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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

OCT 19 2012

John A. Clarke, Executive Officer/Clerk
BY Amber LaFleur-Clayton, Deputy

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES, UNLIMITED JURISDICTION**

11	KAYLA GOLDBERG, an individual,)	CASE NO. BC 491232
12)	UNLIMITED JURISDICTION
13	Plaintiff,)	
14	vs.)	FIRST AMENDED COMPLAINT FOR:
15)	1. SEXUAL BATTERY
16	KRIS HUMPHRIES, an individual; and)	2. NEGLIGENCE
17	DOES 1 THROUGH 3, inclusive)	3. NEGLIGENT INFLICTION OF
18)	EMOTIONAL DISTRESS
19	Defendants.)	DEMAND FOR JURY TRIAL

20 **GENERAL ALLEGATIONS**

21 **Introduction**

22 1. Plaintiff KAYLA GOLDBERG (hereinafter "Plaintiff") files this First Amended
23 Complaint for Damages against Defendant KRIS HUMPHRIES (hereinafter "Humphries" or
24 "Defendant"). Plaintiff brings causes of action for sexual battery, negligence, and negligent
25 infliction of emotional distress for Defendant Humphries' action of transmitting a sexually
26 transmitted infection to Plaintiff during intercourse.

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Parties and Jurisdiction

2. At all times material to this complaint, Plaintiff is informed and believes that Defendant Humphries was and is an individual living in the county of Hennepin, State of Minnesota.

3. At all times material to this complaint, Plaintiff is informed and believes that Defendant Humphries was and is a professional athlete in the National Basketball Association (hereinafter "NBA").

4. Defendants sued herein as Does 1 through 3 are sued under said fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does 1-3, inclusive, and therefore sues such Defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges, that each defendant sued under such fictitious names is in some manner responsible for the wrongs and damages as alleged herein, and in so acting was functioning as the agent, servant, manager, supervisor, employee, subsidiary, and/or joint venturer of Defendant Humphries and acted at the direction of or with the permission and consent of Defendant Humphries.

5. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control. Plaintiff is informed and believes, and thereon alleges, that at all times material hereto Defendants were and are the agents of each other.

6. This Court is the proper court and this action is properly filed in the County of Los Angeles and in this judicial district because the injuries to Plaintiff occurred entirely in the City of Beverly Hills, in the County of Los Angeles, California.

7. At all times material to this complaint, Plaintiff was and is a resident of the County of Los Angeles in the state of California.

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1 18. Once Plaintiff and Defendant Humphries arrived at Defendant's hotel room, they
2 engaged in sexual intercourse on several occasions throughout the night of August 31, 2010 and
3 into the morning of September 1, 2010. During this intercourse, Defendant Humphries also
4 performed oral sex on Plaintiff.

5 19. During at least part of the time that Plaintiff and Defendant Humphries engaged in
6 sexual acts, Defendant Humphries did not wear a condom or use any other sort of protective
7 barrier commonly used to prevent the spread of sexually transmitted infections.

8 20. Throughout the night, Plaintiff and Defendant Humphries had frank and open
9 discussions about their personal lives and Plaintiff's sexual history. Defendant Humphries
10 specifically asked Plaintiff whether she had "anything that would make my dick fall off." Plaintiff
11 reasonably interpreted this remark as an attempt to discuss the respective parties potential for
12 transmission of sexual transmitted diseases. Plaintiff responded to Defendant's frank question
13 that she did not. At no time during the night of August 31, 2010 or the morning of September 1,
14 2010 did Defendant Humphries inform Plaintiff that he was infected with the incurable sexually
15 transmitted infection, Herpes Simplex Virus ("herpes") or any other sexually transmitted
16 infection.

17 21. Prior to parting ways, Plaintiff and Defendant Humphries discussed tentative
18 plans to meet again and spend more time together later that day, September 1, 2010. After their
19 parting, Defendant Humphries did not respond to Plaintiff's attempts to contact him about these
20 tentative plans. Plaintiff then ceased attempting to contact Defendant Humphries.

21 22. Plaintiff is informed and believes, and thereon alleges that at the time immediately
22 prior to engaging in sexual intercourse with Defendant Humphries, and each of them, she was free
23 of sexually transmitted infections, including herpes.

24 23. Plaintiff is informed and believes, and thereon alleges that at the time that
25 Defendant Humphries engaged in sexual intercourse with Plaintiff, Defendant Humphries, and
26 each of them, was infected with herpes.

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1 24. Plaintiff is informed and believes, and thereon alleges that at the time that
2 Plaintiff and Defendant Humphries engaged in sexual intercourse, Defendant Humphries, and
3 each of them, knew or should have known that he was infected with herpes.

4 25. Within a week of Plaintiff's encounter with Defendant Humphries, and each of
5 them, she developed a sore throat, fever, body aches, lesions, and extreme pain which made it
6 difficult to walk.

7 26. On or about September 8, 2010, Plaintiff was diagnosed with herpes by her doctor
8 during a medical examination and swab test.

9 27. Plaintiff is informed and believes, and thereon alleges that as a result of engaging
10 in sexual intercourse with Defendant Humphries, and each of them, she has been infected with
11 herpes, which is known to be contagious and incurable.

12 28. As a result of being diagnosed with herpes, Plaintiff has suffered physical and
13 mental distress, pain from vaginal lesions, and mental stress, strain, and upset from having
14 contracted the sexually transmitted infection.

15 29. As a result of being diagnosed with herpes, Plaintiff has had to undergo a course
16 of treatment, including: monitoring her condition, attending doctor's appointments related to her
17 condition, and taking prescription medications to treat her condition.

18 30. Plaintiff is informed and believes, and thereon alleges that Defendant Humphries,
19 and each of them, acted with malice, fraud, and/or oppression in his actions against Plaintiff.

20 31. Plaintiff was unaware that Defendants, and each of them, were infected with
21 herpes during the time that Plaintiff and Defendant engaged in sexual intercourse or other sexual
22 activities, and Plaintiff would not have engaged in these sexual activities had this condition,
23 herpes, been disclosed to her.

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1 **FIRST CAUSE OF ACTION**

2 **SEXUAL BATTERY IN VIOLATION OF CIVIL CODE SECTION 1708.5**

3 **(Against Defendants Humphries and Does 1-3)**

4 32. As a separate and distinct cause of action, Plaintiff complains and realleges all the
5 allegations contained in this complaint, and incorporates them by reference into this cause of
6 action as though fully set forth herein, excepting those allegations which are inconsistent with this
7 cause of action. This cause of action is brought by Plaintiff against Defendant Humphries and
8 Does 1-3.

9 33. Plaintiff is informed and believes, and thereon alleges that when, on or about
10 August 31, 2010 and September 1, 2010, Plaintiff and Defendant Humphries, and each of them,
11 engaged in sexual intercourse, Defendant Humphries, and each of them, knew he was infected
12 with the incurable sexually transmitted infection, herpes.

13 34. Defendant Humphries, and each of them, knowingly and intentionally engaged in
14 sexual intercourse and other sexual activities with Plaintiff knowing that he was infected with
15 herpes.

16 35. Such contact causing infection with an incurable sexually transmitted infection
17 would be harmful or offensive to a reasonable person.

18 36. Such contact was and is harmful and offensive to Plaintiff. As a direct result of
19 sexual contact with Defendant Humphries, and each of them, Plaintiff was infected with herpes.

20 37. On or about August 31, 2010 and September 1, 2010, Plaintiff did not lawfully
21 consent to engage in sexual intercourse or other sexual activities with Defendant Humphries, and
22 each of them, as any purported consent was vitiated by the fact that Defendant Humphries, and
23 each of them, did not inform Plaintiff of his infection with herpes.

24 38. Plaintiff was exposed to sexually offensive contact from Defendant Humphries,
25 and each of them, including infection of Plaintiff by Defendant Humphries, and each of them,
26 with herpes, an incurable sexually transmitted infection, in violation of Civil Code section
27 1708.5(a).

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1 injury to her by informing her of Defendant Humphries' herpes, or otherwise take steps to prevent
2 the transmission of the disease.

3 50. Defendant Humphries, and each of them, breached the duty of care when
4 Defendant Humphries engaged in sexual intercourse with Plaintiff without informing her that he
5 was infected with herpes. Defendants Does 1-3 breached their duty of care by failing to inform
6 Plaintiff of Defendant Humphries' infected status and the likelihood of contracting herpes through
7 engaging in sexual intercourse or activities with Defendant Humphries.

8 51. Defendant Humphries, and each of them, knew or should have known that such
9 conduct would cause serious emotional distress to Plaintiff.

10 52. The breach of Defendant Humphries, and each of them, caused significant injury
11 to Plaintiff, as she was infected with herpes as a result of engaging in sexual intercourse and
12 activities with Defendant Humphries. Defendant Does 1-3's breach proximately caused
13 significant injury to Plaintiff, as she was infected with herpes because she was not warned of
14 Defendant Humphries' infected status or the likelihood of contracting the disease by sexual
15 intercourse or activities.

16 53. As a result of said injury, Plaintiff has suffered physical pain and injury, mental
17 and emotional distress, and financial damages in an amount subject to proof at trial.

18 WHEREFORE, Plaintiff requests relief as hereafter provided.

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21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for relief and judgment against all Defendants, jointly and
23 severally, as to her First through Third Causes of Action, as follows:

- 24 A. For compensatory damages in an amount to be proven at trial;
25 B. For general damages to compensate Plaintiff commensurate with Defendant's
26 actions and what a reasonable person would suffer;
27 C. For costs of suit incurred;
28 D. For an award of interest, including prejudgment interest, at the legal rate;

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E. For punitive damages as allowed by law; and

F. For such other and further relief as this Court deems appropriate.

Dated: October 19, 2012

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Attorneys for Plaintiff
KAYLA GOLDBERG

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury in this matter.

Dated: October 19, 2012

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KAYLA GOLDBERG

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