

FILED
Los Angeles Superior Court

AUG 29 2012

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES CENTRAL DISTRICT**

KAYLA GOLDBERG, an individual,
Plaintiff,

vs.

KRIS HUMPHRIES, an individual, and
JOHN DOES 1 -4, individuals,
Defendants

Case No.:

BC 491232

COMPLAINT FOR DAMAGES:

1. SEXUAL BATTERY
2. VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 120290
3. NEGLIGENCE TRANSMISSION OF A VENEREAL DISEASE
4. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
5. NEGLIGENCE INFLICTION OF EMOTIONAL DISTRESS
6. FRAUD IN CONCEALMENT
7. FRAUD IN MISREPRESENTATION

DEMAND FOR JURY TRIAL

Comes now the Plaintiff Kayla Goldberg (hereinafter "Plaintiff" or "she"), by and through counsel, and states and alleges as follows:

PARTIES

Plaintiff and Defendant Kris Humphries Relationship

1. PLAINTIFF is informed, believes, and thereon alleges that Defendant KRIS HUMPHRIES (hereinafter "Defendant Humphries," or collectively as "the Defendants"), is, and at times mentioned in this complaint was, an individual with a primary residence in the County of Hennepin, State of Minnesota.

CHECK: \$495.00
CASH:
CHANGE:
CARD:

CIT/CASE: BC491232 LEA/DEFH:
RECEIPT #: CCH465980021
DATE PAID: 08/29/12 11:54:59 AM
PAYMENT: \$495.00
RECEIVED: 0310

2. Plaintiff is informed and believes, and thereon alleges that Defendant Humphries, at present, is an athlete playing in the National Basketball Association (hereinafter "NBA"), and has played basketball within the NBA since approximately 2004.
3. As a result of the below-described personal and intimate contact between the parties occurring in Los Angeles County, in the State of California, jurisdiction is proper in the above-captioned court.
4. On or about the afternoon of August 31, 2010, Plaintiff and Defendant Humphries met while having lunch separately with their own acquaintances at the restaurant called the Newsroom Café, located at 120 N. Robertson Blvd., West Hollywood, California.
5. The causes of actions set forth below arise out of Plaintiff's personal relationship with Defendant Humphries.
6. On or about the afternoon of August 31, 2010, during their meals at the above-mentioned Newsroom Café, Plaintiff and Defendant Humphries began talking, flirting, and getting to know one another.
7. Defendant Humphries presented himself to Plaintiff as a trustworthy, safe, and charming person while they were getting to know one another while dining.
8. Plaintiff and Defendant Humphries exchanged their phone numbers at the end of their meals and made plans to meet each other later that night.
9. On or about the evening of August 31, 2010, Plaintiff and Defendant Humphries met at a nightclub called Trousdale at 9229 Sunset Blvd. in West Hollywood, California, where they spent the evening together and with other friends.
10. Plaintiff, at one point, attempted to get Defendant Humphries to talk to another female, in which Defendant Humphries told Plaintiff she was "cuter" and proceeded to show interest in only Plaintiff throughout the evening.
11. Defendant Humphries was openly affectionate with Plaintiff, talking, laughing, flirting, touching, kissing and dancing with her throughout the evening.
12. Plaintiff became comfortable with Defendant Humphries and began to trust him, as he promoted himself to her as a charming, trustworthy, and caring person.

1 13. Defendant Humphries paid the bill for Plaintiff at the Trousdale nightclub that night on or
2 about August 31, 2010.

3 14. After paying the Trousdale Nightclub bill, Defendant Humphries invited Plaintiff back to
4 his hotel room at the Thompson Beverly Hills Hotel located at 9360 Wilshire Blvd.,
5 Beverly Hills, California. Plaintiff accepted the invitation and they drove to the hotel
6 together in her car.

7 15. Once Plaintiff and Defendant Humphries arrived at Defendant's hotel room, they had
8 sexual intercourse more than once, becoming intimate partners. During their interactions,
9 Defendant Humphries also performed oral sex on Plaintiff.

10 16. Throughout the night, Plaintiff and Defendant Humphries talked and shared intimate
11 experiences and continued to get to know each other by sharing many jokes, laughs, and
12 talking about their families.

13 17. For some of the time during sexual intercourse, Defendant Humphries did not wear a
14 condom.

15 18. The parties had sexual intercourse again the next morning, (September 1, 2010). Defendant
16 Humphries asked her how many sexual partners she had in her past and replied with: "That
17 is good enough to marry."

18 19. Despite his frank and open discussions and questions about Plaintiff's sexual life and
19 history, Defendant Humphries did not at any time inform Plaintiff that he was infected with
20 the incurable venereal disease, Herpes Simplex Virus ("herpes").

21 20. Plaintiff and Defendant Humphries discussed meeting again to spend time together later
22 that day on September 1, 2010, yet Defendant Humphries did not respond to Plaintiff's
23 attempts to contact him about their tentative plans. Plaintiff then ceased attempting to
24 contact him.

25 21. Plaintiff is informed and believes, and thereon alleges that she was free of any venereal
26 diseases at the time she commenced her intimate relationship with Defendant Humphries.

27 22. Plaintiff is informed and believes, and thereon alleges that Defendant Humphries was
28 infected with herpes at the time of their intimate relationship.

1 23. Plaintiff is informed and believes, and thereon alleges that Defendant Humphries knew or
2 should have known about his condition of being infected with herpes at the time of their
3 intimate relationship.

4 **DOE DEFENDANTS 1 THROUGH 4**

5 24. The true names and capacities of DOES 1 through 4, inclusive, whether individual,
6 corporate, or otherwise are presently unknown to Plaintiff who therefore sues said
7 defendants by such fictitious names and will amend this complaint to allege their true
8 names and capacities when the same have been ascertained. Plaintiff is informed, and
9 believes and thereon alleges that each of the fictitiously named defendants is responsible in
10 some manner for the occurrences herein alleged.

11 25. Plaintiff is informed and believes, and thereby alleges, that each of the DOE defendants
12 were the agents and employees of Defendants, and in doing the things alleged herein, were
13 acting pursuant to such relationship or are otherwise responsible to Plaintiff with respect to
14 the matters herein alleged.

15 **GENERAL ALLEGATIONS**

16
17 26. As a result of engaging in sexual intercourse with each of the Defendants, Plaintiff
18 developed symptoms of herpes about or around four to five days after the first sexual
19 encounter with Defendant Humphries. These symptoms included sore throat, fever, body
20 aches and immobilizing pain, extreme vaginal irritation, and painful lesions on her
21 genitalia.

22 27. A doctor officially diagnosed Plaintiff with herpes on September 8, 2010, through an
23 examination and a swab test.

24 28. As a result of being diagnosed with herpes, which is known to be contagious and incurable,
25 Plaintiff has suffered severe physical and mental distress, pain from vaginal lesions and the
26 accompanying symptoms, mental stress, depression, strain and upset from having
27 contracted the diseases. Upon information and belief, Plaintiff has further experienced

embarrassment, shame, anxiety and revulsion at having contracted herpes from the Defendants.

29. Furthermore, upon information and belief, Plaintiff's health may be compromised in the future as a result of the increased risk of cancer (especially cervical cancer), shingles, high-risk pregnancies, higher risk of contracting HIV, and other medical conditions that stem from herpes.

30. Plaintiff has been additionally damaged by having to monitor the conditions, take prescription medications, and attend additional doctors' appointments, which are all to her physical, emotional, and financial detriment. At her young age, Plaintiff's prospects of enjoying a full and healthy sexual life have unfortunately been compromised and diminished, as has her prospect of entering into a future personal intimate relationship and marriage.

31. Plaintiff is informed and believes, and thereon alleges that the Defendants acted with intent, oppression, and/or malice.

32. At all times during Plaintiff's and the Defendants' intimate relationship, Plaintiff was unaware that any Defendant was infected with herpes, and would not have engaged in sexual intercourse with any of them had they disclosed that information and properly warned her.

FIRST CAUSE OF ACTION

SEXUAL BATTERY

(AGAINST ALL DEFENDANTS)

33. Plaintiff hereby incorporates by reference each and every allegation of Paragraphs 1 through 32 above as set forth in full herein verbatim.

34. Each Defendant penetrated intimate parts of Plaintiff's body, including Plaintiff's sexual organs, with intimate parts of his body and engaged in sexual intercourse with Plaintiff.

35. Plaintiff is informed and believes, and thereon alleges that, while engaging in sexual intercourse with Plaintiff, the Defendants, had the infectious and incurable venereal disease, herpes.

- 1 36. Plaintiff is informed and believes, and thereon alleges that, while engaging in sexual
2 intercourse with her, the Defendants knew that they had herpes.
- 3 37. None of the Defendants disclosed to Plaintiff that they had herpes, and Plaintiff would not
4 have engaged in sexual intercourse with any of them if she had known that any of them had
5 herpes.
- 6 38. Each Defendant's nondisclosure to Plaintiff of his having the venereal disease vitiates any
7 consent that Plaintiff may have given to sexual intercourse with him.
- 8 39. Plaintiff is informed and believes, and thereon alleges that the Defendants transmitted
9 herpes to Plaintiff during sexual intercourse, thereby causing Plaintiff extreme pain and
10 suffering and severe and permanent bodily injury.
- 11 40. By acting in the manner set forth immediately above, each of the Defendants intended to,
12 and did, cause harmful and offensive contact to an intimate part of Plaintiff's body, and
13 sexually offensive contact with Plaintiff directly occurred.
- 14 41. By completing the acts set forth immediately above, the Defendants intended to, and did,
15 cause harmful and offensive contact to Plaintiff using an intimate part of his body.
- 16 42. As a direct and proximate result of each of the Defendants' actions set forth immediately
17 herein, Plaintiff has suffered physical and emotional damages, including permanent
18 physical injury, emotional distress as a result of now having an increased risk for various
19 other diseases such as mental anguish, shame, offense to her sense of personal dignity,
20 embarrassment and humiliation, pain and irritation from genital lesions, personal invasion,
21 and inconvenience and financial expense associated with continued medical examinations,
22 screening, testing, monitoring and mediation, in a sum according to proof at trial
- 23 43. Pursuant to California Civil Code §1708.5(b), "[any] person who commits a sexual battery
24 upon another is liable to that person for damages, including, but not limited to, general
25 damages, special damages and punitive damages."
- 26 44. The Defendants' actions as alleged herein were willful, oppressive and malicious and were
27 undertaken in conscious disregard of the rights of Plaintiff, thereby entitling Plaintiff to
28 punitive damages.

SECOND CAUSE OF ACTION
VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 120290
(AGAINST ALL DEFENDANTS)

45. Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1 through 44 above as set forth in full herein verbatim.

46. Upon information and belief, the Defendants are afflicted with a contagious, infectious, and communicable disease.

47. Each of the Defendants willfully exposed himself and his contagious disease to Plaintiff by engaging in sexual intercourse with her more than once, and Defendant Humphries did so for some of the time without a condom.

48. Defendants have violated California Health and Safety Code § 120290, which states "...any person afflicted with any contagious, infectious, or communicable disease who willfully exposes himself or herself to another person...is guilty of a misdemeanor."

49. Defendant Humphries' and/or Doe's violation of the said California statute by engaging in sexual intercourse with Plaintiff willfully, and thereby exposing Plaintiff to a contagious disease, caused Plaintiff injury by infecting her with herpes.

50. A reasonable person of ordinary prudence following the law would not have engaged in sexual intercourse with Plaintiff without first informing her of the chances of her contracting herpes, thus giving rise to negligence per se.

51. The Defendants' negligence per se caused permanent physical and mental injury and financial damages to Plaintiff.

52. Plaintiff is a member of the public in Los Angeles County, California and is thereby a protected party under California Health and Safety Code § 120290, as it seeks to protect all members of society in California.

53. Due to the above injury, Plaintiff is entitled to compensatory damages in an amount proven by evidence at trial.

1 54. The Defendants' actions were willful, wanton, and oppressive and malicious acts, which
2 were undertaken in conscious disregard of the rights of Plaintiff, thereby entitling Plaintiff
3 to punitive damages pursuant to California Civil Code § 3294.
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5 **THIRD CAUSE OF ACTION**
6 **NEGLIGENT TRANSMISSION OF A VENEREAL DISEASE**
7 **(AGAINST ALL DEFENDANTS)**

8 55. Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1 through
9 54 as set forth in full herein verbatim.

10 56. Plaintiff is informed and believes, and thereon alleges that all Defendants, owed a legal
11 duty and obligation to use ordinary care to prevent injury to her by informing her of his
12 herpes, or to otherwise take steps to prevent the disease.

13 57. Defendants breached that duty of care when he engaged in oral and sexual intercourse with
14 Plaintiff, including Defendant Humphries engaging on one occasion without a condom,
15 without informing her that he was infected with herpes.

16 58. The risk of harm to the Plaintiff was foreseeable and Defendants acted unreasonably by
17 failing to exercise due care to prevent against the injury to Plaintiff.

18 59. Defendants' breach of duty directly and proximately caused significant and permanent
19 injury to Plaintiff, as she was infected with incurable herpes, she has suffered physical and
20 emotional damages including pain, discomfort, shock, mental anguish, humiliation,
21 embarrassment, emotional distress, and shame, in an amount according to proof at trial.

22 60. As a result of said injuries, Plaintiff has incurred, and will continue to incur for the rest of
23 her life, numerous expenses in connection with treating these two incurable diseases in an
24 amount according to proof at trial.
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28 98/29/12

FOURTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(AGAINST ALL DEFENDANTS)

61. Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1 through 60 above as set forth in full herein verbatim.

62. Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known he suffered from herpes prior to and during his intimate relationship with Plaintiff.

63. Plaintiff is informed and believes, and thereon alleges that Defendants, as an intimate partner, owed a legal duty and obligation to use ordinary care to prevent injury to her and otherwise take steps to prevent transmission of the disease.

64. Each of the Defendants acted with reckless disregard of the probability that Plaintiff would suffer from emotional distress as a result of contracting the incurable disease, herpes.

65. All of the Defendants' failure to inform Plaintiff of his HSV or to otherwise take steps to prevent transmission of the disease, leaving Plaintiff to contract the disease, constituted outrageous conduct that no reasonable could be expected to endure.

66. Each of the Defendant's conduct was a substantial factor in causing Plaintiff's serious emotional distress.

67. As a direct and proximate result of all Defendants' conduct, Plaintiff suffered severe emotional distress in the form of physical pain, mental suffering, anguish, nervousness, shock, worry, horror, humiliation and shame, anxiety, depression, and helplessness, in an amount according to proof at trial.

68. Each of the Defendants' actions of failing to act as a reasonable person and inform Plaintiff of his incurable disease prior to sexual contact, and Defendant Humphries' failure to wear a condom for some of the time during sexual intercourse, as alleged herein, were intentional, willful, malicious, and oppressive and were undertaken in conscious disregard of the rights and well being of the Plaintiff. An award of punitive damages in a sum according to proof is justified, warranted, and appropriate.

FIFTH CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(AGAINST ALL DEFENDANTS)

69. Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1 through 68 above as though set forth in full herein verbatim.

70. Plaintiff is informed and believes, and thereon alleges that all Defendants, as an intimate partner, owed a legal duty to use ordinary care to prevent injury to her and to not expose her to an unreasonable risk of harm.

71. Each Defendant breached that duty of care when he engaged in sexual intercourse with Plaintiff, without informing her that he was infected with herpes, thereby taking no steps to prevent the transmission of the disease.

72. Each of the Defendants further breached that duty of care when he engaged in unprotected sexual intercourse with Plaintiff for some of the time during their intimate interactions.

73. A reasonably prudent person infected with herpes would have anticipated the foreseeable danger of transmission to a sexual partner, and each Defendant unreasonably failed to exercise due care to guard against it.

74. All Defendants knew or should have known that said conduct ending in transmission of the incurable disease would cause serious emotional distress to any reasonable person.

75. Each of the Defendants' breach directly and proximately caused significant injury to Plaintiff, as she was infected with herpes as a result of engaging in oral and/or sexual intercourse with the Defendants.

76. As the result of the Defendants' negligence that caused Plaintiff's injuries, Plaintiff has suffered physical pain, mental suffering, anguish, nervousness, shock, worry, horror, humiliation and shame, anxiety, depression, and helplessness, in an amount according to proof at trial.

**SIXTH CAUSE OF ACTION
FRAUD BY CONCEALMENT
(AGAINST ALL DEFENDANTS)**

77. Plaintiff incorporates herein by reference each and every allegation of Paragraphs 1 through 76 above as though set forth in full herein verbatim.
78. Plaintiff is informed and believes, and thereon alleges that prior to or during engaging in sexual contact with her, each Defendant had actual knowledge or should have had knowledge that he was infected with herpes.
79. Plaintiff is informed and believes, and thereon alleges that the Defendants knew or should have known that herpes is an incurable and contagious disease that can be spread through sexual contact, especially, but not limited to, sexual intercourse without a condom and/or oral sex.
80. All Defendants had a duty to Plaintiff as an intimate partner to disclose, advise, and warn her, prior to engaging in sexual relations, that he was, in fact, infected with herpes.
81. Each Defendant concealed his disease from Plaintiff and engaged in oral and/or sexual intercourse with her without informing her he was infected with herpes.
82. In engaging in sexual relations with Plaintiff without advising her of his infections with herpes, the Defendants breached his duty to disclose said facts to Plaintiff.
83. As a result of said concealment, Plaintiff engaged in oral and sexual intercourse with the Defendants, sometimes more than once, having no knowledge of his infection with herpes.
84. Each Defendant breached his duty with the intent of misleading Plaintiff so that she would engage in sexual intercourse with him.
85. Plaintiff relied on each Defendant to be direct and frank with her, and trusted him to be honest with her concerning their intimate relationship.
86. Further, Plaintiff relied on Defendant Humphries' frank and open questions about her own sexual life to mean that he was not infected with a sexually transmitted disease.

1 87. Plaintiff relied on each Defendant as an intimate partner to be honest and open and to share
2 important health and sexual information with her prior to engaging in sexual intercourse
3 with her.

4 88. As a result of Plaintiff's reliance on the Defendants' prior behavior, and in reliance of the
5 Defendants' failure to inform her that he had herpes, Plaintiff engaged in sexual intercourse
6 with him.

7 89. As a direct, proximate and legal result of the concealment as alleged, Plaintiff was damaged
8 physically and mentally by contracting herpes from the Defendants.

9 90. Plaintiff has suffered in body and mind, including severe physical pain, discomfort,
10 embarrassment, shame, anxiety, depression, and emotional distress and is entitled to
11 compensatory damages in an amount to be proven at trial.

12 91. By reason of the foregoing, the Defendants' actions and omissions were willful, malicious,
13 fraudulent, oppressive, and were undertaken with conscious disregard of the Plaintiff,
14 thereby an award of punitive damages in a sum according to proof at trial is justified,
15 warranted, and appropriate.

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17 **SEVENTH CAUSE OF ACTION**
18 **FRAUD OF MISREPRESENTATION**
19 **(AGAINST ALL DEFENDANTS)**

20 92. Plaintiff incorporates by reference each and every allegation of Paragraphs 1 through 91
21 above as though set forth in full herein verbatim.

22 93. Plaintiff is informed and believes, and thereon alleges that prior to or during sexual contact
23 with her, each of the Defendants had actual knowledge or should have known he was
24 infected with herpes.

25 94. Plaintiff is further informed and believes, and thereon alleges that prior to or during sexual
26 contact with her the Defendants had actual knowledge or should have known, as a result of
27 being infected with herpes, that he could infect Plaintiff with herpes by engaging in oral and

1 other sexual contact with him, with or without a condom, even if he did not have an visible
2 active outbreak of herpes at the time of the sexual contact.

3 95. Prior to and during sexual contact with her, the Defendants misrepresented the fact that he
4 was infected with herpes by not informing Plaintiff that he was contagious, and by
5 promoting himself to Plaintiff as a caring and trustworthy individual, getting Plaintiff to put
6 her trust in him.

7 96. Additionally, during the above sexual encounter, Defendant Humphries misrepresented
8 himself by engaging in oral sex and sexual intercourse with Plaintiff without a condom and
9 thereby implying that he was not contagious, when in fact he was.

10 97. With the above-described acts, each Defendant breached his duty to disclose his diseases to
11 Plaintiff and he breached said duty with the intent of misleading Plaintiff so that she would
12 engage in sexual intercourse with him.

13 98. Each of the Defendants' breach of his duty to inform Plaintiff of his contagious diseases
14 was intentional and with reckless disregard of the probability that severe injury would result
15 upon Plaintiff.

16 99. Plaintiff relied on the Defendants to be direct and frank with her, and relied on Defendants'
17 actions as described above which assured her that he was not infected with any venereal
18 disease.

19 100. Plaintiff further relied on the Defendants, as a result of their intimate relationship, to share
20 with her any important health and sexual information with her prior to engaging in sexual
21 intercourse with her.

22 101. As a result of Plaintiff's reliance on each of the Defendants' prior actions, Plaintiff relied on
23 the representation that he was not contagious. Further, as a result of those
24 misrepresentations, Plaintiff engaged in sexual intercourse with the Defendants, sometimes
25 more than once.

26 102. Plaintiff was ignorant of the facts concealed by the Defendants' misrepresentations and did
27 not know that she could contract herpes from him, and believed that she was not in danger
28 of contracting an incurable disease by having sexual contract with him.

1 103. As a proximate and legal result of the misrepresentations, as alleged, Plaintiff was damaged
2 physically and mentally, as she contracted herpes from the Defendants.

3 104. Plaintiff has suffered in body and mind, including severe physical pain, discomfort,
4 embarrassment, shame, anxiety, depression, and emotional distress and is entitled to
5 compensatory damages in an amount to be proven at trial.

6 105. By reason of the foregoing, each of the Defendants acted with malice, fraud and oppression,
7 in knowingly and unnecessarily infecting Plaintiff with an incurable venereal disease that
8 could have easily been prevented by abstaining from sexual contact. Additionally, the risk
9 of transmitting the disease to Plaintiff could have easily been reduced by Defendant
10 Humphries by not performing oral sex on Plaintiff and by wearing a condom during every
11 moment of sexual intercourse, which he did not do.

12 106. As a result of the Defendants' malicious behavior toward Plaintiff, an award of punitive
13 damages in a sum according to proof at trial is justified, warranted, and appropriate.
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1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

3 *ON THE FIRST, SECOND, FOURTH, SIXTH AND SEVENTH CAUSES OF ACTION*
4 *AGAINST DEFENDANTS*

- 5 1. To enter judgment for Plaintiff on the counts named herein;
6 2. For compensatory damages in an amount to be proven at trial;
7 3. For general damages within the jurisdiction of this court;
8 4. For punitive damages as permitted by law;
9 5. For costs of suit herein occurred;
10 6. For such other and further relief as the court may deem just and proper.

11 *ON THE THIRD AND FIFTH CAUSES OF ACTION AGAINST DEFENDANTS*

- 12 7. To enter judgment for Plaintiff on the counts named herein;
13 8. For compensatory damages in an amount to be proven at trial;
14 9. For general damages within the jurisdiction of this court;
15 10. For costs of suit herein incurred;
16 11. For such other and further relief as the court may deem just and proper.

17 Dated this August 29, 2012

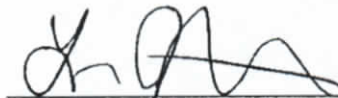
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5 **DEMAND FOR JURY TRIAL**
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7 Plaintiff, Kayla Goldberg, demands a jury trial.
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9 Dated this August 29, 2012

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