pulled behind my back I was
3 handcuffed, my cell phone was taken away and I was asked to lean against the vehicle. The
4 officer searching the vehicle said he found gloves and I don't know any more than that because
5 my head started swimming a little and at that point I started to understand what happened, that I
6 had been setup. Someone had broken into my vehicle and planted these objects in my car. I
7 don't even know which seat they found it under. I never saw the gun or gloves. The police
8 asked me to sit in their squad car and by now a crowd was starting to gather. Employees I knew
9 from the hospital were gawking at me wondering what was going on. "Dr. Fitzgibbons is in a
10 police car in the doctor is parking lot." My friends later told me that rumors circulated wildly,
11 that "I had been pursued on the freeway by police", and that "I was brandishing a gun from my
12 vehicle." Of course all that was untrue. What was true was that someone had planted in gun and
13 gloves in my car and that they or their confederates had called in a false police report. With that,
14 the loss of my civil rights followed quickly. I was not read my Miranda rights. Instead, I was
15 detained by the police for approximately two hours in the parking lot. They mentioned vaguely
16 that they were holding me for having a concealed weapon in my car which they told me was
17 loaded. I asked to stand up outside the police car and they approved. The police were just doing
18 their job. They treated me like any other suspect. At 5 PM they carted me off to jail. I was told
19 in jail that I was under arrest and I was again handcuffed and shackled, booked, strip searched,
20 put into a holding cell, and kept incommunicado for another hour and a half. I started to feel
21 nauseated and then thirsty, but there was nothing in the cell except for toilet, a sink, and a bench.
22 Finally they called me out for my mug shot, I had to wear a jailhouse shirt for the portrait. They
23 fingerprinted me using electronic scanner and then they took medical information from me about
24 my medical conditions. I was told I could make a phone call, a collect call to your favorite
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1 phone number. I was able to get through to my elderly parents who later called my wife my
2 sister and my friend Dr. Tom Badin. At 1915 hours I was finally released from the jail and my
3 wife and Dr. Badin were waiting for me shocked and surprised at the awful crime that had been
4 perpetrated upon me that day. I was then the victim of a car break-in, the planting of a loaded
5 gun in my car, and a false report of 'road rage', which could not have happened the way the
6 perpetrator described it. I protested my innocence of this incident to the Santa Ana police, who
7 arrested me. My car had scratch marks on the passenger side window, which were new since the
8 break-in of my car occurred and are evidence of the break-in. I want the crime against me to be
9 investigated. I am innocent of the crimes charged against me by the Santa Ana police. IHHI's
10 conspiracy to defame, frighten and intimidate me, and my family, and deprive me of my medical
11 license and ability to practice medicine was consummated. IHHI conspired to break into my car,
12 plant an illegal loaded firearm and black gloves in my car, and make a false police report
13 concerning an accident and that I was brandishing a pistol while wearing black gloves. I was
14 arrested in the hospital parking lot June 28, 2006. The events as described by two 911 callers
15 could not have happened, because I was talking on the telephone while driving and could not
16 have brandished a weapon, and held a telephone and driven at the same time. The accusations
17 were false, the 'witnesses' failed to show, because I was innocent. Later testimony of Mr. Larry
18 Anderson shed light on these events. As I was being handcuffed, Bruce Mogel watched the
19 events from a window in the 1301 North Tustin Ave. Building. As he stood watching, my arrest,
20 Mr. Anderson heard him say, "People don't know how powerful I am." But people did know
21 how powerful he was, that is why the majority shareholders of IHHI had tried to remove him.
22 That is why Mr. Anderson quit despite a lucrative position in a company he helped found. He
23 quit because he testified the IHHI board had turned a blind eye to Mogel's lies and mayhem.
24 Mogel had lied repeatedly about his background and in SEC filings. Further, he had
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1 loquaciously extolled to Mr. Anderson, a certain Mikey, a thug whom he knew, who had
2 reported mafia connections and contacts within the Santa Ana Police Department, who could
3 'fix' things. I wondered why the police arrived so promptly, why there were so many, why they
4 found the gun so quickly (10 seconds), and why they showed me a staged photograph of the
5 gloves on the floorboard of the driver's side of my car—staged to look like they had been
6 dropped carelessly there, and why they did nothing to investigate to obvious a setup crime. For a
7 while Mr. Anderson was intimidated or bewildered by Mogel, but he began to put two and two
8 together. Shortly after the crimes against me, Mr. Mogel asked Mr. Anderson to draft a contract
9 with 'FormLabs' for \$10,000 for web design. But Mr. Anderson knew they already had
10 someone doing web design. When investigated by Nick Schou, a reporter for the OC Weekly,
11 FormLabs turned out to be a front. According to Mr. Anderson, FormLabs never did any web
12 work for IHHI.
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15 27. IHHI Malice through Attempts to Deprive Me of My Hospital Privileges--

16 Mr. Brothman's Retaliatory Actions against Me Following My Arrest of June 28, 2006

17 Mr. Brothman knew that I was sitting quietly eating lunch when the police came to WMCSA to
18 question Dr. Fitzgibbons'. (Surveillance cameras). Dr. Goonetilleke and Dr. Bhatnagar had just
19 left. Mr. Brothman's surveillance cameras knew that I took police peacefully to my car. He
20 knew that I had recently been victorious over IHHI and I was pleased about the verdict. He
21 knew that I had recently expressed appreciation to the MEC about their support for my defense.
22 Mr. Brothman knew that there were no unusual reports about my behavior in the hospital. In
23 July, Mr. Brothman knew that the DA was going to drop the charges. Mr. Brothman never
24 called me to get my version of the story, as he did when Dr. Zona was seen putting guns in his
25 own car in the doctor's parking lot, the next day. Mr. Brothman allowed his employees to
26 'witness' the spectacle of my arrest—June 28--a large group gathered near the coffee trailer and
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1 gawked. Then Mr. Brothman claimed they expressed concern for their safety from me.
2 However, Brothman's motivation for retaliation is revealed by him and his employees (CEO
3 Norris and an Operating Room employee at WMC) spreading the false rumor that 'everybody
4 knew Dr. Fitzgibbons kept a gun in his car after he was mugged five years ago.' An operating
5 room employee Susan Jones stated to Dr. Lyman Wilson in July of 2006 that "everyone knew
6 that Dr. Fitzgibbons carried a gun in his car after he was mugged five years ago." (I was mugged
7 in 1990 in a park in Irvine) Susan Jones did not create this rumor by herself, but merely repeated
8 it. This rumor was propagated by Mr. Brothman to Dr. Brian Cross and others and repeated by
9 Mr. Douglas Norris to Dr. Kenneth Duckor, at Chapman Hospital, about the same time and
10 reported to me by Dr. John Luster. Later October 7, 2006, Mr. Jay Christensen, the Chapman
11 Medical Center Medical Staff attorney, gave a talk at Northridge Hospital Medical Center to the
12 Medical Executive Committee entitled New Perils and Protections for Peer Review. One of Mr.
13 Christensen's slides numbered 43 of a PowerPoint presentation stated, "Dr. Fitzgibbons sent an
14 email to numerous medical staff members and others (including health plans)" stating that IHHI
15 was heading for bankruptcy; that patient utilization was down due to physicians' non-support;
16 and that physicians would have supported the facility if Tenet had sold it to an entity composed
17 of local medical staff members. Mr. Christensen's false assertion that, "Dr. Fitzgibbons sent an
18 email to numerous medical staff members and others (including health plans)..." is harmful to
19 me as it misstates the facts. I did not send the email to 'health plans.' The only people who
20 falsely contended I sent my May 19, 2005 email **directly** to health plans were IHHI and its
21 supporters. This shows a false and defamatory characterization of my actions by an attorney
22 paid by IHHI. Mr. Brothman could have easily checked the gun rumor's falsity by calling me.
23 By spreading the rumor, Mr. Brothman aided and abetted the retaliatory criminal acts of planting
24 guns and drugs in my car and attempted to give credence to the criminal acts. Further, Mr.
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1 Brothman became aware of the concerns of Mr. Anderson about the criminal acts by Mr. Mogel,
2 but took no action to report the criminal acts or correct his false assertions. Mr. Brothman
3 proceeded with the attempt to retaliate against me after the gun planting and arrest of June 28,
4 2006, by seeking a suspension of privileges action by Medical Staff against me. Mr. Brothman
5 threatened Dr. Brian Cross that Brothman would summarily suspend Dr. Fitzgibbons. Dr. Cross
6 finally agreed to refer me to the Physician Well-being Committee, despite believing there was no
7 evidence of a lack of well-being on my part. Dr. Cross himself stated that Brothman violated the
8 separation of 'church and state' by importuning Dr. Cross to take action against Dr. Fitzgibbons
9 though this was clearly the province of the Medical Staff and not unilaterally Mr. Brothman's.
10 Dr. Cross told me he was in San Francisco when I was arrested and his beeper was going 'crazy'
11 with calls from Brothman. According to Dr. Cross, when Dr. Cross initially refused to take
12 action, Mr. Brothman went to the vice Chief, Dr. Alimadadian. According to Dr. Ali, Dr. Ali
13 also refused to take action. He told me Brothman called him six times. Mr. Brothman did not
14 disclose to the MEC when he sought disciplinary action against me in July 2006, that he knew
15 the DA was dropping the charges against me. After the MEC learned the DA was dropping the
16 charges at that meeting from Dr. Thomas Badin, the MEC took 'no action.' Mr. Brothman
17 attempted to shame the MEC by threatening to tell his Governing Board that the MEC did
18 nothing about the matter. After the MEC vote to take no action against me, Mr. Brothman told
19 everyone he knew the DA was dropping the charges. Mr. Brothman withheld the material fact of
20 the DA's dropping the matter, while seeking an MEC suspension action against me. That
21 constituted malice. Soon after the MEC failed to take action, Brothman met Dr. Tom Badin in
22 the hospital parking lot. Incensed, Mr. Brothman thumped Dr. Badin's chest with his index
23 finger angrily stating, "Don't you ever do that again...embarrass me in front of the MEC."
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28 (Brothman was referring to a question Dr. Badin asked during the MEC about whether reporting

1 problem with equipment would constitute a violation of the Agreement between IHHI and the
2 Medical Staff for the Medical Staff to 'support' IHHI. Brothman took umbrage to the question)
3 Mr. Brothman's handling of my arrest was in stark contrast to his handling of another incident
4 involving guns in another physician's car in the Doctor's Parking lot at Western Medical Center,
5 several days after my arrest. The physician, Dr. Michael Zona, a psychiatrist who ran the
6 Geropsychiatric Unit in the hospital Mr. Brothman and was viewed favorably by Mr. Brothman,
7 was seen transferring two guns into the trunk of his car in the WMCSA parking lot, and was
8 reported to Mr. Brothman by a hospital employee, Riwa Cooper. Mr. Brothman called Dr. Zona
9 to ask about this matter and took no further action. He did not call the Chief of Staff; he did not
10 seek a formal investigation. More pointedly, Dr. Zona is an expert in workplace violence.
11 However, Mr. Brothman did not query Dr. Zona in any manner about me or how to protect the
12 employees, nor did he ask Dr. Zona to call me. Dr. Zona told me that. In my case, Mr.
13 Brothman did not call me. A call to me would have been reasonable. Mr. Brothman could have
14 assessed my demeanor and heard about the 'frame up' from me. Mr. Brothman could have heard
15 from me that I never had a gun in my car. Further, Mr. Brothman chose to spread the false
16 rumor to Dr. Cross that I kept a gun in my car. Mr. Brothman's stated reason for pursuing
17 disciplinary action against me was to protect his employees. He claimed employees came to him
18 concerned their safety from me. Yet, I was the first person to suggest a metal detector be
19 installed when the incident took place several years before after a patient relative ran amok in an
20 Anaheim hospital, killing several hospital employees. Mr. Brothman did nothing for several
21 months, before finally increasing security at the hospital entrance. There is no metal detector
22 even now. Mr. Brothman did not carry out the threat made to Dr. Cross to seek Governing
23 Board action. Mr. Brothman cleverly retaliated against me, under the cover of acting as a
24 fiduciary for his employees. His retaliatory behavior harmed my reputation. It became clear to
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1 physicians associated with the hospital and PHEAR doctors--pathologists, hospitalists,
2 emergency medicine doctors, anesthesiologists, and radiologists, and trauma surgeons, that Dr.
3 Fitzgibbons was *persona non grata* with administration. As a result my referrals suffered and I
4 lost income and status with my peers. On balance, Mr. Brothman's actions disclose animus not
5 reason. Mr. Brothman's actions display the tortured *sequela* of a plot gone wrong and an attempt
6 to feed on the carcass of IHHI's criminal conspiracy. This was malice. It didn't end there.
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8 28. Further IHHI Criminal Acts, Suborning the Commission of a Felony to Deprive
9 Me on My Medical License:

10 My automobile was impounded June 28, 2006, and I was required to pay four hundred dollars to
11 retrieve it July 3, 2006 from Tom's Towing, the police contracted impound lot on 3rd Street, in
12 Santa Ana. When I went to pick up the car with my wife, after I paid to get the key back, I went
13 to unlock the door. I saw a baggie of yellow pills on the passenger front seat. I did not know
14 what the pills were or how they got there. The drugs were witnessed by my wife, Junko
15 Miyamoto. When I confronted the lot attendant that there was a bag of drugs sitting on the front
16 car seat, the employee on duty that day (who was also babysitting his child), July 3, 2006, said he
17 saw nothing and that he would testify that he saw nothing. I called my criminal attorney, Gary
18 Pohlson, 949 859 7070 and he told me to bring the drugs to him. According to Mr. Larry
19 Anderson, Mr. Mogel bragged that 'Mikey' at FormLabs had contacts within the Santa Ana
20 Police Department who could fix things for him--Mr. Anderson said Mogel mentioned a watch-
21 commander or some high-ranking position. I immediately turned the drugs over to my criminal
22 attorney, Gary Pohlson. Clearly the IHHI conspiracy had reached a pinnacle of malice,
23 harassment, intimidation, humiliation, and fear for me, and my family. A forensic automobile
24 expert Forrest Folck examined my Camry and documented the car was broken into. The further
25 planting of a saleable quantity of illegal drugs, which we identified as Ecstasy was an extension
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1 of the IHHI conspiracy. The reason for the drugs was that mere brandishing of a weapon was
2 not a felony and therefore not sufficient to put my license in jeopardy with the Medical Board.
3 Having a saleable quantity of illegal drugs was a felony and would cause me to lose my medical
4 license. Mr. Anderson accused Mr. Mogel of executing and contracting for the crimes against
5 me through a mafia related group of individuals. The cost to stage this crime was significant and
6 borne by IHHI. Mr. Anderson believed the immediate perpetrators were FormLabs, a website
7 'front' organization. It is also obvious, that the planting of drugs in my car, which constituted a
8 second attempt at intimidation, was directed at me personally. For a time IHHI considered
9 floating the preposterous story that I set myself up for these crimes to embarrass IHHI. That is
10 false. Since I did not have enemies before the IHHI litigation against me, those who would
11 benefit from this crime would be connected with IHHI. Further, some of the individuals
12 associated with IHHI have a history of association with illegal activity or unscrupulous business
13 practices. Mr. Anderson's sworn deposition testimony now proves the perpetrator of these
14 criminal acts to be Bruce Mogel.

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18 29. Further Criminal Acts Against My Family:

19 On July 21, My 1996 Honda Accord's right rear tire was sabotaged and failed
20 catastrophically while my daughter was driving on the 22 Freeway, July 21st. The car went out
21 of control, hit the center divider, flipped over and landed on its roof. Miraculously, the three
22 occupants suffered soft tissue injuries, but no fractures. After concerns by my daughter about the
23 unusual nature of the accident, I contracted with Forensic auto inspector, Dr. Kenneth Zion,
24 telephone 1 562 424 3962, to thoroughly examine the automobile. Neither I, nor anyone in my
25 family or employ other than Dr. Zion had any contact with the car after it was wrecked. Dr. Zion
26 found a 3 cm clean 'slice' into the outer tread of the right rear tire. He said he did not think this
27 slice was caused by a road hazard. Dr. Zion has issued a report of his findings, he found no other
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1 defects in the car to explain the accident. The accident occurred at about 8 PM, the pavement
2 was dry, the weather was fine, and moderate traffic was flowing at the time at about 45mph. My
3 daughter was driving in the number one lane, closest to the center divider. She was not
4 distracted, was not using a cell phone, was not smoking, and was not drinking, or using drugs,
5 prior to the accident. Photos of the vehicle indicate that the right rear tire failed catastrophically.
6 The tires were Michelin and less than six months old. A CHP report was taken of the accident.
7 My daughter's name is withheld. I believe the Honda was sabotaged while it was in my
8 driveway on July 21st or shortly before her trip of July 21, 2006. I believe this because when my
9 wife and I got into our 1998 Chevy Astro to drive to the scene of the accident, we noted that the
10 right front tire of that car was flat. Without a moment to lose, we jumped into our 1995 Saturn
11 and drove to the scene. I told my wife to change the tires on the Chevy Astro, which she did the
12 next day. She did not have the tire examined, because at the time we had no reason to believe
13 foul play was involved. Now we do. Two flat tires in different cars on the same day? We
14 believe both tires were sabotaged in another attempt to intimidate me after the article in the *OC*
15 *Weekly* of July 6, 2006 entitled, Whistleblower Blues, about my court victory and subsequent
16 arrest. I went to the CHP, Santa Ana Police, and Irvine Police no one would listen.

20 30. Summary: A Series of Malicious Events Leading to the Loss of My Family's
21 Peace.

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24 My family has lost its peace and peace of mind. For over 3 years, we have been victimized and
25 terrorized. I was maliciously sued by Integrated Health Care Holdings and our lives were turned
26 upside down. My wife, children and I were frightened that we would lose everything we had
27 worked for over twenty five years--over an e-mail that complained about the hospital's finances!
28 Integrated Health Care Holdings knew I had nothing to do with their failure to gain a rate

1 increase from Blue Cross-Well point; however they sought to cripple and punish me with
2 litigation. My children did not know whether they would be able to complete their education.
3 My wife thought we would have to sell our home. My legal bills mounted incredibly. Longtime
4 friends turned against me. Employees at the hospital scowled at me. I lapsed into a daily ritual
5 of talking about the lawsuit, defending myself, attempting to raise money, explaining my actions,
6 and being daily derided about carrying a gun, all at the same time trying to continue to earn my
7 living as a doctor. I tried to explain, "It was a private e-mail." The hospital was in default.
8 There was no bankruptcy plan for the hospital, like a disaster plan. Physicians called me a
9 troublemaker, complaining to me, "crooks yesterday, crooks today, crooks tomorrow, what's the
10 difference? You're complaining about things that don't matter." I was pressured to back down.
11 A large number of physicians were induced by the hospital to come to focus groups, where the
12 hospital denounced me and explained their position. "We want him to pay our damages," IHHI
13 officials said to the doctors. IHHI officials falsely publicly stated, "Dr. Fitzgibbons intended to
14 hurt the hospitals and he did." In holding these meetings, they did what I had accused them of
15 doing, squandering the hospital's resources, to disguise their own dealings. Many nursing staff
16 and physicians believed the line that 'Dr. Fitzgibbons intended to hurt the hospitals.' Nursing
17 staff turned a cold shoulder to me in many areas. Particularly in the intensive care unit, I had to
18 be very careful in my documentation to not make errors. I was constantly watched. I was
19 wrongfully accused of endangering patients on two occasions by the same administration nurse
20 educator Lisa Moores. I was spied upon. I sensed that I was being followed. That turned out to
21 be true. Hari Lal, IHHI General Counsel, told Mark Van Druff he had him followed. Mr. Lal
22 threatened to destroy Van Druff and Tom Curtis, and said he had \$1 million to do so. Then came
23 the lawsuit against me. Bruce Mogel told Mark Van Druff that IHHI had all my e-mails. Mr.
24 Mogel showed Van Druff my e-mails on his computer. My privacy was invaded. I feared my
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1 phone was tapped. I feared that my car was bugged. My activities in the hospital were
2 monitored. When police came to arrest me June 28th, they were led right to me. My office
3 suffered an unusual water leak in late November of 2005, and then again about six months later.
4 I wondered whether these were caused by a break-in or dirty tricks. Collections from my
5 practice faltered. I had to pay attorney's fees. I had to use the credit line on my house to pay
6 bills. My credit card bills increased. I lost weight. I couldn't sleep. I developed severe muscle
7 aches. I was irritable. I had no energy. I was less productive. I lost interest in work. I could
8 not see extra patients. I was boorish, talking only about the lawsuit. I was suspicious when I
9 was sent no pay cases from investors in IHHI. I saw a psychologist. Then paranoia turned to
10 reality. Though the Appellate court forced Integrated Health Care Holdings to drop their suit,
11 the architects of the litigation, Bruce Mogel, Dan Brothman never apologized or instructed their
12 employees that the suit was baseless. Dr. Meka, the new Chairman of the IHHI Board
13 apologized at the WMCSA Medical Staff meeting in November, 2006, for the damage IHHI had
14 done to me. This apology publicly fixed the blame on IHHI. This apology, while appreciated,
15 was self-serving. Dr. Meka has asked for my help to rescue the \$2 million investment he
16 personally has at stake. The apology did not rectify the damage done. My practice has suffered
17 irrevocably. Employees continue to scowl at me. Likewise, I cannot approach these people in
18 the way that I once would. My relationship with the employees has been forever tainted by the
19 actions of their employers and owning corporation. Their employers have created a hostile work
20 environment for me, where hostile, illegal, underhanded, and violent actions were tolerated and
21 encouraged--a culture of blame and sham, created to suppress and punish diversity of opinion
22 and thought. I became the victim of a criminal campaign of terror by IHHI. My car was broken-
23 into, false police reports claiming I brandished a pistol were made by two people calling 911 on
24 June 28, 2006. I was searched. My car was searched. A planted gun was found in my car. I

1 was arrested. More than that, I was publicly humiliated in the place and I had worked for over
2 25 years -- handcuffed in the parking lot like a criminal for all the employees and patients to see.
3 I was humiliated at the jail, treated as a common criminal, strip searched, mug photographed,
4 fingerprinted, my DNA taken, deprived of my belongings, deprived of my freedom, locked in a
5 cell. My money was taken from me, and I was released without a dime, in Santa Ana in the dark
6 of night. My reputation forever blighted by the record of my arrest. Drugs were planted in my
7 car. My cars' tires were slashed. My daughter and her two friends were nearly killed as a result
8 of these actions, when her slashed tire blew out on the Garden Grove Freeway and the car flipped
9 over several times at 7 PM, July 21, 2006. We were nearly prevented from going to my
10 daughter's aid, by the fact that my wife's cars tire had been flattened. My daughter is now afraid
11 to drive. We went to the police, but because of my arrest, they did nothing. They accused me of
12 trying to introduce evidence into my case. Now, every night when there is a noise in the house,
13 my wife and I worry there is someone breaking in. We worry that we are being watched, that
14 our phones are tapped, that cars on the freeway are following us, that our children will be
15 attacked. We cannot freely discuss where they attend school, for fear this information will be
16 disclosed to the wrong person. Every day, we must check our house and cars carefully to see
17 that there is nothing planted inside them, and that the cars and tires have not been tampered with.
18 I must furtively leave my house in Irvine and my Santa Ana office, ducking behind cars,
19 concerned that someone might be taking aim at me. We fear that the office will be attacked, that
20 it will be broken into or bugged. Concerned that someone may be waiting to intimidate or harm
21 me. It's happened before. Our peace of mind has been taken from us. IHHI will plead
22 innocence of these crimes against me. Failing that they will plead poverty. We are not children.
23 We do not accept a complex business network setup to siphon profits and show no cash to pay
24 creditors is anything but a scheme, modeled after Doctor's Community Health and National
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1 Century Financial, Mr. Mogel's former employers. Like at Doctor's Community Health and
2 NCFE, litigation is necessary against enemies and victims of the schemes. The lie must be
3 perpetuated by violence. Such schemes, when discovered, require a culture of retaliation for the
4 scheme to continue. The illegal events are undeniable, along with the baseless litigation, and the
5 corporate culture that encouraged these events. Mogel, and Chaudhuri are clever people and
6 their backgrounds follow them. IHHI has systemic problems, which they have attempted to
7 cover up. The attempts to silence opposition, retaliate against me, deprive shareholders and
8 others of their rights were part of their business plan. It was a cost of doing business. It's time
9 to take responsibility. It might be one thing if I were a banker or real estate agent. But I am a
10 physician. I care for people's lives. The attacks on me go beyond the Pale. When they
11 intentionally attempted to harm me, they interfered with my ability to care for my patients.
12 IHHI's actions did not just harm me, and my family; they interfered with the safety of patients
13 throughout the hospital. There is no question this 'series of unfortunate events' happened as a
14 direct result of IHHI's conspiracy against me. I pray for justice. I pray the hospital's system is
15 cleansed of this evil.

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

21 Executed at _____, California this _____ day of _____, 2005.

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24 _____
25 MICHAEL FITZGIBBONS, MD
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1 *** Original signature page will be provided to the Court prior to the hearing.

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