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14 MONTANA SECOND JUDICIAL DISTRICT COURT
15 SILVER BOW COUNTY, STATE OF MONTANA

16 ROBERT J WHELAN
17 JUDGE DEPT. II

18 C.G., individually and as a member of a class)
19 of similarly situated individuals)

20 Cause No. DM-19-220

21 Plaintiffs,)

22 vs.)

23 CLASS ACTION COMPLAINT AND
24 DEMAND FOR JURY TRIAL

25 ST. JAMES HEALTHCARE and JOHN DOES)
26 1 through 50,)

27 Defendants.)
28)
29)
30)

31 COMES NOW, the Plaintiffs C.G., and the class of individuals identified herein, by and
32 through counsel, ROBERT G. McCARTHY and KEVIN M. FUNYAK and hereby allege as
33 follows:

34 GENERAL ALLEGATIONS

1. This court has jurisdiction over the parties and subject matter of this case.
2. Venue of this matter is proper in Silver Bow County.

FILED
JUL 19 2019

By: Tem Powers, Clerk
Deputy Clerk
41208

- 1 3. Dr. Patrick McGree is a former physician that practiced medicine in Butte, Montana from
2 1986 until 2017. McGree practice at, was affiliated with, was under the supervision and
3 control of or was regulated by Defendant and John Doe Defendants 1-50.
- 4 4. Plaintiff C.G. was at all times relevant to this action a resident of Silver Bow County,
5 Montana.
- 6 5. Defendant St. James Healthcare is a corporate entity offering medical services in Butte,
7 Montana. Defendant was formerly known as St. James Community Hospital.
- 8 6. The plaintiff class members are female patients that were sexually assaulted and or forced
9 into sexual servitude by McGree while receiving medical care from Patrick J. McGree who
10 was granted staff privileges and the opportunity to deliver medical services at Defendant
11 St. James Healthcare's controlled facilities.
- 12 7. John Does, 1 through 50 are named fictitiously as their identity is presently unknown to
13 the plaintiffs.
- 14 8. The John Doe defendants are corporate entities, governmental, regulatory and supervisory
15 entities, medical providers, medical facilities including clinics and hospitals and other
16 individuals with a duty to C.G. and other patients and the public to report inappropriate
17 conduct and to protect patients under Dr. McGree's care.
- 18 9. Defendants and John Does knew of McGree's malfeasance, malpractice and improper
19 conduct and purposefully or negligently failed to take actions to protect the plaintiff and
20 the class to which she belongs and concealed their knowledge from C.G., and other patients
21 including the members of a prospective class.
- 22 10. St. James Healthcare and John Does 1 through 50 have failed to take any action or make
23 any effort to advise or warn their shared patients and other individuals to which they owed
24 a duty of the admitted conduct of Dr. McGree even after Dr. McGree was sentenced to

prison for his actions.

11. The John Doe defendants will be named and added to this complaint as their identity is determined in the process of discovery.

12. Defendant St. James Healthcare was at the time of the incidents which are the subject of this action, a facility providing medical care which is believed to have been managed and directed in part by its member physicians including Dr. Patrick J. McGree in Butte, Montana. St. James Healthcare has existed in the Butte community for over 100 years and has operated under other names, all of which are now under the direction and control of St. James Healthcare.

13. St. James Healthcare was at the time of the incidents, from 1986 to the present time, was aware or should have been aware of the actions by Dr. Patrick McGree that were injuring C.G. and other similarly situated patients and have failed to act to protect those patients at the time of the conduct and have failed to take any actions to provide appropriate care and interventions to date.

14. The active concealment of material facts by the Defendant St. James Healthcare and John Doe Defendants is believed to include the period from 1986 to date.

15. Each of the Defendants have actively and purposefully concealed from C.G. and other similarly situated patients the fact of McGree's sexual assault of patients including but not limited to the material facts that were published by local news outlets after Dr. McGree admitted that he had sexually assaulted multiple patients and that there have been substantiated charges that McGree placed patients in sexual servitude by addicting patients to prescription medication and forcing sexual acts from them in exchange for the renewal of their prescriptions.

16. St. James Healthcare and John Doe Defendants knew of prior complaints against Dr.

McGree and took no steps to protect his patients.

17. The claims of C.G. and similarly situated individuals relate to conduct that by its nature and Defendants' positions or roles as C.G.'s medical providers or as entities has been kept secret and hidden.

18. The Defendants' actions to conceal was not discovered by C.G. until McGree's criminal interactions with other patients became publicly known as a result of a criminal prosecution that was initiated in December 2017.

19. Patients of Defendants that were sexually abused and placed in sexual servitude are believed to remain uninformed of McGree's conduct and as a result continue to suffer harm and injury. These patients have moved from the area, died, or do not follow the new or current reported events.

20. The confidential nature of the relationship and repose of trust that existed between C.G. and the Defendants required the Defendants to disclose material information to C.G. and other patients. The Defendants did not disclose material facts to C.G. or other patients regarding Dr. McGree and his criminal acts and have further failed to take reasonable steps to provide for C.G.'s health and well-being as a result of their desire to protect their reputation and financial positions.

21. St. James Healthcare provided the facility, staff and employees and operated one of the medical facilities in which McGree examined female patients including C.G. and other patients.

22. McGree was a primary physician who provided medical care to C.G. and other individuals at St. James Healthcare and at other facilities owned, operated or under the direction of St. James Healthcare or by the John Doe Defendants.

23. C.G. regularly saw McGree for medical care at St. James Healthcare and other facilities

1 over a period of years and complained of McGree's conduct toward her as specifically
2 requested that he not be allowed to see her at the St. James facility but her request was
3 denied and Dr. McGree sexually abused her there behind the closed doors of her patient
4 room.

5 24. C.G. was sexually assaulted and forced into sexual servitude during the time she saw
6 McGree and was sexually abused by McGree at St. James Healthcare.

7 25. Multiple complaints were made by patients against Dr. McGree alleging improper sexual
8 contact that were known or should have been known to St. James Healthcare and the John
9 Doe Defendants. No action was taken to protect CG or other patients. No actions were
10 taken to investigate the complaints or to otherwise provide for the safety, security and
11 wellbeing of the plaintiff or the plaintiff class.

12 26. St. James Healthcare and John Does 1 through 50 caused injury and harm to C.G. and
13 others as a result of their negligence and negligent concealment of facts known to them of
14 material importance to C.G. and other patients.

15 27. St. James Healthcare and John Does 1 through 50 failed to disclose material facts regarding
16 McGree to patients including C.G. and others who were examined by McGree.

17 28. St. James Healthcare and John Does 1 through 50 negligently concealed McGree's actions
18 and their own negligent actions relating to McGree and his care of patients and have failed
19 or otherwise refused to take reasonable steps to inform their patients that they know or
20 should know or would know with a scintilla of due diligence were examined by McGree
21 at their facilities.

22 29. St. James Healthcare and John Does 1 through 50 have by their omissions and refusals to
23 act have prevented their patients who they knew or now know or could be easily determined
24 were treated by McGree from obtaining professional care and treatment.

1 **COUNT I: C.G.'s CLAIM OF NEGLIGENCE AGAINST ALL DEFENDANTS**

2 30. C.G. re-alleges and incorporates by reference herein all of the allegations contained in
3 paragraphs 1-29 above.

4 31. The Defendants undertook to render proper and continuing care and treatment to C.G. for
5 a fee, and therefore owed a duty to exercise reasonable care in the diagnosis, treatment,
6 and discharge of C.G. The obligations continue following discharge when the Defendants
7 learned or reasonably should have learned of McGree's acts.

8 32. St. James Healthcare and John Doe Defendants were aware of acts by McGree that included
9 reported sexual assaults while on their premises and failed to investigate those claims or to
10 take appropriate acts to establish appropriate procedures to assure the safety of C.G. and
11 any other patients that were subject to exams or to other medical care from McGree at the
12 facility.

13 33. After having sufficient knowledge of allegations of improprieties by McGree the
14 Defendants negligently failed to establish a chaperoned examination procedure at their
15 facilities or locations.

16 34. After having sufficient notice of allegations of improprieties by McGree St. James
17 Healthcare and John Does 1 through 50 negligently failed to educate their staff and C.G.
18 and other female patients as to appropriate conduct of medical examinations and when to
19 report improprieties and to whom. They also failed to attempt to educate patients as to the
20 appropriate conduct of a medical exam and inform patients to report any suspicion of
21 inappropriate physical touching during and exam.

22 35. After having sufficient notice of allegations of improprieties by McGree the Defendants
23 negligently continued to allow unchaperoned examinations of female patients behind
24 closed doors by McGree.

1 36. C.G., and other patients of McGree at St. James Healthcare and John Does 1 through 50
2 facilities were sexually abused and subjected to sexual servitude after the Defendants had
3 notice, or otherwise knew or should have known of McGree's criminal conduct.

4 37. Defendants St. James Healthcare and John Does 1 through 50, their staff and their
5 employees all breached their duties to C.G. and other patients in that they failed to use
6 reasonable care to provide for patient safety and security during medical exams and in the
7 process of providing medical care.

8 38. Following discovery of McGree's conduct, Defendants St. James Healthcare and John
9 Does 1 through 50, their staff and employees breached their individual and collective duties
10 to C.G. and other patients in that they have failed to advise C.G. and other patients that
11 they should seek medical and psychological care to address the sexual abuse and
12 medication abuses. McGree's admitted criminal acts and alleged practices were the subject
13 of criminal charges to which McGree had admitted.

14 39. As a proximate result of the St. James Healthcare and John Does 1 through 50's negligence
15 through their individual acts and the acts of their managers, staff and employees, C.G. and
16 other similarly situated individuals suffered physical rape, sexual assault, physical
17 addictions to narcotics, extreme emotional pain and injuries, extreme mental anguish in
18 the past and in the future, lost earnings in the past and future, damage to past and future
19 earning capacity, physical impairment in the past and future, medical expenses in the past
20 and future, loss of household services in the past and future, severe emotional distress and
21 other special and general damages to be proven at trial.

22 40. C.G. and other patients that were injured by the St. James Healthcare and John Does 1
23 through 50's negligence are entitled to the recovery of all of their damages from the
24 Defendants to be proven at trial.

1 41. St. James Healthcare and John Does 1 through 50 are individually, jointly and severally
2 liable to C.G. and other patients similarly situated and harmed for the damages they
3 sustained as a result of the Defendants' negligence.
4

5 **COUNT II—LOSS OF CHANCE TO MINIMIZE HARM**

6 42. C.G. incorporates by reference herein all of the allegations contained in paragraphs 1-41
7 above.

8 43. The harm that C.G. and other patients have suffered over a period of several years and
9 which they continue to suffer from as a result of the negligence of the Defendants could
10 have been prevented if St. James Healthcare and John Does 1 through 50 had implemented
11 appropriate standards and requirements for the examination and treatment of patients and
12 informed female patients of appropriate exam practices including offering a chaperone in
13 their facilities. These standards should have been implemented before the abuse by
14 McGree and the failure to have such procedures in place was negligent and the proximate
15 cause of injury to the plaintiff and the class of individuals who were similarly injured and
16 harmed.

17 44. The harm that C.G. and other patients have suffered over a period of several years and
18 which they continue to suffer from as a result of the negligence of St. James Healthcare
19 and John Does 1 through 50 could have been minimized had the Defendants taken
20 reasonable steps to promptly and appropriately investigate allegations and complaints
21 made about McGree and taken reasonable steps to provide for patient safety while a patient
22 of their facilities.

23 45. Even after McGree was criminally charged the Defendants have failed to take a single act
24 to promptly provide resources including medical and psychological care and support for

1 C.G. and other patients that the Defendants know or should have known were examined by
2 McGree and possibly sexually assaulted. Many patients who were treated by McGree
3 now have reasonable questions as to whether they were abused by him that should be
4 addressed by trained professionals.

5 46. The Defendants have buried their heads with an expectation that someone else is going to
6 take responsibility for their patients while those patients suffer further harm and mental
7 anguish.

8 47. Prompt treatment and care of C.G. and other patients could have produced a better outcome
9 for C.G. and all other patients and would have allowed them to recover more completely
10 and or sooner from the harms that they sustained and from which they continue to suffer.

11 48. St. James Healthcare and John Does 1 through 50 have refused to act to protect C.G. and
12 other patients they reasonably knew in the past to have been likely harmed and which they
13 now know with a reasonable certainty were likely harmed in order to protect themselves
14 and their assets and to foster their perception of their good reputation in the community.

15 49. St. James Healthcare and John Does 1 through 50 failed to initiate care and treatment of
16 C.G. or to refer her to others and thereby deprived C.G. and other patients of appropriate
17 care and the opportunity to minimize and or limit the injuries and damages they have
18 suffered and will continue to suffer in the future.

19 50. St. James Healthcare and John Does 1 through 50 have individually and collectively
20 breached their duties and have failed to provide care required by failing to inform C.G.,
21 and other patients of McGree's past conduct with others.

22 51. St. James Healthcare and John Does 1 through 50 failed to advise C.G. and all their patients
23 who may have been sexually assaulted to seek appropriate professional care to address the
24 mental and physical harms McGree's conduct and their negligence and subsequent

1 concealment may have caused them and which may continue to cause them in the future.

2 52. As a proximate result of the negligent actions of the St. James Healthcare and John Does 1
3 through 50, C.G. and other patients of McGree have suffered extreme physical pain and
4 injuries, extreme mental anguish in the past and in the future, lost earnings, damage to
5 earning capacity, physical and mental impairments in the past and future, medical and
6 treatment expenses in the past and future, and loss of household services in the past and
7 future and other damages to be proven at trial.

8 53. St. James Healthcare and John Does 1 through 50 are individually, jointly and severally
9 liable to C.G. and all other patients for all damages caused by their negligence and failure
10 to take appropriate and responsible actions to minimize the harm that C.G. and other
11 patients suffered.

12 **COUNT IV. CLASS ACTION CLAIMS**

13 54. Plaintiff's repeat the allegations in paragraphs 1 – 53 above. The allegations are
14 consecutive and included in each separated claim and count for relief asserted by the class.

15 55. Plaintiff C.G. is a member of a class of similar individual patients of Patrick McGree and
16 of the Defendants that have suffered harms as a result of the negligence of the above named
17 Defendants as set forth above.

18 56. Plaintiff bring this action as a class action on behalf of individuals defined as follows:

19 Any person that was examined as a patient by Patrick McGree who was or believes they
20 may have been sexually assaulted and or inappropriately prescribed prescription
21 medications as a result of the Defendants negligence in failing to protect them from such
22 harms.

23 60. The individuals in the class above defined are believed to number in the hundreds and
24 are so numerous that individual joinder of class members as plaintiffs is impracticable.

- 1 61. There are questions of law and fact common to each member of the class.
- 2 62. The claims stated above by C.G. are believed to be typical of the claims of the class
- 3 members stated herein.
- 4 63. Plaintiffs have retained experienced class action litigation counsel and will fairly and
- 5 adequately protect the interests of the class.
- 6 64. Prosecution of separate actions by or against individual members of the class would
- 7 create a risk of inconsistent or varying adjudications of the duties and obligations owed
- 8 by the Defendants.
- 9 65. The prospective class meets all of the criteria set forth in Rule 23(b), M.R.Civ.P.
- 10 66. The questions of law or fact that are common to the members of the class will be
- 11 determinative of the lawsuit thus making a class action the superior method for fair and
- 12 efficient adjudication of the controversy.
- 13 67. Due to the costs and complexity of litigation, individual class members would have
- 14 little interest in controlling the prosecution of separate actions and would be hampered
- 15 in doing so by the expected costs.
- 16 68. No unique difficulties should be encountered in managing this class action lawsuit
- 17 which would militate against certification.

18 WHEREFORE the Plaintiffs pray for relief as follows:

- 19 1. For the past and future damages incurred by C.G. and other class
- 20 members;
- 21 2. For those damages proven at trial.
- 22 3. For the costs of this suit and an award of reasonable attorney fees .
- 23 4. For an order appointing instant counsel as class counsel.
- 24 5. For any other equitable and legal relief the Court deems just and proper.


1 6. For the Court's certification of the requested class and an order directing
2 the Defendants publish notice at their cost and expense in a form
3 approved by plaintiff and class counsel to all individuals who may have
4 been a victim of Dr. McGree.

5 7. For an order certifying a class of similarly situated individuals requiring
6 the Defendants including any subsequently identified John Does to
7 provide individualized notice to any and all patients that were examined
8 by McGree. Such notice should include a statement of the conduct
9 McGree has admitted and further provide notice that the Defendants are
10 being demanded to pay for the class members evaluation and medical
11 care and that their damages will be determined as established by the
12 Court in subsequent proceedings.

13 8. For such other legal or equitable relief that the Court determines
14 appropriate including but not limited to the appropriate award of such
15 punitive or exemplary damages, upon appropriate future amendment of
16 this complaint, as may be appropriate based on the acts of the
17 Defendants taken to protect themselves while knowingly allowing the
18 plaintiff and plaintiff class to suffer.

19 DATED this 19th day of July, 2019.

20 McCARTHY LAW, P.C.

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23 ROBERT G. MCCARTHY
24 Attorney for Plaintiff

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DATED this 19th day of July, 2019.

McCARTHY LAW, P.C.

ROBERT G. McCARTHY
Attorney for Plaintiff