

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**Electronically
FILED**

by Superior Court of California
County of Ventura

02/01/2022

Brenda L. McCormick
Executive Officer and Clerk

Cristal Alvarez
Cristal Alvarez
Deputy Clerk

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

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

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Lena Shiblak

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Ventura- Hall of Justice
800 South Victoria Avenue
Ventura, California 93009

CASE NUMBER: (Número del Caso):
56-2022-00562866-CU-FR-VTA

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

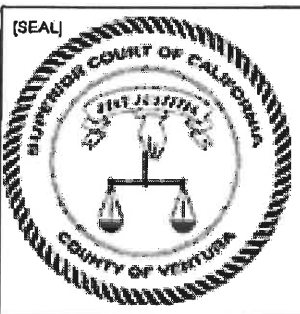
Karen Barth Menzies, GIBBS LAW GROUP LLP, 505 14th Street, Suite 1110, Oakland, CA 94612 Tel: (510) 260-9700

DATE: 02/01/2022
(Fecha)

Brenda L. McCormick Clerk, by
(Secretario)

Cristal Alvarez, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Karen Barth Menzies (CA SBN 180234)
GIBBS LAW GROUP LLP
505 14th Street, Suite 1110, Oakland California 94612
TELEPHONE NO.: (510) 350-9700 FAX NO. (Optional): (510) 350-9701
ATTORNEY FOR (Name): Plaintiff, LENA SHIBLAK

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by Superior Court of California
County of Ventura
02/01/2022
Brenda L. McCormick
Executive Officer and Clerk
Cristal Alvarez
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA
STREET ADDRESS: 800 South Victoria Avenue
MAILING ADDRESS: same
CITY AND ZIP CODE: Ventura, California 93009
BRANCH NAME: Ventura- Hall of Justice

CASE NAME:
LENA SHIBLAK v. ALLEN COHEN, et al.,

CIVIL CASE COVER SHEET
[X] Unlimited (Amount demanded exceeds \$25,000)
[] Limited (Amount demanded is \$25,000)

Complex Case Designation
[] Counter [] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 56-2022-00562866-CU-FR-VTA
JUDGE:
DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

- 1. Check one box below for the case type that best describes this case:
Auto Tort: [] Auto (22), [] Uninsured motorist (46), [] Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort: [] Asbestos (04), [] Product liability (24), [] Medical malpractice (45), [] Other PI/PD/WD (23), Non-PI/PD/WD (Other) Tort: [] Business tort/unfair business practice (07), [] Civil rights (08), [] Defamation (13), [X] Fraud (16), [] Intellectual property (19), [] Professional negligence (25), [] Other non-PI/PD/WD tort (35), Employment: [] Wrongful termination (36), [] Other employment (15)
Contract: [] Breach of contract/warranty (06), [] Rule 3.740 collections (09), [] Other collections (09), [] Insurance coverage (18), [] Other contract (37), Real Property: [] Eminent domain/Inverse condemnation (14), [] Wrongful eviction (33), [] Other real property (26), Unlawful Detainer: [] Commercial (31), [] Residential (32), [] Drugs (38), Judicial Review: [] Asset forfeiture (05), [] Petition re: arbitration award (11), [] Writ of mandate (02), [] Other judicial review (39)
Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403): [] Antitrust/Trade regulation (03), [] Construction defect (10), [] Mass tort (40), [] Securities litigation (28), [] Environmental/Toxic tort (30), [] Insurance coverage claims arising from the above listed provisionally complex case types (41), Enforcement of Judgment: [] Enforcement of judgment (20), Miscellaneous Civil Complaint: [] RICO (27), [] Other complaint (not specified above) (42), Miscellaneous Civil Petition: [] Partnership and corporate governance (21), [] Other petition (not specified above) (43)

- 2. This case [] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. [] Large number of separately represented parties d. [] Large number of witnesses
b. [] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. [] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. [] Substantial amount of documentary evidence f. [] Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. [X] monetary b. [] nonmonetary; declaratory or injunctive relief c. [X] punitive
4. Number of causes of action (specify): 4
5. This case [] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 1, 2022
Karen Barth Menzies
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
• File this cover sheet in addition to any cover sheet required by local court rule.
• If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
• Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
- Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease
 - Contract *(not unlawful detainer or wrongful eviction)*
 - Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
 - Negligent Breach of Contract/Warranty
 - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
- Confession of Judgment *(non-domestic relations)*
- Sister State Judgment
- Administrative Agency Award *(not unpaid taxes)*
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint *(not specified above)* (42)
- Declaratory Relief Only
- Injunctive Relief Only *(non-harassment)*
- Mechanics Lien
- Other Commercial Complaint Case *(non-tort/non-complex)*
- Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
- Other Civil Petition

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA**

800 South Victoria Avenue
Ventura , CA 93009
(805) 289-8525
WWW.VENTURA.COURTS.CA.GOV

NOTICE OF CASE ASSIGNMENT AND MANDATORY APPEARANCE

Case Number: 56-2022-00562866-CU-FR-VTA

Your case has been assigned for all purposes to the judicial officer indicated below.

A copy of this Notice of Case Assignment and Mandatory Appearance shall be served by the filing party on all named Defendants/Respondents with the Complaint or Petition, and with any Cross-Complaint or Complaint in Intervention that names a new party to the underlying action.

| ASSIGNED JUDICIAL OFFICER | COURT LOCATION | DEPT/ROOM |
|---------------------------|----------------|-----------------|
| Hon. Benjamin Coats | Ventura | 43 |
| HEARING | | |
| EVENT DATE | EVENT TIME | EVENT DEPT/ROOM |
| | | |

SCHEDULING INFORMATION

Judicial Scheduling Information

APPEARANCE AT THE ABOVE HEARING IS MANDATORY.

Each party must file a Case Management Statement no later than 15 calendar days prior to the hearing and serve it on all parties. If your Case Management Statement is untimely, it may NOT be considered by the court (CRC 3.725).

If proof of service and/or request for entry of default have not been filed: At the above hearing you are ordered to show cause why you should not be compelled to pay sanctions and/or why your case should not be dismissed (CCP 177.5, Local Rule 3.17).

Advance Jury Fee Requirement

At least one party demanding a jury trial on each side of a civil case must pay a non-refundable jury fee of \$150. The non-refundable jury fee must be paid timely pursuant to Code of Civil Procedure section 631.

Noticed Motions/Ex Parte Matters

To set an ex parte hearing, contact the judicial secretary in the assigned department. Contact the clerk's office to reserve a date for a law and motion matter.

Telephonic Appearance

Telephonic appearance at the Case Management Conference is permitted pursuant to CRC 3.670. In addition, see Local Rule 7.01 regarding notice to the teleconference provider. The court, through the teleconference provider, will contact all parties and counsel prior to the hearing.

Date: 02/25/2022

Clerk of the Court,
By: Paul V. Alvarez
Cristal Alvarez, Clerk

1 Karen Barth Menzies (CA SBN 180234)
2 GIBBS LAW GROUP LLP
3 505 14th Street, Suite 1110
4 Oakland, California 94612
5 Tel: (510) 350-9700
6 Fax: (510) 350-9701
7 kbm@classlawgroup.com

8 David J. Cutshaw (*Pro Hac Vice* Forthcoming)
9 COHEN & MALAD, LLP
10 One Indiana Square, Suite 1400
11 Indianapolis, Indiana 46204
12 Tel: (317) 636-6481
13 Fax: (317)636-2593
14 dcutshaw@cohenandmalad.com

15 Barry Rooth (*Pro Hac Vice* Forthcoming)
16 THEODOROS & ROTH, P.C.
17 8750 Broadway #A
18 Merrillville, Indiana 46410
19 Tel: (219) 733-8633
20 Fax: (219) 755-4368
21 barry@trinjurylaw.com

22 *Attorneys for Plaintiff*

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

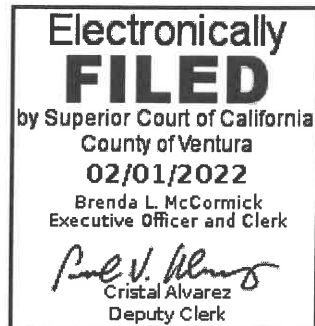
26 LENA SHIBLAK

27 Plaintiff,

28 v.

29 ALEN COHEN, M.D.;
30 MATT HERSHCOVITCH, M.D.
31 C/V ENT SURGICAL GROUP,
32 SOUTHERN CALIFORNIA SINUS
33 INSTITUTE; and WEST HILLS
34 SURGICAL CENTER, LTD.; and DOES 1 to 50

35 Defendants.



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

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

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

3 **Nature of Action**

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

10 **Parties**

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

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

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

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

מסמך זה נכונת ונחתם על ידי המעורבים בו ביום 11.10.15

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

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

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

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

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

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

6 **Count I: Medical Battery Against**
7 **Defendants Cohen, Hershcovitch, C/V ENT and SCSi**

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

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

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

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

21 **Count II: Fraud against Defendants**
22 **Cohen, Hershcovitch, C/V ENT and SCSi**

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

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

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

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

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

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

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

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

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

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

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

23 **CountIV: Negligent Supervision and Credentialing**
24 **Against Defendant West Hills**

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

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

הוראה פרטית הנתונה היא בענין זה בלבד ואיננה מהווה תחליט משפטי או תחליט דיוורני

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

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

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

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

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

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

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

25 WHEREFORE, Plaintiff prays for judgment against the Defendants in an amount which
26 will justly compensate her for her injuries and damages, for the costs of this action, and for all
27 other relief just and proper in the premises.
28

1 Dated: February 1, 2022

GIBBS LAW GROUP LLP

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4 By: 
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19 *Attorneys for Plaintiff*

או"ח. 10.11.17 17:23

EXHIBIT A

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

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CIV ENT Surgical Group
Southern California Sinus Institute
7345 Medical Center Dr., Ste. 510
West Hills, CA 91307 | | | |
| PS Form 3800, April 2015 | | SEE REVERSE FOR INSTRUCTIONS | |

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

October 13, 2021

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

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

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

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

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

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

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

מסמך זה נשלח באמצעות מערכת הדוא"ר האלקטרונית של בית דין תל אביב-יפו. אם אתם מקבלים מסמך זה בטעות, נא ליידוע את בית הדין בהודעה בכתב או בדוא"ר אלקטרוני.

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

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

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

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

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

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

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

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

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

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

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

The Gibbs Law Group, LLP

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Oakland, CA 94612

Cohen & Malad, LLP

/s/ David J. Cutshaw
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Theodoros & Rooth, P.C.

/s/ Barry Rooth
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10/10/2018 10:10:10 AM