

**FAX FILE**

1 JESSICA RIGGIN (SBN 281712)  
*jriggin@rukinhyland.com*  
2 DYLAN COWART (SBN 324711)  
*dcowart@rukinhyland.com*  
3 RUKIN HYLAND & RIGGIN LLP  
1939 Harrison Street, Suite 290  
4 Oakland, CA 94612  
Telephone: (415) 421-1800  
5 Facsimile: (415) 421-1700

6 Elizabeth Gill (SBN 218311)  
*egill@aclunc.org*  
7 ACLU FOUNDATION OF NORTHERN CALIFORNIA  
39 Drumm Street  
8 San Francisco, CA 94111  
9 Tel: (415) 621-2493  
Fax: (415) 255-8437

10  
11 Amanda Goad (SBN 297131)  
*agoad@clusocal.org*  
12 ACLU FOUNDATION OF SOUTHERN CALIFORNIA  
13 1313 West Eighth Street  
Los Angeles, CA 90017  
14 Tel: (213) 977-9500  
Fax: (213) 915-0219

15 Attorneys for Plaintiff  
16 OLIVER KNIGHT

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **HUMBOLDT COUNTY**

19 OLIVER KNIGHT,  
20 Plaintiff,

21 v.

22 ST. JOSEPH HEALTH NORTHERN  
23 CALIFORNIA, LLC d/b/a ST. JOSEPH  
HOSPITAL - EUREKA,  
24

25 Defendant.  
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**FILED**

**SEP 16 2019**

AR

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF HUMBOLDT

**CASE NO.: DR190259**

**PLAINTIFF OLIVER KNIGHT'S  
OPPOSITION TO DEFENDANT ST.  
JOSEPH HOSPITAL – EUREKA'S  
DEMURRER TO PLAINTIFF OLIVER  
KNIGHT'S COMPLAINT**

Date: September 27, 2019

Time: 10:30 a.m.

Courtroom: 4

Judge: Hon. Kelly Neel

**TABLE OF CONTENTS**

	Page
INTRODUCTION .....	1
FACTS.....	1
LEGAL STANDARD .....	3
ARGUMENT .....	4
I.    Mr. Knight Has Sufficiently Pleaded His Unruh Act Claim .....	4
A.    Mr. Knight’s Allegations State A Claim for Sex Discrimination Under the Unruh Act .....	4
B.    The ERDs Do Not Immunize Defendant’s Actions.....	6
C.    Defendant Does Not Have a Constitutional Right to Discriminate Against Patients .....	7
D.    Requiring Defendant to Comply with the Unruh Act Does Not Impermissibly Involve the Court in Church Affairs.....	11
II.   Mr. Knight Has Sufficiently Pleaded His Negligent Infliction of Emotional Distress Claim.....	12
III.  Mr. Knight Has Sufficiently Pleaded His Intentional Infliction of Emotional Distress Claim .....	13
CONCLUSION .....	15

**TABLE OF AUTHORITIES**

**Federal Cases**

**Page(s)**

*Christian Legal Soc’y Chapter of the Univ. of Cal. v. Martinez*  
(2010) 561 U.S. 661 ..... 8

*Duronslet v. Cty. of L.A.*,  
(C.D. Cal. 2017) 266 F.Supp.3d 1213 ..... 14

*Edmo v. Corizon, Inc.*  
(9th Cir. Aug. 23, 2019) No. 19-35019, 2019 WL 3978329 ..... 5

*EEOC v. Catholic Univ. of Am.*  
(D.C. Cir. 1996) 83 F.3d 455 ..... 12

*Employment Div. v. Smith*  
(1990) 494 U.S. 872 ..... 7

*Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*  
(2012) 565 U.S. 171 ..... 10

*Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*  
(1952) 344 U.S. 94 ..... 12

*Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*  
(2018) 138 S.Ct. 1719 ..... 10, 11

*Norsworthy v. Beard*  
(N.D. Cal. 2015) 87 F.Supp.3d 1104 ..... 5

**State Cases**

*Angelucci v. Century Supper Club*  
(2007) 41 Cal.4th 160 ..... 4

*Bundren v. Superior Court*  
(1983) 145 Cal.App.3d 784 ..... 14

*Catholic Charities of Sacramento, Inc. v. Superior Court*  
(2004) 32 Cal.4th 527 ..... 8, 10, 11

*Community Cause v. Boatwright*  
(1981) 124 Cal.App.3d 888 ..... 3

*Everett v. Superior Court*  
(2002) 104 Cal.App.4th 388 ..... 6, 7

*Hales v. Ojai Valley Inn & Country Club*  
(1977) 73 Cal.App.3d 25 ..... 5

*Hughes v. Pair*  
(2009) 46 Cal.4th 1035 ..... 13, 14

*In re Cox*  
(1970) 3 Cal.3d 205 ..... 5

1	<i>Koebke v. Bernardo Heights Country Club</i> (2005) 36 Cal.4th 824 .....	6
2	<i>Koire v. Metro Car Wash</i> (1985) 40 Cal.3d 24 .....	4
3		
4	<i>Leung v. Verdugo Hills Hospital</i> (2012) 55 Cal.4th 291 .....	13
5	<i>Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.</i> (1989) 48 Cal.3d 583 .....	12
6		
7	<i>Means v. United States Conf. of Catholic Bishops</i> (W.D. Mich. June 30, 2015) No. 1:15-CV-353, 2015 WL 3970046 .....	12
8	<i>Molien v. Kaiser Foundation Hospitals</i> (1980) 27 Cal.3d 916 .....	13
9	<i>Molko v. Holy Spirit Assn.</i> (1988) 46 Cal.3d 1092 .....	14
10		
11	<i>Munson v. Del Taco, Inc.</i> (2009) 46 Cal.4th 661 .....	4
12	<i>Nally v. Grace Community Church</i> (1988) 47 Cal.3d 278 .....	12
13		
14	<i>New v. Kroeger</i> (2008) 167 Cal.App.4th 800 .....	12
15	<i>North Coast Women's Care Medical Group., Inc. v. Superior Court</i> (2008) 44 Cal.4th 1145 .....	<i>passim</i>
16	<i>Payne v. Anaheim Memorial Medical Center, Inc.</i> (2005) 130 Cal.App.4th 729 .....	5
17		
18	<i>Richtek USA, Inc. v. uPI Semiconductor Corp.</i> (2015) 242 Cal.App.4th 651 .....	3
19	<i>Rodas v. Spiegel,</i> (2001) 87 Cal.App.4th 513 .....	3
20		
21	<i>Turner v. Association of American Medical Colleges</i> (2008) 167 Cal.App.4th 1401 .....	7
22	<b><u>State Statutes</u></b>	
23	2 Cal. Code Reg. 11030(b).....	1
24	Cal. Civ. Code § 51 .....	1, 4
25	<b><u>Other</u></b>	
26	CACI No. 514.....	13
27	CACI No. 1620.....	12
28	CACI No. 3060.....	4

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Catholic Bishops (6th ed. 2018),

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## INTRODUCTION

1  
2 Defendant St. Joseph Health Northern California, LLC d/b/a St. Joseph Hospital –  
3 Eureka (“Defendant” or “Hospital”) is a hospital in Eureka, California open to the public. Like  
4 any hospital, it performs a wide range of surgical and medical procedures, including  
5 hysterectomies. However, unlike many other hospitals, Defendant—a Catholic hospital—  
6 regularly provides hysterectomies to its cisgender patients and refuses to perform  
7 hysterectomies on its transgender patients, including Plaintiff Oliver Knight (“Mr. Knight”), a  
8 transgender man. Mr. Knight scheduled a medically necessary hysterectomy at Defendant, who  
9 admitted Mr. Knight and performed hours of anxiety-inducing pre-op procedures on him before  
10 cancelling his surgery minutes before it was scheduled to begin. Why it was cancelled is no  
11 mystery: Mr. Knight’s physician told Mr. Knight the Hospital would not allow him to receive  
12 his scheduled surgery because he is transgender.

13 Defendant’s justifications for its refusal to treat Mr. Knight—all of which amount to  
14 variations on a religious freedom argument—are without factual or legal support. To the  
15 contrary, years of controlling California Supreme Court authority have made clear that  
16 Defendant’s status as a Catholic-affiliated institution does not provide it with license to  
17 discriminate in the public services that it chooses to provide. Because Plaintiff’s allegations are  
18 more than sufficient to state a claim under California’s Unruh Civil Rights Act, which  
19 guarantees that Californians are entitled to the “full and equal accommodations, advantages,  
20 facilities, privileges, or services in all business establishments of every kind whatsoever”  
21 regardless of their sex, the Court should overrule Defendant’s demurrer. *See* Cal. Civ. Code  
22 § 51(b).

## FACTS

23  
24 Plaintiff Oliver Knight is a transgender man. Compl. ¶ 1. His gender identity—his  
25 internal understanding of his gender—is male, although his sex assigned at birth is female. *Id.* at  
26 ¶ 12. *See* 2 Cal. Code Reg. 11030(b) (defining “gender identity”). Like many transgender  
27 people, Mr. Knight has been diagnosed with gender dysphoria, or distress caused by the  
28 incongruence between his gender identity and the sex he was assigned at birth. Compl. at ¶ 24.

1 As part of his treatment for gender dysphoria, and to increase the alignment between his body  
2 and his gender identity, Mr. Knight sought a hysterectomy with bilateral salpingo-  
3 oophorectomy to remove his uterus, fallopian tubes, and ovaries. *Id.* at ¶ 25. Mr. Knight’s  
4 surgeon and mental health professionals agreed that this procedure was medically necessary. *Id.*

5 After consulting with his doctors, Mr. Knight scheduled his hysterectomy at Defendant  
6 on August 30, 2017 with Dr. Deepak Stokes. Compl. ¶ 26. Defendant is the closest and most  
7 convenient hospital to where Mr. Knight lives in Eureka, and it is the only hospital within  
8 twenty miles. *Id.* at ¶ 7. Dr. Stokes regularly performs hysterectomies at Defendant. *Id.* at ¶ 27.

9 On the day of the scheduled surgery, Defendant engaged in conduct that caused Mr.  
10 Knight extreme distress and anxiety. Compl. ¶¶ 28, 32. After Mr. Knight was admitted for his  
11 pre-op procedures, Hospital staff required Mr. Knight to wear a pink gown. *Id.* at ¶ 28. When  
12 Mr. Knight asked to instead wear a blue gown, a Hospital nurse refused, telling him that a pink  
13 gown was required because he was receiving a “female” procedure. *Id.* Hospital staff also  
14 repeatedly mis-gendered Mr. Knight despite his use of male pronouns, his traditionally  
15 masculine appearance, and the fact that his medical records clearly identify Mr. Knight as male.  
16 *Id.*

17 After approximately three hours of these anxiety-inducing procedures, and minutes  
18 before Mr. Knight was scheduled to begin his surgery, Defendant cancelled the procedure after  
19 an “Ethics Assessment” was completed by a Catholic reverend with no medical training.  
20 Compl. ¶¶ 29–30. Mr. Knight was informed by Dr. Stokes that Defendant had cancelled his  
21 surgery and that it would not ever be rescheduled at the Hospital because it was a Catholic  
22 hospital. *Id.* at ¶ 29. Mr. Knight, sobbing and shaking, asked Dr. Stokes if the reason his surgery  
23 was cancelled was because he is a transgender man, to which Dr. Stokes replied, “Yes.” *Id.* at  
24 ¶ 29.

25 Mr. Knight was traumatized by the news that his procedure was cancelled and suffered  
26 an anxiety attack. Compl. ¶ 32. Approximately fifteen to thirty minutes later, Defendant  
27 discharged Mr. Knight, despite the fact that Mr. Knight told Hospital staff that he was not  
28 accompanied by anyone. *Id.* at ¶ 33. Mr. Knight was then forced to sit outside the Hospital

1 alone, under the influence of the medication administered by Defendant, until he was able to  
2 find a ride home. *Id.*

3 After Defendant cancelled Mr. Knight’s surgery, Mr. Knight was unsure of when—or  
4 if—he would be able to undergo his medically necessary hysterectomy. Compl. ¶ 34. Mr.  
5 Knight was also painfully aware that he was denied full and equal access to the  
6 accommodations and services provided by Defendant because he is transgender. *Id.* Luckily, Dr.  
7 Stokes had surgical privileges at Mad River Community Hospital—which is not affiliated with  
8 Defendant—and Mr. Knight was subsequently able to receive his hysterectomy. *Id.* at ¶ 35.  
9 However, in order to have the procedure, Mr. Knight was required to again undergo anxiety-  
10 inducing pre-op procedures, and he contracted a serious infection while at Mad River. *Id.* at  
11 ¶¶ 36–37. Mr. Knight suffered, and continues to suffer, severe emotional distress because of  
12 Defendant’s actions.

### 13 LEGAL STANDARD

14 In evaluating a demurrer, “all material facts pleaded in the complaint and those that arise  
15 by reasonable implication . . . are deemed admitted by the demurring party.” *Rodas v. Spiegel*  
16 (2001) 87 Cal.App.4th 513, 517. “The complaint must be construed liberally by drawing  
17 reasonable inferences from the facts pleaded.” *Id.* “[I]f it appears that the plaintiff is entitled to  
18 any relief against the defendant, the complaint will be held good.” *Cmt. Cause v. Boatwright*  
19 (1981) 124 Cal.App.3d 888, 896. Mr. Knight has alleged facts that are sufficient to state a cause  
20 of action; his complaint must survive Defendant’s demurrer.<sup>1</sup>

21  
22 <sup>1</sup> Defendant asks the Court to take judicial notice of two documents: *The Official Catholic*  
23 *Directory* and the ERDs. See Defendant’s RJN. First the Court need not take judicial notice of  
24 the Directory because Plaintiff does not dispute that Defendant is a Catholic hospital, and it is  
25 unnecessary to include a document in the record where the underlying fact is the subject of a  
26 stipulation. Second, the Court also need not take judicial notice of the ERDs because “[t]he  
27 hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of  
28 having the court take judicial notice of documents whose truthfulness or proper interpretation are  
disputable.” *Richtek USA, Inc v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 660.  
Here, Plaintiff alleges that Defendant discriminated against him because it performs  
hysterectomies on its cisgender patients but not on its transgender patients. This allegation is  
sufficient to withstand Defendant’s demurrer without reference to the ERDs, and it would be  
inappropriate to interpret the ERDs at this stage.<sub>3</sub>



1 **ARGUMENT**

2 **I. Mr. Knight Has Sufficiently Pleaded His Unruh Act Claim**

3 A. Mr. Knight’s Allegations State A Claim for Sex Discrimination Under the Unruh Act

4 The Unruh Act mandates that all persons “are entitled to the full and equal  
5 accommodations, advantages, facilities, privileges, or services in all business establishments,”  
6 regardless of their sex—including gender identity. Cal. Civ. Code § 51(b), (e)(5). “The [Unruh]  
7 Act expresses a state and national policy against discrimination on arbitrary grounds. Its  
8 provisions were intended as an active measure that would create and preserve a  
9 nondiscriminatory environment in California business establishments by banishing or  
10 eradicating arbitrary, invidious discrimination by such establishments.” *Angelucci v. Century*  
11 *Supper Club* (2007) 41 Cal.4th 160, 167 (citations omitted). The Act also “serves as a  
12 preventive measure, without which it is recognized that businesses might fall into  
13 discriminatory practices.” *Id.* Accordingly, the Unruh Act promotes “equal treatment of patrons  
14 in all aspects of [] business.” *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 29. The Act “must  
15 be construed liberally in order to carry out its purpose.” *Munson v. Del Taco, Inc.* (2009) 46  
16 Cal.4th 661, 666.

17 Given the broad prophylactic and remedial purposes of the Unruh Act, Mr. Knight’s  
18 only obligation at this stage is to plead that Defendant denied him “full and equal  
19 accommodations, advantages, facilities, privileges, or services” because of his gender identity,  
20 causing harm. Cal. Civ. Code § 51(e)(5); *see also* CACI No. 3060. The “scope of the Unruh Act  
21 is not narrowly limited to practices which totally exclude classes or individuals from business  
22 establishments” but also includes the differential treatment of individuals by such businesses.  
23 *Koire*, 40 Cal.3d at 30. Here, Mr. Knight has pleaded that he was denied access to medical  
24 services that other Hospital patients regularly receive because of his gender identity as a  
25 transgender man. Compl. ¶ 1. He alleges that that he was denied a medically necessary  
26 hysterectomy, that cisgender women receive hysterectomies at the Hospital, and that his  
27 surgeon, Dr. Stokes, told him that his medically necessary surgery was cancelled because Mr.  
28 Knight is transgender. *Id.* at ¶¶ 20, 24–25, 29. Mr. Knight further alleges that this denial of

1 medically necessary care, along with traumatizing treatment by Defendant, caused him  
2 substantial harm. *Id.* at ¶¶ 25, 28, 32–33. Similar allegations—or less—have been found to state  
3 a claim under the Unruh Act. *See Payne v. Anaheim Memorial Medical Center, Inc.* (2005) 130  
4 Cal.App.4th 729, 746 (allegation that hospital “failed to address racist conduct which impaired  
5 the access of minority physicians and patients to that facility” sufficient to state a claim under  
6 the Unruh Act); *Hales v. Ojai Valley Inn & Country Club* (1977) 73 Cal.App.3d 25, 29  
7 (complaint alleging that, due to his sex, plaintiff was denied services accorded to other persons  
8 because he was not wearing a necktie was sufficient to state a claim under the Unruh Act). Mr.  
9 Knight has more than met his burden of pleading a claim under the Unruh Act.

10       To the extent that Defendant attempts to cast Mr. Knight’s allegations of intentional sex  
11 discrimination as medical condition discrimination—which it argues is not protected by the  
12 Unruh Act (Dem. at 8.)—Defendant misunderstands gender dysphoria. Mr. Knight suffers from  
13 gender dysphoria *because* he is transgender. As a number of courts have found, the refusal to  
14 provide treatment because it stems from a diagnosis of gender dysphoria is sex discrimination  
15 against transgender people. *See Norsworthy v. Beard* (N.D. Cal. 2015) 87 F. Supp. 3d 1104,  
16 1120–1121 (finding that a transgender woman stated a federal equal protection claim against  
17 California Department of Rehabilitation and Corrections by alleging that CDCR denied her  
18 medically necessary and gender-affirming surgery but permitted the same surgery for cisgender  
19 women); *see also Edmo v. Corizon, Inc.* (9th Cir., Aug. 23, 2019) No. 19-35019, 2019 WL  
20 3978329 (denial of medically necessary gender confirmation surgery to treat gender dysphoria  
21 violated Eighth Amendment’s prohibition on cruel and unusual punishment). The medical  
22 diagnosis of gender dysphoria is relevant to Mr. Knight’s claim of discrimination only because  
23 it was the medical reason he needed a hysterectomy. Denying Mr. Knight care because he is  
24 transgender and because he needed treatment related to being transgender are functionally the  
25 same. And refusing to treat Mr. Knight because he is transgender is sex discrimination in  
26 violation of the Unruh Act. *See also In re Cox* (1970) 3 Cal.3d 205, 216 (Unruh Act prohibits  
27 all “arbitrary discrimination by a business enterprise” and statutory list of protected categories is  
28 “illustrative rather than restrictive” of the kinds of discrimination prohibited by the Act).

1           B. The ERDs Do Not Immunize Defendant’s Actions

2           Defendant argues that Mr. Knight has not stated a claim because the Ethical and  
3 Religious Directives for Catholic Health Care Services (“ERDs”) it follows are facially neutral,  
4 and facially neutral policies “are not prohibited by the Unruh Act.” Dem. at 6. Neither  
5 contention is correct.

6           First, the ERDs and related Catholic doctrinal guidance are not facially neutral, nor were  
7 they applied in a facially neutral manner. The ERDs prohibit sterilization except when the  
8 “direct effect is the cure or alleviation of a present and serious pathology and a simpler  
9 treatment is not available.”<sup>2</sup> Put simply, by following the ERDs, Defendant will allow some  
10 sterilizations but not others. And other Catholic directives make clear that Catholic health care  
11 providers like Defendant should refuse to provide *any* gender-affirming care, including the  
12 medically necessary hysterectomy sought by Mr. Knight.<sup>3</sup> The Complaint’s allegations are clear  
13 and, indeed, substantiated by Defendant’s own admissions: Defendant permits and performs  
14 sterilizations on cisgender patients and refuses to perform the very same procedures on its  
15 transgender patients based on their gender identity, due to its religious beliefs. Compl. ¶¶ 20–23,  
16 31; Dem. at 11. By definition, this is not a facially neutral policy. Moreover, Mr. Knight was  
17 *specifically told* by his surgeon that he was denied his hysterectomy by Defendant because he is  
18 transgender. Compl. ¶ 29. These allegations are more than sufficient to plead intentional  
19 discrimination under the Unruh Act.

20           Furthermore, the California Supreme Court has recognized that where a facially neutral  
21 policy is “discriminatorily applied,” it violates the Unruh Act. *Koebke v. Bernardo Heights*  
22 *Country Club* (2005) 36 Cal.4th 824, 855 (remanding to determine if a facially neutral criterion  
23 requiring marriage was applied discriminatorily against a lesbian couple); *see also Everett v.*

24 \_\_\_\_\_  
25 <sup>2</sup> Ethical and Religious Directives for Catholic Health Care Services, United States Conference  
26 of Catholic Bishops (6th ed. 2018), at 19 (available at  
27 [http://www.usccb.org/about/doctrine/ethicaland-religious-directives/upload/ethical-religious-](http://www.usccb.org/about/doctrine/ethicaland-religious-directives/upload/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06.pdf)  
28 [directives-catholic-health-service-sixth-edition-2016-06.pdf](http://www.usccb.org/about/doctrine/ethicaland-religious-directives/upload/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06.pdf)).

<sup>3</sup> *See* Transgender Issues in Catholic Health Care, The National Catholic Bioethics Center (Feb.  
2017) (available at [https://www.ncbcenter.org/files/4515/2459/6063/2017-](https://www.ncbcenter.org/files/4515/2459/6063/2017-Transgender_Issues_in_Catholic_Health_Care.pdf)  
[Transgender\\_Issues\\_in\\_Catholic\\_Health\\_Care.pdf](https://www.ncbcenter.org/files/4515/2459/6063/2017-Transgender_Issues_in_Catholic_Health_Care.pdf)).

1 *Superior Court* (2002) 104 Cal.App.4th 388, 394 (reversing grant of summary adjudication  
2 where the plaintiff “presented evidence sufficient to support an inference that Magic Mountain's  
3 facially neutral line-cutting policy is applied in a discriminatory manner”). Indeed, a neutral  
4 policy may not be “used as a pretext to discriminate against a protected class of individuals”  
5 without potentially running afoul of the Unruh Act. *Turner v. Ass’n of Am. Med. Colleges*  
6 (2008) 167 Cal.App.4th 1401, 1411 (citation omitted). Because Mr. Knight alleges that  
7 Defendant applied the ERDs and other Catholic directives in a manner meant to discriminate  
8 against him based on his gender identity, he has met his burden of pleading an Unruh Act claim.

9 C. Defendant Does Not Have a Constitutional Right to Discriminate Against Patients

10 The California Supreme Court has unambiguously held that religiously-affiliated  
11 healthcare facilities must comply with the Unruh Act’s requirement mandating full and equal  
12 access to healthcare in the face of religious objections. The Court’s *North Coast Women’s Care*  
13 *Med. Grp., Inc. v. Superior Court* decision, in which defendant physicians refused to perform a  
14 medical procedure based on their objection to a patient’s sexual orientation, is clear on this  
15 point. *North Coast Women’s Care Med. Grp., Inc. v. Superior Court*, (2008) 44 Cal.4th 1145.

16 The *North Coast* Court first rejected defendant physicians’ argument that their  
17 discriminatory conduct was protected by the federal constitution’s free exercise clause. Contrary  
18 to Defendant’s contention, the appropriate test is *not* strict scrutiny; rather “[u]nder the United  
19 States Supreme Court’s most recent holdings, a religious objector has no federal constitutional  
20 right to an exemption from a neutral and valid law of general applicability on the ground that  
21 compliance with that law is contrary to the objector’s religious beliefs.” *North Coast*, 44 Cal.4th  
22 at 1155; *see Employment Div., Ore. Dept. of Human Res. v. Smith* (1990) 494 U.S. 872, 878 (the  
23 Supreme Court has “never held that an individual’s religious beliefs excuse him from  
24 compliance with an otherwise valid law prohibiting conduct that the State is free to regulate”).  
25 Applying the *Smith* test,<sup>4</sup> the *North Coast* Court held that the Unruh Act is a “valid and neutral

26 \_\_\_\_\_  
27 <sup>4</sup> The *Smith* “test’s main inquiry is whether the law being challenged is a valid and neutral law of  
28 general applicability. If it is, it need not be justified by a compelling governmental interest even  
if the law has the incidental effect of burdening a particular religious practice.” *North Coast*, 44  
Cal.4th at 1157 (internal quotes and citations omitted).

1 law of general applicability” such that the “First Amendment’s right to the free exercise of  
2 religion does not exempt defendant physicians here from conforming their conduct to the Act’s  
3 antidiscrimination requirements even if compliance poses an incidental conflict with  
4 defendants’ religious beliefs.” *Id.* at 1156; *see also Catholic Charities of Sacramento, Inc. v.*  
5 *Superior Court* (2004) 32 Cal.4th 564–65 (rejecting Catholic Charities’ free exercise challenge  
6 to state law requiring employers to include contraceptive coverage because the requirements  
7 apply neutrally; address a matter the state is free to regulate; and the “act conflicts with Catholic  
8 Charities’ religious beliefs only incidentally, because those beliefs happen to make prescription  
9 contraceptives sinful”).

10 The *North Coast* Court next rejected defendant physicians’ federal constitutional free  
11 speech challenge based on their refusal to perform a medical procedure. In short, “compliance  
12 with a law regulating health care benefits is not speech.” *North Coast*, 44 Cal.4th at 1157 (citing  
13 *Catholic Charities*, 32 Cal.4th at 558). While the Unruh Act requires certain antidiscrimination  
14 obligations of businesses, “defendant physicians remain free to voice their objections, religious  
15 or otherwise, to the Act’s prohibition against sexual orientation discrimination.” *North Coast*,  
16 44 Cal.4th at 1157; *see also Catholic Charities*, 32 Cal.4th at 558–559 (“For purposes of the  
17 free speech clause, simple obedience to a law that does not require one to convey a verbal or  
18 symbolic message cannot reasonably be seen as a statement of support for the law or its  
19 purpose. Such a rule would, in effect, permit each individual to choose which laws he would  
20 obey merely by declaring his agreement or opposition.”).<sup>5</sup>

21 Finally, the *North Coast* Court analyzed defendant physicians’ claims under the  
22 California Constitution, acknowledging that California has not yet determined the appropriate  
23 standard of review for challenges under the state Constitution’s guarantee of free exercise of  
24 religion. Yet, the Court held that even under the *strictest possible standard*, defendant

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25 <sup>5</sup> *See also Christian Legal Soc’y Chapter of the Univ. of Cal. v. Martinez* (2010) 561 U.S. 661,  
26 696 (refusing First Amendment protection for a student group excluding gay members because  
27 “[e]ven if a regulation has a differential impact on groups wishing to enforce exclusionary  
28 membership policies, where the State does not target conduct on the basis of its expressive  
content, acts are not shielded from regulation merely because they express a discriminatory idea  
or philosophy”)(quotations omitted).

1 physicians' claim failed. The Court held that, even assuming compliance with the Unruh Act's  
2 prohibition against discrimination would “substantially burden” defendants’ religious beliefs,  
3 “that burden is insufficient to allow them to engage in such discrimination. The Act furthers  
4 California's compelling interest in ensuring full and equal access to medical treatment  
5 irrespective of sexual orientation, and there are no less restrictive means for the state to achieve  
6 that goal.” *North Coast*, 44 Cal. 4th at 1158.

7       As in *North Coast*, the relief Mr. Knight seeks—equal access to the Defendant’s medical  
8 services—does not impermissibly infringe on Defendant’s federal or state Constitutional rights.  
9 First, there is no First Amendment free exercise violation. As the *North Coast* Court held, the  
10 Unruh Act is a law of general applicability. *North Coast*, 44 Cal.4th at 1155. Its  
11 nondiscrimination mandate—applying broadly to “services in all business establishments of  
12 every kind whatsoever”—is not a law intended to interfere with religious practices, nor does it  
13 implicate internal church governance. The law simply requires that if Defendant operates a  
14 business open to the general public (which it does), it must provide those services on equal and  
15 nondiscriminatory terms. The “First Amendment’s right to the free exercise of religion does not  
16 exempt defendant physicians here from conforming their conduct to the Act's antidiscrimination  
17 requirements even if compliance poses an incidental conflict with defendants' religious beliefs.”  
18 *Id.* at 1156. The *North Coast* and *Catholic Charities* decisions similarly make clear that  
19 requiring Defendant to comply with the Unruh Act does not violate its “ability to express its  
20 religious message.” Dem. at 10.

21       Nor does the California Constitution provide Defendant with a license to discriminate.  
22 Defendant relies on dicta suggesting that a clinic could hypothetically address an individual  
23 physician’s objections to performing a procedure on some patients by having a non-objecting  
24 doctor perform that procedure on all patients who needed it, as well as dicta querying whether,  
25 *if* a strict scrutiny standard were applied to claims of free exercise and *if* “the patient could be  
26 referred with relative ease and convenience to another practice,” a sole practitioner with  
27 religious objections *might* not be compelled to provide treatment. *North Coast*, 44 Cal.4th at  
28 1159, 1162–1163. Not only is this dicta not controlling authority, but Defendant does not even

1 satisfy these hypothetical conditions. First, the California Supreme Court *has already held* that  
2 the Unruh Act satisfies strict scrutiny. *Id.* at 1158. Moreover, Defendant here *did not refer Mr.*  
3 *Knight to another practice* (and his physician had no objection to the procedure). Mr. Knight  
4 alleges that, even after performing traumatic pre-op procedures on him, Defendant refused to  
5 perform his surgery, after which Mr. Knight was left wondering whether and if he would be  
6 able to obtain the surgery. Compl. ¶¶ 29, 34. Ultimately, he was forced to make his own  
7 arrangements to receive his medically necessary care at a less convenient community hospital.  
8 *Id.* at ¶¶ 34–36. During his second attempt at receiving the surgery, Plaintiff was re-traumatized  
9 and contracted a dangerous infection. *Id.* at ¶ 37. Finally, and as Defendant acknowledges, the  
10 *North Coast* Court recognized that an alternative method of compliance would be to refuse to  
11 provide the procedure at issue to anyone. *North Coast*, 44 Cal.4th at 1159; *See* Dem. at 11–12.  
12 If, however, the Hospital chooses to provide a procedure—as it does here—it must perform that  
13 procedure for all patients on a full and equal basis. Thus, Defendant’s state constitutional  
14 challenge also fails. *Catholic Charities*, 32 Cal.4th at 562.

15         Rather, Defendant’s demurrer rests on inapposite caselaw. For example, Defendant  
16 relies on *Hosanna-Tabor Evangelical Luther Church and School v. E.E.O.C.* (2012) 565 U.S.  
17 171, 196 to argue that “courts will not compel [hospitals] to engage in acts prohibited by the  
18 church’s fundamental tenets.” Dem. at 9. *Hosanna-Tabor*, however, does not stand for any such  
19 proposition. In that case, the United States Supreme address the applicability of federal  
20 discrimination law—Title VII—to “claims concerning the employment relationship *between a*  
21 *religious institution and its ministers.*” *Id.* at 188 (emphasis added). The Court’s ruling was  
22 narrow and explicitly stated that the exception does not “bar other types of suits.” *Id.* at 196.  
23 Likewise, the holding of *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n* is merely the  
24 uncontroversial proposition that “[o]ur laws [must] be applied in a manner that is neutral toward  
25 religion.” *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, (2018) 138 S. Ct. 1719,  
26 1721 (finding that the Colorado Civil Rights Commission did not act as a neutral decisionmaker  
27 in considering the plaintiff’s religious objections). While the Court noted in dicta that a  
28 clergyman who is actively engaged in the practice of religion might be lawfully permitted to

1 refrain from providing religious services on an equal basis, it strongly reaffirmed the general  
2 proposition that “religious objections do not allow business owners and other actors in the  
3 economy and in society to deny protected persons equal access to goods and services under a  
4 neutral and generally applicable public accommodations law.” *Id.* at 1727.

5 D. Requiring Defendant to Comply with the Unruh Act Does Not Impermissibly Involve  
6 the Court in Church Affairs

7 Defendant argues that the relief sought by Mr. Knight would “excessively entangle the  
8 Court in Catholic religious doctrine and impermissibly intrude on matters of church  
9 governance.” Dem. at 11. Not so. The California Supreme Court has soundly rejected this  
10 argument under almost identical circumstances. In *Catholic Charities*, the defendant, like  
11 Defendant here, attempted to invoke the rule of the “so-called church property cases”—that the  
12 state must accept the decision of appropriate church authorities on such matters as religious  
13 doctrine and internal church governance—in challenging a rule requiring it to provide coverage  
14 for contraception. *Catholic Charities*, 32 Cal.4th at 541. The California Supreme Court  
15 dismissed Catholic Charities’ assertion that, in passing the statute at issue, the California  
16 Legislature violated the rule of the church property cases by interfering with matters of internal  
17 church governance and by “rejecting the Catholic Church’s decision that prescription  
18 contraceptives are sinful.” *Id.* at 542. Rather, it held that the court need only “apply the usual  
19 rules for assessing whether state-imposed burdens on religious exercise are constitutional.” *Id.*  
20 at 543. The case did not “implicate internal church governance; it implicates the relationship  
21 between a nonprofit public benefit corporation and its employees, most of whom do not belong  
22 to the Catholic Church,” and “[o]nly those who join a church impliedly consent to its religious  
23 governance on matters of faith and discipline.” *Id.* at 542.

24 The same is true here. As the *Catholic Charities* court recognized, there is an established  
25 framework for deciding the question at issue: is the “state-imposed burden[] on religious  
26 exercise [. . .] constitutional”? As discussed above, the answer to that question is “Yes.” *See*  
27 Section I, *supra*. The mere fact that Mr. Knight’s claim conflicts with Defendant’s religious  
28 beliefs does not automatically implicate internal church governance or prevent judicial



1 intervention. Defendant seeks an order that would immunize discriminatory behavior by *all*  
2 religiously-affiliated institutions—including public accommodations. Defendant’s cited cases  
3 are irrelevant and provide no support for this extreme position that is counter to decades of case  
4 law. *See e.g., Means v. U.S. Conference of Catholic Bishops* (W.D. Mich. June 30, 2015) No.  
5 1:15-CV-353, 2015 WL 3970046, at \* 13–14 (finding that *Church sponsors* of a hospital could  
6 not be held liable for the imposition of the ERDs but that the plaintiff could proceed against the  
7 *medical providers* involved in a denial of health care because “the Court’s consideration of the  
8 legal duty of a physician to provide adequate medical care is not a matter of church doctrine”).<sup>6</sup>

9 Moreover, contrary to Defendant’s assertion, Mr. Knight’s claim is not dependent upon  
10 the ERDs or any interpretation of the ERDs. Mr. Knight’s claim is quite simple: he sought, and  
11 was denied, a medical procedure on the basis of his gender identity. Indeed, he alleges that he  
12 was *told* that he could not receive the procedure because of his status as a transgender man.  
13 Compl. ¶ 29. Mr. Knight’s Unruh Act claim is cognizable without any reference to the ERDs.

## 14 **II. Mr. Knight Has Sufficiently Pleaded His Negligent Infliction of Emotional Distress** 15 **Claim**

16 In order to state a claim for negligent infliction of emotional distress, a plaintiff must  
17 show “duty, breach of duty, causation, and damages.” *Marlene F. v. Affiliated Psychiatric*  
18 *Medical Clinic, Inc.* (1989) 48 Cal.3d 583, 588; *see also* CACI 1620 “Negligent Infliction of  
19 Emotional Distress” (plaintiff must show that defendant was negligent, that plaintiff suffered  
20 serious emotional distress, and that defendant’s negligence was a substantial factor in causing  
21 plaintiff’s emotional distress). Whether it is titled “Negligence” or “Negligent Infliction of

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22 <sup>6</sup> *See also New v. Kroeger* (2008) 167 Cal.App.4th 800, 819–821 (in a property dispute between  
23 Diocese and parish members, finding that the court *should* apply generally applicable  
24 corporations law); *Nally v. Grace Comm. Church* (1988) 47 Cal.3d 278, 293–294 (holding that  
25 nontherapist counselors had no duty to refer potentially suicidal person to professional therapist  
26 because there was no special relationship or control over the environment like there is in the  
27 hospital context); *Kedroff v. Saint Nicholas Cathedral* (1952) 344 U.S. 94, 106–109 (finding that  
28 a New York statute, which at the height of the red scare removed control over a cathedral from  
the Russian Orthodox Church, was unconstitutional); *E.E.O.C. v. Catholic University of America*  
(D.C. Cir. 1996) 83 F.3d 455, 462–463 (finding that the exceedingly narrow ministerial  
exception to Title VII was valid; noting that the statute in *Kedroff* was not a law of general  
applicability that would be valid pursuant to *Smith*).

1 Emotional Distress,” the elements are the same, and Mr. Knight’s allegations are sufficient.  
2 Defendant argues, without citation, that it “has no duty to perform a procedure that is prohibited  
3 by the ERDs.” Dem. at 12. Defendant is incorrect.

4 It is black-letter law that a hospital “is negligent if it does not use reasonable care toward  
5 its patients.” CACI No. 514 “Duty of Hospital” (“A hospital must provide procedures, policies,  
6 facilities, supplies, and qualified personnel reasonably necessary for the treatment of its  
7 patients.”). Indeed, the hospital-patient relationship has been long found to create a duty under  
8 California law sufficient to sustain a negligent infliction of emotional distress claim. *See Molién*  
9 *v. Kaiser Found. Hosps.* (1980) 27 Cal.3d 916, 923 (allegations sufficient to state a claim for  
10 negligent infliction of emotional distress based on hospital’s misdiagnosing patient with  
11 syphilis); *see also Leung v. Verdugo Hills Hospital* (2012) 55 Cal.4th 291, 310 (“Certainly, the  
12 person who avails himself of ‘hospital facilities’ expects that the hospital will attempt to cure  
13 him . . . [and] [a]lthough hospitals do not practice medicine in the same sense as physicians,  
14 they do provide facilities and services in connection with the practice of medicine, and if they  
15 are negligent in doing so they can be held liable.”). Mr. Knight’s allegations are more than  
16 sufficient to describe how Defendant’s actions fell below the standard of care. First and most  
17 importantly, Defendant refused to provide a medically necessary procedure that it provides to its  
18 cisgender patients without notifying Mr. Knight until minutes before the scheduled surgery.  
19 Compl. ¶¶ 29, 31. Defendant’s employees also misgendered Mr. Knight; required Mr. Knight to  
20 wear a pink smock because a hysterectomy is a “woman’s surgery”—even though he identifies  
21 as, and presents as, male; and forced Mr. Knight to leave the hospital without any companion,  
22 minutes after experiencing an anxiety attack, and wait on the curb alone for a ride home. *Id.* at  
23 ¶¶ 28, 32–33. These actions caused Mr. Knight severe emotional distress.

24 **III. Mr. Knight Has Sufficiently Pleaded His Intentional Infliction of Emotional**  
25 **Distress Claim**

26 A cause of action for intentional infliction of emotional distress exists when there is “(1)  
27 extreme and outrageous conduct by the defendant with the intention of causing, or reckless  
28 disregard of the probability of causing, emotional distress; (2) the plaintiff[] suffer[s] severe or

1 extreme emotional distress; and (3) actual and proximate causation of the emotional distress by  
2 the defendant’s outrageous conduct.” *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050 (citations  
3 omitted). Behavior may be considered outrageous if a defendant “(1) abuses a relation or  
4 position which gives him power to damage the plaintiff’s interest; (2) knows the plaintiff is  
5 susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the  
6 recognition that the acts are likely to result in illness through mental distress.” *Molko v. Holy*  
7 *Spirit Assn.* (1988) 46 Cal.3d 1092, 1122 (quotation omitted). Given the susceptibility of  
8 patients in a hospital and the power a hospital has over patients’ health, the existence of a  
9 hospital-patient relationship is also a relevant consideration in determining whether a  
10 defendant’s conduct is outrageous. *See Bundren v. Superior Court* (1983) 145 Cal.App.3d 784,  
11 790–791. Insofar as a threshold showing is made, whether conduct is “extreme and outrageous”  
12 is a question of fact for a jury to resolve unless reasonable minds could not differ on the  
13 issue. *Molko*, 46 Cal.3d. at 1123.

14 Here, Defendant’s actions towards Mr. Knight were sufficiently outrageous to state a  
15 claim for intentional infliction of emotional distress. *See* Section II, *supra*. Courts have  
16 routinely found that—in cases much less outrageous than the conduct at issue—denying  
17 transgender people equal access to accommodations may be extreme and outrageous. *See, e.g.,*  
18 *Duronslet v. Cnty of Los Angeles* (C.D. Cal. 2017) 266 F.Supp.3d 1213, 1220 (noting that “it is  
19 far from certain that the [defendant’s] conduct would not be extreme and outrageous as a matter  
20 of law even if there was only a single instance where [defendant] knowingly forced [p]laintiff to  
21 use facilities that did not comport with her gender identity”). Defendant—despite its  
22 purportedly clear objection to providing Mr. Knight with his medically necessary surgery—  
23 brought him in for the procedure; misgendered him; required him to wear a pink gown; told him  
24 his procedure was a “woman’s surgery”; refused to perform the procedure minutes before it was  
25 scheduled to begin; and forced Mr. Knight to leave the Hospital almost immediately after  
26 experiencing an acute anxiety attack. Compl. ¶¶ 28–29, 32–33. These allegations are more than  
27 sufficient to show that Defendant, *at minimum*, acted with reckless disregard to the probability  
28 of causing Mr. Knight severe emotional distress. Indeed, given that Defendant knew of Mr.

1 Knight’s transgender status—and in light of Defendant’s power over Mr. Knight in his  
2 vulnerable state—its actions are all-the-more outrageous. Mr. Knight has sufficiently stated a  
3 claim for intentional infliction of emotional distress.

4 **CONCLUSION**

5 For the foregoing reasons, the Court should overrule Defendant’s demurrer to Mr.  
6 Knight’s complaint.

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8  
9 DATED: September 16, 2019

RUKIN HYLAND & RIGGIN LLP

10  
11 By:   
12 Jessica Riggin  
13 Dylan Cowart  
14 RUKIN HYLAND & RIGGIN LLP  
15 1939 Harrison Street, Ste. 290  
16 Oakland, CA 94612

17 Elizabeth Gill  
18 ACLU FOUNDATION OF NORTHERN  
19 CALIFORNIA  
20 39 Drumm Street  
21 San Francisco, CA 94111

22 Amanda Goad  
23 ACLU FOUNDATION OF SOUTHERN  
24 CALIFORNIA  
25 1313 West Eighth Street  
26 Los Angeles, CA 90017

27 Attorneys for Plaintiff  
28 OLIVER KNIGHT

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I am employed in the County of Alameda, State of California; I am over the age of 18 years and not a party to the within entitled action; my business address is 1939 Harrison Street, Suite 290, Oakland, California 94612.

On September 16, 2019, I served the foregoing documents, described as **PLAINTIFF OLIVER KNIGHT'S OPPOSITION TO DEFENDANT ST. JOSEPH HOSPITAL – EUREKA'S DEMURRER TO PLAINTIFF OLIVER KNIGHT'S COMPLAINT** on the interested parties to said action by the following means:

<input type="checkbox"/>	(By Facsimile Transmission) By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below.
<input type="checkbox"/>	(By Mail) By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Oakland, California addressed as set forth below.
<input type="checkbox"/>	(By Hand Delivery) By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the addresses shown below.
<input checked="" type="checkbox"/>	(By Overnight Delivery) By placing a true copy thereof, enclosed in a sealed envelope, with delivery charges prepaid, to be sent by Federal Express, addressed as shown below.
<input type="checkbox"/>	(By Personal Service) By personally delivering a true copy thereof, enclosed in a sealed envelope, to the addressees shown below.
<input type="checkbox"/>	(By E-Mail) By electronically transmitting the document(s) listed above, by agreement between the parties, addressed as set forth below.

Harvey L. Rochman  
Barry S. Landsberg  
Colin M. McGrath  
MANATT, PHELPS & PHILLIPS, LLP  
11355 W. Olympic Blvd.  
Los Angeles, CA 90064

Attorneys for Defendant

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 16, 2019, at Oakland, California.

  
\_\_\_\_\_  
Honeyleen Bohol