



JPP 3/26/03 8:45
3:03-CV-00588 ESCALANTE V. MCHUGH
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FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

1 CAROL C. LAM
United States Attorney
2 STEVEN J. POLIAKOFF
Assistant U.S. Attorney
3 California State Bar No. 188231
Federal Office Building
4 880 Front Street, Room 6293
San Diego, California 92101-8893
5 Telephone: (619) 557- 7117

6 Attorneys for the
Federal Defendant

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

'03 CV 0588K NLS

11 EVELYN ESCALANTE,

12 Plaintiff,

13 v.

14 JOHN PAUL McHUGH, M.D., AND FRAN
BUTLER-COHEN,

15 Defendants.
16

Civil No.

NOTICE OF REMOVAL OF A
CIVIL ACTION

Superior Court
County of San Diego
Case No. GIC805680

17 The United States of America, on behalf of the Family Health Centers, by its attorneys,
18 Carol C. Lam, United States Attorney, and Steven J. Poliakoff, Assistant U.S. Attorney, hereby
19 respectfully notices the removal of the above-captioned civil action from the (Superior Court of
20 the State of California, San Diego). Removal is noticed on the following grounds:

21 1. The John Paul McHugh, M.D., and Fran Butler-Cohen, employees of the Family
22 Health Centers, have been named as defendants in the above-captioned case now pending as
23 Case No. GIC805680 in the Superior Court of California, County of San Diego and no trial has
24 yet been had therein.

25 2. Plaintiff's claims against John Paul McHugh, M.D., and Fran Butler-Cohen allege
26 medical malpractice.

27 ///

28 ///

1 3. The above captioned action may be removed pursuant to 28 U.S.C. Section 1442 (a) (1)
2 because John Paul McHugh, M.D., and Fran Butler-Cohen are employees of Family Health Centers and
3 are covered by the Federally Supported Health Centers Assistance Act, codified as 42U.S.C. §§ 233(g)-
4 (n) and are the responsibility of the Department of Health and Human Services, an agency of the United
5 States of America ("United States"). The Department of Health and Human Services will raise defenses
6 to Plaintiff's complaint including, but not limited to : (i) sovereign immunity and (ii) the Health and
7 Human Services is not a proper defendant in this action.

8 4. The above captioned action may also be removed under 28 U.S.C. Sections 1441 (a) and (b)
9 and 1346 (b)(1) because the district courts of the United States have original jurisdiction over cases
10 which arise under the Constitution, treaties, or laws of the United States. Plaintiff's remedy, if any, for
11 her tort claims is exclusively found in 28 U.S.C. Sections 2671 et seq. and 1346 (b), which in pertinent
12 part states

13 Subject to the provisions of chapter 171 of this title [28 U.S.C. Section 2671 et seq.] the
14 district courts, together with the United States District Court for the District of the Canal
15 Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of
civil actions on claims against the United States, for money damages, accruing on or after
January 1, 1945, for injury or loss of property... [emphasis added]

16 28 U.S.C. 1346 (b).

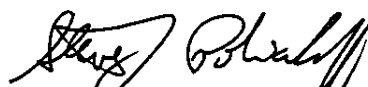
17 5. As of this time, no process or pleadings relative to the above captioned civil action have been
18 served on the Attorney General or on the United States Attorney.

19 6. A copy of the action filed in Superior Court Number GIC805680, is filed herewith, pursuant
20 to 28 U.S.C. Section 1446 (a), as amended by the Judicial Improvements and Access to Justice Act of
21 1988 (Pub. Law 100-702), Section 1016.

22 WHEREFORE, this action now pending in the Superior Court of California, County of San
23 Diego, hereby properly is removed therefrom to this Court.

24
25 DATED: 3/25/03

26 CAROL C. LAM
United States Attorney

27 

28 STEVEN J. POLIAKOFF
Assistant U.S. Attorney
Attorneys for Federal Defendant

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): EVELYN ESCALANTE / PROPER 162 ZENITH ST. CHULA VISTA, CA. 91911 TELEPHONE NO: (619) 426-4291 FAX NO.: ATTORNEY FOR (Name):		FOR COURT USE ONLY FEB 19 AM 9:37 SUPERIOR COURT SAN DIEGO COUNTY, CA
INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		
CASE NAME: MEDICAL MALPRACTICE		
CIVIL CASE COVER SHEET <input type="checkbox"/> Limited <input checked="" type="checkbox"/> Unlimited	Complex Case Designation <input checked="" type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	CASE NUMBER: GIC 805680 ASSIGNED JUDGE:

Please complete all five (5) items below.

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input checked="" type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (e.g., discrimination, false arrest) (08) <input type="checkbox"/> Defamation (e.g., slander, libel) (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (e.g., legal malpractice) (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36)	<input type="checkbox"/> Other employment (15) Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (e.g., money owed, open book accounts) (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (e.g., quiet title) (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11)	<input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Claims involving mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Toxic tort/Environmental (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (e.g., sister state, foreign, out-of-county abstracts) (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 1800 of the California Rules of Court. If case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination and related actions pending in one or more courts in other counties, states or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial post-disposition judicial disposition


3. Type of remedies sought (check all that apply):
 a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): **10 causes of action. Medical malpractice**

5. This case is is not a class action suit.

Date: **2-18-03**

EVELYN ESCALANTE
(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, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 982.2.)
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 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 complex case, this cover sheet shall be used for statistical purposes only.

EVELYN ESCALANTE/PRO PER
162 ZENITH STREET
CHULA VISTA CA 91911
619-426-4291

Ref. No. : 0746022-02 [33]
Atty. File No. : GIC805680

Attorney for : PLAINTIFF

SUPERIOR COURT OF CA. COUNTY OF SAN DIEGO
SAN DIEGO JUDICIAL DISTRICT

PLAINTIFF : EVELYN ESCALANTE
DEFENDANT : JOHN PAUL McHUGH, M.D.;FRAN BUTLER-COHEN

Case No.: GIC805680
PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to this action, and I served copies of the:
SUMMONS; COMPLAINT; NOTICE OF CASE ASSIGNMENT; NOTICE TO LITIGANTS;
STIPULATION/ORDER FOR COURT-ORDERED MEDIATION

2. a. Party served : FRAN BUTLER-COHEN
b. Person served : Party in item 2a
c. Place of Service : 823 GATEWAY CENTER WAY
SAN DIEGO, CA 92113 (Business)

3. I served the party named in item 2
a. by personally delivering the copies
(1) on : February 26, 2003
(2) at: 01:30 PM

4. The "Notice to the person served" (on the summons) was completed as follows:
a. as an individual defendant.

5. Person serving:
RODRIGO LORA
KNOX ATTORNEY SERVICE, INC.
2250 Fourth Avenue
San Diego, California 92101
619-233-9700

a. Fee for service: \$.00
d. Registered California Process server
(2) Registration No.: 479
(3) County: San Diego

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

Date: February 26, 2003

Signature:

RODRIGO LORA

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: (Aviso a Acusado)

*JOHN PAUL McHUGH M.D., AND
FRAN BUTLER-COHEN.*

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

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)

EVELYN ESCALANTE

You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, 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 call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

- HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827
- JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792
- NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643
- JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92083-6634
- EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941
- RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200
- SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649

CASE NUMBER: (Número del Caso)

GIC 805680

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)

*EVELYN ESCALANTE / PROPER
162 ZENITH ST.*

BAR # *CHULA VISTA, CA., 91911*

DATE: FEB 18 2003

by *[Signature]* CLERK OF THE SUPERIOR COURT, Deputy

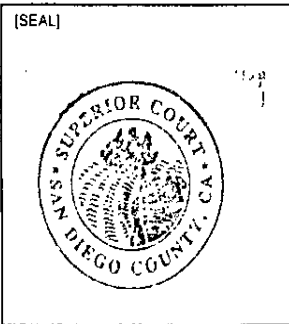
NOTICE TO THE PERSON SERVED: You are served

R. Portillo

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

- under:
- CCP 416.10 (corporation)
 - CCP 416.20 (defunct corporation)
 - CCP 416.40 (association or partnership)
 - other:
- CCP 416.60 (minor)
 - CCP 416.70 (conservatee)
 - CCP 416.90 (individual)

4. by personal delivery on (date):



PROOF OF SERVICE — SUMMONS
(Use separate proof of service for each person served)

1. I served the
- a. summons complaint amended summons amended complaint
 completed and blank Case Questionnaires Other (specify):
- b. on defendant (name):
- c. by serving defendant other (name and title or relationship to person served):
- d. by delivery at home at business
(1) date:
(2) time:
(3) address:
- e. by mailing
(1) date:
(2) place:

2. Manner of service (check proper box):

- a. **Personal service.** By personally delivering copies. (CCP 415.10)
- b. **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
- c. **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) **(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)**
- d. **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) **(Attach completed acknowledgment of receipt.)**
- e. **Certified or registered mail service.** By mailing to an address outside California (by first-class mail postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) **(Attach signed return receipt or other evidence of actual delivery to the person served.)**
- f. Other (specify code section):
 additional page is attached.

3. The "Notice to the Person Served" (on the summons) was completed as follows (CCP 412.30, 415.10, and 474):

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

4. At the time of service I was at least 18 years of age and not a party to this action.

5. Fee for service: \$

6. Person serving:

- a. California sheriff, marshal, or constable.
- b. Registered California process server.
- c. Employee or independent contractor of a registered California process server.
- d. Not a registered California process server.
- e. Exempt from registration under Bus. & Prof. Code 22350(b).

f. Name, address and telephone number and, if applicable, county of registration and number:

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

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)

EVELYN ESCALANTE/PRO PER
162 ZENITH STREET
CHULA VISTA CA 91911
619-426-4291

Ref. No. : 0746022-01 [33]
Atty. File No. : GIC805680

SUPERIOR COURT OF CA. COUNTY OF SAN DIEGO
SAN DIEGO JUDICIAL DISTRICT

PLAINTIFF : EVELYN ESCALANTE
DEFENDANT : JOHN PAUL McHUGH, M.D.;FRAN BUTLER-COHEN

Case No.: GIC805680
PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to this action, and I served copies of the: SUMMONS; COMPLAINT; NOTICE OF CASE ASSIGNMENT; NOTICE TO LITIGANTS; STIPULATION/ORDER FOR COURT-ORDERED MEDIATION
2.
 - a. Party served : JOHN PAUL McHUGH, M.D.
 - b. Person served : BECKY YBARRA, ASSISTANT CLINIC DIRECTOR (PERSON IN CHARGE AT BUSINESS)
 - c. Place of Service : 1809 NATIONAL AVENUE SAN DIEGO, CA 92113 (Business)
3. I served the party named in item 2
 - b. by leaving the copies with or in the presence of BECKY YBARRA, ASSISTANT CLINIC DIRECTOR , PERSON IN CHARGE AT BUSINESS
 - (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person served. I informed him or her of the general nature of the papers.
 - (3) on : February 26, 2003 (4) at: 01:00 PM
 - (5) A declaration of diligence is attached.
 - c. by mailing the copies to the person served, addressed as shown in item 2c, by first-class mail, postage prepaid,
 - (1) on : February 26, 2003 (2) from : San Diego
4. The "Notice to the person served" (on the summons) was completed as follows:
 - c. on behalf of: JOHN PAUL McHUGH, M.D. under [xx] CCP 415.20 (individual)
5. Person serving:

RODRIGO LORA KNOX ATTORNEY SERVICE, INC. 2250 Fourth Avenue San Diego, California 92101 619-233-9700	a. Fee for service: \$30.00 d. Registered California Process server (2) Registration No.: 479 (3) County: San Diego
--	--

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

Date: February 26, 2003

Signature: _____

RODRIGO LORA

EVELYN ESCALANTE/PRO PER
162 ZENITH STREET
CHULA VISTA CA 91911
619-426-4291

Ref. No. : 0746022-01 [33]
Atty. File No. : GIC805680

SUPERIOR COURT OF CA. COUNTY OF SAN DIEGO
SAN DIEGO JUDICIAL DISTRICT

PLAINTIFF : EVELYN ESCALANTE
DEFENDANT : JOHN PAUL McHUGH, M.D.;FRAN BUTLER-COHEN

Case No.: GIC805680
DECLARATION REGARDING
DILIGENCE

I received the within process on 02/18/03. After due and diligent effort I have been unable to effect personal service on the within named party.

Therefore, I effected substituted service upon

JOHN PAUL McHUGH, M.D.

by serving BECKY YBARRA, ASSISTANT CLINIC DIRECTOR (PERSON IN CHARGE AT BUSINESS)

who was over the age of 18, competent and informed of the nature of the legal documents. A copy of the documents listed on the attached Proof of Service was mailed to the above named party to be served by first-class mail, postage prepaid.

*Place of mailing : San Diego
Date of mailing : 02/26/03*

Address(es) where attempts were made:

1809 NATIONAL AVENUE, SAN DIEGO CA 92113 (Business)

Dates and times of attempts are as follows:

- 02/21/03 02:45P Attempted service at business; subject not in*
- 02/24/03 05:30P. Attempted service at business; subject not in*
- 02/25/03 09:10A Attempted service at business; subject not in*
- 02/26/03 01:00P Attempted service-effected substitute service*

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

Date: February 26, 2003

Signature:



RODRIGO LORA

INDEPENDENT CALENDAR CLERK
 330 W. Broadway
 San Diego, CA 92101

TO:
 EVELYN ESCALANTE (PP)

FILE COPY

<p>EVELYN ESCALANTE Plaintiff(s)</p> <p style="text-align: center;">vs.</p> <p>JOHN PAUL MCHUGH M D Defendant(s)</p>	<p>Case No.: GIC805680</p> <p>NOTICE OF CASE ASSIGNMENT</p> <p>Judge: E. MAC AMOS Department: 70 Phone: 619-685-6128 This case IS eligible to participate in a pilot mediation program.</p>
--	---

COMPLAINT FILED 02/18/03

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION 11, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SUPCT CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document. (Rule 5.6)

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.) (Rule 5.7)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service. (Rule 5.8)

CASE MANAGEMENT CONFERENCE: A Case Management Conference will be set within 150 days of filing the complaint.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN MEDIATION OR ARBITRATION PURSUANT TO CCP 1730 OR 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO MEDIATION UNDER THE MEDIATION PILOT PROGRAM, OR TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SUPCT CIV-357 OR 358 PRIOR TO THAT HEARING.

ALSO SEE THE ATTACHED NOTICE TO LITIGANTS.

CERTIFICATE OF SERVICE

I certify that: I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by personally handing it to the attorney or their personal representative at **SAN DIEGO** California.

DATED: 02/18/03

CLERK OF THE SUPERIOR COURT
 BY: C. REED, Deputy

2017 FEE MAINTAINED
FEB 10 AM 10:37
SUPERIOR COURT
SAN DIEGO COUNTY, CA
RP

1 EVELYN ESCALANTE /PROPER
2 162 ZENITH ST.
3 CHULA VISTA, CA. 91911

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO

11 EVELYN ESCALANTE) Case No. GIC 805680
12)
13 Plaintiff,) MEDICAL MALPRACTICE
14)
15 vs)
16 JOHN PAUL McHUGH, M. D., and)
17 FRAN BUTLER-COHEN.)
18 Defendants.)

18 FIRST CAUSE OF ACTION:

19 Complaint for Damages:

20 On April 12, 2001 a total abdominal hysterectomy was
21 performed on myself at Mercy Hospital of San Diego, by Dr.
22 John Paul McHugh. During surgery, Dr. McHugh negligently
23 'created' a "fistula" (a 5 mm opening between the posterior
24 wall of the bladder and the fornix of the vagina). The bla-
25 dder drains through the vagina via the "fistula", causing me
26 urinary incontinence.

1 SECOND CAUSE OF ACTION:

2 On or after June 12, 2001 I was hired by an employment
3 agency for a job at Sony Corporation at Rancho Bernardo (proof
4 available upon request). The first 8 hrs. at \$8 dls. per
5 hour, and 32 hrs. at \$12.75 per hour. I was not able to start
6 because the damage to my bladder was confirmed by then, and
7 further options of surgical remedy were going to be presented
8 to me for possible bladder repair.

9 THIRD CAUSE OF ACTION:

10 On 7-31-01 I had the first bladder repair at UCSD of Cal-
11 ifornia. (the opening of the bladder persisted...) I had
12 2 catheters inserted for 3 months upon released of the hospital.

13 FORTH CAUSE OF ACTION:

14 On 10-02-01 I had the second bladder repair: vesico-vagi-
15 nal fistula repair with a "martius flap" approach: (the remo-
16 val of scar tissue of the left labia of the vagina). The
17 surgery was very painful and left my vaginal area very uncom-
18 fortable to the touch, soared and unable to perform sexual
19 activity to-date, because of the removal of vital tissue of
20 the vagina). The opening of the bladder persisted.....

21 FIFTH CAUSE OF ACTION:

22 On 5-14-02 I had the third bladder repair: vesico-vagi-
23 nal fistula repair. (the opening of the bladder persisted...)

24 SIXTH CAUSE OF ACTION:

25 Another surgery is expected in two or three more months
26 after pelvic and bladder exams are final and completed.

1 SEVENTH CAUSE OF ACTION:

2 FRAN BUTLER-COHEN, The Chief Executive of Logan Heights
3 Family Health Center of San Diego, is fully responsible for
4 allowing Dr, John Paul McHugh, to remain working as a
5 gynecologist doctor in her premises, conscientiously informed,
6 and aware of his negligence in the treatment, case and diagnosis
7 of 4-12-01 hysterectomy procedure.

8 EIGHTH CAUSE OF ACTION:

9 I am very exhausted; I have had to undergo very painful
10 urethra exams, catheters in and out for testing, and infections
11 in the urinary tract, a must. The discomfort of trying to
12 empty the bladder and not been capable to do it in a usual and
13 normal way. I have to wear pads or diapers every single day
14 of my life. Doctors cannot guarantee any chance of cure. My
15 life is very miserable, the suffering and depression are very
16 difficult to tolerate.

17 NINETH CAUSE OF ACTION:

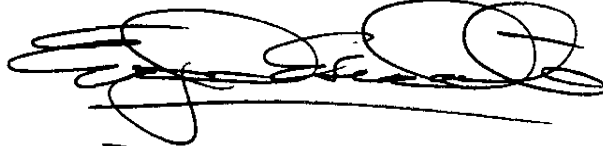
18 I strongly believe, to the best of my knowledge, that I
19 should be monetary compensated in excess of \$ 300,000.00 dlls.
20 The money won't resolve my physical condition, nor alleviate
21 the pain, and will not return what doctor McHugh took away
22 from me in a moment of distraction: The dignity of being a
23 real woman, and the enjoyment of life I deserve as a human
24 being; but will mitigate my pain and will compensate a bit,
25 part of my daily expenses and sufferings.

TENTH CAUSE OF ACTION:

This is an irreversible damage that could leave myself
PERMANENTLY INJURED FOR THE REST OF MY LIFE.

February 18, 2003

EVELYN ESCALANTE

A handwritten signature in black ink, appearing to read 'Evelyn Escalante', with a horizontal line drawn underneath it.

Proper.

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) EVELYN ESCALANTE 162 ZENITH ST. CHULA VISTA, CA. 91911 TELEPHONE NO (619) 426-4291 FAX NO ATTORNEY FOR (Name)	FOR COURT USE ONLY FILED TO 2:10:37 COURT CITY, CA
NAME OF COURT SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS 330 W. BROADWAY MAILING ADDRESS CITY AND ZIP CODE SAN DIEGO, CA. 92101-3827 BRANCH NAME	
PLAINTIFF/ PETITIONER: EVELYN ESCALANTE DEFENDANT/ RESPONDENT: JOHN PAUL MCHUGH, M.D. AND FRAN BUTLER-COHEN.	
ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS	CASE NUMBER GIC 805680

1. The application was filed on (date): 2-18-03 A previous order was issued on (date):
 2. The application was filed by (name): **EVELYN ESCALANTE**
 3. IT IS ORDERED that the application is **granted** in whole in part (see Cal. Rules of Court, rule 985).
 - a. **No payments.** Payment of all the fees and costs listed in California Rules of Court, rule 985(i), **is waived.**
 - b. **The applicant shall pay** all the fees and costs listed in California Rules of Court, rule 985(i), EXCEPT the following:

(1) <input type="checkbox"/> Filing papers.	(6) <input type="checkbox"/> Sheriff and marshal fees.
(2) <input type="checkbox"/> Certification and copying.	(7) <input type="checkbox"/> Reporter's fees* (valid for 60 days).
(3) <input type="checkbox"/> Issuing process and certification.	(8) <input type="checkbox"/> Telephone appearance (Gov. Code, § 68070.1(c)).
(4) <input type="checkbox"/> Transmittal of papers.	(9) <input type="checkbox"/> Other (specify code section):
(5) <input type="checkbox"/> Court-appointed interpreter (small claims only).	

* Reporter's fees are per diem pursuant to Code Civ Proc, §§ 269, 274c, and Gov. Code, §§ 69947, 69948, and 72195
 - c. **Method of payment.** The applicant shall pay all the fees and costs when charged, EXCEPT as follows:

(1) Pay (specify): _____ percent. (2) Pay: \$ _____ per month or more until the balance is paid.
 - d. The clerk of the court, county financial officer, or appropriate county officer is authorized to require the litigant to appear before and be examined by the court no sooner than four months from the date of this order, and not more than once in any four-month period. The applicant is ordered to appear in this court as follows for review of his or her financial status:

Date:	Time:	Dept.:	Div.:	Room:
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 - e. (must be completed if application is granted in part) Reasons for denial of a requested waiver (specify):
 - f. The clerk is directed to mail a copy of this order to the applicant's attorney or to the applicant if unrepresented.
 - g. **All unpaid fees and costs shall be deemed to be taxable costs if the applicant is entitled to costs and shall be a lien on any judgment recovered by the applicant and shall be paid directly to the clerk by the judgment debtor upon such recovery.**
4. IT IS ORDERED that the application is **denied** for the following reasons (specify):
 - a. The applicant shall pay any fees and costs due in this action within 10 days from the date of service of this order or any paper filed by the applicant with the clerk will be of no effect.
 - b. The clerk is directed to mail a copy of this order to all parties who have appeared in this action.
 5. IT IS ORDERED that a **hearing** be held.
 - a. The substantial evidentiary conflict to be resolved by the hearing is (specify):
 - b. The applicant should appear in this court at the following hearing to help resolve the conflict:

Date:	Time:	Dept.:	Div.:	Room:
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 - c. The address of the court is (specify):
 - d. The clerk is directed to mail a copy of this order to the applicant only.

NOTICE: If item 3d or item 5b is filled in and the applicant does not attend the hearing, the court may revoke or change the order or deny the application without considering information the applicant wants the court to consider.

WARNING: The applicant must immediately tell the court if he or she becomes able to pay court fees or costs during this action. The applicant may be ordered to appear in court and answer questions about his or her ability to pay fees or costs.

Date: 2-18-03

(Continued on reverse)

[Signature]
NOTARIAL SEAL

PLAINTIFF/PETITIONER (Name):	LAB ESCALANTE	CASE NUMBER:	
DEFENDANT/RESPONDENT (Name):	JOHN PAUL MCHUGH, M.D., AND FRAN BUTLER-COHEN.		

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the foregoing was mailed first class, postage prepaid, in a sealed envelope addressed as shown below, and that the mailing of the foregoing and execution of this certificate occurred at (place): _____, California, on (date): _____

STEPHEN THUNBERG
CLERK OF THE SUPERIOR COURT

by _____, Deputy



CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

STEPHEN THUNBERG
CLERK OF THE SUPERIOR COURT

Date:

by _____, Deputy

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

EVELYN ESCALANTE

DEFENDANTS

JOHN PAUL McNUCK, M.D.
FRANK COHEN

03 MAR 25 PM 3:32

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED **03 CV 0588K NLS**

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)
STEVEN J. POLAKOFF, AUSA
U.S. ATTY'S OFFICE
880 FRONT ST., RM. 6293
SAN DIEGO, CA. 92101-8893

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PT	DEF		PT	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. § 1441 (a) & (b) and 1346 (b)(1) **28:1441mm (SP)**

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input checked="" type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal-Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(r)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND \$** _____ **JURY DEMAND:** YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): _____ **JUDGE** _____ **Docket Number** _____

DATE 3/25/03 **SIGNATURE OF ATTORNEY OF RECORD** 