

**TENTATIVE RULING**

**Judge Donna Geck**  
**Department 4 SB-Anacapa**  
**1100 Anacapa Street**  
**P.O. Box 21107**  
**Santa Barbara, CA 93121-1107**

**CIVIL LAW & MOTION****Richard Cain vs Sansum Clinic et al**

<b>Case No:</b>	1402957
<b>Hearing Date:</b>	Wed Oct 31, 2012 9:30

**Nature of Proceedings: (6) Demurrers**

Plaintiffs filed their original complaint on July 24, 2012, against 20 defendants, asserting 8 causes of action. On August 7, plaintiffs filed their first amended complaint, adding one plaintiff, five defendants, and one cause of action. It is the FAC that is currently at issue. [The Court notes that plaintiffs attempted to file a second amended complaint in response to the current demurrers, dropping two causes of action, adding one cause of action, adding another 14 defendants, dropping the plaintiff added in the FAC, and adding a different plaintiff. However, the law only allows one amendment as of right under CCP § 472, which plaintiffs had utilized in filing their FAC. The improperly filed second amended complaint was stricken upon defendants' ex parte application, so that the demurrers could be heard. Plaintiffs' subsequent ex parte application to allow the second amended complaint to be filed was denied by the Court.]

Plaintiffs' FAC alleges causes of action entitled: (1) civil conspiracy, (2) medical malpractice, (3) medical battery, (4) non-consensual implantation of subcutaneous devices, (5) non-disclosure and concealment, (6) actual fraud / deceit, (7) negligence, (8) respondeat superior, and (9) Civil RICO under 18 U.S.C. § 1964.

The FAC generally alleges that plaintiffs are Richard Cain, and his two minor sons, ages 6 and 4 ½, against their former physicians, and radiology and medical facilities.. From 4/30/11 to the present, plaintiff began to notice abnormal behavior in his two minor sons, and began to document abnormal sleeping patterns, complaints of headaches, one son's persistent scratching, heating of the body without symptoms, appearance of red circular marks on the 6 year old that then blistered, and jerking and jolting while sleeping. Medical professionals were unable to explain the injuries. Plaintiff conducted research, and discovered that his younger son exhibited signs of having a biochip in his body, and the symptoms both boys exhibited were consistent with those in a documentary made by Freedom from Covert Harassment, which announced that the International Center Against



the Abuse of Covert Technologies (ICAACT) would perform radio frequency scans in Sacramento on 1/1/12. Plaintiff took his sons to Sacramento on that date, and met with Mr. Beltran of the ICAACT, who performed scans on the children. Both scanned positively for Radio Frequency Devices. Plaintiff was then scanned, and also scanned positively in various areas of his body. Upon his return to Santa Barbara, he obtained X-Rays and a CT scan which confirmed the existence of non-consensual subcutaneous devices within him and his sons.

Plaintiffs allege that defendants are doctors and medical facilities in or near Santa Barbara, and that plaintiffs and defendants were at all relevant times in a physician-patient and/or healthcare provider-patient relationship, providing medical services to plaintiffs and charging for those services.

Richard Cain recalls driving himself to St. John's Pleasant Valley Hospital (SJPVH) in Camarillo on 3/9/08, where he was later transferred to St. John's Regional Medical Center (SJPMC) in Oxnard. Plaintiff objected to the contemplated cardiac catheterization, after which defendant Khatore cancelled the procedure, and he and defendant Fealy requested plaintiff to remain overnight. He was placed on an IV to lower his elevated blood pressure. He was released the next day. He had a short visit to Goleta Valley Cottage Hospital on 4/4/04 to have blood pressure checked after a racing like episode near his heart. He was placed on an IV, but did not consent to any other treatments or surgical procedures, and was released about 5 hours after admission.

After returning from Sacramento, he began requesting his medical records, first from the St. Johns entities, then GVCH, and Sansum. Sansum records showed updates by physicians after business hours, and as late as 1:28 a.m. by defendant Musicant. Plaintiff received X-rays from St. Johns, but had not consented to having any X-rays taken there. They showed foreign devices lodged in his right and left interior chest wall, and a foreign object protruding from the left side of his heart. His position makes him believe he was unconscious when they were taken. SBCH records also revealed an X-ray taken at GVCH, which showed implant leads extending from plaintiff's heart and lying on his chest, consistent with a Cochlear Implant procedure, as well as a foreign object protruding from the left side of his heart. A Sansum MRI shows a foreign object in the cochlea of each ear, and a foreign object in his left maxillary sinus. After consulting with an Otolaryngologist, it was revealed that plaintiff had a deviated left septum with a foreign device in his left maxillary sinus. He returned for a second visit to discuss surgery for the deviated septum, and showed the doctor the 2004, 2008 and 2012 X-rays and CT scans depicting foreign devices. The doctor stated he could feel implant leads in plaintiff's abdomen, did not know why anyone would do that, and would not repair the deviated septum until the foreign devices were removed, referring plaintiff to his primary care physician to do so.

New 2012 X-rays and CT scans were obtained by Richard Cain from Pueblo Radiology, which show foreign objects, but which Pueblo concludes were normal. The same is true of a 4/3/12 X-ray of Christopher Cain from Cottage Imaging, a 4/4/12 X-ray of Cayden Cain from Cottage Imaging, a 7/7/11 X-ray of Cayden Cain, a 4/17/12 CT scan of Richard Cain by Cottage Imaging, and a 5/15/11 MRI of Richard Cain. Their primary care physicians could not explain the objects, and referred to the radiology reports as being normal.



Defendants are engaged in a sophisticated network of medical facilities, doctors, and radiologists conspiring to non-consensually implant Radio Frequency Identification Devices (RFID) into individuals for experimental purposes and financial gain. When triggered, the devices cause the victims to experience illnesses which require medical attention. The devices were implanted during visits between 1999 and 2008. Radiologists participated by indicating X-rays and scans were normal, when they actually revealed foreign devices. Plaintiff has identified surgical scars on plaintiffs, indicating the routes for introduction of the subcutaneous devices into their bodies, and the scars coincide with visits or hospitalizations under defendants' care. In a visit to his primary care physician only months after his St. John's hospitalization, Dr. Hadsall's notes indicated that plaintiff will develop a localized area of chest pain in the anterior right chest wall, which is consistent with the X-ray taken during the hospitalization showing a foreign device lodged in plaintiff's right anterior chest wall.

1st c/a for Civil Conspiracy Incorporates prior allegations. Defendants did these acts in furtherance of the conspiracy, also conspiring to conceal their crimes. The last overt act in the conspiracy occurred on 4/17/12, when Dr. Ramona Clark fraudulently amended plaintiff Richard Cain's 2004 radiology report by deleting her name. She is the doctor who interpreted his 3/2/12 X-ray determined to be normal despite visible foreign objects. One "Haulbosky" transcribed the report, but Pueblo CEO Wayne Baldwin informed plaintiff that Pueblo had no such employee. Clark altered the 2004 X-ray report to keep the conspiracy and avoid suspicion. As a proximate result of defendants' wrongful acts, plaintiffs have been damaged and suffered permanent injury. Punitive damages are sought.

2nd c/a for medical malpractice Incorporates prior allegations. Medical facilities were responsible for the acts and omissions of their employees and the work performed by their doctors. Defendants breached their duties to plaintiffs by (a) failing to inform plaintiffs they were being implanted with subcutaneous devices that could cause permanent injury; (b) failing to offer plaintiffs a choice in participating in the experimentation; (c) failing to inform plaintiffs of the risks of implanting them with leads and other electronic devices; (d) failing to inform and warn plaintiffs about the experiments; (e) failing to obtain informed consent to perform the surgeries necessary to implant the devices; (f) performing surgeries without plaintiffs' knowledge or approval; (g) negligently performing the surgeries; (h) failing to provide plaintiffs with adequate post-operative care; and (i) abandoning plaintiffs. As a result, plaintiffs have sustained permanent injuries and emotional distress, and incurred medical expenses and lost income. Notice of intent to sue was deposited for service on 6/13/12.

3rd c/a for medical battery Incorporates prior allegations. Between 12/28/1999 and 3/10/08, nonconsensual procedures were agreed upon, performed, and supervised by defendants, participating in a network to conceal the implantation for financial gain and medical experimental purposes: (a) cutting open plaintiff's bodies; and (b) manipulation or physical contact with plaintiffs' organs in a manner causing injury to plaintiffs. Defendants conduct constituted intentional and offensive contact with plaintiffs' bodies, in violation of public policy and ethical standards, and in reckless disregard for plaintiffs' health and safety. As a result, plaintiffs sustained injury and will incur medical expenses, and Richard Can has and



will suffer lost wages and loss of earning capacity.

4th c/a for non-consensual implantation of subcutaneous devices (CC § 52.7) Incorporates prior allegations. Defendants violated CC § 52.7 by implanting plaintiffs with subcutaneous devices including implant leads and RFIDs for financial gain and medical experimentation purposes, without plaintiffs' consent, and in furtherance of the conspiracy. Punitive damages are sought.

5th c/a for intentional non-disclosure and concealment Incorporates prior allegations. All defendants knew or should have known of the risk of serious side-effects or complications that could result from non-consensual implantation of subcutaneous devices into non-suspecting patients. All defendants failed to disclose and concealed (a) that plaintiffs had been implanted without their consent; (b) that plaintiffs were subjects of experiments; (c) that defendants were being paid to participate in experiments by supervising, upgrading, record-keeping, and concealing the implants, by fabricating the radiology reports in an effort to conceal their unlawful experiments; (d) plaintiffs were not informed of the risks associated with non-consensual implantation of implant leads and RFIDs. Defendants failed to exercise their duty to disclose these facts to plaintiffs. Defendants knew that if they fully disclosed their intentions to plaintiffs, plaintiffs would decline the implantations. They failed to inform plaintiffs that a surgery would be taking place. Plaintiffs relied on defendants to provide disclosures of any risks and services not consented to, and plaintiffs did not consent to implantation of subcutaneous devices. Defendants concealed the facts with intent to defraud and injure plaintiffs, acting recklessly in violation of fundamental public policy and medical ethical standards. As a result, plaintiffs sustained injury.

6th c/a for intentional misrepresentation Incorporates prior allegations. Defendants misrepresented facts by stating in writing and verbally that plaintiffs' X-rays were normal and no foreign objects existed in them. At the time the representations were made, defendants knew or should have known they were false, since the X-rays and CT scans showed the presence of foreign objects. Those statements also defamed Richard Cain and caused him to be shunned in the community, in covering up the conspiracy by stating that plaintiff was delusional. Defendants influenced other doctors to change opinions as to whether foreign objects were depicted in the X-ray film and in plaintiffs' body, after the doctor had already examined him and located the implant leads. In making the false statements, defendants acted recklessly, and in violation of public policy and medical ethical standards. As a result of the false statements, plaintiffs have sustained injury, including emotional distress, medical expenses, and lost income.

7th c/a for fraud/deceit Incorporates prior allegations. Defendants represented to plaintiffs that (a) X-rays for all 3 were normal, and showed no foreign objects; (b) CT scans of Richard Cain were normal and showed no foreign objects; (c) they conveyed to other medical professionals that the X-rays and scans were normal. They knew those statements to be false, and they intended plaintiffs to rely on them, placing their health in peril. Plaintiffs and other doctors relied on the statements, resulting in injury and harm to plaintiffs.

8th c/a for negligence Incorporates prior allegations. Defendants owed plaintiffs a duty of



care to exercise ordinary skill and care, and breached those duties by (a) failing to inform plaintiffs defendants would be performing non-consensual surgeries and implanting subcutaneous devices within their bodies; (b) failing to offer plaintiffs a choice in being implanted with RFIDs; (c) failing to inform plaintiffs of the risks of being implanted; (d) failing to inform/warn plaintiffs they were subjects of experiment; (e) failing to obtain informed consent to perform the surgical implantation; (f) performing surgery without plaintiffs' knowledge or approval; (g) negligently performing surgery; (h) medical facilities failing to supervise doctors; (i) medical facilities failing to intervene; (j) medical facilities failing to train doctors; (k) failing to notify plaintiffs of surgeries; and (l) medical facilities permitting doctors to carry out experiments for financial gain. Those acts caused plaintiffs harm. Notices were deposited for service on 6/13/12. Plaintiffs sustained injury and damage.

9th c/a for respondeat superior Incorporates prior allegations. At all times, Does 1-15 were agents or employees of Pueblo Radiology Medical Group, Pueblo Radiology, Sansum Clinic, Goleta Valley Cottage Hospital, Santa Barbara Cottage Hospital, St. John's Regional Medical Center, St. John's Pleasant Valley Hospital, and were acting in the course and scope of their authority. Defendants had actual direction and control over the work of employees Does 50-100, including the right to supervise, direct, and control the manner of work performed, and to fire them. Does 1-50 were hired by defendants on the dates on which services were rendered to plaintiffs. The acts of misconduct by Does 50-100 arose out of their employment responsibilities. The Does exhibited reckless disregard for human life, and proximately caused injury to plaintiffs.

10th c/a for civil RICO 18 U.S.C. § 1964 Incorporates prior allegations. Defendants continued their criminal enterprise from 12/28/99, to fraudulently implant plaintiff with electronic devices to mimic medical conditions, to experiment, and for financial gain. The devices were placed in areas of the body that, when triggered, would cause the intended pre-diagnosed medical conditions, such as high blood pressure, asthma, and viral syndrome in plaintiffs. Defendants used plaintiffs' family history medical questionnaires to fraudulently pre-diagnose plaintiffs with medical conditions consistent with the medical history of their ancestors. While Richard Cain participated in a pre-employment physical examination on 12/28/99 at Sansum, defendants fraudulently diagnosed him with high blood pressure and prescribed Lisinopril. For more than 10 years, defendants monitored and prescribed hundreds or thousands of Lisinopril pills without a true medical condition. They continued to treat plaintiff under the guise of his high blood pressure, so they could monitor and maintain the devices. During visits, plaintiff was placed in an unconscious state as subcutaneous devices were implanted, designed to cause his blood pressure to fluctuate, causing him to seek medical treatment. They also maintained and controlled the triggering mechanisms of the devices. He discovered through investigation implant leads and foreign devices for the years 2004 and 2008, after he had visited the facilities.

Dr. Mike Fealy is the conduit surgeon present on both of plaintiff's hospital visits, and is on record as being associated with both St. John's hospitals, and Goleta Valley Cottage Hospital, all of which admitted plaintiff. Cottage Imaging, Pueblo Radiology, Pueblo Radiology Medical Group Inc., and defendants Fealy, Mastrovito, Clark, Wrench, K. Daughters, and Pojunas furthered the criminal enterprise in an attempt to obstruct justice by removing their names from business records, and fraudulently finding reports to be



normal despite that implant leads and foreign devices are visible on the X-rays. Defendants attempted to conceal their crimes of non-consensually implanting the victim with electronic devices in the heart in an attempt to murder him after years of alleged high blood pressure/hypertension. The devices were intentionally placed in plaintiff's heart to cause his death.

Plaintiff recently had a thorough physical exam which revealed surgical scars, and blood pressure of 127/82. Prior to discovery of the devices, his blood pressure was 160/180 over the last 10 years on each visit to defendants' facilities. Defendants' criminal enterprise for financial gain was to implant him with devices which mimicked illnesses, causing plaintiffs and insurance companies to be billed for their services. His billing from St. Johns was more than \$12,000. Their pattern of racketeering activity consisted of fraud for financial gain, concealment, obstruction of justice, obstruction of a criminal investigation, money laundering, and attempted murder, over a 10 year period. Defendants implanted electrodes into his chest on 3/10/08 during his overnight stay at SJRMC, designing them so they would cause what appeared to be a natural heart attack after years of high blood pressure.

A victim may investigate and prosecute defendants under RICO as a private attorney general. Plaintiff Richard Cain began his racketeering investigation on 4/28/12, uncovering additional victims. A CT scan of newly discovered unrelated victim G.W. shows evidence of implant leads and foreign devices. G.W. is Jewish, and has never consented to surgeries implanting leads or foreign devices. As a private attorney general, Richard Cain may appear in court without a license to practice law. Civil RICO statutes are supplemented by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Organized crime is a serious problem, for which prosecutorial resources are inadequate. Plaintiff Richard Cain will continue to seek out victims of this network of organized crime of non-consensual implantation of subcutaneous devices.

The complaint prays for general damages; past, present and future medical expenses, loss of earning capacity and lost wages, damages for emotional distress, costs of suit, pre- and post-judgment interest on all damages from the date of injury at the highest rate possible.

DEMURRERS: The sole issue raised by a general demurrer is whether the facts pleaded state a valid cause of action, not whether they are true. Thus, no matter how unlikely or improbable, plaintiff's allegations must be accepted as true for the purpose of ruling on the demurrer. *Del E. Webb Corp. v. Structural materials Co.* (1981) 123 Cal.App.3d 593, 604. Questions regarding plaintiffs' ability to prove the allegations are of no concern in ruling on a demurrer. *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214. The allegations of the complaint are not accepted as true only if they contradict or are inconsistent with facts judicially noticed by the court, are contradicted by an attached exhibit, or contradict an earlier admission made by the party, none of which appear to be at issue herein.

While the six demurrers before the Court differ in some respects, there are issues that are common among them. In the interests of judicial economy and expedience, the Court will address the various issues collectively.



Guardian ad litem appointment/appearance in propria persona With respect to the plaintiffs other than Richard Cain, the defendants raise several issues, including: (a) plaintiffs' failure to have a guardian ad litem appointed for the minors, and (b) plaintiff Richard Cain's inability to represent any plaintiff other than himself in pro per. The court file contains orders appointing Richard Cain as guardian ad litem for Christopher Cain and Cayden Cain on July 25, 2012. Certainly, those documents should have been served upon the defendants. Further, the complaint should indicate that Richard Cain is not only a plaintiff in his own right, but has been appointed as guardian ad litem for the two minor plaintiffs. The existence of a guardian ad litem is therefore a non-issue in this action, and to the extent any of the demurrers were based upon the apparent non-existence of a guardian ad litem for the children, they are overruled.

Richard Cain's ability to represent either the minor or newly added plaintiff "G.W." in pro per, is quite another matter. Richard Cain does not allege that he is a licensed attorney, and in fact in ¶ 135 of the FAC argues that he may appear in court without a license to practice law, implicitly acknowledging that he is not a licensed attorney. Further, Richard Cain's assertions that he can appear on behalf of others as a private attorney general, without being licensed as an attorney, is legally wrong. While it is entirely permissible for Richard Cain to appear in pro per on his own behalf, only a licensed attorney can appear in court for another person. See *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 547. Consequently, Richard Cain may not appear in court to represent either his children or plaintiff G.W. The demurrers to the FAC are therefore sustained, to the extent the FAC is being prosecuted on behalf of Christopher Cain, Cayden Cain, and plaintiff G.W. Leave to amend is granted, but the children's claims may not be pursued unless they are represented by a licensed attorney. To the extent G.W. or any other future plaintiffs are a competent adults, they can represent themselves in pro per (by indicating that status in the same manner that Richard Cain did in the complaints filed to date, by including his or her name and address at the top of the pleading, and indicating that he or she is appearing in propria persona), or by a licensed attorney in any amended pleading, but cannot be represented by Richard Cain.

Amendment to add new parties plaintiff and defendant. Some concern was expressed for the addition of new parties, both plaintiff and defendant, via the FAC. Under CCP § 472, any pleading may be amended once by the party of course, and without costs, at any time before the answer or demurrer is filed, or after demurrer and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party. The original complaint was filed in July 2012. The FAC was filed on August 7, 2012, apparently before service upon any defendant. There is authority that Section 472, in failing to limit the types of amendments which may be made, in fact permits the addition of new parties as either plaintiffs or defendants, without leave of court. See *Ryan G. v. Department of Transportation* (1986) 180 Cal.App.3d 1102, 1105.

To the extent plaintiffs wish to bring in further defendants, now that their one opportunity to amend as of right is gone, they certainly can do so by DOE amendment, or by obtaining leave of court to do so. Of course, utilizing a DOE amendment preserves the statute of limitation as of the time the action was originally filed using the DOE defendant. If plaintiff chooses to add defendants directly, rather than as DOE defendants, whether the claims are being brought within the applicable statutes of limitation will be determined as of the



date those defendants are first named in a properly filed complaint.

Failure to serve DOE Amendment Defendant Wayne Baldwin (one of the Pueblo defendants) demurs to the entire complaint, contending that he is not a proper party to the action and the court has no jurisdiction over him, because although the summons with which he was served indicated that he had been named him as DOE 3, he has no knowledge or evidence that plaintiff filed the required amendment to the complaint. The DOE amendment naming Mr. Baldwin as DOE 3 was, in fact, filed on August 30, 2012. Further, there is authority that, where the summons states that the defendant is being sued as a DOE defendant, the amendment form need not be served upon the defendant. *Drotleff v. Renshaw* (1949) 34 Cal.2d 176, 181. The demurrer by Mr. Baldwin on this ground is therefore overruled.

1st c/a for civil conspiracy; 8th c/a for respondeat superior, The demurrers to these "causes of action" are sustained, without leave to amend.

A conspiracy involves concerted action in pursuit of a common plan or design to commit a tortious act, in which the conspirators actively part, or further the conspiracy by cooperation or request, by lending aid or encouragement to the wrongdoers, or by ratifying and adopting those acts done for his or her benefit. See *Cully v. Bianca* (1986) 186 Cal.App. (1986) 186 Cal.App.3d 1172, 1176. The doctrine of respondeat superior (literally "let the master answer") provides that an employer or principal is vicariously liable for the wrongful conduct of his or her employees or agents committed within the scope of the employment or agency. See, e.g., *Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967; *Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 617-618.

Neither civil conspiracy nor respondeat superior is a separate cause of action. Rather, each is a theory under which some defendants can be held legally responsible for the actions of others in committing underlying torts. The facts giving rise to these concepts should be alleged in the complaint, but do not stand alone as separate causes of action. The Court notes that plaintiffs appear to have understood defendants' claims with respect to these causes of action, as they were omitted in the now-stricken Second Amended Complaint.

The Court will note further that defendant Shoemaker, in her demurrer, contended that courts require specific evidence of each element of the conspiracy, citing *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582. She therefore concluded that the demurrer must be sustained, because the complaint contains no facts to establish formation and operation of the conspiracy. The Court will note that *Kidron* is not a pleading case; *Kidron* involved the granting of a nonsuit at trial, where plaintiff was unable to present specific evidence of each element of the conspiracy at trial. Whereas plaintiffs will face a heavy burden at trial, in terms of establishing through the submission of admissible evidence that each and every member of the conspiracy (the many defendants named in the complaint) acted in concert and came to a mutual understanding to accomplish a common and unlawful plan, and that one or more committed overt acts to further it, on demurrer, the court is concerned only with the adequacy of the allegations in pleading the existence of the conspiracy.



Generally speaking, although the pleaded facts must show that something was done which, without the conspiracy, would give rise to a cause of action (i.e., the underlying tort), the formation and operation of a conspiracy may be alleged in general terms. The general allegation that defendants “did agree together”, or “conspired together,” are sufficient to allege a conspiracy. See *Farr v. Bramblett* (1955) 132 Cal.App.2d 36, 47; *Greenwood v. Mooradian* (1955) 137 Cal.App.2d 532, 535-537. The acts done pursuant to the conspiracy and inflicting the wrong should be alleged; the specific acts constituting the conspiracy need not be alleged. *Greenwood v. Mooradian*, *supra*.

Here, plaintiffs have alleged that defendants are engaged in a sophisticated network of medical facilities, doctors, and radiologists conspiring to non-consensually implant Radio Frequency Identification Devices into individuals for experimental purposes and financial gain and that, when triggered, the devices cause the victims to experience illnesses which require medical attention. They allege further that radiologists participated by indicating X-rays and scans were normal, when they actually revealed foreign devices. Finally, plaintiffs allege that the last overt act in the conspiracy occurred on 4/17/12, when Dr. Ramona Clark fraudulently amended plaintiff Richard Cain’s 2004 radiology report by deleting her name. To the extent that the complaint suffices to adequately allege any of the appropriate underlying causes of action—and to the extent that the underlying tort is of the sort for which conspiracy liability is appropriate—these allegations of conspiracy, however difficult they may be to prove with respect to each and every defendant, are likely sufficient to allege the existence of a conspiracy and require the overruling of particular defendants’ demurrers to those claims.

2nd c/a for medical malpractice; 8th c/a for negligence The demurrer to the professional negligence cause of action is overruled; the demurrer to the general negligence cause of action is sustained, with leave to amend, as outlined below.

Both professional medical negligence and general negligence claims are based upon the defendant’s failure to meet the applicable standard of care. Physicians are held to that degree of skill, knowledge, and care ordinarily possessed and exercised by members of the medical profession under similar circumstances. *Bardessono v. Michels* (1970) 3 Cal.3d 780, 788. A health care provider’s medical expertise and skill is merely a factor that affects the standard of care governing a negligence action, and a single set of facts therefore cannot give rise to separate and distinct claims for ordinary and professional negligence. *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 998-1001.

While there are minor differences, plaintiffs’ medical malpractice and general negligence causes of action are largely duplicative. In the medical malpractice cause of action, plaintiffs allege that defendants breached their duties to plaintiffs by (a) failing to inform plaintiffs they were being implanted with subcutaneous devices that could cause permanent injury; (b) failing to offer plaintiffs a choice in participating in the experimentation; (c) failing to inform plaintiffs of the risks of implanting them with leads and other electronic devices; (d) failing to inform and warn plaintiffs about the experiments; (e) failing to obtain informed consent to perform the surgeries necessary to implant the devices; (f) performing surgeries without plaintiffs’ knowledge or approval; (g) negligently performing the surgeries; (h) failing to provide plaintiffs with adequate post-operative care; and (i) abandoning plaintiffs.



Similarly, in the general negligence cause of action, plaintiffs allege that defendants breached their duties to plaintiffs by (a) failing to inform plaintiffs defendants would be performing non-consensual surgeries and implanting subcutaneous devices within their bodies; (b) failing to offer plaintiffs a choice in being implanted with RFIDs; (c) failing to inform plaintiffs of the risks of being implanted; (d) failing to inform/warn plaintiffs they were subjects of experiment; (e) failing to obtain informed consent to perform the surgical implantation; (f) performing surgery without plaintiffs' knowledge or approval; (g) negligently performing surgery; (h) medical facilities failing to supervise doctors; (i) medical facilities failing to intervene; (j) medical facilities failing to train doctors; (k) failing to notify plaintiffs of surgeries; and (l) medical facilities permitting doctors to carry out experiments for financial gain.

The general negligence cause of action alleges forms of negligence which could only be characterized as professional negligence. In the absence of some separate and distinct basis for a general negligence claim that has nothing to do with the defendants' status as health care providers, a separate general negligence claim cannot be stated. Therefore, the demurrers to the general negligence claim are sustained. Leave to amend will be allowed, but only to allow plaintiffs the opportunity to allege any basis for a general negligence claim that is separate and distinct from negligence that necessarily arises from defendants' status as health care providers.

Defendants' further demurrer arguments with respect to the negligence causes of action are largely based upon the FAC's lack of allegations against specific defendants to establish the existence of a duty to plaintiffs. Certainly, with respect to some tort causes of action, the allegation that the tort was being committed by one or more defendants as part of a larger conspiracy acts to save the cause of action where allegations of a particular defendant's conduct are missing. However, conspiracy is defined as "a combination of two or more persons to accomplish by concerted action a criminal or unlawful purpose, or a lawful purpose by criminal or unlawful means." *Parkinson Co. v. Building Trades Council* (1908) 154 Cal. 581, 593. It defies logic to allege that two or more persons are combining to accomplish by concerted action, a negligent failure to meet the standard of care. Conspiracy and either professional or general negligence simply do not appear to be able to coexist. The Court has therefore concluded that the existence of the conspiracy allegations would not suffice to establish a duty owed by each defendant.

However, the FAC also includes an allegation that there existed at all relevant times a physician-patient, and/or health care provider-patient relationship between plaintiffs and each defendant, and that each defendant provided medical services to plaintiffs and charged plaintiffs for those services. [FAC @ page 6, lines 15-20.] The FAC then alleges that defendants acted negligently in, among other things failing to inform plaintiffs that they were being implanted with subcutaneous devices, failing to advise them of the risks of doing so, failing to advise them that they were the subjects of experimentation, negligently performing the surgeries, failing to provide adequate post-operative care, etc., all resulting in harm to plaintiffs.

The question then becomes whether these allegations are sufficient to give rise to each defendant's duty to plaintiffs. Medical negligence, like other negligence claims, may be



pleaded in general terms. It is sufficient, at least with respect to withstanding a general demurrer, to allege that certain treatment was negligently administered by defendant to plaintiff's damage without alleging in what respect the treatment may have been deficient. *Stafford v. Shultz* (1954) 42 Cal.2d 767, 774. The essential allegations in a medical negligence action which should be pleaded are the physician-patient relationship giving rise to the physician's duty of care, defendant's act or omission which breached the duty of care, the element of causality between that act or omission and plaintiff's resultant injury, and actual damages. See *Stafford v. Shultz*, supra, 42 Cal.2d at 774-775; *Keene v. Wiggins* (1977) 69 Cal.App.3d 308, 312.

Certainly, the FAC does not advise the Court as to when, how, or why most of the medical professionals were consulted, and by which plaintiffs they were consulted. However, in light of the facts that negligence can be generally pleaded, and that plaintiffs have alleged the ultimate facts of a health care provider-patient relationship between plaintiffs and defendants, and breach of duties owed by health care providers by implanting subcutaneous devices within plaintiffs while failing to obtain any consent, failing to obtain informed consent, and failing to advise plaintiffs of the risks involved, among other things, the Court is forced to conclude that the professional negligence claim has been adequately stated. The demurrer to the professional negligence claim will therefore be overruled.

Certainly, plaintiffs will need, at trial, to establish by competent evidence, all of these facts as to each defendant, in order to recover against each defendant. No party has raised, and the Court has not evaluated, whether plaintiffs might be able to avail themselves of some theory under which their evidentiary burden of showing which defendant or defendants caused plaintiffs' injuries and damages would be shifted to defendants, e.g., the alternative liability doctrine of *Summers v. Tice* (1948) 33 Cal.2d 80, *res ipsa loquitur*, or some other theory.

3rd c/a for medical battery The demurrers to the medical battery cause of action are overruled.

A physician's performance of a medical procedure to which the patient has not consented constitutes a battery. *Cobbs v. Grant* (1972) 8 Cal.3d 229, 240; *Saxena v. Goffney* (2008) 159 Cal.App.4th 316, 326-327. Plaintiffs have alleged that they were implanted with subcutaneous devices not just without their consent, but without their knowledge. They further allege, in allegations incorporated by reference into the cause of action, that defendants are all engaged in a sophisticated network of medical facilities, doctors, and radiologists conspiring to non-consensually implant Radio Frequency Identification Devices into individuals for experimental purposes and financial gain and that, when triggered, the devices cause the victims to experience illnesses which require medical attention. They allege further that radiologists participated by indicating X-rays and scans were normal, when they actually revealed foreign devices. Finally, plaintiffs allege that the last overt act in the conspiracy occurred on 4/17/12, when Dr. Ramona Clark fraudulently amended plaintiff Richard Cain's 2004 radiology report by deleting her name.

Defendants have demurred to the medical battery cause of action on various grounds, including (a) that the cause of action can only be pleaded in negligence rather than as an



intentional tort; (b) that there are no allegations as to specific defendants with respect to their having committed any medical battery; (c) the claim is duplicative of the cause of action for violation of CC § 52.7.

The initial claim—that a medical battery can only be pleaded as a claim for professional negligence—is puzzling. Plaintiffs have clearly alleged a claim for medical battery, i.e., a claim for battery arising out of the provision of health care services, in the performance of medical procedures for which no consent has been given. This is not a case where there is a lack of informed consent; rather, this is a case where plaintiffs allege there was absolutely no consent at all, informed or otherwise, and in fact they were unaware that defendants had implanted subcutaneous devices within them. The distinctions made by authorities such as *Central Pathology Services Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, cited by the Pueblo defendants, in terms of whether or not a medical battery arises from the provision of medical services, has nothing whatsoever to do with the existence of the claim as a separate tort. Rather, it related solely to the statutory prohibition in CCP § 425.13 against the pleading of a punitive damage claim against a health care provider in actions arising from the provision of health care services by a health care service provider, without first having complied with the requirements of that section. To the extent that any of the defendants believe that entitling the cause of action as one for medical battery in any way invalidates the claim, their demurrers on that ground are overruled.

Most of the demurring defendants assert that there are no allegations in the FAC which support the conclusion that they committed any form of battery upon plaintiffs. Certainly, the FAC does not articulate, with respect to each and every demurring defendant, conduct which would support a claim for medical battery personally committed by each such defendant. However, it does include the allegations of a greater conspiracy involving all defendants. While this Court has sustained the demurrers to the conspiracy claims, to the extent they are alleged as a separate cause of action, in doing so the Court noted that the very general way in which conspiracy can properly be alleged renders the allegations—which are incorporated into this cause of action by reference—sufficient to bring each defendant into the appropriate causes of action, in spite of the fact that there are no allegations of their direct conduct in committing the tort in question. Therefore, that there are no specific allegations against individual defendants with respect to their personal commission of medical battery, does not defeat the cause of action, and the demurrers on this ground must be overruled.

Finally, defendants assert that the medical battery claim is duplicative of the cause of action for violation of CC § 52.7. As noted in the Court's discussion of that cause of action, the argument ignores both that the cause of action for violation of Section 52.7 provides for additional remedies not available under a medical battery claim, and that Section 52.7(f) expressly provides that a claim pursued under Section 52.7 is independent of any other actions, remedies, or procedures that may be available to an aggrieved party pursuant to other law. The demurrer on this ground is therefore overruled.

5th c/a for non-disclosure and concealment; 6th c/a for intentional misrepresentation, and 7th c/a for actual fraud/deceit The demurrers to all fraud-based causes of action are sustained, with leave to amend.



Plaintiffs have stated three fraud-based causes of action in the FAC, although the caption of the FAC only reflects two such causes of action. Both the 6th and 7th causes of action appear to be based upon the same conduct, in making affirmative misrepresentations that plaintiffs' X-rays and scans were normal and no foreign objects existed in them, which caused plaintiff Richard Cain to be shunned in the community, and caused other medical professionals to change their opinions as to whether foreign objects were depicted in the X-rays and scans (6th c/a), and on which plaintiffs relied, placing their health in peril.

With respect to each form of fraud, each element of fraud must be alleged factually and specifically, and the policy of liberal construction of pleadings will not be invoked to sustain a pleading that is defective in any material respect. *Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331. The rule arose because allegations of fraud involve a serious attack on character, and fairness to the defendant demand that he or she should receive the fullest possible details of the charge in order to prepare his or her defense. *Hill Transportation Co. v. Southwest Forest Industries* (1968) 266 Cal.App.2d 702, 707. The fraud claims alleged by plaintiffs herein do not meet the standard of factual specificity required to maintain them, requiring that the demurrers to each claim be sustained, with leave to amend.

With respect to fraudulent concealment, the fraud consists of the suppression of fact by one who is bound to disclose it, or who gives information of other facts that are likely to mislead for want of communication of that fact. CC § 1710(3); *People v. Highland Fed. Sav. & Loan* (1993) 14 Cal.App.4th 1692, 1718. Concealment is actionable generally under four circumstances: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. *Bank of America Corp. v. Superior Court* (2011) 198 Cal.App.4th 862, 870-871. Specific factual pleading of fraudulent concealment would necessarily entail the pleading of all facts necessary to establish one or more of the circumstances giving rise to the duty to disclose.

Here, plaintiffs allege that all defendants failed to disclose and concealed (a) that plaintiffs had been implanted without their consent; (b) that plaintiffs were subjects of experiments; (c) that defendants were being paid to participate in experiments by supervising, upgrading, record-keeping, and concealing the implants, by fabricating the radiology reports in an effort to conceal their unlawful experiments; and (d) that plaintiffs were not informed of the risks associated with non-consensual implantation of implant leads and RFIDs. Plaintiffs further allege that defendants knew that if they fully disclosed their intentions to plaintiffs, plaintiffs would decline the implantations.

To the extent that any one claim for fraudulent concealment has been properly alleged, the conspiracy allegations, which were incorporated by reference into all of the fraud causes of action, including the 5th cause of action for fraudulent concealment, the cause of action would likely stand against all defendants. However, the fraud allegations do not properly state sufficient specific facts to establish a claim for fraudulent concealment against any one defendant. Therefore, the demurrers to the 5th cause of action will be sustained, with



leave to amend.

Intentional misrepresentation involves affirmative making of a false representation with knowledge of its falsity or reckless disregard of the truth, with intent to induce another to rely on the representation, justifiable reliance, and resulting damage. See *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638. Specific pleading of intentional misrepresentation requires the pleading of facts to show how, when where, to whom, and by what means the representations were made. *Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74.

The intentional misrepresentation claims allege that defendants represented to plaintiffs that (a) X-rays for all 3 were normal, and showed no foreign objects; (b) CT scans of Richard Cain were normal and showed no foreign objects; (c) they conveyed to other medical professionals that the X-rays and scans were normal. While there are some allegations, primarily in the attachment of some radiological reports, that might tend to support some of the allegations, the intentional misrepresentation causes of action do not contain sufficient specific allegations as to how, when, where, to whom, and by what means the representations were made. The Court will therefore sustain the demurrers to the 6th and 7th causes of action, both of which allege intentional misrepresentation, with leave to amend.

4th c/a for nonconsensual implantation of subcutaneous devices (CC § 52.7) The demurrers to this cause of action are overruled.

Section 52.7 prohibits a person from requiring, coercing, or compelling any other individual to undergo the subcutaneous implanting of an identification device. CC § 52.7(a). It provides possible remedies of an initial civil penalty of no more than \$10,000, a continuing civil penalty of no more than \$1,000 for each day the violation continues, attorneys fees, litigation costs, and expert witness fees and expenses to a prevailing plaintiff, compensatory damages, punitive damages, and injunctive relief. CC § 52.7(b). The action must be commenced within 3 years of the date upon which the identification device was implanted, except that if the victim was a dependent adult or minor when implantation occurred, the action must be commenced within 3 years after the plaintiff, or his or her guardian or parent, discovered or reasonably should have discovered the implant, or within 8 years after attaining the age of majority, whichever occurs later. CC § 52.7(c). A defendant is estopped to assert a statute of limitations defense when its expiration is due to conduct by defendant inducing plaintiff to delay filing the action, or threats made by defendant causing duress upon defendant. *Id.* The provisions of the section are to be liberally construed to protect privacy and bodily integrity. CC § 52.7(e). Further, actions brought under Section 52.7 are independent of any other actions, remedies, or procedures that may be available to an aggrieved party pursuant to any other law. CC § 52.7(f).

Here, plaintiffs allege that defendants violated CC § 52.7 by implanting plaintiffs with subcutaneous devices including implant leads and RFIDs for financial gain and medical experimentation purposes, without plaintiffs' consent, and in furtherance of the conspiracy.

Defendants make certain contentions in their demurrers, with respect to this cause of action. First, defendant Shoemaker in her demurrer, and defendants Clark, Mastrovito,



Wrench, Baldwin, and the Pueblo Radiology entities, in their demurrer, contend that the claim is duplicative of the medical battery claim, and that this duplication requires that the demurrer be sustained. That argument ignores both that the cause of action for violation of Section 52.7 provides for additional remedies not available under a medical battery claim, and that Section 52.7(f) expressly provides that a claim pursued under Section 52.7 is independent of any other actions, remedies, or procedures that may be available to an aggrieved party pursuant to other law. The demurrer on this ground is therefore overruled.

Second, defendant Dignity Health, dba SJPVH and SJRMC contend that the cause of action is time barred. Dignity asserts that Richard Cain has acknowledged that his treatment at SJPVH and SJRMC was limited to March 2008, and his lawsuit is therefore barred because it was not filed until July 2012. The Court notes that the cause of action alleges that defendants violated Section 52.7 by implanting “plaintiffs” with subcutaneous devices. The demurrer does not address any claims, however vaguely they may have been asserted, that the minor plaintiffs were implanted with subcutaneous devices. Given that the minor plaintiffs are only 4 ½ and 6 years of age, and they expressly have until 8 years after they reach the age of majority within which to file their claim, any claims they have are not barred.

Further, under the express terms of Section 52.7(c), a defendant is estopped to assert a statute of limitations defense when its expiration is due to conduct by defendant inducing plaintiff to delay filing of the action. The Court notes that the focus of Section 52.7 is on coercive implantation, and implies that the victim was fully aware that the implantation was being performed, but was deprived of any choice in the matter. The tenor of plaintiffs’ complaint is that they were completely unaware until 2012 that they had been implanted with subcutaneous devices. The coercive nature of the implantation also arises from their not having any choice in the matter—since they had no idea it was occurring. Conduct by a defendant in failing to inform a victim that a subcutaneous device had been implanted could logically be construed as a means of inducing the victim to delay the filing of the action. Because it does not appear to the Court that the cause of action, even as alleged by plaintiff Richard Cain, is necessarily barred as a matter of law, the demurrer on statute of limitations grounds will be overruled.

Third, a number of the demurrers assert that the FAC contains no allegation that the specific demurring defendants required, coerced, or compelled any plaintiff to undergo the subcutaneous implantation of any device, and that the claim therefore fails to state a cause of action against those demurring defendants. Again, the argument fails to account for the conspiracy allegations, which are incorporated by reference into the cause of action. Therefore, that there are no specific allegations against individual defendants with respect to their personal commission of a violation of Civil Code section 52.7, does not defeat the cause of action, and the demurrers on this ground must be overruled.

10th c/a for civil RICO The demurrers to the RICO cause of action are sustained, with leave to amend.

Plaintiffs have alleged a cause of action for civil violation of the Federal Racketeer Influenced and Corrupt Organizations Act, commonly referred to as RICO. They have



alleged that defendants have engaged in a criminal enterprise, commencing from 12/28/99, to fraudulently implant plaintiff with electronic devices to mimic medical conditions, to experiment, and for financial gain. The devices were placed in areas of the body that, when triggered, would cause the intended pre-diagnosed medical conditions, such as high blood pressure, asthma, and viral syndrome in plaintiffs. Defendants used plaintiffs' family history medical questionnaires to fraudulently pre-diagnose plaintiffs with medical conditions consistent with the medical history of their ancestors. While Richard Cain participated in a pre-employment physical examination on 12/28/99 at Sansum, defendants fraudulently diagnosed him with high blood pressure and prescribed Lisinopril. For more than 10 years, defendants monitored and prescribed hundreds or thousands of Lisinopril pills without a true medical condition. They continued to treat plaintiff under the guise of his high blood pressure, so they could monitor and maintain the devices. During visits, plaintiff was placed in an unconscious state as subcutaneous devices were implanted, designed to cause his blood pressure to fluctuate, causing him to seek medical treatment. They also maintained and controlled the triggering mechanisms of the devices. He discovered through investigation implant leads and foreign devices for the years 2004 and 2008, after he had visited the facilities.

Plaintiffs alleged further that Dr. Mike Fealy is the conduit surgeon present on both of plaintiff's hospital visits, and is on record as being associated with both St. John's hospitals, and Goleta Valley Cottage Hospital, all of which admitted plaintiff. Cottage Imaging, Pueblo Radiology, Pueblo Radiology Medical Group Inc., and defendants Fealy, Mastrovito, Clark, Wrench, K. Daughters, and Pojunas furthered the criminal enterprise in an attempt to obstruct justice by removing their names from business records, and fraudulently finding reports to be normal despite that implant leads and foreign devices are visible on the X-rays. Defendants attempted to conceal their crimes of non-consensually implanting the victim with electronic devices in the heart in an attempt to murder him after years of alleged high blood pressure/hypertension. The devices were intentionally placed in plaintiff's heart to cause his death.

Plaintiff recently had a thorough physical exam which revealed surgical scars, and blood pressure of 127/82. Prior to discovery of the devices, his blood pressure was 160/180 over the last 10 years on each visit to defendants' facilities. Defendants' criminal enterprise for financial gain was to implant him with devices which mimicked illnesses, causing plaintiffs and insurance companies to be billed for their services. His billing from St. Johns was more than \$12,000. Their pattern of racketeering activity consisted of fraud for financial gain, concealment, obstruction of justice, obstruction of a criminal investigation, money laundering, and attempted murder, over a 10 year period. Defendants implanted electrodes into his chest on 3/10/08 during his overnight stay at SJRMC, designing them so they would cause what appeared to be a natural heart attack after years of high blood pressure.

Plaintiff alleges that he began his racketeering investigation on 4/28/12, uncovering additional victims. A CT scan of newly discovered unrelated victim G.W. shows evidence of implant leads and foreign devices. G.W. is Jewish, and has never consented to surgeries implanting leads or foreign devices.

Each of the demurrers challenges the RICO cause of action. Given the complexity of RICO,



the superficiality with which defendants addressed the cause of action is startling. The Court feels compelled to remind defendants that, unless the arguments they submit in support of their demurrers identifies the inadequacy, and convinces the court that the pleading is in fact inadequate in the manner claimed, the Court will overrule the demurrer—even if it believes the cause of action is improper or inadequate in other respects. It is not the Court's obligation to discover and point out pleading defects, or to complete the inadequate investigation and research conducted by defendants prior filing their demurrers. The Court will rule on only those defects properly raised by the demurrers, and only for the reasons argued in the demurrers, since to do anything else would violate plaintiffs' due process rights.

Most demurring defendants first challenge plaintiffs' reference to 18 U.S.C. § 1964, which sets forth remedies for RICO violations, rather than referring to 18 U.S.C. § 1962, which identifies RICO violations. The Court considers this a de minimus error, given plaintiffs' identification of the Act by name.

One demurrer contends that RICO deals only with receipt of income from another person based upon an improper investment or unlawful debt, and that it has nothing to do with medical care. To the contrary, there is nothing about RICO which would necessarily exclude actions in providing medical care from its terms, so long as RICO's requirements were otherwise complied with. Further, RICO deals with much, much more than improper investments and unlawful debts. The definition of "racketeering activity" set forth in 18 U.S.C. § 1961(1), and the lengthy list of violations which can constitute racketeering activity, makes that much crystal clear.

Most defendants contend that their demurrers must be sustained, because there are no express allegations about their individual participation in activities prohibited by RICO. That ignores that 18 U.S.C. § 1962(d) makes it unlawful for any person to conspire to violate any of the provisions of Section 1962(a), (b), or (c). Here, plaintiffs have included allegations which the Court has found sufficient to allege a conspiracy involving all defendants. Therefore, the absence of allegations directly tying a particular defendant to the acts complained of does not require the sustaining of a demurrer on that basis.

One demurrer asserts that violations of state statutory and common law do not satisfy the "predicate Acts" requirement of RICO, and also that the prohibited pattern of racketeering activity requires that there be at least two acts of racketeering activity, the last of which occurred within the last 10 years, and must amount to or threaten the continued likelihood of continued criminal activity. 18 U.S.C. § 1961(5); *McMartin v. Children's Inst. International* (1989) 212 Cal.App.3d 1393. In making the argument, the demurrer refers only to the predicate acts under state law, which includes "any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical, which is chargeable under State law and punishable by imprisonment for more than one year."

Plaintiffs allege that the pattern of racketeering activity consisted of fraud for financial gain, concealment, obstruction of justice, obstruction of a criminal investigation, money laundering, and attempted murder, over a 10 year period. The attempted murder allegation



could conceivably constitute an “act or threat involving murder,” within the definition of racketeering activity. Further, money laundering is another activity which 18 U.S.C. § 1961 (1) identifies as constituting racketeering activity. The demurrer argument has not met its burden of convincing the Court that the RICO claim is therefore necessarily defective, in failing to allege more than one act of racketeering activity, requiring that the demurrer on this ground be overruled.

Finally, however, two of the demurrers identified that in order for racketeering activity to violate RICO, it must affect interstate commerce. See 18 U.S.C. § 1962(a), (b), and (c). In that respect the RICO cause of action, as alleged, necessarily fails. The demurrers to the RICO cause of action made on this ground are therefore sustained, with leave to amend.

**Tentative Ruling:**

Demurrers Sustained to 1st cause of action for conspiracy, and 9th cause of action for respondeat superior, without leave to amend.

Demurrers Sustained to the 5th cause of action for non-disclosure and concealment; 6th c/a for intentional misrepresentation, 7th c/a for actual fraud/deceit, 8th cause of action for general negligence, and 10th cause of action for civil RICO, with leave to amend.

Demurrers Sustained to FAC as a whole as to minor plaintiffs with leave to amend;  
Demurrers Sustained as to added plaintiff(s) with leave to amend.

Demurrers Overruled as to 2nd cause of action for professional negligence, the 3rd cause of action for medical battery, and the 4th c/a for nonconsensual implantation of subcutaneous devices (CC § 52.7).

Demurrers Overruled to the extent they are based on failure to appoint guardian ad litem, and failure to serve DOE amendment.