

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ROSAISET JARAMILLO, AS SPECIAL  
ADMINISTRATOR OF THE ESTATE OF  
MARIA JARAMILLO

APPELLANT,

VS.

SUSAN R. RAMOS, M.D., F.A.C.S.,

RESPONDENT.

CASE NO. 77385

Electronically Filed  
Jan 31 2019 11:21 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE  
THE HONORABLE KATHLEEN DRAKULICH, DISTRICT JUDGE  
DISTRICT COURT CASE No. CV17-00221

**APPELLANT'S APPENDIX**

William C. Jeanney, Esq.  
Nevada State Bar No. 01235  
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*Attorneys for Appellant*

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1 **\$1425**  
2 William C. Jeanney, Esq.  
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4 BRADLEY, DRENDEL & JEANNEY  
5 P.O. Box 1987  
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7 Telephone No. (775) 335-9999  
8 Facsimile No. (775) 335-9993  
9 **Attorney for Plaintiff**

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12 **MARIA JARAMILLO,**

13 **Plaintiff,**

14 **v.**

Case No. CV17-00221

15 **SUSAN R. RAMOS, M.D., F.A.C.S.;**  
16 **PRIME HEALTHCARE**  
17 **SERVICES-RENO, LLC, a Delaware**  
18 **Limited Liability Company, d/b/a SAINT**  
19 **MARY'S REGIONAL MEDICAL**  
20 **CENTER; PRIME HEALTHCARE**  
21 **MANAGEMENT, INC., a California**  
22 **Corporation; SAINT MARY'S MEDICAL**  
23 **GROUP, INC.; ABC Corporations I-X,**  
24 **inclusive, Black and White Companies; and**  
25 **DOES I-XX, inclusive,**

Dept. No. 1

26 **Defendants.**

27 **COMPLAINT**

28 Plaintiff, MARIA JARAMILLO, by and through her counsel of record, William C. Jeanney, Esq. of the law firm of Bradley, Drendel and Jeanney, and for a cause of action against the Defendants, each of them, hereby alleges and complains as follows:

**PARTIES & JURISDICTION**

1. At all times material hereto, Plaintiff, MARIA JARAMILLO, was and is a resident of Washoe County, Nevada.

2. Based upon information and belief, Defendant, SUSAN R. RAMOS, M.D., F.A.C.S., (hereinafter Defendant RAMOS) is a medical doctor duly licensed to practice medicine in the State

1 of Nevada and at all times material hereto is the agent, employee, or ostensible agent, or ostensible  
2 employee of all other Defendants and at all times was acting within the permission and consent  
3 within the course and scope of employment and agency.

4 3. Based upon information and belief, Defendant, PRIME HEALTHCARE  
5 SERVICES-RENO, LLC., is a Delaware Corporation doing business as SAINT MARY'S  
6 REGIONAL MEDICAL CENTER in Reno, Nevada.

7 4. Defendant, PRIME HEALTHCARE MANAGEMENT, INC. is a California  
8 Corporation, and is a hospital management company that is operating and existing by virtue of the  
9 laws of the State of Nevada.

10 5. Defendant, SAINT MARY'S MEDICAL GROUP, INC., is a Nevada Corporation  
11 operating and existing by virtue of the laws of the State of Nevada.

12 6. Pursuant to NRCP 10(a) and *Nurenberger Hercules-Werke GMBH, vs. Virostek*, 107  
13 Nev. 873, 822 P.2d 1100 (1991), the identity of Defendants designated as DOES I through X,  
14 inclusive; ABC CORPORATIONS I through X, inclusive; and BLACK AND WHITE  
15 COMPANIES I through X, inclusive are unknown at the present time; however, it is alleged and  
16 believed these Defendants were involved in the initiation, approval, support or execution of the  
17 wrongful acts upon which this litigation is premised, and that said fictitiously designated Defendants  
18 are jointly and severally liable for the damages sustained by Plaintiff as alleged herein. When  
19 Plaintiff becomes aware of the true names of said Defendants, she will seek leave to amend this  
20 Complaint in order to state the true names in the place and stead of such fictitious names.

21 7. Plaintiff does not know the true names and capacities, whether corporate or otherwise,  
22 of these Defendants sued herein as DOES I through X, inclusive; ABC CORPORATIONS I through  
23 X, inclusive; and BLACK AND WHITE COMPANIES I through X, inclusive and Plaintiff prays  
24 leave that when the true names of said Defendants are ascertained, she may insert the same at the  
25 appropriate allegations. Plaintiff is informed and believes, and upon such information and belief,  
26 alleges that each of the Defendants designated herein by such fictitious names are negligently  
27 responsible in some manner for the events and happenings herein referred to and negligently caused  
28 the injuries to Plaintiff. Plaintiff further alleges that each Defendant designated herein by such

1 fictitious names are and at all times relevant hereto were, agents of each other and have ratified the  
2 acts of each other Defendant and acted within the course and scope of such agency and have the right  
3 to control the actions of the remaining Defendants.

4 8. At all times herein mentioned, Defendants, and each of them, were the apparent  
5 ostensible principals, principals, apparent ostensible agents, agents, apparent ostensible servants,  
6 servants, apparent ostensible employees, employees, apparent ostensible assistants, assistants,  
7 apparent ostensible consultants and consultants of their Co-Defendants, and were as such acting  
8 within the course, scope and authority of said agency and employment, and that each and every act  
9 of such Defendants, as aforesaid, when acting as a principal, agent, employee, assistant or consultant,  
10 were responsible in some manner for the events and happenings herein referred to.

#### 11 COMMONS ALLEGATIONS

12 7. Plaintiff realleges Paragraphs 1 through 8 of this Complaint and incorporates the same  
13 herein as though set forth at length.

14 8. On March 26, 2015 Plaintiff had a mammogram of her left breast. The findings  
15 showed that a left breast lesion had increased in size compared to the previous exam, which had been  
16 performed approximately six months prior.

17 9. The radiologist, Eric Kraemer, M.D. noted that given the possibility of sampling error  
18 with a needle biopsy, direct surgical excision was recommended.

19 10. Plaintiff was referred to Defendant, a general surgeon SUSAN R. RAMOS, M.D.,  
20 F.A.C.S.

21 11. On or about April 29, 2015 Plaintiff underwent a wire localization of her left breast  
22 at Defendant SAINT MARY'S REGIONAL MEDICAL CENTER'S facility by Defendant RAMOS.

23 12. On or about January 28, 2016 Plaintiff returned to Defendant RAMOS for a follow-up  
24 appointment. At that time she complained of pain in her left breast. Defendant RAMOS ordered  
25 a mammogram and ultrasound of Plaintiff's left breast.

26 13. On or about February 4, 2016 Plaintiff had the mammogram and ultrasound of her  
27 left breast at Defendant SAINT MARY'S REGIONAL MEDICAL CENTER'S facility on.

28 14. The mammogram results showed a 3 cm length localization wire fragment foreign

1 body in the left upper breast at or about 1:00 position.

2 15. On or about February 9, 2016 Plaintiff followed up with Defendant RAMOS who for  
3 the very first time disclosed that there was a 3 cm length wire fragment in Plaintiff's left breast  
4 which would require surgery.

5 **FIRST CAUSE OF ACTION**

6 16. Plaintiff realleges Paragraphs 1 through 15 of this Complaint and incorporates the  
7 same herein as though set forth at length.

8 17. At all relevant times, and for valuable consideration given, Plaintiff presented to  
9 Defendants for consultation, examination, medicare care and treatment.

10 18. During the course of Defendants' consultation, examination, medical care and  
11 treatment, Defendants, and each of them, negligently and carelessly failed to exercise that degree of  
12 care ordinarily possessed and exercised by other medical staff and facilities engaged in providing  
13 such services as the Defendants, and each of them.

14 19. Defendants, and each of them, breached their duty of care to Plaintiff, by failing to  
15 properly provide medical care and treatment to Plaintiff.

16 20. Pursuant to NRS 41A.100(1)(a) an Affidavit from a medical expert is not required  
17 at the time of filing the Plaintiff's complaint.

18 21. As a direct and proximate result of Defendant's negligence as herein alleged, Plaintiff  
19 was caused to suffer significant pain and suffering, permanent disfigurement and scarring in an  
20 amount in excess of Fifteen Thousand and No/Dollars (\$15,000.00).

21 22. Plaintiff was required and did employ physicians and other medical personnel and  
22 incurred doctor and medical bills, and will incur future medical bills in the future, in an amount that  
23 is presently unknown. Plaintiff prays leave to amend this Complaint to include such sums when the  
24 same become known.

25 23. That as a further direct and proximate result of the negligence, carelessness and  
26 recklessness of the Defendants, and each of them, as aforesaid, Plaintiff MARIA JARAMILLO has  
27 incurred past wage loss in an unknown amount and prays leave to amend this Complaint to include  
28 such sums when the same becomes known.

1 **SECOND CAUSE OF ACTION**

2 24. Plaintiff realleges Paragraphs 1 through 23 of this Complaint and incorporates the  
3 same herein as though set forth at length.

4 25. Defendants, and each of them, had a legal duty to Plaintiff to exercise due care in  
5 providing her a safe environment while she was in the custody and care of Defendant.

6 26. Defendants, and each of them failed to exercise due care in providing a safe  
7 environment for Plaintiff while she was a patient at SAINT MARY'S REGIONAL MEDICAL  
8 CENTER and therefore breached their duty to Plaintiff.

9 27. As a direct and legal result of Defendants; breach of respective duties Plaintiff  
10 sustained damages as set forth above.

11 **THIRD CAUSE OF ACTION**

12 28. Plaintiff realleges Paragraphs 1 through 27 of this Complaint and incorporates the  
13 same herein as though set forth at length.

14 29. Pursuant to NRS 41A.100 provides, in relevant part that there arises a rebuttal  
15 presumption that an injury to a patient by the acts or omissions of a health care provider was caused  
16 by the latter's negligence where the patient sustains an injury as a result of a foreign substance other  
17 than medication or a prosthetic device being left within her body following surgery.

18 30. In the alleged circumstances, NRS 41A.100 gives rise to a rebuttable presumption that  
19 Plaintiff's injuries were the proximate and legal result of the negligence of Defendants.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays judgment against the Defendants, each of them, as follows:

- 22 1. For leave to amend the Complaint upon discovery of the true names and identities of  
23 each Doe defendant;  
24 2. For past and future medical and incidental expenses which will be shown according  
25 to proof;  
26 3. For past and future general damages to Plaintiffs, each in a sum in excess of  
27 \$15,000.00;  
28 4. For past wage loss which will be shown according to proof;

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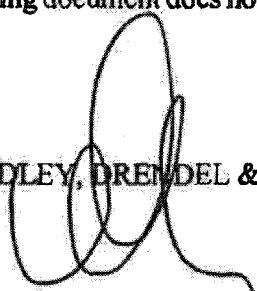
5. For costs of suit and reasonable attorney fees herein;
6. For pre-judgment and post-judgment interest as allowed by law; and
7. For such other and further relief, at law or in equity, as this Court may deem equitable and just.

**AFFIRMATION Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 2nd day of February 2017.

BRADLEY, DRENDEL & JEANNEY

  
\_\_\_\_\_  
William C. Jeanney, Esq.  
*Attorney for Plaintiff*



1 4085

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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE

7 MARIA JARAMILLO,

8 Plaintiff,

9 v.

Case No. CV17-00221

10 SUSAN R. RAMOS, M.D., F.A.C.S.;  
11 PRIME HEALTHCARE  
12 SERVICES-RENO, LLC, a Delaware  
13 Limited Liability Company, d/b/a SAINT  
14 MARY'S REGIONAL MEDICAL  
15 CENTER; PRIME HEALTHCARE  
16 MANAGEMENT, INC., a California  
17 Corporation; SAINT MARYS MEDICAL  
18 GROUP, INC.; ABC Corporations I-X,  
19 inclusive, Black and White Companies; and  
20 DOES I-XX, inclusive,

Dept. No. 1

21 Defendants.

22 SUMMONS

23 **TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**  
24 **WITHOUT BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS. READ**  
25 **THE INFORMATION BELOW VERY CAREFULLY.**

26 A civil complaint has been filed by the Plaintiff against you for the relief as set forth in that document (see  
27 complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada  
28 Rules of Civil Procedure, Rule 4 (b).

- 29 1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this  
30 summons, exclusive of the day of service:
- 31 a. File with the Clerk of the Court, whose address is shown below, a formal written answer to  
32 the complaint or petition, along with the appropriate filing fees, in accordance with the rules  
33 of the Court, and;
  - 34 b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is  
35 shown below.

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2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

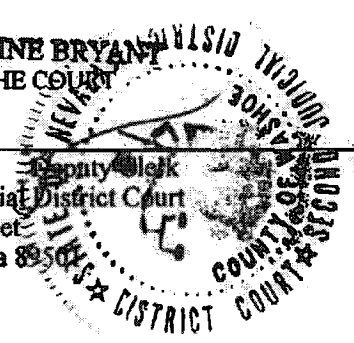
Dated this 9th day of February 2017.

Issued on behalf of Plaintiff:

Name: William C. Jeanney, Esq.  
Address: P.O. Box 1987  
Reno, NV 89505  
Phone Number: (775) 335-9999

JACQUELINE BRYANT  
CLERK OF THE COURT

County Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501



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**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION  
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document filed in case number CV17-00221, does not contain the social security number of any person.

Dated this 3rd day of March 2017.

/s/ William C. Jeanney  
William C. Jeanney, Esq.  
*Attorney for Plaintiffs*

1 CODE 1067

2 IN THE SECOND JUDICIAL DISTRICT COURT  
3 IN AND FOR THE COUNTY OF WASHOE

4 Maria Jaramillo,

Plaintiff(s),

5 VS.

CASE NO: CV17-00221

6 Susan R. Ramos, M.D et al,

Defendant(s).

7 Declaration of Service

8 STATE OF NEVADA

9 COUNTY OF CARSON CITY ss.:

10 MICHAEL CLARK, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over  
11 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

12 That Affiant received copy(ies) of the SUMMONS & COMPLAINT; On 2/23/2017 and served the same on 2/24/2017 at  
13 10:41 AM by delivery and leaving a copy with:

LEE ANN BROOKS - CSR, pursuant to NRS 14.020 as a person of suitable age and discretion, of the office of  
Registered Agent, registered agent for Prime Healthcare Management, Inc., at the registered address of:

14 202 S Minnesota St, Carson City, NV 89703-4267

A description of LEE ANN BROOKS is as follows

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	White - Non Hispanic	Blond	41 - 45	5'6 - 6'0	120-140 Lbs

16 Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

17 Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the  
18 foregoing is true and correct.

Executed on: 2/28/2017

19 by MICHAEL CLARK

Registration: R-070396

20 No notary is required per NRS 53.045

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23  
24 x Michael Clark

MICHAEL CLARK

Registration: R-070396

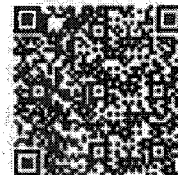
26 Reno Carson Messenger Service, Inc #322

185 Martin St.

27 Reno, NV 89509

(775) 322-2424

28 www.renocarson.com



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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

MARIA JARAMILLO,

Plaintiff,

v.

Case No. CV17-00221

Dept. No. 1

SUSAN R. RAMOS, M.D., F.A.C.S.;  
PRIME HEALTHCARE  
SERVICES-RENO, LLC, a Delaware  
Limited Liability Company, d/b/a SAINT  
MARY'S REGIONAL MEDICAL  
CENTER; PRIME HEALTHCARE  
MANAGEMENT, INC., a California  
Corporation; SAINT MARYS MEDICAL  
GROUP, INC.; ABC Corporations I-X,  
inclusive, Black and White Companies; and  
DOES I-XX, inclusive,

Defendants.

SUMMONS

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 DAYS. READ  
THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint has been filed by the Plaintiff against you for the relief as set forth in that document (see  
complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada  
Rules of Civil Procedure, Rule 4 (b).

1. If you intend to defend this lawsuit, you must do the following within 20 days after service of this  
summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, a formal written answer to  
the complaint or petition, along with the appropriate filing fees, in accordance with the rules  
of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is  
shown below.

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2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 9th day of February 2017.

Issued on behalf of Plaintiff:

Name: William C. Jeanney, Esq.  
Address: P.O. Box 1987  
Reno, NV 89505  
Phone Number: (775) 335-9999

JACQUELINE BRYANT  
CLERK OF THE COURT  
Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501  
★ DISTRICT COURT ★ SECOND

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**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION  
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document filed in case number CV17-00221, does not contain the social security number of any person.

Dated this 3rd day of March 2017.

/s/ William C. Jeanney  
William C. Jeanney, Esq.  
*Attorney for Plaintiffs*

1 CODE 1067

2 IN THE SECOND JUDICIAL DISTRICT COURT  
3 IN AND FOR THE COUNTY OF WASHOE

4 Maria Jaramillo,

Plaintiff(s),

5 VS.

CASE NO: CV17-00221

6 Susan R. Ramos, M.D et al,

Defendant(s),

7 Declaration of Service

8 STATE OF NEVADA

9 COUNTY OF WASHOE

ss.:

10 MIKE JONES, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18  
years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

11 That Affiant received copy(ies) of the SUMMONS & COMPLAINT On 2/23/2017 and served the same on 2/24/2017 at  
12 2:10 PM by delivery and leaving a copy with:

1. Delivering and leaving a copy with Susan R. Ramos, M.D., F.A.C.S. at 890 Mill St Ste 203 Reno, NV 895021436

13 A description of Susan R Ramos M.D. is as follows

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	White - Non Hispanic	Gray/White	Over 60	4'6 - 5'0	100-120 Lbs

15 Server Report: Served

16 Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

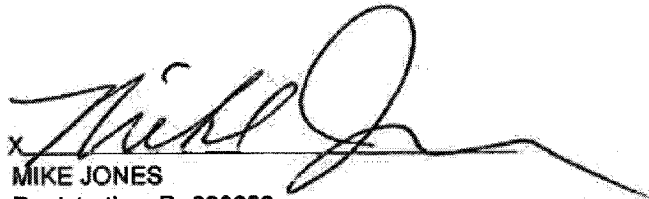
17 Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the  
18 foregoing is true and correct.

Executed on: 2/28/2017

by MIKE JONES

19 Registration: R -023632

20 No notary is required per NRS 53.045

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MIKE JONES

Registration: R -023632

Reno Carson Messenger Service, Inc #322

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Reno, NV 89509

(775) 322-2424

www.renocarson.com





1 **1130**

2 Edward J. Lemons, Esq.  
3 Nevada Bar No. 699  
4 [ejl@lge.net](mailto:ejl@lge.net)

5 LEMONS, GRUNDY & EISENBERG  
6 6005 Plumas Street, 3<sup>rd</sup> Floor  
7 Reno, Nevada 89519  
8 (775) 786-6868

9 *Attorneys for Defendant*  
10 *Susan R. Ramos, M.D., F.A.C.S.*

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE**

-000-

**MARIA JARAMILLO,**

Plaintiff,

vs.

SUSAN R. RAMOS, M.D., F.A.C.S.;  
PRIME HEALTHCARE SERVICES-RENO,  
LLC, A DELAWARE LIMITED LIABILITY  
COMPANY D/B/A SAINT MARY'S REGIONAL  
MEDICAL CENTER; PRIME HEALTHCARE  
MANAGEMENT, INC., A CALIFORNIA  
CORPORATION; SAINT MARY'S MEDICAL  
GROUP, INC.; ABC CORPORATIONS I-X,  
INCLUSIVE, BLACK AND WHITE  
COMPANIES; AND DOES I-XX, INCLUSIVE,

Defendants.

Case No.: CV17-00221

Dept. No. 1

**DEFENDANT SUSAN R. RAMOS, M.D., F.A.C.S.'s**  
**ANSWER TO COMPLAINT**

COMES NOW, Defendant, SUSAN R. RAMOS, M.D., F.A.C.S., by and  
through her attorney EDWARD J. LEMONS, ESQ. and LEMONS, GRUNDY &  
EISENBERG, and in response to Plaintiff's Complaint states as follows:

///

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///

1 PARTIES & JURISDICTION

2 1. Defendant is without knowledge or information sufficient to form a  
3 belief as to the truth of the allegations contained in paragraph 1 of Plaintiff's  
4 Complaint and therefore denies the same.

5 2. Defendant admits that she is a medical doctor duly licensed to  
6 practice medicine in the State of Nevada; Defendant denies the remaining  
7 allegations contained in paragraph 2 of Plaintiff's Complaint.

8 3. Defendant is without knowledge or information sufficient to form a  
9 belief as to the truth of the allegations contained in paragraph 3 of Plaintiff's  
10 Complaint and therefore denies the same.

11 4. Defendant is without knowledge or information sufficient to form a  
12 belief as to the truth of the allegations contained in paragraph 4 of Plaintiff's  
13 Complaint and therefore denies the same.

14 5. Defendant is without knowledge or information sufficient to form a  
15 belief as to the truth of the allegations contained in paragraph 5 of Plaintiff's  
16 Complaint and therefore denies the same.

17 6. Defendant is without knowledge or information sufficient to form a  
18 belief as to the truth of the allegations contained in paragraph 6 of Plaintiff's  
19 Complaint and therefore denies the same.

20 7. Defendant is without knowledge or Information sufficient to form a  
21 belief as to the truth of the allegations contained in paragraph 7 of Plaintiff's  
22 Complaint and therefore denies the same.

23 8. Defendant denies each and every allegation contained in  
24 paragraph 8 of Plaintiff's Complaint.

25 COMMON ALLEGATIONS

26 7. [sic] Defendant, in response to paragraph 7 of Plaintiff's  
27 Complaint, repeats and realleges her responses to paragraphs 1 - 8 as though  
28 fully set forth herein.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of Plaintiff's Complaint and therefore denies the same.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of Plaintiff's Complaint and therefore denies the same.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of Plaintiff's Complaint and therefore denies the same.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of Plaintiff's Complaint and therefore denies the same.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of Plaintiff's Complaint and therefore denies the same.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of Plaintiff's Complaint and therefore denies the same.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of Plaintiff's Complaint and therefore denies the same.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of Plaintiff's Complaint and therefore denies the same.

### FIRST CAUSE OF ACTION

16 Defendant, in response to paragraph 16 of Plaintiff's Complaint, repeats and realleges her responses to paragraphs 1 - 15 as though fully set forth herein.

1           17. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the allegations contained in paragraph 17 of Plaintiff's  
3 Complaint and therefore denies the same.

4           18. Defendant denies each and every allegation contained in  
5 paragraph 18 of Plaintiff's Complaint.

6           19. Defendant denies each and every allegation contained in  
7 paragraph 19 of Plaintiff's Complaint.

8           20. Defendant denies each and every allegation contained in  
9 paragraph 20 of Plaintiff's Complaint.

10          21. Defendant denies each and every allegation contained in  
11 paragraph 21 of Plaintiff's Complaint.

12          22. Defendant denies each and every allegation contained in  
13 paragraph 22 of Plaintiff's Complaint.

14          23. Defendant denies each and every allegation contained in  
15 paragraph 23 of Plaintiff's Complaint.

16                                   **SECOND CAUSE OF ACTION**

17          24. Defendant, in response to paragraph 24 of Plaintiff's Complaint,  
18 repeats and realleges her responses to paragraphs 1 - 23 as though fully set  
19 forth herein.

20          25. Defendant is without knowledge or information sufficient to form a  
21 belief as to the truth of the allegations contained in paragraph 25 of Plaintiff's  
22 Complaint and therefore denies the same.

23          26. Defendant denies each and every allegation contained in  
24 paragraph 26 of Plaintiff's Complaint.

25          27. Defendant denies each and every allegation contained in  
26 paragraph 27 of Plaintiff's Complaint.

27          ///

28          ///

1                                    THIRD CAUSE OF ACTION

2            28. Defendant, in response to paragraph 28 of Plaintiff's Complaint,  
3 repeats and realleges her responses to paragraphs 1 - 27 as though fully set  
4 forth herein.

5            29. Defendant denies each and every allegation contained in  
6 paragraph 29 of Plaintiff's Complaint.

7            30. Defendant denies each and every allegation contained in  
8 paragraph 30 of Plaintiff's Complaint.

9                                    AFFIRMATIVE DEFENSES

10                           First Affirmative Defense

11           Plaintiff's Complaint fails to state a claim against Defendant upon which  
12 relief can be granted.

13                           Second Affirmative Defense

14           Plaintiff gave an appropriately obtained informed consent regarding the  
15 medical care which is the subject of Plaintiff's Complaint.

16                           Third Affirmative Defense

17           Defendant alleges that the occurrence referred to in Plaintiff's Complaint,  
18 and all injuries and damages, if any, resulting therefrom, were caused by the  
19 acts or omissions of a third party or parties over whom Defendant had no  
20 control.

21                           Fourth Affirmative Defense

22           Defendant plead the provisions and limitations of NRS Chapter 41A as an  
23 Affirmative Defense herein.

24                           Fifth Affirmative Defense

25           Defendant hereby incorporate by reference those affirmative defenses  
26 enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth  
27 herein. In the event further investigation or discovery reveals the applicability of  
28 any such defenses, Defendant reserves the right to seek leave of Court to

1 amend his Answer to specifically assert the same. Such defenses are herein  
2 incorporated by reference for the specific purpose of not waiving the same.

3 Sixth Affirmative Defense

4 Defendant hereby reserves the right pursuant to NRCP 11 to plead  
5 additional affirmative defenses if and when sufficient information to support the  
6 pleading of said defenses is obtained.

7 WHEREFORE, Defendant prays as follows:

8 1. That Plaintiff take nothing by reason of her Complaint on file herein  
9 and that the same be dismissed with prejudice.

10 2. That Defendant be awarded costs of suit and attorneys' fees as  
11 provided by law.

12 3. For such other and further relief as the Court may deem just and  
13 proper in the premises.

14 DATED this 14<sup>th</sup> day of March, 2017.

15 LEMONS, GRUNDY & EISENBERG  
16 Attorneys for Defendant  
Susan R. Ramos, M.D., F.A.C.S.

17  
18  
19 BY:   
20 EDWARD J. LEMONS, ESQ.  
21 Nevada Bar No. 699  
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**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION  
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

**Answer to Complaint**

(Title of Document)

filed in case number: CV17 00221

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: March 14, 2017

  
(Signature)

Edward J. Lemons, Esq.

(Print Name)

Defendant Susan Ramos, MD

(Attorney for)

CERTIFICATE OF SERVICE

I am a citizen of the United States. My business address is 6005 Plumas Street, Third Floor, Reno, NV 89519, and I am employed by LEMONS, GRUNDY & EISENBERG in the City of Reno and County of Washoe where this service occurs

On March 14, 2017, following the ordinary business practice, I caused to be served to the addressee(s) listed below, a true copy of the foregoing document(s) and described as *Defendant's Answer to Complaint*.

☒ **BY MAIL:** in an envelope with postage thereon fully prepaid to be placed in the U.S. Mail at Reno, Nevada;

William C. Jeanney, Esq.  
BRADLEY, DRENDEL & JEANNEY  
P.O. Box 1987  
Reno, Nevada 89505


☐ **BY PERSONAL SERVICE:** in an envelope to be hand delivered this date;

☐ **BY OVERNIGHT DELIVERY:** in an envelope to be delivered to an overnight delivery carrier with delivery fees provided for;

☐ **BY FACSIMILE:** by transmitting by facsimile to the respective fax telephone phone number(s).

☐ **BY USING THE COURT'S EFS** which electronically served the following individual(s):

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.





1 1130  
2 Janine C. Prupas, Bar No. 9156  
3 Carrie L. Parker, Bar No. 10952  
4 SNELL & WILMER L.L.P.  
5 50 West Liberty Street, Suite 510  
6 Reno, Nevada 89501  
7 Telephone: 775-785-5440  
8 Facsimile: 775-785-5441  
9 Email: jprupas@swlaw.com  
10 cparker@swlaw.com

11 *Attorneys for Defendants Prime Healthcare Services-*  
12 *Reno, LLC, Saint Mary's Regional Medical Center,*  
13 *Prime Healthcare Management, Inc. and Saint Mary's*  
14 *Medical Group, Inc.*

15  
16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
17  
18 **IN AND FOR THE COUNTY OF WASHOE**

19 MARIA JARAMILLO,

20 Plaintiff,

21 vs.

22 SUSAN R. RAMOS, M.D., F.A.C.S.; PRIME  
23 HEALTHCARE SERVICES-RENO, LLC, a  
24 Delaware Limited Liability Company, d/b/a/  
25 SAINT MARY'S REGIONAL MEDICAL  
26 CENTER; PRIME HEALTHCARE  
27 MANAGEMENT, INC., a California  
28 Corporation; SAINT MARY'S MEDICAL  
GROUP, INC.; ABC Corporation; and does I-  
XX, inclusive,,

Defendants.

Case No. CV17-00221

Dept. No. 1

29 **DEFENDANTS PRIME HEALTHCARE SERVICES RENO, LLC D/B/A SAINT MARY'S**  
30 **REGIONAL MEDICAL CENTER, PRIME HEALTHCARE MANAGEMENT, INC., AND**  
31 **SAINT MARY'S MEDICAL GROUP, INC.'S ANSWER TO COMPLAINT**

32 Defendants Prime Healthcare Services Reno, LLC d/b/a Saint Mary's Regional Medical  
33 Center, Prime Healthcare Management, Inc., and Saint Mary's Medical Group, Inc. (collectively,  
34 "Saint Mary's"), by and through their attorneys of record, Snell & Wilmer L.L.P., responds to  
35 Plaintiff's Complaint as follows:

36 ///

## GENERAL DENIAL

Saint Mary's denies each and every allegation of the Complaint, except those allegations that are specifically admitted, qualified, or otherwise answered herein.

## PARTIES AND JURISDICTION

1. Saint Mary's is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies them.

2. Saint Mary's is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 and therefore denies them.

3. Saint Mary's admits that Prime Healthcare Services-Reno, LLC, is a Delaware limited liability company doing business as Saint Mary's Regional Medical Center in Reno, Nevada, but denies the remaining allegations in Paragraph 3.

4. Saint Mary's admits the allegations in Paragraph 4.

5. Saint Mary's is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and therefore denies them.

6. To the extent the allegations contained in Paragraph 6 of the Complaint are directed to Saint Mary's or its alleged acts and omissions, Saint Mary's denies those allegations. To the extent those allegations are directed at defendants other than Saint Mary's, Saint Mary's asserts that it is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies them.

7. To the extent the allegations contained in Paragraph 7 of the Complaint are directed to Saint Mary's or its alleged acts and omissions, Saint Mary's denies those allegations. To the extent those allegations are directed at defendants other than Saint Mary's, Saint Mary's asserts that it is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies them.

8. To the extent the allegations contained in Paragraph 8 of the Complaint are directed to Saint Mary's or its alleged acts and omissions, Saint Mary's denies those allegations. To the extent those allegations are directed at defendants other than Saint Mary's, Saint Mary's

1 asserts that it is without knowledge or information sufficient to form a belief as to the truth of  
2 those allegations and therefore denies them.

### 3 COMMON ALLEGATIONS

4 7. (sic) Saint Mary's repeats and re-alleges its responses to Paragraphs 1-8 as though fully  
5 incorporated herein.

6 8. (sic) Saint Mary's is without knowledge or information sufficient to form a belief as to  
7 the truth of the allegations in Paragraph 8 and therefore denies them.

8 9. Saint Mary's is without knowledge or information sufficient to form a belief as to  
9 the truth of the allegations in Paragraph 9 and therefore denies them.

10 10. Saint Mary's is without knowledge or information sufficient to form a belief as to  
11 the truth of the allegations in Paragraph 10 and therefore denies them.

12 11. Saint Mary's is without knowledge or information sufficient to form a belief as to  
13 the truth of the allegations in Paragraph 11 and therefore denies them.

14 12. Saint Mary's is without knowledge or information sufficient to form a belief as to  
15 the truth of the allegations in Paragraph 12 and therefore denies them.

16 13. Saint Mary's is without knowledge or information sufficient to form a belief as to  
17 the truth of the allegations in Paragraph 13 and therefore denies them.

18 14. Saint Mary's is without knowledge or information sufficient to form a belief as to  
19 the truth of the allegations in Paragraph 14 and therefore denies them.

20 15. Saint Mary's is without knowledge or information sufficient to form a belief as to  
21 the truth of the allegations in Paragraph 15 and therefore denies them.

### 22 FIRST CAUSE OF ACTION

23 16. Saint Mary's repeats and re-alleges its responses to Paragraphs 1-15 as though  
24 fully incorporated herein.

25 17. Saint Mary's is without knowledge or information sufficient to form a belief as to  
26 the truth of the allegations in Paragraph 17 and therefore denies them.

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1           18.     Saint Mary's states that the allegations in Paragraph 18 do not state averments of  
2 fact but rather conclusions of law as to which no answer is required, but to the extent an answer is  
3 required, Saint Mary's denies said allegations.

4           19.     Saint Mary's states that the allegations in Paragraph 19 do not state averments of  
5 fact but rather conclusions of law as to which no answer is required, but to the extent an answer is  
6 required, Saint Mary's denies said allegations.

7           20.     Saint Mary's states that the allegations in Paragraph 20 do not state averments of  
8 fact but rather conclusions of law as to which no answer is required, but to the extent an answer is  
9 required, Saint Mary's denies said allegations.

10          21.     Saint Mary's states that the allegations in Paragraph 21 do not state averments of  
11 fact but rather conclusions of law as to which no answer is required, but to the extent an answer is  
12 required, Saint Mary's denies said allegations.

13          22.     Saint Mary's is without knowledge or information sufficient to form a belief as to  
14 the truth of the allegations in Paragraph 22 and therefore denies them.

15          23.     Saint Mary's states that the allegations in Paragraph 23 do not state averments of  
16 fact but rather conclusions of law as to which no answer is required, but to the extent an answer is  
17 required, Saint Mary's denies said allegations.

18                               **SECOND CAUSE OF ACTION**

19          24.     Saint Mary's repeats and re-alleges its responses to Paragraphs 1-23 as though  
20 fully incorporated herein.

21          25.     Saint Mary's states that the allegations in Paragraph 25 do not state averments of  
22 fact but rather conclusions of law as to which no answer is required, but to the extent an answer is  
23 required, Saint Mary's denies said allegations.

24          26.     Saint Mary's states that the allegations in Paragraph 26 do not state averments of  
25 fact but rather conclusions of law as to which no answer is required, but to the extent an answer is  
26 required, Saint Mary's denies said allegations.

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1           27.     Saint Mary's states that the allegations in Paragraph 27 do not state averments of  
2 fact but rather conclusions of law as to which no answer is required, but to the extent an answer is  
3 required, Saint Mary's denies said allegations.

4                                   **THIRD CAUSE OF ACTION**

5           28.     Saint Mary's repeats and re-alleges its responses to Paragraphs 1-27 as though  
6 fully incorporated herein.

7           29.     Saint Mary's states that the allegations in Paragraph 29 do not state averments of  
8 fact but rather conclusions of law as to which no answer is required, but to the extent an answer is  
9 required, Saint Mary's denies said allegations.

10          30.     Saint Mary's states that the allegations in Paragraph 30 do not state averments of  
11 fact but rather conclusions of law as to which no answer is required, but to the extent an answer is  
12 required, Saint Mary's denies said allegations.

13                                   **AFFIRMATIVE DEFENSES**

14           As separate affirmative defenses to the Complaint, Saint Mary's alleges as follows:

15                                   **FIRST AFFIRMATIVE DEFENSE**

16           Plaintiff's Complaint and all claims thereunder fail to state a claim upon which relief can  
17 be granted.

18                                   **SECOND AFFIRMATIVE DEFENSE**

19           Plaintiff's claims are barred by the applicable statute of limitations, statute of repose,  
20 and/or the equitable doctrines of laches and estoppel.

21                                   **THIRD AFFIRMATIVE DEFENSE**

22           Plaintiff's Complaint failed to name necessary and indispensable parties.

23                                   **FOURTH AFFIRMATIVE DEFENSE**

24           Plaintiff's claims are barred by the doctrines of informed consent, consent or implied  
25 consent (including any exceptions thereto), release, and waiver.

26                                   **FIFTH AFFIRMATIVE DEFENSE**

27           Saint Mary's did not breach any duty owed to Plaintiff.

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**SIXTH AFFIRMATIVE DEFENSE**

No actions of Saint Mary's were the cause in fact or proximate cause of Plaintiff's alleged injuries and damages.

**SEVENTH AFFIRMATIVE DEFENSE**

Some or all of Plaintiff's alleged damages were proximately caused by new and independent, unforeseeable, superseding, and/or intervening causes unrelated to any conduct by Saint Mary's.

**EIGHTH AFFIRMATIVE DEFENSE**

The injuries and damages suffered in this action were caused in whole or in part by the acts (wrongful or otherwise), negligence, sole fault, misuse, abuse, modification, alteration, omission, or fault of one or more persons or entities over whom Saint Mary's exercised no control and for whom Saint Mary's is not legally responsible.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged damages are barred by the doctrines of contributory and/or comparative negligence.

**TENTH AFFIRMATIVE DEFENSE**

Saint Mary's is entitled to a set-off for all amounts paid, payable by, or available from collateral sources.

**ELEVENTH AFFIRMATIVE DEFENSE**

Saint Mary's is entitled to, and claims the benefit of, all defenses and presumptions set forth in or arising from any rule of law or statute in this state and any other state whose law is deemed to apply in this case.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged damages were proximately caused by her own conduct, including but not limited to, her failure to mitigate damages, precluding any recovery against Saint Mary's.

**THIRTEENTH AFFIRMATIVE DEFENSE**

All actions or inaction of Saint Mary's in connection with the matters alleged in the Complaint were reasonable, legally justified, and privileged.

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**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' alleged damages are barred by the doctrine of unclean hands.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged damages are barred as against Saint Mary's since the action complained of was an independent venture, was not within the course and scope of employment, and/or was not reasonably foreseeable.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Saint Mary's pleads the provisions and limitations of NRS Chapter 41A as an Affirmative Defense herein.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Saint Mary's hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Saint Mary's reserves the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Saint Mary's hereby reserves the right to amend this answer to assert any other defenses, affirmative or otherwise, that may become available during discovery proceedings in this case.

**WHEREFORE**, Saint Mary's prays for judgment as follows:

1. That Plaintiff takes nothing by her Complaint, and that this action be dismissed in its entirety with prejudice;
2. For the costs incurred in defense of this action;
3. For reasonable attorneys' fees incurred in defense of this action; and
4. For such other relief as the court may deem just and proper.

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**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that this document does not contain the social security number of any person.

Dated: May 31, 2017

SNELL & WILMER LLP.

By: 

Janine C. Prupas, Bar No. 9156  
Carrie L. Parker, Bar No. 10952  
50 West Liberty Street, Suite 510  
Reno, Nevada 89501

*Attorneys for Defendants Prime  
Healthcare Services-Reno, LLC, Saint  
Mary's Regional Medical Center, Prime  
Healthcare Management, Inc. and Saint  
Mary's Medical Group, Inc.*

Snell & Wilmer  
LLP  
LAW OFFICES  
50 West Liberty Street, Suite 510  
Reno, Nevada 89501  
775-783-5440

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**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANTS PRIME HEALTHCARE SERVICES RENO, LLC D/B/A SAINT MARY'S REGIONAL MEDICAL CENTER, PRIME HEALTHCARE MANAGEMENT, INC., AND SAINT MARY'S MEDICAL GROUP, INC.'S ANSWER TO COMPLAINT** by the method indicated:

XXXXXXX by Court's CM/ECF Program  
\_\_\_\_\_ by U. S. Mail  
\_\_\_\_\_ by Facsimile Transmission  
\_\_\_\_\_ by Overnight Mail  
\_\_\_\_\_ by Federal Express  
\_\_\_\_\_ by Electronic Service  
\_\_\_\_\_ by Hand Delivery

and addressed to the following:

William C. Jeanney, Esq.  
Bradley, Drendel & Jeanney  
P.O. Box 1987  
Reno, NV 89505  
*Attorneys for Plaintiff*

Edward J. Lemons, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas Street 3<sup>rd</sup> Floor  
Reno, NV 89519  
*Attorney for Susan R. Ramos, M.D., F.A.C.S.*

Dated this 31<sup>st</sup> day of May, 2017.

By:   
An employee of Snell & Wilmer L.L.P.

1 **\$2200**

2 Edward J. Lemons, Esq., Bar No. 699  
3 Alice Campos Mercado, Esq., Bar No. 4555  
4 **LEMONS, GRUNDY & EISENBERG**  
5 6005 Plumas Street, 3<sup>rd</sup> Floor  
6 Reno, Nevada 89519  
7 (775) 786-6868; (775) 786-9716  
8 ejl@lge.net; acm@lge.net

9 *Attorneys for Defendant*  
10 *Susan Ramos, M.D., F.A.C.S.*

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE**  
12 **STATE OF NEVADA IN AND FOR THE**  
13 **COUNTY OF WASHOE**

14 -o0o-

15 **ROSAISET JARAMILLO, AS SPECIAL ADMINISTRATOR**  
16 **OF THE ESTATE OF MARIA JARAMILLO,**

Case No.: CV17-00221

17 **Plaintiff,**

Dept. No. 1

18 vs.

19 **SUSAN R. RAMOS, M.D., F.A.C.S.;**  
20 **PRIME HEALTHCARE SERVICES-RENO, LLC,**  
21 **A DELAWARE LIMITED LIABILITY COMPANY, D/B/A**  
22 **SAINT MARY'S REGIONAL MEDICAL CENTER;**  
23 **ABC CORPORATIONS I-X, INCLUSIVE, BLACK AND**  
24 **WHITE COMPANIES; AND DOES I-XX INCLUSIVE,**

25 **Defendants.**

26 **DEFENDANT SUSAN R. RAMOS, M.D.'s**  
27 **MOTION FOR SUMMARY JUDGMENT**

28 Defendant, SUSAN R. RAMOS, M.D., hereby moves for an order granting summary judgment on the claims prosecuted by ROSAISET JARAMILLO AS SPECIAL ADMINISTRATOR OF THE ESTATE OF MARIA JARAMILLO. This motion is made pursuant to NRCP 56 because the undisputed medical evidence does not establish the essential elements of breach of the standard of care and causation. There being no genuine issues of material fact as to these essential elements, all other facts are rendered immaterial and Dr. Ramos is entitled to judgment as a matter of law. This motion is supported by the accompanying Points and Authorities and exhibits, the pleadings on file, and on such other matters as the court may consider.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

3 This medical malpractice action alleges that Dr. Ramos was negligent in connection with  
4 her surgical treatment of the patient, Maria Jaramillo (now deceased). The complaint also joined  
5 Prime Health Care, which operates St. Mary's Regional Medical Center, the hospital where Dr.  
6 Ramos performed surgery on Ms. Jaramillo. *See Complaint*.

7 In a medical malpractice action, the standard of care and causation must be established  
8 by expert testimony, with limited exceptions. NRS 41A.100. The plaintiff bears the burden in its  
9 case in chief to prove a breach of the standard of care and causation to a reasonable degree of  
10 medical probability. Plaintiff fails in this regard because she has proffered no medical experts to  
11 opine, to a reasonable degree of medical probability, that Dr. Ramos breached the standard of  
12 care or that a causal connection exists between any purported breach and plaintiff's claimed  
13 damages.

14 The complaint reflects that plaintiff is relying on the doctrine of *res ipsa loquitur*, as  
15 codified in NRS 41A.100(1)(a), based on the allegation that a foreign object was left in the  
16 patient's body after surgery. Such reliance would be misplaced because, as the complaint  
17 acknowledges, the presumption is simply a rebuttable presumption and Dr. Ramos, through  
18 uncontroverted medical evidence, has rebutted the presumption of negligence. Plaintiff was,  
19 therefore, required to respond with expert proof of a breach of the standard of care and causation.  
20 She has not provided that expert proof and the time to do so has passed. Because plaintiff has  
21 disclosed no medical experts she cannot prove her malpractice claim as a matter of law, rendering  
22 all other facts immaterial and entitling Dr. Ramos to judgment as a matter of law.

23 **II. STATEMENT OF UNDISPUTED FACTS**

24 **A. Medical Facts**

25 On March 26, 2015, plaintiff Maria Jaramillo, had a mammogram of her left breast. The  
26 findings showed that a lesion had increased in size from the previous exam performed  
27 approximately six months earlier. *Complaint*, p. 3, ¶8. The radiologist recommended a direct  
28 surgical incision to confirm the findings. The patient was referred to Dr. Ramos. *Id.*, ¶¶9-10.

1 On or about April 29, 2015, Dr. Ramos performed a wire localization of the patient's left  
2 breast at St. Mary's Regional Medical Center. *Complaint*, p. 3, ¶11. On or about January 28,  
3 2016, plaintiff returned to Dr. Ramos for a follow up appointment. She complained of pain in her  
4 left breast. *Id.*, ¶11. Dr. Ramos ordered a mammogram and ultrasound, which showed a 3 cm  
5 length localization wire fragment in the upper left breast. *Id.*, pp. 3-4, ¶¶ 12-14. On February 9,  
6 2016, Dr. Ramos informed the patient of the existence of the wire fragment, the removal of which  
7 would require surgery. *Complaint*, p. 4, ¶15.

8 Plaintiff was evaluated by Sharon Wright, M.D. at Western Surgical Group on March 1,  
9 2016. On March 28, 2016, Dr. Wright performed a surgical excision of the wire fragment.  
10 *Plaintiff's Answer to Interrogatory No. 8; excerpts of Plaintiff Maria Jaramillo Responses to*  
11 *Defendant Susan R. Ramos, M.D., FACS' First Set of Interrogatories are attached hereto as*  
12 *Exhibit 1.*

13 On or about August 19, 2016, plaintiff was diagnosed with stomach cancer. *See Medical*  
14 *Information Report from HAWC Clinic; a copy of the report and the Certificate of Custodian of*  
15 *Records are attached as Exhibit 2.* On October 23, 2017, plaintiff Maria Jaramillo succumbed  
16 to the cancer; she passed away from causes unrelated to the issues in this case. *See verified*  
17 *Petition for Letters of Special Administration and Death Certificate attached thereto, filed*  
18 *December 15, 2017, attached hereto as Exhibit 3.*

19 **B. Salient Procedural Facts**

20 A complaint for professional negligence was filed on behalf of Maria Jaramillo on  
21 February 2, 2017, against Dr. Ramos and Prime Health Care, dba St. Mary's Regional Medical  
22 Center. The complaint was unaccompanied by a medical expert's affidavit. *Complaint*, p. 4, ¶20.  
23 The complaint alleges the an expert's affidavit was not required pursuant to NRS 41A.100(1)(a).  
24 *Complaint*, p. 4, ¶20. The complaint further alleged that an expert affidavit is not required in  
25 circumstances where a foreign substance is unintentionally left in the patient's body, which gives  
26 rise to a rebuttable presumption that the plaintiff's injuries were the proximate and legal result of  
27 the defendants' negligence. *Complaint*, p. 5, ¶¶29-30.

28 ///

1 Dr. Ramos filed her answer to the complaint on March 14, 2017, generally denying the  
2 allegations against her and asserting various affirmative defenses, including the provisions and  
3 limitations of NRS Chapter 41A (Nevada's Medical Malpractice Act). *See Defendant Susan R.*  
4 *Ramos, M.D., F.A.C.S.'s Answer to Complaint, filed March 14, 2017.*

5 In June and July of 2017, the parties exchanged their initial disclosures of documents and  
6 filed their Joint Case Conference Report. *See Joint Case Conference Report ("JCCR"), filed*  
7 *August 9, 2017.* Thereafter, discovery ensued.

8 Initial expert disclosures were due to be made on June 22, 2018, with rebuttal disclosures  
9 due on July 23, 2018. *See JCCR p. 6.* Plaintiff's Expert Witness Disclosure stated that she had  
10 "no retained expert witnesses to disclose at this time." *See Plaintiff's Expert Witness Disclosure,*  
11 *p. 3, attached as Exhibit 4.* Dr. Ramos served her Expert Witness Disclosure on June 22, 2018.  
12 *See Defendant Susan R. Ramos, M.D.'s Expert Witness Disclosure, attached as Exhibit 5.*

13 In her Expert Witness Disclosure, Dr. Ramos disclosed Andrew B. Cramer, M.D., a  
14 Board Certified general and vascular surgeon. *See Exhibit 5.* Accompanying Dr. Ramos' expert  
15 witness disclosure is the Declaration of Andrew B. Cramer, M.D, attached as Exhibit 1 to Dr.  
16 Ramos' Expert Witness Disclosure. *See Exhibit 5.*

17 Dr. Cramer reviewed Ms. Jaramillo's medical records from Dr. Ramos, St. Mary's  
18 Regional Medical Center, Western Surgical Group and Reno Diagnostic Center. Based on his  
19 review, Dr. Cramer's overall opinion is that Dr. Ramos' care met expected standards for a Board  
20 Certified surgeon under the circumstances of this case. Dr. Cramer opined that Dr. Ramos' care  
21 was appropriate and he saw no aspect of that care in which she was negligent. Dr. Cramer opined:

22 5. It is my opinion, to a reasonable degree of medical probability,  
23 that the wire fragment left in the patient's breast in this case does not denominate  
24 negligence on the part of the surgeon. It is something that a surgeon should be  
25 unhappy to have happen but it isn't due to negligence. This is something that can  
happen without negligence on the part of the surgeon.

26 6. It is also my opinion that it was reasonable for Dr. Ramos to ask  
27 the radiologist to image the area, which was done using Bioview, and confirm that  
28 the dissected tissue was what radiology wanted her to find and remove. It does  
not appear that the radiologist noted any retained wire fragment or that he brought  
any retained fragment to Dr. Ramos' attention.

1                   7. In conclusion, based on the information currently available to me,  
2 Dr. Ramos' care and treatment of Maria Jaramillo was appropriate and within the  
3 applicable standards of care of a Board Certified Surgeon. There is nothing about  
4 the care by Dr. Ramos which was negligent in this case.

5 *Declaration of Andrew B. Cramer, M.D., attached as Exhibit 6 for ease of reference.*

6 No rebuttal experts were disclosed by any of the parties.

7 As noted above, Maria Jaramillo died in October of 2017; in November of 2017,  
8 plaintiff's counsel filed a Suggestion of Death on the Record. On May 22, 2018, plaintiff filed a  
9 Motion for Substitution of Parties, seeking to substitute Ms. Jaramillo's daughter, Rosaiset  
10 Jaramillo, Special Administrator of the Estate of Maria Jaramillo, as the plaintiff in this action.  
11 The unopposed motion was granted on May 25, 2018. *See Order Granting Plaintiff's Motion for  
Substitution of Parties, filed May 25, 2018.*

12 Pursuant to the JCCR, discovery closes on September 21, 2018 and dispositive motions  
13 must be submitted by October 5, 2018. The trial is scheduled to begin on November 5, 2018.

### 14 **III. ARGUMENT**

#### 15 **A. Standard for Granting Summary Judgment**

16 Summary judgment is appropriate when the pleadings, written discovery, depositions,  
17 and affidavits, if any, demonstrate that no genuine issue of material fact remains for trial.  
18 NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). If the  
19 nonmoving party bears the burden of persuasion at trial, the moving party has the burden of  
20 producing evidence that negates an essential element of the nonmoving party's claim, or pointing  
21 out that there is an absence of evidence to support the nonmoving party's case. *Cuzze v. University  
22 and Community College System of Nevada*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007).

23 Although the pleadings and proof must be construed in the light most favorable to the  
24 non-moving party, the non-moving party is required to "do more than simply show that there is  
25 some metaphysical doubt" as to the operative facts to avoid summary judgment. *Wood*, 121 Nev.  
26 at 732, 121 P.3d at 1031, citing *Matsushita Elect. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586  
27 (1986). Once the moving party meets its burden, "the nonmoving party must transcend the  
28 pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a

1 genuine issue of material fact.” *Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134 (citations omitted).  
2 Otherwise, summary judgment must be granted against the non-moving party. *Wood*, 121 Nev.  
3 at 732, 121 P.3d at 1031.

4 While claims for negligence are generally not decided on summary judgment, a court  
5 may properly grant summary judgment if any of the essential elements of a claim are missing.  
6 See, e.g., *Kusmirek v. MGM Grand Hotel, Inc.*, 73 F.Supp.2d 1222 (D. Nev. 1999) (summary  
7 judgment granted where plaintiff failed to satisfy elements of duty and proximate cause); see also  
8 *Scialabba v. Brandise Construction Co.*, 112 Nev. 965, 968, 921 P.2d 928, 930 (1996) (“In order  
9 to establish entitlement to judgment as a matter of law, a moving defendant must show that one  
10 of the elements of the plaintiff’s prima facie case is ‘clearly lacking as a matter of law.’”).

11 In this case, this medical malpractice claim fails because essential elements of the Estate’s  
12 prima facie case are clearly lacking as a matter of law because plaintiff has no medical expert to  
13 establish them and the Estate is not entitled to a presumption of negligence in light of the expert  
14 evidence rebutting that presumption.

15 **B. PLAINTIFF’S CLAIMS ARE UNSUSTAINABLE IN THE ABSENCE OF PROOF OF A**  
16 **BREACH OF THE STANDARD OF CARE AND CAUSATION**

17 To prevail on a medical malpractice claim, the plaintiff must prove each of the following  
18 essential elements: (1) The accepted standard of care, (2) a departure from the standard of care,  
19 (3) the conduct was both the actual and proximate cause of the plaintiff’s injury, and (4) the  
20 plaintiff suffered damage as a result of a breach of the standard of care. *Orcutt v. Miller*, 95 Nev.  
21 408, 411-412, 595 P.2d 1191, 1193 (1979). “Professional negligence” is defined as “a negligent  
22 act or omission to act by a provider of health care in the rendering of professional services, which  
23 act or omission is the proximate cause of a personal injury or wrongful death.” NRS 41A.015.

24 Generally, liability may not be imposed upon a healthcare provider for negligence in the  
25 performance of that care unless “evidence consisting of expert medical testimony, material from  
26 recognized medical texts or treatises or the regulations of the licensed medical facility where the  
27 alleged negligence occurred is presented to demonstrate the alleged deviation from the accepted  
28 standard of care in the specific circumstances of the case and to prove causation of the alleged

1 personal injury . . .” NRS 41A.100(1). “[M]edical expert testimony regarding standard of care  
2 and causation must be stated to a reasonable degree of medical probability.” *Moriscato v. Sav-*  
3 *On Drug Stores, Inc.*, 121 Nev. 153, 158, 111 P.3d 1112, 1116 (2005).

4 In this case, plaintiff has not identified an expert who will establish a breach of the  
5 standard of care by Dr. Ramos. Nor has plaintiff identified an expert to opine to a reasonable  
6 degree of medical probability that any alleged breach of the standard of care was both the actual  
7 and proximate cause of the claimed injuries. Indeed, plaintiff has not disclosed a medical expert  
8 at all. *See Exhibit 4.*

9 **1. Plaintiff cannot establish the standard of care element**

10 Summary judgment may be properly granted when a plaintiff fails to provide competent,  
11 admissible evidence that a healthcare provider breached the applicable standard of care. *See*  
12 *Bakerink v. Orthopaedic Associates, Ltd.*, 94 Nev. 428, 430, 581 P.2d 9 (1978) (court affirmed  
13 summary judgment in favor of physician where plaintiff failed to present an affidavit or other  
14 document to contradict the competent opinion of expert that the physician conformed to the  
15 standard of care).

16 Here, summary judgment may properly be granted because plaintiff did not disclose an  
17 expert witness who will testify regarding the standard of care applicable to Dr. Ramos. *See*  
18 *Exhibit 4*. Plaintiff’s complaint reflects her belief that an expert witness is not required because  
19 she is invoking the doctrine of *res ipsa loquitur* due to the retention of a foreign object.  
20 *Complaint*, pp. 3-5, citing NRS 41A.100(1)(a). Plaintiff’s theory fails as a matter of law.

21 Initially, it should be noted that plaintiff’s second cause of action is not a *res ipsa* claim.  
22 Thus, a medical expert is required to prove that claim. Plaintiff did not disclose an expert to prove  
23 that claim. Thus, it fails as a matter of law. *See* NRS 41A.100. To the extent plaintiff contends  
24 that the second claim is based on the same factual allegations as the medical malpractice claim  
25 and also relies on the statutory *res ipsa loquitur* doctrine, it still fails as a matter of law for the  
26 following reasons.

27 Plaintiff’s action is premised upon the statutory *res ipsa loquitur* doctrine. *Complaint*, pp.  
28 3-5. Plaintiff alleges that Dr. Ramos was negligent because a localization wire fragment was left



1 in Ms. Jaramillos' body during the April 2015 surgery. The claim rests on NRS 41A.100(1)(a),  
2 which provides in relevant part:

3 "[Expert] evidence is not required and a **rebuttal presumption** that the personal  
4 injury . . . was caused by negligence arises where evidence is presented that the  
5 provider of health care caused the personal injury . . . in any one or more of the  
6 following circumstances: [¶] (a) A foreign substance other than medication or a  
7 prosthetic device was unintentionally left within the body of a patient following  
8 surgery...

9 Plaintiff has *alleged* that the doctrine of *res ipsa loquitur* applies, but has not established  
10 the application of that doctrine. Plaintiff cannot circumvent the expert witness disclosure  
11 requirement by simply alleging that a foreign body was unintentionally left in the patient's body.  
12 The fact that a foreign body is retained does not denominate negligence. *See Exhibit 6, ¶5.*

13 Even if *res ipsa* applied, NRS 41A.100 only gives rise to a *rebuttable presumption* of  
14 negligence when one of the circumstances in NRS 41A.100(1)(a)-(e) are present. *See Complaint,*  
15 *p. 5, ¶¶29-30; Szydel v. Markman*, 121 Nev. 453, 460, 117 P.3d 200, 205 (2005). *Szydel* teaches  
16 that under Nevada's *res ipsa loquitur* statute, there is a rebuttable presumption of negligence;  
17 when a *res ipsa* claim is challenged by the defendant in a pretrial or trial motion, the plaintiff  
18 must present facts and evidence that show the existence of one or more of the situations  
19 enumerated in NRS 41A.100(1)(a)-(e). Similarly, in *Johnson v. Egteadar*, 112 Nev. 428, 434, 915  
20 P.2d 271 (1996), the court stated that the presumption of negligence only arises after the plaintiff  
21 has established that the occurrence giving rise to the litigation does not ordinarily happen in the  
22 absence of negligence. 112 Nev. at 434, 915 P.2d at 274-75. Plaintiff has not established this  
23 fact. By contrast, Dr. Ramos' evidence demonstrates that the inadvertent retention of the wire  
24 fragment under the circumstances of this case does not constitute negligence. *Exhibit 6, Cramer*  
25 *Decl., ¶¶5-7.*

26 Even if plaintiff established a presumption of negligence by alleging that a foreign  
27 substance was left in Ms. Jaramillos' body after the April 29, 2015 surgery, Dr. Ramos has,  
28 through uncontroverted expert evidence, rebutted the presumption that the retention of the wire  
fragment occurred as a result of negligence. Dr. Ramos has disclosed Andrew Cramer, M.D., a  
Board Certified surgeon, to testify that Dr. Ramos conformed to the standard of care. *See Exhibit*

1 5 and Exhibit 6. The Declaration of Dr. Cramer states that retention of the subject fragment is a  
2 risk involved in the type of procedure performed by Dr. Ramos on Ms. Jaramillo. He states, to a  
3 reasonable degree of medical probability, that "the wire fragment left in the patient's breast does  
4 not denominate negligence on the part of the surgeon. . . . This is something that can happen  
5 without negligence on the part of the surgeon. *Exhibit 6, Cramer Decl.*, ¶5. Dr. Cramer proceeds  
6 to opine that Dr. Ramos' care and treatment of Ms. Jaramillo "was appropriate and within the  
7 applicable standards of care of a Board Certified Surgeon. *Exhibit 6, Cramer Decl.*, ¶7.

8 Having rebutted the presumption, the burden shifts back to plaintiff to prove a breach of  
9 the standard of care. Plaintiff cannot do so because she has not disclosed an expert. *See Exhibit*  
10 *4*. Further, plaintiff admits that none of her treating physicians have stated an opinion as to  
11 whether or not Dr. Ramos was negligent with regard to the care and treatment she rendered to  
12 Ms. Jaramillo. *See Exhibit 1, p. 15, Response to Interrogatory No. 29*. To date, this interrogatory  
13 answer has not been supplemented. Consequently, plaintiff she lacks an expert who will testify  
14 at trial that the retention of the wire fragment is an event that does not ordinarily occur in the  
15 absence of the doctor's negligence. In fact, plaintiff acknowledges that she has no retained expert.  
16 *See Exhibit 4*. Having failed to disclose any expert witnesses to testify at trial, and the time to do  
17 so having expired, plaintiff is precluded from presenting any such expert testimony at the trial of  
18 this matter. *See* NRCP 37(c)(1) ("A party that without substantial justification fails to disclose  
19 information required by Rule 16.1, 16.2, or 26(e)(1) . . . is not, unless such failure is harmless,  
20 permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not  
21 so disclosed).

22 Plaintiff may contend that an expert is not required because the existence of a retained  
23 wire is within the common knowledge of lay persons. Such a contention would not only  
24 contravene the law discussed above, it would also be contrary to plaintiff's sworn Answers to  
25 Interrogatories. Throughout her responses, plaintiff declined to answer questions about liability  
26 and causation based on the assertion that the requests sought "expert medical opinions and  
27 conclusions from a lay person." *See Plaintiff Maria Jaramillo Responses to Saint Mary's*

1 *Defendants First Set of Interrogatories, pp. 6-7, 9-10, 12-15; excerpts of Plaintiff's Responses to*  
2 *Saint Mary's First Set of Interrogatories are attached as Exhibit 7.*

3 Because plaintiff did not identify an expert and the time to do so has passed, plaintiff  
4 cannot establish that Dr. Ramos engaged in any conduct from which it could even arguably be  
5 presumed that she breached the standard of care. Therefore, there is an absence of evidence to  
6 support the medical malpractice claim. *See Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134. In the  
7 absence of expert testimony establishing a breach of the standard of care to a reasonable degree  
8 of medical probability, plaintiff Estate cannot establish its medical malpractice claim as a matter  
9 of law. *See NRS 41A.100(1)*. Consequently, as in *Bakerink*, plaintiff's failure to provide  
10 admissible evidence that Dr. Ramos breached the applicable standard of care requires the entry  
11 of summary judgment in Dr. Ramos' favor.

12 **2. Plaintiff cannot establish causation as a matter of law**

13 Notwithstanding the application of the *res ipsa loquitur* statute, plaintiff's claims also fail  
14 because the element of causation is clearly lacking as a matter of law.

15 In a medical malpractice action, a plaintiff must demonstrate that the doctor's conduct  
16 legally caused the plaintiff's injuries. *See Prabhu v. Levine*, 112 Nev. 1538, 1543, 930 P.2d 103,  
17 107 (1996). The elements of actual and proximate cause are essential and must be proven to a  
18 reasonable degree of medical probability by expert testimony. *See, Banks v. Sunrise Hospital*,  
19 120 Nev. 822, 834-835, 102 P.3d 52, 61 (2004); *see also Moriscato*, 121 Nev. at 158, 111 P.3d  
20 at 1116 ("medical expert testimony regarding standard of care and causation must be stated to a  
21 reasonable degree of medical probability.").

22 Here, plaintiff did not disclose a medical expert to opine that Dr. Ramos' medical care  
23 and treatment, including the retention of the wire fragment, were the actual and proximate cause  
24 of plaintiff's claimed injuries. *See Exhibit 4*. Nor does plaintiff have any information to establish  
25 that any doctor, surgeon, nurse or other practitioner expressed any opinion that she would  
26 experience injury or disability as a result of the subject incident. *See Exh. 7, p. 17, Answer to*  
27 *Interrogatory No. 25*. Plaintiff's sworn interrogatory response dated October 9, 2017, stated that  
28 she had no such information at that time and she would "timely disclose plaintiff's experts and

1 related reports, if any . . .” *Id.* In fact, plaintiff did not disclose any such experts or reports. *See*  
2 *Exhibit 4*. The time to do so has expired. *See JCCR*. Therefore, any such expert testimony must  
3 be excluded at trial or in motion practice. *See* NRCp 37(c)(1), *supra*

4 In short, plaintiff lacks the requisite evidence to establish the essential element of  
5 causation. *See* NRS 41A.100(1). Even there were testimony of a deviation of the standard of care,  
6 such evidence would be inadmissible because there is no expert testimony that such deviation  
7 was a proximate cause of plaintiff’s injuries. *See* NRS 48.015, NRS 48.025 and NRS 48.035.

8 In this case, however, there is not even evidence of a breach of the standard of care  
9 because Dr. Cramer’s expert opinion rebuts the presumption of negligence and plaintiff has not  
10 responded with contrary evidence. There being no genuine issue of material fact on the standard  
11 of care and causation elements, all other facts are rendered immaterial, entitling Dr. Ramos to  
12 judgment as a matter of law. *See Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588,  
13 592 (1992) (“Where an essential element of a claim for relief is absent, the facts, disputed or  
14 otherwise, as to other elements are rendered immaterial and summary judgment is proper.”).

#### 15 IV. CONCLUSION

16 The uncontroverted evidence strongly supports the entry of summary judgment in this  
17 medical malpractice action. Plaintiff Rosaiset Jaramillo, as Special Administrator of the Estate  
18 of Maria Jaramillo, cannot establish the essential elements of her claims because plaintiff has not  
19 identified an expert to opine on the standard of care and causation, and the time to do so has  
20 expired. Therefore, all other facts are rendered immaterial and Dr. Ramos is entitled to judgment  
21 as a matter of law. Accordingly, defendant Susan R. Ramos, M.D., respectfully requests that her  
22 Motion for Summary Judgment be granted.

#### 23 AFFIRMATION

24 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document  
25 DOES NOT contain the Social Security Number of any person.

26 DATED this 3rd day of August, 2018

27 LEMONS, GRUNDY & EISENBERG  
28 Attorneys for Defendant  
Susan R. Ramos, M.D.

By: 

EDWARD J. LEMONS, ESQ.  
ALICE CAMPOS MERCADO, ESQ.

042

1 CERTIFICATE OF SERVICE

2 I am a citizen of the United States. My business address is 6005 Plumas Street, Third  
3 Floor, Reno, NV 89519, and I am employed by LEMONS, GRUNDY & EISENBERG in the City of  
4 Reno and County of Washoe where this service occurs

5 On August 03, 2018, following the ordinary business practice, I caused to be served to  
6 the addressee(s) listed below, a true copy of the foregoing document(s) and described as  
*Defendant Susan R. Ramos, M.D.'s Motion for Summary Judgment.*

7            **BY MAIL:** in an envelope with postage thereon fully prepaid to be placed in the U.S.  
8 Mail at Reno, Nevada;

9            **BY PERSONAL SERVICE:** in an envelope to be hand delivered this date;

10            **BY OVERNIGHT DELIVERY:** in an envelope to be delivered to an overnight delivery  
11 carrier with delivery fees provided for;

12            **BY FACSIMILE:** by transmitting by facsimile to the respective fax telephone phone  
13 number(s).

14   ✓   **BY USING THE COURT'S EFS** which electronically served the following individual(s):

15 William C. Jeanney, Esq.  
16 BRADLEY, DRENDEL & JEANNEY

17 Janine C. Prupas, Esq.  
18 Carrie L. Parker, Esq.  
19 SNELL & WILMER, LLP

20 I declare under penalty of perjury under the laws of the State of Nevada that the  
21 foregoing is true and correct.

22 

**INDEX OF EXHIBITS**

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# EXHIBIT 1

to

## DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In the case of

*Jaramillo v. Ramos, et al.*

District Court Case No. CV17-00221

1 **DISC**

2 William C. Jeanney, Esq.  
3 Nevada State Bar NO. 01235  
4 BRADLEY, DRENDEL & JEANNEY  
5 P.O. Box 1987  
6 Reno, NV 89505  
7 Telephone NO. (775) 335-9999  
8 Facsimile NO. (775) 335-9993  
9 *Attorney for Plaintiff*

10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF WASHOE

12 MARIA JARAMILLO,

13 Plaintiff,

14 v.

Case NO. CV17-00221

15 SUSAN R. RAMOS, M.D., F.A.C.S.;  
16 PRIME HEALTHCARE  
17 SERVICES-RENO, LLC, a Delaware  
18 Limited Liability Company, d/b/a SAINT  
19 MARY'S REGIONAL MEDICAL  
20 CENTER; PRIME HEALTHCARE  
21 MANAGEMENT, INC., a California  
22 Corporation; SAINT MARYS MEDICAL  
23 GROUP, INC.; ABC Corporations I-X,  
24 inclusive, Black and White Companies; and  
25 DOES I-XX, inclusive,

Dept. NO. 1

26 Defendants.

27 **PLAINTIFF MARIA JARAMILLO RESPONSES TO DEFENDANT SUSAN R. RAMOS,**  
28 **MD., F.A.C.S.'S FIRST SET OF INTERROGATORIES**

29 COMES NOW plaintiff MARIA JARAMILLO by and through plaintiff's attorneys of record  
30 at Bradley, Drendel & Jeanney, and responds to Defendant SUSAN R. RAMOS, MD., F.A.C.S.'s  
31 First Set of Interrogatories pursuant to N.R.C.P. 33 as follows.

32 **INTRODUCTION**

33 Plaintiff has not completed plaintiff's investigation of the facts relating to this case, has not  
34 completed discovery in this action, and has not completed preparation for trial. The following  
35 answers are given without prejudice to plaintiff's right to produce evidence of any subsequently-  
36 discovered facts. At this time, the information contained in the answers to these Interrogatories



1 foreign body in the left upper breast at about 1:00 in position. The ultrasound results showed  
2 in the 1:00 position a foreign body metallic wire (corresponding to the residual localization  
3 wire fragment in the breast on the mammogram). Plaintiff followed up with Defendant Dr.  
4 Ramos and the Saint Mary's staff on February 9, 2016 to discuss the imaging results.  
5 On March 1, 2016, Plaintiff was evaluated by Sharon Wright, M.D. at Western Surgical  
6 Group. She complained of breast swelling and breast soreness. Dr. Wright noted that the  
7 swelling was in the same area of the breast. Dr. Wright assessed Plaintiff to have foreign  
8 body in soft tissue - needle localization wire in left breast. She scheduled an excision of  
9 Plaintiff's left breast accordingly.

10 On March 28, 2016 Dr. Wright performed a excision biopsy needle localized of left breast  
11 foreign body at Saint Mary's Regional Medical Center. Plaintiff was discharged that same  
12 day, and instructed to call if she developed any signs of infection. On April 5, 2016 Plaintiff  
13 followed up with Dr. Wright. Where Plaintiff reported to have less pain and swelling.

14 (e) Plaintiff suffered severe pain in her left breast for nearly a year before the wire fragment  
15 was finally removed. Ever since the wire fragment was removed, Plaintiff has had throbbing  
16 in her left breast. Plaintiff also has a significant scar across her breast from the wire being  
17 removed.

18 **INTERROGATORY NO. 9:**

19 State in detail, the facts as you know or believe them to be, based on your personal  
20 knowledge and on the information you have learned from others, as to what any defendant herein,  
21 or their agents or employees did or failed to do in causing the injuries or health problems in question  
22 herein, and identify specifically by name each person or instrumentality causing each such injury or  
23 health problems.

24 **RESPONSE TO INTERROGATORY NO 9:**

25 Defendant Dr. Ramos and the Saint Mary's staff scheduled Ms. Jaramillo for a wire  
26 localization of her left breast at Saint Mary's Regional Medical Center on April 29, 2015. Defendant  
27 Dr. Ramos and the Saint Mary's staff left behind a needle localization wire fragment inside  
28 Plaintiff's left breast before closing the surgical site.

1 6. Richard M. Welcome, M.D.  
2 Radiology Consultants  
3 645 North Arlington, Suite 250A  
4 Reno, NV 89503  
5 (775) 770-3000

6 7. Sharon I. Wright, M.D.  
7 Western Surgical Group  
8 75 Pringle Way, Suite 1002  
9 Reno, NV 89502

10 **INTERROGATORY NO. 29:**

11 State whether any of Plaintiffs treating physicians have stated an opinion to Plaintiff, his  
12 attorneys, agents or investigators as to whether or not Defendant Susan Ramos, M.D., F.A.C.S. was  
13 negligent with regard to the treatment and care of Plaintiff.

14 **RESPONSE TO INTERROGATORY NO 29:**

15 Plaintiff does not know at this time, who, if any of her treating physicians have stated an  
16 opinion as to whether or not Defendant Dr. Susan Ramos was negligent with regard to the treatment  
17 and care of Plaintiff.

18 Discovery is ongoing and Plaintiff will supplement this response as more information is  
19 obtained.

20 **INTERROGATORY NO. 30:**

21 Do you contend that Plaintiff will be prevented in the future from attending to her usual  
22 activities as a result of the alleged negligence of Defendant Susan Ramos, M.D., F.A.C.S.? If so,  
23 please set forth factual support you claim for such a contention.

24 **RESPONSE TO INTERROGATORY NO 30:**

25 Objection: this request seeks expert medical opinions and conclusions from a lay person.

26 Plaintiff is still experiencing pain in her left breast.

27 Discovery is ongoing and Plaintiff will supplement this response as more information is  
28 obtained.

**INTERROGATORY NO. 31 :**

State whether you have ever been enrolled in Medicare Part A or Part B, and if so, state your  
Medicare Number.

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**VERIFICATION**

I, MARIA JARAMILLO, am the plaintiff in the captioned matter. I have read the forgoing PLAINTIFF MARIA JARAMILLO'S RESPONSES TO DEFENDANT SUSAN RAMOS, M.D., F.A.C.A.'S INTERROGATORIES, SET ONE. I know the contents thereof and I certify that the same is true of my own knowledge, except as to those matters which are stated upon my information and belief, and as to those matters I believe to be true.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

Dated: 9/25/17

Maria G Jaramillo  
Maria Jaramillo

**EXHIBIT 2**  
to

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

In the case of

*Jaramillo v. Ramos, et al.*

District Court Case No. CV17-00221

**CERTIFICATE OF CUSTODIAN OF RECORDS  
TO ACCOMPANY COPIES OF RECORDS  
PURSUANT TO NRS 52.260 and NRS 52.325**

STATE OF NEVADA                     )  
  ) ss.  
COUNTY OF WASHOE                )

NOW COMES JODIE STARK, who after first being duly sworn deposes and says:

1. That I am MEDICAL RECORDS (position or title) of **HAWC Clinic** and in his or her capacity as MED RECORDS (position or title) is a custodian of the records of **HAWC Clinic**.

2. That **HAWC Clinic** is licensed to do business as COMMUNITY HEALTH ALLIANCE in the State of Nevada.


3. That on the 20<sup>th</sup> day of JUNE, 2017, the undersigned was served with a request for record in connection with the above-entitled cause calling for the production of records pertaining to:

**MARIA JARAMILLO**

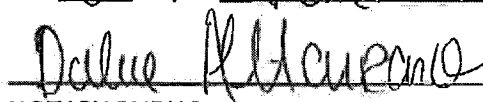
**Date of Birth: 12-11-1968**

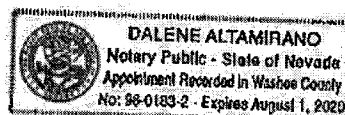
4. That I have examined the original of those records and have made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

5. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the custodian of records or **HAWC Clinic**.

  
Signed

SUBSCRIBED and SWORN to before me  
this 20<sup>th</sup> day of JUNE, 2017.

  
NOTARY PUBLIC



**CHA MAIN**  
1055 South Wells Avenue  
340B00591800HA  
Reno, NV 89502 USA  
Phone: 775-329-6300

## Medical Information Report

**MARIA G JARAMILLO**

**Age:** 48 Years  
**DOB:** 12-11-1968  
**MRN:** 4822-4109.0

### PROBLEM LIST

(C16.9) Cancer of stomach (SCT363349007) - GIST tumor found on abd CT and confirmed with Bx on admission at NNMC - followed by surgeon, DHA and Oncology , Onset: 08-19-2016 (Current)

MARIA G JARAMILLO (DOB: December 11, 1968, Sex:  
Female)  
MRN: 4822-4109.0

Printed on June 16, 2017 by Jodie  
Stahr  
Page 2 of 58

**EXHIBIT 3**  
to

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

In the case of

*Jaramillo v. Ramos, et al.*

District Court Case No. CV17-00221

1 **\$3592**  
2 William C. Jeanney, Esq.  
3 Nevada State Bar No. 01235  
4 **BRADLEY, DRENDEL & JEANNEY**  
5 P.O. Box 1987  
6 Reno, NV 89505  
7 Telephone No. (775) 335-9999  
8 Facsimile No. (775) 335-9993  
9 **Attorneys for Petitioner**

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**

8 **MARIA JARAMILLO,**

Case No. CV17-00221

9 **Plaintiff,**

Dept. No. 1

10 **v.**

11 **SUSAN R. RAMOS, M.D., F.A.C.S.;**  
12 **PRIME HEALTHCARE**  
13 **SERVICES-RENO, LLC, a Delaware**  
14 **Limited Liability Company, d/b/a SAINT**  
15 **MARY'S REGIONAL MEDICAL**  
16 **CENTER; PRIME HEALTHCARE**  
17 **MANAGEMENT, INC., a California**  
18 **Corporation; SAINT MARYS MEDICAL**  
19 **GROUP, INC.; ABC Corporations I-X,**  
20 **inclusive, Black and White Companies; and**  
21 **DOES I-XX, inclusive,**

22 **Defendants.**

23 **PETITION FOR LETTERS OF SPECIAL ADMINISTRATION**

24 The Petition of Rosaiset Jaramillo respectfully shows:

- 25 1. That Petitioner Rosaiset Jaramillo is over the age of majority.
- 26 2. That Petitioner Rosaiset Jaramillo has never been convicted of a felony.
- 27 3. That Petitioner Rosaiset Jaramillo is a bona fide resident of Washoe, Nevada, and can  
28 be contacted at 1800 Sullivan Lane, Apt. 195, Sparks, Nevada 89431.
4. That it is in the best interest of Decedent's heirs and estate and those interested  
therein, that Letters of Special Administration be issued to Rosaiset Jaramillo, for the purpose of  
investigating, and if necessary, instituting and prosecuting an action, proceedings or claim on behalf  
of decedent's estate against Susan R. Ramos, M.D. and others for personal injuries sustained by



MARIA JARAMILLO, deceased, brought or made under the statute in cases provided, including an action, proceeding or claim for any and all damages sustained by her.

5. That MARIA JARAMILLO died in Washoe County, State of Nevada, on or about October 23 2017; and that at the time of her death, Decedent was a resident of Washoe County, Nevada, leaving an Estate in said county and state, consisting of a cause of action against Susan R. Ramos, M.D., and others, in a sum in excess of \$20,000.00; and that no Letters of Administration have been issued out of this or any other Court.

6. That MARIA JARAMILLO died intestate.

7. That MARIA JARAMILLO did not own any real or personal property that the petitioner is aware of.

8. That the name and residence of the heirs-at-law of Decedent are as follows:

A. Rosaiset Jaramillo, daughter, 1800 Sullivan Lane, Apt. 195, Sparks, NV 89431.

B. Montserrat Torres, daughter, 1800 Sullivan Lane, Apt. 195, Sparks, NV 89431.

C. Bryan Torres, son, 1800 Sullivan Lane, Apt. 195, Sparks, NV 89431.

9. Attached hereto as Exhibit 1 is a copy of the death certificate.

WHEREFORE, Petitioner prays for an Order of this Court appointing Rosaiset Jaramillo as Special Administrator of the Estate of MARIA JARAMILLO, deceased, for the purpose of bringing an action against Susan R. Ramos, M.D., and others, for personal injuries MARIA JARAMILLO, upon her taking the oath of office.

Petitioner also requests that no bond be required of Petitioner as it is not believed that MARIA JARAMILLO had any accounts with a significant amount of money in them.

WHEREFORE, Petitioner Rosaiset Jaramillo prays that she be appointed Special

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1 Administrator of the Estate of MARIA JARAMILLO, to pursue the above-referenced wrongful death  
2 action.

3 Dated this 15<sup>th</sup> day of December 2017.

4  
5   
6 Rosaïset Jaramillo

7 AFFIRMATION Pursuant to NRS 239B.030

8 The undersigned does hereby affirm that the preceding document does not contain the social  
9 security number of any person.

10 Dated this 15<sup>th</sup> day of December 2017.

11 BRADLEY, DRENDEL & JEANNEY

12  
13   
14 William C. Jeanney, Esq.  
15 Attorney for Petitioner

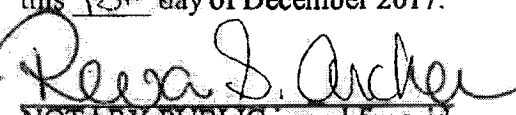
16 VERIFICATION

17 STATE OF NEVADA )  
18 COUNTY OF WASHOE ) ss.

19 ROSAÏSET JARAMILLO swears under penalty of perjury as follows: That she is the  
20 Petitioner in the foregoing Petition; that she has read the foregoing Petition and knows the contents  
21 thereof; that the same is true of her own knowledge, except as to those matters herein stated on  
22 information and belief, and as to those matters, he believes them to be true.

23   
24 ROSAÏSET JARAMILLO

25 SUBSCRIBED AND SWORN before me  
26 this 15<sup>th</sup> day of December 2017.

27   
28 NOTARY PUBLIC in and for said  
County and State

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**EXHIBIT LIST**

<b><u>No.</u></b>	<b><u>Description</u></b>	<b><u># of Pages</u></b>
1.	Death Certificate .....	1

FILED  
Electronically  
CV17-00221  
2017-12-15 10:36:32 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6441105 : yvitoria

**EXHIBIT 1**

**EXHIBIT 1**

# CERTIFICATION OF VITAL RECORD

## WASHOE COUNTY HEALTH DISTRICT

VITAL STATISTICS - RENO, NEVADA

### CERTIFICATE OF DEATH

CASE FILE NO. 3885048

2017020185

STATE FILE NUMBER

TYPE OR  
PRINT IN  
PERMANENT  
BLACK INK

DECEASED

IF DEATH  
OCCURRED IN  
INSTITUTION SEE  
HANDBOOK  
REGARDING  
COMPLETION OF  
RESIDENCE  
ITEMS

PARENTS

DISPOSITION

TRADE CALL

CERTIFIER

REGISTRAR

CAUSE OF  
DEATH

CONDITIONS IF  
ANY WHICH  
GAVE RISE TO  
IMMEDIATE  
CAUSE  
STATING THE  
UNDERLYING  
CAUSE LAST

1a. DECEASED-NAME (FIRST,MIDDLE,LAST,SUFFIX) <b>Ma Guadalupe JARAMILLO HERNANDEZ</b>			2. DATE OF DEATH (Mo/Day/Year) <b>October 23, 2017</b>		3a. COUNTY OF DEATH <b>Washoe</b>	
3b. CITY, TOWN, OR LOCATION OF DEATH <b>Sparks</b>		3c. HOSPITAL OR OTHER INSTITUTION -Name (If not other, give street or R.F.D. No. If Hosp. or Inst. indicate DOA,OP/Emer. Rm. Inpatient(Specify) <b>1800 Sullivan Lane #195 Home</b>			4. SEX <b>Female</b>	
5. RACE (Specify) <b>White</b>		6. Hispanic Origin? Specify <b>Yes - Mexican</b>		7a. AGE-Last birthday (Years) <b>48</b>	7b. UNDER 1 YEAR MOS DAYS HOURS MINS	
9a. STATE OF BIRTH (If not US/CA, name country) <b>Mexico</b>		9b. CITIZEN OF WHAT COUNTRY <b>United States</b>		10. EDUCATION <b>8</b>		
11. MARITAL STATUS (Specify) <b>Never Married</b>		12. SURVIVING SPOUSE'S NAME (Last name prior to first marriage)				
13. SOCIAL SECURITY NUMBER <b>[REDACTED]</b>		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of <b>Housekeeper</b>		14b. KIND OF BUSINESS OR INDUSTRY <b>Hotel</b>		
15a. RESIDENCE - STATE <b>Nevada</b>		15b. COUNTY <b>Washoe</b>		15c. CITY, TOWN OR LOCATION <b>Sparks</b>		
15d. STREET AND NUMBER <b>1800 Sullivan Lane #195</b>		15e. INSIDE CITY LIMITS (Specify Yes or No) <b>Yes</b>				
16. FATHER/PARENT -NAME (First Middle Last Suffix) <b>Bartolo JARAMILLO PADILLA</b>			17. MOTHER/PARENT -NAME (First Middle Last Suffix) <b>Juana HERNANDEZ NERI</b>			
18a. INFORMANT-NAME (Type or Print) <b>Rosalee JARAMILLO HERNANDEZ</b>			18b. MARITAL ADDRESS (Street or R.F.D. No. City or Town, State, Zip) <b>1800 Sullivan Lane #195 Sparks, Nevada 89431</b>			
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) <b>Cremation</b>		19b. CEMETERY OR CREMATORY - NAME <b>Sierra Crematory</b>		19c. LOCATION -City or Town State <b>Reno Nevada 89503</b>		
20a. FUNERAL DIRECTOR - SIGNATURE (Of Person Acting as Such) <b>CHRISTINE A. SWEENEY</b>		20b. FUNERAL DIRECTOR LICENSE NUMBER <b>FO915</b>		20c. NAME AND ADDRESS OF FACILITY <b>Waltons Funerals &amp; Cremations - Ross, Burke 2155 Kietzke Ln Reno NV 89502</b>		
21. TRADE CALL - NAME AND ADDRESS						
21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) <b>MEL MAGBOO MD</b>		21b. On the basis of examination of body, investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)				
21c. DATE SIGNED (Mo/Day/Yr) <b>October 27, 2017</b>		21d. HOUR OF DEATH <b>0920</b>		21e. DATE SIGNED (Mo/Day/Yr)		
21f. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)		21g. PRONOUNCED DEAD (Mo/Day/Yr)		21h. PRONOUNCED DEAD AT (Hour)		
23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) <b>Mel Magboo MD 5250 N. Rd Ste #207 Reno NV 89502</b>					23b. LICENSE NUMBER <b>9713</b>	
24a. REGISTRAR (Signature) <b>BLAIR J. HEDRICK</b>					24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) <b>November 01, 2017</b>	
24c. DEATH DUE TO COMMUNICABLE DISEASE <b>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></b>						
26. IMMEDIATE CAUSE ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c). <b>(a) Malignant Neoplasm Of The Gastro-Intestinal Tract</b>						
(b) DUE TO, OR AS A CONSEQUENCE OF					Interval between onset and death	
(c) DUE TO, OR AS A CONSEQUENCE OF					Interval between onset and death	
(d) DUE TO, OR AS A CONSEQUENCE OF					Interval between onset and death	
PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part I.					28. AUTOPSY (Specify Yes or No) <b>No</b>	
28a. ACC., SUICIDE, HOMICIDE, OR PENDING INVEST. (Specify)					27. WAS CASE REFERRED TO CORONER (Specify Yes or No) <b>Yes</b>	
28b. DATE OF INJURY (Mo/Day/Yr)		28c. HOUR OF INJURY		28d. DESCRIBE HOW INJURY OCCURRED		
28e. INJURY AT WORK (Specify Yes or No)		28f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)		28g. LOCATION <b>STREET OR R.F.D. No. CITY OR TOWN STATE</b>		

STATE REGISTRAR

059

000281314

CERTIFIED COPY OF VITAL RECORDS

This is a true and exact reproduction of the document officially registered and placed on file in the office of the State Registrar and Vital Records.

11/3/2017

DEPUTY REGISTRAR

SIGNATURE AUTHENTICATED

DATE ISSUED:  
REV 10/15

This copy not valid unless prepared on engraved border displaying date, seal and signature of Registrar.



# EXHIBIT 4

to

## DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In the case of

*Jaramillo v. Ramos, et al.*

District Court Case No. CV17-00221

1 **Discovery**  
2 William C. Jeanney, Esq.  
3 Nevada State Bar No. 01235  
4 BRADLEY, DRENDEL & JEANNEY  
5 P.O. Box 1987  
6 Reno, NV 89505  
7 Telephone No. (775) 335-9999  
8 Facsimile No. (775) 335-9993  
9 *Attorney for Plaintiff*

10  
11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
12  
13 IN AND FOR THE COUNTY OF WASHOE  
14

15 ROSAISET JARAMILLO, as Special  
16 Administrator of the Estate of Maria Jaramillo,  
17

18 Plaintiff,

Case No. CV17-00221

19 v.

Dept. No. 1

20 SUSAN R. RAMOS, M.D., F.A.C.S.;  
21 PRIME HEALTHCARE SERVICES-RENO,  
22 LLC, a Delaware Limited Liability Company,  
23 d/b/a SAINT MARY'S REGIONAL  
24 MEDICAL CENTER; PRIME  
25 HEALTHCARE MANAGEMENT, INC., a  
26 California Corporation; SAINT MARYS  
27 MEDICAL GROUP, INC.; ABC  
28 Corporations I-X, inclusive, Black and White  
Companies; and DOES I-XX, inclusive,

Defendants.  
/

**PLAINTIFF'S EXPERT WITNESS DISCLOSURES**

COMES NOW plaintiff ROSAISET JARAMILLO, as Special Administrator of the Estate of Maria Jaramillo by and through her attorneys of record at Bradley, Drendel & Jeanney, and submits Plaintiff's Expert Witness Disclosures pursuant to NRCP 16.1(a)(2) as follows.

**I. NON-RETAINED EXPERT WITNESSES**

Plaintiff discloses as his non-retained expert witnesses all of plaintiff's medical providers and healthcare providers relevant to this matter, including but not limited to the following:

1. Duke Coggeshall, M.D.  
Sierra Anesthesia  
520 Hammill Lane





1                   4.     Sharon I. Wright, M.D.  
2                             Western Surgical Group  
3                             75 Pringle Way, Suite 1002  
4                             Reno, NV 89502  
5                             (775) 323-7500

6             Dr. Sharon Wright will discuss her opinions to a reasonable degree of medical probability,  
7     regarding her treatment, diagnosis and prognosis of Plaintiff Maria Jarmillo. These opinions will be  
8     based on her first-hand examination and treatment of Maria Jarmillo, as fully outlined and set forth in  
9     the medical records from this health care provider which have been previously provided to Defendant  
10    herein. Dr. Wright will testify that the treatment provided to Maria Jarmillo was reasonable, necessary  
11    and causally connected to the incident underlying this matter. A true and correct copy of Dr. Wright's  
12    CV and fee schedule are attached hereto as Exhibit A.

13             This health care provider is also expected to be able to testify as to the following subjects:

- 14             1. A description of injuries suffered by the plaintiff as a result of the accident;
- 15             2. A description of medical treatment provided to the plaintiff as a result of the accident;
- 16             3. The diagnosis of injuries suffered by the plaintiff as a result of the accident;
- 17             4. The causation of injuries suffered by the plaintiff as a result of the accident;
- 18             5. The prognosis regarding injuries suffered by the plaintiff as a result of the accident;
- 19             6. The permanency of injuries suffered by the plaintiff as a result of the accident;
- 20             7. Any disability suffered by the plaintiff as a consequence of the accident;
- 21             8. Any future treatment needed by the plaintiff as a result of the accident;
- 22             9. The reasonableness and necessity of medical treatment which plaintiff has received as a result  
23     of the accident;
- 24             10. The reasonable and customary costs incurred for medical treatment as a result of the  
25     accident.

## 26                             II. RETAINED EXPERTS

27             Plaintiff has no retained expert witnesses to disclose at this time.

28             Plaintiff reserves the right to call to testify any expert witness disclosed by any other party at the  
time of trial.

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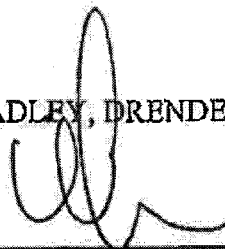
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AFFIRMATION Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 22<sup>nd</sup> of June, 2018

BRADLEY, DRENDEL & JEANNEY



William C. Jeanney, Esq.  
*Attorney for Plaintiff*

1 CERTIFICATE OF SERVICE

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of BRADLEY, DRENDEL &  
3 JEANNEY, and that on this date, I served a true and correct copy of the foregoing on the party(s) set  
4 forth below by:

5 ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing  
6 in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business  
practices.

7 ☐ Personal Delivery

8 ☐ Facsimile

9 ☐ Federal Express/Airborne Express/Other Overnight Delivery

10 ☐ Reno-Carson Messenger Service


11 ☐ All parties signed up for electronic filing have been served electronically, all others have been  
12 served by placing a true copy thereof in a sealed envelope placed for collecting and mailing in  
the United States mail, at Reno, Nevada, postage prepaid, following ordinary business  
13 practices.

14 addressed as follows:

15 Edward J. Lemons, Esq.  
16 Lemons, Grundy & Eisenberg  
6005 Plumas Street, Suite 300  
17 Reno, NV 89519  
Attorney for: Susan R. Ramos, M.D.

18 Janine C. Prupas, Esq.  
19 Carrie L. Parker, Esq.  
Snell & Wilmer  
50 West Liberty Street, Suite 510  
20 Reno, NV 89501  
Attorneys for: Prime Healthcare Services - Reno,  
21 Prime Healthcare Management, Inc.,  
Saint Mary's Medical Group, Inc.

22 DATED this 22<sup>nd</sup> day of June 2018.

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25 Stacy Culbert  
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# EXHIBIT A

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# SHARON WRIGHT

---

645 North Arlington Avenue Suite 525, Reno, NV 89503 ♦ C: 9148447063 ♦ [swright@westernsurgical.com](mailto:swright@westernsurgical.com)

---

## WORK HISTORY

---

**General Surgeon, 09/2012 to Current Western**

**Surgical Group – 75 Pringle Way, Suite 1002**

General surgeon, focusing on the care of surgical endocrine issues (thyroid, parathyroid) and in the care of breast cancer patients.

## EDUCATION

---

**Bachelor of Science: Molecular Biology, 2003**

**Lehigh University - Bethlehem, PA**

**M.D.: 2007**

**New York Medical College - Valhalla, NY**

**Resident in Surgery: General Surgery, 2012**

**Oregon Health and Science University - Portland, OR**

## CERTIFICATIONS

---

State Medical Licensure - Nevada 2013 - present

## POSITIONS

---

Saint Mary's Hospital, Reno Nevada: Member of the Credentials and Professional Practice Evaluation Committee, 2014 - present

Saint Mary's Hospital, Reno Nevada: Member of the Medical Executive Committee, Section Chief of General Surgery, 2016-present

University of Nevada Reno Medical School: Assistant Professor

## AWARDS

---

Oregon Health and Science University: Roger Alberty Award for Outstanding Teaching 2011-2012

## AFFILIATIONS

---

The Alpha Omega Alpha Honor Medical Society - 2007

American College of Surgeons - Fellow - 2012 - present

## CERTIFICATIONS

---

American Board of Surgery - General Surgery Board Certification 2013 - Present



## WESTERN SURGICAL GROUP

Marc  
 M.D., F.A.C.S.  
 Craig, M.D.  
 M.D., F.A.C.S.  
 John  
 M.D., F.A.C.S.

John C. Hansen, M.D., F.A.C.S.  
 James B. Harris, M.D., F.A.C.S.  
 Frida Halka, M.D., F.A.C.S.  
 Harold L. Kennedy, M.D., F.A.C.S.

Mark D. Kozak, M.D., F.A.C.S.  
 Rick L. McElroy, M.D., F.A.C.S.  
 Nicholas J. Spourka, M.D., F.A.C.S.  
 Michael S. Thomas, M.D., Ph.D.

Joseph R. Ussell, M.D.  
 John M. Watson, M.D., F.A.C.S.  
 Sharon L. Wright, M.D., F.A.C.S.

### WSG WESTERN SURGICAL GROUP

#### MEDICAL-LEGAL EVALUATION AND TESTIMONY FEE SCHEDULE

Review of records and preparation of forms or letter with summary and/or diagnostic impression and/or opinion - **\$1000** per hour, minimum charge one hour.

Preparation for deposition done in the office including review of records, review of pertinent literature, and consultation - **\$1000** per hour, minimum charge one hour.

Telephone calls/Consultations - **\$1000** per hour, minimum charge one hour.

Delivery of Deposition - **\$1000** per hour, minimum charge one hour.

Court appearance - **\$1000** per hour, minimum charge one hour.

If testimony is out of the Reno/Sparks city limits, the charge will be calculated in conjunction with the time required to travel to and return from court. It will be calculated as:

**\$1000** per hour with a minimum of 6 hours.

**\$1000** per hour of blocked time if Deposition or Court appearance cancelled with less than 72 hours notice, as there would not be sufficient time to fully reschedule the working day.

All charges are due and payable at least five business days in advance of the date of service. If not received, service date will be cancelled and fees still owed to Doctor at cancellation rate. If there are additional charges for testimony, they are payable at the completion of the testimony.

# EXHIBIT 5

to

## DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In the case of

*Jaramillo v. Ramos, et al.*

District Court Case No. CV17-00221



1 **1610**

2 Edward J. Lemons, Esq.

3 Nevada Bar No. 699

4 eil@lge.net

5 **LEMONS, GRUNDY & EISENBERG**

6 6005 Plumas Street

7 3<sup>rd</sup> Floor

8 Reno, Nevada 89519

9 (775) 786-6868

10 *Attorneys for Defendant*

11 *Susan Ramos, M.D., F.A.C.S.*

12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE**  
13 **STATE OF NEVADA IN AND FOR THE**  
14 **COUNTY OF WASHOE**

15 -o0o-

16 **MARIA JARAMILLO,**

17 Plaintiff,

18 vs.

19 **SUSAN R. RAMOS, M.D., F.A.C.S.;**  
20 **PRIME HEALTHCARE SERVICES-RENO, LLC,**  
21 **A DELAWARE LIMITED LIABILITY COMPANY, D/B/A**  
22 **SAINT MARY'S REGIONAL MEDICAL CENTER;**  
23 **PRIME HEALTHCARE MANAGEMENT INC.,**  
24 **A CALIFORNIA CORPORATION;**  
25 **SAINT MARY'S MEDICAL GROUP, INC.;**  
26 **ABC CORPORATIONS I-X, INCLUSIVE,**  
27 **BLACK AND WHITE COMPANIES; AND**  
28 **DOES I-XX INCLUSIVE,**

**Defendants.**

Case No.: CV17-00221

Dept. No. 1

**DEFENDANT SUSAN R. RAMOS, M.D.'S**  
**EXPERT WITNESS DISCLOSURE**

Defendant, SUSAN R. RAMOS, M.D., by and through her attorney, EDWARD J. LEMONS, ESQ. and LEMONS, GRUNDY & EISENBERG hereby offers the following designation of expert witnesses:

///

///

1 **RETAINED EXPERT WITNESSES:**

2 **1. Andrew B. Cramer, M.D.**

3 CRAMER CONSULTING  
4 1224 Hallinan Circle  
5 Lake Oswego, Oregon 97034

6 Andrew B. Cramer, M.D. is Board Certified in Surgery and licensed to  
7 practice medicine in the state of Oregon. He has practiced as a General and  
8 Vascular Surgeon with Clackamas Surgical Associates in Tualatin, Oregon  
9 since 1992. It is expected that Dr. Cramer will be requested to testify regarding  
10 standard of care, causation and damages in this case. His testimony will be based  
11 upon the medical records produced in this case, depositions he may review,  
12 and his training and practice experience. The Declaration of Andrew B.  
13 Cramer, M.D. is attached hereto as Exhibit 1. Dr. Cramer's Curriculum Vitae is  
14 attached hereto as Exhibit 2 and his fee schedule is attached as Exhibit 3.

14 **NON-RETAINED EXPERT WITNESSES:**

15 **2. Susan Ramos, M.D.**

16 Defendant  
17 c/o Edward J. Lemons, Esq.  
18 LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519

19 Dr. Ramos is a party defendant in this case and in that capacity, will be  
20 asked to comment on the details of her care and treatment of Maria Jaramillo,  
21 including opinions related to the standard of care, causation and damages in  
22 this case, and specifically that she complied with the standard of care and did  
23 not cause injury to Maria Jaramillo.

24 **3.** Defendant reserves the right to call any retained and non-retained  
25 experts identified by any other party in this action.

26 **4.** Such other expert witnesses as may become necessary to address  
27 any opinions expressed by expert witnesses called on behalf of Plaintiff on the  
28 issue of alleged negligence of the Defendants herein. If the need for such

1 additional expert testimony arises, this designation will be supplemented in  
2 writing.

3 5. Such treating physicians as may be listed in the medical records;  
4 although, at present, it is anticipated that such physicians would likely be called  
5 only to testify regarding the medical care provided by them.

6 AFFIRMATION

7 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the  
8 preceding document DOES NOT contain the Social Security Number of any  
9 person.

10 DATED this 22 day of June, 2018.

11 LEMONS, GRUNDY & EISENBERG  
12 Attorneys for Defendant  
13 Susan R. Ramos, M.D.

14 BY: EDWARD J. LEMONS, ESQ.  
15 for Nevada Bar No. 699

1 CERTIFICATE OF SERVICE

2 I am a citizen of the United States. My business address is 6005 Plumas  
3 Street, Third Floor, Reno, NV 89519, and I am employed by LEMONS, GRUNDY &  
4 EISENBERG in the City of Reno and County of Washoe where this service occurs

5 On June 22, 2018, following the ordinary business practice, I caused to be  
6 served to the addressee(s) listed below, a true copy of the foregoing document(s)  
and described as **Defendant Susan R. Ramos, M.D.'s Expert Witness**  
**Disclosure.**

7 \_\_\_\_\_ **BY MAIL:** in an envelope with postage thereon fully prepaid to be placed  
8 in the U.S. Mail at Reno, Nevada;

9 \_\_\_\_\_ **BY PERSONAL SERVICE:** in an envelope to be hand delivered this date;

10 \_\_\_\_\_ **BY OVERNIGHT DELIVERY:** in an envelope to be delivered to an overnight  
delivery carrier with delivery fees provided for;


11 \_\_\_\_\_ **BY FACSIMILE:** by transmitting by facsimile to the respective fax  
12 telephone phone number(s).

13 ☒ **BY USING THE COURT'S EFS** which electronically served the following  
individual(s):

14 William C. Jeanney, Esq.  
15 BRADLEY, DRENDEL & JEANNEY

16 Janine C. Prupas, Esq.  
17 Carrie L. Parker, Esq.  
18 SNELL & WILMER, LLP

19 I declare under penalty of perjury under the laws of the State of Nevada  
that the foregoing is true and correct.

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**INDEX OF EXHIBITS**

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3.	Cramer Consulting Fee Schedule	1

# EXHIBIT 2

to

DEFENDANT'S EXPERT WITNESS DISCLOSURE

In the case of

*Jaramillo v. Ramos, et al.*

District Court Case No. CV17-00221

## CURRICULUM VITAE

**NAME:** Andrew Benjamin Cramer, M.D.

### CURRENT POSITION:

8/1/92            General and Vascular Surgeon  
to                Clackamas Surgical Associates, Inc.  
present          19250 SW 65<sup>th</sup> Ave, Ste. 220  
                  Tualatin, OR 97062  
                  Telephone: (503) 692-5650  
                  Fax: (503) 692-7903

1/1/15           President-Elect Meridian Park Medical Staff  
to  
present

2008             Board of Meridian Association of Physicians

### PAST POSITIONS:

11/1989          Reservist  
to                U.S. Army – Medical Corps  
12/00            Unit:            396<sup>th</sup> Combat Support Hospital  
                  Vancouver, WA 98661-3826  
                  Rank:           Major  
                  Duties:          General & Thoracic Surgeon

2008             Hospital Board Member for Willamette Falls Hospital  
to  
2009

1996             Served at Willamette Falls Hospital Surgery Department Chair, President of Medical  
to                Staff, Credentials Chair and various committee assignments  
2007

2011             Meridian Park Surgery Department Chair  
to  
2014

### PERSONAL DATA:

DOB:            May 10, 1959 – Burns, Oregon, U.S.A.  
MARRIED:      June 19, 1982 – Beverly (Hilton) Cramer  
CHILDREN:     Three

**HOME:** 1224 Hallinan Circle  
Lake Oswego, OR 97034  
(503) 636-7573

**EDUCATION:**

5/1977 Graduate – Burns Union High School, Burns, Oregon  
12/1981 Bachelor of Arts, Degree in Classics  
Stanford University, California  
1981 Field Archeology Project, Kranidi, Greece  
Sponsored by Stanford University  
6/13/86 Doctor of Medicine, Oregon Health Sciences University  
Portland, Oregon

**POST GRADUATE TRAINING:**

6/25/87 Internship – surgery; Oregon Health Sciences University, Portland, Oregon  
Andrew B. Cramer, M.D., F.A.C.S. CURRICULUM VITAE Page 2

6/30/92 Residency - surgery; Oregon Health Sciences University, Portland, Oregon  
6/30/98 Research Fellowship – Surgical oncology; Oregon Health Sciences University, Portland,  
OR

**FACULTY APPOINTMENTS:**

1995-2002 Trauma Surgeon & Clinical Assistant Professor  
Department of Surgery, Oregon Health Sciences University, Portland, Oregon

**AWARDS:**

1990 O.H.S.U. Alumni Research Paper Award Winner  
1992 Chief Resident Teaching Award  
1992 St. Vincent's Hospital – Medical Staff Resident of the Year  
10/97  
to  
4/98 NATO Medal for Service in Bosnia  
4/98 Army Commendation Medal for Bosnia duty  
4/98 U.S. Armed Forces Overseas Service Medal



4/98            Army Reserve Service Medal  
2015            Portland Monthly Top Doctor  
2016            Portland Monthly Top Doctor

**CERTIFICATIONS:**

5/1993           American Board of Surgery  
10/2002          American Board of Surgery Recertification  
12/2013          American Board of Surgery Recertification

**LICENSURE:**

Oregon MD #15391

**FELLOWSHIPS:**

Fellow, American College of Surgeons

**PROFESSIONAL SOCIETIES:**

American College of Surgeons  
Oregon Medical Association  
Andrew B. Cramer, M.D., F.A.C.S.            CURRICULUM VITAE

Page 3

**PROFESSIONAL SOCIETIES (CONT.)**

Christian Medical and Dental Society  
Clackamas County Medical Society  
Meridian Association of Physicians

**PUBLICATIONS:**

Chemo sensitivity Testing: A critical Review, Cramer, A.B. & Woltering, E.A. – Clin Rev in Lab Sci, 28(5,6)405-413, 1991

Somatostatin Analogues Inhibit Angiogenesis in the Chick Chorioallantoic Membrane, Woltering, E.A., Barrie, R., O'Dorisio, T.M. Arce, D., Ure, T., Cramer, A.B., Holmes, D., Robertson, J., Fassler, J. – J. Surg Res., 50:245-251, 1991

Functional Endocrine Tumors of the Gut: Carcinoids, Cramer, A.B., Mozell, E.J., O'Dorisio, T.M. Woltering, E.A. – Surgical Rounds, 15:(1) 41-47, 1992

Functional Endocrine Tumors of the Gut: Vipomas, Cramer, A.B., Mozell, E.J., O'Dorisio, T.M. Woltering, E.A. – Surgical Rounds, 15:(2) 144-146, 1992

Functional Endocrine Tumors of the Gut: Gastrinomas, Cramer, A.B., Mozell, E.J., O'Dorisio, T.M. Woltering, E. A. – Surgical Rounds, 15:(3) 247-251, 1992

Functional Endocrine Tumors of the Gut: Insulinomas, Cramer, A.B., Mozell, E. J., O'Dorisio, T.M. Woltering, E. A. - Surgical Rounds, 15:(4) 343-348, 1992

Functional Endocrine Tumors of the Gut: Glucagonomas and Rare Tumors, Cramer, A.B., Mozell, E.J., O'Dorisio, T. M., Woltering, E.A., - Surgical Rounds, 15:(5) 447-454, 1992

Long-Term Efficacy of Octreotide in the Treatment of Zollinger-Ellison Syndrome, Mozell, E. J., Cramer, A.B., O'Dorisio, T.M., Woltering, E.A., - Arch Surg., 127:1019-1026, 1992

**PRESENTATIONS:**

September 1989      Gastric Outlet Obstruction from Ectopic Pancreatitis: A Case Report – Cramer, A.B., Grout, G. – Oregon Chapter of the American College of Surgeons, Sunriver, Oregon

March 1990      Control of Gastrinoma with Somatostatin Analogue – Cramer, A.B., Woltering, E.A. – Sommer Memorial Lectures/Annual Alumni Scientific Meetings, Portland, Oregon

May 1990      Long-term Symptomatic Control of Gastrinoma with Octreotide Acetate Therapy Cramer, A.B., Woltering, E. A., O'Dorisio, T.M., Arce, D., Mozell, E., Lebrede, L. – The Pancreas Club, San Antonio, Texas

Andrew B. Cramer, M.D., F.A.C.S.

CURRICULUM VITAE

Page 4

June 1990      Zollinger-Ellison Syndrome – Cramer, A.B. – Surgical Grand Rounds, Oregon Health Sciences University, Portland, Oregon

June 1990      Treatment of Hepatic Malignancies with Hepatic Artery Infusion – Cramer, A.B., Fletcher, W. – Portland Surgical Society, Portland, Oregon

June 1990      Long-Term Symptomatic control of Gastrinoma with Octreotide Acetate Therapy Cramer, A.B., Woltering, E.A. – Portland Surgical Society, Portland, Oregon

May 1992      Incidence of Pulmonary Embolus after Trauma and Outcome of a Continuous Intravenous Heparin Protocol - Cramer, A.B., Mullins, R., Feliciano, P. – Portland, Oregon

# EXHIBIT 3

to

## DEFENDANT'S EXPERT WITNESS DISCLOSURE

In the case of

*Jaramillo v. Ramos, et al.*

District Court Case No. CV17-00221

Cramer Consulting  
1224 Hallinan Circle  
Lake Oswego, Oregon 97034

Conference scheduling with Beverly @ 971-275-6344 or [beveLLi@aol.com](mailto:beveLLi@aol.com)

Dr. Andrew Cramer  
Cell: 503-970-2817  
Email: [cramerdoc@aol.com](mailto:cramerdoc@aol.com)

**Fee Schedule:**

Chart review and testifying: \$600/hr  
Travel expenses: \$300/hr  
Trial cancellation within 4 weeks of trial date: \$2000.00

Please deliver chart notes that do not require a signature to Dr. Cramer's home address listed above. If chart notes require a signature please deliver them to:

Clackamas Surgical Associates  
19250 SW 65<sup>th</sup> Ave. Ste 220  
Tualatin, OR 97062

# EXHIBIT 6

to

## DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In the case of

*Jaramillo v. Ramos, et al.*

District Court Case No. CV17-00221

**DECLARATION OF ANDREW B. CRAMER, M.D.**

ANDREW B. CRAMER, M.D. does hereby swear, under penalty of perjury, that the assertions of this Declaration are true.

1. I am Board Certified in Surgery and licensed to practice medicine in the state of Oregon. Since 1992, I have practiced as a General and Vascular Surgeon with Clackamas Surglcal Associates in Tualatin, Oregon. It is my understanding that my Curriculum Vitae, indicating more detail regarding my qualifications, will accompany this Declaration.

2. I have reviewed the following material concerning the case of *Jaramillo v. Ramos*: medical records of Marla Jaramillo from Susan Ramos, M.D.; St. Mary's Regional Medical Center; Western Surgical Group; and Reno Diagnostic Center.

3. It is my understanding that the depositions of the plaintiff and Dr. Ramos have not been taken. When they have been taken, it is my understanding that I will be provided copies to review. This declaration may be supplemented after the review of those depositions and any other pertinent depositions which remain to be taken.

4. My overall opinion is that Dr. Ramos' care met expected standards for a Board Certified Surgeon in these circumstances. Dr. Ramos' care was appropriate and I see no aspect of that care in which she was negligent. This written report is an overview of my testimony. In either a deposition or trial, I may state additional information in connection with the care of Dr. Ramos should the question call for it. Nonetheless, this report provides a statement of the areas of my opinions.

5. It is my opinion, to a reasonable degree of medical probability, that the wire fragment left in the patient's breast in this case does not denominate negligence on the part of the surgeon. It is something that a surgeon should be unhappy to have happen but it isn't due to negligence. This is something that can happen without negligence on the part of the surgeon.

6. It is also my opinion that it was reasonable for Dr. Ramos to ask the radiologist to image the tissue specimen, which was done using Bioview, and confirm that the tissue removed was what radiology wanted her to find and remove. It does not appear that the radiologist noted any missing wire fragment or that he brought any missing fragment to Dr. Ramos' attention.

7. In conclusion, based on the information currently available to me, Dr. Ramos' care and treatment of Marla Jaramillo was appropriate and within the applicable standards of care of a Board Certified Surgeon. There is nothing about the care by Dr. Ramos which was negligent in this case. I am willing to testify accordingly if called. If additional information is made available to me, including depositions of the plaintiff and Dr. Ramos, I reserve the right to include that information in my consideration of this case and to offer supplementary comments if appropriate.

9. All of the opinions I have provided in this report are stated to a reasonable degree of medical probability.

DATED this \_\_\_\_19th\_\_ day of \_\_\_\_\_ June \_\_\_\_\_, 2018.

  
\_\_\_\_\_  
ANDREW B. CRAMER, M.D.

**EXHIBIT 7**  
to

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

In the case of

*Jaramillo v. Ramos, et al.*

District Court Case No. CV17-00221

1 **DISC**  
2 William C. Jeanney, Esq.  
3 Nevada State Bar NO. 01235  
4 BRADLEY, DRENDEL & JEANNEY  
5 P.O. Box 1987  
6 Reno, NV 89505  
7 Telephone NO. (775) 335-9999  
8 Facsimile NO. (775) 335-9993  
9 *Attorney for Plaintiff*

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11 **IN AND FOR THE COUNTY OF WASHOE**

12 MARIA JARAMILLO,

13 Plaintiff,

14 v.

Case NO. CV17-00221

15 SUSAN R. RAMOS, M.D., F.A.C.S.;  
16 PRIME HEALTHCARE  
17 SERVICES-RENO, LLC, a Delaware  
18 Limited Liability Company, d/b/a SAINT  
19 MARY'S REGIONAL MEDICAL  
20 CENTER; PRIME HEALTHCARE  
21 MANAGEMENT, INC., a California  
22 Corporation; SAINT MARYS MEDICAL  
23 GROUP, INC.; ABC Corporations I-X,  
24 inclusive, Black and White Companies; and  
25 DOES I-XX, inclusive,

Dept. NO. 1

26 Defendants.

27 **PLAINTIFF MARIA JARAMILLO RESPONSES TO SAINT MARY'S DEFENDANTS**  
28 **FIRST SET OF INTERROGATORIES**

29 COMES NOW plaintiff MARIA JARAMILLO by and through plaintiff's attorneys of record  
30 at Bradley, Drendel & Jeanney, and responds to Saint Mary's Defendants' First Set of Interrogatories  
31 pursuant to N.R.C.P. 33 as follows.

32 **INTRODUCTION**

33 Plaintiff has not completed plaintiff's investigation of the facts relating to this case, has not  
34 completed discovery in this action, and has not completed preparation for trial. The following  
35 answers are given without prejudice to plaintiff's right to produce evidence of any subsequently-  
36 discovered facts. At this time, the information contained in the answers to these Interrogatories



- 1 5. Person Most Knowledgeable of Saint Mary's Medical Group, Inc.  
2 c/o Janine C. Prupas, Esq. and  
3 Carrie L. Parker, Esq.  
4 Snell & Wilmer  
5 50 West Liberty Street, Suite 510  
6 Reno, NV 89501  
7 (775) 785-5440
- 8 6. Duke Coggeshall, M.D.  
9 Sierra Anesthesia  
10 520 Hammill Lane  
11 Reno, NV 89511  
12 (775) 348-1313
- 13 7. Paige Elliott, PAC  
14 Western Surgical Group  
15 75 Pringle Way, Suite 1002  
16 Reno, NV 89502  
17 (775) 323-7500
- 18 8. Richard M. Welcome, M.D.  
19 Radiology Consultants  
20 645 North Arlington, Suite 250A  
21 Reno, NV 89503  
22 (775) 770-3000
- 23 9. Sharon I. Wright, M.D.  
24 Western Surgical Group  
25 75 Pringle Way, Suite 1002  
26 Reno, NV 89502  
27 (775) 323-7500

28 **INTERROGATORY NO. 8:**

If your answer to Interrogatory No. 5 is anything other than an unqualified no, identify each and every document or thing that supports or otherwise relates to that contention.

**RESPONSE TO INTERROGATORY NO 8:**

Plaintiff previously produced documents bates stamped (Jaramillo-000001-Jaramillo-00200), which support her contentions.

Discovery is ongoing and Plaintiff will supplement this response as more information is obtained.

**INTERROGATORY NO. 9:**

Do you contend during the course of Saint Mary's alleged consultation, examination, medical care and treatment, Saint Mary's negligently and carelessly failed to exercise that degree of care ordinarily possessed and exercised by other medical staff and facilities engaged in providing such

1 services as Saint Mary's, as alleged in paragraph 18 of your complaint?

2 **RESPONSE TO INTERROGATORY NO 9:**

3 Objection: this request seeks expert medical opinions and conclusions from a lay person.

4 Notwithstanding the objection, yes.

5 **INTERROGATORY NO. 10:**

6 If your answer to Interrogatory No. 9 is anything other than an unqualified no, list all facts  
7 that support or otherwise relate to that contention.

8 **RESPONSE TO INTERROGATORY NO 10:**

9 Objection: this request seeks expert medical opinions and conclusions from a lay person.

10 Notwithstanding the objection, Defendant Dr. Ramos and the Saint Mary's staff scheduled Plaintiff  
11 for a wire localization of her left breast at Saint Mary's Regional Medical Center. On April 29,  
12 2015, Plaintiff presented at Saint Mary's for medical care and treatment and Defendants negligently  
13 and carelessly failed to exercise that degree of care ordinarily possessed and exercised by other  
14 medical staff and facilities engaged in providing such services as Defendant Dr. Ramos and the Saint  
15 Mary's staff left behind a needle localization wire fragment inside Plaintiff's left breast before  
16 closing the surgical site.

17 Plaintiff reserves the right to amend this response pending expert review and/or expert  
18 discovery.

19 Discovery is ongoing and Plaintiff will supplement this response as more information is  
20 obtained.

21 **INTERROGATORY NO. 11:**

22 If your answer to Interrogatory No. 9 is anything other than an unqualified no, identify each  
23 and every person who has knowledge that supports or otherwise relates to that contention.

24 **RESPONSE TO INTERROGATORY NO 11:**

25 Objection: this request seeks expert medical opinions and conclusions from a lay person.

26 Notwithstanding the objection:

- 27 1. Maria Jaramillo  
28 c/o William C. Jeanney, Esq.  
Bradley, Drendel & Jeanney

75 Pringle Way, Suite 1002  
Reno, NV 89502  
(775) 323-7500

Plaintiff reserves the right to amend this response pending expert review and/or expert discovery.

Discovery is ongoing and Plaintiff will supplement this response as more information is obtained.

**INTERROGATORY NO. 12:**

If your answer to Interrogatory No. 9 is anything other than an unqualified no, identify each and every document or thing that supports or otherwise relates to that contention.

**RESPONSE TO INTERROGATORY NO 12:**

Objection: this request seeks expert medical opinions and conclusions from a lay person. Notwithstanding the objection, Plaintiff previously produced documents bates stamped (Jaramillo-000001-Jaramillo-00200), which support her contentions.

Plaintiff reserves the right to amend this response pending expert review and/or expert discovery.

Discovery is ongoing and Plaintiff will supplement this response as more information is obtained.

**INTERROGATORY NO. 13:**

Do you contend Saint Mary's breached their duty of care to you by failing to properly provide medical care and treatment to you, as alleged in paragraph 19 of your complaint?

**RESPONSE TO INTERROGATORY NO 13:**

Objection: this request seeks expert medical opinions and conclusions from a lay person. Notwithstanding the objection, yes.

**INTERROGATORY NO. 14:**

If your answer to Interrogatory No. 13 is anything other than an unqualified no, list all facts that support or otherwise relate to that contention.

**RESPONSE TO INTERROGATORY NO 14:**

Objection: this request seeks expert medical opinions and conclusions from a lay person.

1 Notwithstanding the objection, Defendant Dr. Ramos and the Saint Mary's staff scheduled Plaintiff  
2 for a wire localization of her left breast at Saint Mary's Regional Medical Center on April 29, 2015.  
3 Plaintiff presented to Saint Mary's on April 29, 2016 for medical care and treatment by Defendant  
4 Dr. Ramos and Saint Mary's staff wherein they negligently and carelessly failed to exercise that  
5 degree of care ordinarily possessed and exercised by other medical staff and facilities engaged in  
6 providing such services to Plaintiff because they left behind a needle localization wire fragment  
7 inside Plaintiff's left breast before closing the surgical site.

8 Plaintiff reserves the right to amend this response pending expert review and/or expert  
9 discovery.

10 Discovery is ongoing and Plaintiff will supplement this response as more information is  
11 obtained.

12 **INTERROGATORY NO. 15:**

13 If your answer to Interrogatory No. 13 is anything other than an unqualified no, identify each  
14 and every person who has knowledge that supports or otherwise relates to that contention.

15 **RESPONSE TO INTERROGATORY NO 15:**

16 Objection: this request seeks expert medical opinions and conclusions from a lay person.  
17 Notwithstanding the objection:

- 18 1. Maria Jaramillo  
19 c/o William C. Jeanney, Esq.  
20 Bradley, Drendel & Jeanney  
21 6900 S. McCarran Blvd., Suite 2000  
22 Reno, Nevada 89509  
23 (775) 335-9999
- 24 2. Susan R. Ramos, M.D.  
25 c/o Edward J. Lemons, Esq.  
26 Lemons, Grundy & Eisenberg  
27 6005 Plumas Street, Suite 300  
28 Reno, NV 89519  
(775) 786-6868
3. Person Most Knowledgeable of Saint Mary's Regional Medical Center  
c/o Janine C. Prupas, Esq. and  
Carrie L. Parker, Esq.  
Snell & Wilmer  
50 West Liberty Street, Suite 510  
Reno, NV 89501  
(775) 785-5440

1 **RESPONSE TO INTERROGATORY NO 16:**

2 Objection: this request seeks expert medical opinions and conclusions from a lay person.  
3 Notwithstanding the objection, Plaintiff previously produced documents bates stamped (Jaramillo-  
4 000001-Jaramillo-00200), which support her contentions.

5 Plaintiff reserves the right to amend this response pending expert review and/or expert  
6 discovery.

7 Discovery is ongoing and Plaintiff will supplement this response as more information is  
8 obtained.

9 **INTERROGATORY NO. 17:**

10 Do you contend Saint Mary's failed to exercise due care in providing a safe environment for  
11 you while you were a patient at Saint Mary's Regional Medical Center and therefore breached their  
12 duty to you, as alleged in paragraph 26 of your complaint?

13 **RESPONSE TO INTERROGATORY NO 17:**

14 Objection: this request seeks expert medical opinions and conclusions from a lay person.  
15 Notwithstanding the objection, yes.

16 **INTERROGATORY NO. 18:**

17 If your answer to Interrogatory No. 17 is anything other than an unqualified no, list all facts  
18 that support or otherwise relate to that contention.

19 **RESPONSE TO INTERROGATORY NO 18:**

20 Objection: this request seeks expert medical opinions and conclusions from a lay person.  
21 Notwithstanding the objection, Defendant Dr. Ramos and the Saint Mary's staff scheduled Plaintiff  
22 for a wire localization of her left breast at Saint Mary's Regional Medical Center on April 29, 2015.  
23 Plaintiff presented to Saint Mary's on April 29, 2016 for medical care and treatment by Defendant  
24 Dr. Ramos and the Saint Mary's staff wherein they negligently and carelessly failed to exercise due  
25 care in providing a safe environment for Plaintiff because they left behind a needle localization wire  
26 fragment inside Plaintiff's left breast before closing the surgical site.

27 Plaintiff reserves the right to amend this response pending expert review and/or expert  
28 discovery.

1           Discovery is ongoing and Plaintiff will supplement this response as more information is  
2 obtained.

3           **INTERROGATORY NO. 19**

4           If your answer to Interrogatory No. 17 is anything other than an unqualified no, identify each  
5 and every person who has knowledge that supports or otherwise relates to that contention.

6           **RESPONSE TO INTERROGATORY NO 19:**

7           Objection: this request seeks expert medical opinions and conclusions from a lay person.

8           Notwithstanding the objection:

- 9           1.     Maria Jaramillo  
10                c/o William C. Jeanney, Esq.  
11                Bradley, Drendel & Jeanney  
12                6900 S. McCartan Blvd., Suite 2000  
13                Reno, Nevada 89509  
14                (775) 335-9999
- 15           2.     Susan R. Ramos, M.D.  
16                c/o Edward J. Lemons, Esq.  
17                Lemons, Grundy & Eisenberg  
18                6005 Plumas Street, Suite 300  
19                Reno, NV 89519  
20                (775) 786-6868
- 21           3.     Person Most Knowledgeable of Saint Mary's Regional Medical Center  
22                c/o Janine C. Prupas, Esq. and  
23                Carrie L. Parker, Esq.  
24                Snell & Wilmer  
25                50 West Liberty Street, Suite 510  
26                Reno, NV 89501  
27                (775) 785-5440
- 28           4.     Person Most Knowledgeable of Prime Healthcare Management, Inc.  
                c/o Janine C. Prupas, Esq. and  
                Carrie L. Parker, Esq.  
                Snell & Wilmer  
                50 West Liberty Street, Suite 510  
                Reno, NV 89501  
                (775) 785-5440
5.     Person Most Knowledgeable of Saint Mary's Medical Group, Inc.  
                c/o Janine C. Prupas, Esq. and  
                Carrie L. Parker, Esq.  
                Snell & Wilmer  
                50 West Liberty Street, Suite 510  
                Reno, NV 89501  
                (775) 785-5440
6.     Duke Coggeshall, M.D.

1                   Sierra Anesthesia  
2                   520 Hammill Lane  
3                   Reno, NV 89511  
                  (775) 348-1313

4           7.     Paige Elliott, PAC  
5                   Western Surgical Group  
6                   75 Pringle Way, Suite 1002  
                  Reno, NV 89502  
                  (775) 323-7500

7           8.     Richard M. Welcome, M.D.  
8                   Radiology Consultants  
9                   645 North Arlington, Suite 250A  
                  Reno, NV 89503  
                  (775) 770-3000

10          9.     Sharon I. Wright, M.D.  
11                   Western Surgical Group  
                  75 Pringle Way, Suite 1002  
                  Reno, NV 89502  
                  (775) 323-7500

12                   Plaintiff reserves the right to amend this response pending expert review and/or expert  
13                   discovery.

14                   Discovery is ongoing and Plaintiff will supplement this response as more information is  
15                   obtained.

16                   **INTERROGATORY NO. 20:**

17                   If your answer to Interrogatory No. 17 is anything other than an unqualified no, identify each  
18                   and every document or thing that supports or otherwise relates to that contention.

19                   **RESPONSE TO INTERROGATORY NO 20:**

20                   Objection: this request seeks expert medical opinions and conclusions from a lay person.  
21                   Notwithstanding the objection, Plaintiff previously produced documents bates stamped (Jaramillo-  
22                   000001-Jaramillo-00200), which support her contentions.

23                   Plaintiff reserves the right to amend this response pending expert review and/or expert  
24                   discovery.

25                   Discovery is ongoing and Plaintiff will supplement this response as more information is  
26                   obtained.

27                   ///

28

1 **INTERROGATORY NO. 21:**

2 Identify the specific acts or omissions on the part of Saint Mary's or its employees which you  
3 contend caused or contributed to the injuries or damages you sustained.

4 **RESPONSE TO INTERROGATORY NO 21:**

5 Objection: this request seeks expert medical opinions and conclusions from a lay person.

6 Notwithstanding the objection, Defendant Dr. Ramos and the Saint Mary's staff scheduled Ms.  
7 Jaramillo for a wire localization of her left breast at Saint Mary's Regional Medical Center on April  
8 29, 2015. Defendant Dr. Ramos and the Saint Mary's staff negligently and carelessly failed to  
9 exercise that degree of care ordinarily possessed and exercised by other medical staff and facilities  
10 engaged in providing such services by leaving behind a needle localization wire fragment inside  
11 Plaintiff's left breast before closing the surgical site.

12 Plaintiff reserves the right to amend this response pending expert review and/or expert  
13 discovery.

14 Discovery is ongoing and Plaintiff will supplement this response as more information is  
15 obtained.

16 **INTERROGATORY NO. 22:**

17 Identify each injury you contend was caused by Saint Mary's or its employees.

18 **RESPONSE TO INTERROGATORY NO 22:**

19 Objection: this request seeks expert medical opinions and conclusions from a lay person.

20 Notwithstanding the objection, Plaintiff suffered severe pain in her left breast for nearly a year  
21 before the wire fragment was finally removed. Her pain affected all aspects of her daily life. She  
22 continued to work, but her co-workers rallied around her to help out and do many of her tasks for  
23 her. Plaintiff became afraid to even drive her car because of the pain and she was worried she  
24 couldn't drive safely. She had difficulty cooking and taking care of her home. She had very little  
25 interest in hobbies or outings. She was irritable and short-tempered constantly. Plaintiff's three  
26 teenage children became frustrated by her mom's constant irritability, which was not her usual  
27 demeanor. Plaintiff had difficulty dealing with anything.

28 Also as a result of the incident, Ms. Jaramillo missed about 3 weeks of work. At the time



- 1           3.     Duke Coggeshall, M.D.  
2                 Sierra Anesthesia  
3                 520 Hammill Lane  
               Reno, NV 89511  
               (775) 348-1313
- 4           4.     Paige Elliott, PAC  
5                 Western Surgical Group  
6                 75 Pringle Way, Suite 1002  
               Reno, NV 89502  
               (775) 323-7500
- 7           5.     Richard M. Welcome, M.D.  
8                 Radiology Consultants  
9                 645 North Arlington, Suite 250A  
               Reno, NV 89503  
               (775) 770-3000
- 10          6.     Sharon I. Wright, M.D.  
11                 Western Surgical Group  
12                 75 Pringle Way, Suite 1002  
               Reno, NV 89502  
               (775) 323-7500

13     **INTERROGATORY NO. 25:**

14             Has any doctor, physician, surgeon, nurse or other practitioner formed or expressed any  
15     opinion to you that in the future you will or may suffer from any disability or condition resulting  
16     from the incident? If so, state the name and address of each such person and describe the nature of  
17     the disability or condition that you will or may suffer.

18     **RESPONSE TO INTERROGATORY NO 26:**

19             Not at this time, Plaintiff will timely disclose plaintiff's experts and related reports, if any,  
20     pursuant to the parties' Joint Case Conference Report.

21             Plaintiff reserves the right to amend this response pending expert review and/or expert  
22     discovery.

23     **INTERROGATORY NO. 26:**

24             Identify each and every person who prepared or assisted in the preparation of the responses  
25     to these interrogatories.

26     ///

27     ///

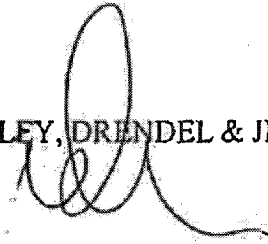
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1 **RESPONSE TO INTERROGATORY NO 26:**

2 Plaintiff and her counsel.

3 Dated this 9<sup>th</sup> day of October 2017.

4 BRADLEY, DRENDEL & JEANNEY



5  
6  
7 William C. Jeanney, Esq.  
8 *Attorney for Plaintiff*

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VERIFICATION

I, MARIA JARAMILLO, am the plaintiff in the captioned matter. I have read the forgoing PLAINTIFF MARIA JARAMILLO'S RESPONSES TO DEFENDANT SAINT MARY'S INTERROGATORIES, SET ONE. I know the contents thereof and I certify that the same is true of my own knowledge, except as to those matters which are stated upon my information and belief, and as to those matters I believe to be true.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

Dated: 10/9/17

Maria G Jaramillo  
Maria Jaramillo

2645  
William C. Jeanney, Esq.  
Nevada State Bar No. 01235  
BRADLEY, DRENDEL & JEANNEY  
P.O. Box 1987  
Reno, NV 89505  
Telephone No. (775) 335-9999  
Facsimile No. (775) 335-9993

*Attorneys for Plaintiff*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

ROSAISET JARAMILLO, as Special  
Administrator of the Estate of MARIA  
JARAMILLO,

Case No. CV17-00221

Dept. No. 1

Plaintiff,

v.

**PLAINTIFF'S OPPOSITION TO  
"DEFENDANT SUSAN R. RAMOS,  
M.D.'S MOTION FOR SUMMARY  
JUDGMENT"**

SUSAN R. RAMOS, M.D., F.A.C.S.;  
PRIME HEALTHCARE SERVICES-RENO,  
LLC, a Delaware Limited Liability Company,  
d/b/a SAINT MARY'S REGIONAL  
MEDICAL CENTER; PRIME  
HEALTHCARE MANAGEMENT, INC., a  
California Corporation; SAINT MARY'S  
MEDICAL GROUP, INC.; ABC Corporations  
I-X, inclusive, Black and White Companies;  
and DOES I-XX, inclusive,

Defendants.

Plaintiff, above-named, acting by and through her counsel of record, William C. Jeanney, Esq., hereby opposes "Defendant Susan R. Ramos, M.D.'s Motion for Summary Judgment," filed herein on or about August 3, 2018. This opposition is based upon the accompanying memorandum of points and authorities and all other matters properly of record.

Dated this 27<sup>th</sup> day of August, 2018.

BRADLEY, DRENDEL & JEANNEY

  
William C. Jeanney, Esq.  
*Attorneys for Plaintiff*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF DISPUTED AND UNDISPUTED FACTS**

3 1. Dr. Ramos's expert, Andrew B. Cramer, M.D., admits that Dr. Ramos left a wire fragment  
4 inside patient Maria Jaramillo's left breast while performing a surgical procedure upon the patient. While  
5 opining that Dr. Ramos was not negligent, Dr. Cramer acknowledged there was "a wire fragment left in the  
6 patient's breast in this case." Dr. Ramos' Exhibit 5 (Exhibit 1, thereto), Declaration of Andrew B. Cramer,  
7 M.D., § 5.

8 2. That Dr. Ramos left a wire fragment in Ms. Jamarillo's breast is also substantiated by the  
9 Imaging Report of the ultrasound performed on February 4, 2016, which states, in relevant part, under the  
10 heading "FINDINGS," as follows: "More medially about 3 cm from the nipple 1:00 position there is a 2.5  
11 cm foreign body metallic wire corresponding to te residueal localization wire fragment in the breast on the  
12 mammogram of the same date." Exhibit 1.

13 3. This fact is also corroborated by the Imaging Report of the mammogram performed on Ms.  
14 Jamarillo on the same date. It's "FINDINGS" state in relevant part as follows: "There is a 3 cm length  
15 localization wire fragment foreign body in the left upper breast at about 1:00 in position." Exhibit 2.

16 **ARGUMENT**

17 **I. STANDARDS GOVERNING DR. RAMOS' MOTION**

18 Plaintiff has no quarrel with the summary judgment standards articulated by Dr. Ramos, as far as  
19 they go, until she applies them in conclusory fashion in her final paragraph. Motion, pg. 6, lns. 11-14.  
20 Additionally, it would be well to add that the nonmovant party has no duty to respond unless the movant  
21 first meets the burden of establishing the absence of genuine issues of material fact. *See, e.g., Adickes v.*  
22 *S, h, Kress & Company*, 398 U.S. 144, 161, 90 S.Ct. 1598, 1610 (1970) ("No defense to an insufficient  
23 showing is required," quoting 6 J. Moore, *Federal Practice* 56.22(\*2), pp. 2824-2825 (2d ed. 1966));  
24 *see also Pacific Pools Constr. Co. v. McCain's Cponcrete, Inc.*, 101 Nev. 557, 706 P.2d 849 (1985)  
25 (initial burden of establishing absence of triable factual issues is upon movant).

26 **II. PLAINTIFF IS NOT REQUIRED TO PRESENT EXPERT TESTIMONY IN SUPPORT**  
27 **OF HER CLAIM**

28 NRS 41A.100(1)(a) expressly exempts Plaintiff from the burden of establishing her claim through

1 expert medical testimony. It provides as follows:

2 1. Liability for personal injury or death is not imposed upon any provider of  
3 health care based on alleged negligence in the performance of that care unless evidence  
4 consisting of expert medical testimony, material from recognized medical texts or treatises  
5 or the regulations of the licensed medical facility wherein the alleged negligence occurred  
6 is presented to demonstrate the alleged deviation from the accepted standard of care in the  
7 specific circumstances of the case and to prove causation of the alleged personal injury or  
8 death, *except that such evidence is not required and a rebuttable presumption that*  
9 *the personal injury or death was caused by negligence arises where evidence is*  
10 *presented that the provider of health care caused the personal injury or death*  
11 *occurred in any one or more of the following circumstances:*

12 (a) *A foreign substance other than medication or a*  
13 *prosthetic device was unintentionally left within the body of a*  
14 *patient following surgery . . . . [Emphasis supplied.]*

15 Despite this clear language, Dr. Ramos seems to contend that Plaintiff was required to present the testimony  
16 of a medical expert. Motion, pgs. 6-7.

17 In her Argument III(B)(1), Dr. Ramos contends that "Plaintiff has *alleged* that the doctrine of *res*  
18 *ipsa loquitur* applies, but has not established the application of that doctrine." Motion, pg. 8, lns. 7-8;  
19 emphasis in original. This argument is unclear. We recognize that a party need not support a Rule 56  
20 motion with an affidavit, *Clauson v. Lloyd*, 103 Nev. 432, 743 P.2d 631 (1987), and can instead merely  
21 point to the absence of evidence in the record to support the opponent's position as to a matter on which  
22 he will have the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548  
23 (1986). But this requires an affirmative showing, not merely a conclusory statement in the motion. *Id.* Dr.  
24 Ramos has made no such showing, probably she realizes she cannot do so. Even her own expert  
25 recognizes that a foreign substance, a wire fragment, was inadvertently left in Ms. Jaramillo's body.  
26 Because Dr. Ramos has failed to support her motion, summary judgment is not authorized.

27 Next, Dr. Ramos argues that her presentation of the unrebutted declaration of Dr. Cramer  
28 somehow places the burden on Ms. Jaramillo to come forward with evidence beyond that necessary to  
establish the applicability of NRS 41A.100(1)(a). This is simply not true. Here, Dr. Ramos misconceives  
the import of *Johnson v. Egtegar*, 112 Nev. 428, 915 P.2d 271 (1996). She cites that case for the  
proposition that "the presumption of negligence only arises after the plaintiff has established that the  
occurrence giving rise to the litigation does not ordinarily happen in the absence of negligence." Motion,  
pg. 8, lns. 17-20. However, the portion of the opinion to which Dr. Ramos cites is a discussion of

1 traditional res ipsa cases, not those arising under NRS 41A.100. As to the latter category of cases, the  
2 Court held that the legislature, by enacting NRS 41A.100, had in effect determined that the enumerated  
3 circumstances do not occur in the absence of negligence. The Court said:

4 Under NRS 41A.100, however, the presumption automatically applies where any  
5 of the enumerated factual circumstances are present. In regard to these factual predicates,  
6 the legislature has, in effect, already determined that they ordinarily do not occur in the  
7 absence of negligence. Thus, we conclude, all a plaintiff need do to warrant an instruction  
8 under the statutory medical malpractice res ipsa loquitur rule is present some evidence of  
9 the existence of one or more of the factual predicates enumerated in the statute. If the trier  
10 of fact then finds that one or more of the factual predicates exist, then the presumption must  
11 be applied. This is the approach taken in Nev. J.I. 6.17 and Plaintiff's A. Accordingly, the  
12 district court should have given the proposed instruction if it was supported by evidence  
13 adduced at trial.

14 *Id.* at 433-34, 915 P.2d at 274-75.

15 Finally, Dr. Ramos contends that even if the presumption of negligence applies that she has rebutted  
16 it as a matter of law. This is simply not true. The jury is not required to accept the testimony of Dr.  
17 Cramer. See Nev. J.I. § 2.11 (instructing the jury to give expert testimony whatever weight, *if any*, it  
18 deems appropriate). Thus, the question of whether the statutory presumption has been rebutted by Dr.  
19 Cramer is a question of fact for the trier of fact; and since there is a presumption of negligence and  
20 causation, Dr. Ramos' assertion fails as to both issues. See, e.g., *Nehls v. Leonard*, 97 Nev. 325, 630  
21 p.2d 258 (1981) (questions of negligence and causation are questions of fact in Nevada, not questions of  
22 law for the courts); *Rish v. Simao*, 132 Nev. \_\_\_, \_\_\_, 368 P.3d 1203, 1209 (Adv.Op.No. 17, March  
23 17, 2016) (citing *Nehls* with approval).

#### 24 CONCLUSION

25 For all the foregoing reasons, it is respectfully submitted that "Defendant Susan R. Ramos, M.D.'s  
26 Motion for Summary Judgment" be denied in its entirety.

#### 27 AFFIRMATION

28 The undersigned does hereby affirm that the foregoing document does not contain the Social

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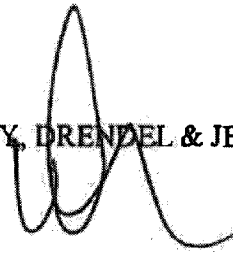
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Security number of any person.

Dated this 27th day of August, 2018.

BRADLEY, DRENDEL & JEANNEY



William C. Jeanney, Esq.  
*Attorney for Plaintiff*



1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of BRADLEY, DRENDEL &  
3 JEANNEY, and that on this date, I served a true and correct copy of the foregoing on the party(s) set forth  
4 below by:

5 ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the  
6 United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices

7 ☐ Personal Delivery

8 ☐ Facsimile

9 ☐ Federal Express/Airborne Express/Other Overnight Delivery

10 ☐ Reno-Carson Messenger Service

11 ☒ All parties signed up for electronic filing have been served electronically, all others have been  
12 served by placing a true copy thereof in a sealed envelope placed for collecting and mailing in the  
13 United States mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

14 addressed as follows:

15 Janine C. Prupas, Esq.  
16 Carrie L. Parker, Esq.  
17 Snell & Wilmer  
18 50 West Liberty Street, Suite 510  
19 Reno, NV 89501  
20 Attorneys for: Prime Healthcare Management, Inc.,  
21 Saint Mary's Medical Group, Inc.,  
22 Saint Mary's Regional Medical Center

23 Edward J. Lemons, Esq.  
24 Alice Campos Mercado, Esq.  
25 Lemons, Grundy & Eisenberg  
26 6005 Plumas Street, Suite 300  
27 Reno, NV 89519  
28 Attorneys for: Susan R. Ramos, M.D.

DATED this 27<sup>th</sup> day of August 2018.

  
Reva S. Archer

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**EXHIBIT LIST**

- |   |  |   |
|---|--|---|
| 1 | Declaration of William C. Jeanney, Esq.  |   |
| 2 | Ultrasound report dated February 4, 2016 | 1 |
| 3 | Mammogram report dated February 4, 2016  | 2 |

## EXHIBIT 1

## EXHIBIT 1

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1. I am counsel for the Plaintiff in the case entitled *Rosaiset Jamarillo v. Susan R. Ramos, M.D., et al.*, pending in Department 1 of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, as Case No. CV17-00221 (hereinafter “the action”).

3. Exhibit 2 to such opposition is a true copy of the ultrasound imaging report that St. Mary's Regional Medical Center supplied to my office at my client's request.

**FURTHER DECLARANT SAYETH NAUGHT.**

Executed on the 27<sup>th</sup> day of August, 2018, in Washoe County, Nevada.

William C. Jeanney

## **EXHIBIT 2**

## **EXHIBIT 2**

SAINT MARY'S REGIONAL MEDICAL CENTER  
235 W 6th St, Reno, NV 89503  
Ph: (775) 770-3000

## IMAGING REPORT

PATIENT: JARAMILLO, MARIA G ACCT: V00008368245 MRN: M001185411  
DOB: 12/11/1968 LOC: CFH ROOM / BED: /  
AGE: 47 SEX: F STATUS: REG CLI

ORDERING PHYSICIAN: RAMOS, SUSAN MD  
ATTENDING PHYSICIAN: RAMOS, SUSAN MD  
CC: RAMOS, SUSAN MD  
PROCEDURE(S): ULTRASOUND - BREAST LIMITED LEFT  
EXAM DATE/TIME: 02/04/16 1600  
REASON: LT BREAST MASS  
ORDER NUMBER(S): 0204-0020, ACCESSION NUMBER(S): 446522.001

## CLINICAL DATA: LT BREAST MASS

TECHNICAL: High-resolution ultrasound is performed of the left breast in area of clinical concern.

FINDINGS: In the left upper outer breast there is a small 7 mm cyst in the 1:30 position 8 cm from the nipple in the area of pain. More medially about 3 cm from the nipple 1:00 position there is a 2.5 cm foreign body metallic wire corresponding to the residual localization wire fragment in the breast on the mammogram of the same date.

## IMPRESSION:

LOCALIZATION WIRE FRAGMENT IN THE BREAST IS IDENTIFIED AT THE 1:00 POSITION 3 CM FROM THE NIPPLE. THIS WOULD BE AMENABLE TO NEEDLE WIRE LOCALIZATION AND SURGICAL EXCISION.

RESULTS AND RECOMMENDATIONS DISCUSSED WITH THE PATIENT AT THE TIME OF THE EXAM.

The findings were discussed by telephone with SUSAN RAMOS, MD on 2/4/2016 5:05 PM.

BI-RADS CATEGORY 2. BENIGN.

-----  
DICTATED BY: WELCOME, RICHARD M MD  
Date Time: 02/04/16 1702

ELECTRONICALLY SIGNED BY: WELCOME, RICHARD M MD  
Date Time: 02/04/16 1706

## **EXHIBIT 3**

## **EXHIBIT 3**

SAINT MARY'S REGIONAL MEDICAL CENTER  
235 W 6th St, Reno, NV 89503  
Ph: (775) 770-3000

**IMAGING REPORT**

PATIENT: JARAMILLO, MARIA G ACCT: V00008368245 MRN: M001185411  
DOB: 12/11/1968 LOC: CFH ROOM / BED: /  
AGE: 47 SEX: F STATUS: REG CLI

ORDERING PHYSICIAN: RAMOS, SUSAN MD  
ATTENDING PHYSICIAN: RAMOS, SUSAN MD

CC: RAMOS, SUSAN MD

PROCEDURE(S): MAMMOGRAPHY - DIAGNOSTIC MAMMO, BILATERAL  
EXAM DATE/TIME: 02/04/16 1530

REASON: LT BREAST MASS

ORDER NUMBER(S): 0204-0023, ACCESSION NUMBER(S): 446521.001

**CLINICAL DATA:** Left breast pain, previous biopsy left breast may 2015

**FINDINGS:** Multiple views of bilateral breasts were performed with digital mammography. The breasts demonstrate heterogeneous breast parenchymal density pattern. Images were reviewed with iCAD image Checker.

**Comparison:** Digital exam Reno Diagnostic Center August 28, 2014

Dominant mass in the left upper outer breast has been surgically excised since the prior exam. There is a 3 cm length localization wire fragment foreign body in the left upper breast at about 1:00 in position. The wire fragment is visible on ultrasound performed at the same date. Ultrasound also showed a small 7 mm cyst in the left upper outer breast which probably does not account for the patient's symptoms. There are no suspicious masses. No architectural distortion is seen. There is a small benign nodule in the right medial breast on the cc view which is unchanged from prior exams.

**IMPRESSION:**

3 CM RESIDUAL LOCALIZATION WIRE FRAGMENT IS STILL PRESENT IN THE LEFT BREAST AT THE 1:00 POSITION. THE WIRE FRAGMENT IS VISIBLE ON ULTRASOUND BUT COULD BE LOCALIZED WITH EITHER MAMMOGRAPHIC OR SONOGRAPHIC GUIDANCE.

POSTSURGICAL CHANGES IN THE LEFT UPPER OUTER BREAST WITH REMOVAL OF PREVIOUS AUGUST 28, 2014 EXAM.

NO EVIDENCE OF MALIGNANCY MAMMOGRAPHICALLY OR SONOGRAPHICALLY.

The findings were discussed by telephone with SUSAN RAMOS, MD on 2/4/2016 5:10 PM.

BI-RADS CATEGORY 2. BENIGN.

-----  
DICTATED BY: WELCOME, RICHARD M MD



Date Time: 02/04/16 1707

ELECTRONICALLY SIGNED BY: WELCOME, RICHARD M MD  
Date Time: 02/04/16 1710

1 **3795**

2 Edward J. Lemons, Esq., Bar No. 699  
3 Alice Campos Mercado, Esq., Bar No. 4555  
4 **LEMONS, GRUNDY & EISENBERG**  
5 6005 Plumas Street, 3<sup>rd</sup> Floor  
6 Reno, Nevada 89519  
7 (775) 786-6868; (775) 786-9716  
8 ejl@lge.net; acm@lge.net

9 *Attorneys for Defendant*  
10 *Susan Ramos, M.D., F.A.C.S.*

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE**  
12 **STATE OF NEVADA IN AND FOR THE**  
13 **COUNTY OF WASHOE**

14 -o0o-

15 **ROSAISET JARAMILLO, AS SPECIAL ADMINISTRATOR**  
16 **OF THE ESTATE OF MARIA JARAMILLO,**

17 Plaintiff,

18 vs.

19 **SUSAN R. RAMOS, M.D., F.A.C.S.;**  
20 **PRIME HEALTHCARE SERVICES-RENO, LLC,**  
21 **A DELAWARE LIMITED LIABILITY COMPANY, D/B/A**  
22 **SAINT MARY'S REGIONAL MEDICAL CENTER;**  
23 **ABC CORPORATIONS I-X, INCLUSIVE, BLACK AND**  
24 **WHITE COMPANIES; AND DOES I-XX INCLUSIVE,**

25 Defendants.

Case No.: CV17-00221

Dept. No. 1

26 **DEFENDANT SUSAN R. RAMOS, M.D.'S REPLY TO**  
27 **PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

28 Defendant, SUSAN R. RAMOS, M.D., submits the following points and authorities in reply  
to the opposition filed on behalf of plaintiff ROSAISET JARAMILLO AS SPECIAL ADMINISTRATOR  
OF THE ESTATE OF MARIA JARAMILLO.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Introduction and Summary of Argument**

Dr. Ramos moved for an order granting summary judgment on the claim of medical  
malpractice being prosecuted by plaintiff ROSAISET JARAMILLO AS SPECIAL ADMINISTRATOR OF  
THE ESTATE OF MARIA JARAMILLO because the undisputed medical evidence does not establish

1 specific facts which might support the nonmoving party's claim." *Schuck v. Signature Flight*  
2 *Support of Nevada*, 126 Nev. 434, 245 P.3d 542, 545-46 (2010).

3 Dr. Ramos' motion for summary judgment was supported by a Statement of Undisputed  
4 Facts. Each fact cited to the supporting evidence. In her opposition, plaintiff lists three facts, all  
5 of which establish that a localization wire fragment was left in the patient's left breast – a fact  
6 that is not in dispute. Missing from plaintiff's opposition is any evidence to refute the medical  
7 expert evidence that establishes Dr. Ramos did not breach the standard of care. Nor did plaintiff  
8 present any evidence to refute Dr. Ramos' evidence showing no causal connection between a  
9 breach of the standard of care and plaintiff's claimed injuries.

10 While breach of the standard of care and causation are *generally* issues of fact, a claim of  
11 professional negligence may be decided as a matter of law where the evidence negates an  
12 essential element of the claim. *See Bakerink v. Orthopaedic Associates, Ltd.*, 94 Nev. 428, 430,  
13 581 P.2d 9 (1978) (court affirmed summary judgment in favor of physician where plaintiff failed  
14 to present an affidavit or other document to contradict the competent opinion of expert that the  
15 physician conformed to the standard of care).

16 In this case, Dr. Ramos has rebutted the presumption of negligence through competent  
17 expert evidence. Specifically, a medical expert's declaration was presented in support of Dr.  
18 Ramos' motion showing that retention of the subject fragment is a risk involved in the type of  
19 procedure performed by Dr. Ramos on Ms. Jaramillo and does not constitute negligence. Dr  
20 Cramer states, to a reasonable degree of medical probability, that "the wire fragment left in the  
21 patient's breast does not denominate negligence on the part of the surgeon. . . . This is something  
22 that can happen without negligence on the part of the surgeon. *Motion Exh. 6, Cramer Decl.*, ¶5.  
23 Dr. Cramer also opined that Dr. Ramos' care and treatment of Ms. Jaramillo "was appropriate  
24 and within the applicable standards of care of a Board Certified Surgeon. *Id.*, *Cramer Decl.*, ¶7.  
25 This evidence rebutted the presumption of negligence under NRS 41A.100(1)(a). Plaintiff's  
26 opposition is devoid of any evidence to the contrary.

27 ///

28 ///

1     **III.     ARGUMENT**

2             **A.     Plaintiff has not satisfied the requirements to defeat summary judgment**

3             On summary judgment, Dr. Ramos' obligation was to present evidence that negated an  
4     essential element of plaintiff's claim, or to point out the absence of evidence to support plaintiff's  
5     case. *See Cuzze*, 123 Nev. at 602, 172 P.3d at 134. Dr. Ramos met that burden by filing a motion  
6     for summary judgment that was supported by sufficient competent evidence, including the sworn  
7     declaration of her expert. That evidence negated *two* essential elements of plaintiff's malpractice  
8     claim – breach of the standard of care and causation – and rebutted any presumption of  
9     professional negligence. Plaintiff was thus required to present admissible evidence introducing  
10    specific facts that show a genuine issue of material fact, or have summary judgment entered  
11    against her. *Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134 (citations omitted); *Wood v. Safeway,*  
12    *Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). Plaintiff's opposition fell short of her  
13    obligations under Nevada law as it is devoid of *any* evidence demonstrating a genuine issue of  
14    material fact regarding the essential elements of breach of the standard of care and causation.

15            Plaintiff attempts to dismiss her failure to produce evidence by asserting that "the jury"  
16    is not required to accept Dr. Cramer's testimony. *See Opp'n*, p. 4:12, citing *Nevada Jury*  
17    *Instruction No. 2.11*. Although a jury is entitled to weigh the evidence when presented with  
18    conflicting evidence to determine an issue of fact, weighing of the evidence is not done by the  
19    court on summary judgment. *See, Banks v. Sunrise Hosp.*, 120 Nev. 822, 838, 102 P.3d 52, 63  
20    (2004) (noting that it is for the jury to determine the credibility of and the weight to be given to  
21    testimony where evidence presented on a material point may be conflicting or facts could support  
22    differing inferences) (emphasis added); and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249  
23    (1986) ("at the summary judgment stage the judge's function is not himself to weigh the evidence  
24    and determine the truth of the matter but to determine whether there is a genuine issue for trial.").  
25    Citing to *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970), the Court instructed: "[T]here is no  
26    issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return  
27    a verdict for that party." *Anderson*, 477 U.S. at 249.

28    ///

1 Here, plaintiff presented no such evidence and any suggestion that the court may simply  
2 ignore the expert evidence supporting Dr. Ramos' motion lacks applicable legal support. In fact,  
3 it is contrary to Nevada law. *See Bakerink, supra*, where the court affirmed summary judgment  
4 in favor of a physician in a case in which the plaintiff failed to present evidence to contradict the  
5 competent opinion of expert that the physician conformed to the standard of care. Thus, while  
6 issues of negligence and causation are *generally* issues of fact for the jury, it is entirely proper  
7 for a court to decide those issues as a matter of law when essential elements of the plaintiff's  
8 claims are clearly lacking as a matter of law. *See, Bakerink, supra; see also Kusmirek v. MGM*  
9 *Grand Hotel, Inc.*, 73 F.Supp.2d 1222 (D. Nev. 1999) (summary judgment granted where  
10 plaintiff failed to satisfy elements of duty and proximate cause); *see also Scialabba v. Brandise*  
11 *Construction Co.*, 112 Nev. 965, 968, 921 P.2d 928, 930 (1996) ("In order to establish entitlement  
12 to judgment as a matter of law, a moving defendant must show that one of the elements of the  
13 plaintiff's prima facie case is 'clearly lacking as a matter of law.'").

14 In this case, Dr. Ramos met her burden under Rule 56 by demonstrating that essential  
15 elements of plaintiff's professional negligence claim were clearly lacking as a matter of law. Dr.  
16 Ramos did by rebutting the presumption arising under NRS 41A.100(1)(a). By contrast,  
17 plaintiff's opposition falls fatally short of meeting her burden under NRCP 56 to present *specific*  
18 *facts* that show the existence of a genuine issue of material fact. Therefore, summary judgment  
19 is proper.

20 **B. Plaintiff's claim fails as a matter of law because Dr. Ramos presented**  
21 **competent proof rebutting the presumption of negligence and plaintiff**  
22 **produced no evidence in support of her claim**

23 NRS 41A.100(1) is "Nevada's limited codification of *res ipsa loquitur*, and is a rule of  
24 evidence creating a rebuttable presumption that a defendant is negligent in medical malpractice  
25 cases." *Szydel v. Markman*, 121 Nev. 453, 117 P.3d 200 (2005) (emphasis added). Plaintiff's  
26 malpractice claim is premised upon the statutory *res ipsa loquitur* doctrine based on the alleged  
27 unintended retention of a foreign object. NRS 41A.100(1)(a).

28 ///

1 Plaintiff argues that NRS 41A.100(1)(a) entitles her to a rebuttable presumption that Dr.  
2 Ramos committed medical malpractice, and that she does not need an expert to support her claim.  
3 Plaintiff's position ignores that NRS 41A.100(1)(a) only gives rise to a *rebuttable* presumption;  
4 it does not impose strict liability on the defendant physician. A rebuttable presumption requires  
5 the party against whom the presumption applies to disprove the presumed fact. NRS 47.180(1);  
6 *cf. Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 366, 184 P.3d 378, 386 (2008).  
7 The party against whom the presumption applies (here, the defendant) may rebut the presumption  
8 by adducing evidence, independent of the basic facts, that tends to disprove the presumed fact.  
9 *See* NRS 47.200-.220. Once evidence is submitted to rebut a presumption, the presumption  
10 disappears entirely. *See Privette v. Faulkner*, 92 Nev. 353, 358, 550 P.2d 404, 407-08 (1976)  
11 (Gunderson, J., dissenting) (recognizing that disputable presumptions evaporate when any  
12 contrary evidence is adduced).

13 Thus, even with the application of the statutory *res ipsa loquitur* doctrine, plaintiff's claim  
14 still fails because the statute only imposes a rebuttable presumption of negligence. Dr. Ramos  
15 rebutted the presumption with evidence consisting of medical expert testimony. *Motion Exh. 6*.  
16 Thus, plaintiff can no longer rely on the presumption, but must instead prove her claim with  
17 expert proof.

18 Stated differently, even accepting for purposes of this motion that the localization wire  
19 fragment was unintentionally left in Ms. Jaramillo's breast following the April 29, 2015 surgery,  
20 Dr. Ramos' evidence unequivocally rebuts the presumption of negligence. Dr. Ramos disclosed  
21 Dr. Cramer as her expert and provided a medical expert declaration supporting her position. *See*  
22 *Motion Exh. 5 and Exh. 6*. Dr. Cramer's declaration rebutted plaintiff's claims of malpractice  
23 against Dr. Ramos. He specifically stated his overall opinion that Dr. Ramos met the standard  
24 of care, that her care was appropriate, and that there was no aspect of her care that was negligent.  
25 *Motion Exh. 6 (Cramer Decl.)*.

26 Plaintiff's opposition glosses over this testimonial evidence that negates the standard of  
27 care elements. She seems to acknowledge that this testimony rebuts the presumption, but baldly  
28 contends that this testimony does not require a response. Not a single legal authority is cited for

1 this assertion. In fact, the law is to the contrary. *See, e.g., Privette*, 92 Nev. at 358, 550 P.2d at  
2 407-08 (Gunderson, J., dissenting) (disputable presumptions evaporate when any contrary  
3 evidence is adduced).

4 Moreover, Dr. Ramos' evidence demonstrated that plaintiff had no evidence to establish  
5 the element of causation. Plaintiff did not disclose a medical expert to opine that Dr. Ramos'  
6 medical care and treatment, including the retention of the wire fragment, were the actual and  
7 proximate cause of plaintiff's claimed injuries. *See Motion Exh. 4*. Nor does plaintiff have any  
8 information to establish that any doctor, surgeon, nurse or other practitioner expressed any  
9 opinion that the patient would experience injury or disability as a result of the retained wire  
10 fragment. *See Motion Exh. 7, p. 17, Answer to Interrogatory No. 25*. Plaintiff's sworn  
11 interrogatory response dated October 9, 2017, stated that she had no such information at that time  
12 and she would "timely disclose plaintiff's experts and related reports, if any . . . ." *Id.* In fact,  
13 plaintiff did not disclose any such experts or reports. *See Motion Exh. 4*.

14 Dr. Ramos has undisputedly rebutted the presumption of negligence and causation. In the  
15 absence of the presumption, the burden shifts back to plaintiff to prove that Dr. Ramos breached  
16 the standard of care, and that the breach was the actual and proximate cause of injury. Plaintiff's  
17 opposition contains no such evidence or any indication that such evidence exists to raise a triable  
18 issue of fact. Because plaintiff does not have an expert to testify regarding the essential elements  
19 of her professional negligence claim, she cannot present specific facts to rebut Dr. Cramer's  
20 opinion that Dr. Ramos did not breach the standard of care.

21 Thus, even assuming the existence of a rebuttable presumption under  
22 NRS 41A.100(1)(a), Dr. Cramer's declaration specifically and irrefutably rebuts the presumption  
23 of professional negligence against Dr. Ramos. This uncontroverted evidence negates an essential  
24 element of plaintiff's medical malpractice claim. Dr. Ramos has satisfied her burden of  
25 production and burden of proof. Plaintiff has presented no competent evidence to the contrary.  
26 Plaintiff lacks the requisite evidence to establish a breach of the standard of care because Dr.  
27 Cramer's expert opinion rebuts the presumption of negligence and plaintiff has not responded  
28 with contrary evidence. There being no genuine issue of material fact on an essential element of

1 plaintiff's professional negligence claim, all other facts are rendered immaterial, entitling Dr.  
2 Ramos to judgment as a matter of law. *See Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825  
3 P.2d 588, 592 (1992) ("Where an essential element of a claim for relief is absent, the facts,  
4 disputed or otherwise, as to other elements are rendered immaterial and summary judgment is  
5 proper.").

6 **IV. CONCLUSION**

7 The plaintiff in a professional negligence case has the burden of proving, through expert  
8 medical proof, a breach of the standard of care and causation. NRS 41A.100. This is true even  
9 when the plaintiff is relying on the doctrine of *res ipsa loquitur*, because the presumption of  
10 negligence under NRS 41A.100(1)(a) is simply a *rebuttable* presumption that may be disproved  
11 with competent evidence. Dr. Ramos, through uncontroverted medical evidence, has rebutted the  
12 presumption of negligence. Plaintiff was, therefore, required to respond with expert proof of a  
13 breach of the standard of care and causation. She has not done so. Therefore, plaintiff cannot  
14 prove her malpractice claim as a matter of law, rendering all other facts are immaterial and  
15 entitling Dr. Ramos to judgment as a matter of law.

16 Accordingly, defendant Susan R. Ramos, M.D., respectfully requests that her Motion for  
17 Summary Judgment be granted.

18 **AFFIRMATION**

19 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document  
20 DOES NOT contain the Social Security Number of any person.

21 DATED this 22<sup>nd</sup> day of August, 2018

22 **LEMONS, GRUNDY & EISENBERG**  
23 *Attorneys for Defendant*  
24 *Susan R. Ramos, M.D.*

25 By:   
26 EDWARD J. LEMONS, ESQ.  
27 ALICE CAMPOS MERCADO, ESQ.  
28



**CERTIFICATE OF SERVICE**

I am a citizen of the United States. My business address is 6005 Plumas Street, Third Floor, Reno, NV 89519, and I am employed by LEMONS, GRUNDY & EISENBERG in the City of Reno and County of Washoe where this service occurs

On August 29, 2018, following the ordinary business practice, I caused to be served to the addressee(s) listed below, a true copy of the foregoing document(s) and described as *Defendant Susan Ramos, M.D.'s Reply to Plaintiff's Opposition to Motion for Summary Judgment.*

☐ **BY MAIL:** in an envelope with postage thereon fully prepaid to be placed in the U.S. Mail at Reno, Nevada;

☐ **BY PERSONAL SERVICE:** in an envelope to be hand delivered this date;

☐ **BY OVERNIGHT DELIVERY:** in an envelope to be delivered to an overnight delivery carrier with delivery fees provided for;

☐ **BY FACSIMILE:** by transmitting by facsimile to the respective fax telephone phone number(s).

☒ **BY USING THE COURT'S EFS** which electronically served the following individual(s):

William C. Jeanney, Esq.  
BRADLEY, DRENDEL & JEANNEY

Janine C. Prupas, Esq.  
Carrie L. Parker, Esq.  
SNELL & WILMER, LLP

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.



1  
2  
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4  
5  
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
7 **THE STATE OF NEVADA IN AND FOR THE**  
8 **COUNTY OF WASHOE**

9 **MARIA JARAMILLO,**

10 **Plaintiff,**

**CASE NO.: CV17-00221**

11  
12 **v.**

**DEPT. NO.: 1**

13 **SUSAN R. RAMOS, M.D., F.A.C.S.;**  
14 **PRIME HEALTHCARE SERVICES RENO,**  
15 **LLC, a Delaware Limited Liability**  
16 **Company, d/b/a SAINT MARY'S**  
17 **REGIONAL MEDICAL CENTER; PRIME**  
18 **HEALTHCARE MANAGEMENT, INC., a**  
19 **California Corporation; SAINT MARY'S**  
20 **MEDICAL GROUP, INC.; ABC**  
21 **Corporations I-X, inclusive, Black and**  
22 **White Companies; and DOES I-XX,**  
23 **inclusive,**

24 **Defendants.**  
25 \_\_\_\_\_/

26 **ORDER GRANTING DEFENDANT SUSAN R. RAMOS, M.D.'S MOTION FOR**  
27 **SUMMARY JUDGMENT**

28 This Court heard oral argument on September 24, 2018 regarding Defendant Susan R. Ramos, M.D.'s (hereafter "Dr. Ramos") *Motion for Summary Judgment* filed on August 3, 2018. Plaintiff Rosaiset Jaramillo, as Special Administrator of the Estate of Maria Jaramillo (hereafter "Plaintiff") filed an *Opposition* on August 27, 2018. Thereafter, Dr. Ramos filed a *Reply* on August 29, 2018, and simultaneously submitted the motion to the Court for decision.

1       Upon review of the record and the arguments presented, this Court finds good cause appears  
2 to GRANT Dr. Ramos's *Motion for Summary Judgment*.

3       **I.       Applicable Legal Standard**

4       NRCp 56(c) provides, "[summary judgment] shall be rendered if the pleadings, depositions,  
5 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there  
6 is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter  
7 of law." A genuine issue of material fact exists when the evidence is such that a rational trier of fact  
8 could return a verdict for the nonmoving party. *Woods v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026,  
9 1031 (2005). When deciding whether summary judgment is appropriate, the court must view all  
10 evidence in light most favorable to the non-moving party and accept all properly supported evidence,  
11 factual allegations, and reasonable inferences favorable to the non-moving party as true. *C. Nicholas*  
12 *Pereos, Ltd. v. Bank of Am.*, 131 Nev. Adv. Op. 44, 352 P.3d 1133, 1136 (2015); *NGA No. 2 Ltd.*  
13 *Liab. Co. v. Rains*, 113 Nev. 1151, 1157, 946 P.2d 163, 167 (1997).

14       The Nevada Supreme Court has adopted the federal approach outlined in *Celotex Corp. v.*  
15 *Catrett*, 477 U.S. 317 (1986), with respect to burdens of proof and persuasion in summary judgment  
16 proceedings. See *Cuzze v. Univ. & Cmty. College Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134  
17 (2007). The party moving for summary judgment must meet his or her initial burden of production  
18 and show there is no genuine issue of material fact. *Id.* "The manner in which each party may satisfy  
19 its burden of production depends on which party will bear the burden of persuasion on the challenged  
20 claim at trial." *Id.* When the moving party bears the burden at trial, that party must present evidence  
21 that would entitle it to judgment as a matter of law absent contrary evidence. *Id.* If the burden of  
22 persuasion at trial will rest on the nonmoving party, "the party moving for summary judgment may  
23 satisfy the burden of production by either (1) submitting evidence that negates an essential element  
24 of the nonmoving party's claim, or (2) pointing out that there is an absence of evidence to support the  
25 nonmoving party's case." *Id.* After the moving party meets his or her initial burden of production,  
26 the opposing party "must transcend the pleadings and by affidavit or other admissible evidence,  
27 introduce specific facts that show a genuine issue of material fact." *Id.*

28       ///

1           **II. Undisputed Facts**

2           On March 26, 2015, Plaintiff Maria Jaramillo had a mammogram of her left breast, which  
3 showed that a lesion had increased in size from the time of her previous exam six months earlier.  
4 *Compl.* at ¶8. Thereafter, the radiologist recommended a direct surgical incision to confirm the  
5 findings and referred Plaintiff to Dr. Ramos. *Id.* at ¶¶9-10.

6           On April 29, 2015, Dr. Ramos performed a wire localization of the patient's left breast. *Id.* at  
7 ¶11. Plaintiff returned to Dr. Ramos for a follow-up appointment on January 28, 2016, wherein  
8 Plaintiff complained of pain in her left breast. *Id.* Dr. Ramos ordered a mammogram and ultrasound,  
9 the results of which showed a 3 cm length localization wire fragment in the upper left breast. *Id.* at  
10 ¶¶12-14. On March 28, 2016, Sharon Wright, M.D. performed a surgical excision of the wire  
11 fragment. *Plaintiff's Answer to Interrogatory No. 8.*

12           On October 23, 2017, Plaintiff passed away from gastrointestinal cancer, the cause of which  
13 is unrelated to the allegations in this matter.

14           **III. Relevant Procedural History**

15           Plaintiff filed a *Complaint* on February 2, 2017, alleging professional negligence asserting  
16 that Defendants negligently left a foreign object in Plaintiff Maria Jaramillo's body at the conclusion  
17 of a surgical procedure. The primary claim of professional negligence implicates the doctrine of *res*  
18 *ipsa loquitur*, alleging that both the doctor and the hospital are responsible in negligence for leaving  
19 the foreign object in Plaintiff's body and that, under NRS 41A.100, there is a rebuttable presumption  
20 of negligence as to both the doctor and the hospital.

21           The *Complaint* was unaccompanied by a medical expert affidavit. *Compl.* at ¶20. Within the  
22 *Complaint*, Plaintiff asserts that an expert affidavit is not required in this circumstance, as the claim  
23 arises from an incident where a foreign substance has been unintentionally left in the patient's body,  
24 and thus a statutory, rebuttable presumption of negligence arises pursuant to NRS 41A.100(1)(a). *Id.*  
25 at ¶¶29-30.

26           Dr. Ramos filed an *Answer* on March 14, 2017. In June and July of 2017, parties exchanged  
27 initial disclosures of documents and filed the Joint Case Conference Report. Pursuant to the Joint  
28 Case Conference Report, the deadline for initial expert disclosures was June 22, 2018, with rebuttal

1 disclosures due by July 23, 2018. Dr. Ramos served her Expert Witness Disclosure on June 22, 2018,  
2 wherein she disclosed Andrew B. Cramer, M.D., a Board Certified general vascular surgeon. The  
3 Declaration of Andrew B. Cramer, M.D. was attached to the Expert Witness Disclosure. No rebuttal  
4 experts were disclosed by any of the parties. Pursuant to the Joint Case Conference Report, discovery  
5 closed on September 21, 2018.

#### 6 IV. Discussion

7 Dr. Ramos comes now requesting summary judgment on the basis that the uncontroverted  
8 evidence demonstrates that Dr. Ramos did not breach the standard of care owed to Plaintiff, and thus,  
9 the undisputed facts cannot establish negligence on the part of Dr. Ramos. Dr. Ramos asserts that the  
10 expert affidavit of Dr. Cramer provides expert evidence that Dr. Ramos conformed to the standard of  
11 care owed. The Declaration of Dr. Cramer provides:

12 5. It is my opinion, to a reasonable degree of medical probability, that the wire  
13 fragment left in the patient's breast in this case does not denominate negligence  
14 on the part of the surgeon. It is something that a surgeon should be unhappy to  
15 have happen but it isn't due to negligence. *This is something that can happen*  
*without negligence on the part of the surgeon.*

16 6. It is also my opinion that it was reasonable for Dr. Ramos to ask the radiologist  
17 to image the area, which was done using Bioview, and confirm that the dissected  
18 tissue was what radiology wanted her to find and remove. It does not appear  
19 that the radiologist noted any retained wire fragment or that he brought any  
20 retained fragment to Dr. Ramos' attention.

21 7. *In conclusion, based on the information currently available to me, Dr.*  
22 *Ramos' care and treatment of Maria Jaramillo was appropriate and within the*  
23 *applicable standards of care of a Board Certified Surgeon. There is nothing*  
24 *about the care by Dr. Ramos which was negligent in this case.*

25 Decl. of Andrew B. Cramer, M.D., at ¶¶5-7 (emphasis added). Dr. Ramos contends this affidavit  
26 rebuts the presumption of negligence put forth by Plaintiff. As Plaintiff has not disclosed any experts,  
27 and the deadline to do so has passed, Dr. Ramos asserts that the rebuttal of negligence is  
28 uncontroverted and thus, she is entitled to summary judgment.

Plaintiff opposes this motion, arguing that pursuant to NRS 41A.100(1)(a), the Plaintiff need  
only establish a prime facie case that a foreign substance was left inside the Plaintiff in order to trigger  
the statutory *res ipsa loquitur* presumption of negligence. Plaintiff further contends that pursuant to

1 Nevada case law, the statutory *res ipsa loquitur* under NRS Chapter 41A has replaced the traditional  
2 common law doctrine of *res ipsa loquitur*, and thus the traditional burden shifting does not occur.  
3 Plaintiff cites *Johnson v. Egtedar*, wherein the Nevada Supreme Court states:

4 Under NRS 41A.100, however, the presumption automatically applies where  
5 any of the enumerated factual circumstances are present. In regard to these  
6 factual predicates, the legislature has, in effect, already determined that they  
7 ordinarily do not occur in the absence of negligence. Thus, we conclude, all a  
8 plaintiff need do to warrant an instruction under the statutory medical  
9 malpractice *res ipsa loquitur* rule is present some evidence of the existence of  
10 one or more of the factual predicates enumerated in the statute. If the trier of fact  
then finds that one or more of the factual predicates exist, then the presumption  
must be applied. This is the approach taken in Nev. J.I.6.17 and Plaintiff's A.  
Accordingly, the district court should have given the proposed instruction if it  
was supported by evidence adduced at trial.

11 112 Nev. 428, 433-34, 915 P.2d 271, 274-75 (1996). Plaintiff argues that since the presumption of  
12 negligence "automatically applies" here, there is no other evidence that the Plaintiff is obligated to  
13 present, and it is for the jury to weigh the testimony of Dr. Cramer. Plaintiff contends that the question  
14 of whether the statutory presumption has been rebutted is a question of fact for the jury.

15 This Court rejects Plaintiff's arguments. Accepting Plaintiff's argument means that the  
16 presumption of negligence arising from a *prima facie* case of any scenario enumerated in NRS  
17 41A.100(1) cannot be rebutted, and thus, must go to trial for the jury decide. However, in scenarios  
18 such as this, where the Defendant has put forth uncontroverted evidence that negligence did not occur  
19 and thus rebutting the presumption of negligence, only three results could occur: (1) defendants move  
20 for directed verdict at the conclusion of their case, wherein the Court would have to grant it; (2) the  
21 jury finds no negligence; or (3) the jury finds a verdict in favor of negligence and Defendant appeals  
22 on the basis that the verdict is unsupported by the evidence. The Court finds the interpretation of  
23 NRS 41A.100(1) in this manner goes against the prevailing law in Nevada.

24 The parties, and the Court, agree that a presumption of negligence arises under NRS  
25 41A.100(1). The statute provides, in relevant part:

26 1. Liability for personal injury or death is not imposed upon any provider of  
27 health care based on alleged negligence in the performance of that care unless  
28 evidence consisting of expert medical testimony, material from recognized  
medical texts or treatises or the regulations of the licensed medical facility

1 wherein the alleged negligence occurred is presented to demonstrate the alleged  
2 deviation from the accepted standard of care in the specific circumstances of the  
3 case and to prove causation of the alleged personal injury or death, ***except that***  
4 ***such evidence is not required and a rebuttable presumption that the personal***  
5 ***injury or death was caused by negligence arises where evidence is presented***  
6 ***that the provider of health care caused the personal injury or death occurred***  
7 ***in any one or more of the following circumstances:***

8 (a) ***A foreign substance*** other than medication or a prosthetic device was  
9 ***unintentionally left within the body of a patient*** following surgery;

10 NRS 41A.100(1)(a) (emphasis added). Pursuant to this statute, a rebuttable presumption of  
11 negligence, in favor of the plaintiff, is triggered by a showing of some evidence of a foreign substance  
12 being unintentionally left in the body of a patient. NRS 41A.100(1)(a) provides a statutory short cut  
13 to the *res ipsa loquitur* presumption of negligence. See *Szydel v. Markman*, 121 Nev. 453, 117 P.3d  
14 200 (2005). In contrast, a plaintiff pursuing a claim under the traditional doctrine of *res ipsa loquitur*  
15 must establish that the event in question is one that ordinarily does not occur in the absence of  
16 negligence.

17 In interpreting the language of NRS 41A.100(1) and the case law pertaining thereto (which  
18 includes acknowledging that the Nevada Supreme Court has held that “the legislature intended NRS  
19 41A.100 to replace rather than supplement, the classic *res ipsa loquitur* formulation in medical  
20 malpractices cases where it is factually applicable” *Johnson v. Egtegar*, 112 Nev. at 428), the Court  
21 disagrees with Plaintiff in that NRS 41A.100(1)(a)-(e) completely replaces the traditional doctrine of  
22 *res ipsa*, such that no evidence presented could rebut the presumption of negligence prior to trial. In  
23 fact, this Court finds that *Johnson* and *Born* speak only to those jury instructions that must be given  
24 in a case of this nature. See *Johnson v. Egtegar*, 112 Nev. 428, 915 P.2d 271 (1996) (holding “we  
25 conclude, all a plaintiff need do to warrant an instruction under the statutory medical malpractice *res*  
26 *ipsa loquitur* rule is present some evidence of the existence of one or more of the factual predicates  
27 enumerated in the statute”); *Born v. Eisenman*, 114 Nev. 854, 859, 962 P.2d 974, 978 (1998) (finding  
28 “all a plaintiff need do to warrant an instruction under the statutory medical malpractice *res ipsa*  
loquitur rule is present some evidence of the existence of one or more of the factual predicates  
enumerated in the statute”). Further, the court in *Szydel*, characterizes the presumption of negligence  
established by NRS 41A.100 as one that applies as a threshold matter and not as an evidentiary rule

1 for trial. 121 Nev. at 458, 117 P.3d at 203 (2005) (stating “the plain language of NRS 41A.071  
2 provides a threshold requirement for medical malpractice pleadings and does not pertain to  
3 evidentiary matters at trial, as does NRS 41A.100(1)”) (citing *Borger v. District Court*, 120 Nev.  
4 1021, 102 P.3d 600, 605 (2004)). As a result, this Court finds that the issue at hand is whether  
5 Defendant Ramos has rebutted the presumption of negligence, triggered by NRS 41A.100(1)(a), to  
6 support a grant of summary judgment.

7 Chapter 47 *et seq.* of the Nevada Revised Statutes provides for the definition and existence of  
8 presumptions. Pursuant to NRS 47.180, a presumption “imposes on the party against whom it is  
9 directed the burden of proving that the nonexistence of the presumed fact is more probable than its  
10 existence.” NRS 47.180(1). Further, “direct evidence” is evidence “which tends to establish the  
11 existence or nonexistence of the presumed fact independently of the basic facts.” Here, the basic fact  
12 is that a 3 cm piece of wire was unintentionally left in Plaintiff’s left breast. The presumption, as  
13 triggered by NRS 41A.100(1), that the unintentional leaving of the piece of wire was a result of  
14 negligence on the part of Defendant Ramos. However, Defendant Ramos has presented direct  
15 evidence, through the affidavit of expert witness Dr. Cramer, that “the wire fragment left in the  
16 patient’s breast . . . does not denominate negligence,” rather “[t]his is something that can happen  
17 without negligence on the part of the surgeon.” *Decl. of Andrew B. Cramer, M.D.*, at ¶5. Further,  
18 Dr. Cramer states that “Dr. Ramos’ care and treatment of Maria Jaramillo was appropriate and within  
19 the applicable standards of care of a Board Certified Surgeon.” *Id.* at ¶7. Through this direct  
20 evidence, Defendant has rebutted the presumption that the unintentional leaving of the wire fragment  
21 was a result of negligence. Plaintiff, relying upon NRS 41A.100(1)(a), did not file an expert affidavit  
22 upon the filing of the *Complaint* in this case. As discussed, Plaintiff is not required to submit an  
23 affidavit, where the claim is pursued under NRS 41A.100(1)(a). However, Plaintiff did not file any  
24 expert affidavits or disclose expert witnesses prior to discovery deadlines in response to Defendant’s  
25 disclosure of Dr. Cramer, which Plaintiff’s counsel acknowledged at oral argument on September 24,  
26 2018. As a result, no direct evidence exists to oppose Defendant’s evidence supporting the  
27 nonexistence of negligence in this case. Therefore, Dr. Cramer’s expert affidavit is undisputed.




1 Pursuant to NRS 47.200, "if reasonable minds would necessarily agree that the direct evidence  
2 renders the nonexistence of the presumed fact more probable than not, the judge shall direct the jury  
3 to find against the existence of the presumed fact." Here, it is uncontroverted that the unintentional  
4 leaving of a wire fragment in Plaintiff's body was not a result of negligence. As such, this Court finds  
5 good cause to grant summary judgment in favor of Defendant Ramos. Finding that the discovery  
6 deadlines have passed, there are no questions of fact remaining for the jury to decide.

7 Accordingly, and good cause appearing,

8 IT IS HEREBY ORDERED that the Defendant Ramos's *Motion for Summary Judgment* is  
9 GRANTED.

10 Dated this 9<sup>th</sup> day of October, 2018.

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12   
13 KATHLEEN DRAKULICH  
14 DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

CASE NO. CV17-00221

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9<sup>th</sup> day of October, 2018, I electronically filed the **ORDER GRANTING DEFENDANT SUSAN R. RAMOS, M.D.'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**

ALICE CAMPOS MERCADO, ESQ. for SUSAN R. RAMOS

CARRIE PARKER, ESQ. for PRIME HEALTHCARE SERVICES-RENO, LLC, SAINT MARY'S MEDICAL GROUP, PRIME HEALTHCARE MANAGEMENT, INC.

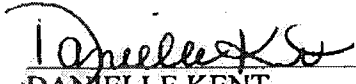
WILLIAM JEANNEY, ESQ. for ROSAISET JARAMILLO, MARIA JARAMILLO

EDWARD LEMONS, ESQ. for SUSAN R. RAMOS

JANINE PRUPAS, ESQ. for PRIME HEALTHCARE SERVICES-RENO, LLC, SAINT MARY'S MEDICAL GROUP, PRIME HEALTHCARE MANAGEMENT, INC.

**Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

NONE

  
DANIELLE KENT  
Department 1 Judicial Assistant

IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE

MARIA JARAMILLO,

Plaintiff,

CASE NO.: CV17-00221

v.

DEPT. NO.: 1

SUSAN R. RAMOS, M.D., F.A.C.S.;  
PRIME HEALTHCARE SERVICES RENO,  
LLC, a Delaware Limited Liability  
Company, d/b/a SAINT MARY'S  
REGIONAL MEDICAL CENTER; PRIME  
HEALTHCARE MANAGEMENT, INC., a  
California Corporation; SAINT MARY'S  
MEDICAL GROUP, INC.; ABC  
Corporations I-X, inclusive, Black and  
White Companies; and DOES I-XX,  
inclusive,

Defendants.

**ORDER GRANTING DEFENDANT SAINT MARY'S  
MOTION FOR SUMMARY JUDGMENT**

This Court heard oral argument on September 24, 2018 regarding Defendant Prime Healthcare Services Reno, LLC, dba Saint Mary's Regional Medical Center's (hereafter "St. Mary's") *Motion for Summary Judgment* filed on August 7, 2018. Plaintiff Rosaiset Jaramillo, as Special Administrator of the Estate of Maria Jaramillo (hereafter "Plaintiff") filed an *Opposition* on September 4, 2018. Thereafter, St. Mary's filed a *Reply* on September 11, 2018.

1       Upon review of the record and the arguments presented, this Court finds good cause appears  
2 to GRANT St. Mary's *Motion for Summary Judgment*.

3       **I.       Applicable Legal Standard**

4       NRCp 56(c) provides, "[summary judgment] shall be rendered if the pleadings, depositions,  
5 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that  
6 there is no genuine issue as to any material fact and that the moving party is entitled to judgment as  
7 a matter of law." A genuine issue of material fact exists when the evidence is such that a rational  
8 trier of fact could return a verdict for the nonmoving party. *Woods v. Safeway*, 121 Nev. 724, 731,  
9 121 P.3d 1026, 1031 (2005). When deciding whether summary judgment is appropriate, the court  
10 must view all evidence in light most favorable to the non-moving party and accept all properly  
11 supported evidence, factual allegations, and reasonable inferences favorable to the non-moving  
12 party as true. *C. Nicholas Pereos, Ltd. v. Bank of Am.*, 131 Nev. Adv. Op. 44, 352 P.3d 1133, 1136  
13 (2015); *NGA No. 2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1157, 946 P.2d 163, 167 (1997).

14       The Nevada Supreme Court has adopted the federal approach outlined in *Celotex Corp. v.*  
15 *Catrett*, 477 U.S. 317 (1986), with respect to burdens of proof and persuasion in summary judgment  
16 proceedings. See *Cuzze v. Univ. & Cmty. College Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131,  
17 134 (2007). The party moving for summary judgment must meet his or her initial burden of  
18 production and show there is no genuine issue of material fact. *Id.* "The manner in which each  
19 party may satisfy its burden of production depends on which party will bear the burden of persuasion  
20 on the challenged claim at trial." *Id.* When the moving party bears the burden at trial, that party  
21 must present evidence that would entitle it to judgment as a matter of law absent contrary evidence.  
22 *Id.* If the burden of persuasion at trial will rest on the nonmoving party, "the party moving for  
23 summary judgment may satisfy the burden of production by either (1) submitting evidence that  
24 negates an essential element of the nonmoving party's claim, or (2) pointing out that there is an  
25 absence of evidence to support the nonmoving party's case." *Id.* After the moving party meets his  
26 or her initial burden of production, the opposing party "must transcend the pleadings and by affidavit  
27 or other admissible evidence, introduce specific facts that show a genuine issue of material fact."  
28 *Id.*

1           **II. Undisputed Facts**

2           On March 26, 2015, Plaintiff Maria Jaramillo had a mammogram of her left breast, which  
3 showed that a lesion had increased in size from the time of her previous exam six months earlier.  
4 *Compl.* at ¶8. Thereafter, the radiologist recommended a direct surgical incision to confirm the  
5 findings and referred Plaintiff to Defendant Dr. Ramos. *Id.* at ¶¶9-10.

6           On April 29, 2015, Dr. Ramos performed a wire localization of the patient's left breast at St.  
7 Mary's Medical Center. *Id.* at ¶11. Plaintiff returned to Dr. Ramos for a follow-up appointment on  
8 January 28, 2016, wherein Plaintiff complained of pain in her left breast. *Id.* Dr. Ramos ordered a  
9 mammogram and ultrasound, the results of which showed a 3 cm length localization wire fragment  
10 in the upper left breast. *Id.* at ¶¶12-14. On March 28, 2016, Sharon Wright, M.D. performed a  
11 surgical excision of the wire fragment. *Plaintiff's Answer to Interrogatory No. 8.*

12           On October 23, 2017, Plaintiff passed away from gastrointestinal cancer, the cause of which  
13 is unrelated to the allegations in this matter.

14           **III. Relevant Procedural History**

15           Plaintiff filed a *Complaint* on February 2, 2017, alleging professional negligence asserting  
16 that Defendants negligently left a foreign object in Plaintiff Maria Jaramillo's body at the conclusion  
17 of a surgical procedure. The primary claim of professional negligence implicates the doctrine of *res*  
18 *ipsa loquitur*, alleging that both the doctor and the hospital are responsible in negligence for leaving  
19 the foreign object in Plaintiff's body and that, under NRS 41A.100, there is a rebuttable presumption  
20 of negligence as to both the doctor and the hospital.

21           The *Complaint* was unaccompanied by a medical expert affidavit. *Compl.* at ¶20. Within the  
22 *Complaint*, Plaintiff asserts that an expert affidavit is not required in this circumstance, as the claim  
23 arises from an incident where a foreign substance has been unintentionally left in the patient's body,  
24 and thus a statutory, rebuttable presumption of negligence arises pursuant to NRS 41A.100(1)(a). *Id.*  
25 at ¶¶29-30.

26           St. Mary's filed a *Motion to Dismiss* on March 16, 2017, seeking dismissal of the second cause  
27 of action (failure to provide a safe environment) for failure to state a claim. The Court denied the  
28 motion, stating the second cause of action was a professional negligence claim which was

1 “inextricably interrelated to the allegations of ‘medical malpractice’ that would ordinarily have to be  
2 accompanied by an affidavit of merit at the time of filing the complaint.” *Order Denying Defendants’*  
3 *Motion to Dismiss or in the Alternative, Motion for a More Definite Statement* (“May 16, 2017  
4 Order”), p. 2.

5 In June and July of 2017, parties exchanged initial disclosures of documents and filed the Joint  
6 Case Conference Report. Pursuant to the Joint Case Conference Report, the deadline for initial expert  
7 disclosures was June 22, 2018, with rebuttal disclosures due by July 23, 2018. Defendants served  
8 their Expert Witness Disclosure on June 22, 2018, wherein St. Mary’s disclosed Paul Goldfarb, M.D.,  
9 F.A.C.S. (hereafter “Dr. Goldfarb”). No rebuttal experts were disclosed by any of the parties.  
10 Pursuant to the Joint Case Conference Report, discovery closed on September 21, 2018.

#### 11 IV. Discussion

12 St. Mary’s comes now requesting summary judgment as to the NRS 41A.100(1) claim on two  
13 bases: (1) Plaintiff’s claim of *res ipsa loquitur* fails as to St. Mary’s, as St. Mary’s lacked exclusive  
14 control; and (2) the uncontroverted expert evidence presented rebuts the presumption of negligence.  
15 Additionally, St. Mary’s requests summary judgment as to the second cause of action for failure to  
16 provide a safe environment, arguing that the claim fails as a matter of law. Upon careful consideration  
17 of the argument presented, this Court finds good cause to grant summary judgment as to St. Mary’s.

##### 18 1. Exclusive Control

19 St. Mary’s argues that Plaintiff’s claim for *res ipsa loquitur*, pursuant to NRS 41A.100(1),  
20 fails as to St. Mary’s, as Plaintiff has failed to establish that St. Mary’s controlled or was responsible  
21 in any way for the wire fragment. Mot. at 8:10-11.

22 Nevada case law has held that a traditional claim of *res ipsa loquitur* requires that the Plaintiff  
23 establish that the defendant was “in exclusive control of the instrumentality causing harm.” *Otis*  
24 *Elevator Co. v. Reid*, 101 Nev. 515, 519, 706 P.2d 1378, 1380 (1985). This Court finds that the general  
25 principles of *res ipsa loquitur* apply to NRS 41A.100(1)(a), finding that NRS 41A.100(1)(a) does not  
26 apply against a defendant who did not have control over the foreign object unintentionally left in the  
27 plaintiff.

1        Within the declaration filed by St. Mary's expert, Dr. Goldfarb, testimony is presented that  
2        "the wire used for needle localization is not a counted object in the operating room and there would  
3        be no reason for any of the operating room staff to be aware of the fact that the wire had been divided  
4        and left within the breast." *Decl. of Paul M. Goldfarb, M.D.*, at p.2. Dr. Goldfarb further testifies  
5        that "[t]here were no actions that the hospital staff would have been required to perform as part of  
6        this procedure and, they would have had no responsibility for identifying the fact that the wire had  
7        been divided." *Id.* Plaintiff has presented no evidence to rebut Dr. Goldfarb's testimony. As such,  
8        it is uncontroverted and St. Mary's is entitled to summary judgment. St. Mary's cannot be held liable  
9        under NRS 41A.100(1)(a) when it is undisputed that St. Mary's lacked exclusive control over the  
10       instrumentality causing harm to Plaintiff. Summary judgment is granted on this basis.

## 11                    2. Rebuttal of the Presumption of Negligence

12        St. Mary's asserts that the expert affidavit of Dr. Goldfarb, as well as the expert opinion of  
13        Dr. Cramer presented by Defendant Ramos, provides uncontroverted evidence that the unintentional  
14        leaving of the wire in Plaintiff's body was not the result of negligence. The Declaration of Dr.  
15        Goldfarb provides that "[i]nadvertent cutting of the wire and leaving a piece of wire within the breast  
16        is a known complication of doing needle localized biopsies," and there was no breach of the standard  
17        of care in this case. *Decl. of Paul M. Goldfarb, M.D.*, at p.1. St. Mary's asserts that this affidavit  
18        rebuts the presumption of negligence put forth by Plaintiff. As Plaintiff has not disclosed any experts,  
19        and the deadline to do so has passed, St. Mary's contends that the rebuttal of negligence is  
20        uncontroverted and thus, it is entitled to summary judgment.

21        Plaintiff opposes this motion, arguing that pursuant to NRS 41A.100(1)(a), the Plaintiff need  
22        only establish a prime facie case that a foreign substance was left inside the Plaintiff in order to trigger  
23        the statutory *res ipsa loquitur* presumption of negligence. Plaintiff further contends that pursuant to  
24        Nevada case law, the statutory *res ipsa loquitur* under NRS Chapter 41A has replaced the traditional  
25        common law doctrine of *res ipsa loquitur*, and thus the traditional burden shifting does not occur.  
26        Plaintiff cites *Johnson v. Egtegar*, wherein the Nevada Supreme Court states:

27                    Under NRS 41A.100, however, the presumption automatically applies where  
28                    any of the enumerated factual circumstances are present. In regard to these  
                      factual predicates, the legislature has, in effect, already determined that they

ordinarily do not occur in the absence of negligence. Thus, we conclude, all a plaintiff need do to warrant an instruction under the statutory medical malpractice res ipsa loquitur rule is present some evidence of the existence of one or more of the factual predicates enumerated in the statute. If the trier of fact then finds that one or more of the factual predicates exist, then the presumption must be applied. This is the approach taken in Nev. J.I.6.17 and Plaintiff's A. Accordingly, the district court should have given the proposed instruction if it was supported by evidence adduced at trial.

112 Nev. 428, 433-34, 915 P.2d 271, 274-75 (1996). Plaintiff argues that since the presumption of negligence "automatically applies" here, there is no other evidence that the Plaintiff is obligated to present, and it is for the jury to weigh the testimony of Dr. Goldfarb. Plaintiff contends that the question of whether the statutory presumption has been rebutted is a question of fact for the jury.

This Court rejects Plaintiff's arguments. Accepting Plaintiff's argument means that the presumption of negligence arising from a prima facie case of any scenario enumerated in NRS 41A.100(1) cannot be rebutted, and thus, must go to trial for the jury decide. However, in scenarios such as this, where the Defendant has put forth uncontroverted evidence that negligence did not occur and thus rebutting the presumption of negligence, only three results could occur: (1) defendants move for directed verdict at the conclusion of their case, wherein the Court would have to grant it; (2) the jury finds no negligence; or (3) the jury finds a verdict in favor of negligence and Defendants appeals on the basis that the verdict is unsupported by the evidence. The Court finds the interpretation of NRS 41A.100(1) in this manner goes against the prevailing law in Nevada.

The parties, and the Court, agree that a presumption of negligence arises under NRS 41A.100(1). The statute provides, in relevant part:

1. Liability for personal injury or death is not imposed upon any provider of health care based on alleged negligence in the performance of that care unless evidence consisting of expert medical testimony, material from recognized medical texts or treatises or the regulations of the licensed medical facility wherein the alleged negligence occurred is presented to demonstrate the alleged deviation from the accepted standard of care in the specific circumstances of the case and to prove causation of the alleged personal injury or death, *except that such evidence is not required and a rebuttable presumption that the personal injury or death was caused by negligence arises where evidence is presented that the provider of health care caused the personal injury or death occurred in any one or more of the following circumstances:*



1 (a) *A foreign substance* other than medication or a prosthetic device *was*  
2 *unintentionally left within the body of a patient* following surgery;  
3 NRS 41A.100(1)(a) (emphasis added). Pursuant to this statute, a rebuttable presumption of  
4 negligence, in favor of the plaintiff, is triggered by a showing of some evidence of a foreign substance  
5 being unintentionally left in the body of a patient. NRS 41A.100(1)(a) provides a statutory short cut  
6 to the *res ipsa loquitur* presumption of negligence. See *Szydel v. Markman*, 121 Nev. 453, 117 P.3d  
7 200 (2005). In contrast, a plaintiff pursuing a claim under the traditional doctrine of *res ipsa loquitur*  
8 must establish that the event in question is one that ordinarily does not occur in the absence of  
9 negligence.

10 In interpreting the language of NRS 41A.100(1) and the case law pertaining thereto (which  
11 includes acknowledging that the Nevada Supreme Court has held that “the legislature intended NRS  
12 41A.100 to replace rather than supplement, the classic *res ipsa loquitur* formulation in medical  
13 malpractices cases where it is factually applicable” *Johnson v. Egtegar*, 112 Nev. at 428), the Court  
14 disagrees with Plaintiff in that NRS 41A.100(1)(a)-(e) completely replaces the traditional doctrine of  
15 *res ipsa*, such that no evidence presented could rebut the presumption of negligence prior to trial. In  
16 fact, this Court finds that courts in *Johnson* and *Born* speak only to those jury instructions that must  
17 be given in a case of this nature. See *Johnson v. Egtegar*, 112 Nev. 428, 915 P.2d 271 (1996) (holding  
18 “we conclude, all a plaintiff need do to warrant an instruction under the statutory medical malpractice  
19 *res ipsa loquitur* rule is present some evidence of the existence of one or more of the factual predicates  
20 enumerated in the statute”); *Born v. Eisenman*, 114 Nev. 854, 859, 962 P.2d 974, 978 (1998) (finding  
21 “all a plaintiff need do to warrant an instruction under the statutory medical malpractice *res ipsa*  
22 *loquitur* rule is present some evidence of the existence of one or more of the factual predicates  
23 enumerated in the statute”). Further, the court in *Szydel*, characterizes the presumption of negligence  
24 established by NRS 41A.100 as one that applies as a threshold matter and not as an evidentiary rule  
25 for trial. 121 Nev. at 458, 117 P.3d at 203 (2005) (stating “the plain language of NRS 41A.071  
26 provides a threshold requirement for medical malpractice pleadings and does not pertain to  
27 evidentiary matters at trial, as does NRS 41A.100(1)”) (citing *Borger v. District Court*, 120 Nev.  
28 1021, 102 P.3d 600, 605 (2004)). As a result, this Court finds that the issue at hand is whether

1 Defendant St. Mary's has rebutted the presumption of negligence, triggered by NRS 41A.100(1)(a),  
2 to support a grant of summary judgment.

3 Chapter 47 *et seq.* of the Nevada Revised Statutes provides for the definition and existence of  
4 presumptions. Pursuant to NRS 47.180, a presumption "imposes on the party against whom it is  
5 directed the burden of proving that the nonexistence of the presumed fact is more probable than its  
6 existence." NRS 47.180(1). Further, "direct evidence" is evidence "which tends to establish the  
7 existence or nonexistence of the presumed fact independently of the basic facts." Here, the basic fact  
8 is that a 3 cm piece of wire was unintentionally left in Plaintiff's left breast. The presumption, as  
9 triggered by NRS 41A.100(1), that the unintentional leaving of the piece of wire was a result of  
10 negligence on the part of St. Mary's. However, St. Mary's has presented direct evidence, through the  
11 affidavit of expert witness Dr. Goldfarb, that "the wire used for needle localization is not a counted  
12 object in the operating room and there would be no reason for any of the operating room staff to be  
13 aware of the fact that the wire had been divided and left within the breast," and that "[t]here were no  
14 actions that the hospital staff would have been required to perform as part of this procedure and, they  
15 would have had no responsibility for identifying the fact that the wire had been divided," and there  
16 was no breach of the standard of care in this case. *Decl. of Paul M. Goldfarb, M.D.*, at p.2.

17 Through this direct evidence, Defendant has rebutted the presumption that the unintentional  
18 leaving of the wire fragment was a result of negligence. Plaintiff, relying upon NRS 41A.100(1)(a),  
19 did not file an expert affidavit upon the filing of the *Complaint* in this case. As discussed, Plaintiff is  
20 not required to submit an affidavit, where the claim is pursued under NRS 41A.100(1)(a). However,  
21 Plaintiff did not file any expert affidavits or disclose expert witnesses prior to discovery deadlines in  
22 response to Defendant's disclosure of Dr. Goldfarb, which Plaintiff's counsel acknowledged at oral  
23 argument on September 24, 2018. As a result, no direct evidence exists to oppose Defendant's  
24 evidence supporting the nonexistence of negligence in this case. Therefore, Dr. Goldfarb's expert  
25 affidavit is undisputed.

26 Pursuant to NRS 47.200, "if reasonable minds would necessarily agree that the direct evidence  
27 renders the nonexistence of the presumed fact more probable than not, the judge shall direct the jury  
28 to find against the existence of the presumed fact." Here, it is uncontroverted that the unintentional

1 leaving of a wire fragment in Plaintiff's body was not a result of negligence. As such, this Court finds  
2 good cause to grant summary judgment in favor of Defendant St. Mary's. Finding that the discovery  
3 deadlines have passed, there are no questions of fact remaining for the jury to decide.

4 **3. Claim for Safe Environment**


5 St. Mary's asserted, through the *Motion for Summary Judgment*, that the second cause of  
6 action, or the "safe environment" claim, fails as a matter of law. St. Mary's contends that Nevada  
7 does not recognize a "safe environment" claim against a hospital based solely on a foreign object  
8 being left in a person's body. St. Mary's contends that NRS 41A.015 defines "professional  
9 negligence" as "the failure of a provider of health care, in rendering services, to use reasonable care,  
10 skill or knowledge ordinarily used under similar circumstances." St. Mary's argues that this claim, if  
11 deemed a claim of professional negligence, fails for the same reasons the NRS 41A.100(1) *res ipsa*  
12 claim fails.

13 The Court notes Plaintiff failed to oppose this argument in the written pleadings, as well as  
14 during oral argument. Pursuant to District Court Rule 13(3), the "[f]ailure of the opposing party to  
15 serve and file his written opposition may be construed as an admission that the motion is meritorious  
16 and a consent to granting the same." As no opposition was presented, the Court finds good cause to  
17 grant summary judgment as to the claim for safe environment.

18 Accordingly, and good cause appearing,

19 IT IS HEREBY ORDERED that the Defendant St. Mary's *Motion for Summary Judgment* is  
20 GRANTED.

21 Dated this 9<sup>th</sup> day of October, 2018.

22  
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24 KATHLEEN DRAKULICH  
25 DISTRICT JUDGE  
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1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV17-00221

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 9<sup>th</sup> day of October, 2018, I  
5 electronically filed the **ORDER GRANTING DEFENDANT SAINT MARY'S MOTION FOR**  
6 **SUMMARY JUDGMENT** with the Clerk of the Court by using the ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document by the  
8 method(s) noted below:

9 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**  
10 **of electronic filing to the following:**

11 ALICE CAMPOS MERCADO, ESQ. for SUSAN R. RAMOS

12 CARRIE PARKER, ESQ. for PRIME HEALTHCARE SERVICES-RENO, LLC, SAINT  
13 MARY'S MEDICAL GROUP, PRIME HEALTHCARE MANAGEMENT, INC.

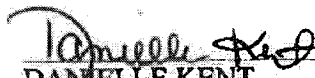
14 WILLIAM JEANNEY, ESQ. for ROSAISET JARAMILLO, MARIA JARAMILLO

15 EDWARD LEMONS, ESQ. for SUSAN R. RAMOS

16 JANINE PRUPAS, ESQ. for PRIME HEALTHCARE SERVICES-RENO, LLC, SAINT  
MARY'S MEDICAL GROUP, PRIME HEALTHCARE MANAGEMENT, INC.

17 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**  
18 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

19 NONE

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23 **DANIELLE KENT**  
24 **Department 1 Judicial Assistant**  
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1 **2540**

2 Edward J. Lemons, Esq.  
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9 6005 Plumas Street  
10 3<sup>rd</sup> Floor  
11 Reno, Nevada 89519  
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13 *Attorneys for Defendant*  
14 *Susan Ramos, M.D., F.A.C.S.*

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE**

-o0o-

**MARIA JARAMILLO,**

Plaintiff,

vs.

**SUSAN R. RAMOS, M.D., F.A.C.S.;  
PRIME HEALTHCARE SERVICES-RENO, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY, D/B/A  
SAINT MARY'S REGIONAL MEDICAL CENTER;  
PRIME HEALTHCARE MANAGEMENT INC.,  
A CALIFORNIA CORPORATION;  
SAINT MARY'S MEDICAL GROUP, INC.;  
ABC CORPORATIONS I-X, INCLUSIVE,  
BLACK AND WHITE COMPANIES; AND  
DOES I-XX INCLUSIVE,**

Defendants.

Case No.: CV17-00221

Dept. No. 1

**NOTICE OF ENTRY OF ORDER**

**PLEASE TAKE NOTICE** that an Order granting Defendant Susan R. Ramos,  
M.D.'s Motion for Summary Judgment was entered on the 9<sup>th</sup> day of October,  
2018. A true and correct copy of said Order is attached hereto.

~ \* ~

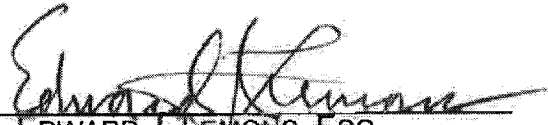
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**AFFIRMATION**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document DOES NOT contain the Social Security Number of any person.

DATED this 10<sup>th</sup> day of October, 2018.

**LEMONS, GRUNDY & EISENBERG**  
*Attorneys for Defendant*  
*Susan R. Ramos, M.D.*

BY:   
EDWARD J. LEMONS, ESQ.  
Nevada Bar No. 699

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**CERTIFICATE OF SERVICE**

I am a citizen of the United States. My business address is 6005 Plumas Street, Third Floor, Reno, NV 89519, and I am employed by LEMONS, GRUNDY & EISENBERG in the City of Reno and County of Washoe where this service occurs

On October 10, 2018, I caused to be served to the addressee(s) listed below, a true copy of the foregoing document(s) and described as **Notice of Entry of Order**.

\_\_\_\_ **BY MAIL:** in an envelope with postage thereon fully prepaid to be placed in the U.S. Mail at Reno, Nevada;

\_\_\_\_ **BY PERSONAL SERVICE:** in an envelope to be hand delivered this date;

\_\_\_\_ **BY OVERNIGHT DELIVERY:** in an envelope to be delivered to an overnight delivery carrier with delivery fees provided for;

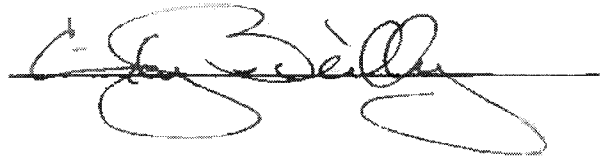
\_\_\_\_ **BY FACSIMILE:** by transmitting by facsimile to the respective fax telephone phone number(s).

\_\_\_\_ ☒ **BY USING THE COURT'S EFS** which electronically served the following individual(s):

William C. Jeanney, Esq.  
BRADLEY, DRENDEL & JEANNEY

Janine C. Prupas, Esq.  
Carrie L. Parker, Esq.  
SNELL & WILMER, LLP

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.



IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE

MARIA JARAMILLO,

Plaintiff,

CASE NO.: CV17-00221

v.

DEPT. NO.: 1

SUSAN R. RAMOS, M.D., F.A.C.S.;  
PRIME HEALTHCARE SERVICES RENO,  
LLC, a Delaware Limited Liability  
Company, d/b/a SAINT MARY'S  
REGIONAL MEDICAL CENTER; PRIME  
HEALTHCARE MANAGEMENT, INC., a  
California Corporation; SAINT MARY'S  
MEDICAL GROUP, INC.; ABC  
Corporations I-X, inclusive, Black and  
White Companies; and DOES I-XX,  
inclusive,

Defendants.

**ORDER GRANTING DEFENDANT SUSAN R. RAMOS, M.D.'S MOTION FOR  
SUMMARY JUDGMENT**

This Court heard oral argument on September 24, 2018 regarding Defendant Susan R. Ramos, M.D.'s (hereafter "Dr. Ramos") *Motion for Summary Judgment* filed on August 3, 2018. Plaintiff Rosaiset Jaramillo, as Special Administrator of the Estate of Maria Jaramillo (hereafter "Plaintiff") filed an *Opposition* on August 27, 2018. Thereafter, Dr. Ramos filed a *Reply* on August 29, 2018, and simultaneously submitted the motion to the Court for decision.



1       Upon review of the record and the arguments presented, this Court finds good cause appears  
2 to GRANT Dr. Ramos's *Motion for Summary Judgment*.

3       **I.       Applicable Legal Standard**

4       NRCp 56(c) provides, "[summary judgment] shall be rendered if the pleadings, depositions,  
5 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there  
6 is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter  
7 of law." A genuine issue of material fact exists when the evidence is such that a rational trier of fact  
8 could return a verdict for the nonmoving party. *Woods v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026,  
9 1031 (2005). When deciding whether summary judgment is appropriate, the court must view all  
10 evidence in light most favorable to the non-moving party and accept all properly supported evidence,  
11 factual allegations, and reasonable inferences favorable to the non-moving party as true. *C. Nicholas*  
12 *Pereos, Ltd. v. Bank of Am.*, 131 Nev. Adv. Op. 44, 352 P.3d 1133, 1136 (2015); *NGA No. 2 Ltd.*  
13 *Liab. Co. v. Rains*, 113 Nev. 1151, 1157, 946 P.2d 163, 167 (1997).

14       The Nevada Supreme Court has adopted the federal approach outlined in *Celotex Corp. v.*  
15 *Catrett*, 477 U.S. 317 (1986), with respect to burdens of proof and persuasion in summary judgment  
16 proceedings. See *Cuzze v. Univ. & Cmty. College Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134  
17 (2007). The party moving for summary judgment must meet his or her initial burden of production  
18 and show there is no genuine issue of material fact. *Id.* "The manner in which each party may satisfy  
19 its burden of production depends on which party will bear the burden of persuasion on the challenged  
20 claim at trial." *Id.* When the moving party bears the burden at trial, that party must present evidence  
21 that would entitle it to judgment as a matter of law absent contrary evidence. *Id.* If the burden of  
22 persuasion at trial will rest on the nonmoving party, "the party moving for summary judgment may  
23 satisfy the burden of production by either (1) submitting evidence that negates an essential element  
24 of the nonmoving party's claim, or (2) pointing out that there is an absence of evidence to support the  
25 nonmoving party's case." *Id.* After the moving party meets his or her initial burden of production,  
26 the opposing party "must transcend the pleadings and by affidavit or other admissible evidence,  
27 introduce specific facts that show a genuine issue of material fact." *Id.*

28       ///

1           **II.     Undisputed Facts**

2           On March 26, 2015, Plaintiff Maria Jaramillo had a mammogram of her left breast, which  
3 showed that a lesion had increased in size from the time of her previous exam six months earlier.  
4 *Compl.* at ¶8. Thereafter, the radiologist recommended a direct surgical incision to confirm the  
5 findings and referred Plaintiff to Dr. Ramos. *Id.* at ¶¶9-10.

6           On April 29, 2015, Dr. Ramos performed a wire localization of the patient's left breast. *Id.* at  
7 ¶11. Plaintiff returned to Dr. Ramos for a follow-up appointment on January 28, 2016, wherein  
8 Plaintiff complained of pain in her left breast. *Id.* Dr. Ramos ordered a mammogram and ultrasound,  
9 the results of which showed a 3 cm length localization wire fragment in the upper left breast. *Id.* at  
10 ¶¶12-14. On March 28, 2016, Sharon Wright, M.D. performed a surgical excision of the wire  
11 fragment. *Plaintiff's Answer to Interrogatory No. 8.*

12           On October 23, 2017, Plaintiff passed away from gastrointestinal cancer, the cause of which  
13 is unrelated to the allegations in this matter.

14           **III.    Relevant Procedural History**

15           Plaintiff filed a *Complaint* on February 2, 2017, alleging professional negligence asserting  
16 that Defendants negligently left a foreign object in Plaintiff Maria Jaramillo's body at the conclusion  
17 of a surgical procedure. The primary claim of professional negligence implicates the doctrine of *res*  
18 *ipsa loquitur*, alleging that both the doctor and the hospital are responsible in negligence for leaving  
19 the foreign object in Plaintiff's body and that, under NRS 41A.100, there is a rebuttable presumption  
20 of negligence as to both the doctor and the hospital.

21           The *Complaint* was unaccompanied by a medical expert affidavit. *Compl.* at ¶20. Within the  
22 *Complaint*, Plaintiff asserts that an expert affidavit is not required in this circumstance, as the claim  
23 arises from an incident where a foreign substance has been unintentionally left in the patient's body,  
24 and thus a statutory, rebuttable presumption of negligence arises pursuant to NRS 41A.100(1)(a). *Id.*  
25 at ¶¶29-30.

26           Dr. Ramos filed an *Answer* on March 14, 2017. In June and July of 2017, parties exchanged  
27 initial disclosures of documents and filed the Joint Case Conference Report. Pursuant to the Joint  
28 Case Conference Report, the deadline for initial expert disclosures was June 22, 2018, with rebuttal

1 disclosures due by July 23, 2018. Dr. Ramos served her Expert Witness Disclosure on June 22, 2018,  
2 wherein she disclosed Andrew B. Cramer, M.D., a Board Certified general vascular surgeon. The  
3 Declaration of Andrew B. Cramer, M.D. was attached to the Expert Witness Disclosure. No rebuttal  
4 experts were disclosed by any of the parties. Pursuant to the Joint Case Conference Report, discovery  
5 closed on September 21, 2018.

6 **IV. Discussion**

7 Dr. Ramos comes now requesting summary judgment on the basis that the uncontroverted  
8 evidence demonstrates that Dr. Ramos did not breach the standard of care owed to Plaintiff, and thus,  
9 the undisputed facts cannot establish negligence on the part of Dr. Ramos. Dr. Ramos asserts that the  
10 expert affidavit of Dr. Cramer provides expert evidence that Dr. Ramos conformed to the standard of  
11 care owed. The Declaration of Dr. Cramer provides:

12 5. It is my opinion, to a reasonable degree of medical probability, that the wire  
13 fragment left in the patient's breast in this case does not denominate negligence  
14 on the part of the surgeon. It is something that a surgeon should be unhappy to  
15 have happen but it isn't due to negligence. *This is something that can happen  
without negligence on the part of the surgeon.*

16 6. It is also my opinion that it was reasonable for Dr. Ramos to ask the radiologist  
17 to image the area, which was done using Bioview, and confirm that the dissected  
18 tissue was what radiology wanted her to find and remove. It does not appear  
19 that the radiologist noted any retained wire fragment or that he brought any  
20 retained fragment to Dr. Ramos' attention.

21 7. *In conclusion, based on the information currently available to me, Dr.  
Ramos' care and treatment of Maria Jaramillo was appropriate and within the  
applicable standards of care of a Board Certified Surgeon. There is nothing  
about the care by Dr. Ramos which was negligent in this case.*

22 Decl. of Andrew B. Cramer, M.D., at ¶¶5-7 (emphasis added). Dr. Ramos contends this affidavit  
23 rebuts the presumption of negligence put forth by Plaintiff. As Plaintiff has not disclosed any experts,  
24 and the deadline to do so has passed, Dr. Ramos asserts that the rebuttal of negligence is  
25 uncontroverted and thus, she is entitled to summary judgment.

26 Plaintiff opposes this motion, arguing that pursuant to NRS 41A.100(1)(a), the Plaintiff need  
27 only establish a prime facie case that a foreign substance was left inside the Plaintiff in order to trigger  
28 the statutory *res ipsa loquitur* presumption of negligence. Plaintiff further contends that pursuant to

1 Nevada case law, the statutory *res ipsa loquitur* under NRS Chapter 41A has replaced the traditional  
2 common law doctrine of *res ipsa loquitur*, and thus the traditional burden shifting does not occur.  
3 Plaintiff cites *Johnson v. Egtegar*, wherein the Nevada Supreme Court states:

4 Under NRS 41A.100, however, the presumption automatically applies where  
5 any of the enumerated factual circumstances are present. In regard to these  
6 factual predicates, the legislature has, in effect, already determined that they  
7 ordinarily do not occur in the absence of negligence. Thus, we conclude, all a  
8 plaintiff need do to warrant an instruction under the statutory medical  
9 malpractice *res ipsa loquitur* rule is present some evidence of the existence of  
10 one or more of the factual predicates enumerated in the statute. If the trier of fact  
then finds that one or more of the factual predicates exist, then the presumption  
must be applied. This is the approach taken in Nev. J.I.6.17 and Plaintiff's A.  
Accordingly, the district court should have given the proposed instruction if it  
was supported by evidence adduced at trial.

11 112 Nev. 428, 433-34, 915 P.2d 271, 274-75 (1996). Plaintiff argues that since the presumption of  
12 negligence "automatically applies" here, there is no other evidence that the Plaintiff is obligated to  
13 present, and it is for the jury to weigh the testimony of Dr. Cramer. Plaintiff contends that the question  
14 of whether the statutory presumption has been rebutted is a question of fact for the jury.

15 This Court rejects Plaintiff's arguments. Accepting Plaintiff's argument means that the  
16 presumption of negligence arising from a *prima facie* case of any scenario enumerated in NRS  
17 41A.100(1) cannot be rebutted, and thus, must go to trial for the jury decide. However, in scenarios  
18 such as this, where the Defendant has put forth uncontroverted evidence that negligence did not occur  
19 and thus rebutting the presumption of negligence, only three results could occur: (1) defendants move  
20 for directed verdict at the conclusion of their case, wherein the Court would have to grant it; (2) the  
21 jury finds no negligence; or (3) the jury finds a verdict in favor of negligence and Defendant appeals  
22 on the basis that the verdict is unsupported by the evidence. The Court finds the interpretation of  
23 NRS 41A.100(1) in this manner goes against the prevailing law in Nevada.

24 The parties, and the Court, agree that a presumption of negligence arises under NRS  
25 41A.100(1). The statute provides, in relevant part:

26 1. Liability for personal injury or death is not imposed upon any provider of  
27 health care based on alleged negligence in the performance of that care unless  
28 evidence consisting of expert medical testimony, material from recognized  
medical texts or treatises or the regulations of the licensed medical facility

1 wherein the alleged negligence occurred is presented to demonstrate the alleged  
2 deviation from the accepted standard of care in the specific circumstances of the  
3 case and to prove causation of the alleged personal injury or death, ***except that***  
4 ***such evidence is not required and a rebuttable presumption that the personal***  
5 ***injury or death was caused by negligence arises where evidence is presented***  
6 ***that the provider of health care caused the personal injury or death occurred***  
7 ***in any one or more of the following circumstances:***

8 (a) ***A foreign substance*** other than medication or a prosthetic device ***was***  
9 ***unintentionally left within the body of a patient*** following surgery;

10 NRS 41A.100(1)(a) (emphasis added). Pursuant to this statute, a rebuttable presumption of  
11 negligence, in favor of the plaintiff, is triggered by a showing of some evidence of a foreign substance  
12 being unintentionally left in the body of a patient. NRS 41A.100(1)(a) provides a statutory short cut  
13 to the *res ipsa loquitur* presumption of negligence. See *Szydel v. Markman*, 121 Nev. 453, 117 P.3d  
14 200 (2005). In contrast, a plaintiff pursuing a claim under the traditional doctrine of *res ipsa loquitur*  
15 must establish that the event in question is one that ordinarily does not occur in the absence of  
16 negligence.

17 In interpreting the language of NRS 41A.100(1) and the case law pertaining thereto (which  
18 includes acknowledging that the Nevada Supreme Court has held that “the legislature intended NRS  
19 41A.100 to replace rather than supplement, the classic *res ipsa loquitur* formulation in medical  
20 malpractices cases where it is factually applicable” *Johnson v. Egtegar*, 112 Nev. at 428), the Court  
21 disagrees with Plaintiff in that NRS 41A.100(1)(a)-(e) completely replaces the traditional doctrine of  
22 *res ipsa*, such that no evidence presented could rebut the presumption of negligence prior to trial. In  
23 fact, this Court finds that *Johnson* and *Born* speak only to those jury instructions that must be given  
24 in a case of this nature. See *Johnson v. Egtegar*, 112 Nev. 428, 915 P.2d 271 (1996) (holding “we  
25 conclude, all a plaintiff need do to warrant an instruction under the statutory medical malpractice *res*  
26 *ipsa loquitur* rule is present some evidence of the existence of one or more of the factual predicates  
27 enumerated in the statute”); *Born v. Eisenman*, 114 Nev. 854, 859, 962 P.2d 974, 978 (1998) (finding  
28 “all a plaintiff need do to warrant an instruction under the statutory medical malpractice *res ipsa*  
loquitur rule is present some evidence of the existence of one or more of the factual predicates  
enumerated in the statute”). Further, the court in *Szydel*, characterizes the presumption of negligence  
established by NRS 41A.100 as one that applies as a threshold matter and not as an evidentiary rule

1 wherein the alleged negligence occurred is presented to demonstrate the alleged  
2 deviation from the accepted standard of care in the specific circumstances of the  
3 case and to prove causation of the alleged personal injury or death, *except that*  
4 *such evidence is not required and a rebuttable presumption that the personal*  
5 *injury or death was caused by negligence arises where evidence is presented*  
6 *that the provider of health care caused the personal injury or death occurred*  
7 *in any one or more of the following circumstances:*

8 (a) *A foreign substance* other than medication or a prosthetic device *was*  
9 *unintentionally left within the body of a patient* following surgery;

10 NRS 41A.100(1)(a) (emphasis added). Pursuant to this statute, a rebuttable presumption of  
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14 200 (2005). In contrast, a plaintiff pursuing a claim under the traditional doctrine of *res ipsa loquitur*  
15 must establish that the event in question is one that ordinarily does not occur in the absence of  
16 negligence.


17 In interpreting the language of NRS 41A.100(1) and the case law pertaining thereto (which  
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24 in a case of this nature. See *Johnson v. Egtegar*, 112 Nev. 428, 915 P.2d 271 (1996) (holding “we  
25 conclude, all a plaintiff need do to warrant an instruction under the statutory medical malpractice *res*  
26 *ipsa loquitur* rule is present some evidence of the existence of one or more of the factual predicates  
27 enumerated in the statute”); *Born v. Eisenman*, 114 Nev. 854, 859, 962 P.2d 974, 978 (1998) (finding  
28 “all a plaintiff need do to warrant an instruction under the statutory medical malpractice *res ipsa*  
*loquitur* rule is present some evidence of the existence of one or more of the factual predicates  
enumerated in the statute”). Further, the court in *Szydel*, characterizes the presumption of negligence  
established by NRS 41A.100 as one that applies as a threshold matter and not as an evidentiary rule

1 Pursuant to NRS 47.200, "if reasonable minds would necessarily agree that the direct evidence  
2 renders the nonexistence of the presumed fact more probable than not, the judge shall direct the jury  
3 to find against the existence of the presumed fact." Here, it is uncontroverted that the unintentional  
4 leaving of a wire fragment in Plaintiff's body was not a result of negligence. As such, this Court finds  
5 good cause to grant summary judgment in favor of Defendant Ramos. Finding that the discovery  
6 deadlines have passed, there are no questions of fact remaining for the jury to decide.

7 Accordingly, and good cause appearing,

8 IT IS HEREBY ORDERED that the Defendant Ramos's *Motion for Summary Judgment* is  
9 GRANTED.

10 Dated this 9<sup>th</sup> day of October, 2018.

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13 KATHLEEN DRAKULICH  
14 DISTRICT JUDGE  
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I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9<sup>th</sup> day of October, 2018, I electronically filed the **ORDER GRANTING DEFENDANT SUSAN R. RAMOS, M.D.'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court by using the ECF system.

**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**


CARRIE PARKER, ESQ. for PRIME HEALTHCARE SERVICES-RENO, LLC, SAINT MARY'S MEDICAL GROUP, PRIME HEALTHCARE MANAGEMENT, INC.

EDWARD LEMONS, ESQ. for SUSAN R. RAMOS

JANINE PRUPAS, ESQ. for PRIME HEALTHCARE SERVICES-RENO, LLC, SAINT MARY'S MEDICAL GROUP, PRIME HEALTHCARE MANAGEMENT, INC.

**Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

NONE

  
DANIELLE KENT  
Department 1 Judicial Assistant



1 **\$2515**  
William C. Jeanney, Esq.  
2 Nevada State Bar No. 01235  
3 **BRADLEY, DRENDEL & JEANNEY**  
P.O. Box 1987  
4 Reno, NV 89505  
Telephone No. (775) 335-9999  
5 Facsimile No. (775) 335-9993  
*Attorney for Plaintiff*

Electronically Filed  
Nov 13 2018 02:11 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8  
9 **ROSAISET JARAMILLO, as Special**  
10 **Administrator of the Estate of Maria**  
**Jaramillo,**

11 **Plaintiff,**

**Case No. CV17-00221**

12 **v.**

**Dept. No. 1**

13 **SUSAN R. RAMOS, M.D., F.A.C.S.;**  
14 **PRIME HEALTHCARE**  
15 **SERVICES-RENO, LLC., a Delaware**  
16 **Limited Liability Company, d/b/a/ SAINT**  
17 **MARYS REGIONAL MEDICAL**  
18 **CENTER; ABC Corporations I-X,**  
19 **inclusive, Black and White Companies; and**  
20 **DOES I-XX, inclusive,**

21 **Defendants.**

22 **NOTICE OF APPEAL**

23 **NOTICE IS HEREBY GIVEN that Plaintiff, ROSAISET JARAMILLO, as Special**  
24 **Administrator of the Estate of Maria Jaramillo, hereby appeals to the Nevada Supreme Court from**  
25 **the Order granting Defendant SUSAN R. RAMOS, M.D.'s Motion for Summary Judgment filed**  
26 **herein on October 9, 2018.**

27 **AFFIRMATION**

28 **The undersigned affirms that the foregoing document does not contain the Social Security**  
29 **Number**

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of any person.

DATED this 8<sup>th</sup> day of November 2018.

BRADLEY, DRENDEL & JEANNEY, LTD.

By   
William C. Jeanney, Esq.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of BRADLEY, DRENDEL &  
3 JEANNEY, and that on this date, I served a true and correct copy of the foregoing on the party(s)  
4 set forth below by:

5 \_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope placed for collection and  
6 mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary  
business practices

7 \_\_\_\_\_ Personal Delivery

8 \_\_\_\_\_ Facsimile

9 \_\_\_\_\_ Federal Express/Airborne Express/Other Overnight Delivery

10 \_\_\_\_\_ Reno-Carson Messenger Service

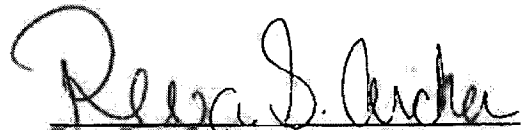
11   x   All parties signed up for electronic filing have been served electronically, all  
12 others have been served by placing a true copy thereof in a sealed envelope placed  
13 for collecting and mailing in the United States mail, at Reno, Nevada, postage  
prepaid, following ordinary business practices

14 addressed as follows:

15 Janine C. Prupas, Esq.  
16 Carrie L. Parker, Esq.  
16 Snell & Wilmer  
50 West Liberty Street, Suite 510  
17 Reno, NV 89501  
18 Attorneys for: Prime Healthcare Management, Inc.,  
Saint Mary's Medical Group, Inc.,  
Saint Mary's Regional Medical Center

19 Edward J. Lemons, Esq.  
20 Alice Campos Mercado, Esq.  
21 Lemons, Grundy & Eisenberg  
6005 Plumas Street, Suite 300  
22 Reno, NV 89519  
Attorneys for: Susan R. Ramos, M.D.

23 DATED this 8<sup>th</sup> day of November 2018.

24   
25 Reva S. Archer  
26  
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