

FILED  
NORTH COUNTY DIVISION  
2011 APR -5 PM 3:24  
CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF SAN DIEGO**  
10 **NORTH COUNTY REGIONAL CENTER**

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12 TRI-CITY HEALTHCARE DISTRICT,  
A Governmental Entity, RICHARD A.  
13 CROOKS, an individual,

14 Plaintiffs,

15 vs.

16 KATHLEEN STERLING, an individual  
and DOES 1 through 50, inclusive,

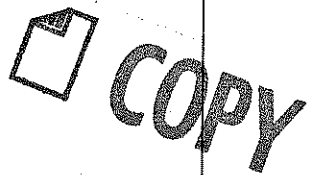
17 Defendants.

CASE NO. 37-2011-00052050-CU-PO-  
NC

**DEFENDANT'S NOTICE OF  
DEMURRER AND DEMURRER TO  
COMPLAINT**

Judge: Hon. Jacqueline M. Stern  
Dept.: 27  
Complaint Filed: March 3, 2011  
Trial Date: Not Set

Hearing Date: July 15, 2011  
Hearing Time: 1:30 P.M.

 COPY

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20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that on July 15, 2011 at 1:30 p.m., or as soon thereafter  
22 as may be heard, in Department 27 of the above-entitled Court, located at 325 South  
23 Melrose, Vista, California 92081, Defendant Kathleen Sterling's ("Director Sterling")  
24 Demurrer to Plaintiffs Tri-City Healthcare District and Richard A. Crooks ("Plaintiffs")  
25 Complaint, dated March 3, 2011, will come on for hearing. This Demurrer is based on  
26 the grounds that the Complaint fails to state facts sufficient to constitute a defense and  
27 that the Cross-Complaint is uncertain. (CCP § 430.10(e)-(f).) Plaintiffs also do not have  
28 the legal capacity to sue for certain claims. (CCP § 430.10(b).) In addition, certain

1 claims are based upon a contract, and it cannot be ascertained from the pleading whether  
2 the contract is written, is oral, or is implied by conduct, and the contract is not attached  
3 and its terms are not sufficiently stated in the Complaint. (CCP § 430.10(g).) Director  
4 Sterling has also filed a concurrent Motion to Strike due to Plaintiffs' numerous improper  
5 prayers for relief in the Complaint, which motion will be heard at the same date and time  
6 as the instant Demurrer.

7 This motion will be based upon this Notice, the accompanying Memorandum of  
8 Points and Authorities and Request for Judicial Notice, all papers filed in this action, and  
9 such oral argument and documentary evidence as may be presented at the hearing on this  
10 matter.

### 11 12 **DEMURRER**

13 Director Sterling hereby demurs to Plaintiffs' Complaint, filed on March 3, 2011,  
14 as set forth below:

#### 15 16 **DEMURRER TO PLAINTIFFS' FIRST CAUSE OF ACTION**

17 The first cause of action for trespass does not state facts sufficient to constitute a  
18 cause of action. (CCP § 430.10(e).) Furthermore, the first cause of action is uncertain.  
19 (CCP § 430.10(f).) In addition, the claim is founded upon a contract, and it cannot be  
20 ascertained from the pleading whether the contract is written, is oral, or is implied by  
21 conduct, and the contract is not attached or the terms explained. (CCP § 430.10(g).)

#### 22 23 **DEMURRER TO PLAINTIFFS' SECOND CAUSE OF ACTION**

24 The second cause of action for battery does not state facts sufficient to constitute a  
25 cause of action. (CCP § 430.10(e).) Furthermore, the second cause of action is uncertain.  
26 (CCP § 430.10(f).) In addition, the claim is founded upon a contract, and it cannot be  
27 ascertained from the pleading whether the contract is written, is oral, or is implied by  
28 conduct, and the contract is not attached or the terms explained. (CCP § 430.10(g).)

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DEMURRER TO PLAINTIFFS' THIRD CAUSE OF ACTION

The third cause of action for assault does not state facts sufficient to constitute a cause of action. (CCP § 430.10(e).) Furthermore, the third cause of action is uncertain. (CCP § 430.10(f).) In addition, the claim is founded upon a contract, and it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct, and the contract is not attached or the terms explained. (CCP § 430.10(g).)

DEMURRER TO PLAINTIFFS' FOURTH CAUSE OF ACTION

The fourth cause of action for "injury to business reputation and dilution" does not state facts sufficient to constitute a cause of action. (CCP § 430.10(e).) Furthermore, the fourth cause of action is uncertain. (CCP § 430.10(f).) In addition, the claim is founded upon a contract, and it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct, and the contract is not attached or the terms explained. (CCP § 430.10(g).)

DEMURRER TO PLAINTIFFS' FIFTH CAUSE OF ACTION

The fifth cause of action for negligence does not state facts sufficient to constitute a cause of action. (CCP § 430.10(e).) Furthermore, the fifth cause of action is uncertain. (CCP § 430.10(f).) In addition, the claim is founded upon a contract, and it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct, and the contract is not attached or the terms explained. (CCP § 430.10(g).)

Plaintiffs also do not have the legal capacity to sue for this claim, as there is no duty owed to Plaintiffs. (CCP § 430.10(b).)

DEMURRER TO PLAINTIFFS' SIXTH CAUSE OF ACTION

The sixth cause of action for declaratory relief does not state facts sufficient to constitute a cause of action. (CCP § 430.10(e).) Furthermore, the sixth cause of action is

1 uncertain. (CCP § 430.10(f).) In addition, the claim is founded upon a contract, and it  
2 cannot be ascertained from the pleading whether the contract is written, is oral, or is  
3 implied by conduct, and the contract is not attached or the terms explained. (CCP §  
4 430.10(g).) Plaintiff Richard Crooks also does not have the legal capacity to sue for this  
5 claim, as it relates to an alleged contract between Plaintiff Tri-City and Director Sterling.  
6 (CCP § 430.10(b).)


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WHEREFORE, Defendant Kathleen Sterling prays for judgment as follows:

1. That Defendant's Demurrer to Plaintiffs' Complaint, and to the causes of action at issue therein, be sustained without leave to amend;
2. That judgment be entered in favor of Defendant, and that she be deemed the prevailing party entitled to all costs and/or fees allowable under law; and
3. For such other and further relief as the court deems just and proper.

DATED: 2/05/11

THE McMILLAN LAW FIRM, A.P.C.

BY:   
\_\_\_\_\_  
Scott A. McMillan  
Attorney for Defendant  
Kathleen Sterling