

1 Steve W. Berman (*pro hac vice* pending)
2 HAGENS BERMAN SOBOL SHAPIRO LLP
3 1301 Second Avenue, Suite 2000
4 Seattle, WA 98101
5 Tel: (206) 623-7292
6 Fax: (206) 623-0594
7 Email: steve@hbsslaw.com

8 Kevin K. Green (CA No. 180919)
9 HAGENS BERMAN SOBOL SHAPIRO LLP
10 533 F Street, Suite 207
11 San Diego, CA 92101
12 Tel: (619) 929-3340
13 Fax: (206) 623-0594
14 Email: keving@hbsslaw.com

15 *Attorneys for Plaintiff*

16 *[Additional Counsel Listed on Signature Page]*

17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA

19 AMBER SNODGRASS, individually
20 and on behalf of others similarly situated,

21 Plaintiffs,

22 v.

23 SHARP HEALTHCARE, and SHARP
24 GROSSMONT HOSPITAL,

25 Defendants.

No. '19CV0702 L LL

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

TABLE OF CONTENTS

Page

I. INTRODUCTION..... 1

II. JURISDICTION AND VENUE..... 3

III. THE PARTIES 3

IV. FACTS..... 4

 A. The standard of care for the treatment of women’s health. 4

 B. Defendants abused the trust of Plaintiffs and the Class and violated the standard of care. 5

 C. The recordings were not filmed for the medical care of Sharp’s patients. 6

 D. The recordings were revealed to the California Medical Board, but not to patients. 7

 E. Sharp failed to secure the recordings to protect patient privacy after filming was complete..... 7

 F. Sharp publicly disclosed its gross invasion of privacy *for the first time* on or about April 5, 2019..... 8

 G. The statute of limitations is tolled based on the continuing violations doctrine and fraudulent concealment. 8

V. CLASS ALLEGATIONS..... 10

VI. CAUSES OF ACTION 12

 COUNT I INVASION OF PRIVACY 12

 COUNT II INVASION OF PRIVACY – CAL. CONST., ART. 1, § 1 13

 COUNT III VIOLATION OF CALIFORNIA PENAL CODE §§ 632 AND 637.2 14

 COUNT IV GROSS NEGLIGENCE 15

 COUNT V NEGLIGENT FAILURE TO WARN, TRAIN, OR EDUCATE..... 16

 COUNT VI INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS 17

 COUNT VII NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS 17

PRAYER FOR RELIEF 18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff, individually and on behalf of all women who underwent a surgery in
2 the Women’s Health Center between July 17, 2012 and June 30, 2013 at Sharp
3 Grossmont Hospital, allege as follows:

4 **I. INTRODUCTION**

5 1. A fundamental tenet of the Hippocratic Oath is the physician’s promise to
6 “respect the privacy of my patients, for their problems are not disclosed to me that the
7 world may know.”¹ To that end, international medical organizations universally agree
8 that: “A physician shall respect a patient’s right to confidentiality.”²

9 2. This fundamental tenet extends to the hospital where the physician treats
10 her patients, and only permits the sharing of medical information “when medically
11 necessary” and “with colleagues who are involved in the care of the same patient. This
12 communication should respect patient confidentiality and be confined to necessary
13 information.”³

14 3. Trust is an essential part of the relationship between physician and
15 patient. “Without trust, how could a physician expect patients to reveal the full extent
16 of their medically relevant history, expose themselves to the physical exam, or act on
17 recommendations for tests or treatments?”⁴ And that trust is particularly crucial when
18
19

20 ¹ Peter Tyson, “The Hippocratic Oath Today,” (March 26, 2001) available at
21 <https://www.pbs.org/wgbh/nova/article/hippocratic-oath-today/> (last accessed
22 April 10, 2019).

23 ² WMA International Code of Medical Ethics, World Medical Association,
24 available at <https://www.wma.net/policies-post/wma-international-code-of-medical-ethics/>
25 (last accessed April 10, 2019).

26 ³ WMA International Code of Medical Ethics, World Medical Association,
27 available at <https://www.wma.net/policies-post/wma-international-code-of-medical-ethics/>
28 (last accessed April 10, 2019).

⁴ Susan Dorr Goold, MD, MHSA, MA, *Trust, Distrust and Trustworthiness: Lessons from the Field*, 17 J. GEN. INTERNAL MED. 79, 79–81 (2002) (citations omitted).

1 a patient is anesthetized, according to a former president of the American Society of
2 Anesthesiologists:

3 “Whether the patient is aware or not, every patient deserves
4 to be treated with dignity and respect — as if you were my
5 mother, my father, my sister, my brother. **** The trust a
6 patient has in their physician to have their best interests at
heart must not be compromised.”⁵

7 4. Defendants grossly breached this trust and their patients’ right to privacy
8 by installing hidden cameras in all three operating rooms of the Women’s Health
9 Center at Sharp Grossmont Hospital. Triggered by motion, these cameras recorded
10 female patients before, during, and after surgical procedures, capturing videos which
11 “depict patients in their most vulnerable state, under anesthesia, exposed and
12 undergoing medical procedures.”

13 5. More than 1,800 women, who were “unconscious, undressed on operating
14 room tables, undergoing medical procedures” were captured in more than 6,966 video
15 clips.

16 6. Defendants did not obtain Plaintiff’s or Class members’ consent to record
17 their Caesarean births, birth complications, dilatation and curettage to resolve
18 miscarriages, hysterectomies, sterilizations, or other medical procedures.

19 7. In a further breach of trust and duty, after the recordings were completed,
20 Sharp stored the files on computers accessible by multiple users, some without
21 password protection. Sharp also allegedly destroyed some recordings, but has not
22 confirmed when or how it deleted the files, whether anyone took the files, or whether
23 the files are nonetheless recoverable.

24
25
26
27 ⁵ “Anonymous Essay Recounts Shocking Treatment Of Anesthetized Patients,”
28 (Aug. 18, 2015), available at https://www.huffpost.com/entry/doctors-patients-anesthetized_n_55d22f8ce4b07addcb43a715.

1 8. Plaintiff and the Class have suffered a gross invasion of privacy, which
2 has caused severe emotional distress, pain and suffering, for which Defendants should
3 be held responsible.

4 **II. JURISDICTION AND VENUE**

5 9. This Court has subject-matter jurisdiction pursuant to the Class Action
6 Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action, including
7 claims asserted on behalf of a nationwide class, filed under Rule 23 of the Federal
8 Rules of Civil Procedure; there are thousands of proposed Class members; the
9 aggregate amount in controversy exceeds the jurisdictional amount or \$5,000,000.00;
10 and Defendants are citizens of a state different from that of one or more members of
11 the Class.

12 10. Venue is proper in this District under 28 U.S.C. § 1391(a)-(d) because,
13 *inter alia*, substantial parts of the events or omissions giving rise to the claim occurred
14 in the District and/or a substantial part of property that is the subject of the action is
15 situated in the District.

16 **III. THE PARTIES**

17 11. Plaintiff Amber Snodgrass is a resident of San Diego, California and a
18 citizen of the United States. Snodgrass gave birth by caesarean section on
19 December 24, 2012 in an operating room at the Women’s Health Center at Sharp
20 Grossmont Hospital. Based on the statements of Defendants, Plaintiff alleges, in good
21 faith, that she was secretly recorded by one of the hidden cameras in the operating
22 room. Plaintiff did not consent and would not have consented to being recorded during
23 this procedure, has suffered severe emotional distress upon learning of this gross
24 invasion of privacy, and has been damaged as a result of Defendants’ actions.

25 12. Defendant Sharp HealthCare is a corporation organized under the laws of
26 California and maintains its principal place of business at 8695 Spectrum Center
27 Boulevard, San Diego, CA 92123.
28

1 spirit” of the Code of Conduct for SAEM and the Code of Ethics for the American
2 College of Emergency Physicians.⁸

3 18. Thus, the American College of Emergency Physicians has proclaimed
4 that filming “cannot benefit a patient medically and may compromise both their
5 privacy and confidentiality, [and thus] filming should not commence unless and until a
6 patient with full unencumbered decision making capacity can explicitly consent”⁹

7 19. Absent consent, the filming of unconscious patients is a fundamental
8 invasion of privacy.

9 **B. Defendants abused the trust of Plaintiffs and the Class and violated the**
10 **standard of care.**

11 20. On or about July 17, 2012, Sharp installed and activated hidden cameras
12 in each of the three operating rooms of its Women’s Health Center at Sharp
13 Grossmont Hospital. The cameras were embedded in computer monitors in the
14 operating rooms and directed at areas where patients receive care.

15 21. The cameras were programmed to start recording as soon as anyone
16 moved in the room, and continue recording until no motion was detected for a set
17 period of time. The cameras operated 24 hours a day, seven days a week until June 30,
18 2013.

19 22. Sharp secretly recorded approximately 1,800 patients undergoing surgical
20 procedures, including cesarean section births, hysterectomies, dilation and curettage
21
22

23 ⁸ Benjamin Lerman, MD, Academic Emergency Medicine (March 2002), Vo. 9,
24 No. 3, p. 262 (citing Marco CA, Larkin GL, for the SAEM Ethics Committee. Filming
25 of patients in academic emergency departments. SAEM Newslett. May-June 2001;
XIII(3)), available at <https://onlinelibrary.wiley.com/doi/pdf/10.1197/aemj.9.3.261>
(last accessed April 10, 2019).

26 ⁹ American College of Emergency Physicians, Commercial Filming of Patients in
27 the Emergency Department (Rev. June 2015), available at
28 [https://www.acep.org/patient-care/policy-statements/commercial-filming-of-patients-
in-the-emergency-department/](https://www.acep.org/patient-care/policy-statements/commercial-filming-of-patients-in-the-emergency-department/) (last accessed April 10, 2019).

1 (D&C), tubal ligations, pelvic floor repairs, laparoscopies, and surgeries to resolve
2 ectopic pregnancies.

3 23. Sharp has records that identify the date, medical record number, and
4 surgical procedures performed in each operating room while the hidden cameras were
5 operating. Yet, Sharp never disclosed to any patients (or even its employees) that they
6 were being recorded secretly during their surgical procedures.

7 **C. The recordings were not filmed for the medical care of Sharp's patients.**

8 24. Sharp claims it installed the cameras to catch a suspected doctor stealing
9 drugs from the operating rooms, but Sharp admitted that it knew the film would not be
10 enough to confront the suspected doctor.

11 25. Shortly after installing the cameras, Sharp's then-Director of Security,
12 Raymond Albright, told Sharp Grossmont's then-Chief Executive Officer Michele
13 Tarbet that the video evidence was not sufficient to confront the suspected doctor.
14 However, Tarbet instructed Albright to continue taking the videos.

15 26. Sharp even kept the cameras running for almost a year, including several
16 months after it concluded its investigation of the suspected doctor without any medical
17 justification.

18 27. Sharp's Senior Vice President and General Counsel then instructed
19 Howard LaBore, Sharp's Investigator, to review the recordings after Sharp confronted
20 the suspected doctor. Over three weeks, LaBore reviewed each of the videos, working
21 approximately 40 hours per week. LaBore has stated that he could see patients' faces,
22 as well as from the head of a patient down to her feet.

23 28. Sharp's General Counsel has also described the content of the videos,
24 stating: "all capture scenes within the three operating rooms, which are not open to the
25 public. There are images contained within the multitude of images of women
26 undergoing operations of a very personal, private nature, unconscious and in states of
27 exposure depending on the operation being performed."
28

1 **D. The recordings were revealed to the California Medical Board, but not to**
2 **patients.**

3 29. Sharp never disclosed to any patients (or even its employees) that they
4 were being recorded secretly during their surgical procedures.

5 30. The existence of the recordings only became known to a limited number
6 of people when the Medical Board of California began an investigation of the
7 suspected doctor in 2015.

8 31. The suspected doctor subpoenaed Sharp, demanding production of all the
9 recordings in that proceeding so that he could search for exculpatory evidence, i.e.,
10 recordings showing other doctors taking drugs from the operating room carts. Sharp
11 moved to quash that subpoena.

12 32. In its motion to quash, Sharp acknowledged that disclosure of the secret
13 recordings “runs afoul of privacy interests of a multitude of persons, protected by
14 among other things Article 1, Section 1 of the California Constitution, the California
15 Medical Information Act (Civil Code § 56 *et seq.*, and specifically § 56.10), California
16 Evidence Code section 994, the Fourth Amendment of the U.S. Constitution and/or the
17 Health Insurance Portability and Accountability Act (HIPAA).”

18 33. Sharp also acknowledged in its motion to quash that “[p]atients have an
19 objectively reasonable expectation that video reflecting them in their most vulnerable
20 state, unconscious on an operating room table, will not be disclosed.”

21 **E. Sharp failed to secure the recordings to protect patient privacy after**
22 **filming was complete.**

23 34. Sharp has disclosed conflicting information concerning the storage of the
24 recordings. Sharp reportedly is unable to document how the videos were stored, or the
25 manner in which they were sent to security employees to review during the
26 investigation.

27 35. Some of the computers holding the secret recordings were moved to an
28 area where they could be accessed by multiple information technology employees.

1 36. One of the computers in the operating rooms was “refreshed,” or replaced
2 by Sharp, during the time the cameras were operating.

3 37. Sharp claims that it deleted recordings between July 2012 and February
4 2013 that were captured by the hidden cameras, but Sharp’s IT employees reportedly
5 cannot remember deleting anything.

6 **F. Sharp publicly disclosed its gross invasion of privacy *for the first time* on or**
7 **about April 5, 2019.**

8 38. On April 5, 2019, the President and Chief Executive Officer of Sharp
9 Healthcare issued a written statement, which provided in part:

10 You may have seen increased media attention surrounding
11 an investigation into missing drugs that took place at Sharp
12 Grossmont Hospital between July 2012 and June 2013.

12 * * *

13 Our initial efforts to determine the cause of the missing
14 drugs through interviews and other investigative methods
15 were unsuccessful. We then installed a computer monitor
16 with a motion-activated camera in each of the three
17 Women’s Health Center operating rooms. Although the
18 cameras were intended to record only individuals in front of
19 the anesthesia carts, others, including patients and medical
20 personnel in the operating rooms, were at times visible to the
21 cameras and recorded without sound.

19 * * *

20 We sincerely apologize that our efforts may have caused any
21 distress to the women who were recorded, their families, and
22 others we serve.¹⁰

22 **G. The statute of limitations is tolled based on the continuing violations**
23 **doctrine and fraudulent concealment.**

24 39. Sharp Grossmont and its agents concealed the existence of Plaintiff’s
25 claims and the fact that Plaintiff had a cause of action against them for secretly
26

27 ¹⁰ Letter from Chris Howard, President and Chief Executive Officer, Sharp
28 Healthcare, available at <https://www.documentcloud.org/documents/5796173-Community-Letter.html> (last accessed April 10, 2019).

1 recording them at their most vulnerable by making material representation(s) to
2 Plaintiff involving a past or existing fact, including by misrepresenting that their acts
3 and/or conduct were for the purpose of medical care.

4 40. The material representation(s) to Plaintiff and the Class were false in that
5 Defendants were actually recording their surgeries for their own internal interests that
6 in no way furthered the medical care of Plaintiff.

7 41. When Sharp Grossmont and its agents made the material
8 representation(s), they knew that they were false in that they knew that the recordings
9 were not proper, appropriate, legitimate, and/or considered within the standard of care
10 by any physician of any specialty and/or surgery or anesthesiology.

11 42. Sharp Grossmont and its agents made the material representation(s) with
12 the intent that the material representation(s) should be acted upon by Plaintiff and the
13 Class in that Plaintiff and the Class members should believe that the actions of Sharp
14 Grossmont while they were sedated were in furtherance of their medical care; should
15 not question and/or report the conduct to appropriate authorities; and should not
16 reasonably believe and not be aware of a possible cause of action that they have
17 against Defendants.

18 43. Plaintiff and Class members acted in reliance upon the material
19 representation(s) in that they:

- 20 a. Reasonably believed that the actions taken by Sharp Grossmont
21 were in furtherance of their medical care;
- 22 b. Did not believe that they should question and/or report any conduct
23 to appropriate authorities; and
- 24 c. Did not reasonably believe that they had and were not aware of a
25 possible cause of action that they had against Defendants.

26 44. Defendants further concealed the fraud by affirmative act(s) that were
27 designed and/or planned to prevent inquiry and escape investigation and prevent
28 subsequent discovery of this fraud in that they:

- 1 a. Misrepresented to other medical professionals in the examination
- 2 room as to the existence of the hidden cameras; and
- 3 b. Did not abide by or follow the standard of care concerning the
- 4 filming of patients without consent.

5 45. The actions and inactions of Defendants constituted fraudulent
6 concealment.

7 46. The statute of limitations for each of Plaintiff's and the Class's causes of
8 actions was equitably tolled, and Defendants are equitably estopped from asserting the
9 statute of limitations as a defense, by reason of their wrongful conduct.

10 47. Defendants engaged in, joined in, and conspired with each of the other
11 Defendants and wrongdoers in carrying out the tortuous and unlawful activities herein
12 described. Each Defendant is legally responsible for the occurrences herein alleged,
13 and Plaintiff's and the Class's damages, as herein alleged, were proximately caused by
14 all Defendants.

15 48. Plaintiffs and Class members did not know, could not have reasonably
16 known, and were not reasonably aware of a possible cause of action that they had
17 against Defendants until Defendants issued an acknowledgement of the invasion of
18 privacy and an apology on or about April 5, 2019.

19 V. CLASS ALLEGATIONS

20 49. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
21 23(b)(3) and 23(c)(4) on behalf of herself and the following Class:

22 All women who underwent a surgical procedure in the
23 Women's Health Center at Sharp Grossmont Hospital
24 between July 17, 2012 and June 30, 2013.

25 50. The Class consists of more than 1,800, making joinder impracticable, in
26 satisfaction of Fed. R. Civ. P. 23(a)(1). The exact size of the Class and the identities of
27 the individual members are ascertainable through records maintained by Sharp
28 Grossmont.

1 51. The claims of Plaintiff are typical of the Class. The claims of the Plaintiff
2 and the Class are based on the same legal theories and arise from the same unlawful
3 invasion of privacy.

4 52. There are many questions of law and fact common to the claims of
5 Plaintiff and the Class, and those questions predominate over any questions that may
6 affect only individual Class members within the meaning of Fed. R. Civ. P. 23(a)(2)
7 and (b)(3). Class treatment of common issues under Fed. R. Civ. P. 23(c)(4) will
8 materially advance the litigation.

9 53. Common questions of fact and law affecting members of the Class
10 include, but are not limited to, the following:

- 11 a. Whether Defendants invaded the privacy of Plaintiff and the Class;
- 12 b. Whether Defendants were grossly negligent by recording Plaintiff
13 and the Class in the operating room without their consent;
- 14 c. Whether Defendants negligently failed to warn or educate Plaintiff
15 and the Class about the risks of being recorded while undergoing
16 surgery;
- 17 d. Whether Defendants negligently failed to warn, educate or train
18 their own employees about the confidentiality concerns and privacy
19 rights of patients undergoing surgery in their facilities;
- 20 e. Whether Defendants intentionally or negligently inflicted
21 emotional distress on Plaintiff and the Class; and
- 22 f. Whether Plaintiff and the Class are entitled to damages.

23 54. Absent a class action, most of the members of the Class would find the
24 cost of litigating their claims to be prohibitive and will have no effective remedy. The
25 class treatment of common questions of law and fact is also superior to multiple
26 individual actions or piecemeal litigation, particularly as to Defendants' legal
27 responsibility, in that it conserves the resources of the courts and the litigants and
28 promotes consistency and efficiency of adjudication.

1 55. Plaintiff will fairly and adequately represent and protect the interests of
2 the Class. Plaintiff has retained counsel with substantial experience in prosecuting
3 complex litigation and class actions. Plaintiff and her counsel are committed to
4 vigorously prosecuting this action on behalf of the other respective Class members,
5 and have the financial resources to do so. Neither Plaintiff nor her counsel have any
6 interests adverse to those of the other members of the Class.

7 **VI. CAUSES OF ACTION**

8 **COUNT I**

9 **INVASION OF PRIVACY**

10 56. Plaintiff and the Class restate and incorporates herein by reference the
11 preceding paragraphs as if fully set forth herein.

12 57. Defendants secretly filmed Plaintiff and the Class while they were
13 unconscious or sedated undergoing medical procedures—without consent, and without
14 protecting their privacy.

15 58. Plaintiff and the Class had a reasonable expectation of privacy in the
16 operating rooms of Sharp Grossmont Hospital’s Women’s Health Center.

17 59. Doctors must obtain informed consent in order to provide medical
18 treatment. “Consent is based on the disclosure of information and a sharing of
19 interpretations of its meaning by a medical professional. The accuracy of disclosure,
20 insofar as it is possible, is governed by the ethical requirement of truth-telling.”¹¹

21 60. Defendants filmed patients’ genitalia and their medical procedures
22 without their consent or any disclosure. Defendants’ conduct was outrageous and
23 motivated by a commercial interest in disregard of Plaintiff’s and the Class’s privacy
24 rights.

25
26
27 ¹¹ American College of Obstetricians and Gynecologists, Committee Opinion No.
28 439 (2009), <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Informed-Consent>.

1 61. Defendants’ intrusion into Plaintiff’s and the Class’s privacy would be
2 highly offensive to a reasonable person.

3 62. Defendants did not protect the privacy of patients they filmed.
4 Defendants intentionally intruded upon Plaintiff’s and the Class members’ solitude,
5 seclusion or private affairs and concerns by filming their gynecological and/or other
6 surgeries, treatment and/or care without authorization or consent. This intrusion is
7 highly offensive to reasonable individuals, such as Plaintiff and the Class members,
8 and was totally unwarranted and unjustified, constituting invasion of privacy, and a
9 violation of the Health Insurance Portability and Accountability Act of 2016, Pub. L.
10 104–191, 110 Stat. 1936 (HIPAA).

11 63. As a direct and/or proximate result of Defendants’ actions and/or
12 inactions, Plaintiff and Class members were damaged.

13 **COUNT II**

14 **INVASION OF PRIVACY – CAL. CONST., ART. 1, § 1**

15 64. Plaintiff and the Class restate and incorporates herein by reference the
16 preceding paragraphs as if fully set forth herein.

17 65. Defendants secretly filmed Plaintiff and the Class while they were
18 unconscious or sedated undergoing medical procedures—without consent, and without
19 protecting their privacy.

20 66. Plaintiff and the Class had a reasonable expectation of privacy in the
21 operating rooms of Sharp Grossmont Hospital’s Women’s Health Center.

22 67. Defendants filmed patients’ genitalia and their medical procedures
23 without their consent or any disclosure. Defendants’ conduct was outrageous and
24 motivated by a commercial interest in disregard of Plaintiff’s and the Class’s privacy
25 rights.

26 68. Defendants’ intrusion into Plaintiff’s and the Class’s privacy would be
27 highly offensive to a reasonable person.

28

1 69. Defendants did not protect the privacy of patients they filmed.
2 Defendants intentionally intruded upon Plaintiff's and the Class members' solitude,
3 seclusion or private affairs and concerns by filming their gynecological and/or other
4 surgeries, treatment and/or care without authorization or consent. This intrusion is
5 highly offensive to reasonable individuals, such as Plaintiff and the Class members,
6 and was totally unwarranted and unjustified, violating their privacy rights under
7 Article 1, Section 1 of the California Constitution.

8 70. As a direct and proximate result of the Defendants' actions and/or
9 inactions, Plaintiff's and members of the Class were damaged.

10 **COUNT III**

11 **VIOLATION OF CALIFORNIA PENAL CODE §§ 632 AND 637.2**

12 71. Plaintiff and the Class restate and incorporates herein by reference the
13 preceding paragraphs as if fully set forth herein.

14 72. Defendants intentionally video recorded and/or eavesdropped on
15 Plaintiff's and the Class's confidential communications and medical procedures in the
16 operating rooms of Sharp Grossmont Hospital's Women's Health Center by using an
17 electronic device (hidden video cameras).

18 73. Plaintiff and the Class had a reasonable expectation that their medical
19 procedures were not being video recorded.

20 74. Plaintiff and the Class had a reasonable expectation that their
21 communications with medical personnel and their medical procedures were not being
22 viewed by Sharp security personnel or by anyone not medically necessary for their
23 care.

24 75. As reflected above, Defendant unlawfully recorded confidential
25 information of Plaintiff and the Class and violated their privacy rights in violation of
26 California Penal Code §§ 632 and 637.2.

27 76. Defendants did not have the consent of all parties to said conversations
28 and communications to record them.

1 77. Plaintiff and the Class suffered harm, and are entitled to treble damages
2 for such harm. Defendants' conduct was a substantial factor in causing their harm. As
3 a result, and in addition to other available remedies at law, pursuant to Penal Code §
4 637.2, Plaintiff and the Class is entitled to recover a sum equal to the greater of treble
5 their actual damages or statutory penalties per violation.

6 **COUNT IV**

7 **GROSS NEGLIGENCE**

8 78. Plaintiff and the Class restate and incorporates herein by reference the
9 preceding paragraphs as if fully set forth herein.

10 79. The Defendants owed Plaintiff and the Class members a duty to use due
11 care to ensure their freedom from manipulation, abuse, and invasion of privacy while
12 undergoing surgery.

13 80. By seeking medical treatment at Sharp Grossmont, a special, confidential,
14 and fiduciary relationship between Plaintiff and Defendants and the Class members
15 and Defendants was created, resulting in Defendants owing Plaintiff and the Class a
16 duty to use due care.

17 81. The Defendants' installation of hidden cameras that recorded their
18 utterly-private medical procedures without disclosure or consent was so reckless as to
19 demonstrate a substantial lack of concern for whether an injury would result to
20 Plaintiff and the Class.

21 82. The Defendants' conduct demonstrated a willful disregard for precautions
22 to protect the protected health information, confidentiality, and privacy interests of
23 Plaintiff and the Class.

24 83. The Defendants' conduct as described above demonstrated a willful
25 disregard for substantial risks to Plaintiff and Class members.

26 84. The Defendants breached duties owed to Plaintiff and Class members and
27 were grossly negligent when they conducted themselves by the actions described
28 above, said acts having been committed with reckless disregard for Plaintiffs and

1 Class members' health, privacy, constitutional and/or statutory rights, and with a
2 substantial lack of concern as to whether an injury would result.

3 85. As a direct and/or proximate result of Defendants' actions and/or
4 inactions, Plaintiff and Class members were damaged.

5 **COUNT V**

6 **NEGLIGENT FAILURE TO WARN, TRAIN, OR EDUCATE**

7 86. Plaintiff and the Class restate and incorporates herein by reference the
8 preceding paragraphs as if fully set forth herein.

9 87. The Defendants owed Plaintiff and the Class members a duty to take
10 reasonable protective measures to protect them and other patients from the risk of
11 disclosure of protected health information, compromising photographs and videos, and
12 invasion of privacy by properly warning, training, or educating Plaintiff and the Class
13 members and others about how to avoid such a risk.

14 88. The Defendants breached their duty to take reasonable protective
15 measures to protect Plaintiff, Class members, and other patients from the risk of
16 disclosure of protected health information, compromising photographs and videos, and
17 invasion of privacy, such as the failure to properly warn, train or educate Plaintiff, the
18 Class members, and other patients about how to avoid such a particular.

19 89. The Defendants breached their duty to take reasonable protective
20 measures to protect Plaintiff, Class members, and other patients from the risk of
21 disclosure of protected health information, compromising photographs and videos, and
22 invasion of privacy, by failing to supervise and stop their employees from recording
23 their medical procedures, and failed to properly handle those recordings after they
24 were completed.

25 90. As a direct and/or proximate result of Defendants' actions and/or
26 inactions, Plaintiff and Class members were damaged.

27
28

COUNT VI

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1
2
3 91. Plaintiff and the Class restate and incorporates herein by reference the
4 preceding paragraphs as if fully set forth herein.

5 92. Defendants' extreme and outrageous conduct intentionally or recklessly
6 caused severe emotional distress to Plaintiff and the Class members.

7 93. Defendants' outrageous conduct was not the type of ordinary physician
8 examination or even rude or obnoxious behavior that women should be expected to
9 tolerate. Rather, Defendants' conduct exceeded all possible bounds of decency.

10 94. Defendants acted with intent or recklessness knowing that their female
11 patients were likely to endure emotional distress given the relationship and trust
12 placed in them by patients.

13 95. Defendants' conduct caused suffering for Plaintiffs and the Class
14 members at levels that no reasonable person should have to endure.

COUNT VII

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

15
16
17 96. Plaintiff and the Class restate and incorporates herein by reference the
18 preceding paragraphs as if fully set forth herein.

19 97. Defendants' conduct negligently caused emotional distress to Plaintiff
20 and the Class members.

21 98. Defendants could reasonably foresee that their actions would have caused
22 emotional distress to Plaintiff and the Class members.

23 99. Plaintiff and the Class members were in a specific zone of danger
24 undergoing surgery in the operating rooms at the Women's Health Center at Sharp
25 Grossmont Hospital.

26 100. Plaintiff and the Class members have suffered and will continue to suffer
27 distress and emotional harm.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all Class members, pray that this Court:

- A. Certify the Class, name Plaintiff as representative of the Class, and appoint her lawyers as Class Counsel;
- B. Enter judgment against Sharp HealthCare in favor of Plaintiff and the Class;
- C. Enter judgment against Sharp Grossmont Hospital in favor of Plaintiff and the Class;
- D. Award Plaintiff and the Class members damages for pain and suffering, and compensatory and punitive damages; and
- E. Award Plaintiff her reasonable attorneys' fees and costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Dated: April 17, 2019

Respectfully submitted,

2 HAGENS BERMAN SOBOL SHAPIRO LLP

3
4 By: /s/Kevin K. Green

Kevin K. Green

5 Kevin K. Green (CA No. 180919)
6 HAGENS BERMAN SOBOL SHAPIRO LLP
7 533 F Street, Suite 207
8 San Diego, CA 92101
9 Tel: (619) 929-3340
10 Fax: (206) 623-0594
11 keving@hbsslaw.com

12 Steve W. Berman (*pro hac vice* pending)

13 Shelby R. Smith (*pro hac vice* pending)

14 HAGENS BERMAN SOBOL

15 SHAPIRO LLP

16 1918 Eighth Avenue, Suite 3300

17 Seattle, WA 98101

18 Tel.: (206) 623-7292

19 Fax: (206) 623-0594

20 steve@hbsslaw.com

21 shelby@hbsslaw.com

22 Elizabeth A. Fegan (*pro hac vice* pending)

23 Whitney K. Siehl (*pro hac vice* pending)

24 HAGENS BERMAN SOBOL

25 SHAPIRO LLP

26 455 N. Cityfront Plaza Dr., Suite 2410

27 Chicago, IL 60611

28 Tel: (708) 628-4949

Fax: (708) 628-4950

beth@hbsslaw.com

whitneys@hbsslaw.com

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Amber Snodgrass, individually and on behalf of others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Hagens Berman Sobol Shapiro LLP
533 F. Street, Suite 207, San Diego, CA 92101

DEFENDANTS

Sharp Healthcare, and Sharp Grossmont Hospital

County of Residence of First Listed Defendant San Diego (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'19CV0702 L LL

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Class Action Fairness Act of 2005
Brief description of cause: Sharp Grossmont failed to protect privacy of patients by hidden cameras to film women during private procedures

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ in excess of \$5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/17/2019 SIGNATURE OF ATTORNEY OF RECORD /s/Kevin K. Green

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Sharp Healthcare Hit with Another Lawsuit Over Secret Recordings of Women in Operating Rooms](#)
