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17 behalf of KYLER PRESCOTT, a deceased minor

18 **UNITED STATES DISTRICT COURT**

19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 KATHARINE PRESCOTT, AN
INDIVIDUAL, AND KATHARINE
21 PRESCOTT, ON BEHALF OF
KYLER PRESCOTT, A
DECEASED MINOR,

22 Plaintiffs,

23 v.

24 RADY CHILDREN'S
25 HOSPITAL—SAN DIEGO,

26 Defendant.

Case No. 16-cv-02408-BTM-JMA

FIRST AMENDED COMPLAINT FOR:

- 27 **1. VIOLATION OF AFFORDABLE CARE ACT § 1557, 42 U.S.C. § 18116 (DISCRIMINATION BASED ON SEX)**
- 28 **2. VIOLATION OF CALIFORNIA'S UNRUH CIVIL RIGHTS ACT, CIVIL CODE § 51 ET SEQ. (DISCRIMINATION BASED ON SEX)**
- 3. VIOLATION OF CALIFORNIA'S UNRUH CIVIL RIGHTS ACT, CIVIL CODE § 51 ET SEQ. (DISCRIMINATION BASED ON DISABILITY)**
- 4. VIOLATION OF CALIFORNIA GOVERNMENT CODE § 11135 (DISCRIMINATION BASED ON SEX)**
- 5. VIOLATION OF CALIFORNIA**

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- GOVERNMENT CODE § 11135
(DISCRIMINATION BASED ON
DISABILITY)**
- 6. VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE
§ 17200 ET SEQ.**
- 7. VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE
§ 17500 ET SEQ.**
- DEMAND FOR JURY TRIAL**

Plaintiff KATHARINE PRESCOTT (“Katharine”), an individual, and on behalf of KYLER PRESCOTT (“Kyler”), a deceased minor, by and through her attorneys, hereby alleges as follows against Defendant RADY CHILDREN’S HOSPITAL–SAN DIEGO (“Defendant” or “RCHSD”):

INTRODUCTION

1. Kyler Prescott was a 14-year-old transgender boy who was admitted to RCHSD on April 5, 2015, on a 72-hour hold due to his suicidal ideation related to gender dysphoria. Upon admission, RCHSD staff assured Kyler and his mother Katharine that while at RCHSD, Kyler would be treated as a boy. RCHSD staff, however, failed to do so. RCHSD ultimately discharged Kyler early from the 72-hour hold due to Kyler’s increasingly severe distress related to the discrimination he faced from RCHSD. Kyler subsequently died by suicide.

2. This is an action to secure relief for violations of rights guaranteed by the Patient Protection and Affordable Care Act (the “ACA”), 42 U.S.C. § 18116 (“Section 1557”), California Civil Code § 51 *et seq.*, also known as the Unruh Civil Rights Act (the “Unruh Act”), California Government Code § 11135 (“Section 11135”), California Business & Professions Code § 17200, also known as the California Unfair Competition Law (“Section 17200”), and California Business & Professions Code § 17500 (“Section 17500”).

3. Section 1557 of the ACA prohibits discrimination based on sex by health

1 care providers that receive federal financial assistance. 42 U.S.C. § 18116 (a); 20 U.S.C.
2 § 1681(a). The Unruh Act prohibits discrimination in public accommodations in the
3 State of California on the basis of sex (which expressly includes gender identity) and
4 disability. Cal. Civ. Code §§ 51(b), (e)(1), (e)(5).

5 4. Both statutes prohibit health care programs from discriminating against a
6 patient based on the patient’s sex, which includes gender identity. Kyler experienced
7 severe emotional distress and other damages after he was discriminated against on the
8 basis of his sex and/or his disability while he was a patient at RCHSD.

9 5. Section 11135 of the California Government Code also prohibits
10 discrimination on the basis of sex (which expressly includes gender identity) by
11 government agencies or any entity that receives funding from the state of California. *See*
12 Cal. Gov’t Code §§ 11135, 12926(r)(2). RCHSD’s actions and omissions also constitute
13 discrimination on the basis of sex, gender identity, and/or disability within the meaning
14 of Section 11135 of the California Government Code.

15 6. Section 17200 of the California Business & Professions Code prohibits any
16 “unlawful, unfair, or fraudulent business act or practice” as well as any “unfair,
17 deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

18 7. Section 17500 of the California Business & Professions Code prohibits,
19 among other things, a business from making or disseminating any statement concerning
20 professional services that is untrue or misleading and is either known or should be known
21 to be untrue or misleading. Cal. Bus. & Prof. Code § 17500.

22 8. Despite RCHSD’s representations that it had experience with transgender
23 youth, RCHSD discriminated against Kyler, resulting in his inability to access necessary
24 services and treatment during a dire medical crisis. These actions amount to
25 discrimination within the meanings of Section 1557 of the ACA, the Unruh Act, and
26 California Government Code Section 11135.

27 9. RCHSD’s discriminatory conduct toward and treatment of Kyler also
28 constitute unlawful and/or unfair business practices within the meaning of California

1 Business & Professions Code Section 17200.

2 10. Additionally, RCHSD's representations, via the Internet and by personal
3 communication to Katharine, that it had experience with transgender youth, constitute
4 untrue or misleading advertising within the meanings of California Business &
5 Professions Code Sections 17200 and 17500.

6 11. Katharine brings this action as an individual and on Kyler's behalf to
7 recover damages for the harms done to her and her deceased son.

8 12. An actual controversy has arisen and now exists between the parties
9 concerning their respective rights, duties, and obligations under federal and state law.

10 **JURISDICTION AND VENUE**

11 13. This Court has original jurisdiction over Plaintiffs' claims arising under the
12 ACA, 42 U.S.C. § 18116, pursuant to 28 U.S.C. § 1331.

13 14. Plaintiffs' state law claims are so related to those under which this Court has
14 original jurisdiction that they form part of the same case and controversy. Supplemental
15 jurisdiction is therefore appropriate over Plaintiffs' remaining claims pursuant to 28
16 U.S.C. § 1367.

17 15. Venue is proper in this Court pursuant to 29 U.S.C. § 1391(b), because the
18 events giving rise to the claims made herein occurred in this Judicial District, and
19 Defendant RCHSD has its principal place of business within this District.

20 **THE PARTIES**

21 16. Kyler Prescott, as represented by his mother Katharine Prescott, is a
22 deceased minor and was at all times mentioned herein a resident of the County of San
23 Diego, California.

24 17. Katharine Prescott, as Kyler's mother, has a special interest in this matter
25 that is concrete and therefore has standing to bring this claim as a survivorship action.

26 18. Defendant RCHSD is now, and was at all times mentioned herein, a
27 nonprofit healthcare organization affiliated with the University of California, San Diego
28 School of Medicine, with its principal place of business located at 3020 Children's Way,

1 San Diego, CA 92123. RCHSD is a business establishment that offers to the public
2 accommodations, advantages, facilities, privileges, and services.

3 19. RCHSD runs its Child and Adolescent Psychiatry Services (“CAPS”)
4 program as an inpatient unit for children who need psychiatric treatment.

5 20. RCHSD receives federal and state financial assistance such as credits,
6 subsidies, or contracts of insurance within the meanings of Section 1557 of the ACA and
7 Section 11135 of the California Government Code. 42 U.S.C. § 18116(a); Cal. Gov’t
8 Code § 11135. According to the Department of Health and Human Services, RCHSD
9 received \$5 million in federal funds in 2015 and nearly \$2.2 million in federal funds in
10 2016.¹ According to RCHSD’s most recent Department of Pediatrics annual report,
11 48.9% of RCHSD’s insurance payments in 2011–2013 stemmed from Medi-Cal plans
12 from the State of California.² RCHSD’s 2013 federal tax Form 990 indicates that
13 RCHSD received \$98.4 million in local, state, or federal government funding sources.
14 Additionally, RCHSD’s 2014 California Office of Statewide Health Planning and
15 Development (“OSHPD”) annual disclosure report states that RCHSD received \$7.3
16 million in government contract revenues.³

17 21. At all relevant times, RCHSD employed the services of doctors, nurses,
18 other professional and non-professional health care providers, and staff, including the
19 nurses, other health care providers, and staff who interacted with Kyler in April 2015.
20 RCHSD advertised its expertise in treating transgender and gender nonconforming
21 children and adolescents through its Gender Management Clinic, from which Kyler had
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23 ¹ *Recipient Search*, TAGGS.HHS.GOV, <https://taggs.hhs.gov/SearchRecip> (under “Enter
24 a Keyword,” search for “Rady Children’s Hospital – San Diego,” then under “Fiscal Year
25 (FY),” select either “2016” or “2015” to view sum of awards to RCHSD for each fiscal
26 year) (last visited Sept. 25, 2016).

27 ² RYDY CHILDREN’S HOSP. – SAN DIEGO, DEPT. OF PEDIATRICS BIENNIAL REPORT 2011-
28 2013 6, available at [http://www.rchsd.org/documents/2014/04/dept-of-pediatrics-report-
2011-13.pdf](http://www.rchsd.org/documents/2014/04/dept-of-pediatrics-report-2011-13.pdf) (last visited Sept. 25, 2016).

29 ³ OSHPD SIERA Financial Disclosure Reports, <https://siera.oshpd.ca.gov/FinancialDisclosure.aspx> (select report type “Hospital Annual,”
30 set “From Year” and “To Year” to 2014, and search for “Rady Children’s Hospital – San
31 Diego (106370673),” then, under “Audited,” select the “Detail” PDF link.

1 previously received care. RCHSD held itself out and warranted itself to the public as
2 competent, careful, and experienced in the care and treatment of patients, particularly
3 transgender patients and those with gender dysphoria. RCHSD’s website states that
4 transgender youth “deserve to have a medical home at Rady Children’s Hospital–San
5 Diego.”⁴

6 **GENDER IDENTITY AND GENDER DYSPHORIA IN CHILDREN**

7 22. Gender identity is a person’s deeply felt understanding of their own gender.
8 People generally become aware of their gender identity as early as two or three years of
9 age. Most people’s gender identity aligns with the gender designated on their birth
10 certificate (a determination generally based solely on the appearance of a baby’s external
11 genitalia at birth). Some children and adolescents, however, manifest persistent signs
12 that the gender they were assumed to be at birth does not align with their gender identity,
13 or their sense of themselves as a boy or a girl. For example, a transgender boy is a child
14 who was assumed to be female at birth but who identifies as a boy. A transgender girl is
15 a child who was assumed to be a boy at birth but identifies as a girl.

16 23. For a transgender child, the incongruity between the child’s anatomy and
17 gender identity commonly leads to psychological distress characterized by severe and
18 unremitting feelings of sadness, anxiety, and/or frustration. This distress is a serious
19 condition recognized by medical professionals as gender dysphoria.

20 24. The Diagnostic and Statistical Manual of Mental Disorders (DSM-5) defines
21 gender dysphoria as a marked difference between a person’s gender identity and their
22 assumed gender at birth, which persists for at least six months and manifests itself in at
23 least two other symptoms (*e.g.*, “a desire to prevent the development of the anticipated
24 secondary sex characteristics,” “a strong desire to be of the other gender,” and/or “a
25 strong desire to be treated as the other gender”). American Psychiatric Association,
26

27 ⁴ RADY CHILDREN’S HOSP., *Gender Management Clinic*, [http://www.rchsd.org/programs-](http://www.rchsd.org/programs-services/endocrinology-diabetes/services/gender-management-clinic/)
28 [services/endocrinology-diabetes/services/gender-management-clinic/](http://www.rchsd.org/programs-services/endocrinology-diabetes/services/gender-management-clinic/) (last visited Sept.
25, 2016).

1 DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 452 (5th ed. 2013).

2 Gender dysphoria is associated with clinically significant distress or impairment in social,
3 occupational, or other important areas of functioning. *Id.* at 453. If left untreated, this
4 clinical distress can lead to debilitating depression and diminishment of self-esteem as
5 well as serious incidents of self-harm, suicide attempts, and suicide.

6 25. Transgender children represent a small but naturally occurring variation of
7 human diversity. Diane Ehrensaft, *From Gender Identity Disorder to Gender Identity*
8 *Creativity: True Gender Self Child Therapy*, 51 J. OF HOMOSEXUALITY 337, 338-39
9 (2012); Norman Spack et al., *Children and Adolescents with Gender Identity Disorder*
10 *Referred to a Pediatric Medical Center*, 129 PEDIATRICS 418, 421 (2012).

11 26. Medical evidence and clinical practice demonstrate that family and societal
12 rejection or disregard of a child's gender identity, as well as attempts to change a child's
13 gender identity, are harmful to transgender children.

14 27. Kyler was assumed to be female at birth. However, as early as age 10, Kyler
15 began exhibiting signs that he was a boy, not a girl. His clothing choices became more
16 stereotypically masculine and he expressed a desire to become more muscular. He also
17 began to socialize almost exclusively with other boys. When he was twelve, due to
18 increasing gender dysphoria, Kyler began engaging in self-harming behaviors.

19 28. When Kyler was thirteen, he told his mother Katharine that he was boy. At
20 this point, Kyler cut his hair short and began to come out to other family members and
21 close friends as a boy. As he entered puberty, Kyler's distress due to his gender
22 dysphoria significantly worsened. Kyler became acutely depressed and began engaging
23 in severe self-harming behaviors. Kyler's parents became increasingly concerned about
24 his mental health, and Kyler's then-therapist focused their therapy sessions on helping
25 him cope with his gender dysphoria and depression.

26 29. Many transgender children and their families work with mental health
27 providers. Besides evaluating children for and diagnosing children with gender
28 dysphoria, mental health providers create a space where a child is able to develop a better

1 understanding of their gender identity, alleviate the psychological distress associated with
2 gender dysphoria, and explore treatment options for addressing the child's gender
3 dysphoria.

4 30. Health care providers recognize that when a child is experiencing significant
5 and prolonged distress associated with gender dysphoria, transition is the only known and
6 effective treatment that improves a child's mental health and reduces the risk that the
7 child will engage in self-harming behaviors. Transition is the process by which a person
8 brings their outer appearance and identity into closer alignment with their gender identity,
9 or affirmed gender. Social transition specifically refers to steps of a transition that do not
10 involve medication or surgical intervention, and can include changing one's name and
11 pronouns, and wearing clothes that match the person's affirmed gender.

12 31. To alleviate what might otherwise be incapacitating distress and give a
13 young person the opportunity to develop a strong, positive sense of self, health care
14 providers can prescribe medications that delay the puberty of children with gender
15 dysphoria. Those medications signal to a person's body not to produce pubertal
16 hormones (*i.e.*, testosterone or estrogen). As a result, those medications prevent a
17 transgender boy from developing breasts, feminine facial features, and beginning
18 menstruation, among other unwanted secondary sex characteristics and effects of puberty.
19 With puberty-delaying medication acting as a "pause button," that child has the
20 opportunity to live life consistent with their gender identity without the distress of
21 permanent, unwanted physical characteristics of their assumed gender at birth. During
22 this time, the young person will work with their family and health care providers to
23 develop a tailored treatment plan to address the child's gender dysphoria.

24 32. At the age of thirteen, Kyler, with the support of his parents, socially
25 transitioned to living life as a boy. By the time he was fourteen, Kyler began seeing a
26 new therapist, Darlene Tando, who has expertise in providing therapy to transgender
27 youth. Starting in July 2014, Darlene Tando met with Kyler every two weeks. She also
28 held joint sessions with Kyler and his family members to assist the family in supporting

1 Kyler’s transition.

2 33. In September 2014, Kyler’s endocrinologist, a physician in the Gender
3 Management Clinic at RCHSD, approved him for puberty-delaying medication, and in
4 October 2014, Kyler received his first such treatment. Kyler was thrilled with the
5 medication because it stopped him from menstruating, which had been causing him
6 extreme distress.

7 34. Despite the positive effect his transition had on his overall mental health,
8 Kyler still experienced depression and gender dysphoria and occasionally engaged in
9 self-harming behaviors. This was compounded by the fact that Kyler was also bullied
10 and harassed about his gender identity by his peers and teachers.

11 35. Once a transgender person with gender dysphoria transitions, being referred
12 to with the wrong gender pronoun or honorific is often incredibly distressing. Such
13 misgendering is frequently understood by a transgender person as a rejection or denial of
14 the person’s identity and can significantly exacerbate gender dysphoria. Children and
15 adolescents, especially those with gender dysphoria, are often highly sensitive to
16 misgendering.

17 36. For Kyler, being misgendered—being called “she” instead of “he”—was a
18 huge source of psychological distress. In fact, Kyler withdrew from classroom learning
19 at the charter school he attended to participate in a private independent study because
20 some of his teachers continuously misgendered him, causing him such distress that he
21 was unable to function in school.

22 **DEFENDANT’S WRONGFUL CONDUCT**

23 37. Late in the day on April 5, 2015, Katharine took Kyler to be seen at the Sam
24 S. and Rose Stein Emergency Care Center of RCHSD for suicidal ideation related to his
25 gender dysphoria and to treat serious self-inflicted lacerations. He was then admitted to
26 RCHSD’s Child and Adolescent Psychiatry Services (“CAPS”) unit in the early morning
27 of April 6, 2015, on a Cal. Welf. & Inst. Code Section 5150 hold for psychiatric inpatient
28 care.

1 38. At this time, Kyler had received a legal name and gender change, which was
2 reflected in his medical records. In addition, upon Kyler's intake at CAPS, RCHSD and
3 CAPS staff were made aware by Katharine of Kyler's male sex gender identity and his
4 need to be referred to exclusively with male gender pronouns. In fact, his male gender
5 identity was denoted on the medical wrist bracelet RCHSD provided him.

6 39. Upon Kyler's intake at CAPS, RCHSD staff informed Katharine that Kyler's
7 sex and gender identity would be respected and affirmed; in other words, RCHSD staff
8 assured Katharine that all staff would refer to Kyler with male gender pronouns and
9 would otherwise treat him as a boy.

10 40. Upon his admission and throughout his stay, RCHSD knew that Kyler was a
11 transgender boy in acute psychological distress.

12 41. Despite RCHSD and CAPS staff's knowledge of his need to be referred to
13 with masculine pronouns, of his diagnosis of gender dysphoria, and of his then-current
14 acute psychological state, nursing and other RCHSD staff repeatedly addressed and
15 referred to Kyler as a girl, using feminine pronouns. RCHSD staff repeatedly
16 misgendered Kyler and actively denied and ignored his sex, including his gender identity.

17 42. Kyler complained to Katharine repeatedly during his stay at RCHSD that
18 RCHSD and CAPS staff were referring to him with feminine pronouns, which was
19 causing him extreme distress. Kyler also reported to Katharine that the other children
20 who were patients on his floor had initially referred to him as "he," correctly recognizing
21 him as male, but subsequently, as a result of RCHSD staff's misgendering Kyler, had
22 begun to call Kyler "she," causing him great embarrassment and distress. After Kyler
23 was discharged, Kyler told Katharine that one RCHSD employee had said to him,
24 "Honey, I would call you 'he,' but you're such a pretty girl."

25 43. At admission and during Kyler's stay at RCHSD, Katharine observed staff
26 calling Kyler "she" on several occasions, and she reiterated each time that it was essential
27 to exclusively refer to Kyler with male gender pronouns, and that misgendering caused
28 him serious harm.

1 44. During Kyler's stay at RCHSD, Katharine called RCHSD multiple times to
2 share Kyler's reports of misgendering and remind RCHSD and CAPS staff of their
3 commitment and obligation to exclusively refer to Kyler with masculine pronouns.
4 Katharine repeatedly told RCHSD and CAPS staff that it was essential that Kyler be
5 referred to with exclusively masculine pronouns.

6 45. In response, RCHSD blocked Katharine's phone number, leaving her unable
7 call the CAPS unit, which had control over her son during his time of distress, as well as
8 leaving her unable to solicit updates on Kyler's condition. Katharine then contacted her
9 son's therapist, who confirmed that RCHSD had blocked Katharine's number from
10 calling the CAPS unit. As a result of RCHSD's egregious conduct, Kyler suffered severe
11 emotional distress and harm. Additionally, Katharine was and continues to be
12 traumatized by the experience.

13 46. While Kyler was isolated from his mother, RCHSD and CAPS continued to
14 ignore Katharine's requests to respect Kyler's gender identity, which caused him severe
15 emotional distress and harm.

16 47. Kyler was severely harmed by RCHSD staff's repeated misgendering, as a
17 result of RCHSD's failure to respect and affirm his male gender and his gender
18 dysphoria. Kyler's distress was compounded by Katharine's inability to advocate for or
19 console her son as a result of RCHSD's blocking Katharine's phone calls to the CAPS
20 unit.

21 48. Given Kyler's worsening condition, Katharine contacted Kyler's therapist,
22 who in turn contacted CAPS, to inform them of Kyler's increasing distress due to the
23 discriminatory actions of RCHSD.

24 49. Kyler's medical providers ultimately concluded that despite Kyler's serious
25 continuing depression and suicidal ideation, he should nonetheless be discharged early
26 from the Cal. Welf. & Inst. Section 5150 hold at RCHSD, due to the discrimination he
27 experienced at RCHSD.

28 50. Kyler was discharged from Defendant's facility on April 7, 2015, with over

1 48 hours left on his 72-hour hold.

2 51. Following his discharge from RCHSD, Kyler continued to feel shocked,
3 angry, humiliated, anxious, and depressed as a result of the discriminatory treatment he
4 was subjected to at RCHSD. Kyler later stated that his experience at RCHSD was
5 “horrible.”

6 52. On May 18, 2015, Kyler died by suicide.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF AFFORDABLE CARE ACT § 1557, 42 U.S.C. § 18116**

9 **(Discrimination Based on Sex)**

10 53. Plaintiffs incorporate by reference each and every allegation in the foregoing
11 paragraphs of this Complaint.

12 54. The Affordable Care Act (“ACA”) includes robust antidiscrimination
13 provisions prohibiting healthcare programs receiving federal assistance from
14 discriminating on the basis of sex. 42 U.S.C. § 18116.

15 55. Defendant is a hospital facility that receives federal funding in the form of
16 extensive federal grants for services provided to its patients. Defendant therefore meets
17 the requirement of being a “health program or activity, any part of which is receiving
18 Federal financial assistance.” 42 U.S.C. § 18116(a).

19 56. The ACA’s ban on sex discrimination includes discrimination against any
20 individual on the basis of sex for the purpose of providing health services. The ACA
21 provides the following:

22 [A]n individual shall not, on the ground prohibited under . . .
23 title IX of the Education Amendments of 1972 (20 USC 1681 et
24 seq.) . . . be excluded from participation in, be denied benefits
25 of, or be subjected to discrimination under, any health program
26 or activity, any part of which is receiving Federal financial
27 assistance, including credits, subsidies, or contracts of
28 insurance, or under any program or activity that is administered

1 by an Executive Agency or any entity established under this
2 title (or amendments).

3 42 U.S.C. § 18116(a).

4 57. Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*,
5 prohibits discrimination based on sex in education programs that receive federal financial
6 assistance.

7 58. Over the past two decades, federal courts have been nearly unanimous in
8 interpreting federal civil rights laws, including Title IX and Title VII, to prohibit
9 discrimination against transgender people. Federal agencies similarly have interpreted
10 federal civil rights laws to prohibit discrimination or harassment of transgender people.
11 Indeed, the regulations implementing the ACA’s nondiscrimination provision mandate
12 that covered entities must “treat individuals consistent with their gender identity” 45
13 C.F.R. § 92.206.

14 59. As a transgender child, Kyler had a right under the ACA to receive health
15 care services free from discrimination based upon sex.

16 60. Defendant discriminated against Kyler in violation of the ACA by
17 intentionally ignoring his sex, referring to him with the wrong gender pronouns, and by
18 blocking Katharine’s phone calls to the hospital. Non-transgender individuals or
19 individuals without a diagnosis of gender dysphoria would not have been subjected to
20 this discrimination or isolation by RCHSD. Kyler has been aggrieved by this violation of
21 the ACA.

22 61. As a result of Defendant’s conduct, Kyler suffered emotional distress and
23 anguish, embarrassment, humiliation, violation of dignity, loss of enjoyment of life, and
24 other compensatory damages.

25 62. Plaintiffs seek relief as set forth below.
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SECOND CAUSE OF ACTION

**VIOLATION OF CALIFORNIA’S UNRUH CIVIL RIGHTS ACT,
CIVIL CODE § 51 *et seq.*
(Discrimination Based on Sex)**

63. Plaintiffs incorporate by reference each and every allegation in the foregoing paragraphs of this Complaint.

64. California Civil Code Section 51(b) *et seq.*, also known as the Unruh Civil Rights Act, provides that all persons in the state are entitled to the “full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever,” regardless of sex. Under California Civil Code Section 51(e)(5), sex is expressly defined to include “a person’s gender identity and gender expression.”

65. Kyler was a transgender boy. As such, he is within a class of persons protected by California Civil Code Section 51(b).

66. RCHSD is a “business establishment” for the purposes of California Civil Code Section 51.

67. Kyler sought appropriate medical care, a service RCHSD provides to the public.

68. RCHSD’s conduct denied, aided, incited a denial of, discriminated, or made a distinction that denied full and equal advantages, privileges, and services to Kyler based upon his sex, and therefore constituted a violation of California Civil Code Section 51(b). Accordingly, Kyler is entitled to recover a civil penalty authorized by California Civil Code Section 52(a).

69. RCHSD staff repeatedly addressed Kyler as female and refused to respect or acknowledge his sex and male gender identity. As a result, Kyler was forced to leave RCHSD before completing his 72-hour hold and was left without in-patient treatment during a time of crisis.

70. RCHSD’s staff blocked Katharine’s phone calls to RCHSD/CAPS during

1 Kyler’s time of distress.

2 71. As a direct and proximate result of RCHSD’s wrongful actions, Kyler has
3 suffered damages, all in an amount to be proven at trial but exceeding the minimum
4 jurisdictional limits of this court.

5 72. Plaintiffs seek relief as set forth below.

6 **THIRD CAUSE OF ACTION**
7 **VIOLATION OF CALIFORNIA’S UNRUH CIVIL RIGHTS ACT,**
8 **CIVIL CODE § 51 *et seq.***
9 **(Discrimination Based on Disability)**

10 73. Plaintiffs incorporate by reference each and every allegation in the foregoing
11 paragraphs of this Complaint.

12 74. California Civil Code Section 51(b) *et seq.*, also known as the Unruh Civil
13 Rights Act, provides that “(a)ll persons within the jurisdiction of this state are free and
14 equal, and no matter what their . . . disability . . . are entitled to the full and equal
15 accommodations, advantages, facilities, privileges, or services in all business
16 establishments of every kind whatsoever.”

17 75. RCHSD is a “business establishment” within the meaning of Unruh Civil
18 Rights Act Cal. Civ. Code Section 51(b) *et seq.*

19 76. Kyler’s gender dysphoria constitutes a mental disability that limits a major
20 life activity. Cal. Gov’t Code §§ 12926(j), 12926.1(c). This disability falls within the
21 purview of the Unruh Civil Rights Act. Cal. Civ. Code § 51(e)(1).

22 77. Kyler sought appropriate medical care, a service RCHSD provides to the
23 public.

24 78. RCHSD’s conduct violated the Unruh Civil Rights Act by denying (or
25 aiding or inciting the denial of) Kyler’s rights to full and equal use of the
26 accommodations, advantages, facilities, privileges, or services RCHSD offers to patients
27 by denying Kyler adequate care on the basis of his disability. Accordingly, Kyler is
28 entitled to recover a civil penalty authorized by California Civil Code Section 52(a).

1 79. As a direct and proximate result of RCHSD’s wrongful actions, Kyler
2 suffered damages, all in an amount to be proven at trial but exceeding the minimum
3 jurisdictional limits of this court.

4 80. Plaintiffs seek relief as set forth below.

5 **FOURTH CAUSE OF ACTION**

6 **VIOLATION OF CALIFORNIA GOVERNMENT CODE § 11135**

7 **(Discrimination Based on Sex)**

8 81. Plaintiffs incorporate by reference each and every allegation in the foregoing
9 paragraphs of this Complaint.

10 82. Section 11135(a) of the California Government Code provides in pertinent
11 part that no person in the State of California shall, on the basis of sex, be unlawfully
12 denied full and equal access to the benefits of, or be unlawfully subjected to
13 discrimination under, any program or activity that is funded directly by the state or
14 receives any financial assistance from the state. Cal. Gov’t Code § 11135(a).

15 83. The term “sex” expressly includes discrimination based on gender identity
16 and expression. Cal. Gov’t Code §§ 11135(e), 12926(r)(2).

17 84. California Government Code Section 11135(f) clarifies that any person who
18 is perceived to have, or is associated with someone who has, any of the characteristics
19 listed under Section 11135 is also protected from discrimination in state-funded
20 programs.

21 85. At all times relevant to this action, RCHSD received financial assistance
22 from the State of California. As such, Defendant is subject to the anti-discrimination
23 provisions of Section 11135.

24 86. Defendant’s conduct denied Kyler full and equal access to the services,
25 programs, and activities offered by Defendant to patients at RCHSD in violation of Cal.
26 Gov’t Code Section 11135.

27 87. Defendant’s conduct also denied Katharine, who is “associated with” Kyler
28 under the meaning of the statute by virtue of the fact that she is the mother of Kyler, a

1 transgender child, full and equal access to the services, programs, and activities offered
2 by Defendant in violation of Section 11135.

3 88. As a direct and proximate result of RCHSD's violation of California
4 Government Code Section 11135, Katharine and Kyler suffered significant losses, and
5 RCHSD was unjustly enriched.

6 89. Pursuant to California Government Code Section 11139, Plaintiffs are
7 entitled to restitution of all monies paid to RCHSD that, in good conscience, belong to
8 Plaintiffs.

9 90. Plaintiffs have assumed the responsibility of enforcement of the laws and
10 lawful claims specified herein. There is a financial burden incurred in pursuing this
11 action which is in the public interest. Therefore, reasonable attorneys' fees are
12 appropriate pursuant to California Code of Civil Procedure Section 1021.5.

13 91. Plaintiffs seek relief as set forth below.

14 **FIFTH CAUSE OF ACTION**

15 **VIOLATION OF CALIFORNIA GOVERNMENT CODE § 11135**

16 **(Discrimination Based on Disability)**

17 92. Plaintiffs incorporate by reference each and every allegation in the foregoing
18 paragraphs of this Complaint.

19 93. Section 11135(a) of the California Government Code provides in pertinent
20 part that no person in the State of California shall, on the basis of disability, be
21 unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to
22 discrimination under, any program or activity that is funded directly by the state or
23 receives any financial assistance from the state. Cal. Gov't Code § 11135(a).

24 94. California Government Code Section 11135(f) clarifies that any person who
25 is perceived to have, or is associated with someone who has, any of the characteristics
26 listed under Section 11135 is also protected from discrimination in state-funded
27 programs.

28 95. At all times relevant to this action, Kyler was and is a qualified individual

1 with a disability within the meaning of Section 11135(c)(1) and meets the essential
2 requirements for the receipt of the services, programs, or activities of Defendant. Cal.
3 Gov't Code §§ 11135; 12926(j).

4 96. At all times relevant to this action, RCHSD received financial assistance
5 from the State of California. As such, Defendant is subject to the anti-discrimination
6 provisions of Section 11135.

7 97. Defendant's conduct denied Kyler full and equal access to the services,
8 programs, and activities offered by Defendant to patients at RCHSD in violation of Cal.
9 Gov't Code Section 11135.

10 98. Defendant's conduct also denied Katharine, who is "associated with" Kyler
11 under the meaning of the statute by virtue of the fact that she is the mother of Kyler, a
12 qualified individual with a disability within the meaning of Section 11135(c)(1), full and
13 equal access to the services, programs, and activities offered by Defendant in violation of
14 Section 11135.

15 99. As a direct and proximate result of RCHSD's violation of California
16 Government Code Section 11135, Katharine and Kyler suffered significant losses, and
17 RCHSD was unjustly enriched.

18 100. Pursuant to California Government Code Section 11139, Plaintiffs are
19 entitled to restitution of all monies paid to RCHSD that, in good conscience, belong to
20 Plaintiffs.

21 101. Plaintiffs have assumed the responsibility of enforcement of the laws and
22 lawful claims specified herein. There is a financial burden incurred in pursuing this
23 action which is in the public interest. Therefore, reasonable attorneys' fees are
24 appropriate pursuant to California Code of Civil Procedure Section 1021.5.

25 102. Plaintiffs seek relief as set forth below.

26 **SIXTH CAUSE OF ACTION**

27 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**

28 **§ 17200 *et seq.***

1 103. Plaintiffs incorporate by reference each and every allegation in the foregoing
2 paragraphs of this Complaint.

3 104. California Business & Professions Code Section 17200, also known as the
4 California Unfair Competition Law, prohibits unfair competition in the form of any
5 unlawful, unfair, or fraudulent business act or practice.

6 105. California Business & Professions Code Section 17204 allows “any person
7 acting for the interests of itself, its members, or the general public” to prosecute a civil
8 action for violation of the Unfair Competition Law.

9 106. As set forth herein, RCHSD committed unlawful, unfair, and/or fraudulent
10 business acts and practices as defined by California Business & Professions Code Section
11 17200, by engaging in the following acts, without limitation:

12 a. Unfairly and falsely representing itself to Katharine, Kyler, and to the
13 general public as being capable of working with transgender patients and patients
14 with gender dysphoria in violation of Cal. Bus. & Prof. Code Section 17500.
15 Defendant made these representations through the operation of its Gender
16 Management Clinic and through statements and information contained on its
17 website.

18 b. Failing to respect the rights of patients pursuant to the Lanterman-
19 Petris Short Act, which clarifies the rights of people with mental health conditions
20 and provides safeguards to ensure that treatment procedures are appropriate. Cal.
21 Welf. & Inst. Code § 5325. These rights require that “[t]reatment should be
22 provided in ways that are least restrictive of the personal liberty of the individual,”
23 and provide a “right to dignity, privacy, and human care,” and a “right to be free
24 from unnecessary or excessive . . . isolation, or abuse.” Cal. Welf. & Inst. Code §
25 5325.1.

26 c. Failing to provide public accommodations free from discrimination
27 based on gender identity, as required by the Unruh Civil Rights Act, California
28 Government Code section 11135, and the Affordable Care Act.

1 d. Failing to provide public accommodations free from discrimination
2 based on disability, as required by the Unruh Civil Rights Act, and California
3 Government Code § 11135.

4 107. Katharine would not have sought medical care for Kyler at RCHSD had she
5 known that RCHSD's claims were false.

6 108. The unfair acts describe above and the violations of law serve as unlawful,
7 unfair, and/or fraudulent predicate acts and practices for purposes of California Business
8 & Professions Code Section 17200. As a direct and proximate result of RCHSD's unfair
9 acts and practices described herein, Katharine and Kyler have suffered economic injury,
10 including but not limited to the loss of money and/or property, such as medical and
11 hospital costs, counseling fees, travel expenses, and other out-of-pocket expenses.

12 109. Katharine and Kyler have also suffered injury in fact as a result of RCHSD's
13 actions for which there is no adequate remedy at law.

14 110. By all of the foregoing alleged conduct, RCHSD has committed, and is
15 continuing to commit, ongoing unlawful, unfair, and/or fraudulent business practices
16 within the meaning of California Business & Professions Code Section 17200 *et seq.*

17 111. As a direct and proximate result of the unfair business practices described
18 above, Plaintiffs have suffered significant losses, and Defendant has been unjustly
19 enriched.

20 112. Pursuant to California Business & Professions Code Section 17203,
21 Plaintiffs are entitled to restitution of money acquired by means of Defendant's unfair
22 business practices, in amounts not yet ascertained but to be ascertained at trial.

23 113. Plaintiffs have assumed the responsibility of enforcement of the laws and
24 lawful claims specified herein. There is a financial burden incurred in pursuing this
25 action which is in the public interest. Therefore, reasonable attorneys' fees are
26 appropriate pursuant to California Code of Civil Procedure Section 1021.5.

27 114. Plaintiffs seek relief as set forth below.
28

SEVENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE

§ 17500 *et seq.*

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4 115. Plaintiffs incorporate by reference each and every allegation in the foregoing
5 paragraphs of this Complaint.

6 116. RCHSD has engaged in false advertising by the following acts, without
7 limitation:

8 a. Stating on its website that children with gender dysphoria “deserve to
9 have a medical home at Rady Children’s Hospital–San Diego.”

10 117. Katharine would not have sought medical care for Kyler at RCHSD had she
11 known that RCHSD’s claims were false.

12 118. Plaintiffs are informed and believe, and thereupon allege, that RCHSD
13 intended to sell services by engaging in advertising that was untrue or misleading, and
14 which RCHSD knew or should have known was untrue or misleading, concerning its
15 ability to provide services to transgender patients.

16 119. As a direct and proximate result of RCHSD’s unfair acts and practices
17 described herein, Katharine and Kyler have suffered economic injury, including but not
18 limited to the loss of money and/or property, such as medical and hospital costs,
19 counseling fees, travel expenses, and other out-of-pocket expenses.

20 120. RCHSD’s false advertising is ongoing and presents a threat to members of
21 the general public seeking appropriate medical treatment options in that RCHSD has
22 failed to publicly acknowledge the wrongfulness of its actions, implement institutional
23 changes to prevent problems from recurring, and otherwise provide the complete relief
24 required by statute.

25 121. RCHSD’s acts and practices as alleged herein constitute acts of false
26 advertising within the meaning of California Business & Professions Code Section 17500
27 *et seq.*

28 122. Plaintiffs are entitled to restitution of all monies paid to RCHSD as a result

1 of Defendant’s false advertising.

2 123. Plaintiffs have assumed the responsibility of enforcement of the laws and
3 lawful claims specified herein. There is a financial burden incurred in pursuing this
4 action which is in the public interest. Therefore, reasonable attorneys’ fees are
5 appropriate pursuant to California Code of Civil Procedure Section 1021.5.

6 124. Plaintiffs seek relief as set forth below.

7 **PRAYER**

8 **WHEREFORE**, Plaintiffs pray for judgment as follows:

- 9 1. Compensatory damages and restitution in an amount to be determined at
10 trial, plus interest accruing between April 5, 2015, and the date of judgment;
- 11 2. For punitive damages according to proof, but not less than \$4,000;
- 12 3. For attorney fees, statutory costs, and expenses;
- 13 4. For judgment in favor of Plaintiffs and against each Defendant on all causes
14 of action; and
- 15 5. For such other and further relief as the Court may deem just and proper.

16
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18 DATED: October 12, 2017

FOLEY & LARDNER LLP
Eileen R. Ridley
Alan R. Ouellette
Kathryn A. Shoemaker

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21
22 /s/ Eileen R. Ridley
Eileen R. Ridley
23 Attorneys for Plaintiffs KATHARINE
24 PRESCOTT, an individual, and
25 KATHARINE PRESCOTT, on behalf of
26 KYLER PRESCOTT, a deceased minor
27
28

DEMAND FOR JURY TRIAL

Plaintiff Katharine Prescott, an individual, and on behalf of Kyler Prescott, a deceased minor, hereby demands a jury trial.

DATED: October 12, 2017

FOLEY & LARDNER LLP
Eileen R. Ridley
Alan R. Ouellette
Kathryn A. Shoemaker

/s/ Eileen R. Ridley
Eileen R. Ridley
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KATHARINE PRESCOTT, on behalf of
KYLER PRESCOTT, a deceased minor

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17 Attorneys for Plaintiffs KATHARINE PRESCOTT,
an individual, and KATHARINE PRESCOTT, on
18 behalf of KYLER PRESCOTT, a deceased minor

19 **UNITED STATES DISTRICT COURT**
20 **SOUTHERN DISTRICT OF CALIFORNIA**

21 KATHARINE PRESCOTT, AN
INDIVIDUAL, AND KATHARINE
22 PRESCOTT, ON BEHALF OF
KYLER PRESCOTT, A DECEASED
23 MINOR,

24 Plaintiffs,

25 v.

26 RADY CHILDREN'S
HOSPITAL—SAN DIEGO,

27 Defendant.
28

Case No. [16-cv-02408-BTM-JMA](#)

FIRST AMENDED COMPLAINT FOR:

1. **VIOLATION OF AFFORDABLE CARE ACT § 1557, 42 U.S.C. § 18116 (DISCRIMINATION BASED ON SEX)**
2. **VIOLATION OF CALIFORNIA'S UNRUH CIVIL RIGHTS ACT, CIVIL CODE § 51 ET SEQ. (DISCRIMINATION BASED ON SEX)**
3. **VIOLATION OF CALIFORNIA'S UNRUH CIVIL RIGHTS ACT, CIVIL CODE § 51 ET SEQ. (DISCRIMINATION BASED ON DISABILITY)**
4. **VIOLATION OF CALIFORNIA**

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- GOVERNMENT CODE § 11135
(DISCRIMINATION BASED ON SEX)
- 5. VIOLATION OF CALIFORNIA
GOVERNMENT CODE § 11135
(DISCRIMINATION BASED ON
DISABILITY)
- 6. VIOLATION OF CALIFORNIA BUSINESS
& PROFESSIONS CODE § 17200 *ET SEQ.*
- 7. VIOLATION OF CALIFORNIA BUSINESS
& PROFESSIONS CODE § 17500 *ET SEQ.*
- DEMAND FOR JURY TRIAL

Plaintiff KATHARINE PRESCOTT (“Katharine”), an individual, and on behalf of KYLER PRESCOTT (“Kyler”), a deceased minor, by and through her attorneys, hereby alleges as follows against Defendant RADY CHILDREN’S HOSPITAL–SAN DIEGO (“Defendant” or “RCHSD”):

INTRODUCTION

1. Kyler Prescott was a 14-year-old transgender boy who was admitted to RCHSD on April 5, 2015, on a 72-hour hold due to his suicidal ideation related to gender dysphoria. Upon admission, RCHSD staff assured Kyler and his mother Katharine that while at RCHSD, Kyler would be treated as a boy. RCHSD staff, however, failed to do so. RCHSD ultimately discharged Kyler early from the 72-hour hold due to Kyler’s increasingly severe distress related to the discrimination he faced from RCHSD. Kyler subsequently died by suicide.

2. This is an action to secure relief for violations of rights guaranteed by the Patient Protection and Affordable Care Act (the “ACA”), 42 U.S.C. § 18116 (“Section 1557”), California Civil Code § 51 *et seq.*, also known as the Unruh Civil Rights Act (the “Unruh Act”), California Government Code § 11135 (“Section 11135”), California Business & Professions Code § 17200, also known as the California Unfair Competition Law (“Section 17200”), and California Business & Professions Code § 17500 (“Section 17500”).

1 3. Section 1557 of the ACA prohibits discrimination based on sex by health care
2 providers that receive federal financial assistance. 42 U.S.C. § 18116 (a); 20 U.S.C. §
3 1681(a). The Unruh Act prohibits discrimination in public accommodations in the State of
4 California on the basis of sex (which expressly includes gender identity) and disability.
5 Cal. Civ. Code §§ 51(b), (e)(1), (e)(5).

6 4. Both statutes prohibit health care programs from discriminating against a
7 patient based on the patient’s sex, which includes gender identity. Kyler experienced
8 severe emotional distress and other damages after he was discriminated against on the basis
9 of his sex and/or his disability while he was a patient at RCHSD.

10 5. Section 11135 of the California Government Code also prohibits
11 discrimination on the basis of sex (which expressly includes gender identity) by
12 government agencies or any entity that receives funding from the state of California. *See*
13 Cal. Gov’t Code §§ 11135, 12926(r)(2). RCHSD’s actions and omissions also constitute
14 discrimination on the basis of sex, gender identity, and/or disability within the meaning of
15 Section 11135 of the California Government Code.

16 6. Section 17200 of the California Business & Professions Code prohibits any
17 “unlawful, unfair, or fraudulent business act or practice” as well as any “unfair, deceptive,
18 untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

19 7. Section 17500 of the California Business & Professions Code prohibits,
20 among other things, a business from making or disseminating any statement concerning
21 professional services that is untrue or misleading and is either known or should be known
22 to be untrue or misleading. Cal. Bus. & Prof. Code § 17500.

23 8. Despite RCHSD’s representations that it had experience with transgender
24 youth, RCHSD discriminated against Kyler, resulting in his inability to access necessary
25 services and treatment during a dire medical crisis. These actions amount to discrimination
26 within the meanings of Section 1557 of the ACA, the Unruh Act, and California
27 Government Code Section 11135.

28 9. RCHSD’s discriminatory conduct toward and treatment of Kyler also

1 constitute unlawful and/or unfair business practices within the meaning of California
2 Business & Professions Code Section 17200.

3 10. Additionally, RCHSD's representations, via the Internet and by personal
4 communication to Katharine, that it had experience with transgender youth, constitute
5 untrue or misleading advertising within the meanings of California Business & Professions
6 Code Sections 17200 and 17500.

7 11. Katharine brings this action as an individual and on Kyler's behalf to recover
8 damages for the harms done to her and her deceased son, ~~and for injunctive relief so that in~~
9 ~~the future RCHSD will provide appropriate, nondiscriminatory care to all of its patients,~~
10 ~~regardless of sex, gender identity, and/or disability.~~

11 ~~12.—Unless enjoined, Defendant will continue to engage in the unlawful acts and~~
12 ~~practices of discrimination complained of herein. Plaintiffs have no adequate remedy at~~
13 ~~law. Accordingly, Plaintiffs are entitled to injunctive relief.~~

14 12. ~~13.~~ An actual controversy has arisen and now exists between the parties
15 concerning their respective rights, duties, and obligations under federal and state law.

16 JURISDICTION AND VENUE

17 13. ~~14.~~ This Court has original jurisdiction over Plaintiffs' claims arising under
18 the ACA, 42 U.S.C. § 18116, pursuant to 28 U.S.C. § 1331.

19 14. ~~15.~~ Plaintiffs' state law claims are so related to those under which this Court
20 has original jurisdiction that they form part of the same case and controversy.
21 Supplemental jurisdiction is therefore appropriate over Plaintiffs' remaining claims
22 pursuant to 28 U.S.C. § 1367.

23 ~~16.—This Court has jurisdiction over Plaintiffs' claims for declaratory and~~
24 ~~injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, as well as Federal Rule of Civil~~
25 ~~Procedure 65.~~

26 15. ~~17.~~ Venue is proper in this Court pursuant to 29 U.S.C. § 1391(b), because the
27 events giving rise to the claims made herein occurred in this Judicial District, and
28 Defendant RCHSD has its principal place of business within this District.

THE PARTIES

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2 16. ~~18.~~ Kyler Prescott, as represented by his mother Katharine Prescott, is a
3 deceased minor and was at all times mentioned herein a resident of the County of San
4 Diego, California.

5 17. ~~19.~~ Katharine Prescott, as Kyler’s mother, has a special interest in this matter
6 that is concrete and therefore has standing to bring this claim as a survivorship action.

7 18. ~~20.~~ Defendant RCHSD is now, and was at all times mentioned herein, a
8 nonprofit healthcare organization affiliated with the University of California, San Diego
9 School of Medicine, with its principal place of business located at 3020 Children’s Way,
10 San Diego, CA 92123. RCHSD is a business establishment that offers to the public
11 accommodations, advantages, facilities, privileges, and services.

12 19. ~~21.~~ RCHSD runs its Child and Adolescent Psychiatry Services (“CAPS”)
13 program as an inpatient unit for children who need psychiatric treatment.

14 20. ~~22.~~ RCHSD receives federal and state financial assistance such as credits,
15 subsidies, or contracts of insurance within the meanings of Section 1557 of the ACA and
16 Section 11135 of the California Government Code. 42 U.S.C. § 18116(a); Cal. Gov’t Code
17 § 11135. According to the Department of Health and Human Services, RCHSD received
18 \$5 million in federal funds in 2015 and nearly \$2.2 million in federal funds in 2016.¹
19 According to RCHSD’s most recent Department of Pediatrics annual report, 48.9% of
20 RCHSD’s insurance payments in 2011–2013 stemmed from Medi-Cal plans from the State
21 of California.² RCHSD’s 2013 federal tax Form 990 indicates that RCHSD received \$98.4
22 million in local, state, or federal government funding sources. Additionally, RCHSD’s
23 2014 California Office of Statewide Health Planning and Development (“OSHPD”) annual
24

25 ¹ *Recipient Search*, TAGGS.HHS.GOV, <https://taggs.hhs.gov/SearchRecip> (under “Enter
26 a Keyword,” search for “Rady Children’s Hospital – San Diego,” then under “Fiscal Year
(FY),” select either “2016” or “2015” to view sum of awards to RCHSD for each fiscal
27 year) (last visited Sept. 25, 2016).

28 ² RYDY CHILDREN’S HOSP. – SAN DIEGO, DEPT. OF PEDIATRICS BIENNIAL REPORT
2011-2013 6, *available at*
<http://www.rchsd.org/documents/2014/04/dept-of-pediatrics-report-2011-13.pdf> (last
visited Sept. 25, 2016).

1 disclosure report states that RCHSD received \$7.3 million in government contract
2 revenues.³

3 21. ~~23.~~ At all relevant times, RCHSD employed the services of doctors, nurses,
4 other professional and non-professional health care providers, and staff, including the
5 nurses, other health care providers, and staff who interacted with Kyler in April 2015.
6 RCHSD advertised its expertise in treating transgender and gender nonconforming
7 children and adolescents through its Gender Management Clinic, from which Kyler had
8 previously received care. RCHSD held itself out and warranted itself to the public as
9 competent, careful, and experienced in the care and treatment of patients, particularly
10 transgender patients and those with gender dysphoria. RCHSD's website states that
11 transgender youth "deserve to have a medical home at Rady Children's Hospital-San
12 Diego."⁴

13 **GENDER IDENTITY AND GENDER DYSPHORIA IN CHILDREN**

14 22. ~~24.~~ Gender identity is a person's deeply felt understanding of their own
15 gender. People generally become aware of their gender identity as early as two or three
16 years of age. Most people's gender identity aligns with the gender designated on their birth
17 certificate (a determination generally based solely on the appearance of a baby's external
18 genitalia at birth). Some children and adolescents, however, manifest persistent signs that
19 the gender they were assumed to be at birth does not align with their gender identity, or
20 their sense of themselves as a boy or a girl. For example, a transgender boy is a child who
21 was assumed to be female at birth but who identifies as a boy. A transgender girl is a child
22 who was assumed to be a boy at birth but identifies as a girl.

23 23. ~~25.~~ For a transgender child, the incongruity between the child's anatomy and
24

25 ³ OSHPD SIERA Financial Disclosure Reports,
26 <https://siera.oshpd.ca.gov/FinancialDisclosure.aspx> (select report type "Hospital Annual,"
27 set "From Year" and "To Year" to 2014, and search for "Rady Children's Hospital - San
28 Diego (106370673)," then, under "Audited," select the "Detail" PDF link.

⁴ RADY CHILDREN'S HOSP., *Gender Management Clinic*,
[http://www.rchsd.org/programs-services/endocrinology-diabetes/services/gender-manage-
ment-clinic/](http://www.rchsd.org/programs-services/endocrinology-diabetes/services/gender-management-clinic/) (last visited Sept. 25, 2016).

1 gender identity commonly leads to psychological distress characterized by severe and
2 unremitting feelings of sadness, anxiety, and/or frustration. This distress is a serious
3 condition recognized by medical professionals as gender dysphoria.

4 24. ~~26.~~The Diagnostic and Statistical Manual of Mental Disorders (DSM-5)
5 defines gender dysphoria as a marked difference between a person's gender identity and
6 their assumed gender at birth, which persists for at least six months and manifests itself in
7 at least two other symptoms (*e.g.*, "a desire to prevent the development of the anticipated
8 secondary sex characteristics," "a strong desire to be of the other gender," and/or "a strong
9 desire to be treated as the other gender"). American Psychiatric Association, DIAGNOSTIC
10 AND STATISTICAL MANUAL OF MENTAL DISORDERS 452 (5th ed. 2013). Gender dysphoria
11 is associated with clinically significant distress or impairment in social, occupational, or
12 other important areas of functioning. *Id.* at 453. If left untreated, this clinical distress can
13 lead to debilitating depression and diminishment of self-esteem as well as serious incidents
14 of self-harm, suicide attempts, and suicide.

15 25. ~~27.~~Transgender children represent a small but naturally occurring variation of
16 human diversity. Diane Ehrensaft, *From Gender Identity Disorder to Gender Identity*
17 *Creativity: True Gender Self Child Therapy*, 51 J. OF HOMOSEXUALITY 337, 338-39
18 (2012); Norman Spack et al., *Children and Adolescents with Gender Identity Disorder*
19 *Referred to a Pediatric Medical Center*, 129 PEDIATRICS 418, 421 (2012).

20 26. ~~28.~~Medical evidence and clinical practice demonstrate that family and
21 societal rejection or disregard of a child's gender identity, as well as attempts to change a
22 child's gender identity, are harmful to transgender children.

23 27. ~~29.~~Kyler was assumed to be female at birth. However, as early as age 10,
24 Kyler began exhibiting signs that he was a boy, not a girl. His clothing choices became
25 more stereotypically masculine and he expressed a desire to become more muscular. He
26 also began to socialize almost exclusively with other boys. When he was twelve, due to
27 increasing gender dysphoria, Kyler began engaging in self-harming behaviors.

28 28. ~~30.~~When Kyler was thirteen, he told his mother Katharine that he was boy.

1 At this point, Kyler cut his hair short and began to come out to other family members and
2 close friends as a boy. As he entered puberty, Kyler’s distress due to his gender dysphoria
3 significantly worsened. Kyler became acutely depressed and began engaging in severe
4 self-harming behaviors. Kyler’s parents became increasingly concerned about his mental
5 health, and Kyler’s then-therapist focused their therapy sessions on helping him cope with
6 his gender dysphoria and depression.

7 29. ~~31.~~ Many transgender children and their families work with mental health
8 providers. Besides evaluating children for and diagnosing children with gender dysphoria,
9 mental health providers create a space where a child is able to develop a better
10 understanding of their gender identity, alleviate the psychological distress associated with
11 gender dysphoria, and explore treatment options for addressing the child’s gender
12 dysphoria.

13 30. ~~32.~~ Health care providers recognize that when a child is experiencing
14 significant and prolonged distress associated with gender dysphoria, transition is the only
15 known and effective treatment that improves a child’s mental health and reduces the risk
16 that the child will engage in self-harming behaviors. Transition is the process by which a
17 person brings their outer appearance and identity into closer alignment with their gender
18 identity, or affirmed gender. Social transition specifically refers to steps of a transition that
19 do not involve medication or surgical intervention, and can include changing one’s name
20 and pronouns, and wearing clothes that match the person’s affirmed gender.

21 31. ~~33.~~ To alleviate what might otherwise be incapacitating distress and give a
22 young person the opportunity to develop a strong, positive sense of self, health care
23 providers can prescribe medications that delay the puberty of children with gender
24 dysphoria. Those medications signal to a person’s body not to produce pubertal hormones
25 (*i.e.*, testosterone or estrogen). As a result, those medications prevent a transgender boy
26 from developing breasts, feminine facial features, and beginning menstruation, among
27 other unwanted secondary sex characteristics and effects of puberty. With
28 puberty-delaying medication acting as a “pause button,” that child has the opportunity to

1 live life consistent with their gender identity without the distress of permanent, unwanted
2 physical characteristics of their assumed gender at birth. During this time, the young
3 person will work with their family and health care providers to develop a tailored treatment
4 plan to address the child’s gender dysphoria.

5 32. ~~34.~~ At the age of thirteen, Kyler, with the support of his parents, socially
6 transitioned to living life as a boy. By the time he was fourteen, Kyler began seeing a new
7 therapist, Darlene Tando, who has expertise in providing therapy to transgender youth.
8 Starting in July 2014, Darlene Tando met with Kyler every two weeks. She also held joint
9 sessions with Kyler and his family members to assist the family in supporting Kyler’s
10 transition.

11 33. ~~35.~~ In September 2014, Kyler’s endocrinologist, a physician in the Gender
12 Management Clinic at RCHSD, approved him for puberty-delaying medication, and in
13 October 2014, Kyler received his first such treatment. Kyler was thrilled with the
14 medication because it stopped him from menstruating, which had been causing him
15 extreme distress.

16 34. ~~36.~~ Despite the positive effect his transition had on his overall mental health,
17 Kyler still experienced depression and gender dysphoria and occasionally engaged in
18 self-harming behaviors. This was compounded by the fact that Kyler was also bullied and
19 harassed about his gender identity by his peers and teachers.

20 35. ~~37.~~ Once a transgender person with gender dysphoria transitions, being
21 referred to with the wrong gender pronoun or honorific is often incredibly distressing.
22 Such misgendering is frequently understood by a transgender person as a rejection or
23 denial of the person’s identity and can significantly exacerbate gender dysphoria. Children
24 and adolescents, especially those with gender dysphoria, are often highly sensitive to
25 misgendering.

26 36. ~~38.~~ For Kyler, being misgendered—being called “she” instead of “he”—was a
27 huge source of psychological distress. In fact, Kyler withdrew from classroom learning at
28 the charter school he attended to participate in a private independent study because some of

1 his teachers continuously misgendered him, causing him such distress that he was unable
2 to function in school.

3 **DEFENDANT’S WRONGFUL CONDUCT**

4 37. ~~39.~~ Late in the day on April 5, 2015, Katharine took Kyler to be seen at the
5 Sam S. and Rose Stein Emergency Care Center of RCHSD for suicidal ideation related to
6 his gender dysphoria and to treat serious self-inflicted lacerations. He was then admitted to
7 RCHSD’s Child and Adolescent Psychiatry Services (“CAPS”) unit in the early morning
8 of April 6, 2015, on a Cal. Welf. & Inst. Code Section 5150 hold for psychiatric inpatient
9 care.

10 38. ~~40.~~ At this time, Kyler had received a legal name and gender change, which
11 was reflected in his medical records. In addition, upon Kyler’s intake at CAPS, RCHSD
12 and CAPS staff were made aware by Katharine of Kyler’s male sex gender identity and his
13 need to be referred to exclusively with male gender pronouns. In fact, his male gender
14 identity was denoted on the medical wrist bracelet RCHSD provided him.

15 39. ~~41.~~ Upon Kyler’s intake at CAPS, RCHSD staff informed Katharine that
16 Kyler’s sex and gender identity would be respected and affirmed; in other words, RCHSD
17 staff assured Katharine that all staff would refer to Kyler with male gender pronouns and
18 would otherwise treat him as a boy.

19 40. ~~42.~~ Upon his admission and throughout his stay, RCHSD knew that Kyler was
20 a transgender boy in acute psychological distress.

21 41. ~~43.~~ Despite RCHSD and CAPS staff’s knowledge of his need to be referred to
22 with masculine pronouns, of his diagnosis of gender dysphoria, and of his then-current
23 acute psychological state, nursing and other RCHSD staff repeatedly addressed and
24 referred to Kyler as a girl, using feminine pronouns. RCHSD staff repeatedly misgendered
25 Kyler and actively denied and ignored his sex, including his gender identity.

26 42. ~~44.~~ Kyler complained to Katharine repeatedly during his stay at RCHSD that
27 RCHSD and CAPS staff were referring to him with feminine pronouns, which was causing
28 him extreme distress. Kyler also reported to Katharine that the other children who were

1 patients on his floor had initially referred to him as “he,” correctly recognizing him as
2 male, but subsequently, as a result of RCHSD staff’s misgendering Kyler, had begun to call
3 Kyler “she,” causing him great embarrassment and distress. After Kyler was discharged,
4 Kyler told Katharine that one RCHSD employee had said to him, “Honey, I would call you
5 ‘he,’ but you’re such a pretty girl.”

6 43. ~~45.~~ At admission and during Kyler’s stay at RCHSD, Katharine observed staff
7 calling Kyler “she” on several occasions, and she reiterated each time that it was essential
8 to exclusively refer to Kyler with male gender pronouns, and that misgendering caused him
9 serious harm.

10 44. ~~46.~~ During Kyler’s stay at RCHSD, Katharine called RCHSD multiple times
11 to share Kyler’s reports of misgendering and remind RCHSD and CAPS staff of their
12 commitment and obligation to exclusively refer to Kyler with masculine pronouns.
13 Katharine repeatedly told RCHSD and CAPS staff that it was essential that Kyler be
14 referred to with exclusively masculine pronouns.

15 45. ~~47.~~ In response, RCHSD blocked Katharine’s phone number, leaving her
16 unable call the CAPS unit, which had control over her son during his time of distress, as
17 well as leaving her unable to solicit updates on Kyler’s condition. Katharine then
18 contacted her son’s therapist, who confirmed that RCHSD had blocked Katharine’s
19 number from calling the CAPS unit. As a result of RCHSD’s egregious conduct, Kyler
20 suffered severe emotional distress and harm. Additionally, Katharine was and continues to
21 be traumatized by the experience.

22 46. ~~48.~~ While Kyler was isolated from his mother, RCHSD and CAPS continued
23 to ignore Katharine’s requests to respect Kyler’s gender identity, which caused him severe
24 emotional distress and harm.

25 47. ~~49.~~ Kyler was severely harmed by RCHSD staff’s repeated misgendering, as a
26 result of RCHSD’s failure to respect and affirm his male gender and his gender dysphoria.
27 Kyler’s distress was compounded by Katharine’s inability to advocate for or console her
28 son as a result of RCHSD’s blocking Katharine’s phone calls to the CAPS unit.

1 provides the following:

2 [A]n individual shall not, on the ground prohibited under . . . title
 3 IX of the Education Amendments of 1972 (20 USC 1681 et seq.)
 4 . . . be excluded from participation in, be denied benefits of, or be
 5 subjected to discrimination under, any health program or
 6 activity, any part of which is receiving Federal financial
 7 assistance, including credits, subsidies, or contracts of insurance,
 8 or under any program or activity that is administered by an
 9 Executive Agency or any entity established under this title (or
 10 amendments).

11 42 U.S.C. § 18116(a).

12 57. ~~59.~~ Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*,
 13 prohibits discrimination based on sex in education programs that receive federal financial
 14 assistance.

15 58. ~~60.~~ Over the past two decades, federal courts have been nearly unanimous in
 16 interpreting federal civil rights laws, including Title IX and Title VII, to prohibit
 17 discrimination against transgender people. Federal agencies similarly have interpreted
 18 federal civil rights laws to prohibit discrimination or harassment of transgender people.
 19 Indeed, the regulations implementing the ACA’s nondiscrimination provision mandate that
 20 covered entities must “treat individuals consistent with their gender identity” 45
 21 C.F.R. § 92.206.

22 59. ~~61.~~ As a transgender child, Kyler had a right under the ACA to receive health
 23 care services free from discrimination based upon sex.

24 60. ~~62.~~ Defendant discriminated against Kyler in violation of the ACA by
 25 intentionally ignoring his sex, referring to him with the wrong gender pronouns, and by
 26 blocking Katharine’s phone calls to the hospital. Non-transgender individuals or
 27 individuals without a diagnosis of gender dysphoria would not have been subjected to this
 28 discrimination or isolation by RCHSD. Kyler has been aggrieved by this violation of the

1 ACA.

2 61. ~~63.~~ As a result of Defendant’s conduct, Kyler suffered emotional distress and
3 anguish, embarrassment, humiliation, violation of dignity, loss of enjoyment of life, and
4 other compensatory damages.

5 62. ~~64.~~ Plaintiffs seek relief, ~~including declaratory and injunctive relief,~~ as set
6 forth below.

7 **SECOND CAUSE OF ACTION**

8 **VIOLATION OF CALIFORNIA’S UNRUH CIVIL RIGHTS ACT,**

9 **CIVIL CODE § 51 *et seq.***

10 **(Discrimination Based on Sex)**

11 63. ~~65.~~ Plaintiffs incorporate by reference each and every allegation in the
12 foregoing paragraphs of this Complaint.

13 64. ~~66.~~ California Civil Code Section 51(b) *et seq.*, also known as the Unruh Civil
14 Rights Act, provides that all persons in the state are entitled to the “full and equal
15 accommodations, advantages, facilities, privileges, or services in all business
16 establishments of every kind whatsoever,” regardless of sex. Under California Civil Code
17 Section 51(e)(5), sex is expressly defined to include “a person’s gender identity and gender
18 expression.”

19 65. ~~67.~~ Kyler was a transgender boy. As such, he is within a class of persons
20 protected by California Civil Code Section 51(b).

21 66. ~~68.~~ RCHSD is a “business establishment” for the purposes of California Civil
22 Code Section 51.

23 67. ~~69.~~ Kyler sought appropriate medical care, a service RCHSD provides to the
24 public.

25 68. ~~70.~~ RCHSD’s conduct denied, aided, incited a denial of, discriminated, or
26 made a distinction that denied full and equal advantages, privileges, and services to Kyler
27 based upon his sex, and therefore constituted a violation of California Civil Code Section
28 51(b). Accordingly, Kyler is entitled to recover a civil penalty authorized by California

1 Civil Code Section 52(a).

2 69. ~~71.~~ RCHSD staff repeatedly addressed Kyler as female and refused to respect
3 or acknowledge his sex and male gender identity. As a result, Kyler was forced to leave
4 RCHSD before completing his 72-hour hold and was left without in-patient treatment
5 during a time of crisis. ~~Kyler suffered significantly increased emotional distress as a direct~~
6 ~~result of these actions.~~

7 70. ~~72.~~ RCHSD's staff blocked Katharine's phone calls to RCHSD/CAPS during
8 Kyler's time of distress. ~~Kyler suffered even more emotional distress as a result of these~~
9 ~~actions.~~

10 71. ~~73.~~ As a direct and proximate result of RCHSD's wrongful actions, Kyler has
11 suffered damages, ~~including severe emotional distress and mental anguish~~ all in an amount
12 to be proven at trial but exceeding the minimum jurisdictional limits of this court.

13 72. ~~74.~~ Plaintiffs seek relief, ~~including declaratory and injunctive relief,~~ as set
14 forth below.

15 **THIRD CAUSE OF ACTION**

16 **VIOLATION OF CALIFORNIA'S UNRUH CIVIL RIGHTS ACT,**

17 **CIVIL CODE § 51 *et seq.***

18 **(Discrimination Based on Disability)**

19 73. ~~75.~~ Plaintiffs incorporate by reference each and every allegation in the
20 foregoing paragraphs of this Complaint.

21 74. ~~76.~~ California Civil Code Section 51(b) *et seq.*, also known as the Unruh Civil
22 Rights Act, provides that "(a)ll persons within the jurisdiction of this state are free and
23 equal, and no matter what their . . . disability . . . are entitled to the full and equal
24 accommodations, advantages, facilities, privileges, or services in all business
25 establishments of every kind whatsoever."

26 75. ~~77.~~ RCHSD is a "business establishment" within the meaning of Unruh Civil
27 Rights Act Cal. Civ. Code Section 51(b) *et seq.*

28 76. ~~78.~~ Kyler's gender dysphoria constitutes a mental disability that limits a major

1 life activity. Cal. Gov't Code §§ 12926(j), 12926.1(c). This disability falls within the
2 purview of the Unruh Civil Rights Act. Cal. Civ. Code § 51(e)(1).

3 77. ~~79.~~ Kyler sought appropriate medical care, a service RCHSD provides to the
4 public.

5 78. ~~80.~~ RCHSD's conduct violated the Unruh Civil Rights Act by denying (or
6 aiding or inciting the denial of) Kyler's rights to full and equal use of the accommodations,
7 advantages, facilities, privileges, or services RCHSD offers to patients by denying Kyler
8 adequate care on the basis of his disability. Accordingly, Kyler is entitled to recover a civil
9 penalty authorized by California Civil Code Section 52(a).

10 79. ~~81.~~ As a direct and proximate result of RCHSD's wrongful actions, Kyler
11 suffered damages, ~~including severe emotional distress and mental anguish~~, all in an
12 amount to be proven at trial but exceeding the minimum jurisdictional limits of this court.

13 80. ~~82.~~ Plaintiffs seek relief, ~~including declaratory and injunctive relief~~, as set
14 forth below.

15 **FOURTH CAUSE OF ACTION**

16 **VIOLATION OF CALIFORNIA GOVERNMENT CODE § 11135**

17 **(Discrimination Based on Sex)**

18 81. ~~83.~~ Plaintiffs incorporate by reference each and every allegation in the
19 foregoing paragraphs of this Complaint.

20 82. ~~84.~~ Section 11135(a) of the California Government Code provides in
21 pertinent part that no person in the State of California shall, on the basis of sex, be
22 unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to
23 discrimination under, any program or activity that is funded directly by the state or receives
24 any financial assistance from the state. Cal. Gov't Code § 11135(a).

25 83. ~~85.~~ The term "sex" expressly includes discrimination based on gender identity
26 and expression. Cal. Gov't Code §§ 11135(e), 12926(r)(2).

27 84. ~~86.~~ California Government Code Section 11135(f) clarifies that any person
28 who is perceived to have, or is associated with someone who has, any of the characteristics

1 listed under Section 11135 is also protected from discrimination in state-funded programs.

2 85. ~~87.~~ At all times relevant to this action, RCHSD received financial assistance
3 from the State of California. As such, Defendant is subject to the anti-discrimination
4 provisions of Section 11135.

5 86. ~~88.~~ Defendant's conduct denied Kyler full and equal access to the services,
6 programs, and activities offered by Defendant to patients at RCHSD in violation of Cal.
7 Gov't Code Section 11135.

8 87. ~~89.~~ Defendant's conduct also denied Katharine, who is "associated with"
9 Kyler under the meaning of the statute by virtue of the fact that she is the mother of Kyler,
10 a transgender child, full and equal access to the services, programs, and activities offered
11 by Defendant in violation of Section 11135.

12 88. ~~90.~~ As a direct and proximate result of RCHSD's violation of California
13 Government Code Section 11135, ~~Kyler and Katharine have been injured as set forth~~
14 ~~herein~~ Katharine and Kyler suffered significant losses, and RCHSD was unjustly enriched.

15 89. Pursuant to California Government Code Section 11139, Plaintiffs are
16 entitled to restitution of all monies paid to RCHSD that, in good conscience, belong to
17 Plaintiffs.

18 90. Plaintiffs have assumed the responsibility of enforcement of the laws and
19 lawful claims specified herein. There is a financial burden incurred in pursuing this action
20 which is in the public interest. Therefore, reasonable attorneys' fees are appropriate
21 pursuant to California Code of Civil Procedure Section 1021.5.

22 91. Plaintiffs seek relief, ~~including declaratory and injunctive relief~~, as set forth
23 below.

24 **FIFTH CAUSE OF ACTION**

25 **VIOLATION OF CALIFORNIA GOVERNMENT CODE § 11135**

26 **(Discrimination Based on Disability)**

27 92. Plaintiffs incorporate by reference each and every allegation in the foregoing
28 paragraphs of this Complaint.

1 93. Section 11135(a) of the California Government Code provides in pertinent
2 part that no person in the State of California shall, on the basis of disability, be unlawfully
3 denied full and equal access to the benefits of, or be unlawfully subjected to discrimination
4 under, any program or activity that is funded directly by the state or receives any financial
5 assistance from the state. Cal. Gov't Code § 11135(a).

6 94. California Government Code Section 11135(f) clarifies that any person who
7 is perceived to have, or is associated with someone who has, any of the characteristics
8 listed under Section 11135 is also protected from discrimination in state-funded programs.

9 95. At all times relevant to this action, Kyler was and is a qualified individual
10 with a disability within the meaning of Section 11135(c)(1) and meets the essential
11 requirements for the receipt of the services, programs, or activities of Defendant. Cal.
12 Gov't Code §§ 11135; 12926(j).

13 96. At all times relevant to this action, RCHSD received financial assistance from
14 the State of California. As such, Defendant is subject to the anti-discrimination provisions
15 of Section 11135.

16 97. Defendant's conduct denied Kyler full and equal access to the services,
17 programs, and activities offered by Defendant to patients at RCHSD in violation of Cal.
18 Gov't Code Section 11135.

19 98. Defendant's conduct also denied Katharine, who is "associated with" Kyler
20 under the meaning of the statute by virtue of the fact that she is the mother of Kyler, a
21 qualified individual with a disability within the meaning of Section 11135(c)(1), full and
22 equal access to the services, programs, and activities offered by Defendant in violation of
23 Section 11135.

24 99. As a direct and proximate result of RCHSD's violation of California
25 Government Code Section 11135, ~~Kyler and Katharine have been injured as set forth~~
26 ~~herein~~ Katharine and Kyler suffered significant losses, and RCHSD was unjustly enriched.

27 100. Pursuant to California Government Code Section 11139, Plaintiffs are
28 entitled to restitution of all monies paid to RCHSD that, in good conscience, belong to

1 Plaintiffs.

2 101. Plaintiffs have assumed the responsibility of enforcement of the laws and
3 lawful claims specified herein. There is a financial burden incurred in pursuing this action
4 which is in the public interest. Therefore, reasonable attorneys' fees are appropriate
5 pursuant to California Code of Civil Procedure Section 1021.5.

6 102. ~~100.~~ Plaintiffs seek relief, ~~including declaratory and injunctive relief,~~ as set
7 forth below.

8 **SIXTH CAUSE OF ACTION**

9 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**

10 **§ 17200 *et seq.***

11 103. ~~101.~~ Plaintiffs incorporate by reference each and every allegation in the
12 foregoing paragraphs of this Complaint.

13 104. ~~102.~~ California Business & Professions Code Section 17200, also known as
14 the California Unfair Competition Law, prohibits unfair competition in the form of any
15 unlawful, unfair, or fraudulent business act or practice.

16 105. ~~103.~~ California Business & Professions Code Section 17204 allows “any
17 person acting for the interests of itself, its members, or the general public” to prosecute a
18 civil action for violation of the Unfair Competition Law.

19 106. ~~104.~~ As set forth herein, RCHSD committed unlawful, unfair, and/or
20 fraudulent business acts and practices as defined by California Business & Professions
21 Code Section 17200, by engaging in the following acts, without limitation:

22 a. Unfairly and falsely representing itself to Katharine, Kyler, and to the
23 general public as being capable of working with transgender patients and patients
24 with gender dysphoria in violation of Cal. Bus. & Prof. Code Section 17500.
25 Defendant made these representations through the operation of its Gender
26 Management Clinic, and through statements and information contained on its
27 website ~~and in statements to Katharine prior to and during Kyler's stay at RCHSD.~~

28 b. Failing to respect the rights of patients pursuant to the Lanterman-Petris

1 Short Act, which clarifies the rights of people with mental health conditions and
2 provides safeguards to ensure that treatment procedures are appropriate. Cal. Welf.
3 & Inst. Code § 5325. These rights require that “[t]reatment should be provided in
4 ways that are least restrictive of the personal liberty of the individual,” and provide a
5 “right to dignity, privacy, and human care,” and a “right to be free from unnecessary
6 or excessive . . . isolation, or abuse.” Cal. Welf. & Inst. Code § 5325.1.

7 c. Failing to provide public accommodations free from discrimination
8 based on gender identity, as required by the Unruh Civil Rights Act, California
9 Government Code section 11135, and the Affordable Care Act.

10 d. Failing to provide public accommodations free from discrimination
11 based on disability, as required by the Unruh Civil Rights Act, and California
12 Government Code § 11135.

13 107. ~~105.~~ Katharine would not have sought medical care for Kyler at RCHSD had
14 she known that RCHSD’s claims were false.

15 108. ~~106.~~ The unfair acts describe above and the violations of law serve as
16 unlawful, unfair, and/or fraudulent predicate acts and practices for purposes of California
17 Business & Professions Code Section 17200. As a direct and proximate result of
18 RCHSD’s unfair acts and practices described herein, Katharine and Kyler have suffered
19 economic injury, including but not limited to the loss of money and/or property, such as
20 medical and hospital costs, counseling fees, travel expenses, and other out-of-pocket
21 expenses.

22 109. ~~107.~~ Katharine and Kyler have also suffered injury in fact as a result of
23 RCHSD’s actions for which there is no adequate remedy at law. ~~Plaintiffs are informed
24 and believe and thereon allege that unless restrained by order of this Court, RCHSD will
25 continue the acts alleged above, or similar acts.~~

26 110. ~~108.~~ By all of the foregoing alleged conduct, RCHSD has committed, and is
27 continuing to commit, ongoing unlawful, unfair, and/or fraudulent business practices
28 within the meaning of California Business & Professions Code Section 17200 *et seq.*

1 111. ~~109.~~ As a direct and proximate result of the unfair business practices
2 described above, Plaintiffs have suffered significant losses, and Defendant has been
3 unjustly enriched.

4 112. ~~110.~~ Pursuant to California Business & Professions Code Section 17203,
5 Plaintiffs are entitled to ~~(a)~~ restitution of money acquired by means of ~~its~~ Defendant's
6 unfair business practices, in amounts not yet ascertained but to be ascertained at trial; ~~(b)~~
7 ~~injunctive relief against Defendant's continuation of its unfair business practices; and (c) a~~
8 ~~declaration that Defendant's business practices are unfair within the meaning of the statute.~~

9 113. ~~111.~~ Plaintiffs have assumed the responsibility of enforcement of the laws and
10 lawful claims specified herein. There is a financial burden incurred in pursuing this action
11 which is in the public interest. Therefore, reasonable attorneys' fees are appropriate
12 pursuant to California Code of Civil Procedure Section 1021.5.

13 114. Plaintiffs seek relief as set forth below.

14 **SEVENTH CAUSE OF ACTION**

15 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE**

16 **§ 17500 *et seq.***

17 115. ~~112.~~ Plaintiffs incorporate by reference each and every allegation in the
18 foregoing paragraphs of this Complaint.

19 116. ~~113.~~ RCHSD has engaged in false advertising by the following acts, without
20 limitation:

21 a. Stating on its website that children with gender dysphoria “deserve to
22 have a medical home at Rady Children’s Hospital–San Diego.”

23 ~~b. Representing to Katharine and Kyler that Kyler’s sex would be~~
24 ~~respected; in other words, he would be referred to with masculine pronouns and~~
25 ~~would be otherwise treated as a male patient in all respects.~~

26 117. ~~114.~~ Katharine would not have sought medical care for Kyler at RCHSD had
27 she known that RCHSD’s claims were false.

28 118. ~~115.~~ Plaintiffs are informed and believe, and thereupon allege, that RCHSD

1 intended to sell services by engaging in advertising that was untrue or misleading, and
2 which RCHSD knew or should have known was untrue or misleading, concerning its
3 ability to provide services to transgender patients.

4 119. ~~116.~~ As a direct and proximate result of RCHSD's unfair acts and practices
5 described herein, Katharine and Kyler have suffered economic injury, including but not
6 limited to the loss of money and/or property, such as medical and hospital costs, counseling
7 fees, travel expenses, and other out-of-pocket expenses.

8 120. ~~117.~~ RCHSD's false advertising is ongoing and presents a threat to members
9 of the general public seeking appropriate medical treatment options in that RCHSD has
10 failed to publicly acknowledge the wrongfulness of its actions, implement institutional
11 changes to prevent problems from recurring, and otherwise provide the complete relief
12 required by statute.

13 121. ~~118.~~ RCHSD's acts and practices as alleged herein constitute acts of false
14 advertising within the meaning of California Business & Professions Code Section 17500
15 *et seq.*

16 122. ~~119.~~ Plaintiffs are entitled to restitution of all monies paid to RCHSD as a
17 result of Defendant's false advertising ~~and to injunctive relief under California Business &
18 Professions Code Section 17535 to prevent continued false advertising by Defendant.~~

19 123. Plaintiffs have assumed the responsibility of enforcement of the laws and
20 lawful claims specified herein. There is a financial burden incurred in pursuing this action
21 which is in the public interest. Therefore, reasonable attorneys' fees are appropriate
22 pursuant to California Code of Civil Procedure Section 1021.5.

23 124. ~~120.~~ Plaintiffs seek relief, ~~including declaratory and injunctive relief,~~ as set
24 forth below.

25 **PRAYER**

26 **WHEREFORE**, Plaintiffs pray for judgment as follows:

27 1. Compensatory damages and restitution in an amount to be determined at trial,
28 plus interest accruing between April 5, 2015, and the date of judgment;

1 ~~2. For injunctive relief, according to proof;~~

2 ~~3.~~ 2. For punitive damages according to proof, but not less than \$4,000;

3 ~~4.~~ 3. For attorney fees, statutory costs, and expenses;

4 ~~5.~~ 4. For judgment in favor of Plaintiffs and against each Defendant on all causes
5 of action; and

6 ~~6.~~ 5. For such other and further relief as the Court may deem just and proper.

7
8 **DEMAND FOR JURY TRIAL**

9 ~~Plaintiff Katharine Prescott, an individual, and on behalf of Kyler Prescott, a
10 deceased minor, hereby demands a jury trial.~~

11 DATED: ~~September 26, 2016~~ October **FOLEY & LARDNER LLP**
12 12, 2017 Eileen R. Ridley

13 Alan R. Ouellette
14 Kathryn A. Shoemaker

15
16 /s/ Eileen R. Ridley
17 Eileen R. Ridley
18 Attorneys for Plaintiffs KATHARINE
19 PRESCOTT, an individual, and KATHARINE
20 PRESCOTT, on behalf of KYLER
21 PRESCOTT, a deceased minor
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DEMAND FOR JURY TRIAL

Plaintiff Katharine Prescott, an individual, and on behalf of Kyler Prescott, a
deceased minor, hereby demands a jury trial.

DATED: October 12, 2017

FOLEY & LARDNER LLP

Eileen R. Ridley
Alan R. Ouellette
Kathryn A. Shoemaker

/s/ Eileen R. Ridley
Eileen R. Ridley
Attorneys for Plaintiffs KATHARINE
PRESCOTT, an individual, and KATHARINE
PRESCOTT, on behalf of KYLER
PRESCOTT, a deceased minor

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