

1 CHRISTOPHER E. COBEY, SBN 060821
 MICHAEL HARVEY, SBN 267684
 2 LITTLER MENDELSON
 A Professional Corporation
 3 50 W. San Fernando, 15th Floor
 San Jose, CA 95113.2303
 4 Telephone: 408.795.3425
 Facsimile: 408.790.0564
 5 ccobey@littler.com
mharvey@littler.com
 6

7 Attorneys for Defendants and Counterclaimants
 CHRISTOPHER CHEN, M.D., INC. AND
 8 CHRISTOPHER CHEN, M.D.

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11 KRISTI SHEHAN,
 12 Plaintiff,

13 v.

14 CHRISTOPHER CHEN, M.D., INC., a
 15 California Corporation; CHRISTOPHER
 CHEN, M.D., an individual; CACIE
 16 MULARCHUK, an individual, and DOES
 1-25,

17 Defendants.
 18

19 CHRISTOPHER CHEN, M.D, INC., a
 20 California Corporation; CHRISTOPHER
 CHEN, M.D., an individual,

21 Counterclaimants,
 22

23 v.

24 KRISTI SHEHAN,

25 Counterdefendant.
 26

Case No. C09-05546 MMC ADR

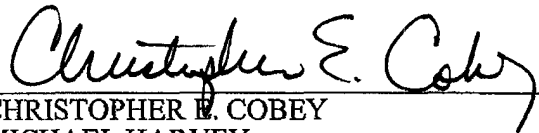
**STIPULATION AND [PROPOSED]
 ORDER PERMITTING FILING OF
 AMENDED COUNTERCLAIM OF
 DEFENDANTS CHRISTOPHER CHEN,
 M.D., INC. AND CHRISTOPHER CHEN,
 M.D.**

27 It is hereby stipulated by and between the parties hereto, through their respective
 28


1 attorneys of record that Defendant and Counterclaimant Christopher Chen, M.D., may file an
2 amended counterclaim, a copy of which is attached hereto as **Exhibit A**. Defendant and
3 Counterclaimant Christopher Chen, M.D. shall file and serve the amended counterclaim within ten
4 (10) court days after entry of order of this stipulation.

5 IT IS SO STIPULATED:

6 Dated: May 20, 2010

7
8 
9 CHRISTOPHER E. COBEY
10 MICHAEL HARVEY
11 LITTLER MENDELSON
12 A Professional Corporation
13 Attorneys for Defendants and
14 Counterclaimants,
15 CHRISTOPHER CHEN, M.D., INC. AND
16 CHRISTOPHER CHEN, M.D.

13 Dated: May 17, 2010

14
15 
16 DENISE E. CHAMBLISS
17 GARCIA & GURNEY
18 Attorneys for Plaintiff and Counterdefendant
19 KRISTI SHEHAN

19 **ORDER**

20 Based on the foregoing Stipulation, IT IS ORDERED that the amended counterclaim of
21 Defendants and counterclaimants may be filed and served pursuant to the above stipulation.

22 DATED: May 19, 2010

23
24 
25 THE HONORABLE MAXINE M. CHESNEY
26 United States District Court

25 Firmwide:95361283.3 064494.1001

1 CHRISTOPHER E. COBEY, SBN 060821
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CHRISTOPHER CHEN, M.D.
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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
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12 KRISTI SHEHAN,
13 Plaintiff,

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California Corporation; CHRISTOPHER
16 CHEN, M.D., an individual; CACIE
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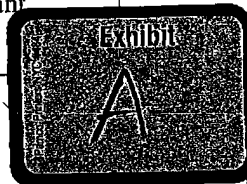
24 v.

25 KRISTI SHEHAN,
26 Counterdefendant
27
28

Case No. C09-05546 MMC

**FIRST AMENDED COUNTERCLAIMS OF
DEFENDANTS CHRISTOPHER CHEN,
M.D., INC. AND CHRISTOPHER CHEN,
M.D. FOR SPECIFIC RECOVERY OF
PERSONAL PROPERTY, AND FOR
INDEMNITY, DAMAGES AND
INJUNCTIVE RELIEF.**

DEMAND FOR JURY TRIAL



1 Defendants and Counterclaimants Christopher Chen, M.D., Inc. and Christopher
2 Chen, M.D. (hereinafter "Counterclaimants") demand a jury trial and allege as follows for their
3 Counterclaim against Plaintiff and Counterdefendant Kristi Shehan:
4

5 **JURISDICTION**

6 1. Counterdefendant's Complaint against Counterclaimants is predicated on the
7 employment laws of the United States, Fair Labor Standards Act of 1938, 29 U.S.C. Sections 201 *et*
8 *seq.*; California Labor Code Sections 201-204, 226, 510, and 512, California Business and
9 Professions Code Section 17200 *et seq.*, and quantum meruit.

10 2. This Court has jurisdiction to hears Counterclaimants' counterclaims, as they
11 arise out of the same nucleus of operative facts as Plaintiff's claims in this action.
12

13 **VENUE**

14 3. Venue is proper in this judicial district because the alleged claims against
15 Counterdefendant occurred in this district.
16

17 **PARTIES**

18 4. Counterclaimant Christopher Chen, M.D., Inc., is a California corporation
19 with its principal place of business in Pleasanton, California.

20 5. Counterclaimant Christopher Chen, M.D., is an individual who resides in
21 Contra Costa County, California.

22 6. On information and belief, Counterdefendant Kristi Shehan is an individual
23 who resides in San Luis Obispo.
24

25 **GENERAL ALLEGATIONS**

26 7. From about 2005 to 2010, Counterdefendant resided with Counterclaimant
27 Christopher Chen, M.D., and worked at various times from at least 2005 to 2009 as a contractor or
28 employee at Counterclaimants' medical offices, or for Counterclaimant Christopher Chen, M.D.

1 During her work for Counterclaimants, Counterdefendant had access to, and did access, personal,
2 private, and protected documents, information and property ("Protected Information") of
3 Counterclaimants concerning Counterclaimants' clients, associated medical care providers, and other
4 aspects of their business operations.

5 8. The Protected Information achieved that status pursuant to the Health
6 Information Technology for Economic and Clinical Health Act (HITECH Act), the Health
7 Insurance Portability and Accountability Act (HIPAA) of 1996, provisions of the California
8 Confidentiality of Medical Information Act (California Civil Code §56 *et seq.*; CMIA), California
9 Labor Code section 2860, the United States and California Constitutions on the right to privacy,
10 among other Federal and California statutes and common law.

11 9. Counterclaimants Christopher Chen, M.D., and Christopher Chen, M.D., Inc.,
12 are the sole owners of the Protected Information and are entitled to the immediate possession of it.

13 10. The Protected Information contains confidential, medical, personal, private,
14 consumer, financial, proprietary, and trade secret information, and has no intrinsic value to anyone
15 other than its owners, namely, Counterclaimants Christopher Chen, M.D., and Christopher Chen
16 M.D., Inc. The Protected Information were and is, and is intended to be, confidential and was
17 understood by Counterdefendant to be Protected Information. Counterclaimants and their patients
18 and employees have a strong expectation of privacy and a private interest in the information
19 contained in the Protected Information that Counterdefendant wrongfully removed from
20 Counterclaimants' possession, and that Counterdefendant has refused to return to Counterclaimants.

21 11. During at least 2005 to 2009, Counterdefendant wrongfully, in bad faith, and
22 without Counterclaimants' knowledge or consent, unlawfully removed Protected Information from
23 the medical offices and home of Counterclaimants Christopher Chen, M.D., and Christopher Chen
24 M.D., Inc., wrongfully retained the Protected Information for her personal and unauthorized
25 purposes, and distributed or disseminated the Protected Information to third parties.

26 12. In June and July 2009, Counterdefendant intentionally recorded at least two
27 confidential conversations of Counterclaimant Christopher Chen, M.D., using an electronic device,
28 without Counterclaimant's knowledge or consent. Counterclaimant Christopher Chen, M.D. had a

1 reasonable expectation that the conversations were not being overheard or recorded.
2 Counterdefendant's conduct was a substantial factor in causing the harm to Counterclaimant
3 Christopher Chen, M.D.

4 13. In 2009 to early 2010, Counterdefendant unlawfully and without consent or
5 authorization of either Counterclaimant, distributed, disclosed and disseminated Protected
6 Information to at least her attorneys (Garcia & Gurney, of Pleasanton, California). The Protected
7 Information was, in turn produced in March 2010 by Counterdefendant's counsel as part of
8 Counterdefendant's required "Initial Disclosures" in this action. A list of the Protected Information,
9 identified by the specification of the 1,505 documents which do not constitute Protected Information,
10 is attached hereto as **Exhibit A**.

11 14. On learning that Counterdefendant's Initial Disclosures contained Protected
12 Information, counsel for Counterclaimants sent a three-page letter on March 9, 2010 (via e-mail
13 attachment and U.S. Postal Service) to Counterdefendant's counsel, requesting the immediate return
14 to Counterdefendants' counsel of all Protected Information. A true and correct copy of this letter is
15 attached hereto as **Exhibit B**.

16 15. Having had no response from Counterdefendant's counsel, Counterclaimants'
17 counsel faxed and mailed a second letter to Counterdefendant's counsel on March 11, 2010. A true
18 and correct copy of this letter is attached hereto as **Exhibit C**.

19 16. Thereafter, later on March 11, 2010, counsel for Counterdefendant and
20 Counterclaimants spoke by telephone on the subject of the return of the Protected Information.
21 Counsel for Counterclaimants memorialized this conversation in a letter to Counterdefendant's
22 counsel, a true and correct copy of which is attached hereto as **Exhibit D**.

23 17. Following the initial case management conference, counsel for
24 Counterdefendant caused the return to Counterclaimants' counsel, on or about March 17, 2010, of
25 some, but not all, of the physical documents which are Protected Information. In her letter dated
26 March 15, 2010 which accompanied the returned documents, Counterdefendant's counsel indicated
27 her office was retaining electronic copies of all physical documents being returned. A true and
28 correct copy of that letter is attached hereto as **Exhibit E**.

1 18. As of the date of the filing of this counterclaim, Counterdefendant's counsel
2 has failed to return all Protected Information, in paper, electronic, or any other form, as demanded by
3 Counterclaimants' counsel.

4 19. On information and belief, Counterclaimants allege that, according to the
5 HITECH Act, Counterclaimants are required to report a breach of unsecured protected health
6 information to the affected individuals and the Secretary of Health and Human Services. According
7 to the CMIA, each one of Counterclaimants' patients whose medical information was unlawfully
8 disclosed may be entitled to recover damages, reasonable fees and costs.

9 20. Counterclaimants assert claims against Counterdefendant arising out of her
10 unlawful removal and distribution of Counterclaimants' Protected Information in violation of the
11 HITECH Act, HIPAA, the CMIA, California Labor Code section 2860, and the United States and
12 California Constitutions' right to privacy, among other Federal and California statutes and common
13 law.

14 21. Counterclaimant Christopher Chen, M.D. asserts claims against
15 Counterdefendant arising out of her unlawful, intentional recording of his confidential conversations
16 without his knowledge or consent in violation of California Penal Code sections 632 and 637.2, and
17 the United States and California Constitutions' right to privacy, among other Federal and California
18 statutes and common law.

19
20 **FIRST CLAIM FOR RELIEF BY BOTH COUNTERCLAIMANTS:**

21 **Return of Personal Property**

22 22. Counterclaimants restate and incorporate by reference the allegations in
23 Paragraphs 1 through 21.

24 23. Counterclaimants have had, and now have, by law, a right to possession of the
25 Protected Information. The right arises from the sources cited in Paragraph 20.

26 24. Counterdefendant and her counsel, and each of them, converted the Protected
27 Information to their own use.

28 25. Counterdefendant and her counsel, and each of them, remain in possession of

1 the Protected Information, as was demonstrated by Counterdefendant's Initial Disclosures.

2 26. The Protected Information has value to Counterclaimants as business
3 information, and as a source of professional responsibility and legal liability.

4
5 **SECOND CAUSE OF ACTION BY BOTH COUNTERCLAIMANTS:**

6 **Indemnity**

7 27. Counterclaimants restate and incorporate by reference the allegations in
8 Paragraphs 1 through 20.

9 28. Under at least the legal authorities stated in Paragraphs 19 and 20 herein,
10 Counterclaimants may be obligated to provide notice of a breach of confidentiality, and other
11 remedial measures, to those current and former clients who Protected Information Counterdefendant
12 removed from Counterclaimants' premises, kept without authorization, and disseminated to others,
13 including but not limited to her counsel and her counsel's staff. Such remedial measures will take
14 the expenditure of time and money by Counterclaimants.

15 29. But for the Counterdefendant's actions as described herein, Counterclaimants
16 would have no obligation to correct a breach of confidentiality, and take other remedial action.

17 30. Accordingly, Counterdefendant owes an equitable duty to Counterclaimants to
18 indemnify them for every and all costs, including but not limited to time and money,
19 Counterclaimants incur because of Counterdefendant's unlawful actions, including the actions of her
20 counsel and their staff.

21
22 **THIRD CAUSE OF ACTION BY COUNTERCLAIMANT CHRISTOPHER CHEN, M.D.:**

23 **Damages and Injunction**

24 31. Counterclaimant Christopher Chen, M.D. restates and incorporate by
25 reference the allegations in Paragraphs 1 through 21.

26 32. At all relevant times, Counterclaimant Christopher Chen, M.D. had a
27 reasonable expectation of privacy that his confidential conversations were not being recorded.

28 33. On or about June 26, 2009, Counterdefendant intentionally recorded

1 Counterclaimant Christopher Chen, M.D.'s confidential conversation in his car by using an
2 electronic device without the consent of all parties to the conversation.

3 34. Counterclaimant Christopher Chen, M.D. has suffered and continues to suffer
4 damages from Counterdefendant's unlawful recording of his confidential conversation, the amount
5 of such damages to be proven at trial, and trebled under the legal authorities stated in Paragraph 21.

6 35. Counterdefendant's unlawful recording of his confidential conversation was a
7 substantial factor in causing the harm suffered by Counterclaimant Christopher Chen, M.D.

8 36. Counterclaimant Christopher Chen, M.D. is entitled to an award of statutory
9 damages as a result of Counterdefendant's unlawful recording of his confidential conversation.

10 37. Counterclaimant Christopher Chen, M.D. is entitled to an injunction to
11 prohibit Counterdefendant's further use or dissemination of the information obtained from her
12 unlawful recording of confidential conversation.

13
14 **FOURTH CAUSE OF ACTION BY COUNTERCLAIMANT CHRISTOPHER CHEN, M.D.:**

15 **Damages and Injunction**

16 38. Counterclaimant Christopher Chen, M.D. restates and incorporate by
17 reference the allegations in Paragraphs 1 through 21.

18 39. At all relevant times, Counterclaimant Christopher Chen, M.D. had a
19 reasonable expectation of privacy that his confidential conversations were not being recorded.

20 40. In July 2009, Counterdefendant intentionally recorded a second confidential
21 conversation she had with Counterclaimant Christopher Chen, M.D. in his home by using an
22 electronic device without the consent of all parties to the conversation.

23 41. Counterclaimant Christopher Chen, M.D. has suffered and continues to suffer
24 damages from Counterdefendant's unlawful recording of his confidential conversation, the amount
25 of such damages to be proven at trial, and trebled under the legal authorities stated in Paragraph 21.

26 42. Counterdefendant's unlawful recording of his confidential conversation was a
27 substantial factor in causing the harm suffered by Counterclaimant Christopher Chen, M.D.

28 43. Counterclaimant Christopher Chen, M.D. is entitled to an award of statutory

1 damages as a result of Counterdefendant's unlawful recording of his confidential conversation.

2 44. Counterclaimant Christopher Chen, M.D. is entitled to an injunction to
3 prohibit Counterdefendant's further use or dissemination of the information obtained from her
4 unlawful recording of confidential conversation.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Counterclaimants seek the following relief:

8 1. That Counterdefendant immediately surrender the Protected Information
9 identified in Exhibit A and any other documents as identified in the amendments to Exhibit A. No
10 adequate remedy exists at law for the injuries suffered by Counterclaimants. Further harm will result
11 to Counterclaimants from Counterdefendant's wrongful act of conversion and continued possession ,
12 and her counsel's continued possession, of the protected documents and various other continuing
13 violations absent injunctive relief. If this court does not grant injunctive relief of the type and for the
14 purpose specified herein, Counterclaimants will suffer irreparable injury. Therefore,
15 Counterclaimants request the following injunctive relief: an order enjoining Counterdefendant from
16 using said documents, itemized as Exhibit A to this Counterclaim, for any purpose and surrender or
17 confirm that the original and all copies or duplicates of the itemized documents maintained in any
18 media format have been completely destroyed without further delay.

19 2. That Counterdefendant indemnify Counterclaimants for any and all damages,
20 expenses, fees and costs that Counterclaimants may incur resulting from Counterdefendant's
21 violation of HIPAA; CMIA, and any other claims resulting from the wrongful removal of the
22 Protected Information.

23 3. For damages for time and money properly expended in seeking to recover the
24 Protected Information in a sum according to proof.

25 4. An order finding that Counterdefendant's conduct in removing, taking and
26 distributing Counterclaimants' Protected Information was unlawful.

27 5. An order declaring that Counterdefendant's disclosure and/or dissemination of
28 Counterclaimants' Protected Information was unlawful.

1 6. For three times the amount of actual damages sustained by Counterclaimant
2 Christopher Chen, M.D. as a result of each of Counterdefendant's unlawful recordings of his
3 confidential conversations in violation of California Penal Code sections 632 and 637.2, and the
4 United States and California Constitutions' right to privacy, among other Federal and California
5 statutes and common law.

6 7. An award of statutory damages for each of Counterdefendant's unlawful
7 recordings of Counterclaimant Christopher Chen, M.D.'s confidential conversations in violation of
8 California Penal Code sections 632 and 637.2, and the United States and California Constitutions'
9 right to privacy, among other Federal and California statutes and common law.

10 8. An injunction to prohibit Counterdefendant's further use or dissemination of
11 the information obtained from her unlawful recording of Counterclaimant Christopher Chen, M.D.'s
12 confidential conversations in violation of California Penal Code sections 632 and 637.2, and the
13 United States and California Constitutions' right to privacy, among other Federal and California
14 statutes and common law.

15 9. An order finding that each of Counterdefendant's recordings of
16 Counterclaimant Christopher Chen, M.D.'s confidential conversations was unlawful.

17 10. For costs of suit incurred.

18 11. For any and all attorney's fees as permitted by law.

19 12. For an award of exemplary or punitive damages.

20 13. For such other and further relief as the court may deem proper.

21 Dated: May __, 2010

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CHRISTOPHER E. COBEY
MICHAEL HARVEY
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendants
CHRISTOPHER CHEN, M.D., INC. AND
CHRISTOPHER CHEN, M.D.