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FOR COURT USE ONLY
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
JUN 14 2022
BY [Signature] DEPUTY
Stephanie Pandoza

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino
STREET ADDRESS: 247 West Third Street
MAILING ADDRESS: 247 West Third Street
CITY AND ZIP CODE: San Bernardino 92415-0210
BRANCH NAME: San Bernardino District - Civil Division

CASE NAME:
Gerardo Canedo JR, M.D. v. Victor Valley Hospital Acquisition, Inc.

CIVIL CASE COVER SHEET
[Checked] Unlimited (Amount demanded exceeds \$25,000)
[ ] Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
CIV SB 2212130
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

- 1. Check one box below for the case type that best describes this case:
Auto Tort: [ ] Auto (22), [ ] Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort: [ ] Asbestos (04), [ ] Product liability (24), [ ] Medical malpractice (45), [ ] Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort: [ ] Business tort/unfair business practice (07), [ ] Civil rights (08), [ ] Defamation (13), [ ] Fraud (16), [ ] Intellectual property (19), [ ] Professional negligence (25), [Checked] Other non-PI/PD/WD tort (35)
Employment: [ ] Wrongful termination (36), [ ] Other employment (15)
Contract: [ ] Breach of contract/warranty (06), [ ] Rule 3.740 collections (09), [ ] Other collections (09), [ ] Insurance coverage (18), [ ] Other contract (37)
Real Property: [ ] Eminent domain/Inverse condemnation (14), [ ] Wrongful eviction (33), [ ] Other real property (26)
Unlawful Detainer: [ ] Commercial (31), [ ] Residential (32), [ ] Drugs (38)
Judicial Review: [ ] Asset forfeiture (05), [ ] Petition re: arbitration award (11), [ ] Writ of mandate (02), [ ] Other judicial review (39)
Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403): [ ] Antitrust/Trade regulation (03), [ ] Construction defect (10), [ ] Mass tort (40), [ ] Securities litigation (28), [ ] Environmental/Toxic tort (30), [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment: [ ] Enforcement of judgment (20)
Miscellaneous Civil Complaint: [ ] RICO (27), [ ] Other complaint (not specified above) (42)
Miscellaneous Civil Petition: [ ] Partnership and corporate governance (21), [ ] Other petition (not specified above) (43)

- 2. This case [ ] is [Checked] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. [ ] Large number of separately represented parties d. [ ] Large number of witnesses
b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. [ ] Substantial amount of documentary evidence f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. [Checked] monetary b. [Checked] nonmonetary; declaratory or injunctive relief c. [Checked] punitive
4. Number of causes of action (specify): Two
5. This case [ ] is [Checked] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 10, 2022
Matthew A. Brinegar
(TYPE OR PRINT NAME)

[Signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
• Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
• File this cover sheet in addition to any cover sheet required by local court rule.
• If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
• Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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COUNTY OF SAN BERNARDINO  
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BY

*[Signature]*  
Stephanie Plonier DEPUTY

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8 Attorney for Plaintiff,  
9 Gerardo Canedo Jr., M.D.

10  
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR SAN BERNARDINO COUNTY

13 GERARDO CANEDO JR., M.D.,

14 Plaintiff,

15 vs.

16 VICTOR VALLEY HOSPITAL  
17 ACQUISITION, INC. DBA VICTOR  
18 VALLEY GLOBAL MEDICAL CENTER  
19 and DOES 1-20.

20 Defendants.

) Case No.: **CIV SB 2212130**

) **COMPLAINT FOR DAMAGES**

) **JURY TRIAL DEMANDED**

21 Gerardo Canedo Jr., M.D. ("Dr. Canedo" or "Plaintiff"), by and through the undersigned  
22 counsel, allege as follows:

23 **I.**  
24 **PARTIES**

25 1. Dr. Canedo is a hospitalist. He has held an unrestricted California medical  
26 license since 2016. Plaintiff is a resident of the State of California.

27 2. Defendant Victor Valley Hospital Acquisition, Inc. DBA Victor Valley Global  
28 Medical Center ("Defendant" or "Hospital") is a California corporation doing business in San

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1 Bernardino County, California. The Hospital is an affiliate of KPC Healthcare, Inc. The  
2 Hospital is a "peer review body" within the meaning of Business & Professions Code § 805. It  
3 has medical staff bylaws that detail the notice and hearing rights for members of the medical  
4 staff, such as Dr. Canedo, who are terminated for an alleged "medical disciplinary cause or  
5 reason."  
6

7 3. Defendants DOES 1 through 20, inclusive, are sued herein under fictitious  
8 names. Their true names and capacities are unknown to Plaintiff. When their true names and  
9 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and  
10 capacities herein. Plaintiff is informed and believes, and thereon alleges, that each of the  
11 fictitious named Defendants is responsible in some manner for the occurrences herein alleged,  
12 and that Plaintiff's damages as alleged were proximately caused by Defendants.  
13

14 **II.**  
15 **VENUE**

16 4. California Code of Civil Procedure § 395.5 states a corporation may be sued in  
17 the county where the principal place of business of such a corporation is situated. The  
18 Hospital's principal place of business is in the County of San Bernardino. Therefore, this Court  
19 is the proper venue for this action.  
20

21 **III.**  
22 **STATEMENT OF FACTS**

23 5. Dr. Canedo became a partner in CEP America-California, a California general  
24 partnership DBA Vituity ("Vituity") in or around July 2019.

25 6. On or about January 6, 2020, Vituity, through an entity named Galen Inpatient  
26 Physicians, Inc. DBA Vituity, and the Hospital signed a "Hospitalist Services Agreement" (the  
27 "Agreement"). This Agreement required Vituity to provide hospitalist coverage on a 24 hours/7  
28

1 days per week basis. It was an “exclusive” contract in that only physicians affiliated with  
2 Vituity could provide hospitalist services at the Hospital for unassigned patients.

3 7. The Agreement also required Vituity to appoint a medical director for the  
4 hospitalist program at the Hospital.

5 8. Pursuant to Section 8.1 of the Agreement, each Vituity physician who worked at  
6 the Hospital was required to maintain medical staff privileges in good standing at the Hospital.

7 9. Pursuant to Section 8.2 of the Agreement, if the Hospital determined that a  
8 Vituity physician did not meet or failed to continue to meet the established written criteria for  
9 medical staff membership and clinical privileges, the Hospital had the right to demand removal  
10 of that Vituity physician from the schedule for hospitalists shifts at the Hospital.  
11

12 10. Paragraph 8.3 of the Agreement further stated that that the “clinical privileges of  
13 the Group Physician [i.e., physicians affiliated with Vituity] to provide Hospitalist Services in  
14 connection with this exclusive Agreement ... shall immediately terminate without the right to a  
15 fair hearing or any rights more particularly set forth in the Medical Staff bylaws.”  
16

17 11. In or around January 2020, Dr. Canedo obtained medical staff privileges at the  
18 Hospital. Dr. Canedo also began working hospitalist shifts at the Hospital.  
19

20 12. In or around July 2020, Vituity appointed Dr. Canedo as the medical director of  
21 the hospitalist program at the Hospital. He also began working at the Hospital on a full-time  
22 basis.  
23

24 13. On September 24, 2021, a patient was admitted to the Hospital for acute hypoxic  
25 respiratory failure by Dr. Hisham Abukamleh, a Vituity physician. The patient elected to be  
26 listed as “full code,” meaning that all resuscitation procedures would be provided to keep him  
27 alive. The patient was intubated on September 27, 2021.  
28

1 14. On October 12, 2021, the Hospital's administration requested that Dr. Akashdeep  
2 Dhaliwal extubate the patient. Dr. Dhaliwal was another one of Dr. Canedo's Vituity hospitalist  
3 colleagues. Dr. Canedo had also been treating the patient, and he had been working to transfer  
4 him to another facility that had a higher level of care at the time of the extubation request.

5 15. An ethics panel was convened on October 18, 2021 to determine whether to  
6 extubate the patient. Dr. Canedo represented the patient's best interests at the ethics panel. At  
7 the ethics panel, Dr. Canedo informed the Hospital's administration that extubation, which  
8 would have resulted in the patient's death, was not clinically indicated. The panel agreed with  
9 Dr. Canedo's decision to not extubate the patient. Dr. Canedo also consulted with Vituity's  
10 malpractice carrier and Vituity's general counsel, Mitch Cohen, who agreed that Dr. Canedo  
11 was not obligated to extubate the patient.  
12  
13

14 16. However, the Hospital's Chief Nursing Officer, David Neal, and the Hospital's  
15 Chief Operating Officer, Lance Lowrey, and the Hospital's Director of Critical Care, Caleb  
16 Moering, objected to this finding because there was no obligation to render "futile medical  
17 care."  
18

19 17. Upon information and belief, the Hospital wanted to extubate the patient, which  
20 would have caused the patient's death, to avoid paying for uncompensated care.

21 18. On October 20, 2021, Dr. Canedo had a phone call with Vituity's regional  
22 director, Dr. Humayn Tufail. Dr. Tufail told Dr. Canedo would have to be placed on a  
23 performance improvement plan ("PIP"). The alleged justification for the PIP was that (1) Dr.  
24 Canedo supposedly documented another provider's negligence in a medical chart, (2) he sent an  
25 email on October 13, 2021 stating, "For months now we have hospitalized patients with  
26 COVID-19 associated cytokine release syndrome and have had nothing to offer beyond  
27 Decadron, and Remdesivir ... No JAK-inhibitors. No IL-6 pathway inhibitors. Many of these  
28

1 patients clinically deteriorated and ultimately expired without receiving evidence-based  
2 standard of care medical interventions. Surely, we can do better for the community of Victor  
3 Valley,” and (3) he allegedly made a reference to a “picket line” during the ethics committee  
4 hearing.

5  
6 19. Prior to this meeting with Dr. Tufail, Dr. Canedo had not received any negative  
7 feedback regarding his performance at the Hospital. Indeed, he had recently been elevated to a  
8 category three Vituity partner, his medical directorship compensation had increased, and he  
9 received positive feedback from the Hospital’s CEO.

10  
11 20. On October 28, 2021, Dr. Canedo received a text message from the Hospital’s  
12 Chief Medical Officer, Dr. Rahul Nayyar, wherein KPC Healthcare, Inc. Chief Medical Officer,  
13 Dr. Tirso Del Junco, wanted Dr. Canedo’s “complete removal” from the Hospital.

14  
15 21. At the meeting, Dr. Canedo was also informed that he would be terminated from  
16 the medical directorship position at the request of Hospital administrators.

17  
18 22. On November 4, 2021, the PIP was reduced to a “verbal warning” for alleged  
19 “communication issues” with Hospital administrators.

20  
21 23. On or about November 15, 2021, Dr. Canedo learned from Dr. Nayyar that KPC  
22 Healthcare, Inc. had required Vituity to remove another physician from the Hospital’s schedule  
23 on pain of losing emergency room contracts with other KPC Healthcare, Inc. affiliated  
24 hospitals. Moreover, Dr. Canedo was urged to “clear” his name by Dr. Nayyar, because KPC  
25 Healthcare, Inc. believed that he was part of a “team” with this other physician.

26  
27 24. On or about November 23, 2021, Dr. Canedo learned that he had been removed  
28 from day shifts at the Hospital effective immediately and that he would be removed from night  
shifts effective December 31, 2021.



1           30.     As a licensed physician in the State of California, Plaintiff is entitled to the  
2 protections of Business and Professions Code § 809 et seq., including notice and a hearing prior  
3 to the termination of medical staff privileges by a “peer review body.”

4           31.     The Hospital’s failure to offer Plaintiff a quasi-judicial hearing denied Plaintiff the  
5 opportunity to defend himself against unsubstantiated allegations and to be heard in violation of  
6 Business & Professions Code § 809, et. seq.

7           32.     While Dr. Canedo’s medical staff privileges remained in good standing “on  
8 paper,” forcing Vituity to remove Dr. Canedo from the hospitalist schedule in a closed department  
9 was the functional equivalent to loss of his medical staff privileges. *See Economy v. East Bay*  
10 *Sutter Hospitals* (2019) 31 Cal.App.5th 1147, 1158 (“The hospital argues that East Bay Group  
11 made the decision to ... terminate plaintiff's employment; the ... termination did not trigger a  
12 duty to file a report with the state ... because the East Bay Group is not a ‘peer review body’ ...  
13 and that plaintiff's redress for any grievance related to the discipline and dismissal imposed by  
14 East Bay Group must be directed to East Bay Group ... The trial court rejected these arguments,  
15 finding that under the hospital's approach ‘a hospital could effectively avoid complying with the  
16 notice and hearing requirements of sections 805 and 809 by simply relying on its contracts with  
17 third-party employers as a way to terminate the services of physicians whenever a hospital  
18 administrator determines there is a medical disciplinary reason.’ We agree that the hospital's  
19 position is untenable.”)

20           33.     As an actual and proximate result of the Hospital’s violation of Business and  
21 Professional Code § 809 et seq., Plaintiff has suffered lost earnings and other economic damages.  
22 Dr. Canedo has also suffered damage to his reputation, loss of earning capacity, future economic  
23 harm, emotional distress, and other general damages.  
24  
25  
26  
27  
28



1 34. In violating Plaintiff's right to fair procedure, the Hospital acted willfully,  
2 knowingly, intentionally, maliciously, oppressively, or with a conscious disregard for the rights  
3 of Plaintiff. Plaintiff is therefore entitled to punitive damages against the Hospital for that conduct.

4 35. As a result of the Hospital's failure to offer Plaintiff a hearing prior to the  
5 termination of his employment, Plaintiff is not required to exhaust any administrative remedies  
6 before bringing this count, pursuant to *Westlake v. Superior Court* (1976) 17 Cal.3d 465, 478.  
7

8 **SECOND COUNT**  
9 **Violations of Health & Safety Code §1278.5**

10 36. Plaintiff incorporates by reference paragraphs 1-35 as if those paragraphs were  
11 set forth herein in full.

12 37. The California Legislature has determined that, in order to protect patients, "it is  
13 the public policy of the State of California to encourage patients, nurses, members of the  
14 medical staff, and other health care workers to notify government entities of suspected unsafe  
15 patient care and conditions."  
16

17 38. The Hospital is a "hospital facility" pursuant to Health and Safety Code section  
18 1250, subdivision (a).

19 39. Therefore, pursuant to Health and Safety Code section 1278.5, subdivision (b),  
20 "[n]o health facility shall discriminate or retaliate, in any manner, against any patient, employee,  
21 member of the medical staff, or any other health care worker of the health facility because that  
22 person...[p]resented a grievance, complaint, or report to the facility, to an entity or agency  
23 responsible for accrediting or evaluating the facility, or the medical staff of the facility, or to  
24 any other governmental entity." Pursuant to section 1278.5, subdivision (i), 'health facility'  
25 means any facility defined under this chapter, including, but not limited to, the facility's  
26 administrative personnel, employees, boards, and committees of the board, and medical staff."  
27  
28

1 40. Plaintiff was a member of the Hospital's medical staff.

2 41. Section 1278.5, subdivision (d)(1) states, "there shall be a rebuttable presumption  
3 that discriminatory action was taken by the health facility or by the entity that owns or operates  
4 that health facility, or that owns or operates any other health facility, in retaliation against an  
5 employee, member of the medical staff, or any other health care worker of the facility, if  
6 responsible staff at the facility or the entity that owns or operates the facility had knowledge of  
7 the actions, participation, or cooperation of the person responsible for any acts described in  
8 paragraph (1) of subdivision (b), and the discriminatory action occurs within 120 days of the  
9 filing of the grievance or complaint by the employee, member of the medical staff or any other  
10 health care worker of the facility."  
11

12  
13 42. Discriminatory and retaliatory action were taken against Plaintiff within 120  
14 days of presenting complaints regarding patient care, services, and/or hospital conditions,  
15 including, but not limited to, having Plaintiff fired from his medical directorship at the Hospital  
16 and having Plaintiff removed from the day and night shifts at the Hospital.  
17

18 43. Health and Safety Code section 1278.5 has no administrative or judicial  
19 exhaustion requirement.

20 44. As an actual and proximate result of the aforementioned violations, Plaintiff has  
21 been damaged in an amount according to proof, but in an amount in excess of the jurisdiction of  
22 this Court.  
23

24 45. As an actual and proximate result of Defendant's willful and intentional  
25 discrimination and retaliation, Plaintiff has lost income.

26 46. As an actual and proximate result of Defendant's aforementioned acts, Plaintiff  
27 also suffered mental upset, depression, loss of concentration, and other emotional distress.  
28

1 Plaintiff claims general damages for mental distress in an amount according to proof at time of  
2 trial.

3 47. The above described actions were perpetrated and/or ratified by a managing  
4 agent or officer of Defendant. These acts were done with malice, fraud, oppression, and in  
5 reckless disregard of Plaintiff's rights. Further, said actions were despicable in character and  
6 warrant the imposition of punitive damages against the individual Defendant in a sum sufficient  
7 to punish and deter Defendant's future conduct.  
8

9  
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays from judgment and damages as against Defendants as  
12 follows:  
13

- 14 1. Compensatory economic damages;
- 15 2. Compensatory general damages;
- 16 3. Punitive and exemplary damages according to proof;
- 17 4. Attorneys' fees and costs pursuant to Business and Professions Code § 809.9,  
18 and any other applicable statute;
- 19 5. Prejudgment interest on monetary damages to the extent permitted by law; and
- 20 6. For other such further relief, including injunctive relief, as this Court may deem  
21 just and proper.  
22  
23  
24

25 Date: June 10, 2022

THE BRINEGAR LAW FIRM

26 

27 \_\_\_\_\_  
Matthew A. Brinegar, Esq.  
Attorney for Plaintiff  
Gerardo Canedo Jr., M.D.  
28

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Date: June 10, 2022.

THE BRINEGAR LAW FIRM



Matthew A. Brinegar, Esq.  
Attorney for Plaintiff  
Gerardo Canedo Jr., M.D.

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