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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**06/03/2013** at 11:22:52 AM  
Clerk of the Superior Court  
By Deborah Macias, Deputy Clerk

6 Attorneys for Plaintiff,  
7 ANDREW J. WEILAND, M.D.

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF ORANGE, HARBOR JUSTICE CENTER**

11 ANDREW J. WEILAND, M.D.,  
12 Plaintiff,  
13 v.  
14 GLENN W. WELLING; AND DOES 1 TO 10,  
15 INCLUSIVE,  
16 Defendants.

CASE NO: 30-2013-00653980-CL-CL-HLH  
DEMAND = \$11000.00  
COMPLAINT FOR:  
**1. BREACH OF CONTRACT**  
**2. OPEN BOOK ACCOUNT**  
**3. ACCOUNT STATED**  
LIMITED CIVIL CASE

18 Plaintiff, ANDREW J. WEILAND, M.D. ("Plaintiff") alleges:

- 19 1. Plaintiff is, and all times herein mentioned was, a licensed medical doctor.
- 20 2. Plaintiff is informed and believes and thereupon alleges that Defendant,  
21 GLENN W. WELLING, is and individual residing in this district.
- 22 3. Plaintiff is unaware of the true names or capacities, whether individual,  
23 corporate, associate or otherwise of the defendants sued herein as DOES 1 to 10,  
24 inclusive, and therefore sues there Defendants by such fictitious names. Plaintiff will amend  
25 this Complaint to show the true name and capacities of the fictitiously named Doe  
26 Defendants when Plaintiff ascertains same.

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**FIRST CAUSE OF ACTION**

**BREACH OF CONTRACT**

**(As Against All Defendants)**

4. Plaintiff incorporates by reference paragraphs 1 through 3, inclusive, of this Complaint as though wholly set forth herein.

5. On or about 04/24/2011, a written agreement was made between Plaintiff and Defendants. By the terms of said agreement, Plaintiff agreed to provide medical services to Defendants. Defendants promised to pay Plaintiff for all services provided. A copy of the agreement is attached hereto as Exhibit "A," and incorporated herein by reference.

6. On or about 09/02/2011, Defendants, and each of them, breached the agreement by failing to pay for services which had been provided at their special instance and request. Demand for the outstanding balance owed of \$11000.00 was made upon Defendants, and each of them. Defendants, and each of them, have failed and refused and continue to fail and refuse to pay the remaining balance due.

7. Plaintiff has performed all obligations to Defendants except those obligations Plaintiff was prevented or excused from performing.

8. Plaintiff suffered damages legally (proximately) caused by Defendants' breach of the agreement in the sum of \$11000.00 which is the outstanding balance and reasonable value now due, owing and unpaid, despite Plaintiff's demands, plus prejudgment interest thereon at the rate of 10.0000 percent per annum from 09/02/2011.

**SECOND CAUSE OF ACTION**

**OPEN BOOK ACCOUNT**

**(As Against All Defendants)**

9. Plaintiff incorporates by reference paragraphs 1 through 8, inclusive, of this Complaint as though wholly set forth herein.

10. As an alternative and cumulative remedy, Plaintiff alleges that Defendant(s) became indebted to Plaintiff within the last four years on an open book account for work, labor, services and materials rendered at the special instance and request of Defendant(s)

1 and for which Defendant(s) promised to pay Plaintiff.

2 11. Although demand for payment of the sum of \$11000.00 has been made upon  
3 Defendant(s), and each of them, Defendant(s), and each of them, have failed and refused  
4 and continue to fail and refuse to pay said sum. The sum of \$11000.00 remains now due,  
5 owing and unpaid from Defendant(s) to Plaintiff, together with interest thereon at the rate of  
6 10.0000 percent per annum from 09/02/2011.

7 12. Plaintiff entitled to attorney fees pursuant to California Civil Code Section  
8 1717.5, in a sum according to proof.

9 **THIRD CAUSE OF ACTION**

10 **ACCOUNT STATED**

11 **(As Against All Defendants)**

12 13. Plaintiff incorporates by reference paragraphs 1 through 12, inclusive, of this  
13 Complaint as though fully set forth herein.

14 14. As an alternative and cumulative remedy, Plaintiff alleges that Defendant(s)  
15 became indebted to Plaintiff because an account was stated in writing by and between  
16 Plaintiff and Defendant(s) in which it was agreed that Defendant(s) was/were indebted to  
17 Plaintiff for work, labor, services and materials in the sum of \$11000.00.

18 15. Although demand for payment of the sum of \$11000.00 has been made upon  
19 Defendant(s), and each of them, Defendant(s), and each of them, have failed and refused,  
20 and continue to fail and refuse to pay said sum. The sum of \$11000.00 remains now due,  
21 owing and unpaid from Defendant(s) to Plaintiff, together with interest at the rate of 10.0000  
22 percent per annum from 09/02/2011.

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1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them,  
2 as follows:

3 **ON THE FIRST CAUSE OF ACTION**

- 4 1. For the principal sum of \$11000.00;
- 5 2. For the interest rate of 10.0000 percent per annum from on and after  
6 09/02/2011;

7 **ON THE SECOND CAUSE OF ACTION**

- 8 3. For the principal sum of \$11000.00;
- 9 4. For interest at the rate of ten (10) percent per annum from on and after  
10 09/02/2011;
- 11 5. For reasonable attorneys fees pursuant to California Civil Code Section  
12 1717.5 in a sum according to proof;

13 **ON THE THIRD CAUSE OF ACTION**


- 14 6. For the Principal Sum of \$11000.00;
- 15 7. For interest at the rate of ten (10) percent per annum from on and after  
16 09/02/2011;

17 **ON ALL CAUSES OF ACTION**

- 18 8. For cost of suit incurred herein; and
- 19 9. For such other and further relief as this Court may deem just and proper.
- 20 10. PLAINTIFF REMIT ALL DAMAGES IN EXCESS OF THE JURISDICTIONAL  
21 AMOUNT OF THIS COURT

22 DATED: June 2, 2013

**GABA LAW CORPORATION**

23  
24 By:  \_\_\_\_\_  
25 RUDY GABA JR  
26 Attorneys for Plaintiff,  
27 ANDREW J. WEILAND, M.D.

# **Exhibit "A"**

HOSPITAL FOR SPECIAL SURGERY



Andrew J. Weiland, M.D.  
Professor of Orthopedic and Plastic Surgery  
Cornell University Medical College  
Surgery of the Hand, Wrist, Elbow and Shoulder

*Please sign +  
Fax back*

335 East 70th Street  
New York, NY 10021

Tel (212) 606-1575  
Fax (212) 636-0426  
email:weilanda@fss.edu

SURGICAL/FRACTURE FINANCIAL POLICY

I understand that Dr. Weiland does not participate in my insurance plan and that I am responsible for all charges incurred. I understand that all surgical and fracture care fees will be submitted to my primary insurance carrier provided I supply Dr. Weiland's office with complete and effective insurance coverage information including but not limited to a copy of my insurance card.

I am aware that all surgical and fracture fees incorporate a 90 day after care period during which time, office visits will neither be billed to my insurance nor to myself. Charges for office visits will resume on the 91<sup>st</sup> day following the date of my surgery and/or fracture.

I am aware that x-rays are a separate entity and must be addressed by the radiology facility that performed the x-rays. Also, x-rays are not included in the 90 day after care period mentioned above.

I understand that payment may be sent to me rather than Dr. Weiland for the surgical services performed and that in such case I must furnish this amount in its entirety to Dr. Weiland's office upon receipt. I also understand that at that time I am responsible to pay the remaining balance in full. If a hardship exists, I am to contact the billing department to arrange a monthly payment arrangement. In the case that the insurance reimbursement is less than anticipated, I understand that Dr. Weiland will furnish me with any information necessary and available for my insurance carrier to review their reimbursement. However, I am aware that during this review process, I am still responsible for payment and that if any overpayment is made I will be promptly reimbursed.

I have read and understand the above policy and agree to abide by it.

Patient Name: Glen Welling

Surgery Date: 4/25/2010

Signature of Patient: [Signature]

Signature of Parent/Guardian if patient is a minor: \_\_\_\_\_