

1 Barbara Clark, c/o
2 *in propria persona*
3 PMB # 125
4 785 Tucker Road, Suite G
5 Tehachapi, CA 93561

6 **UNITED STATES DISTRICT COURT**
7 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
8 **LOS ANGELES DIVISION**

9 Barbara Clark) **AMENDED**
10 Plaintiff) **COMPLAINT FOR DAMAGES**
11 Vs.) **VIOLATIONS OF**
12 Carrie Nevans,) **42 USC § 1395c (2006)**
13 Thomas J. Mostert, Jr. in his official) **CV-06-8253-GPS (FMC)**
14 capacity as)
15 Chairman of the Board, and)
16 Adventist Health System West)
17 Defendants)
18 **RELATED CASE: CV-06-4581 DOC**

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21 1. NOW COMES THE PRO SE PLAINTIFF, **BARBARA CLARK**, to file
22 this amended complaint under **42 U.S.C.S. § 1395y(b)(3)(A)** of the Medicare
23 Secondary Payer statute (MSP) to seek to recover for past, present and future
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1 Medicare expenditures for treatment of workers' compensation related medical
2 expenses incurred by the plaintiff and her treating physicians¹.

3 **RELIEF**

4 2. The amount of monies claimed for reimbursed to the U.S. Department of
5 Health and Human Services exceeds \$500,000.00 (US) in compensatory and
6 equitable relief (monies due to the U.S. Government under the Medicare
7 Secondary Payment ("MSP") Act for reimbursement of insurance expenses). The
8 MSP also creates a private right of action with double recovery to encourage
9 private parties who are aware of non-payment by primary plans to bring actions to
10 enforce Medicare's rights. **42 U.S.C.S. § 1395y(b)(3)(A)**. Therefore, (\$500,000.00
11 x 2 = \$1,000,000.00) one million dollars (\$1,000,000.00 US) is claimed in
12 equitable relief. Additionally, the plaintiff also seeks compensatory damages in
13 excess of \$20,000,000.00 for her emotional, traumatic, physical and psychological
14 injuries (articulated herein) that she suffered due to the reckless misconduct of the
15 nonprofit provider of health care services (Adventist Health System – West of
16 Roseville, herein "Adventist Health") and its agents in causing grievous
17 aggravation to plaintiff's de-stabilized medical condition.

18 **JURISDICTION**

19 3 The Plaintiff herein presents a federal question that provides this Honorable
20 Court with original jurisdiction, granted, in part, by the Medicare Secondary Payer
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23 ¹ (3) Enforcement.

24 (A) Private cause of action. There is established a private cause of action for
25 damages (which shall be in an amount double the amount otherwise provided) in
26 the case of a primary plan which fails to provide for primary payment (or
appropriate reimbursement) in accordance with paragraphs (1) and (2)(A).

1 Act (MSP), aka **42 USC § 1395c²** (2006), et. seq., and **42 U.S.C. § 12101** (also
2 known as the Americans with Disabilities Act).³, et. seq., Sections 501, 503 and
3 504 of the Rehabilitation Act of 1973, **29 U.S.C. § 794(a)⁴** and the ancillary Civil
4 rights remedies equalization provisions of the Civil Rights Act **42 U.S.C. § 2000d-**
5 **7⁵**, et. seq., and those implementing agency regulations affecting the U.S.
6 Department of Health and Human Services (DHHS) and the implementation of
7 said federal laws. Plaintiff also claims jurisdiction under the aegis of
8 **AMENDMENT XIV** of the U.S. Constitution, **42 U.S.C. § 1983⁶, § 1985⁷ and §**
9 **1986**, et. al, (also known as the Ku Klux Klan Act). Plaintiff is allowed to bring
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11 ² TITLE 42. THE PUBLIC HEALTH AND WELFARE, CHAPTER 7. SOCIAL
12 SECURITY ACT, TITLE XVIII, HEALTH INSURANCE FOR THE AGED AND
13 DISABLED: PART A. HOSPITAL INSURANCE BENEFITS FOR THE AGED
14 AND DISABLED.

15 ³ 42 U.S.C. § 12101 --- The Americans with Disabilities Act of 1990 --- provides
16 for the protection of people with disabilities in employment and public
17 accommodations. The definition of disability is broadened to include any
18 condition, which significantly impedes a major life activity.

19 ⁴ 29 U.S.C. 794(a) -- No otherwise qualified individual with a disability in the
20 United States, as defined in section 705(20) of this title, shall, solely by reason of
21 her or his disability, be excluded from the participation in, be denied the benefits
22 of, or be subjected to discrimination under any program or activity receiving
23 Federal financial assistance or under any program or activity conducted by any
24 Executive agency or by the United States Postal Service.

25 ⁵ 42 U.S.C. 2000d-7 -- (1) A State shall not be immune under the Eleventh
26 Amendment of the Constitution of the United States from suit in Federal court for
a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794]

⁶ 42 U.S.C. § 1983 --- every person who, "under color of any statute, ordinance,
regulation, custom or usage..." subjects another person within jurisdiction of the
U.S. to deprivation of any rights, privileges, or immunities secured by the
Constitution and Laws" shall be liable to the party injured thereby.

⁷ 42 U.S.C. § 1985 --- any conspiracy of two or more persons to prevent any public
officer from performing his or her duties; to obstruct justice by of equal protection
of the laws, shall be liable for such injury.

1 this instant federal action pursuant to the patient anti-dumping act EMTALA 42
2 USC § 1395c(b)(3).

3 **JURISDICTION FOR PENDANT STATE CLAIMS**

4 4. The following pendant state laws are hereby incorporated within this instant
5 complaint. Article XIV of the State of California Constitution⁸, Cal. Civil Code §
6 51 et seq⁹, also known as the Unruh Civil Rights Act, and Cal. Gov't Code §
7 11135¹⁰, Cal. Govt. Code Section 12900 and the California Labor Code as well as
8 S.B. 228 (Alarcon), S.B. 227 (Vargas). Also, *The City of Moorpark v. Superior*
9 *Court* decision rendered by the California Supreme Court.

10 **PARTIES**

11 5. Defendant Carrie Nevans is the acting director of the California Division of
12 Workers' Compensation (DWC), a sub-administrative unit of the California
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14 ⁸ CALIFORNIA CONSTITUTION, ARTICLE 14, LABOR RELATIONS, SEC.
15 4. The Legislature is hereby expressly vested with plenary power, unlimited by
16 any provision of this Constitution, to create, and enforce a complete system of
17 workers' compensation, by appropriate legislation, and in that behalf to create and
18 enforce a liability on the part of any or all persons to compensate any or all of their
19 workers for injury or disability, and their dependents for death incurred or
20 sustained by the said workers in the course of their employment, irrespective of the
21 fault of any party. A complete system of workers' compensation includes adequate
22 provisions for the comfort, health and safety and general welfare of any and all
23 workers and those dependent upon them for support to the extent of relieving from
24 the consequences of any injury or death incurred or sustained by workers in the
25 course of their employment, irrespective of the fault of any party;

26 ⁹ Cal. Civil Code § 51 et seq. provides that all persons are entitled to full and equal
"accommodations, advantages, facilities, privileges or services" regardless of "sex,
race, color, religion, ancestry or national origin."

¹⁰ CAL. GOV'T CODE § 11135 provides that no person on the state of California
shall be denied legal benefits, or subjected to discrimination in the basis of "ethnic
group identification, religion, age, sex color, or physical or mental disability," in
any program or activity funded by the State.

1 Department of Industrial Relations. Her offices are located at Office of the
2 Director, 10th floor, 455 Golden Gate Avenue, San Francisco, CA 94102 and 1515
3 Clay Street, 17th Floor, Oakland, California 94612.

4 6. Thomas J. Mostert, Jr. is sued in his official capacity as Chairman of the
5 Board of the Adventist Health System West, a division of the Seventh Day
6 Adventist Church, which oversees the administration and payment of workers'
7 compensation claims filed by disabled injured workers (like the plaintiff).

8 Chairman Thomas J. Mostert, Jr. maintains business addresses at P.O. Box 5005,
9 2686 Townsgate Road, Westlake Village, California 91359, Fax: 805-495-2644
10 and at 401 Taylor Blvd., P.O. Box 23165, Pleasant Hill, California 94523, Fax:
11 925-685-4380.

12 7. The defendant corporation, Adventist Health System West, maintains offices
13 at 2100 Douglas Blvd., Roseville, California 95661, telephone 916-781-2000
14 and/or 2130 Professional Drive, Suite 150, Roseville, California 95661. Defendant
15 Adventist Health System - West ("Adventist Health") manages and operates
16 several "sole community" hospitals¹¹ participating in the Medicare program¹² and
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18 ¹¹ Medicare regulations afford certain provider organizations "special treatment,"
19 intended to ensure the ongoing availability of medical services for qualifying
20 patients. See 42 CFR pt. 412G (1999). Providers qualifying as "Medicare-
21 dependent, small rural hospitals," for instance, are entitled to additional, "lump
22 sum" payments to compensate for significant declines in demand for patient care. §
23 412.108. The additional funds enable a provider to "maintai[n] [its] necessary core
24 staff and services" and to satisfy its "fixed (and semi-fixed) costs." §§
25 412.108(d)(3)(A), (B). So too does the Medicare program authorize "special
26 treatment" for, among other providers, "sole community hospitals," "renal
transplantation centers," and "hospitals that serve a disproportionate share of low-
income patients." See §§ 412.92, 412.100, 412.106. The subsidies assist providers
in satisfying those financial obligations necessary to continue as going concerns in
accordance with the program's requirements. See, *e.g.*, § 412.92(d)(2).

1 is presently, a self-insured plan under California Labor Code (L.C.) Section
2 3700(b)¹³. Under this L.C. Section the Adventist Health was in 1994, and is
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4 ¹² Payments received by a health care provider--such as a non-profit corporation
5 which operates sixteen hospitals and is allegedly defrauding the Federal
6 Government under the Medicare program (within the meaning of a federal bribery
7 statute **18 USCS 666**), as (1) 666 prohibits various offenses, including fraud,
8 against or involving parties defined in **18 USCS 666**(b) as organizations,
9 governments, or agencies which receive, in any 1-year period, more than 10,000 in
10 benefits under a federal program involving a grant, contract, subsidy, loan,
11 guarantee, insurance, or other federal assistance; (2) for purposes of applying
12 666(b) to the case at hand, all agree that (a) Medicare is a federal assistance
13 program, and (b) the municipal agency received more than 10,000 in benefits
14 under the program; (3) while, under **42 USCS 1395** et seq. and implementing
15 federal regulations, elderly and disabled patients are the primary beneficiaries of
16 the Medicare program, (a) Medicare operates with a purpose and design above and
17 beyond point-of-sale patient care, and (b) it follows that the program's benefits are
18 broader as well; (4) the language of 666(b) reveals Congress' expansive and
19 unambiguous intent to insure the integrity of organizations participating in federal
20 assistance programs; (5) even if **18 USCS 666**(c)--which removes from the
21 statutory coverage any "bona fide" compensation or reimbursement in the usual
22 course of business--relates to the statutory definition of benefits, Medicare
23 payments to health care providers are not only for the limited purpose of
24 compensation or reimbursement, but also for the additional purpose, which is in
25 the interest of both a provider and the greater community, of assisting the provider
26 in making available and maintaining a certain level and quality of care; (6) thus,
such a provider is receiving a benefit in the conventional sense of the term; and (7)
the Federal Government has a legitimate and significant interest in prohibiting
financial fraud or acts of bribery perpetrated upon Medicare providers, for such
acts threaten the program's integrity and the ability of participating organizations to
provide the expected level of care).

¹³ California Labor Code Section 3700 "Every employer except the state shall
secure the payment of compensation in one or more of the following ways....(b)
By securing from the Director of Industrial Relations a certificate of consent to
self-insure either as an individual employer, or as one employer in a group of
employers, which may be given upon furnishing proof satisfactory to the Director
of Industrial Relations of ability to self-insure and to pay any compensation that
may become due to his or her employees..."

1 presently, considered a permissibly self-insured entity for the purposes of workers'
2 compensation claims filed in the State of California. This means that Adventist
3 Health has the authority; vested by the California Office of Self Insurance Plans
4 within the California Department of Industrial Relations; to self-administer
5 workers compensation claims pursuant to a Certificate of Consent to Self-Insure
6 issued to an employer pursuant to § 3700(b) of the Labor Code by the Department
7 of Industrial Relations. Therefore, Adventist Health can administer the treatment,
8 rehabilitation and payment for medical services of industrial injuries suffered on
9 the job by employees of the Adventist Health, or one of its subordinate hospitals,
10 under the authority granted by the California Department of Industrial Relations,
11 Office of Self-Insured Plans.

12 8. The plaintiff is a disabled handicapped injured worker with un-treated and
13 de-stabilized medical conditions that maintains an address at Barbara Clark, c/o
14 PMB # 125, 785 Tucker Road, Suite G, Tehachapi, CA 93561. Ms. Clark is a
15 registered nurse and a nurse practitioner in the State of California, who lives in
16 constant pain and must deal with untreated injuries to her jaw, neck and spine as
17 the Adventist health has refused to provide treatment to said injuries by ignoring
18 (not authorizing) requests for medical treatment. That the plaintiff became a
19 disabled handicapped injured worker as a result of her industrial injury (as
20 articulated in 28 CFR § 41.32 and 45 CFR § 84.3(k)(4), and is presently receiving
21 Federal Medicare benefits in lieu of State benefits as the Adventist Health has
22 ignored payment authorizations for said medical treatments. Plaintiff is unable to
23 perform several major life activities that an average person in the population might
24 easily be able to perform. Plaintiff has difficulty speaking for extended periods of
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1 time due to excessive pain in her jaw that is complicated by extended speech.
2 Therefore she is a handicapped disabled injured worker.

3 **GENERAL ALLEGATIONS**

4 **BACKGROUND ON MEDICARE ISSUES**

5 9. This instant suit arose out of a scheme to defraud Medicare by shifting
6 medical costs incurred by California injured workers (including the plaintiff) away
7 from California self-insured providers (like Adventist Health) and onto Medicare.
8 The federal Medicare Secondary Payer Act (“MSP”) designates certain private
9 insurers as “primary payers” and Medicare as a “secondary payer” obligated to pay
10 only for medical services not covered by a beneficiary’s private insurance plan. In
11 this instant scheme, the private insurer (“Adventist Health”) thwarts any attempt to
12 pay its private workers’ compensation obligations to the plaintiff, forcing
13 Medicare¹⁴ to pay for such medical expenses incurred by the plaintiff in her
14 treatment of her industrial injury.

15 10. Medicare is a federally funded medical insurance program for the elderly
16 and disabled; the plaintiff receives Medicare benefits presently. The Federal
17 Government is the single largest source of funds for hospitals participating in
18 Medicare. Such providers qualify to participate upon satisfying a comprehensive
19 series of statutory and regulatory requirements, including licensing, quality
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21 ¹⁴ This means that if payment for covered services has been or is reasonably
22 expected to be made by someone else, Medicare does not have to pay. In order to
23 accommodate its beneficiaries, however, Medicare does make conditional
24 payments for covered services, even when another source may be obligated to pay,
25 if that other source is not expected to pay promptly. **42 U.S.C.S. §**
26 **1395y(b)(2)(A)(i)**. Such payment is conditioned on Medicare's right to
reimbursement if a primary plan later pays or is found to be responsible for
payment of the item or service.

1 assurance, staffing, and other standards. Compliance with these standards provides
2 the Government with assurance that participating providers possess the capacity to
3 fulfill their statutory obligation of providing "medically necessary" services "of a
4 quality which meets professionally recognized standards of health care." **42 U.S.C.**
5 **§ 1320c-5(a).**

6 11. Medicare attains its objectives through an elaborate funding structure
7 designed not only to compensate providers for the reasonable cost of the services
8 actually rendered to patients, but also to enhance health care organizations'
9 capacity to provide ongoing, quality services to the community at large. In the
10 normal course Medicare disbursements occur periodically, often in advance of a
11 provider's rendering services, in order to protect providers' liquidity and thereby
12 assist in the ongoing provision of such services. The program, then, establishes
13 correlating and reinforcing incentives: The Government has an interest in making
14 available a high level of quality of care for the elderly and disabled; and providers,
15 because of their financial dependence upon the program, have incentives to
16 achieve program goals¹⁵.

17 12. The Federal Government has a legitimate and significant interest in
18 prohibiting financial fraud being perpetrated upon Medicare: Such acts threaten the
19 program's integrity and raise the risk participating organizations will lack the
20 resources needed to provide the requisite level and quality of care. The
21 Government enacted specific statutes and regulations to secure its own interests in
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23 ¹⁵ *Fischer v. United States*, No. 99-116 , SUPREME COURT OF THE UNITED
24 STATES , 529 U.S. 667; 120 S. Ct. 1780; 146 L. Ed. 2d 707; 2000 U.S. LEXIS
25 3136; 68 U.S.L.W. 4370; 2000 Cal. Daily Op. Service 3769; 2000 Daily Journal
26 DAR 5035; 2000 Colo. J. C.A.R. 2638; 13 Fla. L. Weekly Fed. S 315, February
22, 2000, Argued, May 15, 2000, Decided

1 promoting the well being and advantage of the health care provider (like Adventist
2 Health), in addition to the patient who receives care. The health care provider
3 (Adventist Health) is receiving long-term residual benefits from Medicare in
4 excess of \$ 1 Billion yearly (based on annual gross revenues of \$1.6 Billion for
5 calendar yea 2005 and assuming 60% of that figure is derived from Medicare for
6 the operation of sole community hospitals).

7 13. **42 U.S.C.S. § 1395y(b)(2)(A)** prohibits Medicare from paying for items or
8 services for which payment can reasonably be expected to be made under a
9 primary plan (“Adventist Health”) except as provided in § 1395y(b)(2)(B).
10 Subparagraph (B) authorizes Medicare to make conditional payments, but requires
11 that a primary plan, and any entity that receives payment from a primary plan, shall
12 reimburse Medicare with respect to an item or service if it is demonstrated that
13 such primary plan has or had a responsibility to make payment with respect to such
14 item or service. **42 U.S.C.S. § 1395y(b)(2)(A), (b)(2)(B)(ii).** An alleged
15 tortfeasor's (“Adventist Health”) responsibility for payment of a Medicare
16 beneficiary's medical costs must be demonstrated before a Medicare Secondary
17 Payer private cause of action for failure to reimburse Medicare can correctly be
18 brought under **42 U.S.C.S. § 1395y(b)(3)(A)**¹⁶.

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21 ¹⁶ Under the Medicare Secondary Payer statute, **42 U.S.C.S. § 1395y**, a primary
22 plan's (“Adventist Health”) responsibility for such payment may be demonstrated
23 by a judgment (as in the case of a judgment from the California Workers’
24 Compensation Appeals Board [WCAB]), a payment conditioned upon the
25 recipient's compromise, waiver, or release (whether or not there is a determination
26 or admission of liability) of payment for items or services included in a claim
against the primary plan or the primary plan's insured, or by other means. **42
U.S.C.S. § 1395y(2)(B)(ii).**

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2 **BACKGROUND ON WORKERS COMPENSATION ISSUES**

3 14. Although the responsibility of the Medicare tortfeasor (“Adventist Health”)
4 has been demonstrated several times via judgments of the Workers Compensation
5 Appeals Board (WCAB), a division of the California DWC, the defendant
6 Adventist Health has steadfastly refused to pay for any medical expenses incurred
7 by the plaintiff in conjunction with her industrial injury. The defendant, Adventist
8 Health, was adjudicated liable for the medical expenses on **August 22, 2001**¹⁷,
9 when the plaintiff had reduced her de-stabilized industrial injury to a Workers’
10 Compensation medical claim that received a State of California issued judgment
11 known as an Award and Order from the WCAB directing medical treatment to
12 “*cure and relieve*” the effects of her de-stabilized industrial injury. Citing
13 “*unreasonably delay*” of the defendants (Adventist Health) in providing treatment,
14 the Workers’ Compensation Judge (WCJ) stated in said State issued Award and
15 Order:

16 *“..Defendant contrary to well-established case law (and statute)
17 unreasonably relied on purported limitations in the language of the
18 WCJ’s “Opinion and Decision” and unreasonably delayed ... the
19 provision of medical treatment. Defendant’s reliance on its own
20 improper and incorrect interpretations is unreasonable per se...” [
21 Order of Judge Barbara A. Stevens, 8/22/2001]*

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22 ¹⁷ A Findings of Award and Order was issued on August 22, 2001 (8/22/2001) by
23 WCAB Judge Barbara Stevens finding plaintiff sustained industrial injury
24 requiring treatment for “*..head, jaw, teeth, neck, headaches and psyche..*” The
25 8/22/2001 FAO also cited “*unreasonably delay*” of the defendants in providing
26 treatment to the plaintiff. Therefore, the plaintiff had an entitlement and property
interest in health care via a Findings of Award and Order (FAO) issued by
Workers’ Compensation Appeals Board Judge (WCJ) Barbara Stevens of August
22, 2001 (8/22/2001).

1 13. Reconsideration of the WCJ's Award and Order was given judicial review
2 from a WCAB panel of judges. On November 6, 2001 the WCAB panel of judges
3 upheld the 8/22/2001 Award and Order. In fact, the WCAB panel of judges cited
4 in **2001:**

5 *"..The plaintiff's unreasonable conduct arises out of its erroneous*
6 *belief that the award of further medical treatment was somehow*
7 *limited to the treatment recommendations of two Agreed Medical*
8 *Examiners and that no medical treatment beyond that was awarded.*
9 *The failure to provide treatment and pay for plaintiff's mileage*
expenses can be traced to that single incorrect belief..." [WCAB
Opinion and Order, 11/6/2001.]

10 14. The California Fifth Appellate Court and subsequently the California
11 Supreme Court refused to hear any further appeals and upheld the WCAB judicial
12 panel via orders issued February 2, 2002 (Fifth Appellate) and May 15, 2002
13 (Supreme Court) respectively.

14 15. The plaintiff filed an action in the Kern County Superior Court (Bakersfield)
15 on December 28, 2001 in an attempt to **enforce** the aforementioned awards and
16 orders (see 8/22/2001 judgment of WCJ Barbara Stevens). see *Clark v. San*
17 *Joaquin Community Hospital / Adventist Health System West*, Case No. S-1500-
18 CV-0000245966.

19 16. Forced to re-litigate the issues of payment of the medical expenses in
20 question, plaintiff obtained another WCAB Award and Order, dated December 19,
21 2006. In this Order the workers' compensation judge (WCJ) stated, "[a]pplicant
22 *Barbara Clark remains entitled to such additional and further medical treatment*
23 *as may be necessary to cure and relieve her from the effects of the injury presently*
24 *at the prescription of her primary care physician, presently including care for her*
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1 *teeth and xerostomia as recommended by Robert Reed, DDS, but not presently*
2 *including trigger point injections, nerve blocks, and epidural injections.”*

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4 **PUBLIC FUNCTION OF PROVIDING SPINAL SURGEON SECOND**
5 **OPINION (AS DEFINED BY SENATE BILL 228)**

6 17. On **September 21, 2005** (9/21/2005) Dr. Gil Tepper, M.D., plaintiff’s
7 attending spinal surgeon, submitted a formal authorization request to defendant
8 Adventist Health to perform a spinal cervical fusion surgery on the plaintiff. On
9 **October 13, 2005** (10/13/2005) another request was submitted by Dr. Tepper to
10 Carol Pope for authorization to proceed with the spinal cervical fusion surgery. On
11 **October 17, 2005** (10/17/2005) another request was submitted by Dr. Tepper to
12 Carol Pope for authorization to proceed with the spinal cervical fusion surgery.
13 On **January 6, 2006** (1/6/2006) Dr. Tepper writes a *Notice of Self Procured*
14 *Treatment*, stating;

15 *“..This supplemental is drafted to record the insurer’s inability to comply*
16 *with Labor Code 9792.6(c)(1)...Please note that the aforementioned*
17 *procedure was requested in writing on 9/21/05 was sent by way of U.S.*
18 *mail on 11/16/05 and facsimile on 10/13/05 as well as by personal*
19 *telephone calls by my authorization staff on 10/13/05, 10/17/05, 10/24/05.*
20 *Lizzette from our authorization department received call back from*
21 *adjuster Carol Pope who stated to call defense attorney Dennis Hershewe*
22 *at 818-700-8430 first call was made on 10/24/05 left message with Rema,*
23 *second call was made 10/31/05 left message with Rema, third call was*
24 *made 11/7/05 left message with Rema. Called adjuster Carol Pope on*
25 *11/23/05 since we did not have a response back from defense attorney*
26 *Hershewe also left message for adjuster. At [as] of the date of this letter,*
we have received no response.”

24 18. On **April 4, 2006** attorney for Adventist health, Dennis J. Hershewe, via
25 letter (copies of which were never provided to the plaintiff at the time) requested
26 Dr. Allen I. Sallick, Primary Treating Physician (PTP) to review the deposition

1 of Dr. James L. Strait (see 10/5/2004). The purpose of this letter was to thwart
2 the providing of spinal surgery to the plaintiff. Mr. Hershewe's letter requested
3 that PTP Dr. Sallick review page 39, lines 4 to 25, wherein in Dr. Strait says he
4 did not find the patient a candidate for any type of surgical procedure after
5 reviewing surveillance films. Stating:

6 *"..The defendant objects to your report of February 7, 2006. Enclosed for*
7 *your review (for at least the third time) is the deposition of the agreed*
8 *medical examiner, Dr. James Strait. Dr. Strait's deposition was taken on*
9 *October 4, 2004. In the deposition of October 4, 2004 Dr. Strait testifies*
10 *as follows:*

11 *Page 39, lines 4 through 25:...*

12 *Q: And is there anything that would indicate she would be a candidate*
13 *for any type of surgical procedure when you looked at those films?*

14 *A: No.*

15 *...The defendant has already filed a previous objection to Dr. Tepper's*
16 *report. Dr. Tepper did not review all of the MRI's in this case..."*

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19. On **April 17, 2006** PTP Dr. Sallick replied to Mr. Hershewe that he had
indeed reviewed the subject deposition Dr. Strait. Dr. Sallick wrote:

27 *"..she actually has a significant disc disease and she is probably a*
28 *surgical candidate...I have no objection to epidural injections being*
29 *performed in lieu of surgery she has had tremendous relief from [in] the*
30 *past from epidural injections, so why would one want to withhold this*
31 *type of treatment.."*

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20. On **June 26, 2006**, the Miracle Mile Medical Center conducted an MRI
Study of the Cervical Spine, completed 6/27/2006, finding that, *"There is a*
broad based asymmetric posterior disc protrusion/extrusion at C6-C7 level
which at its maximum on the right side measures about 3.5 mm and is causing
pressure over the anterior aspect of the thecal sac and encroaches into and
causes subtotal obliteration of the right neural foramen."

1 21. On **June 26, 2006** (6/26/2006) the Adventist Health claims adjuster wrote
2 a letter to Mr. Hershewe in which she provides a transmittal of PTP Dr.
3 Sallick's letter of 4/17/2006. On June 27, 2006 (6/27/2006) the Adventist
4 Health claims adjuster wrote a letter to PTP Dr. Sallick thanking him for his
5 review of the deposition of Dr. Strait taken on 10/5/2004 and for the 4/17/2006
6 report written by PTP Dr. Salick.

7 22. On **July 11th, 2006** the *pro se* plaintiff underwent cervical spinal fusion
8 surgery performed by Dr. Gil Tepper at the Miracle Mile Medical Center in Los
9 Angeles, California. During this surgery (7/11/2006) it was confirmed that the
10 plaintiff's spinal cord was in danger of being severely injured by an embedded
11 bone fragment (information provided to all defendants years ago). The
12 justification for said surgery was based upon the opinion of Dr. Gil Tepper, spinal
13 surgeon; an opinion that was later seconded by the plaintiff's primary treating
14 physician Dr. Allen I. Sallick pursuant to the rules of the California workers'
15 compensation system.

16 23. By letter of **May 10, 2006** (5/10/2006) to the president of the Adventist
17 Health System West, plaintiff complained that the administrative regulations
18 concerning procurement of a legitimate Spinal Surgeon Second Opinion to resolve
19 any disputes for payment authorization, see 8 CCR § 9788.1 (see below), were not
20 complied with by the claims administrator (Adventist Health System – West), “*..I*
21 *call to your attention Section 9788.1 ... I take note that your offices have NEVER*
22 *objected to the treatment recommendations of the above referenced report [citing*
23 *panel QME report of 11/10/2005],”*. A copy of the 5/10/2006 letter was provided
24 to AD-DWC Carrie Nevans as well as DIR defense counsel Michael Roy Drayton.
25 The letter concludes, “*..Therefore, please make arrangements for me to obtain the*
26 *spinal surgery described in the above referenced report..”*.

1 24. An administrative implementing regulation of California’s Senate Bill
2 228 (Alarcon) known as Title 8, California Code of Regulations (CCR), Section
3 9788.1 (8 CCR § 9788.1). 8 CCR § 9788 generally addressed “*Spinal Surgery*
4 *Second Opinion Procedure*” (SSSOP). The DWC-DIR published a memorandum
5 on October 26, 2004 (10/26/2004) that addressed changes to the implementing
6 regulations for spinal surgery disputes; quoted in relevant part:

7 ***Section 9788.1. Employer's Objection To Report Of Treating Physician***
8 ***Recommending Spinal Surgery.***

9 *An objection to the treating physician’s recommendation for spinal*
10 *surgery shall be written on the form prescribed by the Administrative*
11 *Director in Section 9788.11 The employer shall include with the*
12 *objection a copy of the treating physician's report containing the*
13 *recommendation to which the employer objects. The objection shall*
14 *include the employer's reasons, specific to the employee, for the objection*
15 *to the recommended procedure. The form must be executed by a principal*
16 *or employee of the employer, insurance carrier, or administrator.*

17 25. The plaintiff asserts that the California law embodied in Senate Bill 228
18 created a non-delegable duty to resolve disputes over spinal surgeries upon the
19 Administrative Director (Carrie Nevans, acting), Division of Workers
20 Compensation (“AD-DWC”), that of the procuring a spinal surgeon second
21 opinion (SSSOP) when spinal surgery is disputed; as was the case with the plaintiff
22 and Adventist Health.

23 26. It is the public function of the AD-DWC to “*resolve disputes*” regarding
24 recommended spinal surgery. The plaintiff complained to the AD-DWC (by letter
25 of May 4, 2006 (5/4/2006)) that the defendant tortfeasor (“Adventist Health”) had
26 disputed the opinion expressed by spinal surgeon Dr. Gil Tepper embodied within
a report known as a panel qualified medical examiner (QME) report issued
November 10, 2005 (11/10/2005) (the panel QME report was created by Dr.

1 Robert Reed and included a report of Dr. Gil Tepper. Suffice to say, that the AD-
2 DWC, Carrie Nevans, was informed via plaintiff's letters of 5/4/2006 and
3 5/10/2006, that the defendant tortfeasor ("Adventist Health") was "*delaying,*
4 *denying or modifying*" the authorization of spinal surgery in open defiance of 8
5 CCR § 9788.1, as the letter of 5/10/2006 cites 8 CCR § 9788.1 specifically.

6 27. Defendant tortfeasor's counsel, Dennis Hershewe, presumed to act under
7 the State's statutory utilization review guidelines to "*modify, delay or deny*"¹⁸
8 medical treatment and supplied an illegitimate SSSOP to the primary treating
9 physician for the purposes of either "*denying, delaying, or modifying*" the
10 treatment recommendations of PTP Dr. Sallick.

11 28. As no person who is not a licensed physician may "*delay, modify or*
12 *deny*" medical treatment recommendations from other physicians (see 8 CCR §
13 9792.7(b)(2)¹⁹ (see also Labor Code § 4610(e)²⁰), it is presumed by the plaintiff,
14

15 ¹⁸ *Specific Purpose of Section 9792.8:*

16 *The purpose of this section is to set forth the medically-based criteria required in the*
17 *utilization review process which is to be reflected in the utilization review plan. This*
18 *section also requires the claims administrator to disclose the criteria in written form*
19 *to the physician, the provider of goods, if any, the injured worker, and if the injured*
20 *worker is represented by counsel, the injured worker's attorney, if used as the basis of*
21 *a decision to **modify, delay, or deny** services in a specific case under review.*

22 ¹⁹ 9792.7(b)(2) This subdivision provides that no person, other than a licensed
23 physician who is competent to evaluate the specific clinical issues involved in the
24 medical treatment services, and where these services are within the licensure and
25 scope of the physician's practice, may, except as indicated below, delay, modify or
26 deny, requests for authorization of medical treatment for reasons of medical
necessity to cure or relieve the effects of the industrial injury.

²⁰ Labor Code § 4610(e) No person other than a licensed physician who is
competent to evaluate the specific clinical issues involved in the medical treatment

1 that the defendants' counsel Hershewe attempted to "*delay, modify or deny*" the
2 medical recommendation for spinal cervical fusion surgery by relying on the
3 opinion of Dr. James L. Strait, given in a deposition on 10/4/2004 as a form of an
4 illegitimate SSSOP. However, Dr. Strait's (who is NOT a spinal surgeon) opinion
5 was NOT correctly procured via the AD-DWC pursuant to 8 CCR § 9788.1. There
6 simply is no other method to object to recommended spinal surgery (under the
7 aegis of S.B. 228) but to have the AD-DWC procure an SSSOP from a qualified
8 spinal surgeon. Therefore, defendants' counsel Mr. Hershewe navigated around
9 the requirements of S.B. 228 (as articulated in 8 CCR § 9788.1) by "*objecting*"
10 (*delaying, denying, modifying*) to the treatment recommendations of the primary
11 treating physician with the illegitimate SSSOP (under the pretense of *utilization*
12 *review*) he had obtained from Dr. Strait (via deposition taken on 10/4/2004). Mr.
13 Hershewe now presumes to act under the pretense of *utilization review*; albeit the
14 plaintiff had a right to obtain a legitimate SSSOP, a right created by State law (see
15 S.B. 228) denied her by Mr. Hershewe's *utilization review* activities. In essence,
16 Mr. Hershewe has become a self-proclaimed utilization review organization
17 (URO).

18 29. To refresh this Honorable Court's memory, 8 CCR § 9788.1, *Employer's*
19 *Objection To Report Of Treating Physician Recommending Spinal Surgery*, stated
20 in relevant part:

21 "8 CCR 9788.1(a) An objection to the treating physician's
22 recommendation for spinal surgery shall be written on the form
23 prescribed by the Administrative Director in Section 9788.11. The
24 employer shall include with the objection a copy of the treating

25 services, and where these services are within the scope of the physician's practice,
26 requested by the physician may modify, delay, or deny requests for authorization
of medical treatment for reasons of medical necessity to cure and relieve.

1 *physician's report containing the recommendation to which the employer*
2 *objects. The objection shall include the employer's reasons, specific to the*
3 *employee, for the objection to the recommended procedure. The form*
4 *must be executed by a principal or employee of the employer, insurance*
 carrier, or administrator... ”.

5 **30.** In sum, 8 CCR § 9788.1 represents a due process avenue created by S. B.
6 228. An avenue with only one traffic cop: the AD-DWC (Carrie Nevans). It is the
7 public function of the AD-DWC to obtain SSSOP’s after receiving a timely
8 objection to a treating physician’s recommendation (see Dr. Allen I. Sallick’s
9 medical report of 2/7/2006) for spinal surgery recommended for an injured worker,
10 like the plaintiff. The AD-DWC was informed on at least two (2) occasions²¹
11 (5/4/2006 letter, and 5/10/2006 letter) that the exclusive public function bestowed
12 upon the AD-DWC was being ignored by members of the *workers’ compensation*
13 *community* (Adventist Health’s counsel Dennis J. Hershewe).

14 **31.** On October 27, 2006 the plaintiff filed a complaint with the Bakersfield
15 WCAB outlines the foregoing activities of Mr. Hershewe and his letter writing to
16 her primary treating physician, the use of legitimate vs. illegitimately obtained
17 spinal surgeon second opinions, etc. In WCAB parlance, such a “complaint” is
18 called a “Declaration of Readiness to Proceed”; or **D.O.R.** A D.O.R. was filed in
19 the Bakersfield WCAB on or about October 27, 2006. The Bakersfield WCAB has
20 **never** held a hearing on the D.O.R.

21
22
23 ²¹ *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982) (“If the state puts a man in a
24 position of danger from private persons and then fails to protect him, it will not be
25 heard to say that its role was merely passive; it is as much an active tortfeasor as if
26 it had thrown him into the snake pit”).

1 **FRAUDULENT ACTIVITIES OF ADVENTIST HEALTH ATTORNEY TO**
2 **HARM AND INJURE PLAINTIFF**

3 32. The plaintiff has recently discovered that the “Professional Law
4 Corporation of Dennis J. Hershewe” or aka the “*DENNIS J. HERSHEWE, A*
5 *PROFESSIONAL LAW CORPORATION*” is a suspended corporations in the
6 State of California and the California Secretary of State suspended Mr. Hershewe's
7 corporate rights, powers, and privileges effective August 1, 2003.

8 33. **California’s Rev. & Tax. Code, 1 § 19719²²** provides that: “*Any person*
9 *who attempts or purports to exercise the powers, rights, and privileges of a . . .*
10 *corporation which has been suspended pursuant to Section 23301 . . . is*
11 *punishable by a fine of not less than two hundred fifty dollars (\$250) and not*
12 *exceeding one thousand dollars (\$1,000), or by imprisonment not exceeding one*
13 *year, or both fine and imprisonment.” (Stats. 1993, ch. 31, § 26, p. 292.)*

14 34. Section 23301 provides, in relevant part, “*the corporate powers, rights*
15 *and privileges of a domestic taxpayer may be suspended*” if it does not pay its
16 taxes. The suspension of the corporate powers, rights, and privileges means a
17 suspended corporation cannot sue or defend a lawsuit while its taxes remain
18 unpaid. (*Gar-Lo, Inc. v. Prudential Sav. & Loan Assn.* (1974) 41 Cal.App.3d 242,
19 244.) Once a suspended corporation pays its taxes and obtains a certificate of
20 revivor, however, the corporation may be allowed to carry on the litigation. (*Ibid.*)
21 Its revivor will validate most otherwise invalid prior proceedings in the case.

22
23
24
25 ²² Section 19719, subdivision (a), makes it a crime for any person “to exercise the
26 powers, rights, and privileges of a corporation that has been suspended pursuant to
Section 23301.”

1 (*Ibid.*) The underlying purpose of this statute is to induce the corporation to pay its
2 taxes. (*Ibid.*)

3 35. The legislative intent is demonstrated by section 23301 of the Revenue
4 and Taxation Code which provides the one, and only one, right permitted a
5 suspended corporation: the amendment of its articles of incorporation to adopt a
6 new name.

7 36. During a suspension, a corporation is, in fact, "shorn of all rights save
8 those expressly reserved by the statutes." (*Ransome-Crummey Co. v. Superior*
9 *Court* (1922) 188 Cal. 393, 397.) (referring to Cal. Bank & Corp. Franchise Act §
10 32)²³

11 37. The plaintiff contends that among the rights lost by a suspended
12 corporation are rights to conduct business or pursue legal matters in the courts.
13 (See *Appeal of Al Tirpa & Associates*, 97-SBE-007, Feb. 26, 1997.)
14 Revenue and Taxation Code section 25962.1 makes it a crime for any person to
15 purport to exercise the powers of a corporation which has been suspended pursuant
16 to Revenue and Taxation Code section 23301²⁴.

18 ²³ Enacted in 1949 to replace former section 32, subdivision (a), of the Bank and
19 Corporation Franchise Tax Act, section 23301 has long provided for the
20 suspension of the corporate powers, rights, and privileges of a domestic
21 corporation and forfeiture by a corporation of the same for the failure to pay
franchise tax.

22 ²⁴ See *Lewis v. Telephone Employees Credit Union*, 87 F.3d 1537, 1554-56 (9th
23 Cir. 1996):
24 "We recognize that the California Revenue and Taxation
25 Code made it a crime for someone to exercise "the
26 powers, rights and privileges" of a suspended
corporation at the time of Sumitomo's indorsement. Cal.
Rev. & Tax Code S 25962.1 (West 1992) (repealed)."

1 37. An examination of the rights and privileges of a California suspended
2 corporation was undertaken in *Peacock Hill Asso. v. Peacock Lagoon Constr.*
3 *Co.*, S.F. No. 22907, Supreme Court of California, 8 Cal. 3d 369; 503 P.2d 285;
4 105 Cal. Rptr. 29; 1972 Cal. LEXIS 259, (1972), which concluded:

5 “....The court made it quite clear that suspension of corporate powers is a
6 defense which may be asserted so long as the party-corporation is under
7 disability, and that upon revival of these powers, the corporation may
8 proceed with the prosecution or defense of an action...”

9 38. That Revenue and Taxation Code section 25962.1 places a burden and
10 standard of conduct on the “*DENNIS J. HERSHEWE, A PROFESSIONAL LAW*
11 *CORPORATION*” to properly represent itself. As a California suspended
12 corporation, “*DENNIS J. HERSHEWE, A PROFESSIONAL LAW*
13 *CORPORATION*”, has conducted business before the WCAB as a legitimate
14 corporation, while it was in fact suspended; considered a crime in California.
15 Further, commercial contracts entered into by a suspended corporation can be
16 nullified at the insistence of an injured party.

17 39. As **Rev. & Tax. Code, 1 § 19719** makes the representation of the “*DENNIS*
18 *J. HERSHEWE, A PROFESSIONAL LAW CORPORATION*”, a suspended
19 corporation, criminal misconduct, would *Bus. & Prof. Code, § 6068*, establish a
20 code of conduct to prevent an attorney to make a presentation of a statement of
21 fact, known by him to be false, which tends to influence the court.

22 40. In *Datig vs. Dove Books (1999) 73 Cal. App. 4th 964, 980, 981* the appellate
23 Court stated that: “[T]hat a member of the State Bar shall not seek to mislead the
24 judge, judicial officer or jury by an artifice or false statement of fact or law (Rules
25 of Professional Conduct, rule 5-200(B)). “Honesty in dealing with the courts is of
26

1 paramount importance, and misleading a judge is, regardless of motives, a serious
2 offense."

3 41. In Black's Law Dictionary, (Thomson/West © 2005) fraud on the court is
4 defined as: "*In a judicial proceeding a lawyer's or party's misconduct so serious*
5 *that it undermines or is intended to undermine the integrity of the proceedings.*"

6 Misrepresentation is defined as: "*The act of making a false assertion about*
7 *something, usu. with the intent to deceive.*"

8 42. As noted earlier, the misrepresentation of a suspended corporation is a
9 criminal offense in California; fraudulent misrepresentations can be prohibited and
10 the penal laws used to punish such conduct directly. *Schneider v. State*, 308 U.S.,
11 at 164; *Cantwell v. Connecticut*, 310 U.S., at 306; *Virginia Pharmacy Board v.*
12 *Virginia Citizens Consumer Council*, 425 U.S., at 771.

13 43. Preserving the integrity of our judicial system and ensuring that attorneys
14 conform to the highest professional standards are fundamental matters of statewide
15 concern. *Baron v. City of Los Angeles (1970) 2 Cal.3d 535, 540* ["Regulation of
16 attorneys and control over the practice of law have always been considered matters
17 of statewide concern."] As the *Baron* court observed, the conduct of attorneys are
18 matters of significant public interest and concern:

19
20 [T]he profession and practice of law, while in a limited sense a matter
21 of private choice and concern insofar as it relates to its emoluments, is
22 essentially and more largely a matter of public interest and concern, not
23 only from the viewpoint of its relation to the administration of civil and
24 criminal law, but also from that of the contacts of its membership with
25 the constituent membership of society at large, whose interest it is to be
26 safeguarded against the ignorances or evil dispositions of those who
may be masquerading beneath the cloak of the legal and supposedly
learned and upright profession....[citations omitted.]

1 44. The Bakersfield WCAB has allowed and condoned the improper use Mr.
2 Hershewe's suspended "professional law corporation" to submit pleadings and
3 correspondence to the WCAB in furtherance of this scheme to defraud Medicare
4 since August, 2003. The Bakersfield WCAB has relied on letters and pleadings
5 submitted by Mr. Hershewe on legal stationary displaying "*DENNIS J.*
6 *HERSHEWE, A PROFESSIONAL LAW CORPORATION*", although a
7 violation of California public policy.

8 45. Plaintiff alleges that the State of California, and Carrie Nevans specifically,
9 took no action to remedy the non-compliance of Adventist Health when the
10 Bakersfield WCAB refused to hear the 10/27/2006 D.O.R. filed in the Bakersfield
11 WCAB.

12 **COUNT ONE**

13 **DENIAL OF DUE PROCESS: SPINAL SURGERY**

14 46. As a threshold issue plaintiff establishes her protectable property interest in
15 obtaining spinal surgery as an entitlement. On September 22, 2005, spinal surgeon
16 Dr. Gil Tepper, M.D. recommended spinal surgery for appellant and said
17 recommendation was approved by appellant's treating physician Dr. Allen I.
18 Salick, M.D on February 7, 2006. Appellant's former employer did not timely
19 object to the treatment recommendation pursuant to 8 CCR § 9788.1, "within ten
20 days of the treating physician's report". Interference to thwart her opportunities to
21 obtain said spinal surgery have damaged and injured the plaintiff's property
22 interests.

23 47. In an effort to defraud Medicare of the legitimate medical expenses
24 attributed to her industrial injury, plaintiff alleges that the State of California and
25 Adventist Health joined in a partnership that has violated: (1) the good faith
26

1 provision of Article XIV of the State of California Constitution²⁵, (2) Cal. Civil
2 Code § 51 et seq²⁶, also known as the Unruh Civil Rights Act, and (3) Cal. Gov't
3 Code § 11135²⁷, (4) Cal. Govt. Code Section 12900, (5) the California Labor Code
4 and (6) S.B. 228 (Alarcon), S.B. 227 (Vargas).

5 48. In an effort to defraud Medicare of the legitimate medical expenses
6 attributed to her industrial injury, plaintiff alleges that her constitutionally
7 protected rights to procedural and substantive due process have been denied (see
8 Amendments V and XIV of the U.S. Constitution, by the WCAB deliberately
9 delaying review of the review of Mr. Hershewe's letter writing campaign to her
10 treating physicians (as articulated in the 10/27/2006 D.O.R. filed with the WCAB,
11 filed but never heard) and for continuing to recognize Mr. Hershewe's suspended
12
13

14 ²⁵ CALIFORNIA CONSTITUTION, ARTICLE 14, LABOR RELATIONS, SEC.
15 4. The Legislature is hereby expressly vested with plenary power, unlimited by
16 any provision of this Constitution, to create, and enforce a complete system of
17 workers' compensation, by appropriate legislation, and in that behalf to create and
18 enforce a liability on the part of any or all persons to compensate any or all of their
19 workers for injury or disability, and their dependents for death incurred or
20 sustained by the said workers in the course of their employment, irrespective of the
21 fault of any party. A complete system of workers' compensation includes adequate
22 provisions for the comfort, health and safety and general welfare of any and all
23 workers and those dependent upon them for support to the extent of relieving from
24 the consequences of any injury or death incurred or sustained by workers in the
25 course of their employment, irrespective of the fault of any party;

26 ²⁶ Cal. Civil Code § 51 et seq. provides that all persons are entitled to full and
equal "accommodations, advantages, facilities, privileges or services" regardless of
"sex, race, color, religion, ancestry or national origin."

²⁷ CAL. GOV'T CODE § 11135 provides that no person on the state of California
shall be denied legal benefits, or subjected to discrimination in the basis of "ethnic
group identification, religion, age, sex color, or physical or mental disability," in
any program or activity funded by the State.

1 corporation and the fraudulent letters attached to said suspended corporation
2 (although alerting to these facts via official pleadings and letters to state officials).

3 **COUNT TWO**

4 **DENIAL OF DUE PROCESS: SSSOP**

5 49. Plaintiff contends under the implementation of S.B. 228 the Administrative
6 Director, Division of Workers' Compensation was overtly and significantly
7 entrusted with the public function to obtain second spinal surgeon opinions from a
8 state controlled list of qualified spinal surgeons. See 8 CCR § 9788.2:
9 Qualifications of Spinal Surgery Second Opinion Physicians. The Administrative
10 Director was warned in writing on two occasions (May 4, 2006 and May 10, 2006)
11 that the self insured plan Adventist Health was not conforming to state instituted
12 regulations governing conduct for those inclined to “*deny, modify, or delay*”
13 medical treatment of injured workers.

14 50. Plaintiff contends that a statutorily created plan for obtaining second spinal
15 surgeon opinions was created by S.B. 228; this process, directly involving the
16 Administrative Director, Division of Workers' Compensation, “establish[es]
17 ‘substantive predicates’ to govern official decision making . . . [and] mandate[s]
18 the outcome to be reached upon a finding that the relevant criteria have been met.”
19 Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 462 (1989) (relying on
20 Hewitt v. Helms, 459 U.S. at 472); and, that when state actors knowingly place a
21 person in danger, the due process clause of the constitution...render[s] them
22 accountable for the foreseeable injuries that result from their conduct.” Johnson v.
23 Dallas Independent Sch. Dist., 38 F.3d 198, 199 (5th Cir. 1994).

24 51. Plaintiff alleges that there is significant entwinement between the self
25 insured plan Adventist Health and the Division of Workers' Compensation.

1 **COUNT THREE:**
2 **INTIMIDATION OF PLAINTIFF BY AGENTS OF**
3 **CHAIRMAN MOSTERT AND THE**
4 **ADVENTIST HEALTH SYSTEM**

5 52. Adventist Health, apparently under the watchful eye of Chairman Thomas J.
6 Mostert, Jr., Chairman of the Board, created a nefarious scheme by achieving a
7 meeting of minds and agreement to hire a private investigator, herein John Doe, to
8 intimidate the plaintiff in violation of 42 U.S.C. § 1985(2) and (3). John Doe,
9 wearing a wig to disguise him as a female driver, played a “cat and mouse” tail
10 gating game with the plaintiff immediately following the plaintiff’s appearance at
11 an April 19th, 2006 hearing at the Bakersfield WCAB offices. Three individuals
12 witnessed these cat and mouse tail gating games besides the plaintiff. The plaintiff
13 has had experience with John Doe in the past, on three other occasions, a man,
14 attempting to appear as a woman via the use of a disguise (to include feminine
15 wig) attempted to run the plaintiff’s truck off a mountain road near Bakersfield. It
16 is believed and hereby alleged that attorney Hershewe formed a civil conspiracy
17 with an attorney known as Peggy Nakamura, a registered nurse (R.N.), the
18 associate counsel for the Adventist Health System to intimidate the plaintiff and
19 exacerbate her fragile emotional condition via the use of these Ku Klux Klan style
20 tactics that continue to cause the plaintiff irreparable emotional damage.

21 53. That Adventist Health & Hershewe designed schemes to oppress the
22 plaintiff and create debilitating fear and humiliation in the plaintiff’s life. That
23 Adventist Health & Hershewe conspired with John Doe to develop schemes to
24 intimidate the plaintiff, including the aforementioned cat and mouse tail gating
25 incidents. The Adventist Health & Hershewe schemes, endorsed by Chairman
26

1 Mostert, were designed to drive the Plaintiff out of the local Bakersfield
2 community, much like the Ku Klux Klan (KKK) tactics of the 1960's Civil Rights
3 movement in violation of 42 USC § 1983 and § 1985, only with a white-collar
4 twist to the harassment and intimidation.

5 54. The objective of these intimidating cat and mouse tail gating chases is to
6 intimidate and frighten the plaintiff to give up her workers' compensation claim in
7 the Bakersfield WCAB and give up her state racketeering lawsuit in Kern County,
8 and/or cause a fatal head, neck or spine trauma by running the plaintiff off the
9 road. Adventist Health & Hershewe essentially have created what appears to be a
10 Klansman (KKK) for hire scheme. The Klansman (KKK) for hire scheme,
11 directed at the plaintiff to prevent her from seeking equal protection of the laws of
12 the United States and deny her due process, is a violation of 42 U.S.C. § 1985(2)
13 and (3). The aforementioned acts are discriminatory in nature and designed to
14 intimidate the plaintiff.

15 55. The Adventist Health, Hershewe and John Doe conspiracy was designed to
16 deprive the plaintiff, and others like her (disabled handicapped injured workers)
17 the equal protection of laws and due process, by using cat and mouse tail gating
18 chase tactics to further the conspiracy, causing the plaintiff to suffer great
19 emotional anxiety, debilitating humiliation, and to be in fear of her life, and/or
20 cause a fatal injury due to neck, spine and head trauma by running the plaintiff's
21 automobile off the road.

22 56. That Adventist Health and Hershewe had a meeting of minds to hire former
23 agents of the Federal Bureau of Investigation to harass and intimidate witnesses
24 and obstruct justice with Chairman Mostert's approval. An example of the latest
25 incident of intimidation tactics was the visit of a former FBI agent to a close friend
26

1 of the Plaintiff on August 25th, 2006. This former FBI agent left a “FBI calling
2 card” at the residence of the Plaintiff’s close friend. This friend has been identified
3 as a witness in the Kern County racketeering lawsuit.,

4 57. That the aforementioned acts constitute a violation of Amendment XIV of
5 the U.S. Constitution, 42 U.S.C. § 1320d-6, 42 USC § 1983 and § 1985, and 45
6 CFR § 84.3(f) and 28 CFR § 41.3(d).

7
8 **JURY OF PEERS DEMANDED**

9
10 The Plaintiff hereby DEMANDS a jury of her peers to hear the aforementioned
11 allegations.

12
13 **DAMAGES AND AWARDS**

14
15 The Plaintiff seeks compensatory damages of \$20,000,001.00 against all
16 defendants.

17
18 The Plaintiff seeks punitive damages of \$20,000,001.00 against all defendants.

19
20 I hereby attest under the penalties of perjury that the following allegations are true,
21 to the best of my reason and belief.

1

2 **REQUEST FOR FINDINGS OF LAW AND FACT**

3

4 That this Honorable Court find that the defendants have acted in reckless disregard
5 to federal civil rights laws and be required to compensate the plaintiff for her
6 emotional, physical and mental damages. Further, those monies due the U.S.
7 Government are recovered from the defendants under the Medicare Secondary
8 Payer Act for the plaintiff's injuries.

9

10 I attest to the truthfulness and accuracy of the foregoing statements and allegations.
11 I am not filing this complaint for the purposes to harass, annoy the defendants or
12 delay proceedings. I attest that I have reason to believe that this entire complaint is
13 well-founded, having merit and grounded in law and fact.

14

15 Respectfully submitted,

16

17 Barbara Clark

18

19 Dated this ____ day of April, 2007.

20

21

22 _____
23 Barbara Clark, c/o
24 *in propria persona*
25 PMB # 125
26 785 Tucker Road, Suite G
Tehachapi, CA 93561