

1 **CALLAHAN & BLAINE, APLC**
Edward Susolik, Esq. (SBN 151081)
2 Robert Scott Lawrence, Esq. (SBN 207099)
Raphael Cung (Bar No. 201829)
3 3 Hutton Centre Drive, Ninth Floor
Santa Ana, California 92707
4 (714) 241-4444/(714) 241-4445 [FAX]

5 Attorneys for Defendants

6 **SUPERIOR COURT OF CALIFORNIA**
7 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

8 JOHN FAITRO, an individual and as the personal)
9 representative of THE ESTATE OF LAURA LEE)
FAITRO, deceased; ARTURO & ELVIA RENTERIA,)
10 as individuals and as the personal representatives of)
THE ESTATE OF ANA RENTERIA, deceased;)
11 BRIDGET SANDOVAL, an individual; SUSAN)
BLACKBURN, guardian ad litem for TAYLOR)
12 BLACKBURN, a minor; JESSICA BLEAMAN, an)
individual; SUSAN LEVERETT, a individual;)
13 CONNIE MARIA HERRERA, an individual; APRIL)
MORENO, an individual; as Plaintiff Class)
14 Representatives,)

15 Plaintiffs,)

16 v.)

17 TOP SURGEONS, INC., a corporation; TOP)
SURGEONS, LLC, a limited liability company; 1800)
18 GET THIN, LLC; ALMONT AMBULATORY)
CENTER, INC., a corporation; ANTELOPE VALLEY)
19 SURGICAL CENTER, INC.; BEVERLY HILLS)
SURGERY CENTER, LLC; CALIFORNIA)
20 HOSPITAL MANAGEMENT & COLLECTIONS,)
INC.; LAP BAND SPECIALISTS, LLC; SKIN)
21 CANCER AND RECONSTRUCTIVE SURGERY)
SPECIALISTS OF BEVERLY HILLS; SKIN)
22 CANCER AND RECONSTRUCTIVE SURGERY)
SPECIALISTS OF VALENCIA; SURGERY CENTER)
23 MANAGEMENT, LLC; NEW LIFE SURGERY)
CENTER, LLC; WOODLAKE AMBULATORY)
24 SURGERY CENTER, INC.; KAMBIZ BENIAMIA)
OMIDI, aka JULIAN OMIDI, an individual;)
25 MICHAEL OMIDI, M.D., an individual; CINDY)
OMIDI, an individual; and DOES 1 through 100,)
26 inclusive,)

27 Defendants.)
28

CASE NO. BC454464

Assigned to the Honorable Carl J. West
Dept. 322

**DEFENDANTS' NOTICE OF PETITION
AND PETITION TO COMPEL
ARBITRATION; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Code Civ. Proc., § 1281.2 et seq.;
9 U.S.C. §§ 2 and 3]

[Filed Concurrently With Declaration of
Robert S. Lawrence, Declaration of Carosel
Castillo; and Proposed Order]

Date: TBD
Time: TBD
Dept.: 322

Complaint Filed: February 4, 2011

TABLE OF CONTENTS

1
2
3 I. INTRODUCTION 1
4 II. ISSUE TO BE DECIDED 2
5 III. FACTUAL AND PROCEDURAL BACKGROUND 3
6 A. Plaintiffs’ Execution of the Arbitration Agreement 3
7 B. The Arbitration Agreement 4
8 C. The Arbitration Agreement Allows Full Remedies 5
9 D. Plaintiffs’ Complaint 5
10 E. Status of Discovery 5
11
12 IV. ARGUMENT 6
13 A. The FAA Strongly Favors Arbitration 6
14 B. Plaintiffs’ Claims Are Within the Scope of the Arbitration Agreement 8
15 C. Any Doubts About Arbitrability Must Be Resolved In Favor of Arbitration 9
16 D. The Agreement to Arbitrate Is Valid and Binding on Plaintiffs 11
17 E. Any Challenge Premised on the Alleged Right to Class Relief Was Expressly
18 Rejected in Concepcion and Stolt-Neilsen and Is Preempted by the FAA 12
19
20 V. CONCLUSION 15
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

Arellano v. T-Mobile USA, Inc.
2011 U.S. Dist. LEXIS 52142 14

AT&T Mobility LLC v. Concepcion
(2011) 131 S.Ct. 1740 *passum*

AT&T Techs., Inc. v. Comm. Workers of Am.
(1986) 475 U.S. 643 8, 9, 10

Bellows v. Midland Credit Mgt., Inc.
(2011) WL 1691323 14

Bischoff v. DirecTV, Inc.
(CD. Cal. 2002) 180 F. Supp. 2d 1097 10

Boyer v. AT&T Mobility Services, LLC
(2011) U.S. Dist. LEXIS 80607 14

Britton v. Co-op Banking Group
(9th Cir. 1993) 4 F.3d 742 8

Broughton v. Cigna Healthplans of California
(1999) 21 Cal. 4th. 1066 14

Buckeye Check Cashing, Inc. v. Cardegna
(2006) 546 U.S. 440 6

Chevron U.S.A., Inc. v. Consolidated Edison Co.
(2d Cir. 1989) 872 F.2d 534 11

Chiron Corp. V. Ortho Diagnostic Sys., Inc.
(9th Cir. 2000) 207 F.3d 1126 8

Cruz v. PacificCare Healthy Sys., Inc.
(2003) 30 Cal. 4th 303 14

Dean Witter Reynolds, Inc. v. Byrd
(1985) 470 U.S. 213, 218 7

Discover Bank v. Superior Court
(2005) 36 Cal. 4th 148 *passum*

1	<u>Doctor's Associates, Inc. v. Casarotto</u>	
2	(1996) 517 U.S. 681	6
3	<u>Engalla v. Permanente Med. Grp., Inc.</u>	
4	(1997) 15 Cal. 4th 951	8
5	<u>Estrella v. Freedom Financial</u>	
6	(2011) U.S. Dist. LEXIS 71606	14
7	<u>Int'l Bhd. of Elec. Workers, Local 2188 v. W. Elec. Co.</u>	
8	(5th Cir. 1981) 661 F.2d 514, 515	11
9	<u>J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.</u>	
10	(4th Cir. 1988) 863 F.2d 315, 321	10
11	<u>Jackson v. S.A.W. Entm't Ltd.</u>	
12	(2009) 629 F. Supp. 2d 1018	12
13	<u>JSM Tuscany LLC v. Superior Court</u>	
14	(2011) 193 Cal. App. 4th 1222	10
15	<u>Keller Construction Co. v. Kashani</u>	
16	(1990) 220 Cal. App. 3d 222	9
17	<u>Laster v. AT&T Mobility LLC</u>	
18	(9th Cir. 2009) 584 F.3d 849, 857	13
19	<u>Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.</u>	
20	(1983) 460 U.S. 1	6, 9
21	<u>Preston v. Ferrer</u>	
22	(2008) 552 U.S. 346	7
23	<u>Rent-A-Center, West, Inc. v. Jackson</u>	
24	(2010) 130 S.Ct. 2772	6
25	<u>Simula, Inc. v. Autoliv, Inc.</u>	
26	(9th Cir. 1999) 175 F.3d 716	8, 10
27	<u>Southland Corp. v. Keating</u>	
28	(1984) 465 U.S. 1	11
	<u>St. Agnes Medical Center v. PacifiCare of California</u>	
	(2003) 31 Cal. 4th 1187	7
	<u>Stirlen v. Supercuts, Inc.</u>	
	(1997) 51 Cal. App. 4th 1519	9

1	<u>Stolt-Nielsen S.A. v. Animalfeeds Int'l Corp.</u>	
2	(2010) 130 S. Ct. 1758	2, 11, 12
3	<u>United Transp. Union v. S. Cal. Rapid Transit Dist.</u>	
4	(1992) 7 Cal. App. 4th 804	9
5	<u>Vianna v. Doctors' Mgmt. Co.</u>	
6	(1994) 27 Cal. App. 4th 1186	9
7	<u>Villegas v. US Bancorp</u>	
8	(2011) U.S. Dist. LEXIS 65032	14
9	<u>Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Univ.</u>	
10	(1989) 489 U.S. 468	6
11	<u>Zarandi v. Alliance Data Sys. Corp.</u>	
12	(2011) U.S. Dist. LEXIS 54602	14
13	STATUTES	
14	Business & Professions Code, § 17200	5
15	Business & Professions Code, § 17500	5
16	Code of Civil Procedure § 1281.2	7
17	Code of Civil Procedure § 1770	5
18	Code of Civil Procedure § 3345	5
19	Consumer Legal Remedies Act § 1750	5
20	Federal Arbitration Act 9 U.S.C. § 2	2, 6
21	Federal Arbitration Act 9 U.S.C. § 3	2
22	Federal Arbitration Act 9 U.S.C. § 4	7
23		
24		
25		
26		
27		
28		

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on a date and time to be determined by the above-entitled
3 Court, in Department 322, located at 600 South Commonwealth Ave., Los Angeles, California 90005,
4 defendants will and hereby do petition this Court, pursuant to CCP § 1281.2 et seq. and 9 U.S.C. §§ 2
5 and 3, for an order compelling plaintiffs to arbitrate their individual claims in this action against
6 defendants and to stay this action until the arbitration proceedings are completed.

7 The grounds for issuance of this order are that plaintiffs are contractually bound to arbitrate
8 their claims but have refused and are unwilling to do so, the law favors compelling arbitration, class
9 action allegations do not bar arbitration, and public policy favors enforcing the arbitration provision
10 of the arbitration agreements between the parties.

11 This Petition is based upon this Notice of Petition and Petition, the attached Memorandum of
12 Points and Authorities, the concurrently filed Declaration of Carosel Castillo with associated exhibits,
13 the concurrently filed Declaration of Robert S. Lawrence, all pleadings and papers on file with this
14 Court in this action, and such further oral and written argument as may be presented at, or prior to, the
15 hearing on this matter.

16 Dated: January 20, 2012

CALLAHAN & BLAINE, APLC

17
18 By: 

Robert S. Lawrence

19 Attorneys for Defendants Top Surgeons, Inc.; Top
20 Surgeons, LLC; 1 800 Get Thin, LLC; Almont
21 Ambulatory Surgery Center, Inc.; Antelope Valley
22 Surgical Center, Inc.; Beverly Hills Surgery Center,
23 LLC; California Hospital Management & Collections,
24 Inc.; Lap Band Specialists, LLC; Skin Cancer and
25 Reconstructive Surgery Specialists of Beverly Hills;
26 Skin Cancer and Reconstructive Surgery Specialists of
27 Valencia; Surgery Center Management, LLC; New Life
28 Surgery Center, LLC; Woodlake Ambulatory Surgery
Center, Inc.; Kambiz Beniamia Omid, aka Julian
Omid; Michael Omid, M.D., and Cindy Omid

1 **PETITION TO COMPEL ARBITRATION**

2 Petitioners Top Surgeons, Inc.; Top Surgeons, LLC; 1 800 Get Thin, LLC; Almont
3 Ambulatory Surgery Center, Inc.; Antelope Valley Surgical Center, Inc.; Beverly Hills Surgery
4 Center, LLC; California Hospital Management & Collections, Inc.; Lap Band Specialists, LLC; Skin
5 Cancer and Reconstructive Surgery Specialists of Beverly Hills; Skin Cancer and Reconstructive
6 Surgery Specialists of Valencia; Surgery Center Management, LLC; New Life Surgery Center, LLC;
7 Woodlake Ambulatory Surgery Center, Inc.; Kambiz Beniamia Omid, aka Julian Omid; Michael
8 Omid, M.D., and Cindy Omid allege:

9 **A. THIS DISPUTE ARISES UNDER THE ARBITRATION AGREEMENT**

10 1. According to the complaint, this is an action based on allegations of false advertising
11 and unfair competition in connection with the provision of Lap-Band surgery and related services to
12 the named plaintiffs by defendants or surgeons alleged to have been hired by them. (FAC, ¶17).

13 2. Petitioners are various limited liability companies, individuals, and corporations duly
14 licensed by the State of California and affiliated with the surgical centers where the plaintiffs were
15 treated. Petitioners are alleged to have "provided the marketing, billing and or collection for the Lap-
16 Band surgeries" performed on plaintiffs. (*Id.*)

17 3. Prior to the surgery being performed all plaintiffs signed arbitration agreements. True
18 and correct copies of the executed arbitration agreements are attached to the accompanying
19 Declaration of Carosel Castillo as Exhibits A - H.

20 4. For those petitioners who are not expressly named in the arbitration agreements, they
21 are covered by articles I and II of the subject arbitration agreement. All petitioners and defendants
22 identified in this petition respectfully request that this matter be arbitrated.

23 **B. THE ARBITRATION AGREEMENTS**

24 5. The Agreements signed by plaintiffs provides in pertinent part:

25
26 **ARTICLE 1: Agreement to Arbitrate:** It is understood that any dispute
27 as to medical malpractice, that is as to whether any medical services
28 rendered under this contract were unnecessary or unauthorized or were
improperly, negligent or incompletely rendered, will be determined by
submission to arbitration as provided by California law, and not by a

1 lawsuit or resort to court process except as California law provides for
2 judicial review of arbitration proceedings. Both parties to this contract,
3 by entering into it, are giving up their constitutional right to have such a
4 dispute decided in a court of law before a jury, and instead are
5 accepting the use of arbitration.

6 **ARTICLE 2: All Claims Must be Arbitrated:** it is the intention of the
7 parties that this agreement bind all parties whose claims may arise out
8 of or relate to treatment or service provided by the physician including
9 any spouse or heirs of the patient, and any children, whether born or
10 unborn, at the time of the occurrence giving rise to any claim. In the
11 case of any pregnant mother, the term "patient" herein shall mean both
12 the mother and the mother's expected child or children.

13 All claims for monetary damages exceeding the jurisdiction limit of the
14 small claims court against the physician, and the physician's partners,
15 associates, association, corporation or partnership, and the employees,
16 agents and estates of any of them, must be arbitrated including, without
17 limitation, claims for loss of consortium, wrongful death, emotional
18 distress or punitive damages.

19 ...

20 6. Further, this Agreement specifically provides that "the parties consent to the
21 intervention and joinder in this arbitration of any person or entity which would otherwise be a proper
22 additional party in a court action, and upon such intervention and joinder any existing court action
23 against such additional person or entity shall be stayed pending arbitration." (See Article 3 of the
24 Arbitration Agreement).

25 7. The gravamen of plaintiffs' complaints against the petitioners arises out of or relates to
26 the medical treatment rendered to them (i.e., it concerns claims of false advertising and unfair
27 competition related to such treatment or services). Such a claim falls squarely within the meaning of
28 the Arbitration Agreements signed by the plaintiffs. (See Article 2 of the Arbitration Agreement).

8. Petitioners warrant that discovery is in its infancy and to date no depositions have
taken place and the petitioners have not yet formally answered the allegations in the complaint.

///

///

///

1 9. This Petition should be granted and the Superior Court's action stayed or dismissed
2 without prejudice until the arbitration of all matters in controversy has been effected pursuant to the
3 Arbitration Agreements.
4

5 DATED: January 20, 2012

CALLAHAN & BLAINE, APLC

6
7 By: 

8 Robert S. Lawrence

9 Attorneys for Defendants Top Surgeons, Inc.; Top
10 Surgeons, LLC; 1 800 Get Thin, LLC; Almont
11 Ambulatory Surgery Center, Inc.; Antelope Valley
12 Surgical Center, Inc.; Beverly Hills Surgery Center,
13 LLC; California Hospital Management &
14 Collections, Inc.; Lap Band Specialists, LLC; Skin
15 Cancer and Reconstructive Surgery Specialists of
16 Beverly Hills; Skin Cancer and Reconstructive
17 Surgery Specialists of Valencia; Surgery Center
18 Management, LLC; New Life Surgery Center, LLC;
19 Woodlake Ambulatory Surgery Center, Inc.;
20 Kambiz Beniamia Omid, aka Julian Omid;
21 Michael Omid, M.D., and Cindy Omid
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 In this case plaintiffs challenge the propriety of advertising and business practices that they
4 collectively attribute to all of the named defendants. Without attempting to distinguish between the
5 entity and individual defendants, or to parse their allegations, plaintiffs simply aver that all defendants
6 have acted as agents and alter egos of each other. This improper pleading tactic has resulted in the
7 appearance of sixteen defendants, all of whom are alleged to be responsible for false advertising or
8 unfair business practices related to the provision of Lap-Band surgery in California.
9

10 All of the named plaintiffs (or the parties they claim to represent) had Lap-Band surgery
11 performed at one of the defendants' surgical facilities.¹ Plaintiffs seek to represent a class of all Lap-
12 Band patients who called 1-800 Get Thin and were referred for, and had, Lap-Band surgery at any of
13 defendants' surgical facilities in California, dating back three years from the filing of the Complaint.
14

15 Plaintiffs' claims do not belong in this Court, however, but must be referred to individual
16 arbitration. When – after extensive testing and consultations with a variety of physicians – plaintiffs
17 ultimately decided to have Lap-Band surgery at any of the defendants' surgical facilities, each and
18 every one of them signed an agreement to arbitrate “all claims” which in any way “may arise out of or
19 relate to treatment or service provided” by their physicians and their agents, including any related
20 medical group, association, partnership or corporate entity. On its face, the arbitration agreement
21 executed by each plaintiff bars them from bringing this putative class action in superior court.
22

23 At the time plaintiff filed suit, *Discover Bank*² set forth California's rule that consumer
24 arbitration agreements requiring arbitration on an individual basis and precluding class actions were
25

26
27 ¹With the exception of April Moreno, who cancelled her surgery.

28 ²*Discover Bank v. Superior Court* (2005) 36 Cal. 4th 148

1 unconscionable in almost all circumstances. On April 27, 2011, the Supreme Court decided *AT&T*
2 *Mobility LLC v. Concepcion*³, which overruled *Discover Bank* and held that the Federal Arbitration
3 Act (“FAA”) 9 U.S.C. § 2, et seq., preempts state laws prohibiting class action waivers in arbitration
4 agreements. Read in conjunction with the Supreme Court’s earlier ruling in *Stolt-Nielsen*⁴ –
5 prohibiting class arbitration where an arbitration agreement is silent on the issue – the holding of
6 *Concepcion* indisputably requires plaintiffs to pursue their claims in arbitration, individually.

8 In light of *Concepcion* and *Stolt-Nielsen*, plaintiffs have no viable argument to avoid
9 arbitrating their disputes with defendants. They cannot assert that the arbitration agreements are
10 unconscionable. They cannot plausibly claim that they did not enter into the agreements after doing so,
11 in some cases, as many as three times. The arbitration agreement was not hidden from plaintiffs, but
12 was a separate stand-alone document which they executed and were given a copy of, so plaintiffs
13 cannot claim surprise. Given that the arbitration agreement allows plaintiffs to pursue their individual
14 claims and recover all relief that would have been available to them in court, there is no defensible
15 basis for plaintiffs to oppose the instant petition to compel arbitration. The FAA requires that
16 arbitration agreements be enforced according to their terms in order to promote the goal of efficient
17 dispute resolution. Accordingly, this case should be transferred from court and into arbitration
18 immediately.

21 **II. ISSUE TO BE DECIDED**

22 Whether plaintiffs’ claims should be compelled to individual arbitration and whether this
23 action should be stayed in accordance with the terms of their agreement with defendants, the FAA [9
24 U.S.C. §§ 2, 3], and other applicable federal and California laws.

27 ³*AT&T Mobility LLC v. Concepcion* (2011) 131 S.Ct. 1740 (“*Concepcion*”)

28 ⁴*Stolt-Nielsen S.A. v. Animalfeeds Int’l Corp.* (2010) 130 S. Ct. 1758 (“*Stolt-Nielsen*”)

1 **III. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. Plaintiffs' Execution of the Arbitration Agreement**

3 Plaintiffs all signed virtually identical versions of an arbitration agreement ("Agreement") prior
4 to the time of their surgery. (See Declaration of Carosel Castillo, Exhibits A - H thereto). The
5 particulars of plaintiffs' execution of the Agreement are as follows:
6

7 (1) Laura Faitro executed an Agreement entitled Physician-Patient Arbitration Agreement
8 on May 20, 2010, which was countersigned on behalf of defendant Beverly Hills Surgery Center (*Id.*,
9 Exh. A);

10 (2) Ana Renteria executed three different versions of the Agreement with defendants. The
11 first is entitled Physician-Patient Arbitration Agreement, dated May 9, 2009; the second is entitled Top
12 Surgeons Arbitration Agreement, dated December 28, 2009, and is countersigned on behalf of Top
13 Surgeons; the third is also entitled Top Surgeons Arbitration Agreement, and is countersigned but
14 undated (*Id.*, Exh. B);

15 (3) Bridget Sandoval executed an untitled Agreement, dated March 24, 2008; she also
16 executed a document entitled Patient-Physician Arbitration Agreement, dated April 14, 2008 (*Id.*,
17 Exh. C);

18 (4) Susan Blackburn executed a Patient-Physician Arbitration Agreement, dated November
19 5, 2008, on behalf of her daughter Taylor Blackburn (*Id.*, Exh. D);

20 (5) Jessica Bleaman executed an Agreement entitled Top Surgeons Arbitration Agreement,
21 dated July 23, 2009 (*Id.*, Exh. E);

22 (6) Susan Leverett executed an Agreement entitled Physician-Patient Arbitration
23 Agreement, dated December 11, 2009 (*Id.*, Exh. F);
24
25
26
27
28

1 (7) Connie Herrera executed an Agreement entitled Physician-Patient Arbitration
2 Agreement, dated May 2, 2010, which is countersigned on behalf of Beverly Hills Surgery Center (*Id.*,
3 Exh. G);

4 (8) April D. Moreno executed an Agreement entitled Physician-Patient Arbitration
5 Agreement, dated November 30, 2010.
6

7 **B. The Arbitration Agreement**

8 The Agreement signed by the plaintiffs acknowledges that plaintiffs have received copies of
9 the Agreement, and plainly and prominently sets forth the operative language of the Agreement.
10

11 In pertinent part, Article 2 of all the Agreement⁵ with named plaintiffs states as follows:

12 **All Claims Must Be Arbitrated:** It is the intention of the parties that this
13 agreement bind all parties whose claims may arise out of or relate to
14 treatment or service provided by the physician including any spouse or
15 heirs of the patient and any children, whether born or unborn, at the time
16 of the occurrence giving rise to the claim. In the case of any pregnant
17 mother, the term “patient” herein shall mean both the mother and the
18 mother’s expected child or children. [Emphasis added]

19 All claims for money damages exceeding the jurisdiction limit of the
20 small claims court against the physician, and the physician’s partners,
21 associates, association, corporation or partnership, and the employees,
22 agents, and estates of any of them, must be arbitrated including, without
23 limitation, claims for loss of consortium, wrongful death, emotional
24 distress or punitive damages.

25 Article 3 of the Agreement states in pertinent part that “the parties consent to the intervention
26 and joinder in this arbitration of any person or entity which would otherwise be a proper additional
27 party in a court action, and upon such intervention and joinder any existing court action against such
28 additional person or entity shall be stayed pending arbitration.”

27 ⁵Copies of the Agreement with all the plaintiffs are attached in full to the accompanying Declaration of
28 Carosel Castillo as Exhibits A-H, and are incorporated herein by reference. The pertinent language from the
Agreement is called out verbatim above.

1 Article 4 of the Agreement states that “All claims based on the same incident, transaction or
2 related circumstances shall be arbitrated in one proceeding.”

3
4 **C. The Arbitration Agreement Allows Full Remedies**

5 The Agreement allows the parties to obtain any relief on their individual claims that
6 would be available in court, including statutory damages, costs, and injunctive relief. (*Id.*, Exh.
7 A-H). On the whole, the arbitration agreement lays out an efficient, streamlined dispute
8 resolution process.

9 The Agreement also allows subscribers to pursue their claims in small claims court if they are
10 below the jurisdictional limit. (*Id.*, Exh. A-H, Article 2 of Agreement)

11
12 **D. Plaintiffs’ Complaint**

13 Plaintiffs filed this action on February 4, 2011, seeking to assert class claims on behalf of all
14 persons who responded to advertisements for Lap-Band surgery disseminated through various media
15 channels by these defendants, and who subsequently had Lap-Band surgery at a facility to which
16 defendants referred them in the last three years.

17 On June 13, 2011, plaintiffs filed their First Amended Complaint (“FAC”), asserting four
18 causes of action, allegedly arising from defendants’ advertising activity, for violations of the Unfair
19 Competition Law (Business & Professions Code, § 17200 *et seq.*), the False Advertising Law
20 (Business & Professions Code, § 17500, *et seq.*), Civil Code § 3345, and the Consumer Legal
21 Remedies Act (Civil Code, § 1750 *et seq.*) (“CLRA”). (FAC ¶¶ 1-2.)
22

23
24 **E. Status of Discovery**

25 Discovery was stayed *sua sponte* by the Court upon the filing of the Complaint in this matter,
26 and was further stayed by operation of law during the pendency of the defendants’ anti-SLAPP motion
27
28

1 and subsequent appeal thereof.⁶ To date, although plaintiffs have issued discovery requests, no
2 responses have been formally served by any defendant, no depositions have been taken, and
3 defendants have taken no actions to avail themselves of the discovery process. (See Declaration of
4 Robert S. Lawrence, ¶2).

6 **IV. ARGUMENT**

7 **A. The FAA Strongly Favors Arbitration**

8 As the Supreme Court reiterated in *Concepcion*, the FAA was enacted to reverse longstanding
9 judicial hostility to arbitration agreements. *Concepcion*, 131 S.Ct. at 1745. Section 2 of the FAA, the
10 primary substantive provision of the Act, provides in pertinent part that arbitration agreements “shall
11 be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the
12 revocation of any contract.” *Id.* (quoting 9 U.S.C. § 2, and *Moses H. Cone Mem’l Hosp. v. Mercury*
13 *Constr. Corp.* (1983) 460 U.S. 1, 24). Section 2 reflects a “liberal federal policy favoring arbitration”
14 and underscores the “fundamental principle that arbitration is a matter of contract.” *Id.* (quoting *Rent-*
15 *A-Center, West, Inc. v. Jackson* (2010) 130 S.Ct. 2772, 2776). Section 2 mandates that courts put
16 arbitration agreements on “equal footing” with all other contracts and enforce them according to their
17 terms. *Id.* at 1745-46 (citing *Buckeye Check Cashing, Inc. v. Cardegna* (2006), 546 U.S. 440, 443 and
18 *Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Univ.* (1989) 489 U.S. 468, 478).

19
20
21 The FAA permits only one method for states to declare arbitration agreements invalid, *i.e.*, by
22 “generally applicable contract defenses, such as fraud, duress, or unconscionability.” *Id.* at 1746
23 (quoting *Doctor’s Associates, Inc. v. Casarotto* (1996) 517 U.S. 681, 687). But state law may not
24 impose restrictions or defenses “that apply only to arbitration or that derive their meaning from the fact
25 that an agreement to arbitrate is at issue.” *Id.* Under the holding of *Concepcion*, states are prohibited
26

27
28 ⁶ Defendants withdrew their appeal of the anti-SLAPP ruling and filed an application for writ of mandate, which is still pending before the Court of Appeal as of the date this Petition was filed.

1 from imposing rules that are inconsistent with the FAA’s purpose of “ensur[ing] the enforcement of
2 arbitration agreements according to their terms so as to facilitate streamlined proceedings.” *Id.* at 1748.
3 The *Concepcion* Court struck down California’s *Discover Bank* rule because “requiring the availability
4 of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme
5 inconsistent with the FAA.” *Id.*
6

7 The standards for evaluating a petition to compel arbitration are well settled. A court must
8 grant a petition to compel arbitration where the petition alleges the existence of an arbitration
9 agreement, provides a copy of the agreement and alleges that the opposing party refuses to honor the
10 terms of the arbitration agreement. CCP § 1281.2. The only exception to this rule is that a party may
11 waive the right to arbitration where: (1) the litigation has already come to judgment; or (2) where the
12 party opposing arbitration suffered severe prejudice as a result of the alleged delay in seeking
13 arbitration/mediation. *See St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal. 4th
14 1187, 1204. Where – as is undeniably the case here – a valid agreement to arbitrate exists, and the
15 dispute falls within the scope of that agreement, the law leaves no place for the exercise of discretion
16 by the court, but instead mandates that courts “shall direct the parties to proceed to arbitration.” *Dean*
17 *Witter Reynolds, Inc. v. Byrd* (1985) 470 U.S. 213, 218; *see also* 9 U.S.C. § 4 (“upon being satisfied
18 that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the
19 court shall make an order directing the parties to proceed to arbitration in accordance with the terms of
20 the agreement”). Consistent with arbitration’s objective – *i.e.*, to achieve streamlined proceedings and
21 expeditious results – the court must “move the parties to an arbitrable dispute out of court and into
22 arbitration as quickly and easily as possible.” *Preston v. Ferrer*, 552 U.S. 346, 357 (2008); *see also*
23 *Concepcion*, 131 S.Ct. at 1749.
24
25
26
27
28

1 **B. Plaintiffs' Claims Are Within the Scope of the Arbitration Agreement**

2 Plaintiff's claims against defendants are well within the scope of the Agreement. The
3 Agreement contains an "all claims" provision, which encompasses "**all claims for monetary**
4 **damages exceeding the jurisdiction limit of the small claims court**" and which is intended to
5 include "**all parties whose claims may arise out of or relate to treatment and services**"
6 (Castillo Dec., Exh. A - H (emphasis added)). "All claims" clauses of this type are "broad and far
7 reaching" in scope, *Chiron Corp. V. Ortho Diagnostic Sys., Inc.*, (9th Cir. 2000) 207 F.3d 1126, 1130
8 and are "routinely used . . . to secure the broadest possible arbitration coverage." *Britton v. Co-op*
9 *Banking Grp.*, (9th Cir. 1993) 4 F.3d 742, 745. Such clauses require arbitration of all disputes that
10 "touch matters" covered by the contract defining the parties' relationship. *Simula, Inc. v. Autoliv, Inc.*,
11 (9th Cir. 1999) 175 F.3d 716, 721.⁷

12 In the FAC, plaintiffs challenge defendants' method and manner of advertising their services,
13 and business practices related to the provision of those services (i.e., their treatment). (See, e.g., FAC,
14 ¶¶ 62-97). Plaintiffs' claims therefore fall squarely within the ambit of the Agreement, as they relate to
15 "services" or "treatment" received by plaintiffs. Under the FAA, this Court is required to compel
16 arbitration of plaintiffs' claims unless plaintiffs can establish that the Agreement to arbitrate is invalid
17 based on generally applicable contract defenses. *Concepcion*, 131 S.Ct. at 1746. The burden of
18 proving a valid defense to avoid the arbitration agreement is on plaintiffs, *Engalla v. Permanente Med.*
19 *Grp., Inc.* (1997) 15 Cal. 4th 951, 972, and is a burden they cannot meet.

20
21
22
23
24
25
26 ⁷ This is consistent with the policy of the FAA that "any doubts concerning arbitrable issues should be
27 resolved in favor of arbitration." *Simula*, 175 F.3d at 719; see also *AT&T Tech. Inc. v. Comms. Workers of*
28 *Am.*, 475 U.S. 643, 650 (1986) (because there is a "presumption of arbitrability," an order to arbitrate "should
not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an
interpretation that covers the asserted dispute").

1 **C. Any Doubts About Arbitrability Must Be Resolved In Favor Of Arbitration**

2 There can be no doubt that the plaintiffs' claims are arbitrable under the plain terms of the
3 Agreements. But even if there were any such doubt, all doubts must be resolved "in favor of
4 arbitration." *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.* (1983) 460 U.S. 1, 24-25
5 (directing that "any doubts concerning the scope of arbitrable issues . . . be resolved in favor of
6 arbitration"). California courts similarly confer arbitration a "favored status" and thus "indulge
7 every intendment to implement and give effect to arbitration proceedings." *Stirlen v. Supercuts, Inc.*
8 (1997) 51 Cal. App. 4th 1519, 1544.
9

10 As a result, where an arbitration agreement exists, the parties are required to arbitrate "unless it
11 may be said with positive assurance that the arbitration clause is not susceptible of an interpretation
12 that covers the asserted dispute." *AT&T Techs., Inc. v. Comms. Workers of Am.* (1986) 475 U.S. 643,
13 650; *United Transp. Union v. S. Cal. Rapid Transit Dist.* (1992) 7 Cal. App. 4th 804, 808 ("Doubts as
14 to whether an arbitration clause applies to a particular dispute are to be resolved in favor of sending
15 the parties to arbitration. The court should order them to arbitrate unless it is clear that the arbitration
16 clause cannot be interpreted to cover the dispute."); *Vianna v. Doctors' Mgmt. Co.* (1994) 27 Cal.
17 App. 4th 1186, 1189 ("Because California has a strong public policy in favor of arbitration, arbitration
18 agreements should be liberally interpreted"); *Keller Construction Co. v. Kashani* (1990) 220 Cal. App.
19 3d 222, 229 (enforcing arbitration agreement against partner because, inter alia, "as the agent and a
20 beneficiary of the partnership, to require him to be a party to the arbitration is consistent with what the
21 late Justices Raymond Peters and Matthew Tobriner labeled 'a strong public policy in favor of
22 arbitrations"). Plaintiffs cannot dispute this principle of interpretation, nor can they satisfy the
23 heavy burden of showing with "positive assurance" that the agreements at issue here fail to encompass
24 this dispute.
25
26
27
28

1 Courts routinely apply this rule of interpretation to arbitration clauses with similar language to
2 those here. *See, e.g., Simula, Inc. v. Autoliv, Inc.*, (9th Cir. 1999) 175 F.3d 716, 720-25 (language
3 calling for the arbitration of “all disputes arising in connection with” an agreement must be interpreted
4 broadly and reached “every dispute” between the parties); *Bischoff v. DirecTV, Inc.*, (C.D. Cal. 2002)
5 180 F. Supp. 2d 1097, 1106 (broadly interpreting language requiring arbitration of “any legal claim
6 relating to this Agreement . . . or your Service” to cover all claims). The Agreement at issue here is
7 broadly worded and contains no exceptions. *See AT&T Techs.*, 475 U.S. at, 649 (“absent any express
8 provision excluding a particular grievance from arbitration . . . only the most forceful evidence of a
9 purpose to exclude the claim from arbitration can prevail”).
10

11
12 Any attempt by plaintiffs to carve out an exception to the Agreement for defendants who are
13 non-signatories to the Agreement cannot be squared with either these principles or the plain language
14 of the arbitration Agreement. The Agreement is expansively worded to encompass any “claims”
15 between plaintiffs and defendants which “arise out of or relate to” treatment or services rendered to
16 plaintiffs. That broad language makes clear that the arbitration clauses apply to the plaintiffs,
17 regardless of what defendant entity attempts to enforce the arbitration Agreement. Indeed, nowhere
18 does the Agreement draw any distinction between the physician, medical group, surgical center, or any
19 related entity. If plaintiffs have a “claim” against defendants that “arises out of or relates to” – that
20 touches on in any way – “treatment or services” rendered to plaintiffs, the Agreement mandates that
21 they resolve that dispute in arbitration. *JSM Tuscan LLC v. Superior Court* (2011) 193 Cal. App. 4th
22 1222 (nonsignatories have right to enforce arbitration clause where claims against them are
23 inextricably intertwined with contract containing arbitration clause); *J.J. Ryan & Sons, Inc. v. Rhone*
24 *Poulenc Textile, S.A.*, 863 F.2d 315, 321 (4th Cir. 1988) (an unambiguous arbitration clause “embraces
25 every dispute between the parties having a significant relationship to the contract regardless of the
26 label attached to the dispute”).
27
28

1 The strong presumption in favor of arbitration trumps any attempt by plaintiffs to impose any
2 exception to the parties' obligation to arbitrate. *Concepcion*, 131 S.Ct. at 1747 (“When state law
3 prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The
4 conflicting rule is displaced by the FAA.”); *Southland Corp. v. Keating* (1984) 465 U.S. 1, 12 (FAA
5 preempts inconsistent state laws). Consistent with this presumption, “even a narrow arbitration clause
6 must be construed in light of the presumption in favor of arbitration.” *Chevron U.S.A., Inc. v.*
7 *Consolidated Edison Co.*, 872 F.2d 534, 538 (2d Cir. 1989); *Int'l Bhd. of Elec. Workers, Local 2188 v.*
8 *W. Elec. Co.*, 661 F.2d 514, 515 (5th Cir. 1981) (“in determining whether a dispute is within the
9 confines of the arbitration clause, the presumption of arbitrability applies, regardless of whether one
10 party characterizes the clause as ‘narrow’”). Plaintiffs cannot overcome the presumption in favor of
11 arbitration. Neither the law nor the language of the Agreement allow the plaintiffs to evade their
12 contractual obligations to arbitrate.
13
14

15 **D. The Agreement to Arbitrate Is Valid and Binding on Plaintiffs**

16
17 In the FAC, plaintiffs attempt to avoid their Agreement to arbitrate by ignoring the fact of its
18 existence and conveniently proceeding as if they had no contractual obligations to defendants. While
19 this may be convenient, plaintiffs have no legal basis for avoiding the effect of the Agreement, which
20 requires them to arbitrate not only their malpractice claims (asserted by plaintiffs in separate actions)
21 but also their claims for restitution and damages arising from, and relating to, the provision of services
22 to plaintiffs. Plaintiffs cannot avoid the effect of their Agreement, post-*Concepcion* and post-*Stolt-*
23 *Nielsen*, by pretending it does not exist or by asserting a generic list of objections. Any claim that
24 requiring arbitration of plaintiffs' individual claims would be unfair, unconscionable, or contrary to
25 California law simply does not survive post-*Concepcion*, as the Supreme Court held such arguments to
26 be preempted by the FAA.
27
28

1 Plaintiffs cannot contend that they were unaware of the Agreement or that they were surprised
2 in any way. The Agreement is a stand alone document initialed by the plaintiffs multiple times, and
3 executed in full multiple times by several of the plaintiffs. It clearly calls out that it is an arbitration
4 agreement, and sets forth at the outset of plaintiffs' treatment the terms and conditions by which any
5 and all claims and disputes between the parties must be decided. There is no language hiding in fine
6 print in minuscule font – the Agreement unambiguously calls out its nature and terms, and does not
7 attempt to disguise or obfuscate anything. *See, e.g., Jackson v. S.A.W. Entm't Ltd.*, (N.D. Cal. 2009)
8 629 F. Supp. 2d 1018, 1023 (when terms are plainly stated and can be easily understood, there is no
9 surprise).
10

11 Nor can plaintiffs reasonably argue that the Agreement limits their opportunity to obtain full
12 relief of their claims. Under the Agreement, plaintiffs are entitled to recover any and all damages or
13 other remedies on their individual claims that would be available in court. (*See, generally*, the
14 Agreement, attached as Exhibits A-H to Carillo Decl.) Plaintiffs agreed to and accepted the
15 Agreement and cannot avoid arbitration by claiming they were unaware of their obligation or that the
16 Agreement does not allow them full relief. It does, yet plaintiffs have nonetheless refused to arbitrate
17 their disputes with defendants. (Lawrence Dec., ¶¶ 6, 7).
18

19
20 **E. Any Challenge Premised on the Alleged Right to Class Relief Was Expressly**
21 **Rejected in *Concepcion* and *Stolt-Neilsen* and Is Preempted by the FAA**

22 Defendants anticipate that plaintiff's principal challenge to the Agreement will be that it calls
23 for individual arbitration and precludes class proceedings. Yet this is precisely the challenge that was
24 rejected in *Concepcion* as inconsistent with and preempted by the FAA.
25

26 Before *Concepcion*, the California Supreme Court held in *Discover Bank* that arbitration
27 agreements containing class waivers were unconscionable under California law in almost all
28

1 circumstances.⁸ *Id.* at 162. The district court in *Concepcion*, relying on *Discover Bank*, concluded that
2 AT&T's "arbitration provision was unconscionable because AT&T had not shown that bilateral
3 arbitration adequately substituted for the deterrent effects of class actions." *Concepcion*, 131 S.Ct. at
4 1745. The Ninth Circuit affirmed and also held that the FAA did not preempt *Discover Bank*. *See, e.g.*,
5 *Laster v. AT&T Mobility LLC*, (9th Cir. 2009) 584 F.3d 849, 857. After the case at bar was filed, the
6 U.S. Supreme Court reversed and overruled *Discover Bank*.

8 In *Concepcion*, the Supreme Court held that the FAA preempted *Discover Bank* because
9 California's rule impeded the objectives of the FAA:

10 The overarching purpose of the FAA, evident in the text of §§ 2, 3, and
11 4, is to ensure the enforcement of arbitration agreements according to
12 their terms so as to facilitate streamlined proceedings. Requiring the
13 availability of classwide arbitration interferes with fundamental
14 attributes of arbitration and thus creates a scheme inconsistent with the
15 FAA.

16 *Concepcion, supra*, 131 S. Ct. at 1748. Since *Discover Bank* ignored the terms of parties' arbitration
17 agreements and "interfered with fundamental attributes of arbitration," the Court concluded that
18 California's rule requiring class proceedings, "to the extent it is manufactured by state law rather than
19 consensual, is inconsistent with the FAA." *Id.* at 1748, 1750-51; *see also Stolt-Nielsen S.A. v.*
20 *AnimalFeeds Int'l Corp.*, 130 S.Ct. 1758, 1774-75 (2010) (holding that "a party may not be compelled
21 under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the
22 party *agreed* to do so." (emphasis in original)).

24
25 ⁸ Under *Discover Bank*, arbitration agreements which contained class waivers were deemed unconscionable
26 if they appeared in (1) a consumer contract of adhesion, (2) in which disputes between the parties predictably
27 would involve small amounts of damages, and (3) when it was alleged that the defendant schemed to
28 deliberately cheat large numbers of consumers out of individually small amounts of money. *See Concepcion*,
131 S.Ct. at 1746 (quoting *Discover Bank*, 36 Cal. 4th at 162). As *Concepcion* Court observed, this test was
essentially meaningless because "the times in which consumer contracts were anything other than adhesive
are long past," while the other two requirements are "toothless and malleable" and have "no limiting effect."
Id. at 1750.

1 The *Concepcion* Court also rejected the California Supreme Court's policy rationale from
2 *Discover Bank* (raised in Justice Breyer's dissenting opinion):

3 The dissent claims that class proceedings are necessary to prosecute
4 small-dollar claims that might otherwise slip through the legal system.
5 But states cannot require a procedure that is inconsistent with the FAA,
6 even if it is desirable for unrelated reasons.

7 *Concepcion*, 131 S.Ct. at 1753.

8 To the extent plaintiffs challenge the Agreement based on *Discover Bank* and its reasoning,
9 these are precisely the arguments rejected by *Concepcion*. As district courts in this circuit and
10 elsewhere are recognizing, challenges to class action waivers in arbitration agreements are no longer
11 viable after *Concepcion*. See, e.g., *Zarandi v. Alliance Data Sys. Corp.*, (C.D. Cal. May 9, 2011) 2011
12 U.S. Dist. LEXIS 54602 (plaintiff's argument that class action waiver was unconscionable "is no
13 longer viable after *Concepcion*"); *Bellows v. Midland Credit Mgt., Inc.*, (S.D. Cal. May 4, 2011) 2011
14 WL 1691323, at *3 (*Concepcion* "makes clear the agreement to arbitrate is not substantively
15 unconscionable merely because it includes a class action waiver"); *Arellano v. T-Mobile USA, Inc.*,
16 (N.D. Cal. May 16, 2011) 2011 U.S. Dist. LEXIS 52142 (Court holds that *Concepcion* compels
17 individual arbitration of claims seeking injunctive relief and preempts the California Supreme Court
18 opinions in *Broughton v. Cigna Healthplans of California*, (1999) 21 Cal. 4th. 1066 and *Cruz v.*
19 *PacificCare Healthy Sys., Inc.*, (2003) 30 Cal. 4th 303); *Estrella v. Freedom Financial*, (N.D. Calif.
20 July 5, 2011) 2011 U.S. Dist. LEXIS 71606 (Court, relying upon *Concepcion*, compels individual
21 arbitration of claims under California Unfair Competition Law, California Consumer Legal Remedies
22 Act and negligence claims); *Villegas v. US Bancorp*, (N.D. Cal. June 20, 2011) 2011 U.S. Dist. LEXIS
23 65032 (Relying upon *Concepcion*, Court compels individual arbitration in a case that had been
24 pending for 13 months; Court rejected waiver argument made by plaintiff because it would have been
25 futile for defendant to have sought arbitration until *Concepcion* case was decided.); *Boyer v. AT&T*

1 *Mobility Services, LLC*, (S.D. Calif. July 25, 2011) 2011 U.S. Dist. LEXIS 80607 (Court relies upon
2 *Concepcion* and compels individual arbitration of claims for (i) fraudulent inducement; (ii) violation
3 of California Consumer Legal Remedies Act; (iii) violation of the California Unfair Competition Law;
4 and (iv) false and deceptive advertising.);

5
6 Under *Concepcion*, the FAA requires enforcement of the Agreement, because to hold
7 otherwise would “stand as an obstacle to the accomplishment and execution of the full purposes and
8 objectives of [the FAA].” *Concepcion*, 131 S. Ct. at 1753.

9 **V. CONCLUSION**

10 For the foregoing reasons, the defendants respectfully request that this Honorable Court grant
11 defendants’ petition to compel arbitration and stay this litigation.
12

13
14 Dated: January 20, 2012

CALLAHAN & BLAINE, APLC

15 By: 

16 Robert Scott Lawrence

17 Attorneys for Defendants Top Surgeons, Inc.; Top
18 Surgeons, LLC; 1 800 Get Thin, LLC; Almont
19 Ambulatory Surgery Center, Inc.; Antelope Valley
20 Surgical Center, Inc.; Beverly Hills Surgery Center, LLC;
21 California Hospital Management & Collections, Inc.; Lap
22 Band Specialists, LLC; Skin Cancer and Reconstructive
23 Surgery Specialists of Beverly Hills; Skin Cancer and
24 Reconstructive Surgery Specialists of Valencia; Surgery
25 Center Management, LLC; New Life Surgery Center,
26 LLC; Woodlake Ambulatory Surgery Center, Inc.;
27 Kambiz Beniamia Omidi, aka Julian Omidi; Michael
28 Omidi, M.D., and Cindy Omidi

1 **PROOF OF SERVICE**

2 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
3 party to the within action; my business address is 3 Hutton Centre Drive, Ninth Floor, Santa Ana,
4 California 92707.

5 On **January 20, 2012** I served the foregoing document(s) entitled:

6 **DEFENDANTS' NOTICE OF PETITION AND PETITION TO COMPEL ARBITRATION;
7 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

8 on the interested parties in this action by placing the original a true copy thereof enclosed in a
9 sealed envelope addressed as follows:

10 ***SEE ATTACHED SERVICE LIST***

11 **BY MAIL:** I deposited such envelope in the mail at Santa Ana, California. The envelope
12 was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice
13 of collection and processing correspondence for mailing. It is deposited with the United
14 States Postal Service on that same day in the ordinary course of business. I am aware that on
15 motion of party served, service is presumed invalid if postal cancellation date or postage meter
16 date is more than one (1) day after date of deposit for mailing in affidavit.

17 **BY FEDEX:** I deposited such envelope at Santa Ana, California for collection and delivery
18 by Federal Express with delivery fees paid or provided for in accordance with ordinary
19 business practices. I am "readily familiar" with the firm's practice of collection and processing
20 packages for overnight delivery by Federal Express. They are deposited with a facility
21 regularly maintained by Federal Express for receipt on the same day in the ordinary course of
22 business.

23 **BY PERSONAL SERVICE:** I caused such document to be delivered by hand to the
24 aforementioned addressee.

25 **VIA E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
26 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
27 documents to be sent to the persons at the e-mail addresses listed below. I did not receive,
28 within a reasonable time after the transmission, any electronic message or other indication that
the transmission was unsuccessful.

VIA CASE ANYWHERE: A true and correct copy of the above-mentioned document was
electronically served on counsel of record by transmission to Case Anywhere.

BY FACSIMILE: I transmitted the foregoing document by facsimile to the party(s)
identified below by using the facsimile number(s) indicated. Said transmission(s) were
verified as complete and without error.

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

Executed on **January 20, 2012**, at Santa Ana, California



Janine Luirette

SERVICE LIST

FAITRO, et al. v. TOP SURGEONS, etc., et al.
Case No.: BC454464

<p>Alexander Robertson, IV, Esq. ROBERTSON & ASSOCIATES, LLP 880 Hampshire Road, Suite B Westlake Village, CA 91361 Tel: (805) 418-9900 Fax: (805) 418-9901 arobertson@rvcdlaw.com</p>	<p>Attorneys for Plaintiffs</p>
<p>John M. Walker, Esq. LAW OFFICES OF JOHN M. WALKER 5850 Canoga Avenue, 4th Floor Woodland Hills, CA 91367 Tel: (818) 719-9181 Fax: (818) 719-9264 johnmwalker@earthlink.net</p>	<p>Attorneys for Plaintiffs</p>

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