

(“SMC”), located in Englewood, Colorado, between August 17, 2015, and January 22, 2016.

2. As a result of Plaintiffs and the Class Members undergoing surgical procedures at SMC, they were placed at an increased risk of bloodborne pathogens including HIV, hepatitis B and hepatitis C. As a result, Plaintiffs and the Class Members have been, and will continue to be, tested for these potentially deadly viruses.

3. Plaintiffs and the Class Members were placed at an increased risk of these bloodborne pathogens because former SMC surgical technician, Rocky Allen, was diverting drugs and exchanging needles prepared for surgical patients.

4. Despite Rocky Allen’s well-documented drug addiction and erratic and facially suspicious employment history, Defendants hired him as a surgical technician at SMC in Englewood, Colorado, where his activities exposed approximately 3,000 patients to bloodborne pathogens.

5. On February 16, 2016, a federal grand jury indicted Rocky Allen on charges of tampering with a consumer product and obtaining a controlled substance by deceit.

6. This class action seeks damages, punitive damages, injunctive relief, declaratory judgments, costs, attorneys’ fees, and other relief as a result of Defendants’ conduct described herein.

THE PARTIES

A. Plaintiffs

Plaintiff Angelica Porras

7. Plaintiff Angelica Porras (“Plaintiff Porras”) is a citizen of the state of Colorado, residing in Denver, Denver County, Colorado. On November 23, 2015, Plaintiff Porras underwent an out-patient surgical procedure at Swedish Medical Center. Plaintiff received intravenous drugs and/or pain medication by employees and agents of Swedish Medical Center before, during and after surgery.

8. On or about February 17, 2016, Plaintiff Porras was notified via letter from Swedish Medical Center that she was possibly exposed to a bloodborne pathogen during her surgical procedure and should immediately have her blood tested for HIV and hepatitis B and C.

9. On or about February 22, 2016, Plaintiff Porras underwent a blood test at Lab Corp. At such time, Plaintiff Porras was told that her blood test results would take approximately 10-14 days to obtain results.

10. On or about February 26, 2016, Plaintiff Porras received notification from Swedish Medical Center that her blood test results were negative.

11. On or about March 1, 2016, Plaintiff Porras received another letter from Swedish Medical Center notifying her that, despite her previous blood test results, she was still at risk and should pursue follow-up and continued blood testing for HIV and hepatitis B and C.

Plaintiff Catherine Pecha

12. Plaintiff Catherine Pecha (“Plaintiff Pecha”) is citizen of the state of Colorado, residing in Denver, Denver County, Colorado. On January 1, 2016, Plaintiff Pecha underwent an in-patient surgical procedure at Swedish Medical Center. Plaintiff Pecha received intravenous drugs and/or pain medication by employees and agents of Swedish Medical Center before, during and after surgery.

13. On or about February 2, 2016, Plaintiff Pecha was notified via letter from Swedish Medical Center that she was possibly exposed to a bloodborne pathogen during her surgical procedure and should immediately have her blood tested for HIV and hepatitis B and C.

14. On or about February 8, 2016, Plaintiff Pecha underwent a blood test at LabCorp. At such time, Plaintiff was told that her blood test results would take approximately 10-14 days to obtain results.

15. On or about February 15, 2016, Plaintiff received notification from Swedish Medical that her blood test results were negative.

16. On or about February 15, 2016, Plaintiff received another letter from Swedish Medical Center notifying her that, despite her previous blood test results, she was still at risk and should pursue follow-up and continued blood testing for HIV and hepatitis B and C.

Plaintiff Gary Wolter

17. Plaintiff Gary Wolter (“Plaintiff Wolter”) is citizen of the State of Colorado, residing in Aurora, Arapahoe County, Colorado. On January 12, 2016, Plaintiff Wolter underwent a surgical procedure at Swedish Medical Center. Plaintiff received intravenous

drugs and/or pain medication by employees and agents of Swedish Medical Center before, during and after surgery.

18. On or about February 1, 2016, Plaintiff Wolter was notified via letter from Swedish Medical Center that he was possibly exposed to a bloodborne pathogen during his surgical procedure and should immediately have his blood tested for HIV, hepatitis B and hepatitis C.

19. On or about February 10, 2016, Plaintiff Wolter underwent a blood test at SMC. At such time, Plaintiff Wolter was told that his blood test results would take approximately 7-10 days to obtain results.

20. On or about February 17, 2016, Plaintiff Wolter received notification from LabCorp. that his blood test results were negative.

21. On or about February 18, 2016, Plaintiff Wolter received another letter from Swedish Medical Center notifying him that, despite his previous blood test results, he was still at risk and should pursue follow-up and continued blood testing for HIV and hepatitis B and C.

B. Defendants

22. Defendant Hospital Corporation of America (“HCA”) has its principal place of business and is headquartered at One Park Plaza, Nashville, Tennessee 37203.

23. Defendant HealthONE of Denver, Inc. (“HealthONE”) is a Colorado corporation, with its principal office address at One Park Plaza, Nashville, Tennessee 37203, with its registered agent at The Corporation Company, 1675 Broadway Suite 1200, Denver, Colorado 80202.

24. Defendant HCA-HealthONE, LLC, doing business as Swedish Medical Center (“HCA-HealthONE LLC”), is a hospital and medical center located at 501 E. Hampden Avenue, Englewood, Colorado 80113. HCA-HealthONE LLC is a corporation authorized and licensed to do business in Colorado with its principal place of business at 4900 S. Monaco Street, Suite 380, Denver, Colorado 80237.

25. The true names and capacities of the defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such defendants by such fictitious names. Each of the defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the defendants designated herein as DOES when such identities become known.

JURISDICTION AND VENUE

26. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of five million dollars (\$5,000,000.00) and is a class action in which members of the Class are citizens of states different from Defendants. Further, greater than two-thirds of the Class members reside in states other than the state in which Defendants are citizens.

27. This Court has personal jurisdiction over Defendants because they are authorized to do business and are conducting business throughout the United States, including Colorado.

28. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to this claim occurred in this District and thus Defendants have consented to venue in this District; Defendants regularly conduct

and transact business in this District and are therefore subject to personal jurisdiction in this District.

29. Venue is also proper because: (a) Defendants are authorized to conduct business in this District and have intentionally availed themselves of the laws and markets within this District; (b) Defendants conduct substantial business in this District; and (c) Defendants are subject to personal jurisdiction in this District.

FACTUAL ALLEGATIONS

A. Relationship Among Defendants

30. Defendant SMC, located in Englewood, Colorado, is part of HealthONE, a for-profit family of hospitals in the Denver Metro area. SMC boasts that it “offers patients the highest quality care and the most advanced technologies and treatments in nearly every medical specialty”

31. Defendant HealthONE has eight hospitals, six stand-alone emergency departments and seventeen ambulatory surgery centers. HealthONE’s eight hospitals include SMC and Rose Medical Center (“Rose Medical”). Since its founding, the HealthONE family of hospitals has become the largest hospital system in the Denver Metro area.

32. Defendant Hospital Corporation of America (“HCA”), which owns HealthONE, is one of the largest for-profit healthcare providers in the world. HCA owns and operates approximately 166 hospitals and approximately 113 freestanding surgery centers in twenty states and London, England.

33. In 1995 HCA-HealthONE LLC was created by a joint venture between HCA and the non-profit The Colorado Health Foundation, which included seven hospitals

and 13 ambulatory surgery centers in the metro Denver area. SMC was one those hospitals. The Rose Family Medicine Residency joined the joint venture in 2002.

34. On October 13, 2011, John Suthers, Colorado's Attorney General at the time, approved the \$1.45 billion sale of the Colorado Health Foundation's forty percent equity stake in the joint venture to HCA.

B. 2009 Kristen Parker - Rose Medical Center

35. In February 2010, a former Rose Medical surgical technician, Kristen Parker, was sentenced to thirty years in prison for swapping drug-filled syringes, intended for patients, with previously injected, non-sterile syringes.

36. As part of her plea agreement, Parker admitted stealing syringes from operating rooms. Parker explained that she would inject herself and then refill the syringes with sterile saline solution before placing them back in the operating rooms. A hepatitis C infection she contracted from using heroin caused her to spread the infectious disease to at least fifteen surgical patients at Rose Medical.

37. When Parker started at Rose Medical, her blood test indicated that she might have hepatitis C. She was counseled on how to limit her exposure to patients. Parker quit after she was found in an operating room where she was not allowed to be. She subsequently tested positive for fentanyl, a powerful synthetic opiate analgesic similar to, but more potent than, morphine. Fentanyl is used to treat patients with severe pain, or to manage pain after surgery.

38. Following Parker's sentencing, Rose Medical, an HCA-HealthONE hospital, said in a statement it would "continue to work with each of those who were

impacted by Parker's crimes to ensure they receive the care they need" and that systems for policing medications in the operating rooms had been upgraded.

C. 2014 Nurse Daniel Morrison - Swedish Medical Center ("SMC")

39. On June 16, 2014, SMC conducted an audit of Nurse Daniel Morrison's "administration and wastage of controlled substances, which demonstrated multiple instances in which [Morrison] withdrew injectable hydromorphone for patients without a physician order and/or who were no longer being treated in the emergency department."

40. On June 17, 2014, Morrison admitted to SMC that he had been diverting hydromorphone since mid-March 2014 for his own use. Morrison tested positive for hydromorphone, fentanyl and benzodiazepines. Morrison was terminated from SMC on July 3, 2014.

D. Rocky Allen Exposes Thousands to Bloodborne Pathogens - SMC

41. On January 22, 2016, an employee of SMC caught Rocky Allen, a surgical technician at SMC, taking a syringe filled with fentanyl and replacing it with another syringe in an operating room. The employee told investigators that Allen walked into Operating Room 5, spoke with other individuals, then went to the Pyxis station, picked up a syringe and replaced it with another one before quickly leaving the room. Allen was apparently scheduled to be in Operating Room 12 on that day.

42. On January 22, 2016, Allen tested positive for fentanyl and marijuana. The lab report noted, "The fentanyl and THC levels were very high."

43. Allen was subsequently fired by SMC and indicted by a federal grand jury in Colorado on charges of tampering with a consumer product and obtaining a controlled substance by deceit.

E. Allen's Rocky Path to SMC

44. By the time Allen appeared on the doorstep of SMC in August 2015 looking for a job as a surgical technician, all the warning signs of what would later occur at SMC were present. Allen already had been terminated by numerous other hospitals for the exact conduct that has now exposed thousands of SMC patients to an increased risk of bloodborne pathogens.

45. Despite a history of drug addiction, Defendants hired Allen on August 17, 2015, and allowed Allen access to operating rooms and syringes containing fentanyl and other narcotics.

46. Christy Berg, a special agent for the U.S. Food and Drug Administration, testified on February 19, 2016 that Allen was terminated from numerous jobs for drug-related reasons.

47. In 2011, Allen was court-martialed by the United States Navy and pleaded guilty to making a false official statement, wrongfully possessing approximately 30 vials of fentanyl, wrongfully possessing a syringe containing fentanyl, stealing fentanyl and stealing a syringe containing fentanyl.

48. According to Jennifer Zeldis, a public affairs officer with the Office of the Judge Advocate General of the Navy, these records would have been available to Defendants had they requested them as part of a hiring background check process or had they called the Navy's personnel command to inquire about Allen's military service.¹

¹ See http://www.denverpost.com/news/ci_29567982/swedish-hospital-surgical-tech-court-martialed-drug-theft (last visited March 4, 2016).

49. From January to March 2012, Allen was employed by Northwest Hospital and Medical Center in Seattle, Washington.

50. From May to June 12, 2013, Allen was employed at Scripps Green Hospital in La Jolla, California. The hospital terminated Allen from that position after he was caught switching a fentanyl syringe with a saline-filled syringe. Allen removed the syringe from his sock and admitted that he planned to inject it. Scripps said in a statement that it notified the Drug Enforcement Agency (“DEA”) on June 7, 2013.

51. The DEA, in fact, requires doctors and hospitals to submit a form to, and notify the agency of the theft or diversion of controlled substances.

52. From May 19, 2014 to July 7, 2014, Allen was employed at Banner Thunderbird in Glendale, Arizona, as a surgical technologist. On July 2, 2014, Allen tested positive for marijuana.

53. From July 28, 2014 to October 6, 2014, Allen was employed by John C. Lincoln North Mountain Hospital in Phoenix, Arizona. On September 28, 2014, Allen tested positive for fentanyl while working as a surgical attendant and was thereafter terminated.

54. Allen worked at SMC from August 17, 2015, to January 22, 2016. As a result of Allen again acting upon his well-documented drug addiction and habitual needle swapping, SMC was forced to notify approximately 3,000 patients whose surgeries occurred during Allen’s employment that they needed to be repeatedly tested for HIV, hepatitis B and hepatitis C.

55. At Allen's February 19, 2016, bond hearing, his medical records were introduced as evidence "under seal." The only mention made was of a bloodborne pathogen. Allen is a carrier of a communicable disease.

F. Bloodborne Pathogens

56. Bloodborne pathogens are infectious microorganisms in the blood that can cause disease in humans. These pathogens include, but are not limited to, hepatitis B (HBV), hepatitis C (HCV) and human immunodeficiency virus (HIV). Individuals at high risk for bloodborne pathogens include intravenous drug users like Allen.

1. *HIV*

57. According to the CDC, HIV weakens a person's immune system by destroying important cells that fight disease and infection. No effective cure currently exists for HIV. Left untreated, HIV could progress into Acquired Immune Deficiency Syndrome ("AIDS").

58. An individual who is exposed to HIV should immediately be tested at the time of exposure because that is the time when a person is most likely to transmit HIV to someone else because the virus levels are high. The frequency and duration of follow-up testing for HIV depends on the type of HIV test being administered.

59. Where an antibody-antigen test is negative, follow-up testing should be performed at six weeks and four months after the exposure. Where an antibody test is negative, repeat HIV testing should occur at six weeks, three months, and six months

following the exposure since it can take up to six months for an individual to develop antibodies to the HIV virus.²

2. *Hepatitis C*

60. According to the Centers for Disease Control and Prevention (“CDC”), for 70%–85% of people who become infected with hepatitis C, the infection is chronic and long-term. Chronic hepatitis C is a serious disease than can result in long-term health problems, including death. The CDC suggests that testing for the hepatitis C virus (“HCV”) can continue through six months following exposure. The CDC’s hepatitis C FAQs for Health Professionals state:

How soon after exposure to HCV can anti-HCV be detected?

HCV infection can be detected by anti-HCV screening tests (enzyme immunoassay) 4–10 weeks after infection. Anti-HCV can be detected in >97% of persons by 6 months after exposure.

How soon after exposure to HCV can HCV RNA be detected by PCR?

HCV RNA appears in blood and can be detected as early as 2–3 weeks after infection.

Under what circumstances is a false-positive anti-HCV test result likely?

False-positive anti-HCV tests appear more often when persons at low risk for HCV infection (e.g., blood donors)

² See <http://www.uptodate.com/contents/testing-for-hiv-beyond-the-basics#H13> (last visited March 4, 2016); <http://sfaf.org/hiv-info/basics/how-long-after-a-possible-exposure-should-i-be-tested-for-hiv.html> (last visited Mar. 4, 2016).

are tested. Therefore, it is important to follow-up all positive anti-HCV tests with a RNA test to establish current infection.

Under what circumstances might a false-negative anti-HCV test result occur?

Persons with early HCV infection might not yet have developed antibody levels high enough that the test can measure. In addition, some persons might lack the (immune) response necessary for the test to work well. In these persons, further testing such as PCR for HCV RNA may be considered.³

3. *Hepatitis B*

61. Hepatitis B is a potentially life-threatening liver infection caused by the hepatitis B virus. The CDC suggests that testing for the hepatitis B virus (“HBV”) can continue through nine weeks following exposure. The CDC’s hepatitis B FAQs for Health Professionals state:

How long does it take for blood to test HBsAg⁴-positive after exposure to HBV?

HBsAg will be detected in an infected person’s blood an average of 4 weeks (range: 1–9 weeks) after exposure to the virus. About 1 of 2 patients will no longer be infectious by 7 weeks after onset of symptoms, and all patients who do not remain chronically infected will be HBsAg-negative by 15 weeks after onset of symptoms.⁵

G. Hiring a Surgical Technician

³ See <http://www.cdc.gov/hepatitis/hcv/hcvfaq.htm> (last visited Mar. 4, 2016).

⁴ According to the CDC, hepatitis B surface antigen (HBsAg) is a protein on the surface of HBV; it can be detected in high levels in serum during acute or chronic HBV infection. The presence of HBsAg indicates that the person is infectious. The body normally produces antibodies to HBsAg as part of the normal immune response to infection. HBsAg is the antigen used to make hepatitis B vaccine.

⁵ See <http://www.cdc.gov/hepatitis/hbv/hbvfaq.htm> (last visited March 4, 2016).

62. Defendant HCA's job posting website, www.careersathca.com, boasts that: "The HCA network includes more than 300 affiliate hospitals, outpatient centers and business offices across the country, offering you the opportunity for travel and relocation. Whatever your career goal in healthcare, HCA can help you achieve it." The site continues, "Throughout HCA's 47-year history a widely held belief among its founders, leaders, and each of its 200,000+ employees is that every one of us impacts patient care, the quality delivery of which is our hallmark."⁶

63. A recent search of Defendant HCA's job site shows over 180 job listings for SMC, including a surgical technician position. Defendant HCA describes the SMC surgical technician position as follows:

The Surgical Technician will be able to demonstrate the knowledge and skills necessary to provide assistance during surgical procedures performed in the department. The Surgery Technician is experienced in all aspects of aseptic technique, setting up the required equipment and sterile supplies as needed for their assigned cases; pulling cases as needed, breaking down cases at the end of the procedure. He/she is knowledgeable regarding instrumentation, equipment and supply needs for all types of surgical procedures. The Surgery Technician performs delegated duties consistent with his/her scope of practice and functions within the philosophy and overall plan of care delivery.⁷

The Licensure/Certification/Registration for this posting requires "Current BLS Certification, Registration as a Surgical Tech by Colorado Division of Registration (DORA)."

And the Knowledge/Skills/Abilities state that "The surgical technologist is authorized to handles [sic] medications, syringes, needles, etc. and is accountable to the registered nurse for oversight of this practice."

⁶ See <http://careersathca.com/working-at-hca/> (last visited March 4, 2016).

⁷ <http://careersathca.com/careers/search.dot?jobId=03167-44035> (last visited March 7, 2016).

H. SMC Acknowledges the Increased Risk

64. SMC's notification to the Plaintiffs and Class Members states in part:

Swedish Medical Center recently identified a potential drug diversion (the stealing of narcotic pain medication intended for patients) by a former employee, which prompted an immediate and thorough investigation involving several regulatory agencies. We also notified law enforcement.

We are working closely with the Colorado Department of Public Health and Environment on an investigation of the actions of that former employee who may have put some of our surgery patients at risk for exposure to HIV, hepatitis B, or hepatitis C, viruses that can potentially cause long-term health concerns.

65. The notification continues:

Approximately 3,000 patients who had surgery at Swedish Medical Center between August 17, 2015 and January 22, 2016 are receiving calls and letters to notify them of the potential for exposure and to request that they take a free, confidential blood test to screen for these viruses.⁸

66. In acknowledging the increased risk of contracting a bloodborne pathogen,

Richard A. Hammett, SMC's president and CEO, stated, "We deeply regret that one of our former employees may have put patients at risk, and are sorry for any uncertainty or anxiety this may cause."

CLASS ACTION ALLEGATIONS

67. Plaintiffs seek to bring the claims below as a class action, under Federal Rule of Civil Procedure 23, on behalf of themselves and all others similarly situated. The proposed Class ("the Class") is defined as:

All individuals who had a surgical procedure at Swedish Medical Center in Englewood, Colorado, between August 17, 2015, and January 22, 2016.

⁸ <http://swedishhospital.com/service/media-statement> (last visited March 7, 2016).

68. Plaintiffs reserve the right to re-define these Classes prior to class certification.

69. Numerosity: The number of persons who are members of the Class, as described above, is so numerous that joinder of all members in one action is impracticable.

70. Predominance: Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Defendants complained of herein were generally applicable to the entire Class. These legal and factual questions include, but are not limited to:

- a) whether Defendants failed to conduct a proper employment background check of Rocky Allen;
- b) whether Defendants failed to properly supervise Rocky Allen;
- c) whether Defendants failed to properly secure medications from diversion or misuse;
- d) whether Defendants failed to properly secure surgical rooms;
- e) whether Plaintiffs and Class Members' increased risk of exposure to a blood borne pathogens was caused by Defendants' negligence; and
- f) whether Defendants are legally responsible for implementation and maintaining a medical monitoring fund for Plaintiffs and the Class Members.

71. Commonality: All questions actions and inactions by the Defendants at issue herein are similarly common. A determination of Defendants' hiring and supervisory procedures will apply to all members of the Class. Further, whether Defendants violated any applicable state laws and pursued the course of conduct complained of herein, whether

Defendants acted intentionally or recklessly in engaging in the conduct described herein, and the extent of the appropriate measure of injunctive and declaratory relief, damages, and restitution are common questions to the Class.

72. Typicality: Plaintiffs' claims are typical of the members of the Class. Plaintiffs had a surgical procedure at SMC between August 17, 2015, and January 22, 2016. Plaintiffs, like all members of the Class, have suffered harm associated with the surgical procedure performed at SMC, including not only the exposure to bloodborne pathogens, continued testing for bloodborne pathogens and the increased risk of contracting a bloodborne pathogen.

73. Adequacy of Representation: Plaintiffs will fully and adequately represent and protect the interests of the Class because of the common injuries and interests of the members of the Class and the singular conduct of Defendants that is or was applicable to all members of the Class. Plaintiffs have retained counsel who are competent and experienced in the prosecution of class action litigation. Plaintiffs have no interests that are contrary to or in conflict with those of the Class they seek to represent.

74. Superiority: A class action is superior to all other available methods for fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications concerning the subject of this action, which adjudications could establish incompatible standards of conduct for Defendants under the laws alleged herein.

75. By negligently exposing Plaintiffs and the Class Members to bloodborne pathogens, Defendants have acted or refuse to act on grounds generally applicable to the Class thereby necessitating the implementation and maintenance of a medical monitoring fund and declaratory and injunctive relief an appropriate remedy for the Class.

76. The claims of the Class may be certified under Rule 23(b)(1), (b)(2) and/or (b)(3). The members of the Class seek declaratory and injunctive relief but also seek sizeable monetary relief.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Negligence

77. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

78. Defendants are the principal in the agency relationship between themselves and their employees and are bound by, and liable for, the acts and omissions of their employees.

79. While Plaintiffs and the Class Members were under the care of Defendants, Defendants owed a duty to Plaintiffs and the Class Members to act with reasonable care in caring for and treating them.

80. Defendants breached this duty when hiring and failing to properly supervise Allen as described herein and by failing to take preventive steps to prevent employees such as Allen from engaging in the conduct that exposed Plaintiffs and the Class to the increased risk of contracting bloodborne pathogens.

81. The negligence of Defendants caused damages and losses to Plaintiffs and the Class.

82. The negligence of Defendants caused Plaintiffs and the Class Members to be subjected to lab and blood testing along with significantly increasing risk and anxiety for fear of contracting a potentially life threatening bloodborne pathogen.

83. The negligence of Defendants caused harm to Plaintiffs and the Class Members as described herein.

SECOND CLAIM FOR RELIEF

Negligent Hiring

84. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

85. Defendants owed a duty to Plaintiffs and the Class Members to act with reasonable care in their hiring of individuals who would be entrusted with care of patients.

86. Defendants were negligent in their hiring and supervisory process creating a significantly increased risk of and actual harm to Plaintiffs and the Class Members and consequently harm to other persons who were exposed to increased risks of contracting bloodborne pathogens unknowingly from Plaintiffs and the Class Members.

87. SMC's hiring of Rocky Allen on August 17, 2015, was not undertaken with reasonable care, and constituted a breach of the duty that Defendants owed to Plaintiffs and the Class Members to ensure that Rocky Allen's hiring and supervision be performed with reasonable care.

88. The breach by Defendants of their duties to Plaintiffs and the Class Members by their negligent hiring of Rocky Allen caused harm to Plaintiffs and the Class Members as described herein.

THIRD CLAIM FOR RELIEF

Negligent Infliction of Emotional Distress

89. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

90. Defendants have a duty to maintain a safe environment for Plaintiffs and the Class Members. With conscious disregard for the safety of the Plaintiffs and the Class, Defendants hired Rocky Allen as a surgical technician despite his well-documented history of drug addiction and history of employment terminations for drug-related issues. Defendants granted Allen access to surgical rooms, surgical equipment and controlled substances without taking adequate precautions. Defendants should have known that Allen would put Plaintiffs and the Class Members at risk based on his prior employment terminations and drug history.

91. Defendants breached their duty to properly hire and supervise Allen. Defendants' failure to properly take appropriate actions and precautions in preventing Allen's actions led to the exposure of Plaintiffs and the Class Members to bloodborne pathogens.

92. Defendants' failure to warn or take appropriate safety measures when hiring and employing Allen constitute outrageous acts that exceed all bounds of decency tolerated by society.

93. Defendants exhibited a reckless disregard for the probability of causing Plaintiffs and the Class Members severe emotional distress by hiring Allen as a surgical technician, and allowing him access to the surgical rooms, surgical equipment and controlled substances without taking adequate precautions. As a result of this breach, the Plaintiffs and the Class Members have been harmed.

94. As a proximate cause of Defendants' acts, Plaintiffs and the Class Members are suffering from severe emotional distress because of their reasonable fear that they have been exposed to bloodborne pathogens. Defendants should have known that Plaintiffs and Class Members would suffer serious, mental distress if Defendants hired Allen.

95. Despite the reasonable foreseeability of Plaintiffs' and the Class Members' emotional distress, Defendants failed to act in a way to prevent exposing them to bloodborne pathogens. Plaintiffs and the Class Members are now aware of the potential repercussions of exposure of bloodborne pathogens. Plaintiffs and the Class Members suffer, and will continue to suffer, severe emotional distress because of their reasonable belief that their exposure to bloodborne pathogens could cause future medical problems, including death. Plaintiffs and the Class Members are reasonably distressed at the prospect of their future medical health problems or complications as a result of the exposure.

96. Defendants' actions in hiring and failing to properly supervise Allen, while knowing (or the knowledge they would have gained through exercise of reasonable diligence) that he was bound to expose Plaintiffs and the Class Members to bloodborne pathogens, were wholly inappropriate and substandard in the circumstance.

97. Defendants willfully and intentionally breached their duties of care and acted with fraud, malice, and oppression for which punitive and exemplary damages should be imposed. As a result of Defendants' actions, Plaintiffs and the Class Members continue to suffer from severe and continuing emotional distress in the form of anxiety, loss of use and enjoyment, and stress.

FOURTH CLAIM FOR RELIEF

Medical Monitoring

98. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

99. The latency period for the manifestation of a bloodborne pathogen is estimated to be anywhere from several weeks to six months after exposure.

100. Plaintiffs and the Class Members have been exposed to bloodborne pathogens at a higher rate than, or in a substantially more dangerous manner than, the general population. Plaintiffs' and the Class Members' exposure levels are therefore substantial in nature.

101. Plaintiffs' and the Class Members' exposure to bloodborne pathogens was caused by Defendants' negligence as follows:

- Failing to properly investigate Rocky Allen before hiring him;
- Failing to properly supervise Rocky Allen after hiring him;
- Failing to properly secure medications and controlled substances;
- Failing to timely warn Plaintiffs and the Class Members of their potential increased risk to bloodborne pathogens as the result of Rocky Allen's employment.

102. Plaintiffs' and the Class Members' exposure to bloodborne pathogens was proximately caused by Defendants' negligence as described herein.

103. Monitoring procedures exist that make the detection of bloodborne pathogens possible.

104. Bloodborne pathogens are capable of early detection by way of existing scientific methods including blood testing.

105. Because bloodborne pathogen screening is not conducted in the absence of exposure, the prescribed monitoring regime is different from that normally recommended in the absence of exposure. Plaintiffs and the Class Members require specialized screening not within the purview of routine medical exams.

106. According to contemporary scientific principles, the prescribed monitoring regime is reasonably necessary to permit early diagnosis of a bloodborne pathogen leading to benefits in treatment, management, and prevention or mitigation of long-term health consequences, including death.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this case be certified and maintained as a class action and for judgment to be entered upon Defendants as follows:

- a. For economic and compensatory damages on behalf of Plaintiffs and all members of the Class;
- b. For restitution;
- c. For actual damages sustained;
- d. For punitive damages, as otherwise applicable;
- e. For declaratory relief, including but not limited to declarations that:

- i) Defendants hiring process is inadequate;
- ii) Defendants supervisory practices are inadequate;
- iii) Defendants storage of medications and controlled substances is inadequate; and
- iv) Defendants are financially responsible for implementing and maintaining a fund for the medical monitoring of Plaintiffs and the Class Members;

f. For injunctive relief, including but not limited to an injunction requiring that:

- i) Defendants establish proper hiring and supervisory practices and policies; and
- ii) Defendants establish proper protocol to secure and protect all medications and controlled substances.

g. For reasonable attorneys' fees and reimbursement of all costs for the prosecution of this action;

h. Leave to amend this Complaint to conform to the evidence produced at trial; and

i. For such other and further relief as this Court deems just and appropriate.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury on all claims so triable.

Dated: March 8, 2016

Respectfully submitted,

By: */s/ Joseph G. Sauder*
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