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6
7 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 **LEANNA SMITH, individual and as the**)
10 **mother of CR, a minor,**)
11 Plaintiffs,)

12 vs.)

13 **BARROW NEUROLOGICAL INSTITUTE**)
14 **OF ST. JOSEPH'S HOSPITAL AND**)
15 **MEDICAL CENTER owned and operated by**)
16 **CATHOLIC HEALTHCARE WEST, an**)
17 **Arizona corporation; BANNER HEALTH**)
18 **SYSTEM, a foreign nonprofit corporation**)
19 **doing business in Arizona as BANNER**)
20 **DESERT MEDICAL CENTER, STATE OF**)
21 **ARIZONA; ARIZONA DEPARTMENT OF**)
22 **ECONOMIC SECURITY, a body politic of**)
23 **the State of Arizona; CHILD PROTECTIVE**)
24 **SERVICES, is a division of the Department of**)
25 **Economic Security in State of Arizona;**)
26 **CHARLES ALFANO M.D. and SPOUSE**)
ALFANO, husband and wife; HAROLD)
REKATE and SPOUSE REKATE, husband)
and wife.; SCOTT ELTON M.D. and SPOUSE)
ELTON, husband and wife; LAURA)
PEDERSON and SPOUSE PEDERSON,)
husband and wife; TAMMY HAMILTON-)
MACALPINE and SPOUSE HAMILTON-)
MACALPINE, husband and wife; BONNIE)
BROWN and SPOUSE BROWN, husband)
and wife; MARYSOL RUIZ and SPOUSE)
RUIZ, husband and wife ; JANE DOES 1-10,)
JOHN DOES 1-10, XYZ CORPORATIONS)
AND/OR PARTNERSHIPS 1-30,)

Defendants.)

COMPLAINT

**(42 U.S.C. § 1983 and State Torts of
Negligence and Interference with Parental
Custody)**

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Plaintiff, **Leanna Smith**, individually and as the mother of CR, a minor,
, as and for their complaint against Defendants alleges as follows:

JURISDICTIONAL ALLEGATIONS

1. All of the acts, occurrences and events which comprise the subject matter of Plaintiff's
Complaint took place in Maricopa County, Arizona, and the Plaintiff was damaged in an amount
sufficient to invoke the jurisdiction of this Court.

2. Plaintiff Leanna Smith ("Smith") at all times mentioned herein resided in Maricopa
County, Arizona.

3. CR is a minor child of Leanna Smith and is a fictitious name to protect her identity.

4. Defendant **Catholic Healthcare West ("CHW")** is an Arizona Corporation owns and
operates **Barrow Neurological Institute of St. Joseph's Hospital and Medical Center in Phoenix,
Arizona ("Barrows")**. **St. Joseph's Hospital and Medical Center ("SJMC")** is also owned and
operated by **CHW**.

5. Defendant **Banner Health System ("BHS")** is a foreign non-profit corporation doing
business in Maricopa County, Arizona and doing business in Maricopa County, Arizona as **Banner
Desert Medical Center ("BDMC")**.

6. Defendant **State of Arizona** is a body politic of the United States of America.
Defendant **Child Protective Services (CPS)** is a part of Division of Children, Youth and Families
(DCYF) within the **Arizona State Department of Economic Security ("DES")**. **DES** is a body
politic of the State of Arizona.

1 7. Defendant **Charles Alfano** (“**Alfano**”) is licensed to practice medicine in the State of
2 Arizona and is employed as a Vice President of **SJMC**. **Alfano** caused events to occur in Maricopa
3 County Arizona out of which this complaint arose.

4 8. Defendant **Harold Rekate** (“**Rekate**”) is licensed to practice medicine in the State of
5 Arizona and is employed as Neurosurgeon by **Barrow**. **Rekate** caused events to occur in Maricopa
6 County Arizona out of which this complaint arose.

7 9. Defendant **Scott Elton** (“**Elton**”) is licensed to practice medicine in the State of
8 Arizona and is employed as a Neurosurgeon by **BDMC**. **Elton** caused events to occur in Maricopa
9 County Arizona out of which this complaint arose.

10 10. Defendants **Laura Pederson, Tammy Hamilton-MacAlpine, Bonnie Brown and**
11 **Marysol Ruiz** are all employees of **DES** and in the course and scope of their employment caused
12 events to occur in Maricopa County, Arizona out of which this complaint arose.

13 11. Each and every individual Defendant is being sued for their conduct and not because
14 of the position they hold. At all times mentioned herein, each individual Defendant was acting within
15 the course and scope of said agency and employment.

16 12. Upon information and belief the above individual defendants are married and the
17 names of their husbands and/or wives are unknown and therefore listed as Spouse. Upon information
18 and belief the alleged acts of the above individual Defendants were done for the benefit of the
19 marital community and therefore Plaintiff will amend the Complaint to include the names of any of
20 the spouses prior to trial of this matter.

21 13. Proper notice of claim has been given pursuant to all relevant statutory provisions.

22 14. The other fictitiously named Defendants are persons and/or corporations or
23 partnerships that may have caused the incident herein sued on, but whose true names are unknown at
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1 this time. Plaintiff will seek leave of the Court to substitute the true names of said parties prior to the
2 entry of Judgment herein.

3 15. Defendants **State of Arizona, DES, CPS, BHC, BDMC, SJMC, Barrows, CHW,**
4 **CITY OF PHOENIX and COUNTY OF MARICOPA** are responsible for the acts and/or
5 omissions of their agents and/or employees under doctrines of respondeat superior, agency, and joint
6 venture.
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8 16. **A JURY TRIAL IS REQUESTED.**

9 **FACTUAL ALLEGATIONS**

10 17. Plaintiff incorporates all the above paragraphs as though fully set forth herein.

11 18. From 10/5/06 to 11/30/06 CR was in the Phoenix Children's Hospital for
12 high blood pressure. The hospital and doctors were unable to determine the cause of
13 the high blood pressure and discharged her to go home.
14

15 19. On 11/2/06 her blood pressure again was high. The family physician, Dr.
16 Stewart Van Hoosear directed Smith to take CR to the nearest hospital because of his
17 concern she would have a stroke from the high blood pressure. Smith to CR to the
18 emergency room at BDMC, the nearest hospital.
19

20 20. CR's blood pressure would not go down and she was vomiting up what
21 she ate.
22

23 21. Dr. Gary Silber at Phoenix Children's Hospital was consulted with Dr.
24 Geetha Rao and Dr. Silber stated that in his opinion the problem was psychological
25 and that CR just needed to calm down. CR was provided intravenously provided
26

1 Loratab to relax her but she immediately went into anaphylactic shock from the
2 medication.

3
4 22. CR was immediately transferred to the pediatric ICU in the care of Dr.
5 Imad Haddard.

6 23. CR was having problems breathing and her heart rate was 150. Smith is a
7 respiratory therapist and was concerned that unless she was intubated, which would
8 ease her breathing, CR could have a stroke. Dr. Haddard refused to intubate CR and
9 had an argument with Smith over the need to intubate CR.
10

11 24. CR was placed in the ICU at around 12:15 p.m. By 5:45 p.m., upon
12 information and belief, because of the stress on her body from the cheyne stokes
13 breathing and high blood pressure and heart rate, CR had a stroke in the ICU. It was
14 witnessed by all those present in the ICU, including Smith.
15
16

17 25. CR went into a coma.

18 26. At about 6:15 p.m., Dr. Haddard intubated CR while she was in the coma.
19

20 27. At about 9:21 p.m., Dr. J. Cook, a neurologist, ordered that the medical
21 staff avoid any further central nervous system strokes.

22 28. Dr. Haddard took the position that CR did not have a stroke and that there
23 was nothing medically wrong with CR, her coma and medical condition was self
24 inflicted and psychological.
25
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1 29. On 11/7/06, CR experienced increased pressure in her spinal column. She
2 was then diagnosed with pseudo-tumor cerebra (in laymon's terms normal MRI but
3 experiencing spinal pressure).
4

5 30. On 11/14/06 CR came out of her coma but her face was hung down and
6 droopy. She went back into a coma on 11/22/06.
7

8 31. On 11/26/06, CR was transferred to Barrows and went under the care of
9 Dr. Harold Rekate, a neurosurgeon.

10 32. An MRI was performed on 11/27/06.

11 33. On 12/21/06 CR woke up from the Coma and CR was transferred to
12 Neurorehab at Barrows.
13

14 34. On 1/11/07, CR goes into repertory arrest after an EDG was performed by
15 Dr. Michael Finch at Barrows. CR was placed back into the pediatric ICU.
16

17 35. On 1/25/07, Dr. Rekate puts in a ventricular access device to measure
18 intracranial pressure.
19

20 36. CR was conscious and undergoing speech therapy, physical therapy and
21 seeing all to doctors set forth below at paragraph ____.

22 37. Cr was discharged on 2/27/07 and was undergoing rehab.

23 38. On 6/20/07, Dr. Kevin Chapman ordered an MRI of CR's brain, with or
24 without contrast. Smith obtained a copy by Disk of the MRI film itself. She could see
25
26

1 from her medical training damage to the brain caused by the stroke. However, Dr.
2 John Karis of Barrows in his report from viewing the film stated her brain was normal.

3
4 39. In October of 2007 CR was admitted to the hospital for pneumonia.

5 40. On 10/12/07 Smith discussed with each Doctor treating CR what could be
6 done for Cr. She was continually going into respiratory and cardiac arrest and was on
7 a breathing machine at night and had pneumonia and was in the hospital. Each doctor
8 stated they did not know what was wrong with her, it was a medical mystery. After
9 discussing the situation with Dr. Robert Rosenberg, the medical director of the
10 pediatric intensive care unit at Barrows, it was agreed that for this one hospitalization,
11 if she went into respiratory or cardiac arrest that no effort would be made to resuscitate
12 her. Dr. Rosenberg agreed and entered in her chart a DNR order.

13
14
15 41. On or about 10/25/07 Cr was discharged.

16
17 42. On 5/22/08 Dr. Rekate indicated he would not perform any surgical
18 intervention for CR.

19 43. On 6/11/08 Dr. Rekate decided to put in a lumbar peritoneal shunt.

20
21 44. On 7/9/08 CR is admitted to have a lumbar peritoneal shunt place in her
22 back.

23 45. On or about 7/14/08, Smith met with Dr. Alfano, a vice president of
24 SJMC and Barrows and Jacqueline Arigon, the Director of the Quality, Risk and
25 Regulatory Division at SJMC. In this meeting Smith brought her copy of the 6/20/07
26

1 MRI and showed her the MRI and Smith requested to know what they knew about
2 CR's medical condition. Smith informed them that she believed CR has a stroke as a
3 result of medical negligence at Barrows and that the stroke was being covered up.
4
5 Smith requested they come clean and provide medical care for CR.

6 46. Dr. Alfano ordered an additional MRI, diffusion weight with stroke
7 protocol, CT angiogram and EEG.
8

9 47. On 7/23/08 CR was diagnosed with a transverse sinus occlusion.

10 48. On 7/23/08 Dr. Rekate discharged CR from the hospital.

11 49. CR went to Scottsdale Osborn hospital because of continued headaches
12 and Scottsdale Osborn sent her back to Barrows.
13

14 50. On 7/28/08 Dr. Rekate discharged her again and sent her home by
15 ambulance. Dr. Rekate in writing stated he would no longer work on the case.
16

17 51. By 8/14/08 CR's brain was herniating.

18 52. On 8/18/08 Dr. Rekate agreed to work on the case and remove and replace
19 the shunt. On 8/20/08 Dr. Rekate takes the shunt out and started doing intracranial
20 monitoring.
21

22 53. On 8/22/08 Dr. Alfano and Dr. Rekate came together to CR's room.
23 Smith left and went to another room with Dr. Alfano while Dr. Rekate goes into CR's
24 room. Smith had requested to talk to Linda Hunt, the head of Barrows and asked Dr.
25 Alfano where she was. He stated that she sent him. Smith stated she was upset
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1 because the hospital sent CR home by ambulance on 7/28/08 and her brain herniated.
2 Smith was angry because Barrows abandoned care for CR, an ACCCHS patient and
3 did not provide her with a necessary neurosurgeon. Dr. Alfano took this personally
4 and told that this was about CR, but personal between them. He then told Smith, she
5 “would not like what we are going to do to you next.” Alfano then walked out.
6

7
8 54. Upon information and belief, on 8/22/08 Dr. Alfano or somebody at his
9 direction, contacted CPS and submitted a complaint requesting them to investigate
10 Smith.

11
12 55. After the meeting with Dr. Alfano, Smith went in and met with Dr. Rekate.
13 They had a discussion about CR’s pressure in her brain increasing (Dr. Rekate denied
14 that) and Dr. Rekate said he wanted to remove the intracranial pressure monitor.
15 Smith asked him why he wanted to remove the monitor when her pressure was
16 increasing. He immediately raised in hand in the air and said you are impossible to
17 work with. Smith said why am I impossible to work with, I just wanted you to answer
18 my question and Dr. Rekate said I cannot work with you anymore and he went out and
19 signed off on the chart.
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22 56. Dr. Rekate latter stated to CPS that Smith refused to let him remove the
23 monitor which exposed CR to infection. This was not true at all.
24

25 57. The monitor was removed and CR was transferred to BDMC on 8/22/08.
26

1 58. On 8/22/08 Dr. Ellton came in and said CR's respiratory arrest was the
2 result of Chari I Malformation (brain stem compression).

3
4 59. At this point Smith feels the doctors are explaining what is going on and
5 CR has a new neurologist looking at the matter fresh.

6 60. On 8/25/08 Dr. Ellton came in and stated CR's condition was not
7 medically based but was all psychological.

8
9 61. CR had a ventricular peritoneal shunt implanted in her brain on 9/2/08.
10 Dr. Ellton inserted the shunt because of increased pressure in CR's brain.

11 62. CR was placed in Arizona CPS custody on 9/3/08 from BDMC.

12 63. On or about 10/3/08, Smith had a one (1) hour supervised visit with her
13 daughter with CPS Investigator Laura Pederson. CR stated that when she goes to the
14 school nurse, the nurse gets upset and tells CR not to bother her and to go back to class.
15 Laura asked if CR was getting Tylenol when she goes to the nurse and CR stated that
16 she is but that it wears off.
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19 64. Laura Pederson then asked Smith for a SVN (small volume nebulizer) for
20 CR to take her breathing treatments for her asthma. Breathing treatments were
21 ordered as needed by the Doctor in her discharge summary from BDMC on 9/4/08.
22 Smith explain to Laura that CPS can order a new breathing machine because she does
23 not want to get in trouble for giving CR anything since they are trying to say Smith
24 has "Munchausen by Proxy." Laura stated she would talk to the insurance company.
25
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1 65. CR was never given a SVN machine to treat her asthma in Arizona CPS
2 custody even though it was ordered in the discharge summary from BDMC on 9/4/08
3 when CR was in CPS custody and control.
4

5 66. On 10/18/08 during Smith's one (1) hour supervised visitation (by Laura)
6 CR, CR was crying to Smith as Laura spoke with the Com-Trans driver. CR told
7 Smith that her head was hurting. She stated that she was having headaches again and
8 that Marysol Ruiz, her foster mother would not take her to the doctor. CR told Smith
9 that she has not seen any of her doctors that she was seeing before being taken into
10 CPS custody.
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13 67. Laura walked up to them and asked "Why are you crying?" CR said
14 because her head is hurting. Laura said we could go inside and have CR lay down
15 during the 1 hour supervised visitation. Laura stated that CR was not on any
16 medication except prescription Tylenol.
17

18 68. CR and Smith asked Laura why CR has not seen the Gastroenterologist,
19 Pulmonologist, and Neurologist she was seeing before being taken into CPS custody.
20 Laura stated because she does not have any orders for CR to see them.
21

22 69. On 10/25/08 during the 1 hour supervised visitation, Laura requested and
23 made Smith sign a piece of paper stating the "Visitation Guidelines." Laura states that
24 CR was very upset after the last visitation with Smith on 10/18/08. Laura stated that
25 the foster mother Marysol Ruiz has never seen CR like that. Smith explain to Laura
26

1 the reason CR was upset is because she was in pain and her head hurts and no one will
2 take her to see the doctor. Laura told Smith that there will be no more discussion with
3 CR at the 1 hour supervised visitation about her medical condition or the 1 hour
4 supervised visitation will be stopped immediately.
5

6 70. On 12/20/08, CR came to the 1 hour supervised visitation with CPS
7 caseworker Tammy Hamilton-MacAlpine crying and stated that her head hurts. her
8 neck is stiff and her spine hurts. CR stated when she goes over speed bumps that her
9 head hurts even more. CR was crying and Tammy Hamilton-MacAlpine states that
10 she will take CR to Urgent Care or have Marysol Ruiz, the foster mother take CR to
11 Urgent Care. Smith and CR had only a 1/2 hour visit and Tammy stated she would
12 have CPS contact Smith with CR's condition.
13
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15 71. On 12/23/08, Smith received a voicemail from Tammy Hamilton-
16 MacAlpine stating that CR did not need to go to Urgent Care; that her headache went
17 away with some Tylenol. She completely ignored the other symptoms CR complained
18 about with the headache.
19
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21 72. On 3/23/09, at 2:30 pm, Smith received a call from Tammy Hamilton-
22 MacAlpine where she stated that everything is fine with CR. Tammy told Smith that
23 there was nothing wrong with the shunt.
24

25 73. CR stated she went to the bathroom at school on 3/23/09 and then
26 returned to class and asked the teacher to go to the bathroom again. CR was at Luke

1 Elementary School and was taken to the nurse's office. The Nurse took action and CR
2 was taken to Dr. Elton's office and he adjusted CR's V-P Shunt and took CT Scans.

3
4 74. On 3/24/09, CR was admitted to Banner Desert Medical Center for an
5 infected ventricular peritoneal shunt. On 3/25/09 CR had surgery to remove the
6 ventricular peritoneal shunt because it was infected and an external ventricular shunt
7 was put in its place. Cultures come back that CR had Enterobacter Cloacae Bacterial
8 Meningitis. CR's short term memory loss and long term memory loss are worse since
9 the bacterial meningitis.
10

11
12 75. On July 14, 2009, CR was taken to Happy Kids Pediatrics to see her
13 Primary Care Physician with Tammy Hamilton-Mac Alpine CPS caseworker and
14 Smith present. The doctor ordered Speech Therapy, Occupational Therapy and
15 Physical Therapy evaluations for CR. The CPS caseworker Tammy Hamilton-
16 MacAlpine told Dr. Pyburn that she feels CR does not need these evaluations and that
17 again I am trying to get CR medical treatments that are not necessary.
18

19
20 76. Speech therapy was ordered in the Discharge Summary from BDMC on
21 4/29/09. The foster mother at the time Marysol Ruiz was hand delivered a prescription
22 for Speech Therapy that she was supposed to take to CR's Primary Care Physician
23 within 10 days of discharge. Marysol never took CR to the Doctor. To this day CR
24 has not had any speech therapy.
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1 77. Dr. Pyburn stated that CPS does not feel CR needs Physical Therapy,
2 Occupational Therapy and Speech Therapy evaluations. Tammy Hamilton-MacAlpine
3 is not a physician and has no authority to decide what therapy CR needs. Smith
4 explained to Dr. Pyburn that Tammy is trying to say that Smith is the one asking for
5 therapies that have not been ordered when Tammy Hamilton-MacAlpine was sitting
6 there when the doctor ordered them. Smith explained to Dr. Pyburn that Tammy
7 Hamilton-MacAlpine and CPS are the ones in medical negligence and Dr. Pyburn
8 stated "your right."
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11 78. When CR was taken into CPS custody on 9/3/08, she was seeing the
12 following doctors:
13

- 14 Dr. Maria Marteniz (Pulmonologist)
- 15 Dr. Elle Firzli (Nephrology)
- 16 Dr. Michael Finch (Gastroenterology)
- 17 Dr. Jerald Underdahl (Ophthalmologist)
- 18 Dr. Thomas Wolfe (Neuro-Ophthalmologist)
- 19 Dr. Lourdas Guerrero-Tiro (Cardiologist)
- 20 Dr. Christina Kwasnica (Pediatric & Traumatic Brain Rehabilitation)
- 21 Dr. Jesse D. Cohen (Pediatric Hematology)
- 22 Dr. Salaheddine Tomeh (Vascular Surgeon)
- 23 Dr. Kevin Chapman (Neurologist)
- 24 Dr. Mario Islas (Primary Care Physician)
- 25 Dr. Scott Elton (Neurosurgeon)
- 26 Sunset Physical Therapy- Glenn Brooks 480-755-1505-Chaunell was in physical
therapy once a week to work on strengthening upper and lower quadrant (body)
weakness.
- Speech Therapy- Nicole Thomson 602-406-3230- CR was in speech therapy once a
week to work on short term memory loss, long term memory loss and higher executive
skills.

 This list was given to CPS investigator Laura Pederson on 10/25/08.

1 79. CR was taken off of all medication prescribed for her while at BDMC
2 except Provigil 200mg p.o. daily, Prevacid 30mg p.o. b.i.d., Xopenex 1.25mg by
3 nebulizer every 4 hours p.r.n wheezing, Tylenol 650mg every 4 hours p.r.n. pain,
4 Motrin 600mg p.o. every 6 hours p.r.n., nystatin cream applied to affected area q.i.d.
5 times 7 days, bacitracin to be applied to the incision area and methodone 10mg p.o.
6 b.i.d. will be weaned to 10% every other day. CR had only 3 pills of Methodone and
7 Tylenol for her headaches. CR was not taken to any of the above doctors for
8 appointments that were scheduled for her prior to CPS custody.
9
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11 80. On CR's Discharge Summary on 9/3/08, it states CR is on Prevacid 30 mg
12 bid, Provigil 200 mg daily, Xopenex 1.25mg by Nebulizer every 4 hours p.r.n.
13 wheezing---the breathing treatments were never given to CR because CPS investigator
14 Laura Pederson on 10/18/08 asked Smith for a nebulizer and CR is not receiving
15 Prevacid, Provigil or Breathing Treatments, only Tylenol and Motrin.
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18 81. CR was supposed to follow up with Dr. Elton (Neurosurgeon) in 2 weeks
19 but CR states she never saw Dr. Elton for 2 months. After discharge on 4/29/09 CR
20 was to resume Speech Therapy and the foster mother was given a prescription for
21 Speech Therapy. CPS still has not gotten CR to Speech Therapy. CR states the foster
22 mother maybe took CR to the see Dr. Gear once. CR was complaining of headaches
23 and CPS would not allow Smith to talk to her about her medical condition and the CPS
24 -foster mother would not take CR to the doctor for her headache.
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1 medical treatment and rehabilitation and extraordinary mental duress as a result of the actions of
2 Defendants.

3 100. Defendant State of Arizona's agents and/or employees actions have proximately
4 caused Plaintiff damages as specified above in an amount to be proven at trial.

5 WHEREFORE, Plaintiff prays that judgment be entered in his favor and against
6 Defendants and each of them as follows:
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- 8 1. For compensatory and consequential damages;
- 9 2. For attorneys' fees incurred in this matter;
- 10 3. For punitive damages; and
- 11 4. To grant such other and further relief as the Court feels is just under the circumstances.

12 DATED this _____ day of March 2010.

13 KEITH M. KNOWLTON, L.L.C.

14 By: _____

15 Keith M. Knowlton
16 Attorney for Plaintiff