

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

ALI KIA, M.D.

Petitioner,  
vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK, AND THE  
HONORABLE JASMIN LILLY-  
SPELLS.

Respondents.

and

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE  
HOSPITAL AND MEDICAL CENTER,  
LLC, a Foreign Limited-Liability  
Company; and NEVADA  
HOSPITALIST GROUP, LLP.

Real Parties in Interest.

Electronically Filed  
Aug 12 2021 08:38 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court No.:

District Court No.: A-17-757722-C

**PETITIONER'S APPENDIX – Volume 5**

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Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint	PA0294- PA0300
Notice of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint	PA0301- PA0309
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Defendant Sunrise Hospital and Medical Center's Answer to Plaintiff's Amended Complaint for Medical Malpractice	PA0325- PA0332
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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this appendix consists of true and correct copies of papers in the Clark County District Court file pursuant to NRAP 30 (g).

Dated: August 11, 2021

COLLINSON, DAEHNKE, INLOW & GRECO

*/s/ Linda Rurangirwa*

By \_\_\_\_\_  
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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of COLLINSON, DAEHNKE, INLOW & GRECO; that service of the foregoing **PETITIONER'S APPENDIX – VOLUME 5** was made on August 11, 2021, via mandatory electronic service, proof of electronic service attached to any copy filed with the Court. Pursuant to Eighth Judicial District Court Administrative Order 21-04, filed June 4, 2021, Respondent does not accept any paper copies and thus was not served by mail. Pursuant to agreement of Real Parties in Interest, proof of which is attached, mail service of the foregoing is waived.

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***Respondent***

/s/ Lacey Ambro  
An Employee of COLLINSON, DAEHNKE,  
INLOW & GRECO

## Deborah Rocha

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**From:** Stryker, Eric K. <Eric.Stryker@wilsonelser.com>  
**Sent:** Monday, August 9, 2021 12:23 PM  
**To:** Linda K. Rurangirwa; Daniel Marks; Jordan, Erin; Vogel, Brent; Tyson Dobbs; Mike Prangle  
**Cc:** Deborah Rocha; Nicole Young; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.; Office; Nicole M. Etienne  
**Subject:** RE: Green v. Sunrise Hospital

Yes, thanks.

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**From:** Linda K. Rurangirwa [mailto:Linda.Rurangirwa@cdiglaw.com]  
**Sent:** Monday, August 9, 2021 12:16 PM  
**To:** Daniel Marks <DMarks@danielmarks.net>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Mike Prangle <mprangle@hpslaw.com>  
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**Subject:** Green v. Sunrise Hospital

### [EXTERNAL EMAIL]

Good afternoon:

We are filing a writ with regard to the court's decision on Dr. Kia's motion to dismiss. Would you be agreeable to only receiving an electronic copy of the Writ and Petitioner's Appendix?

Thank you,

Linda



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## Deborah Rocha

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**From:** Nicole Young <NYoung@danielmarks.net>  
**Sent:** Monday, August 9, 2021 2:38 PM  
**To:** Tyson Dobbs; Vogel, Brent; Linda K. Rurangirwa; Daniel Marks; Stryker, Eric K.; Jordan, Erin; Mike Prangle  
**Cc:** Deborah Rocha; Foley, Brigitte E.; Clark, Angela; Lord, Nicole N.; Office; Nicole M. Etienne  
**Subject:** RE: Green v. Sunrise Hospital

An electronic copy by email works for us as well.

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**Cc:** Deborah Rocha <deborah.rocha@cdiglaw.com>; Nicole Young <NYoung@danielmarks.net>; Foley, Brigitte E. <Brigitte.Foley@wilsonelser.com>; Clark, Angela <Angela.Clark@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>; Office <office@danielmarks.net>; Nicole M. Etienne <netienne@HPSLAW.COM>  
**Subject:** RE: Green v. Sunrise Hospital

Fine with us as well.



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**Cc:** Deborah Rocha <[deborah.rocha@cdiglaw.com](mailto:deborah.rocha@cdiglaw.com)>; Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; Foley, Brigitte E. <[Brigitte.Foley@wilsonelser.com](mailto:Brigitte.Foley@wilsonelser.com)>; Clark, Angela <[Angela.Clark@wilsonelser.com](mailto:Angela.Clark@wilsonelser.com)>; Lord, Nicole N. <[Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com)>; Office <[office@danielmarks.net](mailto:office@danielmarks.net)>; Nicole M. Etienne <[netienne@HPSLAW.COM](mailto:netienne@HPSLAW.COM)>  
**Subject:** RE: Green v. Sunrise Hospital

[External Email] CAUTION!.

Yes, that's fine. Thank you.



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**Sent:** Monday, August 9, 2021 12:16 PM  
**To:** Daniel Marks <[DMarks@danielmarks.net](mailto:DMarks@danielmarks.net)>; Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>; Jordan, Erin <[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)>; Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Tyson Dobbs <[tdobbs@HPSLAW.COM](mailto:tdobbs@HPSLAW.COM)>; Mike Prangle <[mprangle@hpslaw.com](mailto:mprangle@hpslaw.com)>  
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**Subject:** [EXT] Green v. Sunrise Hospital

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Good afternoon:

We are filing a writ with regard to the court's decision on Dr. Kia's motion to dismiss. Would you be agreeable to only receiving an electronic copy of the Writ and Petitioner's Appendix?

Thank you,

Linda



**Linda K. Rurangirwa | Partner**

Collinson, Daehnke, Inlow & Greco – Attorneys at Law

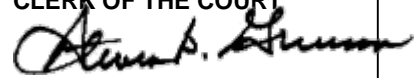
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8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA  
11

12 CHOLOE GREEN, an individual,  
13 Plaintiff,

14 vs.

15 FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE, MD, PC, a Domestic  
16 Professional Corporation, SUNRISE  
HOSPITAL AND MEDICAL CENTER, LLC,  
17 a Foreign Limited-Liability Company; ALI  
KIA, M.D., an individual; and NEVADA  
18 HOSPITALIST GROUP, LLP,

19 Defendants.  
20

CASE NO. A-17-757722-C  
Dept. No.: 23

**NEVADA HOSPITALIST GROUP, LLP'S  
ANSWER TO AMENDED COMPLAINT**

21 Defendant NEVADA HOSPITALIST GROUP, LLP, ("Defendant") by and through its  
22 attorneys of record, S. Brent Vogel, Esq. and Erin E. Jordan, Esq. of LEWIS BRISBOIS  
23 BISGAARD & SMITH LLP, hereby answers Plaintiff's Amended Complaint as follows:

24 1. Answering Paragraphs 1, 2, 3, 4, 5 and 6 of Plaintiff's Amended Complaint,  
25 Defendant is without sufficient information or knowledge to form a belief as to the truth or falsity  
26 of the allegations contained therein, and upon that basis, denies each and every allegation  
27 contained therein.

28 ...

2. Answering Paragraph 7 of Plaintiff's Amended Complaint, Defendant admits the allegations contained therein.

3. Answering Paragraphs 8, 9, 10, 11, 12 and 13 of Plaintiff's Amended Complaint, Defendant denies the allegations contained therein.

4. Answering Paragraphs 14 and 15 of Plaintiff's Amended Complaint, Defendant denies that it breached the standard of care, or anyone employed by or having an agency relationship with it breached the standard of care. Defendant does not have the information or belief necessary to form a belief as to the remainder of the allegations in this paragraph.

5. Answering Paragraphs 16 and 17 of Plaintiff's Amended Complaint, Defendant admits that the referenced documents are attached. Defendant denies the allegations therein regarding Nevada Hospitalist Group, LLP and its employees and agents. Defendant does not have the information or belief necessary to form a belief as to the remainder of the allegations in this paragraph.

6. Answering Paragraph 18 of Plaintiff's Amended Complaint, Defendant denies the allegations therein regarding Nevada Hospitalist Group, LLP and its employees and agents. Defendant does not have the information or belief necessary to form a belief as to the remainder of the allegations in this paragraph.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff's Amended Complaint on file herein fails to state a claim against Defendant for which relief can be granted.

2. Plaintiff's Amended Complaint on file herein is barred by the applicable statute of limitations.

3. The injuries, if any, allegedly suffered by Plaintiff as set forth in the Amended Complaint were caused in whole or in part by the negligence of a third party or third parties over which Defendant had no control.

4. The damages, if any, alleged by Plaintiff are not the result of any acts of omission, commission, or negligence by the Defendant, but were the result of a known risk, which was consented to by the Plaintiff.

1           5.       Pursuant to NRS 41A.110, Defendant is entitled to a conclusive presumption of  
2 informed consent.

3           6.       The damages, if any, incurred by Plaintiff are not attributable to any act, conduct,  
4 or omission on the part of the Defendant. Defendant denies that he was negligent or otherwise  
5 culpable in any matter or in any degree with respect to the matters set forth in Plaintiff's Amended  
6 Complaint.

7           7.       That it has been necessary for Defendant to employ the services of an attorney to  
8 defend this action and a reasonable sum should be allowed Defendant for attorneys' fees, together  
9 with costs of suit incurred herein.

10          8.       Pursuant NRS 41A.035 Plaintiff's non-economic damages, if any, may not exceed  
11 \$350,000.

12          9.       Defendant is not jointly liable with any other entity that may or may not be named  
13 in this action, and will only be severally liable for that portion of Plaintiff's claims that represent  
14 the percentage of negligence attributable to Defendant, if any.

15          10.      Plaintiff's damages, if any, were not proximately caused by Defendant.

16          11.      Plaintiff's injuries and damages, if any, are the result of forces of nature over which  
17 Defendant had no control or responsibility.

18          12.      Plaintiff is barred from asserting any claims against Defendant because the alleged  
19 damages were the result of one or more unforeseeable intervening and superseding causes.

20          13.      Plaintiff failed to mitigate damages, if any.

21          14.      Plaintiff failed to allege facts in support of any award of pre-judgment interest.

22          15.      The incident alleged in the Amended Complaint, and the resulting damages, if any,  
23 to Plaintiff, were proximately caused or contributed to by the Plaintiff's own negligence, and such  
24 negligence was greater than the negligence, if any, of Defendant.

25          16.      Pursuant to NRCP 11, as amended, all applicable Affirmative Defenses may not  
26 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry  
27 upon the filing of Defendant's Answer and, therefore, Defendant reserves the right to amend his  
28 Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

1           17.     Plaintiff failed to substantively comply with NRS 41A.071.

2           18.     At all times mentioned herein, Defendant acted reasonably and in good faith with  
3 regard to the acts and transactions which are the subject of this lawsuit.

4           19.     To the extent Plaintiff has been reimbursed from any source for any special  
5 damages claimed to have been sustained as a result of the incidents alleged in Plaintiff's Amended  
6 Complaint, these Defendant may elect to offer those amounts into evidence and, if Defendant so  
7 elects, Plaintiff's special damages shall be reduced by those amounts pursuant to NRS 42.021.

8           20.     Defendant hereby incorporates by reference those affirmative defenses enumerated  
9 in NRCP 8 as if fully set forth herein. In the event further investigation or discovery reveals the  
10 applicability of such defenses, Defendant reserves the right to seek leave of the Court to amend  
11 this Answer to assert the same. Such defenses are incorporated herein by reference for the  
12 purpose of not waiving the same.

13          21.     Defendant avails himself of all affirmative defenses and limitations of action as set  
14 out in NRS 41.085, 41A.035, 41A.045, 41A.061, 41A.071, 41A.097, 41A.100, 42.005, 42.021,  
15 41.141, and all applicable subparts.

16          22.     NRS Chapters 41 and 41A limit damages that may be collectable against  
17 Defendant.

18          23.     Plaintiff is barred from bringing this action for failure to comply with applicable  
19 contractual remedies and requirements, including arbitration, if applicable. Plaintiff's failure to  
20 comply with the contractual remedies and requirements notwithstanding, Defendant reserves his  
21 right to enforce any applicable arbitration provision.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 WHEREFORE, Defendant prays for judgment as follows:

- 2 1. That Plaintiff takes nothing by way of the Amended Complaint on file herein;  
3 2. For reasonable attorneys' fees and costs of suit incurred herein;  
4 3. For trial by jury, and;  
5 4. For such other and further relief as the Court may deem just and proper.

6 DATED this 8<sup>th</sup> day of April, 2021.

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8  
9 By /s/ Erin E. Jordan

10 S. BRENT VOGEL

11 Nevada Bar No. 6858

12 ERIN E. JORDAN

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17 *Attorneys for Defendant Nevada Hospitalist*  
18 *Group, LLP*  
19  
20  
21  
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23  
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27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of April, 2021, a true and correct copy of **NEVADA HOSPITALIST GROUP, LLP'S ANSWER TO AMENDED COMPLAINT** was served by electronically filing with the Clerk of the Court using the Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

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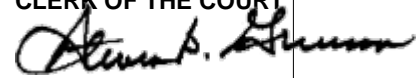
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By /s/ Elsa Amoroso  
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10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVEDA**

12 CHLOE GREEN, an individual,  
13 Plaintiffs,

14 vs.

15 FRANK J. DELEE, M.D., an individual;  
16 FRANK J. DELEE MD, PC, a Domestic  
17 Professional Corporation, SUNRISE  
18 HOSPITAL AND MEDICAL CENTER, LLC,  
19 a Foreign Limited-Liability Company; ALI  
20 KIA, M.D., an individual and NEVADA  
21 HOSPITALIST GROUP, LLP.

22 Defendants.

CASE NO.: A-17-757722-C  
DEPT. NO.: XXIII

**DEFENDANT ALI KIA, M.D.'S  
MOTION FOR RECONSIDERATION  
REGARDING MOTION TO DISMISS  
PLAINTIFF'S AMENDED  
COMPLAINT**

**HEARING REQUESTED**

22 COMES NOW Defendant ALI KIA, M.D., by and through his attorneys of record,  
23 and hereby files this Motion for Reconsideration regarding Defendant's Motion to Dismiss  
24 Plaintiff's Amended Complaint.

25 ///

26 ///

27 ///

28 ///

1 This Motion is based upon all the points and authorities set forth herein, the pleadings,  
2 papers, and records on file, and upon such oral argument as may be permitted at the time of  
3 the hearing in this matter. Accordingly, Defendant respectfully requests said Motion be  
4 granted.

5 DATED: April 8, 2021

**COLLINSON, DAEHNKE, INLOW & GRECO**

6  
7 BY: /s/ Linda K. Rurangirwa

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12 Attorneys for Defendant  
13 ALI KIA, M.D.

**DECLARATION OF LINDA K. RURANGIRWA**

I, Linda K. Rurangirwa, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am an attorney at COLLINSON, DAEHNKE, INLOW & GRECO, attorneys of record for Defendant ALI KIA, M.D.

2. I have personal knowledge of the facts set forth herein. If called as a witness, I could and would competently testify to the matters stated herein.

3. This Declaration is made in support of Ali Kia, M.D.'s Motion for Reconsideration Regarding Motion to Dismiss Plaintiff's Amended Complaint.

4. Plaintiff's Complaint was filed on June 30, 2017. A true and correct copy of the Complaint is attached hereto as Exhibit A.

5. Plaintiff's Amended Complaint was filed on December 16, 2020. A true and correct copy of the Amended Complaint is attached hereto as Exhibit B.

6. On January 21, 2021, Dr. Kia filed a Motion to Dismiss Plaintiff's Amended Complaint. A true and correct copy of Dr. Kia's Motion to Dismiss Plaintiff's Amended Complaint attached as Exhibit C.

7. On February 4, 2021, Plaintiff filed her Opposition to Motion to Dismiss Plaintiff's Amended Complaint. A true and correct copy of Plaintiff's Opposition to Dr. Kia's Motion to Dismiss Plaintiff's Amended Complaint is attached as Exhibit D.

8. On February 16, 2021, Dr. Kia filed his Reply in support of the Motion to Dismiss. A true and correct copy of Dr. Kia's Reply in Support of Motion to Dismiss Plaintiff's Amended Complaint attached as Exhibit E.

9. Oral argument on the Motion to Dismiss was held on March 16, 2021. A true and correct copy of the March 16, 2021 Transcript of Proceedings is attached as Exhibit F.

10. Plaintiff filed her Motion for Leave of Court to Amend Complaint to add Dr. Kia as a Defendant on October 16, 2020. A true and correct copy of Plaintiff's Motion for Leave to File an Amended Complaint is attached as Exhibit G.



## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

Plaintiff Choloe Green filed her medical malpractice claim on June 30, 2017 against Frank J. DeLee, M.D., Frank J. DeLee, M.D., P.C. and Sunrise Hospital and Medical Center (“Sunrise”) arising from the care and treatment provided to Plaintiff between July 9, 2016 and July 17, 2016.<sup>1</sup> Plaintiff filed an Amended Complaint on December 16, 2020 adding Dr. Kia as a Defendant.<sup>2</sup>

On January 21, 2021, Dr. Kia filed a Motion to Dismiss Plaintiff’s Amended Complaint on the grounds that the Amended Complaint was barred by the statute of limitations and did not relate back to the filing of the Complaint.<sup>3</sup> Plaintiff filed her Opposition to the Motion to Dismiss on February 4, 2021.<sup>4</sup> Defendant filed his Reply in Support of Motion to Dismiss on February 16, 2021.<sup>5</sup>

The Court heard oral argument on the Motion on March 16, 2021. At the hearing the Court denied the Motion to Dismiss finding that Judge Silva had previously determined in granting the motion to amend the Complaint that the amendment related back to the filing of the Original Complaint and further that the requirements of *Echols v. Summers* were met allowing the addition of Dr. Kia to relate back to the Complaint:

Specifically in the Court’s prior order by Judge Silva, I believe it’s line 2, she did consider the statute of limitations and she wrote, This Court finds that amended pleadings arising out of the same transaction or occurrence set forth in the original pleadings may relate back to the date of the original filing, see NRCP 15(c). The same remains true when an amended pleading adds a defendant that is filed after the statute of limitations so long as the proper defendant; one, receives actual notice of the action; two, knows that it is the

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<sup>1</sup> See Plaintiff’s Complaint, attached hereto as Exhibit A.

<sup>2</sup> See Plaintiff’s Amended Complaint attached hereto as Exhibit B.

<sup>3</sup> See Dr. Kia’s Motion to Dismiss Plaintiff’s Amended Complaint attached as Exhibit C.

<sup>4</sup> See Plaintiff’s Opposition to Motion to Dismiss Plaintiff’s Amended Complaint attached as Exhibit D.

<sup>5</sup> See Dr. Kia’s Reply in Support of Motion to Dismiss Plaintiff’s Amended Complaint attached as Exhibit E.

proper party; and three, has not been misled to prejudice by the amendment. And she cited *Echols v Summa Corp.*, 95 Nev. 720, a 1979 case.<sup>6</sup>

However, Plaintiff's Motion for Leave to File an Amended Complaint was pursuant to NRCp 15 (a) and did not seek an Order from the Court requesting that the amendment of the Complaint adding Dr. Kia relate back to the filing of the original Complaint.<sup>7</sup> Furthermore, at the hearing on the Motion to Amend on November 17, 2020, Justice Silva expressly had reservations about the statute of limitations and notice stating: "Well, I agree that there's some amendments that are allowed to be made. But you still have to address statute of limitation issues, whether or not there's new causes of action that are being raised for the very first time, and I think that is the issue specifically that Sunrise Hospital has raised in their Opposition."<sup>8</sup>

Although Judge Silva raised the statute of limitations issue, Plaintiff's counsel Daniel Marks argued that was an issue that should be briefed by the parties by filing a Motion to Dismiss stating: "Obviously, they could file a motion to do what they're going to do when they're served. But, right now, it's within the time frame of the scheduling order to set – you don't deal with the statute of limitations at this point. That would come at a later time, based on what Dr. Kia is going to file."<sup>9</sup>

Defendant Ali Kia, M.D. was not part of the case at the time the Order was circulated and therefore could not object to the wording in the Order that appeared to state that the Court determined the amendment of Dr. Kia related back to the filing of the original Complaint. Any representation by the parties to this Court that this issue was previously determined was factually incorrect and to the extent the Court relied on this representation, the ruling denying the motion to dismiss is clearly erroneous.

The Court in further determining that Amended Complaint related back to the filing of the Complaint stated:

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<sup>6</sup> See March 16, 2021 Transcript of Proceedings at pgs. 10:23 – 11:7, attached as Exhibit F.

<sup>7</sup> See Motion for Leave of Court to Amend Complaint filed on October 16, 2020, attached as Exhibit G.

<sup>8</sup> See November 17, 2020 Transcript of Proceedings at pgs. 29:12-18, attached as Exhibit H.

<sup>9</sup> See *id.*, at pg. 31:8-13.

1 Furthermore, a proper defendant may be brought into the action after the  
2 statute of limitations has run if the proper defendant; one, receives actual  
3 notice of the action; two, knows that it is the proper party, and three, has not  
4 been misled to its prejudice by the amendment. And that is both cited in  
5 *Servatius versus United Resort Hotels*, and that's S-E-R-V-A-T-I-U-S, cite is  
6 85 Nev. 371 it's a 1969 case, and also cited in the *Echols* case that Judge Silva  
7 cited in her prior order, and that's *Echols versus Summa Corp.*, that's 95 Nev.  
8 720, that's a 1979 case.

9 The Court finds that Dr. Kia and NHG received notice in June 2019 when a  
10 Third-Party Complaint was filed at that time, as well as with their depositions.  
11 It was clear that Dr. Kia and NHG were proper parties to the case.

12 The Court finds that Dr. Kia and Nevada Hospitalist Group have not been  
13 misled to its prejudice because of the procedural default here. I think that it  
14 was known to them that should plaintiff obtain the necessary affidavits that  
15 they could be added to the case. It was known to them that at the time that  
16 there was a Third Party Complaint. It was known to them at the time that the  
17 motion for summary judgment would have been granted based upon the reason  
18 that it was granted. And it was further known to those parties at the time that  
19 Judge Silva issued her order on September 25th, 2020.<sup>10</sup>

20 However, in *Echols v. Summa Corp.*, the Court found there was no prejudice to the  
21 Defendant as he had notice of the action prior to the running of the statute of limitations.  
22 Furthermore pursuant to *Servatius* a new party cannot be brought into the action after  
23 expiration of the statute of limitations as this amounts to a new an independent cause of  
24 action. Pursuant to *Bender v. Clark Equip. Co.* 111 Nev. 844, 845, 897 P.2d 208, 208-209  
25 (1995) this rule continues to apply to cases such as this where the plaintiff has not named  
26 "Doe" defendants.

27 As set forth in Defendant's Motion and Reply, Dr. Kia did not have notice that he  
28 could be a proper defendant until *after* the running of the one year medical malpractice statute  
of limitations and is therefore prejudiced as he otherwise would have been protected from this  
stale claim and thus under *Echols* the amendment should not relate back. Furthermore,  
pursuant to *Servatius* cited to by the Court as its rationale for denying the Motion instead  
supports Dr. Kia's Motion in that it precludes Plaintiff from bringing a new party after the  
statute of limitations particularly when, as here, the amended was not to correct a misnamed  
party and Plaintiff has not named any "Doe" defendants.

///

<sup>10</sup> See Exhibit F at pgs. 12:13 -13:8.

1 II.

2 **STANDARD FOR MOTIONS FOR RECONSIDERATION**

3 A court has inherent power to reconsider prior orders. *Trail v. Faretto*, 91 Nev. 401,  
4 356 P.2d 1026 (1975). A district court may reconsider a previous decision if different  
5 evidence is later introduced, or if the decision is clearly erroneous. *Masonry and Tile*  
6 *Contractors Assn. of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d  
7 486, 489 (1997). "A party seeking reconsideration of a ruling of the court . . . must file a  
8 motion for such relief within 10 days after service of written notice of the order or judgment  
9 unless the time is shortened or enlarged by order." EDCR 2.24. In this case, Defendant  
10 believes the Court's decision that the amendment of the Complaint adding Defendant Ali Kia,  
11 M.D. relates back to the original Complaint pursuant to NRCP 15 (c) is clearly erroneous in  
12 light of the plain language of NRCP 15 (c) and relevant case law. As the amendment does  
13 not relate back, Plaintiff's claim against Dr. Kia is barred by the statute of limitations.

14 III.

15 **PLAINTIFF'S AMENDMENT TO ADD DR. KIA AS A DEFENDANT DOES NOT**  
16 **RELATE BACK PURSUANT TO *ECHOLS V. SUMMA CORP* AS DR. KIA DID NOT**  
17 **RECEIVE NOTICE UNTIL AFTER EXPIRATION OF THE STATUE OF**  
18 **LIMITATIONS**

19 The Court cited to *Echols v. Summa Corp* in making its decision that the amendment  
20 adding Dr. Kia could relate back to the filing of the original Complaint. In *Echols*, the court  
21 determined that "a proper defendant may be brought into the action after the statute of  
22 limitations has run if the proper defendant (1) receives actual notice of the action; (2) knows  
23 that it is the proper party; and (3) has not been misled to its prejudice by the amendment. In  
24 *Echols* the Court noted that Summa Corp. received actual notice of the action before the  
25 expiration of the two years statute of limitations. "Having actual notice of the action ***before***  
26 ***the expiration of the two-year period***, Summa was neither misled nor prejudiced by the  
27 subsequent amendment." *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717  
28 (1979) (emphasis added). A plaintiff's right to have his or her claim heard on its merits  
despite technical difficulties must be balanced against "a defendant's right to be protected



1 from stale claims and the attendant uncertainty they cause." *Costello v. Casler*, 127 Nev. 436,  
2 441, 254 P.3d 631, 635 (2011).

3 Here the Court found that Dr. Kia and NHG received notice in June 2019 when the  
4 Third-Party Complaint was filed as well as with their depositions. Dr. Kia was not deposed  
5 until November 14, 2018, over a year after the original Complaint had been filed and long  
6 after expiration of the one-year statute of limitations. The applicable statute of limitations for  
7 medical malpractice/professional negligence claims that accrue on or after October 1, 2002 is  
8 set forth in NRS 41A.097(2) which provides in pertinent part:

9 [A]n action for injury or death against a provider of health care may not be  
10 commenced more than 3 years after the date of injury or 1 year after the  
11 plaintiff discovers or through the use of reasonable diligence should have  
12 discovered the injury, ***whichever occurs first.***" (emphasis added).

12 With regard to the one-year discovery period, a plaintiff "discovers" his injury when  
13 "he knows or, through the use of reasonable diligence, **should have known** of facts that  
14 would put a reasonable person on **inquiry notice** of his cause of action." *Massey v. Litton*, 99  
15 Nev. 723, 728, 669 P.2d 248, 252 (1983). A person is placed on "inquiry notice" when he or  
16 she "should have known of facts that would lead an ordinarily prudent person to investigate  
17 the matter further." *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251-52, 277 P.3d 458,  
18 462 (2012) (internal quotation marks omitted). ***The accrual period does not refer to when***  
19 ***the plaintiff discovers the precise facts pertaining to his legal theory, but only to the general***  
20 ***belief that someone's negligence may have cause the injury.*** *Id.* (citing *Massey*, 99 Nev. at  
21 728, 669 P.2d at 252). The plaintiff "discovers" the injury when "he had facts before him that  
22 would have led an ordinarily prudent person to investigate further into whether [the] injury  
23 may have been caused by someone's negligence." *Id.*

24 The statute of limitations begins to run when the patient has before him the facts  
25 which would put a reasonable person on inquiry notice of his possible cause of action,  
26 whether or not it has occurred to the particular patient to seek further medical advice.  
27 *Massey*, 99 Nev. at 727-28. ***The focus is on the access to facts and knowledge of facts,***  
28 ***rather than on knowledge of legal theories.*** *Id.* Plaintiffs cannot "close their eyes" to the

1 information available to them. *See Siragusa v. Brown*, 114 Nev. 1384, 1394, 971 P.2d 801,  
2 807 (1988) (*quoting Spitler v. Dean*, 436 N.W.2d 308, 310-11 (Wis. 1989) (“Plaintiffs may  
3 not close their eyes to means of information reasonably available to them and must in faith  
4 apply their attention to those particulars within their reach.”).

5 NRS 41A.097 (3) allows for the tolling of the one-year statute of limitation if the  
6 “provider of health care has concealed any act, error or omission upon which the action is  
7 based and which is known or through the use of reasonable diligence should have been known  
8 to the provider of health care.” A plaintiff who alleges that the limitations period should be  
9 tolled for concealment must satisfy a two-prong test: (1) that the physician intentionally  
10 withheld information (2) that was "material," meaning the information would have objectively  
11 hindered a reasonably diligent plaintiff from timely filing suit. *Winn*, 128 Nev. at 254-55, 277  
12 P.3d at 464. The Nevada Supreme Court specifically noted that “[a] tolling-for-concealment  
13 provision included within a generally applicable statute of limitations is an exception to the  
14 general rule, meant to prevent a defendant from taking affirmative action to prevent the  
15 plaintiff from filing suit.” *Id.* at 466. In other words, Plaintiff must prove that Dr. Kia  
16 intentionally withheld information from them to prevent her from filing suit. Concealment for  
17 tolling purposes requires "affirmative acts or representations that are calculated to lull or  
18 induce a claimant into delaying her claim or to prevent her from discovering her claim; mere  
19 silence on the part of the defendant and failure by claimant to learn of a cause of action is not  
20 enough.” *Wolf v. Bueser*, 664 N.E.2d 197, 205 (1<sup>st</sup> Dist. Ill. 1996) (doctor's interpretation of  
21 mammogram did not give rise to level of affirmative act that was intended to lull plaintiff into  
22 delaying discovery of the claim).

23 Here, there is no allegation Dr. Kia intentionally withheld information that was  
24 material. In addition there is no alleged concealment. Thus, the one-year statute of  
25 limitations is not tolled.

26 With regard to the one-year statute of limitations, Defendant assumed for the purpose  
27 of his Motion to Dismiss that Plaintiff discovered her injury at the time she filed her  
28 Complaint on June 30, 2017. Pursuant to the expert affidavit of Dr. Karamardian attached to

1 the Complaint, Plaintiff was aware of not only the facts pertaining to her legal theory but had  
2 sufficient facts that would lead an ordinary prudent person to investigate the matter further as  
3 to who it was that was involved in the discharge. In fact, Dr. Karamardian explicitly stated  
4 there was alleged negligence in discharging Plaintiff from Sunrise Hospital on July 14,  
5 2016.<sup>11</sup> Plaintiff had the obligation to investigate further as to who was involved in the  
6 discharge but did not do so. Instead, Plaintiff waited until August 24, 2018<sup>12</sup>, after the  
7 expiration of the one-year statute of limitations on June 30, 2018 to serve Dr. Kia with a  
8 Notice of Deposition.

9 Dr. Kia did not have notice that he may be a proper party until *after* the one-year  
10 statute of limitations expired. Plaintiff's claim against him for medical malpractice was  
11 already stale at that time. This is not a case like *Echols* where no prejudice was found as the  
12 defendant was added within the statute of limitations. Instead, Dr. Kia will be extremely  
13 prejudiced in having to defend a claim against Plaintiff that was already time barred at the  
14 time he became aware that he could have been a proper party.

#### 15 IV.

#### 16 **PURSUANT TO SERVATIUS AND ITS PROGENY DR. KIA'S AMENDMENT** 17 **CANNOT RELATE BACK TO THE FILING OF THE COMPLAINT AS HE WAS** 18 **ADDED AFTER THE STATUTE OF LIMITATIONS AND THERE ARE NO "DOE"** 19 **DEFENDANTS**

20 This Court in explaining its rationale for denying Dr. Kia's Motion to Dismiss relied  
21 on both *Echols v. Summa Corp* and *Servatius v. United Resort Hotels*. In *Servatius* the court  
22 noted that "[w]hile an amendment may be made to correct a mistake in the name of a party, a  
23 new party may not be brought into an action once the statute of limitations has run because  
24 such an amendment amounts to a new and independent cause of action." *Servatius v. United*  
25 *Resort Hotels*, 85 Nev. 371, 372-73, 455 P.2d 621, 622 (1969). The court further stated:

26 There appear to be three factors governing the determination when a "proper  
27 defendant" might be brought into an action by amendment even though the  
28

<sup>11</sup> See June 29, 2017 Affidavit of Lisa Karamardian, M.D., attached to Plaintiff's Amended Complaint (Exhibit B).

<sup>12</sup> See Opposition to Motion to Dismiss p. 7, lines 22-23, attached as Exhibit D.

statute of limitations might have run. They are that the proper party defendant (1) have actual notice of the institution of the action; (2) knew that it was the proper defendant in the action, and (3) was not in any way misled to its prejudice.

*Id.*, 85 Nev. at 373, 455 P.2d at 622-23.

The court in *Servatius* found the factors to be present in that case as the amended complaint **corrected** a mistake in the name of a party already before the court. The court noted:

The record shows that Joan D. Hays was resident agent for both Aku Aku, Inc., the Nevada corporation, and United Resort Hotels, Inc., the Delaware corporation, and was served in that capacity for both corporations; that both corporations have the same principal place of business; that there are four persons on the board of directors of Aku Aku, Inc.; that those same four persons, plus two others, constitute the board of directors of United Resort Hotels, Inc.; that the same law firm, at least for the purpose of this case, represents both corporations.

*Id.*, 85 Nev. at 372, 455 P.2d at 622.

In *Bender v. Clark Equip. Co.*, the Nevada Supreme Court clarified the *Servatius* rule stating:

Until *Nurenberger Hercules-Werke v. Virostek*, 107 Nev. 873, 822 P.2d 1100 (1991), all situations involving the amending of a complaint to name a new party defendant after the statute of limitations had run were governed by a rule announced by this court in *Servatius v. United Resort Hotels*, 85 Nev. 371, 455 P.2d 621 (1969), and modified by later cases. The general rule of *Servatius* is: "While an amendment may be made to correct a mistake in the name of a party, a new party may not be brought into an action once the statute of limitations has run because such an amendment amounts to a new and independent cause of action." Nevertheless, a defendant could be brought into an action even if the statute of limitations had run if the defendant: (1) had actual notice of the institution of the action; (2) knew it was the proper defendant in the action; and (3) was not misled to its prejudice.

In *Nurenberger*, this court concluded that *Servatius* had been misapplied to cases governed by NRCF 10(a), i.e. cases involving the utilization of fictitious defendants. ***Servatius remains applicable to cases where the plaintiff has not named "Doe" defendants.***

111 Nev. 844, 845, 897 P.2d 208, 208-09 (1995) (internal citations omitted) (emphasis added).

///



**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of April, 2021 a true and correct copy of  
**DEFENDANT ALI KIA, M.D.'S MOTION FOR RECONSIDERATION REGARDING**  
**MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT** was served by  
electronically filing with the Clerk of the Court using the Odyssey File & Serve system and  
serving all parties with an email address on record, who have agreed to receive Electronic  
Service in this action.

DANIEL MARKS, ESQ.  
NICOLE M. YOUNG, ESQ.  
Law Office of Daniel Marks  
610 South Ninth Street  
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(702) 386-0536  
*Attorneys for Plaintiff Choloe Green*

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Las Vegas, NV 89119  
11th Floor  
(702) 727-1400  
*Attorneys for Defendants*  
*Frank J. Delee, M.D. and Frank J. Delee, M.D., P.C.*

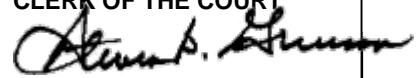
MICHAEL E. PRANGLE, ESQ.  
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20 Las Vegas, Nevada 89144  
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*Sunrise Hospital and Medical Center, LLC*

S. BRENT VOGEL, ESQ.  
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6385 Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
*Attorneys for Third-Party Defendant*  
*Nevada Hospitalist Group, LLP*

By /s/ Richean Martin

An employee of COLLINSON, DAEHNKE,  
INLOW & GRECO

# EXHIBIT A



COMP  
LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Case No.  
Dept. No.

A-17-757722-C

Plaintiff,

Department 8

v.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
Limited-Liability Company.

**Arbitration Exempt - - Action  
for Medical Malpractice**

Defendants.

**COMPLAINT FOR MEDICAL MALPRACTICE**

COMES NOW Plaintiff Chloe Green, by and through undersigned counsel Daniel Marks, Esq., and  
Nicole M. Young, Esq., of the Law Office of Daniel Marks, and for her claims against Defendants herein  
allege as follows:

1. That at all times material hereto, Plaintiff Chloe Green (hereinafter "Chloe") was a  
resident of Clark County, Nevada.
2. That at all times material hereto, Defendant FRANK J. DELEE, M.D., was a licensed  
medical doctor in the State of Nevada, and practiced in his professional corporation entitled  
FRANK J. DELEE MD, PC.

////

////



3. That at all times material hereto, Defendant FRANK J. DELEE MD, PC, was a domestic professional corporation organized and existing under the laws of the state of Nevada and registered to do business, and doing business in the State of Nevada in Clark County, Nevada.
4. That Defendant FRANK J. DELEE, MD, is the President of Defendant FRANK J. DELEE MD, PC (hereinafter collectively referred to as "Dr. DeLee").
5. That Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, (hereinafter "Sunrise Hospital"), was a foreign limited-liability company, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
6. That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on Choloe at Sunrise Hospital. Choloe was discharged from the hospital the following day, on July 10, 2016, even though she did not have bowel movement prior to being discharged from the hospital.
7. On July 13, 2016, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe notified Dr. Delee that she had not had a bowel movement post C-section. He did not provide any care or treatment to Choloe regarding her lack of a bowel movement.
8. On July 14, 2016, after still not having a bowel movement post C-section, Choloe went to the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. Sunrise Hospital discharged Choloe on July 16, 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.
9. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where she was admitted until she was finally discharged on September 2, 2016. Centennial Hills admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed, underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS, and eventually needed a tracheostomy and PEG tube placement.
10. That Defendant Dr. DeLee and Sunrise Hospital breached the standard of care in their treatment of Choloe and as a direct and proximate result of that breach, Choloe has been damaged.

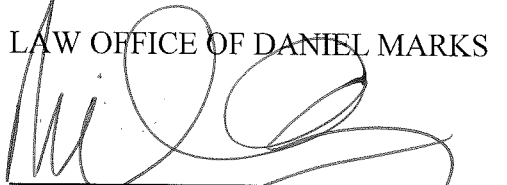
11. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been damaged in an amount in excess of \$15,000.00.
12. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which is attached hereto as Exhibit "1".
13. Choloe has been forced to retain counsel to bring this action and should be awarded his reasonable attorneys fees and costs.

WHEREFORE, Choloe prays for judgment against the Defendants, and each of them, as follows:

1. For special damages in a sum in excess of \$15,000.00;
2. For compensatory damages in a sum in excess of \$15,000.00;
3. For reasonable attorney's fees and litigation costs incurred;
4. For such other and further relief as the Court deems just and proper.

DATED this 30 day of June, 2017.

LAW OFFICE OF DANIEL MARKS



DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 012659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff

1 VERIFICATION

2 STATE OF NEVADA )  
3 COUNTY OF CLARK ) ss:

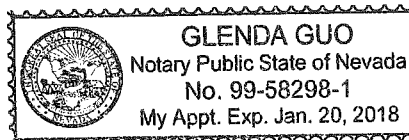
4 CHLOE GREEN, being first duly sworn, deposes and says:

5 That I am the Plaintiff in the above-entitled matter; that I have read the above and foregoing  
6 Complaint and know the contents thereof; that the same are true of my knowledge except for those  
7 matters stated upon information and belief, and as to those matters, I believe them to be true.

8 Chloe Green  
9 CHLOE GREEN

10 SUBSCRIBED AND SWORN to before me  
11 this 26th day of June, 2017.

12 Glenda Guo  
13 NOTARY PUBLIC in and for said  
14 COUNTY and STATE



---

# **EXHIBIT 1**

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AFFIDAVIT OF DR. LISA KARAMARDIAN


STATE OF California  
COUNTY OF Orange ) : s.

DR. LISA KARAMARDIAN, being first duly sworn, under penalty of perjury, does say and depose the following:

1. That I am a medical doctor licensed in the State of California and am board certified in the field of Obstetrics and Gynecology.
2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
3. That I have reviewed Plaintiff Choloe Green's medical records relating to the care and treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center, Valley Hospital Medical Center and Centennial Hills Medical Center.
4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released home on post-operative day number one. This was a breach of the standard of care by Dr. DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.
5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16, 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated the standard of care. Ms. Green was discharged despite the fact that she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.

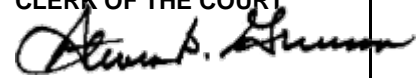
7. Because of the violations of the standard of care, her hospital course was protracted with multiple complications and she was apparently discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding tube and in need of rehabilitation.
8. That in my professional opinion, to a degree of medical probability, the standard of care was breached by both Dr. DeLee and Sunrise Hospital and Medical Center in their treatment of Ms. Green.

  
LISA KARAMARDIAN, MD.

 **TONY GANA**  
Notary Public - California  
Orange County  
Commission # 2148987  
My Comm. Expires Apr 14, 2020

2.

# EXHIBIT B



COMP  
LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,

Case No. A-17-757722-C  
Dept. No. IX

Plaintiff,

v.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
Limited-Liability Company; ALI KIA, M.D. an  
individual; and NEVADA HOSPITALIST  
GROUP, LLP.

**Arbitration Exempt - - Action  
for Medical Malpractice**

Defendants.

**AMENDED COMPLAINT FOR MEDICAL MALPRACTICE**

COMES NOW Plaintiff Choloe Green, by and through undersigned counsel Daniel Marks, Esq., and  
Nicole M. Young, Esq., of the Law Office of Daniel Marks, and for her claims against Defendants herein  
allege as follows:

1. That at all times material hereto, Plaintiff Choloe Green (hereinafter "Choloe") was a  
resident of Clark County, Nevada.
2. That at all times material hereto, Defendant FRANK J. DELEE, M.D., was a licensed  
medical doctor in the State of Nevada, and practiced in his professional corporation entitled  
FRANK J. DELEE MD, PC.

////



3. That at all times material hereto, Defendant FRANK J. DELEE MD, PC, was a domestic professional corporation organized and existing under the laws of the state of Nevada and registered to do business, and doing business in the State of Nevada in Clark County, Nevada.
4. That Defendant FRANK J. DELEE, MD, is the President of Defendant FRANK J. DELEE MD, PC (hereinafter collectively referred to as “Dr. DeLee”).
5. That Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, (hereinafter “Sunrise Hospital”), was a foreign limited-liability company, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
6. That at all times material hereto, Defendant ALI KIA, M.D., was a licensed medical doctor in the State of Nevada, and who practices through the limited-liability partnership entitled NEVADA HOSPITALIST GROUP, LLP.
7. That Defendant NEVADA HOSPITALIST GROUP, LLP, was a limited-liability partnership, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
8. That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on Choloe at Sunrise Hospital. Choloe was discharged from the hospital the following day, on July 10, 2016, even though she did not have bowel movement prior to being discharged from the hospital.
9. On July 13, 2016, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe notified Dr. Delee that she had not had a bowel movement post C-section. He did not provide any care or treatment to Choloe regarding her lack of a bowel movement.
10. On July 14, 2016, after still not having a bowel movement post C-section, Choloe went to the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. Sunrise Hospital, through Ali Kia, M.D., discharged Choloe on July 16, 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.

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- 1 11. That Choloe presented at Sunrise Hospital on July 14, 2016, seeking treatment from the  
2 hospital, not a specific doctor. Upon her admission, Sunrise Hospital provided various  
3 healthcare professionals, including doctors and nurses to provide emergency care/treatment  
4 to Choloe. Throughout her stay from July 14-16, 2016, Choloe believed all healthcare  
5 professionals that provided her care/treatment were employees and/or agents of the hospital.  
6 She was never provided the opportunity to affirmatively chose who provided her  
7 care/treatment. She was never informed the doctors or nurses providing care/treatment were  
8 not employees and/or agents of the hospital.
- 9 12. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where  
10 she was admitted until she was finally discharged on September 2, 2016. Centennial Hills  
11 admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed,  
12 underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS,  
13 and eventually needed a tracheostomy and PEG tube placement.
- 14 13. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 13 herein  
15 by reference.
- 16 14. That Defendant Dr. DeLee, Sunrise Hospital, Dr. Kia, and Nevada Hospitalist Group, LLP,  
17 breached the standard of care in their treatment of Choloe and as a direct and proximate  
18 result of that breach, Choloe has been damaged.
- 19 15. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been  
20 damaged in an amount in excess of \$15,000.00.
- 21 16. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which  
22 is attached hereto as Exhibit "A".
- 23 17. This Complaint is supported by the Affidavit of Robert Savluk, M.D., a copy of which is  
24 attached hereto as Exhibit "B".
- 25 18. Choloe has been forced to retain counsel to bring this action and should be awarded his  
26 reasonable attorneys fees and costs.

27 ////

28 ////

1 WHEREFORE, Choloe prays for judgment against the Defendants, and each of them, as follows:

- 2 1. For special damages in a sum in excess of \$15,000.00;
- 3 2. For compensatory damages in a sum in excess of \$15,000.00;
- 4 3. For reasonable attorney's fees and litigation costs incurred;
- 5 4. For such other and further relief as the Court deems just and proper.

6 DATED this 16th day of December, 2020.

7 LAW OFFICE OF DANIEL MARKS

8

9 /s/ Nicole M. Young

10 DANIEL MARKS, ESQ.

11 Nevada State Bar No. 002003

12 NICOLE M. YOUNG, ESQ.

13 Nevada State Bar No. 012659

14 610 South Ninth Street

15 Las Vegas, Nevada 89101

16 Attorneys for Plaintiff

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Erik K. Stryker, Esq.  
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
300 South 4<sup>th</sup> Street, 11<sup>th</sup> floor  
Las Vegas, Nevada 89101  
Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

Sherman Mayor, Esq.  
HALL PRANGLE & SCHOONVELD, LLC.  
1160 N. Town Center Dr., Ste. 200  
Las Vegas, Nevada 89144  
Attorneys for Sunrise Hospital and Medical Center LLC.

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## **EXHIBIT A**

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AFFIDAVIT OF DR. LISA KARAMARDIAN

STATE OF California  
COUNTY OF Orange } : s .

DR. LISA KARAMARDIAN, being first duly sworn, under penalty of perjury, does say and depose the following:

1. That I am a medical doctor licensed in the State of California and am board certified in the field of Obstetrics and Gynecology.
2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
3. That I have reviewed Plaintiff Choloe Green's medical records relating to the care and treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center, Valley Hospital Medical Center and Centennial Hills Medical Center.
4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released home on post-operative day number one. This was a breach of the standard of care by Dr. DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.
5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16, 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated the standard of care. Ms. Green was discharged despite the fact that she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.

6. The day after she was released from Sunrise Hospital, Ms. Green presented at Centennial Hills Hospital, on July 17, 2016. At the time of presentation she was now 7 days postpartum, had not had a bowel movement, and was unable to even tolerate liquids. She was still in severe pain. Her imaging studies had worsened and she was now admitted, again, with the diagnosis of small bowel obstruction. An NG tube was finally placed and a general surgery evaluation ordered. She was admitted for concern for bowel perforation. She underwent an exploratory laparotomy on July 18th for what was presumed to be a perforated viscus, but none was found intraoperatively, just diffuse ascites. Infarcted mesentery was removed and post-op her condition deteriorated, culminating in a rapid response call on July 20th when she was found to be hypoxic. By the 22nd she had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS, and her condition worsened. CT guided drain placement cultures of fluid revealed enterococcus faecalis, supporting the fact that there must have been a bowel perforation. She then developed a pneumothorax and eventually needed a tracheostomy and PEG tube placement. On August 5, 2016, there was difficulty with her airway support.

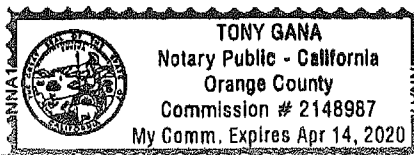
7. Because of the violations of the standard of care, her hospital course was protracted with multiple complications and she was apparently discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding tube and in need of rehabilitation.

8. That in my professional opinion, to a degree of medical probability, the standard of care was breached by both Dr. DeLee and Sunrise Hospital and Medical Center in their treatment of Ms. Green.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
LISA KARAMARDIAN, MD.

SUBSCRIBED and SWORN to before me  
this 29 day of June, 2017.



NOTARY PUBLIC in and for said  
COUNTY and STATE

---

## **EXHIBIT B**

---



**AFFIDAVIT OF ROBERT S. SAVLUK, M.D.**

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN LUIS OBISPO )

ROBERT S. SAVLUK, M.D., being first duly sworn under penalty of perjury, deposes and says:

1. That I have been asked to address issues relating to the care and treatment of patient Choloe Green provided at the Sunrise Hospital by Dr. Ali Kia (hospitalist).
2. That I practiced Internal Medicine (functioning as a hospitalist before the term was coined) and Critical Care Medicine for 36 years.
3. I graduated from the University of California at Los Angeles School of Medicine in 1977 with a doctor of medicine degree and completed my residency in Internal Medicine at University of Medical Center, Fresno, California.
4. That I am board certified in Internal Medicine and was boarded in Critical Care Medicine through 2018.
5. That I am familiar with the roles of hospitalist, and subspecialists in taking care of their patients in a hospital setting.
6. That I am particularly familiar with the case of a septic patient including but not limited to fluid resuscitation, antibiotics, and all manners of supporting medications and equipment.
7. That I am particularly familiar with the source identification and its importance in the treatment of a septic patient. In addition, I am very familiar with the coordination of the various physicians to treat that condition.

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- 1 8. In preparation for this affidavit, I have reviewed summaries of the two hospitalizations at  
2 Sunrise Hospital between August 9 and August 16, 2016 consisting of 33 pages plus an  
3 additional 45 pages of organized records related to medications and vital signs. I also  
4 reviewed 337 pages of Centennial Hills hospital records and the affidavit of Dr. Lisa  
5 Karamardian.  
6
- 7 9. That Choloe Green was a 29 year old G5 P3 obese individual at the time she was  
8 admitted to Sunrise Hospital on 7/09/2016 for repeat c-section for a transverse  
9 presentation. She underwent the procedure through the previous surgical scar (low  
10 transverse), under spinal anesthesia, delivering a 6 lb 7 oz male child.  
11
- 12 10. Post operatively she developed itching secondary to the spinal anesthetic. By the next day  
13 she was ambulatory and taking a regular diet. No mention of bowel activity or urination.  
14 She was deemed ready for discharge and sent home on Norco and Ibuprofen for pain.  
15
- 16 11. That on July 14, 2016 she presented to the Sunrise Hospital ED with 2 days history of  
17 nausea, vomiting, and abdominal pain. She had 2 BM's that day. She was febrile and  
18 tachycardic with a marked leucocytosis. She met the criteria for sepsis and the sepsis  
19 bundle was initiated. She had blood cultures drawn, a fluid bolus given and a broad  
20 spectrum antibiotics initialed appropriately for an intra-abdominal source. An ultra sound  
21 of the pelvis and CT scan of the abdomen and pelvis were ordered. The ultra sound  
22 showed no retained products of conception but a moderate amount of complex free fluid  
23 in the cul-de-sac. The CT scan showed a gastric band in place, distention of doudenum  
24 and jejunum and free fluid with small amount of gas in the peritoneal cavity in the lower  
25 abdomen, anterior to an enlarged uterus. The impressions were 1) small bowel  
26 obstruction and 2) intraperitoneal abscess suspected.  
27  
28

12. The patient was admitted to medicine at the request of Dr. DeLee (who was going to be out of town) by Dr. Ali Kia at 9:10 p.m. on July 14, 2016. Dr. Kim also consulted by ED but did not see patient stating "OB can manage care on an out-patient basis." On July 15, 2016, the WBC was 20,600 with left shift. No additional antibiotics were given outside the first dose. At 17:33 patient seen by case worker with plan that patient would go home with sister or mother on out patient antibiotics and follow up with Dr. DeLee.

13. At 22:31 on July 15, 2016, Dr. Ali Kia saw the patient and noted patient having abdominal pain with distention. Additionally she was agitated and having no flatus on bowel movements. The discharge was halted. On the morning of July 16, 2016 an x-ray of the abdomen was done which revealed multiple dilated small bowel loops, small bowel obstruction versus ileus. Despite this, patient discharged home at 20:26 on Norco, dilaudid, motrin iron, and prenatal vitamins but no antibiotics. She was to follow up with Dr. DeLee in two days.

14. The patient presented to Centennial Hills Hospital the next day with an acute abdomen and was taken to surgery on July 18, 2016 where she was noted to have more than a liter of foul smelling fluid in her abdomen, plus an omental infarct which was resected. She then went on to develop severe ARDS and severe physical deconditioning requiring 6 plus weeks in the ICU, a PEG, a trach and finally discharge to a sub-acute facility.

15. Dr. Ali Kia's care of his patient Choloe Green fell below the standard of care for a hospitalist for the following reasons:

1. Failure to continue appropriate antibiotics during the patients hospitalizations when she was clearly fighting an infection.
2. Failure to continue antibiotics post-discharge in a patient clearly not having

- 1 recovered from her infection.
- 2 3. Failure to follow up the radiographic studies which were clearly suspicious for an
- 3 intra-abdominal abscess.
- 4
- 5 4. Discharging a patient with evidence of a small bowel obstruction or ileus without
- 6 any explanation or resolution.
- 7
- 8 5. Pre maturely discharging the patient before she had adequately recovered from the
- 9 septic process.
- 10 16. Finally due to the failures noted above, Choloe Green went on to develop an acute
- 11 abdomen requiring surgery, intra-abdominal abscess requiring percutaneous drainage and
- 12 sepsis related ARDS (severe) which required 6 plus weeks in the ICU and resulted in
- 13 severe physical deconditioning and prolonged sub-acute care.
- 14 17. The conduct described in paragraph 5 of Dr. Karamardian's affidavit dated June 29, 2017
- 15 relating to Ms. Green's discharge from Sunrise Hospital relates to the care provided to
- 16 Ms. Green at Sunrise by Dr. Ali Kia and any other medical providers that were involved
- 17 in the decision to discharge Ms. Green on July 16, 2016, this decision to discharge her
- 18 violated the standard of care.
- 19
- 20 18. My opinions are expressed to a reasonable degree of medical probability and/or certainty
- 21 and are based on my education, training, experience, and review of the medical records
- 22 outlined previously which reflect the care given Choloe Green by the aforementioned
- 23 Physician.
- 24
- 25 19. This affidavit is intended as a summary of my opinion and there obviously may be further
- 26 explanation of these opinions at the time of trial and/or depositions, should I be asked
- 27 follow-up questions related to any opinions.
- 28

FURTHER YOUR AFFLIANT SAYETH NAUGHT.

ROBERT S. SAVLUK, M.D.

SUBSCRIBED and SWORN TO  
Before me this \_\_\_\_ day of October, 2020.

See attached

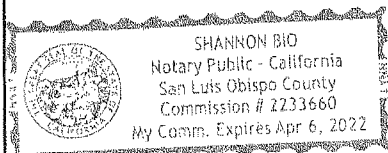
NOTARY PUBLIC in and for said  
COUNTY and STATE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Luis Obispo

Subscribed and sworn to (or affirmed) before me on this 16th  
day of October, 2020, by Robert S. Savluk

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.

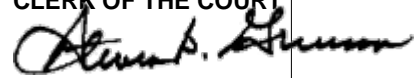


(Seal)

Signature

A handwritten signature in dark ink, appearing to read "Robert S. Savluk", written over a horizontal line.

# EXHIBIT C



**MDSM**

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Ali Kia, M.D.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CHOLOE GREEN, an individual,

Plaintiffs,

vs.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE  
HOSPITAL AND MEDICAL CENTER, LLC,  
a Foreign Limited-Liability Company; ALI  
KIA, M.D., an individual and NEVADA  
HOSPITALIST GROUP, LLP.

Defendants.

CASE NO.: A-17-757722-C  
DEPT. NO.: XXIII

**DEFENDANT ALI KIA, M.D.'S  
MOTION TO DISMISS PLAINTIFF'S  
AMENDED COMPLAINT**

**HEARING REQUESTED**

COMES NOW Defendant, ALI KIA, M.D., by and through his attorneys of records,  
the law firm of COLLINSON, DAEHNKE, INLOW & GRECO, and hereby submits the  
following Motion to Dismiss Plaintiff's Complaint pursuant to NRCP 12 (b) (5) and NRS  
41A.097 (2).

This Motion is made and based upon the Notice of Motion, the Memorandum of  
Points and Authorities set forth below, the exhibits attached hereto, together with all files,



1 pleadings and records on file herein, and any and all evidence and argument made at the time  
2 of the hearing on this Motion.

3 DATED: January 21, 2021

**COLLINSION, DAEHNKE, INLOW & GRECO**

*/s/ Linda K. Rurangirwa*

BY: \_\_\_\_\_

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ALI KIA, M.D.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

Plaintiff Choloe Green filed her medical malpractice claim on June 30, 2017 against Frank J. DeLee, M.D., Frank J. DeLee, M.D., P.C. and Sunrise Hospital and Medical Center (“Sunrise”) arising from the care and treatment provided to Plaintiff between July 9, 2016 and July 17, 2016.<sup>1</sup> The Complaint was filed with the supporting affidavit of Lisa Karamardian, M.D. signed on June 29, 2017. Neither the Complaint, nor the affidavit made mention of Dr. Kia or Nevada Hospitalist Group, LLP (“NHG”). The affidavit stated:

4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released home on post-operative day number one. This was a breach of the standard of care by Dr. DeLee and Sunrise Hospital . . .

5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16, 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated the standard of care. Ms. Green was discharged despite the fact that she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.<sup>2</sup>

Plaintiff contended that as a result of the alleged negligence, she was admitted at Centennial Hills Hospital from July 17, 2016 through September 2, 2016 during which she underwent surgery and had postoperative complications.<sup>3</sup>

On May 1, 2019, Defendant Sunrise filed a Motion for Leave to File a Third-Party Complaint on the grounds that Dr. Kia was the discharging physician on July 16, 2016 and sought to hold him and NHG liable for contribution and indemnity in the event a jury found

<sup>1</sup> See Plaintiff’s Complaint, attached hereto as Exhibit “A.”

<sup>2</sup> *Id.*, Affidavit of Dr. Lisa Karamardian ¶¶ 4-5.

<sup>3</sup> *Id.*, ¶ 9

Dr. Kia's actions were negligent and the hospital was found vicariously liable on a theory of ostensible agency.<sup>4</sup> The motion was granted and the Third-Party Complaint was filed on June 14, 2019.<sup>5</sup> In order to satisfy the expert affidavit requirement set forth in NRS 41A.071, Sunrise relied on the expert affidavit of Dr. Karamardian that was filed with Plaintiff's Complaint.<sup>6</sup>

On March 19, 2020, Third-Party Defendant NHG filed a Motion for Judgment on the Pleadings on the grounds that Sunrise did not attach an affidavit of merit specifying breaches in the standard of care by Dr. Kia or NHG.<sup>7</sup> Dr. Kia filed a Joinder to such motion on April 13, 2020.<sup>8</sup> The Motion was heard on April 29, 2020 and granted. Specifically, the Court found:

When evaluating complaints that assert claims of medical negligence, a Plaintiff must comply with NRS 41A.071, which requires not only a complaint but also an accompanying affidavit setting forth the professional negligence allegations. The Supreme Court held "that courts should read the complaint and the plaintiff's NRS 41A.071 expert affidavit together when determining whether the expert affidavit meets the requirements of NRS 41A.071." *Zohar v. Zbiegien*, 130 Nev. 733, 739, 334 P.3d 402, 406 (2014) (citing *Great Basin Water Network v. Taylor*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010); *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006)). The same decision went on to hold that the NRS 41A.071 affidavit requirement is a preliminary procedural rule subject to the notice pleading standard, and must be liberally construe[d] ... in a manner that is consistent with our NRCP 12 jurisprudence." *Borger v. Eighth Judicial District Court*, 120 Nev. 1021, 1028, 102 P.3d 600, 605 (recognizing that "NRS 47A.071 governs the threshold requirements for initial pleadings in medical malpractice cases, not the ultimate trial of such matters") (emphasis added); see also *Baxter v. Dignity Health*, 131 Nev. 759, 763-64, 357 P.3d 927, 930 (2015) (holding that NRS 41A.071 must be liberally construed). The

<sup>4</sup> See Sunrise Hospital and Medical Center's Motion for Leave to File Third-Party Complaint on Order Shortening Time, attached hereto as Exhibit "B."

<sup>5</sup> See Sunrise Hospital and Medical Center's Third-Party Complaint, attached hereto as Exhibit "C."

<sup>6</sup> See Exhibit B, p. 7, line 3-8.

<sup>7</sup> See Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings, attached hereto as Exhibit "D."

<sup>8</sup> See Third-Party Defendant Ali Kia, M.D.'s Joinder in Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Reply in Support of Motion for Judgment on the Pleadings, attached hereto as Exhibit "E."

affidavit must (1) support the allegations contained in the action; (2) be submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged professional negligence; (3) identify by name, or describe by conduct, each provider of health care who is alleged to be negligent; and (4) set forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms. A complaint that does not comply with NRS 41A.071 is void ab initio, it does not legally exist and thus it cannot be amended. *Washoe Medical Center v. Second Judicial Dist. Court of State of Nevada ex rel. County of Washoe*, 122 Nev. 1298, 148 P.3d 790 (2006). Dismissal applies even when only some of the claims violate the requirements of NRS 41A.071 affidavit requirement.

Here, Third-Party Plaintiff Sunrise Hospital incorporated Plaintiff's affidavit in the filing of their Third-Party Complaint. Plaintiff's complaint and affidavit do not identify Dr. Kia or Nevada Hospitalist Group ("NHG"). Nor does either document identify any John Doe, "unknown" or "unidentified" potential defendants that could arguably be Dr. Kia and/or NHG. Because neither Dr. Kia nor NHG are identified in the complaint or the affidavit there is no identified specific act or specific acts of alleged professional negligence by Dr. Kia and NHG. Instead, the complaint and affidavit only identifies Sunrise Hospital and Dr. DeLee when laying the facts and circumstances that form the cause of action involving the alleged professional negligence. Because the Plaintiff's affidavit fails to meet the third and fourth prongs of the NRS 41A.071 affidavit requirements regarding professional negligence claims against Defendants Dr. Kia and NHG, so does the Third-Party Complaint, rendering it void ab initio. The Court recognizes that the opposition argues that this Third-Party Complaint is brought only for the purposes of contribution and indemnity. But the Court is unaware of any authority that would relieve a party of meeting the requirements set forth in NRS 41A.071 in circumstances where a Third-Party Plaintiff is only seeking indemnity and/or contribution.<sup>9</sup>

On October 16, 2020, Plaintiff filed a Motion for Leave to Amend the Complaint to add Dr. Kia and NHG as Defendants. The motion was granted and the Amended Complaint was filed on December 16, 2020.<sup>10</sup> Therein, Plaintiff states with regards to Dr. Kia:

14. That Defendant Dr. DeLee, Sunrise Hospital, Dr. Kia, and Nevada Hospitalist Group, LLP, breached the standard of care in their treatment of Choloe and as a direct and proximate result of that breach, Choloe has been damaged.<sup>11</sup>

<sup>9</sup> See Notice of Entry of Order Regarding Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Third-Party Defendant Ali Kia, M.D.'s Joinder Thereto, attached hereto as Exhibit "F."

<sup>10</sup> See Amended Complaint for Medical Malpractice, attached hereto as Exhibit "G."

<sup>11</sup> *Id.*, ¶ 14.

1 The Affidavit of Dr. Karamardian from June 2017 is attached, as is a new affidavit of  
2 Robert S. Savluk, M.D. dated October 16, 2020 dated four and a half years after the alleged  
3 medical malpractice. Dr. Savluk's affidavit for the first time identifies Dr. Kia and asserts  
4 allegations that Dr. Kia breached the standard of care.<sup>12</sup>

5 Defendant Dr. Kia moves to dismiss Plaintiff's Complaint on the grounds that it is  
6 barred by both the one and three year statute of limitations applicable to medical malpractice  
7 cases. As late as June 30, 2017, when Plaintiff filed her initial Complaint, she was aware of  
8 the alleged negligence. Plaintiff, however, did not file an amended Complaint adding Dr. Kia  
9 as a defendant until December 16, 2020, three years and six months later. Thus, Plaintiff's  
10 claims are barred by both the three and one year limitation periods set forth in NRS 41A.097  
11 (2). Plaintiff's Amended Complaint therefore fails to state a claim upon which relief can be  
12 granted and is subject to dismissal pursuant to NRCP 12 (b) (5).

## 13 II.

### 14 LEGAL ARGUMENT

#### 15 A. Standard of Review

16 Pursuant to NRCP 12 (b) (5), a pleading is subject to dismissal for failing to state a  
17 claim upon which relief may be granted. Dismissal is appropriate where a plaintiff's  
18 allegations "are insufficient to establish the elements of a claim for relief." *Hampe v. Foote*,  
19 118 Nev. 405, 408, 47 P.3d 438 439 (2002), overruled in part on other grounds by *Buzz Stew*,  
20 *LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). "**A court can**  
21 **dismiss a complaint for failure to state a claim upon which relief may be granted if the**  
22 **action is barred by the statute of limitations.**" *Bemis v. Estate of Bemis*, 114 Nev. 1021,  
23 1024, 967 P.2d 437, 439 (1998)(emphasis added).

24 To survive dismissal under NRCP 12, a complaint must contain "facts, which if true,  
25 would entitled the plaintiff to relief." *Buzz Stew, LLC*, 124 Nev. at 228. In analyzing the  
26 validity of a claim the court is to accept a plaintiff's factual allegations "as true and draw all  
27 inferences in the Plaintiff's favor." *Id.* However, the court is not bound to accept as true a

28 <sup>12</sup> *Id.*, Affidavit of Robert S. Savluk, M.D., ¶15.

plaintiff's legal conclusions and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statement, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)(analyzing the federal counterpart to NRC 12). Moreover, the court may not take into consideration matters outside of the pleadings being attacked. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

**B. Plaintiff's Claims Against Dr. Kia are Barred by the Statute of Limitations**

The applicable statute of limitations for medical malpractice/professional negligence claims that accrue on or after October 1, 2002 is set forth in NRS 41A.097(2) which provides in pertinent part:

[A]n action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, *whichever occurs first*." (emphasis added).

In *Winn v. Sunrise Hospital and Medical Center*, the Nevada Supreme Court explained that NRS 41A.097(2), by its terms, requires a plaintiff "to satisfy both the one-year discovery period *and* the three year injury period." 128 Nev. Adv. Op. 23, 277 P.3d 458, 461 (2012) (emphasis added).

With regard to the one year statute of limitations, generously assuming for purposes of this Motion that Plaintiff discovered her injury at the time she filed her Complaint on June 30, 2017, Plaintiff needed to file an Amended Complaint naming Dr. Kia by June 30, 2018. Plaintiff failed to file her Amended Complaint naming Dr. Kia until December 2020, over two years after the expiration of the statute of limitations. Even when Sunrise filed its Motion for Leave to File a Third-Party Complaint on May 1, 2019 alleging that Dr. Kia and NHG were negligent, Plaintiff still did not seek to amend the Complaint to add Dr. Kia and NHG until over one year and five months later.

The three year limitation period provided in NRS 41A.087(2) "begins to run when a plaintiff suffers appreciable harm [appreciable manifestation of the plaintiff's injury], regardless of whether the plaintiff is aware of the injury's cause." *Libby v. Eighth Judicial*

1 *Dist. Ct.*, 130 Nev. Adv. Rep. 39, 325 P.3d 1276, 1280 (2014). Plaintiff in this case became  
2 aware of her alleged injury when she was hospitalized at Centennial Hills Hospital from July  
3 17, 2016 through September 2, 2016 where she underwent surgery and postoperative  
4 complications. Commencement of the three year limitation period does not require that  
5 Plaintiff be aware of the *cause* of her injury. Such a requirement would “render NRS  
6 41A.097(2)’s three year limitation period irrelevant.” *Libby*, 277 P.3d at 1280. Any attempt  
7 by Plaintiff to impose a “discovery” rule on the three-year statute of limitations provided in  
8 NRS 41A.097(2) is incorrect and directly contrary to the holding in *Libby*.

9 In *Libby*, the Nevada Supreme Court looked to California authority for guidance on  
10 application of the three-year limitation period for medical malpractice matters (as the  
11 California and Nevada statutes are identical). The Court noted California cases have reasoned  
12 the purpose for the three-year limitation period is “to put an outside cap on the  
13 commencements of actions of medical malpractice, to be measured from the date of injury,  
14 regardless of whether or when the plaintiff discovered its negligent cause.” *Libby*, 277 P.3d at  
15 1280.

16 The holding of *Garabet v. Superior Court*, 151 Cal.App.4<sup>th</sup> 1538, 60 Cal.Rptr.3d 800  
17 (Ct.App. 2007) was specifically cited with authority in *Libby*. Similar to the instant matter,  
18 the plaintiff in *Garabet* claimed injury stemming from surgery; however, the plaintiff did not  
19 file a medical malpractice lawsuit until six years after the surgery. The *Garabet* Court  
20 dismissed the plaintiff’s complaint as time-barred under California’s three year statute of  
21 limitations, holding the *limitations period started running when the plaintiff began to*  
22 *experience adverse symptoms after the surgery. Id.* at 809.

23 The three-year limitation period set forth in NRS 41A.097(2) commenced, *at the*  
24 *latest*, in September 2016 and expired in September 2019. The date Plaintiff learned of  
25 (discovered) the alleged cause of her injury is irrelevant for purposes of the current Motion.  
26 Plaintiff’s Complaint against Dr. Kia was not filed until December 16, 2020 and is, therefore,  
27 time-barred and should be dismissed pursuant to NRCP 12(b)(5).  
28

C. **The Amendment to Add Dr. Kia as a Defendant Does Not Relate Back to the Filing of the Original Complaint**

Pursuant to NRCP 15 (c):

An amendment to a pleading relates back to the date of the original pleading when:

(1) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading; or

(2) The amendment changes a party or the naming of a party against whom a claim is asserted if Rule 15 (c) (1) is satisfied and if, within the period provided by Rule 4 (e) for serving the summons and complaint, the party to be brought in by amendment:

(A) received such notice of the action that it will not be prejudiced in defending on the merits; and

(B) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party’s identity.

Rule 4 (e) is with regard to the time limit for service and states that “[t]he summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule.”

In *Badger v. Eighth Judicial District Court*, the Nevada Supreme Court noted:

Under NRCP 15(c), “[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.” The relation-back doctrine applies to both the addition and substitution of parties, and will be liberally construed unless the opposing party is disadvantaged by relation back. However, in *Garvey v. Clark County*, this court expressly refused to allow an amended complaint to relate back after a limitations period had run where the plaintiff elected not to name the proposed defendant as a party in the original action.

*Badger v. Eighth Judicial Dist. Court*, 132 Nev. 396, 403-404, 373 P.3d 89, 94 (2016).  
(internal citations omitted).

Plaintiff in her motion to amend the Complaint contends the amendment “does not cause any prejudice to Ali Kia, M.D., because he was already a party to this case and has been



1   deposed.”<sup>13</sup> However, Dr. Kia’s name was not mentioned in the initial Complaint or affidavit  
2   and he was not deposed until November 14, 2018, over a year after the Complaint was filed.<sup>14</sup>  
3   Additionally, he was not a party to this case until after Sunrise filed its Third-Party Complaint  
4   on June 14, 2019. Thus, he would not have had notice of potentially being a party in this suit  
5   until **after** the one year statute of limitations had expired and long after the time limit set forth  
6   in Rule 4 (e). Furthermore, after Dr. Kia’s deposition on November 14, 2018, Plaintiff  
7   elected **not** to name him as a Defendant until almost **two years later** when she filed her  
8   Motion for Leave to Amend Complaint on October 16, 2020. Plaintiff waited an additional  
9   two years, long after the statute had run. Allowing the amendment to relate back would be  
10   extremely prejudicial to Dr. Kia as he only received such notice **after** the statute of limitations  
11   expired and the claim was time barred, and he would have no expectation of incurring the  
12   expense of defending against this suit.

13           Finally, pursuant to *Washoe Med. Ctr. v. Second Judicial Dist. Court* the addition of  
14   Dr. Kia to the Amended Complaint cannot relate back to the original Complaint because such  
15   Complaint would be considered **void ab initio** as this Court has already deemed the expert  
16   affidavit of Dr. Karamardian insufficient with regard to Dr. Kia. The law-of-the-case doctrine  
17   "refers to a family of rules embodying the general concept that a court involved in later  
18   phases of a lawsuit should not re-open questions decided (i.e., established as law of the case)  
19   by that court or a higher one in earlier phases." *Recontrust Co. v. Zhang*. 130 Nev.Ad.Op. 1,  
20   317 P.3d 814, 818 (2014), *quoting Crocker v. Piedmont Aviation, Inc.* 49 F.3d 735, 739 (D.C.  
21   Cir. 1995). For the law-of-the-case doctrine to apply, this Court must have actually addressed  
22   and decided the issue explicitly or by necessary implication. *Id.*, *citing Dictor v. Creative*  
23   *Management Services, LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010). Here, this Court has  
24   already established that the Affidavit of Dr. Karamardian fails to meet the affidavit  
25   requirement as to Dr. Kia.

26           In *Baxter v. Dignity Health*, the Nevada Supreme Court stated:

27   <sup>13</sup> See Motion for Leave of Court to Amend Complaint, p. 4 lines 9-11, attached as Exhibit “H.”

28   <sup>14</sup> See Face page of deposition transcript of Ali Kia. M.D., attached as Exhibit “I.”

To date, this court has mediated the tension between NRS 41A.071 and the Nevada Rules of Civil Procedure according to the perceived strength of the competing policies at stake. Thus, in *Washoe Medical Center v. Second Judicial District Court*, 122 Nev. 1298, 1301, 148 P.3d 790, 792 (2006), the plaintiff filed her complaint the day before the statute of limitations ran. She did not obtain an affidavit of merit until the defendants moved to dismiss, by which time the statute of limitations had run. *Id.* The plaintiff filed an amended complaint, to which she appended the belated affidavit of merit, and argued that NRCP 15(a) entitled her to amend as of right, that the amendment related back to the original filing date, and that her claims therefore were timely. *Id.* A divided supreme court disagreed, deeming the original complaint a nullity to which NRCP 15(a) and the relation-back doctrine did not apply. *Id.* at 1306, 148 P.3d at 795 (4-2-1 decision). ***We held that, in requiring dismissal of an action filed without a supporting affidavit, NRS 41A.071 trumps NRCP 15(a), which allows liberal amendment of pleadings, given the substantive policy expressed in NRS 41A.071 against a plaintiff bringing a malpractice action without a medical expert first reviewing and validating the claims. Id.*** at 1304, 148 P.3d at 794.

*Baxter v. Dignity Health*, 131 Nev. 759, 763, 357 P.3d 927, 929-930 (2015) (emphasis added).

The Amended Complaint cannot relate back to the filing of the original Complaint as Dr. Kia did not have notice of the Complaint within 120 days of filing of same, nor could he have been aware he was a proper party as the Complaint did not mention his name and the affidavit did not state any allegations against him. The earliest he could potentially have been put on notice of the lawsuit was when he was deposed *after* the expiration of the statute of limitations. Dr. Kia will be severely prejudiced in having to defend against a lawsuit that would otherwise be barred by the statute of limitations should the Court allow the amendment to relate back to the filing of the original Complaint, which would be void ab initio against him in any event as this Court has already determined that the expert affidavit is insufficient to support any claims against him as required by NRS 41A.071.

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IV.

**CONCLUSION**

Based on the foregoing, Dr. Kia respectfully requests this Court dismiss Plaintiff's Complaint, with prejudice, as it was filed in violation of the applicable statute of limitations set forth in NRS 41A.097(2).

DATED: January 21, 2021

**COLLINSON, DAEHNKE, INLOW & GRECO**

*/s/ Linda K. Rurangirwa*

BY: \_\_\_\_\_

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Attorneys for Defendant

ALI KIA, M.D.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of January 2021, a true and correct copy of  
**DEFENDANT ALI KIA, M.D.'S MOTION TO DISMISS PLAINTIFF'S AMENDED  
COMPLAINT** was served by electronically filing with the Clerk of the Court using the  
Odyssey File & Serve system and serving all parties with an email address on record, who  
have agreed to receive Electronic Service in this action.

DANIEL MARKS, ESQ.  
NICOLE M. YOUNG, ESQ.  
Law Office of Daniel Marks  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536  
*Attorneys for Plaintiff Cholo Green*

ERIC K. STRYKER, ESQ.  
BRIGETTE FOLEY, ESQ.  
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6689 Las Vegas Blvd., Suite 200  
Las Vegas, NV 89119  
11th Floor  
(702) 727-1400  
*Attorneys for Defendants  
Frank J. Delee, M.D. and Frank J. Delee, M.D., P.C.*

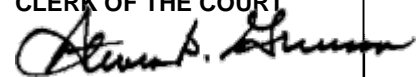
MICHAEL E. PRANGLE, ESQ.  
TYSON J. DOBBS, ESQ.  
SHERMAN B. MAYOR, ESQ.  
HALL PRANGLE AND SCHOONVELD LLC  
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20 Las Vegas, Nevada 89144  
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Sunrise Hospital and Medical Center, LLC*

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6385 Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
*Attorneys for Third-Party Defendant  
Nevada Hospitalist Group, LLP*

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28

By /s/ Linda K. Rurangirwa  
An employee of COLLINSON, DAEHNKE,  
INLOW & GRECO

# **EXHIBIT A**



COMP  
LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Case No.  
Dept. No.

A-17-757722-C

Plaintiff,

Department 8

v.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
Limited-Liability Company.

**Arbitration Exempt - - Action  
for Medical Malpractice**

Defendants.

**COMPLAINT FOR MEDICAL MALPRACTICE**

COMES NOW Plaintiff Chloe Green, by and through undersigned counsel Daniel Marks, Esq., and  
Nicole M. Young, Esq., of the Law Office of Daniel Marks, and for her claims against Defendants herein  
allege as follows:

1. That at all times material hereto, Plaintiff Chloe Green (hereinafter "Chloe") was a  
resident of Clark County, Nevada.
2. That at all times material hereto, Defendant FRANK J. DELEE, M.D., was a licensed  
medical doctor in the State of Nevada, and practiced in his professional corporation entitled  
FRANK J. DELEE MD, PC.

////

////

3. That at all times material hereto, Defendant FRANK J. DELEE MD, PC, was a domestic professional corporation organized and existing under the laws of the state of Nevada and registered to do business, and doing business in the State of Nevada in Clark County, Nevada.
4. That Defendant FRANK J. DELEE, MD, is the President of Defendant FRANK J. DELEE MD, PC (hereinafter collectively referred to as "Dr. DeLee").
5. That Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, (hereinafter "Sunrise Hospital"), was a foreign limited-liability company, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
6. That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on Choloe at Sunrise Hospital. Choloe was discharged from the hospital the following day, on July 10, 2016, even though she did not have bowel movement prior to being discharged from the hospital.
7. On July 13, 2016, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe notified Dr. Delee that she had not had a bowel movement post C-section. He did not provide any care or treatment to Choloe regarding her lack of a bowel movement.
8. On July 14, 2016, after still not having a bowel movement post C-section, Choloe went to the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. Sunrise Hospital discharged Choloe on July 16, 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.
9. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where she was admitted until she was finally discharged on September 2, 2016. Centennial Hills admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed, underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS, and eventually needed a tracheostomy and PEG tube placement.
10. That Defendant Dr. DeLee and Sunrise Hospital breached the standard of care in their treatment of Choloe and as a direct and proximate result of that breach, Choloe has been damaged.



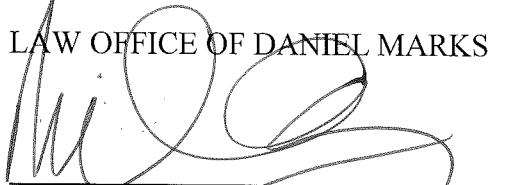
11. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been damaged in an amount in excess of \$15,000.00.
12. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which is attached hereto as Exhibit "1".
13. Choloe has been forced to retain counsel to bring this action and should be awarded his reasonable attorneys fees and costs.

WHEREFORE, Choloe prays for judgment against the Defendants, and each of them, as follows:

1. For special damages in a sum in excess of \$15,000.00;
2. For compensatory damages in a sum in excess of \$15,000.00;
3. For reasonable attorney's fees and litigation costs incurred;
4. For such other and further relief as the Court deems just and proper.

DATED this 30 day of June, 2017.

LAW OFFICE OF DANIEL MARKS



DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 012659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff

1 VERIFICATION

2 STATE OF NEVADA )  
3 COUNTY OF CLARK ) ss:

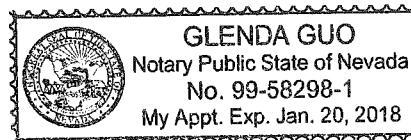
4 CHLOE GREEN, being first duly sworn, deposes and says:

5 That I am the Plaintiff in the above-entitled matter; that I have read the above and foregoing  
6 Complaint and know the contents thereof; that the same are true of my knowledge except for those  
7 matters stated upon information and belief, and as to those matters, I believe them to be true.

8 *Chloe Green*  
9 \_\_\_\_\_  
10 CHLOE GREEN

11 SUBSCRIBED AND SWORN to before me  
12 this *26th* day of June, 2017.

13 *Glenda Guo*  
14 NOTARY PUBLIC in and for said  
15 COUNTY and STATE



---

# **EXHIBIT 1**

---

AFFIDAVIT OF DR. LISA KARAMARDIAN


STATE OF California }  
COUNTY OF Orange }

DR. LISA KARAMARDIAN, being first duly sworn, under penalty of perjury, does say and depose the following:

1. That I am a medical doctor licensed in the State of California and am board certified in the field of Obstetrics and Gynecology.
2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
3. That I have reviewed Plaintiff Choloe Green's medical records relating to the care and treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center, Valley Hospital Medical Center and Centennial Hills Medical Center.
4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released home on post-operative day number one. This was a breach of the standard of care by Dr. DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.
5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16, 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated the standard of care. Ms. Green was discharged despite the fact that she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.

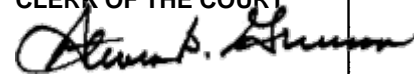
7. Because of the violations of the standard of care, her hospital course was protracted with multiple complications and she was apparently discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding tube and in need of rehabilitation.
8. That in my professional opinion, to a degree of medical probability, the standard of care was breached by both Dr. DeLee and Sunrise Hospital and Medical Center in their treatment of Ms. Green.

  
LISA KARAMARDIAN, MD.

 **TONY GANA**  
Notary Public - California  
Orange County  
Commission # 2148987  
My Comm. Expires Apr 14, 2020

2.

# **EXHIBIT B**



MLEV  
MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No.: 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No.: 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
HALL PRANGLE & SCHOONVELD, LLC  
1160 N. Town Center Dr., Ste. 200  
Las Vegas, NV 89144  
(702) 889-6400 – Office  
(702) 384-6025 – Facsimile  
[efile@hpslaw.com](mailto:efile@hpslaw.com)  
*Attorneys for Defendant*  
*Sunrise Hospital and Medical Center, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHLOE GREEN, an individual,  
  
Plaintiff,

vs.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE  
HOSPITAL AND MEDICAL CENTER,  
LLC, a Foreign Limited-Liability Company,  
  
Defendants.

CASE NO.: A-17-757722-C  
DEPT NO.: 1X

**DEFENDANT SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC'S  
MOTION FOR LEAVE TO FILE THIRD  
PARTY COMPLAINT ON ORDER  
SHORTENING TIME**

COMES NOW Defendant Sunrise Hospital and Medical Center, by and through its  
counsel of record, HALL PRANGLE & SCHOONVELD, LLC, and moves this Honorable Court for an  
order granting Defendant Sunrise Hospital and Medical Center, LLC leave to add Ali Kia, M.D.  
and Nevada Hospitalist Group, LLP as Third-Party Defendants in this litigation (on an Order  
Shortening Time).

...

This Motion is made and based upon the papers and pleadings on file herein, the following points and authorities, and any oral argument which may be adduced at a hearing set for this matter.

DATED this 24<sup>th</sup> day of April, 2019.

HALL PRANGLE & SCHOONVELD, LLC

By: \_\_\_\_\_

MICHAEL E. PRANGLE, ESQ.

Nevada Bar No.: 8619

TYSON J. DOBBS, ESQ.

Nevada Bar No.: 11953

SHERMAN B. MAYOR, ESQ.

Nevada Bar No. 1491

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

*Attorneys for Defendant*

*Sunrise Hospital and Medical Center, LLC*

**ORDER SHORTENING TIME**

It appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS HEREBY ORDERED that the foregoing **DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER, LLC'S MOTION FOR LEAVE TO FILE THIRD PARTY COMPLAINT ON ORDER SHORTENING TIME** shall be heard on the 13 day of

Mar, 2019, at the hour of 3:00 <sup>CD</sup> a.m./p.m. in Department 9.

DATED April 29, 2019.


\_\_\_\_\_  
DISTRICT COURT JUDGE



[illegible]

**HALL PRANGLE & SCHOONVELD, LLC**  
1160 NORTH TOWN CENTER DRIVE  
SUITE 200  
LAS VEGAS, NEVADA 89144  
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

- 1 5. The purpose of the third-party complaint is for Sunrise Hospital to seek equitable  
2 indemnity and/or contribution from Dr. Kia and/or Nevada Hospitalist Group should  
3 liability be imposed upon the hospital as a result of the care rendered by these two  
4 potential Third-Party Defendants.
- 5 6. Currently, this case is scheduled for status check to take place on June 18, 2019 to  
6 schedule the case for trial.
- 7 7. However, the court recently signed a stipulation by all parties to extend the discovery  
8 cut-off to June 1, 2020.
- 9 8. Defendant Sunrise Hospital seeks leave to file its motion for leave to file third party  
10 complaint so that: (1) Dr. Kia and Nevada Hospitalist Group can participate in any  
11 discovery as the case progresses; and (2) Sunrise Hospital will participate in  
12 discovery with knowledge that its third-party complaint is in place.
- 13 9. It is therefore requested that a hearing on Sunrise Hospital's motion for leave to file  
14 third party complaint on an order shortening time be granted and this matter be  
15 scheduled accordingly.
- 16 10. This motion for leave to file third party complaint is brought in good faith and not for  
17 purposed of undue delay or harassment.
- 18 11. I declare under the penalty of perjury that the foregoing is true and correct to the best  
19 of your Affiant's knowledge.

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4/24/19  
\_\_\_\_\_  
SHERMAN B. MAYOR, ESQ.

## PREFATORY NOTE

Although Defendant Sunrise Hospital's motion for leave to file third-party complaint seeks authority to bring third party claims against *both* Ali Kia, M.D. and Nevada Hospitalist Group, LLP, Sunrise Hospital reserves the right to only pursue a third-party claim against Ali Kia, M.D. (and not Nevada Hospitalist Group, LLP should additional discovery and malpractice insurance documentation indicate a third-party action against the group is unnecessary).

## POINTS AND AUTHORITIES

### I. FACTS

This is a medical practice action. Plaintiff, Choloe Green, delivered her 4<sup>th</sup> child by caesarian section birth at Defendant, Sunrise Hospital and Medical Center ("Sunrise Hospital") on July 9, 2016. Defendant, Frank J. DeLee, M.D., Plaintiff's treating OB/GYN, then discharged Ms. Green from the hospital on July 10, 2016. Plaintiff contends this discharge was premature as she had not had a bowel movement and a typical post-operative course for caesarian section is 3-4 days. Plaintiff alleges Dr. DeLee and Sunrise Hospital breached the standard of care.

Plaintiff then alleges she was readmitted to Sunrise Hospital on July 14, 2016 (nausea, vomiting, fever, and chills). Plaintiff contends she was discharged prematurely, a second time, on July 16, 2016. Plaintiff asserts this second discharge also violated the standard of care as she was not able to tolerate a regular diet and her KUB x-ray showed dilated bowel loops.

Plaintiff contends that this second hospital discharge was "discussed and confirmed with Dr. DeLee." The medical records, however, reveal that Ali Kia, M.D. (internal

1 medicine/hospitalist) was actually the physician who ordered and electronically signed the  
2 second hospital discharge of July 16, 2016. *See* Exhibit "A."

3 Recently, Sunrise Hospital filed a Motion for Partial Summary Judgment seeking to  
4 dismiss any claims of vicarious liability or ostensible agency on the part of the hospital with  
5 regard to Frank J. DeLee, M.D. and Ali Kia, M.D. The court granted the partial summary  
6 judgment motion (in part) and denied the motion (in part). Specifically, the claims, if any, that  
7 the hospital may have vicarious liability for either Dr. DeLee or Dr. Kia were dismissed.  
8 Further, any claim that Dr. DeLee (Plaintiff's long-time treating OB/GYN) was the ostensible  
9 agent of the hospital was also dismissed.  
10

11 In Plaintiff's "Complaint for Medical Malpractice," there is no mention of Ali Kia, M.D.  
12 Nor is there any mention that the Dr. Kia is an agent or employee of Sunrise Hospital. Sunrise  
13 Hospital moved for partial summary judgment to dismiss any potential claim in discovery or trial  
14 that Dr. Kia was an ostensible agent of Sunrise Hospital. The court, by decision rendered on  
15 April 1, 2019, denied the hospital's motion as it pertained to the ostensible agency issue and Dr.  
16 Kia. *See* Exhibit "B."  
17

18 Sunrise Hospital denies any allegations of negligence against the hospital. The hospital  
19 also denies that Dr. Kia is an ostensible agent of the hospital. However, this court has ruled that  
20 there is a factual question concerning ostensible agency that should be resolved by the finder of  
21 fact (the jury). As such, Sunrise Hospital seeks leave to file a third-party complaint naming Ali  
22 Kia, M.D. as a third-party defendant. Further, it appears that Dr. Kia was the agent and/or  
23 employee of Nevada Hospitalist Group, LLP, which is also being added. Sunrise Hospital files  
24 this third-party complaint, specifically, for equitable indemnity and/or contribution from Dr. Kia  
25  
26  
27  
28

1 and Nevada Hospitalist Group, LLP, should Sunrise Hospital be liable for any verdict or  
2 judgment arising from from Dr. Kia's care of Plaintiff, Choloe Green.

3 Additionally, Sunrise Hospital is not enclosing an expert affidavit with its third-party  
4 complaint. Instead, the hospital is attaching Plaintiff's underlying complaint and the expert  
5 affidavit attached to the complaint (Lisa Karamardian, M.D.) to comply with the requirements of  
6 NRS 41A.071. *A copy of Sunrise's Hospital proposed Third-Party Complaint (with Exhibits)*  
7 *is attached to this motion for leave as Exhibit "C."*  
8

9 Defendant, Sunrise Hospital motion for leave to file third-party complaint to add Ali Kia,  
10 M.D. and Nevada Hospitalist Group, LLP, as third-party defendants is necessitated by the court's  
11 recent ruling finding that there is a factual question (to be resolved at trial) as to whether Dr. Kia  
12 is an ostensible agent of the hospital. The court's minute order in this regard is dated April 1,  
13 2019. The final proposed order has been submitted to the court and is pending the court's  
14 review, consideration, and approval.  
15

## 16 II. 17 ARGUMENT

18 NRCP 14 provides in relevant part:

19 (a) **When Defendant May Bring in Third Party.** At any time  
20 after commencement of the action a defending party, as a third-  
21 party plaintiff, may cause a summons and complaint to be served  
22 upon a person not a party to the action who is or may be liable to  
23 the third-party plaintiff for all or part of the plaintiff's claim  
24 against the third-party plaintiff. The third-party plaintiff need not  
25 obtain leave to make the service if the third-party plaintiff files the  
third-party complaint not later than 10 days after serving the  
original answer. Otherwise the third-party plaintiff must obtain  
leave on motion upon notice to all parties to the action.

26 A defendant is permitted to defend the case and at the same time assert his right of  
27 indemnity against the party ultimately responsible for the damage. *Reid v. Royal Ins. Co.*, 80  
28

1 Nev. 137, 390 P.2d 45 (1964). The clear import of the Nevada Rules of Civil Procedure is to  
2 enable litigants to try fully their issues before the court. . ." *Morris v. Morris* 83 Nev. 412, 414,  
3 432 P.2d. 1022 (1967).

4 Sunrise Hospital now brings the instant motion for leave to assert a third-party complaint  
5 against Ali Kia M.D. and Nevada Hospitalist Group, LLP. The court's recent decision that the  
6 issue as to whether Dr. Kia is an ostensible agent of Sunrise Hospital is a factual question for the  
7 finder of fact. If, during trial, a jury determines that Dr. Kia is an ostensible agent of Sunrise  
8 Hospital, the hospital will be seeking, as part of the verdict, relief in the form of equitable  
9 indemnity and/or contribution for any hospital liability arising out of Dr. Kia's care of  
10 underlying Plaintiff, Choloe Green.  
11

12  
13 **III.**  
14 **CONCLUSION**

15 Based upon the foregoing, Defendant Sunrise Hospital respectfully requests that the  
16 Court enter an Order Granting its Motion for Leave to File a Third-Party Complaint Against Ali  
17 Kia, M.D. and Nevada Hospitalist Group, and for any other relief that this Honorable Court  
18 deems just and proper.

19 DATED this 24<sup>th</sup> day of April, 2019.

20  
21 HALL PRANGLE & SCHOONVELD, LLC

22 By: \_\_\_\_\_

23 MICHAEL E. PRANGLE, ESQ.

24 Nevada Bar No.: 8619

25 TYSON J. DOBBS, ESQ.

26 Nevada Bar No.: 11953

27 SHERMAN B. MAYOR, ESQ.

28 Nevada Bar No. 1491

1160 N. Town Center Dr., Ste. 200

Las Vegas, NV 89144

*Attorneys for Defendant*

*Sunrise Hospital and Medical Center, LLC*

# ***EXHIBIT A***

# ***EXHIBIT A***

RUN DATE: 07/27/16 RUN TIME: 0110 RUN USER: HPF.FEED		MEDITECH FACILITY: COCSZ IDEV - Discharge Report		PAGE 51
PATIENT: GREEN,CHLOE S ACCOUNT NO: D00113938887		A/S: 30 F LOC: D.E4 RM: D.4508 BD: 0		ADMIT: 07/14/16 DISCH/DEP: 07/16/16 STATUS: IN UNIT NO: D001315049
ATTEND DR: Kia,Ali MD REPORT STATUS: FINAL				

Press <Enter> for Order Details below

Comment: PER DR KIA DO NOT CALL FOR KUB RESULT MD WILL FOLLOW UP IN AM 07/16/16

Order's Audit Trail of Events

```

1 07/16/16 0522 DNUR.CCV Order ENTER in CM
2 07/16/16 0522 DNUR.CCV Ordering Doctor: Kia,Ali MD
3 07/16/16 0522 DNUR.CCV Order Source: TELEPHONE &VERIFIEDq
4 07/16/16 0522 interface order's status changed from TRANS to ACTIVE by NUR
5 07/16/16 0540 DNUR.CCV order acknowledged
6 07/16/16 0713 DNUR.CCV order viewed from Order Management

```

Electronics

Order Date:	07/16/16	Category	Procedure Name	Order Number	Date	Time	Pri	Qty	Ord Source	Status	Ordered By
DISCHG	DISCHARGE ORDER	20160716-0093	07/16/16	R	E	TRN	KIAAL				

Other Provider : Sig Lvl Provider :

Discharge order written date: 07/16/16  
 Discharge order written time: 1521  
 Discharge To: Home  
 Discharge Type: Adult  
 \* New/Additional DHE/Home Health orders with Discharge?  
 N

Does patient have any of the following conditions at discharge?  
 NONE

Aspirin at Discharge?  
 Aspirin Contraindications:  
 Other Specific Reason:  
 EJ Fraction:  
 ACE/ARB at Discharge?  
 ACE/ARB Contraindications:  
 Other Specific Reason:

LDL Level:  
 Statin at Discharge?  
 Statin Contraindications:  
 Other Specific Reason:  
 Beta Blocker at Discharge?  
 Beta Blocker Contraindications:

Other Specific Reason:

Antithrombotic at Discharge?  
 Antithrombotic Contraindications:

Other Specific Reason:  
 Antiplatelet Therapy at Discharge?

## PERMANENT MEDICAL RECORD COPY



RUN DATE: 07/27/16  
RUN TIME: 0110  
RUN USER: HPF.FEED

MEDITECH FACILITY: COCSZ  
IDEV - Discharge Report

PAGE 52

PATIENT: GREEN, CHLOE S  
ACCOUNT NO: D00113938887

A/S: 30 F  
LOC: D.E4  
RM: D.4508  
BD: 0

ADMIT: 07/14/16  
DISCH/DEP: 07/16/16  
STATUS: IN  
UNIT NO: D001315049

ATTEND DR: Kia, Ali MD  
REPORT STATUS: FINAL

Antiplatelet Contraindications:

Other Specific Reason:

HX or current AFIB/AFLUTTER:  
Anticoagulation Therapy at Discharge?

Anticoagulation Contraindications:

Other Specific Reason:  
Assessed for Rehabilitation?  
Reason for not ordering Rehab:

Weight Monitoring:  
Kg: 104.54  
Weight - Lb: 230  
Other Specific Frequency:

What anticoagulation med is patient being sent home on:

List reason for medication choice:

Diet: Soft  
Activity/Exercise/Limitations: No limitations  
Lifting Restrictions:

Return to Work/School:  
OK to Drive:

Call Your Doctor If -  
Fever Greater Than: 101.5

1st Follow Up:  
2nd:  
3rd:  
Physician: NO PRIMARY OR FAMILY PHYSICIAN  
Follow-Up with: Provider Entered Above  
Follow up in: 1 Week  
Reason: MED FUP

Physician: Delee, Frank J MD  
Follow-Up with: Provider Entered Above  
Follow up in: 1 Week  
Reason: OB FUP  
Physician:  
Follow-Up with:  
Follow up in:  
Reason:

Physician:  
Follow-Up with:  
Follow up in:  
Reason:

## PERMANENT MEDICAL RECORD COPY

RUN DATE: 07/27/16  
RUN TIME: 0110  
RUN USER: HPF.FEED

MEDITECH FACILITY: COCSZ  
IDEV - Discharge Report

PAGE 53

PATIENT: GREEN, CHLOE S  
ACCOUNT NO: D00113938887

A/S: 30 F  
LOC: D.E4  
RM: D.4508  
BD: 0

ADMIT: 07/14/16  
DISCH/DEP: 07/16/16  
STATUS: IN  
UNIT NO: D001315049

ATTEND DR: Kia, Alf MD  
REPORT STATUS: FINAL

Physician:  
Follow-Up with:  
Follow up in:  
Reason:  
Physician:

Follow-Up with:  
Follow up in:  
Reason:  
Physician:  
Follow-Up with:  
Follow up in:  
Reason:  
Physician:  
Follow-Up with:  
Follow up in:

Reason:  
Physician:  
Follow-Up with:  
Follow up in:  
Reason:

== INFANT/NICU ==

== INFANT/PEDIATRIC/NICU ==  
Primary Dx of Asthma:

Provide Pre-printed Mother/Infant Instructions:

== Outpatient Services Needs ==

== REHAB / SNF / LTAC / HOSPICE ONLY ==

Rehabilitation Potential: (Group response undefined)  
Anticipated LOS:  
I certify that post-hospital skilled services are required at an extended  
care facility as a continuation for which he/she was receiving in-patient  
hospital services prior to the transfer to the extended care facility.

#### Order's Audit Trail of Events

1	07/16/16 1521 DR.KIAAL	Order ENTER in POM
2	07/16/16 1521 DR.KIAAL	Ordering Doctor: Kia, Alf MD
3	07/16/16 1521 DR.KIAAL	Order Source: EPOM
4	07/16/16 1554 DNURRAW	order viewed from Order Management
5	07/16/16 1554 DNURRAW	order acknowledged
6	07/16/16 1736 DNURNPS	order acknowledged

Electronic Signature of Kia, Alf MD on 07/27/16 at 01:10:10

PERMANENT MEDICAL RECORD COPY

# ***EXHIBIT B***

# ***EXHIBIT B***

**From:** Judd, Joshua [<mailto:Dept08LC@clarkcountycourts.us>]  
**Sent:** Monday, April 01, 2019 3:03 PM  
**To:** efile; Tyson Dobbs; Office ([office@danielmarks.net](mailto:office@danielmarks.net))  
**Subject:** A757722 (Green v. DeLee et al.) Motion for Partial Summary Judgment

Good Afternoon,

At the hearing on March 12, 2019, Judge Smith deferred his decision on Defts' Motion for Partial Summary Judgment. He has reviewed the pleadings and has asked that the parties submit proposed Orders Granting in Part and Denying in Part the Motion, consistent with the following:

- GRANTED as to Plt's claims against the hospital for vicarious liability
- GRANTED as to Plt's claims against the hospital for any of Dr. DeLee's actions
- DENIED as to Plt's claims against the hospital for any of Dr. Kia's actions, under the theory of ostensible agency

Please submit your orders to me in Word format, for Judge Smith's consideration. Judge intends to write and issue his own Order from Chambers. Please let me know if you have any questions, or if anything remains unclear.

Thank you,

Joshua D. Judd, Esq.  
Court Law Clerk to the Honorable Douglas E. Smith  
Eighth Judicial District Court | Department VIII  
P: (702) 671-4335  
F: (702) 671-4337

# ***EXHIBIT C***

***EXHIBIT C***

TPC

MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No.: 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No.: 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
HALL PRANGLE & SCHOONVELD, LLC  
1160 N. Town Center Dr., Ste. 200  
Las Vegas, NV 89144  
(702) 889-6400 – Office  
(702) 384-6025 – Facsimile  
[efile@hpslaw.com](mailto:efile@hpslaw.com)  
*Attorneys for Defendant*  
*Sunrise Hospital and Medical Center, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,  
  
Plaintiff,

vs.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE  
HOSPITAL AND MEDICAL CENTER,  
LLC, a Foreign Limited-Liability Company,

Defendants.

SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC, a Foreign Limited-Liability  
Company,

Third-Party Plaintiff,

vs.

ALI KIA, M.D., Individually and his  
employer, NEVADA HOSPITALIST  
GROUP, LLP; DOES 1-10; AND ROE  
CORPORATION 1-10; inclusive.

Third-Party Defendants.

CASE NO.: A-17-757722-C  
DEPT NO.: VIII

**SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC'S THIRD PARTY  
COMPLAINT FOR CONTRIBUTION  
AND INDEMNITY (ALI KIA, M.D.)**

COMES NOW Third-Party Plaintiff, Sunrise Hospital and Medical Center ("Sunrise Hospital"), by and through its counsel of record HALL PRANGLE AND SCHOONVELD, LLC, and hereby complains and alleges against Third-Party Defendants, Ali Kia, M.D. and Nevada Hospitalist Group, LLP, as follows:

### GENERAL ALLEGATIONS

1. Third-Party Plaintiff, SUNRISE HOSPITAL AND MEDICAL CENTER, a Nevada Corporation (hereinafter referred to as "SUNRISE HOSPITAL"), is a corporation duly organized under the laws of the State of Nevada and is authorized to do business as a hospital in Clark County, Nevada.
2. Third-Party Defendant Ali Kia, M.D., is a Board-Certified Internist who practices as a "Hospitalist." Dr. Kia holds himself out as duly licensed to practice his profession under and by virtue of the laws of the State of Nevada and was, and now is, engaged in the practice of his profession in the State of Nevada.
3. Ali Kia, M.D., is an agent and/or employee of Third-Party Defendant, Nevada Hospitalist Group, LLP. Nevada Hospitalist Group, LLP is a Nevada Limited Liability Partnership in Clark County, Nevada.
4. Plaintiff, Choloe Green, an individual, has asserted that Ali Kia, M.D., is an ostensible agent of Third-Party Plaintiff Sunrise Hospital. The court has denied Sunrise Hospital's motion to dismiss such potential claim finding there is a factual issue to be resolved by the finder of fact.
5. On information and belief DOES/ROE Corporations were the employer and/or were responsible for Third-Party Defendant Ali Kia M.D. being called into consulting and/or treating Plaintiff Choloe Green for her Sunrise hospitalization which commenced on July

1 14, 2016. When the true names and capacities of said Third-Party Defendants  
2 DOES/ROE Corporations have been ascertained, Third-Party Plaintiff will amend this  
3 Third-Party Complaint accordingly.

4 **STATEMENTS OF FACTS**

- 5 6. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and  
6 every allegation contained in paragraphs 1-5 as though fully set forth herein.
- 7
- 8 7. Plaintiff, Choloe Green, had a caesarian section birth on July 9, 2016 at Sunrise Hospital  
9 with Frank J. DeLee, M.D., as the treating Obstetrician. Plaintiff was released home on  
10 the first post-operative day, July 10, 2016. Plaintiff contends in her complaint that her  
11 release was premature since a routine post-operative course is 3-4 days. Plaintiff also  
12 contends in her complaint that she was released prior to tolerating clear liquids and  
13 passing flatus.
- 14
- 15 8. Plaintiff alleges that Sunrise Hospital and Dr. DeLee breached the applicable standard of  
16 care in discharging Plaintiff from the hospital on July 10, 2016. *See* attached Exhibit "A"  
17 (Plaintiff's Choloe Green's Complaint for Medical Malpractice and Affidavit of Lisa  
18 Karamardian, M.D.).
- 19
- 20 9. Plaintiff, Choloe Green asserts that she was readmitted to Sunrise Hospital on July 14,  
21 2016 with severe abdominal pain, nausea, vomiting, fever and chills. Ms. Green was  
22 admitted to the medical/surgical unit of the hospital. She was seen, treated, and/or  
23 consulted by Frank J. DeLee, M.D. and Ali Kia, M.D.
- 24
- 25 10. Plaintiff was discharged from Sunrise Hospital on July 16, 2016. Plaintiff alleges that her  
26 discharge was "discussed and confirmed by Dr. DeLee. . ."
- 27
- 28 11. The Sunrise Hospital records indicate that Ali Kia, M.D. ordered and electronically  
signed Plaintiff's July 16, 2016 discharge from Sunrise Hospital.



12. Plaintiff contends that her second discharge from sunrise Hospital on July 16, 2016 violated the standard of care. Plaintiff asserts that she was not able to tolerate a regular diet at the time of discharge and that her KUB showed multiple dilated loops of bowel (which Plaintiff asserts are related to small bowel obstruction).
13. Plaintiff alleges in her underlying complaint that because of the aforementioned negligence and breaches of the standard of care she suffered a protracted hospital course with multiple complications including discharge to a step-down facility once her antibiotic course was felt to be completed. Plaintiff asserts that she remained on a feeding tube and in need of rehabilitation.
14. Plaintiff contends that it was Sunrise Hospital and Dr. DeLee that breached the standard of care in discharging her from the hospital July 16, 2016.
15. Sunrise Hospital filed a Motion for Partial Summary Judgment which, in part, sought to dismiss any potential claim that Ali Kia, M.D. was an ostensible agent of the hospital during Plaintiff's July 14 – 16, 2016 hospitalization. The court denied the motion finding that there was a genuine issue of fact to be resolved by the finder of fact (jury).
16. Third-Party Defendant, Ali Kia, M.D. was "on call" for Nevada Hospitalist Group, LLP which resulted in Dr. Kia becoming a treating physician of the underlying Plaintiff, Choloe Green.
17. When Dr. Kia was "on call" for Nevada Hospitalist Group he was employed and/or an agent of Nevada Hospitalist Group.

**THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL CLAIM FOR INDEMNITY AND CONTRIBUTION AGAINST ALI KIA, M.D., AND NEVADA HOSPITALIST GROUP**

18. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and every allegation contained in paragraphs 1-17 as though fully set forth herein.

- 1 19. Plaintiff contends that she suffered injury and damage as a result of the care and  
2 treatment she received at Sunrise Hospital for her July 9, 2016 and July 14, 2016  
3 hospitalizations.
- 4 20. Frank J. DeLee, M.D. discharged Choloe Green from her first hospitalization at  
5 Sunrise Hospital on July 10, 2016. Ali Kia, M.D. discharged Choloe Green from her  
6 second hospitalization at Sunrise Hospital on July 16, 2016.
- 7 21. The court has determined that during Plaintiff's July 9, 2016 hospitalization and July  
8 16, 2016 hospitalization, Frank J. DeLee, M.D. was not an ostensible agent of the  
9 hospital and the hospital is not vicariously liable for Dr. DeLee.
- 10 22. The court has also determined that Sunrise Hospital is not vicariously liable for any  
11 care or treatment rendered by Ali Kia, M.D. to Plaintiff, Choloe Green during her  
12 July 16, 2016 hospital admission. The court, however, denied Sunrise Hospital's  
13 motion to dismiss any claim that Dr. Kia was an ostensible agent of the hospital  
14 during this same hospital admission (genuine issue of material fact precluding  
15 summary judgment).
- 16 23. Although unnamed as a party in Plaintiff Choloe Green's underlying complaint, Ali  
17 Kia, M.D. (Third-Party Defendant) discharged Plaintiff on July 16, 2016. As such,  
18 Dr. Kia's care of Choloe Green is at issue in Plaintiff's underlying complaint.
- 19 24. Attached as Exhibit "A" to this Third-Party Complaint is the Plaintiff, Choloe  
20 Green's underlying complaint for medical malpractice and attached expert affidavit of  
21 Lisa Karamardian, M.D.
- 22 25. Third-Party Plaintiff Sunrise Hospital pursuant to NRS 17.225 and 17.285, Nevada's  
23 contribution statutes, and also the doctrine equitable indemnity, seeks judgment  
24  
25  
26  
27  
28

1 against Ali Kia, M.D. and Nevada Hospitalist Group for any amount awarded (by  
2 verdict or judgment) against the hospital resulting from Ali Kia, M.D.'s treatment and  
3 care of Choloe Green during her July 14, 2016 hospital admission.

4 26. WHEREFORE, Third-Party Plaintiff Sunrise Hospital and Medical Center prays that  
5 judgment be entered in its favor and against Third-Party Defendants, Ali Kia, M.D.,  
6 and Nevada Hospitalist Group, LLP, in an amount commensurate with the relative  
7 degree of fault by Dr. Kia in causing the Plaintiff's alleged injuries and damages.  
8

9 DATED this 24<sup>th</sup> day of April, 2019.

10 HALL PRANGLE & SCHOONVELD, LLC

11  
12 By: \_\_\_\_\_

13 MICHAEL E. PRANGLE, ESQ.

14 Nevada Bar No.: 8619

15 TYSON J. DOBBS, ESQ.

16 Nevada Bar No.: 11953

17 SHERMAN B. MAYOR, ESQ.

18 Nevada Bar No. 1491

19 1160 N. Town Center Dr., Ste. 200

20 Las Vegas, NV 89144

21 *Attorneys for Defendant*

22 *Sunrise Hospital and Medical Center, LLC*  
23  
24  
25  
26  
27  
28

*Steven D. Grierson*

1 **COMP**  
2 **LAW OFFICE OF DANIEL MARKS**  
3 **DANIEL MARKS, ESQ.**  
4 **Nevada State Bar No. 002003**  
5 **NICOLE M. YOUNG, ESQ.**  
6 **Nevada State Bar No. 12659**  
7 **610 South Ninth Street**  
8 **Las Vegas, Nevada 89101**  
9 **(702) 386-0536; Fax (702) 386-6812**  
10 **Attorneys for Plaintiff**

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **CHLOE GREEN, an individual,**  
10  
11 **Plaintiff,**

**Case No.**  
**Dept. No.**

**A-17-757722-C** *y*

**Department 8**

12 **v.**

13 **FRANK J. DELEE, M.D., an individual;**  
14 **FRANK J. DELEE MD, PC, a Domestic**  
15 **Professional Corporation, SUNRISE HOSPITAL**  
16 **AND MEDICAL CENTER, LLC, a Foreign**  
17 **Limited-Liability Company.**

**Arbitration Exempt -- Action**  
**for Medical Malpractice**

16 **Defendants.**

18 **COMPLAINT FOR MEDICAL MALPRACTICE**

19 **COMES NOW Plaintiff Chloe Green, by and through undersigned counsel Daniel Marks, Esq., and**  
20 **Nicole M. Young, Esq., of the Law Office of Daniel Marks, and for her claims against Defendants herein**  
21 **allege as follows:**

- 22 1. That at all times material hereto, Plaintiff Chloe Green (hereinafter "Chloe") was a  
23 resident of Clark County, Nevada.  
24 2. That at all times material hereto, Defendant FRANK J. DELEE, M.D., was a licensed  
25 medical doctor in the State of Nevada, and practiced in his professional corporation entitled  
26 FRANK J. DELEE MD, PC.

27 **////**

28 **////**

- 1        3.     That at all times material hereto, Defendant FRANK J. DELEE MD, PC, was a domestic  
2           professional corporation organized and existing under the laws of the state of Nevada and  
3           registered to do business, and doing business in the State of Nevada in Clark County, Nevada.
- 4        4.     That Defendant FRANK J. DELEE, MD, is the President of Defendant FRANK J. DELEE  
5           MD, PC (hereinafter collectively referred to as "Dr. DeLee").
- 6        5.     That Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, (hereinafter  
7           "Sunrise Hospital"), was a foreign limited-liability company, registered to do business and  
8           doing business in the State of Nevada in Clark County, Nevada.
- 9        6.     That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on  
10          Cholee at Sunrise Hospital. Cholee was discharged from the hospital the following day, on  
11          July 10, 2016, even though she did not have bowel movement prior to being discharged from  
12          the hospital.
- 13       7.     On July 13, 2016, Cholee had an appointment with Dr. DeLee. At that appointment, Cholee  
14          notified Dr. DeLee that she had not had a bowel movement post C-section. He did not provide  
15          any care or treatment to Cholee regarding her lack of a bowel movement.
- 16       8.     On July 14, 2016, after still not having a bowel movement post C-section, Cholee went to  
17          the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea,  
18          vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the  
19          diagnosis of sepsis. Sunrise Hospital discharged Cholee on July 16, 2016, despite having a  
20          small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.
- 21       9.     On July 17, 2016, Cholee went to the emergency room at Centennial Hills Hospital where  
22          she was admitted until she was finally discharged on September 2, 2016. Centennial Hills  
23          admitted Cholee with the diagnosis of small bowel obstruction. She had an NG Tube placed,  
24          underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS,  
25          and eventually needed a tracheostomy and PEG tube placement.
- 26       10.    That Defendant Dr. DeLee and Sunrise Hospital breached the standard of care in their  
27          treatment of Cholee and as a direct and proximate result of that breach, Cholee has been  
28          damaged.

1 11. That as a direct and proximate result of all of the Defendants' negligence, Cholee has been  
2 damaged in an amount in excess of \$15,000.00.

3 12. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which  
4 is attached hereto as Exhibit "1".

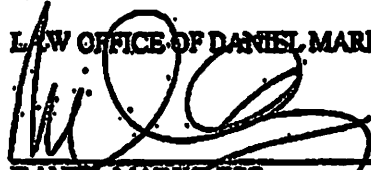
5 13. Cholee has been forced to retain counsel to bring this action and should be awarded his  
6 reasonable attorneys fees and costs.

7 WHEREFORE, Cholee prays for judgment against the Defendants, and each of them, as follows:

- 8 1. For special damages in a sum in excess of \$15,000.00;  
9 2. For compensatory damages in a sum in excess of \$15,000.00;  
10 3. For reasonable attorney's fees and litigation costs incurred;  
11 4. For such other and further relief as the Court deems just and proper.

12 DATED this 30 day of June, 2017.

13 LAW OFFICE OF DANIEL MARKS

14   
15 DANIEL MARKS, ESQ.  
16 Nevada State Bar No. 002003  
17 NICOLE M. YOUNG, ESQ.  
18 Nevada State Bar No. 012659  
19 610 South Ninth Street  
20 Las Vegas, Nevada 89101  
21 Attorneys for Plaintiff  
22  
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VERIFICATION

STATE OF NEVADA  
COUNTY OF CLARK }

ss:

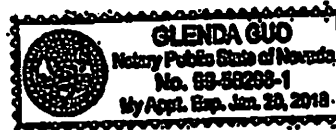
CHLOE GREEN, being first duly sworn, deposes and says:

That I am the Plaintiff in the above-entitled matter, that I have read the above and foregoing Complaint and know the contents thereof; that the same are true of my knowledge except for those matters stated upon information and belief, and as to those matters, I believe them to be true.

*Chloe Green*  
CHLOE GREEN

SUBSCRIBED AND SWORN to before me  
this 1st day of June, 2017.

*Glenda Guo*  
NOTARY PUBLIC in and for said  
COUNTY and STATE



---

**EXHIBIT 1**

---



**AFFIDAVIT OF DR. LISA KARAMARDIAN**

STATE OF California  
COUNTY OF Orange } ss.

DR. LISA KARAMARDIAN, being first duly sworn, under penalty of perjury, does say and depose the following:

1. That I am a medical doctor licensed in the State of California and am board certified in the field of Obstetrics and Gynecology.
2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
3. That I have reviewed Plaintiff Cholea Green's medical records relating to the care and treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center, Valley Hospital Medical Center and Centennial Hills Medical Center.
4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released home on post-operative day number one. This was a breach of the standard of care by Dr. DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.
5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16, 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated the standard of care. Ms. Green was discharged despite the fact that she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.

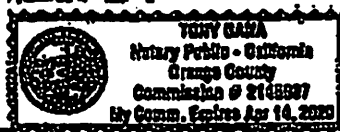
- 1 6. The day after she was released from Sunrise Hospital, Ms. Green presented at Centennial  
2 Hills Hospital, on July 17, 2016. At the time of presentation she was now 7 days  
3 postpartum, had not had a bowel movement, and was unable to even tolerate liquids. She  
4 was still in severe pain. Her imaging studies had worsened and she was now admitted,  
5 again, with the diagnosis of small bowel obstruction. An NG tube was finally placed and  
6 a general surgery evaluation ordered. She was admitted for concern for bowel perforation.  
7 She underwent an exploratory laparotomy on July 18th for what was presumed to be a  
8 perforated viscus, but none was found intraoperatively, just diffuse ascites. Infarcted  
9 mesentery was removed and post-op her condition deteriorated, culminating in a rapid  
10 response call on July 20th when she was found to be hypoxic. By the 22nd she had diffuse  
11 pulmonary infiltrates, suggestive of pulmonary edema or ARDS, and her condition worsened. CT  
12 guided drain placement cultures of fluid revealed enterococcus fecalis, supporting the fact that  
13 there must have been a bowel perforation. She then developed a pneumothorax and eventually  
14 needed a tracheostomy and PEG tube placement. On August 5, 2016, there was difficulty with  
15 her airway support.
- 16 7. Because of the violations of the standard of care, her hospital course was protracted with  
17 multiple complications and she was apparently discharged to a step down facility once her  
18 antibiotic course was felt to be completed, still on a feeding tube and in need of rehabilitation.
- 19 8. That in my professional opinion, to a degree of medical probability, the standard of care  
20 was breached by both Dr. DeLee and Sunrise Hospital and Medical Center in their  
21 treatment of Ms. Green.

22 FURTHER YOUR AFFIANT SAYETH NAUGHT.

23   
24 LISA KARAMARDIAN, MD.

25 SUBSCRIBED and SWORN to before me  
26 this 29 day of June, 2017,

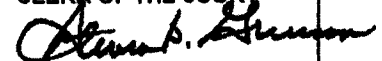
27   
28 NOTARY PUBLIC in and for said  
COUNTY and STATE



# **EXHIBIT C**

HALL PRANGLE & SCHOONVELD, LLC  
1160 NORTH TOWN CENTER DRIVE  
SUITE 200  
LAS VEGAS, NEVADA 89144  
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Electronically Filed  
6/14/2019 11:04 AM  
Steven D. Grierson  
CLERK OF THE COURT



TPC  
MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No.: 8619  
TYSON J. DOBBS, ESQ.  
Nevada Bar No.: 11953  
SHERMAN B. MAYOR, ESQ.  
Nevada Bar No. 1491  
HALL PRANGLE & SCHOONVELD, LLC  
1160 N. Town Center Dr., Ste. 200  
Las Vegas, NV 89144  
(702) 889-6400 – Office  
(702) 384-6025 – Facsimile  
[efile@hpslaw.com](mailto:efile@hpslaw.com)  
*Attorneys for Defendant*  
*Sunrise Hospital and Medical Center, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,  
  
Plaintiff,

vs.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE  
HOSPITAL AND MEDICAL CENTER,  
LLC, a Foreign Limited-Liability Company,

Defendants.

SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC, a Foreign Limited-Liability  
Company,

Third-Party Plaintiff,

vs.

ALI KIA, M.D., Individually and his  
employer, NEVADA HOSPITALIST  
GROUP, LLP; DOES 1-10; AND ROE  
CORPORATION 1-10; inclusive.

Third-Party Defendants.

CASE NO.: A-17-757722-C  
DEPT NO.: IX

**SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC'S THIRD PARTY  
COMPLAINT FOR CONTRIBUTION  
AND INDEMNITY (ALI KIA, M.D.)**

COMES NOW Third-Party Plaintiff, Sunrise Hospital and Medical Center ("Sunrise Hospital"), by and through its counsel of record HALL PRANGLE AND SCHOONVELD, LLC, and hereby complains and alleges against Third-Party Defendants, Ali Kia, M.D. and Nevada Hospitalist Group, LLP, as follows:

### GENERAL ALLEGATIONS

1. Third-Party Plaintiff, SUNRISE HOSPITAL AND MEDICAL CENTER, a Nevada Corporation (hereinafter referred to as "SUNRISE HOSPITAL"), is a corporation duly organized under the laws of the State of Nevada and is authorized to do business as a hospital in Clark County, Nevada.
2. Third-Party Defendant Ali Kia, M.D., is a Board-Certified Internist who practices as a "Hospitalist." Dr. Kia holds himself out as duly licensed to practice his profession under and by virtue of the laws of the State of Nevada and was, and now is, engaged in the practice of his profession in the State of Nevada.
3. Ali Kia, M.D., is an agent and/or employee of Third-Party Defendant, Nevada Hospitalist Group, LLP. Nevada Hospitalist Group, LLP is a Nevada Limited Liability Partnership in Clark County, Nevada.
4. Plaintiff, Choloe Green, an individual, has asserted that Ali Kia, M.D., is an ostensible agent of Third-Party Plaintiff Sunrise Hospital. The court has denied Sunrise Hospital's motion to dismiss such potential claim finding there is a factual issue to be resolved by the finder of fact.
5. On information and belief DOES/ROE Corporations were the employer and/or were responsible for Third-Party Defendant Ali Kia M.D. being called into consulting and/or treating Plaintiff Choloe Green for her Sunrise hospitalization which commenced on July

1 14, 2016. When the true names and capacities of said Third-Party Defendants  
2 DOES/ROE Corporations have been ascertained, Third-Party Plaintiff will amend this  
3 Third-Party Complaint accordingly.

4 **STATEMENTS OF FACTS**

- 5 6. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and  
6 every allegation contained in paragraphs 1-5 as though fully set forth herein.
- 7 7. Plaintiff, Choloe Green, had a caesarian section birth on July 9, 2016 at Sunrise Hospital  
8 with Frank J. DeLee, M.D., as the treating Obstetrician. Plaintiff was released home on  
9 the first post-operative day, July 10, 2016. Plaintiff contends in her complaint that her  
10 release was premature since a routine post-operative course is 3-4 days. Plaintiff also  
11 contends in her complaint that she was released prior to tolerating clear liquids and  
12 passing flatus.
- 13 8. Plaintiff alleges that Sunrise Hospital and Dr. DeLee breached the applicable standard of  
14 care in discharging Plaintiff from the hospital on July 10, 2016. *See* attached Exhibit "A"  
15 (Plaintiff's Choloe Green's Complaint for Medical Malpractice and Affidavit of Lisa  
16 Karamardian, M.D.).
- 17 9. Plaintiff, Choloe Green asserts that she was readmitted to Sunrise Hospital on July 14,  
18 2016 with severe abdominal pain, nausea, vomiting, fever and chills. Ms. Green was  
19 admitted to the medical/surgical unit of the hospital. She was seen, treated, and/or  
20 consulted by Frank J. DeLee, M.D. and Ali Kia, M.D.
- 21 10. Plaintiff was discharged from Sunrise Hospital on July 16, 2016. Plaintiff alleges that her  
22 discharge was "discussed and confirmed by Dr. DeLee. . ."
- 23 11. The Sunrise Hospital records indicate that Ali Kia, M.D. ordered and electronically  
24 signed Plaintiff's July 16, 2016 discharge from Sunrise Hospital.
- 25  
26  
27  
28

1 12. Plaintiff contends that her second discharge from sunrise Hospital on July 16, 2016  
2 violated the standard of care. Plaintiff asserts that she was not able to tolerate a regular  
3 diet at the time of discharge and that her KUB showed multiple dilated loops of bowel  
4 (which Plaintiff asserts are related to small bowel obstruction).

5 13. Plaintiff alleges in her underlying complaint that because of the aforementioned  
6 negligence and breaches of the standard of care she suffered a protracted hospital course  
7 with multiple complications including discharge to a step-down facility once her  
8 antibiotic course was felt to be completed. Plaintiff asserts that she remained on a  
9 feeding tube and in need of rehabilitation.

10 14. Plaintiff contends that it was Sunrise Hospital and Dr. DeLee that breached the standard  
11 of care in discharging her from the hospital July 16, 2016.

12 15. Sunrise Hospital filed a Motion for Partial Summary Judgment which, in part, sought to  
13 dismiss any potential claim that Ali Kia, M.D. was an ostensible agent of the hospital  
14 during Plaintiff's July 14 – 16, 2016 hospitalization. The court denied the motion finding  
15 that there was a genuine issue of fact to be resolved by the finder of fact (jury).

16 16. Third-Party Defendant, Ali Kia, M.D. was "on call" for Nevada Hospitalist Group, LLP  
17 which resulted in Dr. Kia becoming a treating physician of the underlying Plaintiff,  
18 Choloe Green.

19 17. When Dr. Kia was "on call" for Nevada Hospitalist Group he was employed and/or an  
20 agent of Nevada Hospitalist Group.

21  
22  
23  
24 **THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL CLAIM FOR INDEMNITY AND**  
25 **CONTRIBUTION AGAINST ALI KIA, M.D., AND NEVADA HOSPITALIST GROUP**

26 18. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and  
27 every allegation contained in paragraphs 1-17 as though fully set forth herein.  
28

19. Plaintiff contends that she suffered injury and damage as a result of the care and treatment she received at Sunrise Hospital for her July 9, 2016 and July 14, 2016 hospitalizations.
20. Frank J. DeLee, M.D. discharged Choloe Green from her first hospitalization at Sunrise Hospital on July 10, 2016. Ali Kia, M.D. discharged Choloe Green from her second hospitalization at Sunrise Hospital on July 16, 2016.
21. The court has determined that during Plaintiff's July 9, 2016 hospitalization and July 16, 2016 hospitalization, Frank J. DeLee, M.D. was not an ostensible agent of the hospital and the hospital is not vicariously liable for Dr. DeLee.
22. The court has also determined that Sunrise Hospital is not vicariously liable for any care or treatment rendered by Ali Kia, M.D. to Plaintiff, Choloe Green during her July 16, 2016 hospital admission. The court, however, denied Sunrise Hospital's motion to dismiss any claim that Dr. Kia was an ostensible agent of the hospital during this same hospital admission (genuine issue of material fact precluding summary judgment).
23. Although unnamed as a party in Plaintiff Choloe Green's underlying complaint, Ali Kia, M.D. (Third-Party Defendant) discharged Plaintiff on July 16, 2016. As such, Dr. Kia's care of Choloe Green is at issue in Plaintiff's underlying complaint.
24. Attached as Exhibit "A" to this Third-Party Complaint is the Plaintiff, Choloe Green's underlying complaint for medical malpractice and attached expert affidavit of Lisa Karamardian, M.D.
25. Third-Party Plaintiff Sunrise Hospital pursuant to NRS 17.225 and 17.285, Nevada's contribution statutes, and also the doctrine equitable indemnity, seeks judgment



1 against Ali Kia, M.D. and Nevada Hospitalist Group for any amount awarded (by  
2 verdict or judgment) against the hospital resulting from Ali Kia, M.D.'s treatment and  
3 care of Choloe Green during her July 14, 2016 hospital admission.

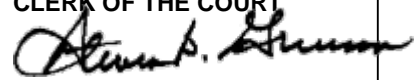
4 26. WHEREFORE, Third-Party Plaintiff Sunrise Hospital and Medical Center prays that  
5 judgment be entered in its favor and against Third-Party Defendants, Ali Kia, M.D.,  
6 and Nevada Hospitalist Group, LLP, in an amount commensurate with the relative  
7 degree of fault by Dr. Kia in causing the Plaintiff's alleged injuries and damages.  
8

9 DATED this 14<sup>th</sup> day of June, 2019.

10 HALL PRANGLE & SCHOONVELD, LLC  
11

12 By: /s/ Tyson J. Dobbs  
13 MICHAEL E. PRANGLE, ESQ.  
14 Nevada Bar No.: 8619  
15 TYSON J. DOBBS, ESQ.  
16 Nevada Bar No.: 11953  
17 SHERMAN B. MAYOR, ESQ.  
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22 *Sunrise Hospital and Medical Center, LLC*  
23  
24  
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28

# **EXHIBIT D**



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*Attorneys for Third-Party Defendant Nevada*  
7 *Hospitalist Group, LLP*

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,  
12 Plaintiff,

13 vs.

14 FRANK J. DELEE, M.D., an individual;  
15 FRANK J. DELEE, MD, PC, a Domestic  
Professional Corporation, SUNRISE  
HOSPITAL AND MEDICAL CENTER, LLC,  
a foreign Limited-Liability Company, ,

16 Defendants.

17  
18 SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC, a Foreign Limited-Liability  
Company,

19 Third-Party Plaintiff,

20 vs.

21 ALI KIA, M.D., Individually and his  
22 employer, NEVADA HOSPITALIST  
GROUP, LLP; DOES 1-10; AND ROE  
23 CORPORATION 1-10; inclusive.,

24 Third-Party Defendants.

CASE NO. A-17-757722-C  
Dept. No.: IX

25 **HEARING REQUESTED**

**THIRD-PARTY DEFENDANT NEVADA  
HOSPITALIST GROUP, LLP'S MOTION  
FOR JUDGMENT ON THE PLEADINGS**

26 Third-Party Defendant NEVADA HOSPITALIST GROUP, LLP, by and through its  
27 attorneys of record, S. Brent Vogel, Esq. and Erin E. Jordan, Esq. of LEWIS BRISBOIS  
28 BISGAARD & SMITH LLP, hereby files this Motion for Judgment on the Pleadings.

1 This Motion is based upon the following Memorandum of Points and Authorities, the  
2 papers and pleadings on file in this matter, and any oral argument offered at the hearing of this  
3 matter.

4 DATED this 19th day of March, 2020.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6  
7

8 By /s/ Erin E. Jordan

9 S. BRENT VOGEL

10 Nevada Bar No. 006858

11 ERIN E. JORDAN

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16 *Attorneys for Third-Party Defendant Nevada  
Hospitalist Group, LLP*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. FACTUAL BACKGROUND**

19 This is a professional negligence case that arises out of medical care and treatment  
20 Defendants Dr. DeLee and Sunrise Hospital provided to Choloe Green between July 9, 2016 and  
21 July 17, 2016 following a cesarean section. Complaint, ¶¶ 6-17. Plaintiff alleges that Defendants  
22 Dr. DeLee and Sunrise Hospital breached the standard of care while caring for her following the  
23 cesarean section and that she sustained injury requiring long-term hospitalization as a result. *Id.*,  
¶¶ 10-11.

24 Plaintiff Choloe Green brought a claim for professional negligence against Dr. DeLee and  
25 Sunrise Hospital on June 20, 2017. Defendant Sunrise Hospital filed a Third-Party Complaint  
26 against two Third-Party Defendants, Ali Kia, M.D. and Nevada Hospitalist Group, LLP on June  
27 14, 2019. Third-Party Plaintiff Sunrise Hospital brought claims against Dr. Kia and Nevada  
28 Hospitalist Group, LLP for contribution and indemnity. The basis for Sunrise Hospital's third-

1 party claims against Nevada Hospitalist Group, LLP was alleged vicarious liability for the alleged  
2 professional negligence of Third-Party Defendant Ali Kia, M.D. Third-Party Complaint, ¶¶ 6-17.

3 Third-Party Plaintiff Sunrise Hospital specifically alleges that the bases of its claims  
4 against Third-Party Defendants Dr. Kia and Nevada Hospitalist Group is the medical care and  
5 treatment that Dr. Kia provided to Choloe Green on July 16, 2016. Third-Party Complaint, ¶ 23  
6 (“Although unnamed as a party in Plaintiff Choloe Green’s underlying complaint, Ali Kia, M.D.  
7 (Third-Party Defendant) discharged Plaintiff on July 16, 2016. **As such, Dr. Kia’s care of**  
8 **Choloe Green is at issue in Plaintiff’s underlying complaint.**”) (emphasis added). Sunrise  
9 Hospital did not attach an affidavit of merit specifying breaches of the standard of care of either  
10 Dr. Kia or Nevada Hospitalist Group, LLP, and has therefore failed to satisfy NRS 41A.071.

## 11 II. ARGUMENT

### 12 a. Motion for Judgment on the Pleadings Standard of Review

13 Nevada Rule of Civil Procedure 12(c) provides that “[a]fter the pleadings are closed but  
14 early enough not to delay trial, a party may move for judgment on the pleadings.” NRCP  
15 12(h)(2)(B) further provides that the “defense of failure to state a claim upon which relief can be  
16 granted...may be raised...by a motion under Rule 12(c).”

17 The Nevada Supreme Court has held that a motion for judgment on the pleadings should  
18 be granted where material facts “are not in dispute and the movant is entitled to judgment as a  
19 matter of law.” *Bonicamp v. Vazquez*, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004). The motion is  
20 useful where only questions of law remain. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135,  
21 (1987). NRCP 12(c) may also be utilized where there are “allegations in the plaintiff’s pleadings  
22 that, if proved, would [not] permit recovery.” *Id.* at 136. See also NRCP 12(h)(2)(B) (allowing the  
23 defense of failure to state a claim upon which relief may be granted to be asserted in a motion for  
24 judgment on the pleadings). The latter scenario is the one applicable here.

25 The defense of failure to state a claim may be raised at any time. *Clark County Sch. Dist.*  
26 *v. Richardson Constr., Inc.*, 123 Nev. 382, 396 (2007) (“a defense under NRCP 12(b)(5) need not  
27 be pleaded affirmatively because it may be asserted at any time.”). It is appropriate to grant a  
28 Defendant judgment on the pleadings pursuant to NRCP 12 when a professional negligence

1 Plaintiff has failed to comply with NRS 41A.071. *Peck v. Zipf*, 133 Nev. Adv. Rep. 108 (2017)  
2 (“Based on the foregoing, we affirm the district court’s order granting Doctors Zipf’s and  
3 Barnum’s motion for judgment on the pleadings because Peck failed to include a medical expert  
4 affidavit with his medical malpractice complaint.”).

5 Here, the Plaintiff has failed to comply with NRS 41A.071, and therefore, judgment on the  
6 pleadings in Third-Party Defendant Nevada Hospitalist Group, LLC’s favor should be granted.

7 **b. The Third-Party Plaintiff Has Failed to State A Claim for Professional**  
8 **Negligence by Failing to Comply with NRS 41A.071, and Therefore, Third-**  
9 **Party Defendant Nevada Hospitalist Group, LLP is Entitled to Judgment as a**  
10 **Matter of Law**

11 A Plaintiff that files a professional negligence action must attach a supporting affidavit to  
12 his or her Complaint, which supports the allegations in the Complaint. NRS 41A.071. This  
13 statute requires a Plaintiff to provide an expert opinion that supports the allegations in the  
14 complaint. The expert must practice in an area that is substantially similar to the type of practice  
15 engaged in at the time of the alleged professional negligence.

16 NRS 41A.071 Dismissal of action filed without affidavit of medical expert. If  
17 an action for professional negligence is filed in the district court, the district court  
18 shall dismiss the action, without prejudice, if the action is filed without an  
19 affidavit that:

1. Supports the allegations contained in the action;
2. Is submitted by a medical expert who practices or has practiced in  
an area that is substantially similar to the type of practice engaged in at the  
time of the alleged professional negligence;
3. Identifies by name, or describes by conduct, each provider of  
health care who is alleged to be negligent; and
4. Sets forth factually a specific act or acts of alleged negligence  
separately as to each defendant in simple, concise and direct terms.

21 It is well-established that NRS 41A.071 was enacted to deter frivolous claims and provide  
22 Defendants with notice of the claims against them. *Zohar v. Zbiegien*, 130 Nev. Adv. Rep. 74, \*2  
23 (2014). A Complaint that is filed in violation of NRS 41A.071 is *void ab initio* and must be  
24 dismissed. *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1300 (2006) (“We  
25 conclude that, under NRS 41A.071, a complaint filed without a supporting medical expert  
26 affidavit is void ab initio and must be dismissed.”).

27 In this case, the Third-Party Plaintiff Sunrise Hospital filed a Third-Party Complaint that  
28 fails to satisfy NRS 41A.071 and therefore, judgment on the pleadings in favor of Defendant

1 Nevada Hospitalist Group, LLP is warranted.

2 Third-Party Plaintiff Sunrise Hospital did not attach a NRS 41A.071 affidavit to its Third-  
3 Party Complaint. However, Sunrise Hospital acknowledges that this is a professional negligence  
4 claim and that NRS 41A.071 applies by referencing it in the Third-Party Complaint. Third-Party  
5 Complaint, ¶ 24.

6 24. Attached as Exhibit "A" to this Third-Party Complaint is the Plaintiff, Choloe  
7 Green's underlying complaint for medical malpractice and attached expert affidavit of  
8 Lisa Karamardian, M.D.  
9

10 Third-Party Plaintiff Sunrise Hospital only refers to the affidavit filed by Plaintiff Choloe Green.  
11 Plaintiff Choloe Green's NRS 41A.071 affidavit does not state that Dr. Kia breached the standard  
12 of care or caused injury to her. Rather, it identifies alleged breaches of the standard of care by  
13 Defendants Dr. DeLee and Sunrise Hospital only. Karamardian Affidavit Attached to Complaint,  
14 ¶ 5. The following paragraph discusses the hospital admission during which Dr. Kia provided care  
15 to Ms. Green, but does not identify any alleged breaches of the standard of care by Dr. Kia. *Id.*

16 5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented  
17 again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain  
18 and reports of nausea, vomiting, fever, and chills. She was admitted to the  
19 medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16,  
20 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated  
21 the standard of care. Ms. Green was discharged despite the fact that she was not able to  
22 tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple  
23 dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was  
24 sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent  
25 home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.  
26

27 Sunrise Hospital did not provide an affidavit that states that Dr. Kia breached the standard  
28 of care, which is required by NRS 41A.071. While Sunrise Hospital labeled its claims against Dr.

1 Kia and Nevada Hospitalist Group as claims for contribution and indemnity, the gravamen of  
2 those claims is the alleged professional negligence of Dr. Kia. Without any professional  
3 negligence by Dr. Kia, Sunrise Hospital's claims for contribution and indemnity would fail.  
4 Therefore, a NRS 41A.071 requires an affidavit setting forth alleged breaches of the standard of  
5 care on the part of Dr. Kia and Nevada Hospitalist Group, LLP.

6 A claim sounds in malpractice if it is related to medical diagnosis, judgment, or treatment.  
7 *Deboer v. Senior Bridges of Sparks Family Hospital, Inc.*, 282 P.3d 727 (Nev. 2012). ("Savage's  
8 complaint was grounded in ordinary negligence, as it was not related to medical diagnosis,  
9 judgment, or treatment. As such, the district court erred in branding Savage's complaint as a  
10 medical malpractice claim."). Here, Third-Party Plaintiff Sunrise Hospital's claims for  
11 contribution and indemnity against Dr. Kia are based upon allegations that he was professionally  
12 negligent and its claims against Nevada Hospitalist Group, LLP are based upon allegations that it  
13 is vicariously negligence for the alleged professional negligence of Dr. Kia. Therefore, pursuant  
14 to *Deboer* and *Szymborski*, the claims are grounded in professional negligence and NRS 41A.071  
15 applies. *Id.*, *Szymborski v. Spring Mt. Treatment Ctr.*, 133 Nev. Adv. Rep. 80, ("Allegations of  
16 breach of duty involving medical judgment, diagnosis, or treatment indicate that a claim is for  
17 medical malpractice.").

18 The Nevada Supreme Court has adopted this analysis and held that a contribution claim  
19 based upon medical malpractice allegations is subject to the affidavit requirement found in NRS  
20 41A.071. *Pack v. LaTourette*, 128 Nev. 264, 270 (2012).

21 Here, Sun Cab's complaint rested upon the theory that La Tourette's negligence  
22 had contributed to Zinni's injuries. In other words, to establish a right to  
23 contribution, Sun Cab would have been required to establish that LaTourette  
24 committed medical malpractice. Thus, Sun Cab is required to satisfy the statutory  
prerequisites in place for a medical malpractice action before bringing its  
contribution claim.

25 *Id.*

26 There can be no dispute that Third-Party Plaintiff Sunrise Hospital did not attach an  
27 affidavit that discusses alleged breaches of the standard of care by either Dr. Kia or Nevada  
28 Hospitalist Group, LLP and that, therefore, it did not satisfy NRS 41A.71.



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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 19th day of March, 2020, a true and correct copy of THIRD-  
3 PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT  
4 ON THE PLEADINGS was served by electronically filing with the Clerk of the Court using the  
5 Electronic Service system and serving all parties with an email-address on record, who have  
6 agreed to receive Electronic Service in this action.

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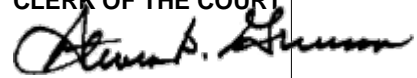
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25  
26  
27  
28  
By /s/ Johana Whitbeck  
An Employee of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

# **EXHIBIT E**



**JOIN**

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*Attorneys for Third-Party Defendant*

ALI KIA, M.D.

**DISTRICT COURT**

**CLARK COUNTY, NEVEDA**

CHOLOE GREEN, an individual,

Plaintiffs,

vs.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE  
HOSPITAL AND MEDICAL CENTER, LLC,  
a Foreign Limited-Liability Company.

Defendants.

SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC, a Foreign Limited-Liability  
Company,

Third-Party Plaintiff,

vs.

ALI KIA, M.D., Individually and his employer  
NEVADA HOSPITALIST GROUP, LLP,  
DOES 1-10; AND ROE CORPORATION 1-  
10, inclusive.

Third-Party Defendants.

CASE NO.: A-17-757722-C

DEPT. NO.: VIII

**THIRD PARTY DEFENDANT ALI KIA,  
M.D.'S JOINDER IN THIRD-PARTY  
DEFENDANT NEVADA HOSPITALIST  
GROUP, LLP'S MOTION FOR  
JUDGMENT ON THE PLEADINGS  
AND REPLY IN SUPPORT OF  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

**DATE: APRIL 21, 2020**

**TIME: 8:30 A.M.**

COMES NOW Third-Party Defendant ALI KIA, M.D., by and through his attorneys,  
the law office of COLLINSON, DAEHNKE, INLOW & GRECO, and hereby file this  
Joinder in NEVADA HOSPITALIST GROUP, LLP's Motion for Judgment on the  
Pleadings.

This Joinder is made and based on the Points and Authorities contained in Nevada  
Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Reply in Support of  
Motion for Judgment on the Pleadings, as such applies equally to Dr. Kia. Thus, Nevada  
Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Reply in Support of  
Motion for Judgment on the Pleadings is hereby referenced and incorporated as though fully  
set forth herein.

This Joinder is also based on the pleadings and papers on file herein and any oral  
argument that may be permitted at the hearing on this matter.

DATED: April 13, 2020

**COLLINSON, DAEHNKE, INLOW & GRECO**

BY: /s/ Linda K. Rurangirwa

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ALI KIA, M.D.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 13<sup>th</sup> day of April 2020, a true and correct copy of **THIRD**  
3 **PARTY DEFENDANT ALI KIA, M.D.'S JOINDER IN THIRD-PARTY DEFENDANT**  
4 **NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT ON THE**  
5 **PLEADINGS AND REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE**  
6 **PLEADINGS** was served by electronically filing with the Clerk of the Court using the  
7 Odyssey File & Serve system and serving all parties with an email address on record, who  
8 have agreed to receive Electronic Service in this action.

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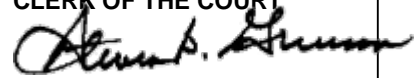
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*Nevada Hospitalist Group, LLP*  
5

6 By /s/ Linda K. Rurangirwa  
7 An employee of COLLINSON, DAEHNKE,  
INLOW & GRECO  
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# **EXHIBIT F**





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7 *Attorneys for Third-Party Defendant Nevada*  
*Hospitalist Group, LLP*

8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA  
11

12 CHOLOE GREEN, an individual,

13 Plaintiff,

14 vs.

15 FRANK J. DELEE, M.D., an individual;  
16 FRANK J. DELEE, MD, PC, a Domestic  
Professional Corporation, SUNRISE  
17 HOSPITAL AND MEDICAL CENTER, LLC,  
a foreign Limited-Liability Company, ,

18 Defendants.

19 SUNRISE HOSPITAL AND MEDICAL  
20 CENTER, LLC, a Foreign Limited-Liability  
Company,

21 Third Party Plaintiff,

22 vs.

23 ALI KIA, M.D., Individually and his  
24 employer, NEVADA HOSPITALIST  
GROUP, LLP; DOES 1-10; AND ROE  
25 CORPORATION 1-10; inclusive.,

26 Third Party Defendants.  
27  
28

CASE NO. A-17-757722-C  
Dept. No.: IX

**NOTICE OF ENTRY OF ORDER**

1 PLEASE TAKE NOTICE that an ORDER was entered with the Court in the above-  
2 captioned matter on the 1st day of September 2020, a copy of which is attached hereto.

3  
4 DATED this 1<sup>st</sup> day of September, 2020

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7  
8 By /s/ Erin E. Jordan

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of September, 2020, a true and correct copy of **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the Electronic Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

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7 *Hospitalist Group, LLP*

8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,  
12  
13 Plaintiff,

14 vs.

15 FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE, MD, PC, a Domestic  
Professional Corporation, SUNRISE  
16 HOSPITAL AND MEDICAL CENTER, LLC,  
a foreign Limited-Liability Company, ,

17 Defendants.

CASE NO. A-17-757722-C  
Dept. No.: IX

**JUDGMENT UPON THE PLEADINGS IN  
FAVOR OF THIRD-PARTY DEFENDANT  
NEVADA HOSPITALIST GROUP, LLP'S  
AND AGAINST SUNRISE HOSPITAL  
MEDICAL CENTER, LLC**

18  
19 SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC, a Foreign Limited-Liability  
20 Company,

21 Third Party Plaintiff,

22 vs.

23 ALI KIA, M.D., Individually and his  
employer, NEVADA HOSPITALIST  
24 GROUP, LLP; DOES 1-10; AND ROE  
CORPORATION 1-10; inclusive.,

25 Third Party Defendants.  
26

27 PLEASE TAKE NOTICE that the above-entitled matter came before the Court for  
28 decision on Third-Party Defendant NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR

1 JUDGMENT ON THE PLEADINGS AND THIRD-PARTY DEFENDANT ALI KIA, M.D.'S  
2 JOINDER THERETO. The Court heard and considered oral argument and evidence presented by  
3 the parties. The Court thereafter issued its Order granting Judgment on the Pleadings in favor of  
4 Nevada Hospitalist Group, LLP and against Sunrise Hospital and Medical Center. A copy of the  
5 Notice of Entry of Order Regarding Third-Party Defendant Nevada Hospitalist Group, LLP's  
6 Motion for Judgment on the Pleadings and Third-Party Defendant Ali Kia, M.D.'s Joinder  
7 Thereto, filed on June 3, 2020, is attached as Exhibit A.

8 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Judgment on the  
9 Pleadings is hereby entered in favor of Third-Party Defendant Nevada Hospitalist Group, LLP and  
10 against Sunrise Hospital and Medical Center, LLC.

11 ~~DATED this \_\_\_\_ day of August, 2020.~~ Dated this 1st day of September, 2020

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14   
DISTRICT COURT JUDGE

ec

15  
16 Respectfully submitted by:

41B FB8 3A22 4188  
Cristina D. Silva  
District Court Judge

17 LEWIS BRISBOIS BISGAARD & SMITH LLP

18 By /s/ Erin E. Jordan

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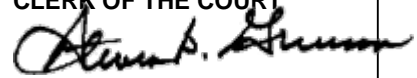
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EXHIBIT A

EXHIBIT A



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8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,  
12  
13 Plaintiff,

14 vs.

15 FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE, MD, PC, a Domestic  
Professional Corporation, SUNRISE  
16 HOSPITAL AND MEDICAL CENTER, LLC,  
a foreign Limited-Liability Company, ,

17 Defendants.

18  
19 SUNRISE HOSPITAL AND MEDICAL  
CENTER, LLC, a Foreign Limited-Liability  
20 Company,

21 Third Party Plaintiff,

22 vs.

23 ALI KIA, M.D., Individually and his  
employer, NEVADA HOSPITALIST  
24 GROUP, LLP; DOES 1-10; AND ROE  
CORPORATION 1-10; inclusive.,

25 Third Party Defendants.  
26

CASE NO. A-17-757722-C  
Dept. No.: IX

**NOTICE OF ENTRY OF ORDER  
REGARDING THIRD-PARTY  
DEFENDANT NEVADA HOSPITALIST  
GROUP, LLP'S MOTION FOR  
JUDGMENT ON THE PLEADINGS AND  
THIRD-PARTY DEFENDANT ALI KIA,  
M.D.'S JOINDER THERETO**

27 PLEASE TAKE NOTICE that the ORDER REGARDING THIRD-PARTY  
28 DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT ON

1 THE PLEADINGS AND THIRD-PARTY DEFENDANT ALI KIA, M.D.'S JOINDER  
2 THERETO was entered with the Court in the above-captioned matter on the 2nd day of June,  
3 2020, a copy of which is attached hereto.

4 DATED this 3rd day of June, 2020

5 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6  
7

8 By /s/ Erin E. Jordan

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 3rd day of June, 2020, a true and correct copy of **NOTICE OF**  
3 **ENTRY OF ORDER REGARDING THIRD-PARTY DEFENDANT NEVADA**  
4 **HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT ON THE PLEADINGS AND**  
5 **THIRD-PARTY DEFENDANT ALI KIA, M.D.'S JOINDER THERETO** was served by  
6 electronically filing with the Clerk of the Court using the Electronic Service system and serving all  
7 parties with an email-address on record, who have agreed to receive Electronic Service in this  
8 action.

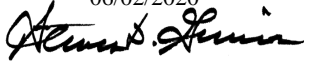
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25 By /s/ Johana Whitbeck  
26 An Employee of  
27 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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CLERK OF THE COURT

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7 *Hospitalist Group, LLP*

8  
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,  
12  
13 Plaintiff,

14 vs.

15 FRANK J. DELEE, M.D., an individual;  
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Professional Corporation, SUNRISE  
16 HOSPITAL AND MEDICAL CENTER, LLC,  
a foreign Limited-Liability Company, ,

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18

19 SUNRISE HOSPITAL AND MEDICAL  
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21 Third Party Plaintiff,

22 vs.

23 ALI KIA, M.D., Individually and his  
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24 GROUP, LLP; DOES 1-10; AND ROE  
CORPORATION 1-10; inclusive.,

25 Third Party Defendants.  
26

CASE NO. A-17-757722-C  
Dept. No.: IX

**ORDER REGARDING THIRD-PARTY  
DEFENDANT NEVADA HOSPITALIST  
GROUP, LLP'S MOTION FOR  
JUDGMENT ON THE PLEADINGS AND  
THIRD-PARTY DEFENDANT ALI KIA,  
M.D.'S JOINDER THERETO**

27 The above-entitled matter having come before the Court for decision upon Third-Party  
28 Defendant Nevada Hospitalist Group, LLP's Motion for Judgment on the Pleadings and Third-

1 Party Defendant Ali Kia, M.D.'s Joinder there-to, and oral argument being held on April 29, 2020,  
2 Erin E. Jordan, Esq. appearing on behalf of Third-Party Defendant Nevada Hospitalist Group,  
3 LLP, Sherman Mayor, Esq. appearing on behalf of Third-Party Plaintiff Sunrise Hospital and  
4 Medical Center, LLC, Linda Rurangirwa, Esq. appearing on behalf of Third-Party Defendant Ali  
5 Kia, M.D., Eric Stryker, Esq. appearing on behalf of the DeLee Defendants and Nicole Young,  
6 Esq. appearing on behalf of the Plaintiff, this Court, having considered the pleadings and papers  
7 on file, and then taken the matter under advisement, and for other good cause appearing finds as  
8 follows:

9         Similar to a motion to dismiss pursuant to NCRP 12(b)(5), when reviewing a judgment on  
10 the pleadings, the Court accepts the factual allegations in the complaint as true and draws all  
11 inferences in favor of the nonmoving party. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224,  
12 228, 181 P.3d 670, 672 (2008) (setting forth the standard of review for an order dismissing a  
13 complaint under NRCPP 12(b)(5)). Judgment on the pleadings (or a motion to dismiss pursuant to  
14 NRCPP 12(c)) is proper when as determined from the pleadings, the material facts are not in  
15 dispute and the moving party is entitled to judgment as a matter of law. *Bonicamp v. Vazquez*, 120  
16 Nev. 377, 379, 91 P.3d 584, 585 (2004).

17         When evaluating complaints that assert claims of medical negligence, a Plaintiff must  
18 comply with NRS 41A.071, which requires not only a complaint but also an accompanying  
19 affidavit setting forth the professional negligence allegations. The Supreme Court held "that courts  
20 should read the complaint and the plaintiff's NRS 41A.071 expert affidavit together when  
21 determining whether the expert affidavit meets the requirements of NRS 41A.071." *Zohar v.*  
22 *Zbiegien*, 130 Nev. 733, 739, 334 P.3d 402, 406 (2014) (citing *Great Basin Water Network v.*  
23 *Taylor*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010); *Washoe Med. Ctr. v. Second Judicial Dist.*  
24 *Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006)). The same decision went on to hold that  
25 the NRS 41A.071 affidavit requirement is a preliminary procedural rule subject to the notice-  
26 pleading standard, and must be liberally construe[d] ... in a manner that is consistent with our  
27 NRCPP 12 jurisprudence." *Borger v. Eighth Judicial District Court*, 120 Nev. 1021, 1028, 102 P.3d  
28 600, 605 (recognizing that "NRS 47A.071 governs the threshold requirements for initial pleadings

1 in medical malpractice cases, not the ultimate trial of such matters") (emphasis added); *see also*  
2 *Baxter v. Dignity Health*, 131 Nev. 759, 763-64, 357 P.3d 927, 930 (2015) (holding that NRS  
3 41A.071 must be liberally construed). The affidavit must (1) support the allegations contained in  
4 the action; (2) be submitted by a medical expert who practices or has practiced in an area that is  
5 substantially similar to the type of practice engaged in at the time of the alleged professional  
6 negligence; (3) identify by name, or describe by conduct, each provider of health care who is  
7 alleged to be negligent; and (4) set forth factually a specific act or acts of alleged negligence  
8 separately as to each defendant in simple, concise and direct terms. A complaint that does not  
9 comply with NRS 41A.071 is void ab initio, it does not legally exist and thus it cannot be  
10 amended. *Washoe Medical Center v. Second Judicial Dist. Court of State of Nevada ex rel. County*  
11 *of Washoe*, 122 Nev. 1298, 148 P.3d 790 (2006). Dismissal applies even when only some of the  
12 claims violate the requirements of NRS 41A.071 affidavit requirement.

13 Here, Third-Party Plaintiff Sunrise Hospital incorporated Plaintiff's affidavit in the filing of  
14 their Third-Party Complaint. Plaintiff's complaint and affidavit do not identify Dr. Kia or Nevada  
15 Hospitalist Group ("NHG"). Nor does either document identify any John Doe, "unknown" or  
16 "unidentified" potential defendants that could arguably be Dr. Kia and/or NHG. Because neither  
17 Dr. Kia nor NHG are identified in the complaint or the affidavit there is no identified specific act  
18 or specific acts of alleged professional negligence by Dr. Kia and NHG. Instead, the complaint and  
19 affidavit only identifies Sunrise Hospital and Dr. DeLee when laying the facts and circumstances  
20 that form the cause of action involving the alleged professional negligence. Because the Plaintiff's  
21 affidavit fails to meet the third and fourth prongs of the NRS 41A.071 affidavit requirements  
22 regarding professional negligence claims against Defendants Dr. Kia and NHG, so does the Third-  
23 Party Complaint, rendering it void ab initio. The Court recognizes that the opposition argues that  
24 this Third-Party Complaint is brought only for the purposes of contribution and indemnity. But the  
25 Court is unaware of any authority that would relieve a party of meeting the requirements set forth  
26 in NRS 41A.071 in circumstances where a Third-Party Plaintiff is only seeking indemnity and/or  
27 contribution.

28 Finally, the Court declines to address Third-Party Plaintiff's argument that the granting of

1 this motion renders the Court's prior ruling regarding the applicability of ostensible agency theory  
2 erroneous. Assuming arguendo that that is true, there is no motion, or requested relief, related to  
3 that issue pending before the Court.

4 Consequently, and based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED  
5 AND DECREED that Third-Party Defendant Nevada Hospitalist Group, LLP's Motion for  
6 Judgment on the Pleadings and Third-Party Defendant Ali Kia, M.D.'s Joinder there-to are  
7 GRANTED.  
Dated this 2nd day of June, 2020

8 Dated this \_\_\_\_\_ day of May, 2020.

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DISTRICT COURT JUDGE

MK  
28B 6D1 A711 ED7D  
Cristina D. Silva

Submitted by:

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Approved as to Form:

LAW OFFICE OF DANIEL MARKS

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Sunrise Hospital and Medical Center, LLC*

*Green v. Delee, et al.*  
*Case No. A-17-757722-C*  
*Order Regarding Third-Party Defendant*  
*Nevada Hospitalist Group, LLP's*  
*Motion For Judgment On The Pleadings*  
*And Third-Party Defendant*  
*Ali Kia, M.D.'S Joinder Thereto*

WILSON ELSEER MOSKOWITZ EDELMAN  
& DICKER LLP

COLLINSON, DAEHNKE, INLOW,  
GRECO

*Approved, did not specifically grant  
permission for e-signature*

*/s/ Linda K. Rurangirwa*

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*Attorneys for Third-Party Defendant Ali Kia,*  
*M.D.*

## Whitbeck, Johana

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**From:** Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>  
**Sent:** Tuesday, May 26, 2020 4:35 PM  
**To:** Jordan, Erin; Nicole Young; Kelli N. Wightman; Stryker, Eric K.; Sherman Mayor; Grijalva, Trisha E.; Patricia Daehnke; Laura Lucero; Lord, Nicole N.  
**Cc:** Vogel, Brent; Whitbeck, Johana  
**Subject:** [EXT] RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

You may use my electronic signature. Thanks.

Linda K. Rurangirwa  
Collinson, Daehnke, Inlow & Greco

---

**From:** Jordan, Erin <Erin.Jordan@lewisbrisbois.com>  
**Sent:** Tuesday, May 26, 2020 3:51 PM  
**To:** Nicole Young <NYoung@danielmarks.net>; Kelli N. Wightman <kwightman@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Sherman Mayor <smayor@HPSLAW.COM>; Grijalva, Trisha E. <Trisha.Grijalva@wilsonelser.com>; Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Patricia Daehnke <Patricia.Daehnke@cdiglaw.com>; Laura Lucero <Laura.Lucero@cdiglaw.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>  
**Cc:** Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Whitbeck, Johana <Johana.Whitbeck@lewisbrisbois.com>  
**Subject:** RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

Great, thanks! I think we've heard from everyone, but can Linda and Eric please confirm that we may use their e-signature on this chain? I'd appreciate it.

Thanks,  
Erin

---

**From:** Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>  
**Sent:** Tuesday, May 26, 2020 11:07 AM  
**To:** Kelli N. Wightman <[kwightman@HPSLAW.COM](mailto:kwightman@HPSLAW.COM)>; Jordan, Erin <[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)>; Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>; Sherman Mayor <[smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM)>; Grijalva, Trisha E. <[Trisha.Grijalva@wilsonelser.com](mailto:Trisha.Grijalva@wilsonelser.com)>; 'linda.rurangirwa@cdiglaw.com' <[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)>; [Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com); Laura Lucero ([Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)) <[Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)>; Lord, Nicole N. <[Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com)>  
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**Subject:** [EXT] RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

Hi Erin:

I approve the proposed order as to form. You may use my e-signature.

Nicole M. Young, Esq.  
Associate Attorney

Law Office of Daniel Marks  
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Facsimile: (702) 386-6812

---

**From:** Kelli N. Wightman [<mailto:kwightman@HPSLAW.COM>]  
**Sent:** Thursday, May 21, 2020 2:27 PM  
**To:** Jordan, Erin <[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)>; Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>; Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; Sherman Mayor <[smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM)>; Grijalva, Trisha E. <[Trisha.Grijalva@wilsonelser.com](mailto:Trisha.Grijalva@wilsonelser.com)>; 'linda.rurangirwa@cdiglaw.com' <[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)>; [Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com); Laura Lucero ([Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)) <[Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)>; Lord, Nicole N. <[Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com)>  
**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>  
**Subject:** RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

Erin:

Regarding the proposed Order on the Motion for Judgment on the Pleadings, you may apply the e-signature of Sherman B. Mayor, Esq. as approved as to form.



**Kelli Wightman**  
*Legal Assistant*  
O: 702.212.1445  
Email: [kwightman@HPSLAW.COM](mailto:kwightman@HPSLAW.COM)

**Legal Assistant to:**  
Mari Schaan  
Sherman Mayor

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---

**From:** Jordan, Erin <[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)>  
**Sent:** Thursday, May 21, 2020 12:46 PM  
**To:** Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>; Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; Sherman Mayor <[smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM)>; Kelli N. Wightman <[kwightman@HPSLAW.COM](mailto:kwightman@HPSLAW.COM)>; Grijalva, Trisha E. <[Trisha.Grijalva@wilsonelser.com](mailto:Trisha.Grijalva@wilsonelser.com)>; 'linda.rurangirwa@cdiglaw.com' <[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)>; [Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com); Laura Lucero ([Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)) <[Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)>; Lord, Nicole N. <[Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com)>  
**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>  
**Subject:** RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order



[External Email] CAUTION!.

All,

Here is the version with Linda's requested addition to the title. Please let us know if we may use your e-signature when we submit the Order to the Court.

Thanks,

Erin

---

**From:** Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>

**Sent:** Tuesday, May 19, 2020 4:40 PM

**To:** Jordan, Erin <[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)>; Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; [smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM); Kelli N. Wightman <[kwightman@HPSLAW.COM](mailto:kwightman@HPSLAW.COM)>; Grijalva, Trisha E. <[Trisha.Grijalva@wilsonelser.com](mailto:Trisha.Grijalva@wilsonelser.com)>;

'linda.rurangirwa@cdiglaw.com' <[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)>; [Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com); Laura Lucero ([Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)) <[Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)>; Lord, Nicole N. <[Nicole.Lord@wilsonelser.com](mailto:Nicole.Lord@wilsonelser.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>

**Subject:** [EXT] RE: Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

No changes from me – thanks for sending.

Eric K. Stryker

Attorney at Law

Wilson Elser Moskowitz Edelman & Dicker LLP

Attorney at Law

Wilson Elser Moskowitz Edelman & Dicker LLP

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**PLEASE NOTE OUR NEW ADDRESS**

---

**From:** Jordan, Erin [<mailto:Erin.Jordan@lewisbrisbois.com>]

**Sent:** Tuesday, May 19, 2020 4:29 PM

**To:** Nicole Young <[NYoung@danielmarks.net](mailto:NYoung@danielmarks.net)>; [smayor@HPSLAW.COM](mailto:smayor@HPSLAW.COM); Kelli N. Wightman <[kwightman@HPSLAW.COM](mailto:kwightman@HPSLAW.COM)>; Stryker, Eric K. <[Eric.Stryker@wilsonelser.com](mailto:Eric.Stryker@wilsonelser.com)>; Grijalva, Trisha E. <[Trisha.Grijalva@wilsonelser.com](mailto:Trisha.Grijalva@wilsonelser.com)>; 'linda.rurangirwa@cdiglaw.com' <[linda.rurangirwa@cdiglaw.com](mailto:linda.rurangirwa@cdiglaw.com)>;

[Patricia.Daehnke@cdiglaw.com](mailto:Patricia.Daehnke@cdiglaw.com); Laura Lucero ([Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)) <[Laura.Lucero@cdiglaw.com](mailto:Laura.Lucero@cdiglaw.com)>

**Cc:** Vogel, Brent <[Brent.Vogel@lewisbrisbois.com](mailto:Brent.Vogel@lewisbrisbois.com)>; Whitbeck, Johana <[Johana.Whitbeck@lewisbrisbois.com](mailto:Johana.Whitbeck@lewisbrisbois.com)>

**Subject:** Green v. Sunrise and DeLee; Sunrise v. Kia and NHG; proposed Order

[EXTERNAL EMAIL]

All,

Attached please find a draft Order regarding the Motion for Judgment on the Pleadings for your review. Please let me know if you have any requested changes or if we may use your e-signature to approve as to form.

Thanks,  
Erin



**Erin E. Jordan**

**Partner**

[Erin.Jordan@lewisbrisbois.com](mailto:Erin.Jordan@lewisbrisbois.com)

**T: 702.693.4354 F: 702.893.3789**

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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at [www.wilsonelser.com](http://www.wilsonelser.com) or refer to any of our offices.

Thank you.

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Choloe Green, Plaintiff(s)

CASE NO: A-17-757722-C

7 vs.

DEPT. NO. Department 9

8 Frank Delee, M.D., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Judgment of Dismissal was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/1/2020

15 E-File Admin

efile@hpslaw.com

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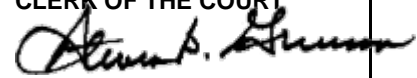
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# **EXHIBIT G**



COMP  
LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,

Case No. A-17-757722-C  
Dept. No. IX

Plaintiff,

v.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
Limited-Liability Company; ALI KIA, M.D. an  
individual; and NEVADA HOSPITALIST  
GROUP, LLP.

**Arbitration Exempt - - Action  
for Medical Malpractice**

Defendants.

**AMENDED COMPLAINT FOR MEDICAL MALPRACTICE**

COMES NOW Plaintiff Choloe Green, by and through undersigned counsel Daniel Marks, Esq., and  
Nicole M. Young, Esq., of the Law Office of Daniel Marks, and for her claims against Defendants herein  
allege as follows:

1. That at all times material hereto, Plaintiff Choloe Green (hereinafter "Choloe") was a  
resident of Clark County, Nevada.
2. That at all times material hereto, Defendant FRANK J. DELEE, M.D., was a licensed  
medical doctor in the State of Nevada, and practiced in his professional corporation entitled  
FRANK J. DELEE MD, PC.

////

3. That at all times material hereto, Defendant FRANK J. DELEE MD, PC, was a domestic professional corporation organized and existing under the laws of the state of Nevada and registered to do business, and doing business in the State of Nevada in Clark County, Nevada.
4. That Defendant FRANK J. DELEE, MD, is the President of Defendant FRANK J. DELEE MD, PC (hereinafter collectively referred to as “Dr. DeLee”).
5. That Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, (hereinafter “Sunrise Hospital”), was a foreign limited-liability company, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
6. That at all times material hereto, Defendant ALI KIA, M.D., was a licensed medical doctor in the State of Nevada, and who practices through the limited-liability partnership entitled NEVADA HOSPITALIST GROUP, LLP.
7. That Defendant NEVADA HOSPITALIST GROUP, LLP, was a limited-liability partnership, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
8. That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on Choloe at Sunrise Hospital. Choloe was discharged from the hospital the following day, on July 10, 2016, even though she did not have bowel movement prior to being discharged from the hospital.
9. On July 13, 2016, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe notified Dr. Delee that she had not had a bowel movement post C-section. He did not provide any care or treatment to Choloe regarding her lack of a bowel movement.
10. On July 14, 2016, after still not having a bowel movement post C-section, Choloe went to the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. Sunrise Hospital, through Ali Kia, M.D., discharged Choloe on July 16, 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.

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- 1 11. That Choloe presented at Sunrise Hospital on July 14, 2016, seeking treatment from the  
2 hospital, not a specific doctor. Upon her admission, Sunrise Hospital provided various  
3 healthcare professionals, including doctors and nurses to provide emergency care/treatment  
4 to Choloe. Throughout her stay from July 14-16, 2016, Choloe believed all healthcare  
5 professionals that provided her care/treatment were employees and/or agents of the hospital.  
6 She was never provided the opportunity to affirmatively chose who provided her  
7 care/treatment. She was never informed the doctors or nurses providing care/treatment were  
8 not employees and/or agents of the hospital.
- 9 12. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where  
10 she was admitted until she was finally discharged on September 2, 2016. Centennial Hills  
11 admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed,  
12 underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS,  
13 and eventually needed a tracheostomy and PEG tube placement.
- 14 13. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 13 herein  
15 by reference.
- 16 14. That Defendant Dr. DeLee, Sunrise Hospital, Dr. Kia, and Nevada Hospitalist Group, LLP,  
17 breached the standard of care in their treatment of Choloe and as a direct and proximate  
18 result of that breach, Choloe has been damaged.
- 19 15. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been  
20 damaged in an amount in excess of \$15,000.00.
- 21 16. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which  
22 is attached hereto as Exhibit "A".
- 23 17. This Complaint is supported by the Affidavit of Robert Savluk, M.D., a copy of which is  
24 attached hereto as Exhibit "B".
- 25 18. Choloe has been forced to retain counsel to bring this action and should be awarded his  
26 reasonable attorneys fees and costs.

27 ////

28 ////



1 WHEREFORE, Choloe prays for judgment against the Defendants, and each of them, as follows:

- 2 1. For special damages in a sum in excess of \$15,000.00;
- 3 2. For compensatory damages in a sum in excess of \$15,000.00;
- 4 3. For reasonable attorney's fees and litigation costs incurred;
- 5 4. For such other and further relief as the Court deems just and proper.

6 DATED this 16th day of December, 2020.

7 LAW OFFICE OF DANIEL MARKS

8

9 /s/ Nicole M. Young

10 DANIEL MARKS, ESQ.

11 Nevada State Bar No. 002003

12 NICOLE M. YOUNG, ESQ.

13 Nevada State Bar No. 012659

14 610 South Ninth Street

15 Las Vegas, Nevada 89101

16 Attorneys for Plaintiff

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Erik K. Stryker, Esq.  
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
300 South 4<sup>th</sup> Street, 11<sup>th</sup> floor  
Las Vegas, Nevada 89101  
Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

Sherman Mayor, Esq.  
HALL PRANGLE & SCHOONVELD, LLC.  
1160 N. Town Center Dr., Ste. 200  
Las Vegas, Nevada 89144  
Attorneys for Sunrise Hospital and Medical Center LLC.

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## **EXHIBIT A**

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AFFIDAVIT OF DR. LISA KARAMARDIAN

STATE OF California } : s.  
COUNTY OF Orange }

DR. LISA KARAMARDIAN, being first duly sworn, under penalty of perjury, does say and depose the following:

1. That I am a medical doctor licensed in the State of California and am board certified in the field of Obstetrics and Gynecology.
2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
3. That I have reviewed Plaintiff Choloe Green's medical records relating to the care and treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center, Valley Hospital Medical Center and Centennial Hills Medical Center.
4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released home on post-operative day number one. This was a breach of the standard of care by Dr. DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.
5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16, 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated the standard of care. Ms. Green was discharged despite the fact that she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.



---

## **EXHIBIT B**

---

**AFFIDAVIT OF ROBERT S. SAVLUK, M.D.**

STATE OF CALIFORNIA                     )  
                                                           )       ss:  
COUNTY OF SAN LUIS OBISPO        )

ROBERT S. SAVLUK, M.D., being first duly sworn under penalty of perjury, deposes and says:

1. That I have been asked to address issues relating to the care and treatment of patient Choloe Green provided at the Sunrise Hospital by Dr. Ali Kia (hospitalist).
2. That I practiced Internal Medicine (functioning as a hospitalist before the term was coined) and Critical Care Medicine for 36 years.
3. I graduated from the University of California at Los Angeles School of Medicine in 1977 with a doctor of medicine degree and completed my residency in Internal Medicine at University of Medical Center, Fresno, California.
4. That I am board certified in Internal Medicine and was boarded in Critical Care Medicine through 2018.
5. That I am familiar with the roles of hospitalist, and subspecialists in taking care of their patients in a hospital setting.
6. That I am particularly familiar with the case of a septic patient including but not limited to fluid resuscitation, antibiotics, and all manners of supporting medications and equipment.
7. That I am particularly familiar with the source identification and its importance in the treatment of a septic patient. In addition, I am very familiar with the coordination of the various physicians to treat that condition.

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- 1 8. In preparation for this affidavit, I have reviewed summaries of the two hospitalizations at  
2 Sunrise Hospital between August 9 and August 16, 2016 consisting of 33 pages plus an  
3 additional 45 pages of organized records related to medications and vital signs. I also  
4 reviewed 337 pages of Centennial Hills hospital records and the affidavit of Dr. Lisa  
5 Karamardian.  
6
- 7 9. That Choloe Green was a 29 year old G5 P3 obese individual at the time she was  
8 admitted to Sunrise Hospital on 7/09/2016 for repeat c-section for a transverse  
9 presentation. She underwent the procedure through the previous surgical scar (low  
10 transverse), under spinal anesthesia, delivering a 6 lb 7 oz male child.  
11
- 12 10. Post operatively she developed itching secondary to the spinal anesthetic. By the next day  
13 she was ambulatory and taking a regular diet. No mention of bowel activity or urination.  
14 She was deemed ready for discharge and sent home on Norco and Ibuprofen for pain.  
15
- 16 11. That on July 14, 2016 she presented to the Sunrise Hospital ED with 2 days history of  
17 nausea, vomiting, and abdominal pain. She had 2 BM's that day. She was febrile and  
18 tachycardic with a marked leucocytosis. She met the criteria for sepsis and the sepsis  
19 bundle was initiated. She had blood cultures drawn, a fluid bolus given and a broad  
20 spectrum antibiotics initialed appropriately for an intra-abdominal source. An ultra sound  
21 of the pelvis and CT scan of the abdomen and pelvis were ordered. The ultra sound  
22 showed no retained products of conception but a moderate amount of complex free fluid  
23 in the cul-de-sac. The CT scan showed a gastric band in place, distention of doudenum  
24 and jejunum and free fluid with small amount of gas in the peritoneal cavity in the lower  
25 abdomen, anterior to an enlarged uterus. The impressions were 1) small bowel  
26 obstruction and 2) intraperitoneal abscess suspected.  
27  
28



12. The patient was admitted to medicine at the request of Dr. DeLee (who was going to be out of town) by Dr. Ali Kia at 9:10 p.m. on July 14, 2016. Dr. Kim also consulted by ED but did not see patient stating "OB can manage care on an out-patient basis." On July 15, 2016, the WBC was 20,600 with left shift. No additional antibiotics were given outside the first dose. At 17:33 patient seen by case worker with plan that patient would go home with sister or mother on out patient antibiotics and follow up with Dr. DeLee.

13. At 22:31 on July 15, 2016, Dr. Ali Kia saw the patient and noted patient having abdominal pain with distention. Additionally she was agitated and having no flatus on bowel movements. The discharge was halted. On the morning of July 16, 2016 an x-ray of the abdomen was done which revealed multiple dilated small bowel loops, small bowel obstruction versus ileus. Despite this, patient discharged home at 20:26 on Norco, dilaudid, motrin iron, and prenatal vitamins but no antibiotics. She was to follow up with Dr. DeLee in two days.

14. The patient presented to Centennial Hills Hospital the next day with an acute abdomen and was taken to surgery on July 18, 2016 where she was noted to have more than a liter of foul smelling fluid in her abdomen, plus an omental infarct which was resected. She then went on to develop severe ARDS and severe physical deconditioning requiring 6 plus weeks in the ICU, a PEG, a trach and finally discharge to a sub-acute facility.

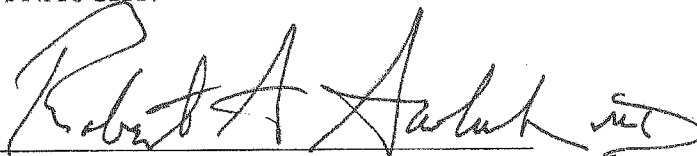
15. Dr. Ali Kia's care of his patient Choloe Green fell below the standard of care for a hospitalist for the following reasons:

1. Failure to continue appropriate antibiotics during the patients hospitalizations when she was clearly fighting an infection.
2. Failure to continue antibiotics post-discharge in a patient clearly not having

- 1 recovered from her infection.
- 2 3. Failure to follow up the radiographic studies which were clearly suspicious for an
- 3 intra-abdominal abscess.
- 4
- 5 4. Discharging a patient with evidence of a small bowel obstruction or ileus without
- 6 any explanation or resolution.
- 7
- 8 5. Pre maturely discharging the patient before she had adequately recovered from the
- 9 septic process.
- 10 16. Finally due to the failures noted above, Choloe Green went on to develop an acute
- 11 abdomen requiring surgery, intra-abdominal abscess requiring percutaneous drainage and
- 12 sepsis related ARDS (severe) which required 6 plus weeks in the ICU and resulted in
- 13 severe physical deconditioning and prolonged sub-acute care.
- 14 17. The conduct described in paragraph 5 of Dr. Karamardian's affidavit dated June 29, 2017
- 15 relating to Ms. Green's discharge from Sunrise Hospital relates to the care provided to
- 16 Ms. Green at Sunrise by Dr. Ali Kia and any other medical providers that were involved
- 17 in the decision to discharge Ms. Green on July 16, 2016, this decision to discharge her
- 18 violated the standard of care.
- 19
- 20 18. My opinions are expressed to a reasonable degree of medical probability and/or certainty
- 21 and are based on my education, training, experience, and review of the medical records
- 22 outlined previously which reflect the care given Choloe Green by the aforementioned
- 23 Physician.
- 24
- 25 19. This affidavit is intended as a summary of my opinion and there obviously may be further
- 26 explanation of these opinions at the time of trial and/or depositions, should I be asked
- 27 follow-up questions related to any opinions.
- 28

1 20. I hereby reserve the right to amend or supplement my opinions in a report and/or  
2 deposition or as information is provided.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT.

4  
5  
6   
7 ROBERT S. SAVLUK, M.D.

8 SUBSCRIBED and SWORN TO  
9 Before me this \_\_\_\_ day of October, 2020.

10 *See attached*

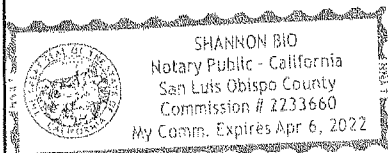
11 NOTARY PUBLIC in and for said  
12 COUNTY and STATE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Luis Obispo

Subscribed and sworn to (or affirmed) before me on this 16th  
day of October, 2020, by Robert S. Savluk

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.

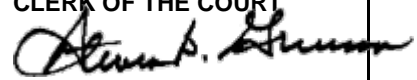


(Seal)

Signature

A handwritten signature in dark ink, appearing to read "Robert S. Savluk", written over a horizontal line.

# **EXHIBIT H**



LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,  
Plaintiff,

Case No. A-17-757722-C  
Dept. No. IX

v.

***ORAL ARGUMENT REQUESTED***

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
Limited-Liability Company.  
Defendants.

**MOTION FOR LEAVE OF COURT TO AMEND COMPLAINT**

COMES NOW the Plaintiff, Choloe Green, by and through her counsel, Daniel Marks, Esq., of the Law Office of Daniel Marks, and hereby moves for leave of this Court to amend her complaint. The grounds for Plaintiff's motion are set forth in the following Memorandum of Points and Authorities.

DATED this 16th day of October, 2020.

LAW OFFICES OF DANIEL MARKS

/s/ Nicole M. Young  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. FACTUAL BACKGROUND**

3 On July 9, 2016, Defendants Frank J. Delee, M.D., and Frank J. Delee, MD, PC (“Delee”) performed a cesarean section on Plaintiff Choloe Green (“Choloe”) at Defendant Sunrise Hospital and Medical Center, LLC (“Sunrise”). Choloe is an African-American female, who was about to turn 30 years old. She was discharged home on “post-operative day one” even though the standard of care for “a routine cesarean is a 3-4 night stay in the hospital.” The standard of care was also breached relating to the first discharge because Choloe “had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.” (See Affidavit of Lisa Karamardian (“Karamardian Affidavit”), attached to Complaint for Medical Malpractice as Exhibit 1, filed on June 30, 2017, at ¶ 4.)

12 On July 14, 2016, Choloe was admitted into Sunrise’s “medical/surgical unit because of the diagnosis of sepsis.” She was five days post-partum and experiencing “severe abdominal pain and reports of nausea, vomiting, fever, and chills.” (See Karamardian Affidavit, at ¶ 5.) She had various conversations with doctors arranged by Sunrise. She was assigned a doctor, Dr. Kia, who she did not know. She was treated by nurses of Sunrise and various other doctors called in by Sunrise.

17 She was discharged two days later, on July 16, 2016. Choloe’s discharge was discussed between Delee and the doctors treating her at Sunrise. As part of his OB-GYN care and delivering of the child, Delee was required to provide follow-up care for thirty (30) days. He breached this duty when he did not provide Choloe competent care during her second hospital stay even though he was paid, through Medicaid, to provide this care. (See Karamardian Affidavit, at ¶ 5.)

22 This discharge violated the standard of care because “[1] she was not able to tolerate a regular diet[,] . . . [2] her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, . . . [and] [3] [a]n intraperitoneal abscess was suspected on a CT scan.” Despite these issues both Sunrise and Delee agreed to discharge her home. (See Karamardian Affidavit, at ¶ 5.)

26 One day after her second discharge from Sunrise, July 17, 2017, Choloe was admitted into

27 ////

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1 Centennial Hills Hospital (“Centennial”), again in severe pain and with no real bowel movement. The  
2 imaging studies at Centennial showed her condition had worsened in the one day since her discharge  
3 from Sunrise. (See Karamardian Affidavit, at ¶ 6.)

4 Dr. Karamardian opined that based on the above breaches to the standard of care by Delee and  
5 Sunrise, Choloe’s “hospital course was protracted with multiple complications and . . . [then]  
6 discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding  
7 tube and in need of rehabilitation.” (See Karamardian Affidavit, at ¶ 7.) The instant complaint was filed  
8 on June 30, 2017.

9 Choloe turned 30 years old during her second admission to Sunrise. After she was discharged  
10 from Centennial and then the rehabilitation facility, she had to undergo a huge change of lifestyle,  
11 especially for a 30-year-old with four children. During her time at Centennial and the rehabilitation  
12 facility she was diagnosed with Chronic Obstructive Pulmonary Disease (“COPD”) and now requires  
13 constant, 24-hour use of oxygen tanks. She also suffers other health issues related to COPD. These  
14 health issues caused by Delee and Sunrise burden the State of Nevada through Medicaid, her insurance  
15 provider. These health issues also prevent Choloe from obtaining meaningful employment to care for her  
16 family.

## 17 **II. LEGAL ARGUMENT**

18 Pursuant to the Nevada Rules of Civil Procedure, a party may only amend her pleadings by leave  
19 of the court after a responsive pleading is filed. NRCP 15(a). The Court must freely grant leave to amend  
20 when justice so requires. NRCP 15(a). It is in the sound discretion of the court to grant leave to amend a  
21 complaint. *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Absent “any  
22 apparent or declared reason- such as undue delay, bad faith or dilatory motive on the part of the movant  
23 the leave sought should be freely given.” *Id.*

24 In this case, Choloe seeks to amend her complaint to add Ali Kia, M.D., and Nevada Hospitalist  
25 Group, LLP, his employer, as named parties to this complaint. This amendment is necessary based on  
26 information discovered during this case and this Court’s recent decision granting Sunrise’s motion for  
27 partial summary judgment on the issue of ostensible agency. As this Court is aware, Choloe filed a  
28 motion for reconsideration of that order, as well as its decision denying her previous motion for leave to



1 amend her complaint. In this Court's Order from the July 7, 2020, hearing it comments that it could not  
2 grant Choloe's first motion to amend because Dr. Karamardian's affidavit did not comply with NRS  
3 41A.071 to add additional parties. Choloe's instant motion to amend cures that issue with the affidavit of  
4 Dr. Savluk.

5 Choloe's request for leave to amend is not made to delay this case. This case has been wrapped  
6 up in motion practice for the better part of this year. This amendment seeks to resolve all pending issues  
7 so that the parties can focus on discovery. The current initial expert disclosure deadline is December 30,  
8 2020, and discovery closes on April 29, 2021. With this amendment, Defendants would still have time to  
9 conduct discovery as to the proposed amendment to Choloe's complaint. This does not cause any  
10 prejudice to Ali Kia, M.D., because he was already a party to this case and has been deposed.  
11 This Court cannot find the proposed amendment is made in bad faith or for any dilatory motive.

12 On January 15, 2019, Sunrise filed its first motion for partial summary judgment relating to  
13 ostensible agency. As that motion related to Ali Kia, M.D., this Court ordered as follows:

14 Defendant's motion is DENIED as it relates to Plaintiffs claims against the  
15 hospital for any of Dr. Kia's actions under the theory of ostensible agency.  
16 As such, Plaintiff may argue that Defendant Sunrise Hospital and Medical  
17 Center, LLC, is vicariously liable for Dr. Kia's actions under the doctrine  
of ostensible agency. "Whether an ostensible agency relationship exists is  
... a question of fact for the jury." *McCrosky v. Carson Tahoe Regional*  
*Medical Center*, 133 Nev. Adv. Op. 115,408 P.3d 149 (2017).

18 (See Order From March 12, 2019 Hearing, filed on March 5, 2020.)

19 Then, on May 11, 2020, this Court issued its Minute Order relating to Third-Part Defendant  
20 Nevada Hospitalist Group's Motion for Judgment on the Pleadings. That minute order also comments on  
21 the ostensible agency issue. After that minute order was issued, Sunrise renewed its motion for partial  
22 summary judgment relating to its ostensible agency with Ali Kia. M.D.

23 Based on these orders, it has become apparent that Choloe must protect her rights and ensure that  
24 she is able to recover for the malpractice at issue. Justice demands this case be heard on the merits.

25 This Court should grant Choloe leave to amend her complaint adding Ali Kia, M.D., as a named  
26 party. A copy of Plaintiff's proposed Amended Complaint is attached hereto as Exhibit 1, in accordance  
27 with EDCR 2.30. That Amended Complaint contains the affidavit of Robert S. Savluk, M.D., who

28 ////

1 reviewed Dr. Karamardian's affidavit, which attributes medical negligence to the conduct of Sunrise  
2 when it discharged Choloe on July 16, 2016. Dr. Savluk's affidavit complies with NRS 41A.071 because  
3 it expands on the conduct criticized by Dr. Karamardian and attributes that conduct to Ali Kia, M.D.

4 **III. CONCLUSION**

5 Based on the foregoing, this Court should grant Choloe leave to amend her complaint in this  
6 case.

7 DATED this 16th day of October, 2020.

8 LAW OFFICES OF DANIEL MARKS

9  
10 /s/ Nicole M. Young

11 DANIEL MARKS, ESQ.

12 Nevada State Bar No. 002003

13 NICOLE M. YOUNG, ESQ.

14 Nevada State Bar No. 12659

15 610 South Ninth Street

16 Las Vegas, Nevada 89101

17 Attorneys for Plaintiff  
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Erik K. Stryker, Esq.  
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
300 South 4<sup>th</sup> Street, 11<sup>th</sup> floor  
Las Vegas, Nevada 89101  
Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

Sherman Mayor, Esq.  
HALL PRANGLE & SCHOONVELD, LLC.  
1160 N. Town Center Dr., Ste. 200  
Las Vegas, Nevada 89144  
Attorneys for Sunrise Hospital and Medical Center LLC.

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# **EXHIBIT 1**

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1 COMP  
2 LAW OFFICE OF DANIEL MARKS  
3 DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
4 NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
5 610 South Ninth Street  
Las Vegas, Nevada 89101  
6 (702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 CHOLOE GREEN, an individual,

Case No. A-17-757722-C  
Dept. No. IX

10 Plaintiff,

11 v.

12 FRANK J. DELEE, M.D., an individual;  
13 FRANK J. DELEE MD, PC, a Domestic  
14 Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
15 Limited-Liability Company; ALI KIA, M.D. an  
16 individual; and NEVADA HOSPITALIST  
GROUP, LLP.

**Arbitration Exempt - - Action  
for Medical Malpractice**

17 Defendants.  
18 \_\_\_\_\_/

19 **AMENDED COMPLAINT FOR MEDICAL MALPRACTICE**

20 COMES NOW Plaintiff Choloe Green, by and through undersigned counsel Daniel Marks, Esq., and  
21 Nicole M. Young, Esq., of the Law Office of Daniel Marks, and for her claims against Defendants herein  
22 allege as follows:

- 23 1. That at all times material hereto, Plaintiff Choloe Green (hereinafter "Choloe") was a  
24 resident of Clark County, Nevada.
- 25 2. That at all times material hereto, Defendant FRANK J. DELEE, M.D., was a licensed  
26 medical doctor in the State of Nevada, and practiced in his professional corporation entitled  
27 FRANK J. DELEE MD, PC.

28 ////

3. That at all times material hereto, Defendant FRANK J. DELEE MD, PC, was a domestic professional corporation organized and existing under the laws of the state of Nevada and registered to do business, and doing business in the State of Nevada in Clark County, Nevada.
4. That Defendant FRANK J. DELEE, MD, is the President of Defendant FRANK J. DELEE MD, PC (hereinafter collectively referred to as “Dr. DeLee”).
5. That Defendant SUNRISE HOSPITAL AND MEDICAL CENTER, LLC, (hereinafter “Sunrise Hospital”), was a foreign limited-liability company, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
6. That at all times material hereto, Defendant ALI KIA, M.D., was a licensed medical doctor in the State of Nevada, and who practices through the limited-liability partnership entitled NEVADA HOSPITALIST GROUP, LLP.
7. That Defendant NEVADA HOSPITALIST GROUP, LLP, was a limited-liability partnership, registered to do business and doing business in the State of Nevada in Clark County, Nevada.
8. At all relevant times, Defendants, and each of them, were the agents, ostensible agents, servants, employees, employers, partners, co-owners and/or joint venturers of each other and of their co-defendants, and were acting within the color, purpose and scope of their employment, agency, ownership and/or joint ventures and by reason of such relationships the Defendants, and each of them, are vicariously and jointly and severally responsible and liable for the acts and/or omissions of their co-Defendants.
9. That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on Choloe at Sunrise Hospital. Choloe was discharged from the hospital the following day, on July 10, 2016, even though she did not have bowel movement prior to being discharged from the hospital.
10. On July 13, 2016, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe notified Dr. Delee that she had not had a bowel movement post C-section. He did not provide any care or treatment to Choloe regarding her lack of a bowel movement.

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11. On July 14, 2016, after still not having a bowel movement post C-section, Choloe went to the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. Sunrise Hospital, through Ali Kia, M.D., discharged Choloe on July 16, 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed by Dr. DeLee.
12. That Choloe presented at Sunrise Hospital on July 14, 2016, seeking treatment from the hospital, not a specific doctor. Upon her admission, Sunrise Hospital provided various healthcare professionals, including doctors and nurses to provide emergency care/treatment to Choloe. Throughout her stay from July 14-16, 2016, Choloe believed all healthcare professionals that provided her care/treatment were employees and/or agents of the hospital. She was never provided the opportunity to affirmatively chose who provided her care/treatment. She was never informed the doctors or nurses providing care/treatment were not employees and/or agents of the hospital.
13. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where she was admitted until she was finally discharged on September 2, 2016. Centennial Hills admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed, underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS, and eventually needed a tracheostomy and PEG tube placement.

### **COUNT I**

#### **(Professional Negligence Against All Defendants)**

14. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 13 herein by reference.
15. That Defendant Dr. DeLee, Sunrise Hospital, Dr. Kia, and Nevada Hospitalist Group, LLP, breached the standard of care in their treatment of Choloe and as a direct and proximate result of that breach, Choloe has been damaged.
16. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been damaged in an amount in excess of \$15,000.00.

1 17. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which  
2 is attached hereto as Exhibit "A".

3 18. This Complaint is supported by the Affidavit of Robert Savluk, M.D., a copy of which is  
4 attached hereto as Exhibit "B".

5 19. Choloe has been forced to retain counsel to bring this action and should be awarded his  
6 reasonable attorneys fees and costs.

7 **COUNT II**

8 **(Vicarious Liability- Against Defendants Sunrise Hospital and Nevada Hospitalist Group)**

9 20. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 18 herein  
10 by reference.

11 21. That a hospital and/or hospitalist group cannot avoid liability by claiming a secret or  
12 undisclosed independent contractor relationship with doctors providing healthcare services  
13 on its premises and/or through its scheduling service because that relationship is unknown  
14 to a patient seeking emergency services from a hospital.

15 22. Defendant Sunrise Hospital and Nevada Hospitalist Group's employees, agents and/or  
16 servants were acting in the scope of their employment, under Defendants' control, and in  
17 furtherance of Defendant' 'interest at the time their actions fell below the standard of care  
18 causing injuries to Plaintiff.

19 23. Defendant Sunrise Hospital and Nevada Hospitalist Group are vicariously liable for damages  
20 resulting from its agents' and/or employees' and/or servants' negligent actions and omissions  
21 regarding the injuries to Plaintiff to include, but not are not limited to, conduct in failing to  
22 supervise and/or correct the negligence of their employees demonstrated disregard for the  
23 safety of the Plaintiff.

24 24. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been  
25 damaged in an amount in excess of \$15,000.00.

26 25. Choloe has been forced to retain counsel to bring this action and should be awarded his  
27 reasonable attorneys fees and costs.

28 ////



1 WHEREFORE, Choloe prays for judgment against the Defendants, and each of them, as follows:

- 2 1. For special damages in a sum in excess of \$15,000.00;
- 3 2. For compensatory damages in a sum in excess of \$15,000.00;
- 4 3. For reasonable attorney's fees and litigation costs incurred;
- 5 4. For such other and further relief as the Court deems just and proper.

6 DATED this \_\_\_\_\_ day of October, 2020.

7 LAW OFFICE OF DANIEL MARKS

8

9 \_\_\_\_\_

10 DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
11 NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 012659  
12 610 South Ninth Street  
Las Vegas, Nevada 89101  
13 Attorneys for Plaintiff

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1 VERIFICATION

2 STATE OF NEVADA        )  
3 COUNTY OF CLARK        )        ss:

4 CHOLOE GREEN, being first duly sworn, deposes and says:

5 That I am the Plaintiff in the above-entitled matter; that I have read the above and foregoing  
6 Complaint and know the contents thereof; that the same are true of my knowledge except for those  
7 matters stated upon information and belief, and as to those matters, I believe them to be true.

8  
9 \_\_\_\_\_  
10 CHOLOE GREEN

11 SUBSCRIBED AND SWORN to before me  
12 this \_\_\_\_ day of June, 2020.

13 \_\_\_\_\_  
14 NOTARY PUBLIC in and for said  
15 COUNTY and STATE  
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## **EXHIBIT A**

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AFFIDAVIT OF DR. LISA KARAMARDIAN


STATE OF California  
COUNTY OF Orange } : s .

DR. LISA KARAMARDIAN, being first duly sworn, under penalty of perjury, does say and depose the following:

1. That I am a medical doctor licensed in the State of California and am board certified in the field of Obstetrics and Gynecology.
2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
3. That I have reviewed Plaintiff Choloe Green's medical records relating to the care and treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center, Valley Hospital Medical Center and Centennial Hills Medical Center.
4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released home on post-operative day number one. This was a breach of the standard of care by Dr. DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.
5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16, 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated the standard of care. Ms. Green was discharged despite the fact that she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.

7. Because of the violations of the standard of care, her hospital course was protracted with multiple complications and she was apparently discharged to a step down facility once her antibiotic course was felt to be completed, still on a feeding tube and in need of rehabilitation.
8. That in my professional opinion, to a degree of medical probability, the standard of care was breached by both Dr. DeLee and Sunrise Hospital and Medical Center in their treatment of Ms. Green.

  
LISA KARAMARDIAN, MD.

 **TONY GANA**  
Notary Public - California  
Orange County  
Commission # 2148987  
My Comm. Expires Apr 14, 2020

2.

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## **EXHIBIT B**

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**AFFIDAVIT OF ROBERT S. SAVLUK, M.D.**

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN LUIS OBISPO )

ROBERT S. SAVLUK, M.D., being first duly sworn under penalty of perjury, deposes and says:

1. That I have been asked to address issues relating to the care and treatment of patient Choloe Green provided at the Sunrise Hospital by Dr. Ali Kia (hospitalist).
2. That I practiced Internal Medicine (functioning as a hospitalist before the term was coined) and Critical Care Medicine for 36 years.
3. I graduated from the University of California at Los Angeles School of Medicine in 1977 with a doctor of medicine degree and completed my residency in Internal Medicine at University of Medical Center, Fresno, California.
4. That I am board certified in Internal Medicine and was boarded in Critical Care Medicine through 2018.
5. That I am familiar with the roles of hospitalist, and subspecialists in taking care of their patients in a hospital setting.
6. That I am particularly familiar with the case of a septic patient including but not limited to fluid resuscitation, antibiotics, and all manners of supporting medications and equipment.
7. That I am particularly familiar with the source identification and its importance in the treatment of a septic patient. In addition, I am very familiar with the coordination of the various physicians to treat that condition.

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- 1 8. In preparation for this affidavit, I have reviewed summaries of the two hospitalizations at  
2 Sunrise Hospital between August 9 and August 16, 2016 consisting of 33 pages plus an  
3 additional 45 pages of organized records related to medications and vital signs. I also  
4 reviewed 337 pages of Centennial Hills hospital records and the affidavit of Dr. Lisa  
5 Karamardian.  
6
- 7 9. That Choloe Green was a 29 year old G5 P3 obese individual at the time she was  
8 admitted to Sunrise Hospital on 7/09/2016 for repeat c-section for a transverse  
9 presentation. She underwent the procedure through the previous surgical scar (low  
10 transverse), under spinal anesthesia, delivering a 6 lb 7 oz male child.  
11
- 12 10. Post operatively she developed itching secondary to the spinal anesthetic. By the next day  
13 she was ambulatory and taking a regular diet. No mention of bowel activity or urination.  
14 She was deemed ready for discharge and sent home on Norco and Ibuprofen for pain.
- 15 11. That on July 14, 2016 she presented to the Sunrise Hospital ED with 2 days history of  
16 nausea, vomiting, and abdominal pain. She had 2 BM's that day. She was febrile and  
17 tachycardic with a marked leucocytosis. She met the criteria for sepsis and the sepsis  
18 bundle was initiated. She had blood cultures drawn, a fluid bolus given and a broad  
19 spectrum antibiotics initialed appropriately for an intra-abdominal source. An ultra sound  
20 of the pelvis and CT scan of the abdomen and pelvis were ordered. The ultra sound  
21 showed no retained products of conception but a moderate amount of complex free fluid  
22 in the cul-de-sac. The CT scan showed a gastric band in place, distention of doudenum  
23 and jejunum and free fluid with small amount of gas in the peritoneal cavity in the lower  
24 abdomen, anterior to an enlarged uterus. The impressions were 1) small bowel  
25 obstruction and 2) intraperitoneal abscess suspected.  
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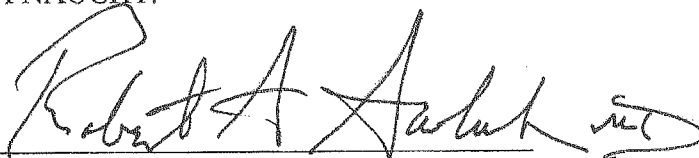


12. The patient was admitted to medicine at the request of Dr. DeLee (who was going to be out of town) by Dr. Ali Kia at 9:10 p.m. on July 14, 2016. Dr. Kim also consulted by ED but did not see patient stating "OB can manage care on an out-patient basis." On July 15, 2016, the WBC was 20,600 with left shift. No additional antibiotics were given outside the first dose. At 17:33 patient seen by case worker with plan that patient would go home with sister or mother on out patient antibiotics and follow up with Dr. DeLee.
13. At 22:31 on July 15, 2016, Dr. Ali Kia saw the patient and noted patient having abdominal pain with distention. Additionally she was agitated and having no flatus on bowel movements. The discharge was halted. On the morning of July 16, 2016 an x-ray of the abdomen was done which revealed multiple dilated small bowel loops, small bowel obstruction versus ileus. Despite this, patient discharged home at 20:26 on Norco, dilaudid, motrin iron, and prenatal vitamins but no antibiotics. She was to follow up with Dr. DeLee in two days.
14. The patient presented to Centennial Hills Hospital the next day with an acute abdomen and was taken to surgery on July 18, 2016 where she was noted to have more than a liter of foul smelling fluid in her abdomen, plus an omental infarct which was resected. She then went on to develop severe ARDS and severe physical deconditioning requiring 6 plus weeks in the ICU, a PEG, a trach and finally discharge to a sub-acute facility.
15. Dr. Ali Kia's care of his patient Choloe Green fell below the standard of care for a hospitalist for the following reasons:
1. Failure to continue appropriate antibiotics during the patients hospitalizations when she was clearly fighting an infection.
  2. Failure to continue antibiotics post-discharge in a patient clearly not having

- 1 recovered from her infection.
- 2 3. Failure to follow up the radiographic studies which were clearly suspicious for an
- 3 intra-abdominal abscess.
- 4
- 5 4. Discharging a patient with evidence of a small bowel obstruction or ileus without
- 6 any explanation or resolution.
- 7
- 8 5. Pre maturely discharging the patient before she had adequately recovered from the
- 9 septic process.
- 10 16. Finally due to the failures noted above, Choloe Green went on to develop an acute
- 11 abdomen requiring surgery, intra-abdominal abscess requiring percutaneous drainage and
- 12 sepsis related ARDS (severe) which required 6 plus weeks in the ICU and resulted in
- 13 severe physical deconditioning and prolonged sub-acute care.
- 14 17. The conduct described in paragraph 5 of Dr. Karamardian's affidavit dated June 29, 2017
- 15 relating to Ms. Green's discharge from Sunrise Hospital relates to the care provided to
- 16 Ms. Green at Sunrise by Dr. Ali Kia and any other medical providers that were involved
- 17 in the decision to discharge Ms. Green on July 16, 2016, this decision to discharge her
- 18 violated the standard of care.
- 19
- 20 18. My opinions are expressed to a reasonable degree of medical probability and/or certainty
- 21 and are based on my education, training, experience, and review of the medical records
- 22 outlined previously which reflect the care given Choloe Green by the aforementioned
- 23 Physician.
- 24
- 25 19. This affidavit is intended as a summary of my opinion and there obviously may be further
- 26 explanation of these opinions at the time of trial and/or depositions, should I be asked
- 27 follow-up questions related to any opinions.
- 28

1 20. I hereby reserve the right to amend or supplement my opinions in a report and/or  
2 deposition or as information is provided.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT.

4  
5   
6 ROBERT S. SAVLUK, M.D.

7  
8 SUBSCRIBED and SWORN TO  
9 Before me this \_\_\_\_ day of October, 2020.

10 *See attached*

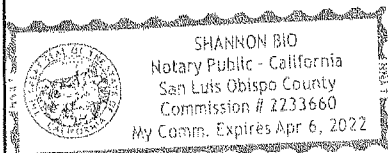
11 NOTARY PUBLIC in and for said  
12 COUNTY and STATE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Luis Obispo

Subscribed and sworn to (or affirmed) before me on this 16th  
day of October, 2020, by Robert S. Savluk

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.



(Seal)

Signature

A handwritten signature in dark ink, appearing to read "Robert S. Savluk", written over a horizontal line.

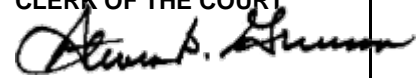
# **EXHIBIT I**

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3 \* \* \* \* \*  
4 CHOLOE GREEN, an individual, )  
5 )  
6 Plaintiff, )  
7 )  
8 vs. ) Case No.: A-17-757722-C  
9 ) Dept. No.: VIII  
10 FRANK J. DELEE, M.D., an )  
11 individual; FRANK J. DELEE )  
12 MD, PC, a Domestic )  
13 Professional Corporation, )  
14 SUNRISE HOSPITAL AND MEDICAL )  
15 CENTER, LLC, a Foreign )  
16 Limited-Liability Company, )  
17 )  
18 Defendants. )  
19 \_\_\_\_\_ )  
20 )  
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**CONDENSED  
TRANSCRIPT**

26 DEPOSITION OF ALI KIA, M.D.  
27 Taken on Wednesday, November 14, 2018  
28 At 1:35 p.m.  
29 Taken at 610 South Ninth Street  
30 Las Vegas, Nevada  
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# EXHIBIT D



OPP  
LAW OFFICE OF DANIEL MARKS  
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Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,  
  
Plaintiff,

Case No. A-17-757722-C  
Dept. No. XXIII

v.

Date of Hearing: February 23, 2021  
Time of Hearing: 9:30 a.m.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
Limited-Liability Company; ALI KIA, M.D. an  
individual; and NEVADA HOSPITALIST  
GROUP, LLP.

Defendants.

**OPPOSITION TO DEFENDANT ALI KIA, M.D.'S MOTION TO DISMISS  
PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW the Plaintiff Choloe Green, by and through her undersigned counsel, Daniel Marks,  
Esq., and Nicole M. Young, Esq., of the Law Office of Daniel Marks, and hereby submits her Opposition  
to Defendant Ali Kia M.D.'s Motion to Dismiss Plaintiff's Amended Complaint.

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1 The grounds for Plaintiff's opposition are set forth in the following Memorandum of Points and  
2 Authorities.

3 DATED this 4th day of February, 2021.

4 LAW OFFICES OF DANIEL MARKS

5 /s/ Nicole M. Young

6 DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
7 NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
8 610 South Ninth Street  
Las Vegas, Nevada 89101  
9 Attorneys for Plaintiff

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. PROCEDURAL HISTORY**

12 Plaintiff Choloe Green ("Choloe") filed her initial Complaint for Medical Malpractice against  
13 Defendants Frank J. Delee, M.D., and Frank J. Delee, M.D., P.C. ("Delee") and Sunrise Hospital and  
14 Medical Center, LLC ("Sunrise Hospital") on June 30, 2017. Delee and Sunrise Hospital both filed  
15 answers to her complaint and the parties began discovery. Delee's deposition was taken on September  
16 20, 2018.

17 In her attempt to obtain more information regarding Sunrise Hospital's breach of the standard of  
18 care, Choloe properly noticed and served Dr. Ali Kia ("Kia") with a Notice of Deposition to be taken on  
19 September 21, 2018. (*See* Certified Copy of Scheduled Deposition of Ali Kia, M.D., attached hereto as  
20 Exhibit 6.) Kia did not appear for that deposition. Kia's deposition was ultimately taken on November  
21 14, 2018. During his deposition, he testified that he works at Sunrise Hospital through Nevada  
22 Hospitalist Group ("NHG"). (*See* Certified Copy of Deposition of Ali, Kia, M.D., attached hereto as  
23 Exhibit 7, at 11:15-20 & 12:21-24.)

24 On January 15, 2019, Sunrise Hospital filed its original partial motion for summary judgment on  
25 the issue of ostensible agency. The district court denied that motion because it found there was a genuine  
26 issue of material fact regarding the ostensible agency relationship between Sunrise Hospital and Kia.

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1 (See Order From March 12, 2019 Hearing, filed on March 6, 2020.) Judge Smith decided the original  
2 motion for partial summary judgment, which was heard on March 12, 2019. He then retired from the  
3 bench, and this case was assigned to Judge Silva on April 29, 2019.

4 After Judge Smith denied the partial motion for summary judgment, Sunrise Hospital sought  
5 leave to add Kia and NHG, Kia's "employer," to a third-party complaint for indemnity, which was  
6 granted by the district court. (See Order Granting Sunrise Hospital and Medical Center, LLC's Motion to  
7 File Third Party Complaint for Contribution and Indemnity (Ali Kia, M.D.), filed on June 14, 2019.)  
8 Sunrise Hospital's third-party complaint was filed on June 14, 2019. This complaint was filed less than  
9 three years after Chloe's second discharge from Sunrise Hospital and less than one year after the  
10 discovery of Choloe's legal injury by Kia. Kia filed his answer to that complaint on August 2, 2019.  
11 NHG did not file its answer until December 27, 2019. It is unknown why NHG took so long to file any  
12 responsive pleading.

13 NHG filed a motion for judgment on the pleadings on March 25, 2020, which Kia joined. When  
14 Judge Silva granted that motion, she invited reconsideration of the ostensible agency relationship issue  
15 in her minute order. (See Court Minutes regarding Third-Party Defendant Nevada Hospitalist Group,  
16 LLP's Motion for Judgment on the Pleadings and Joinder, dated May 11, 2020.) Sunrise Hospital then  
17 renewed its motion for partial summary judgment regarding ostensible agency on May 20, 2020.

18 Choloe opposed that motion and also filed a motion seeking leave to amend her complaint to add  
19 ostensible agency and corporate negligence/negligent supervision theories of liability against Sunrise  
20 Hospital on June 3, 2020.

21 Judge Silva granted Sunrise Hospital's renewed motion for partial summary judgment on the  
22 issue of ostensible agency and denied Choloe leave to amend her complaint to add ostensible agency and  
23 corporate negligence/negligent supervision to her complaint. (See Three (3) Part Order: (1) Granting  
24 Partial Summary Judgment Dismissing Ostensible Agency; (2) Denying Sanctions; and (3) Denying  
25 Plaintiff's Motion to Amend Complaint in Part with Prejudice and in Part Without Prejudice, filed on  
26 September 28, 2020.)

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1 Choloe sought reconsideration of that order on October 12, 2020, and also filed a new motion for  
2 leave to amend her complaint to add Kia and NHG back into the case on October 16, 2020. Judge Silva  
3 denied reconsideration but granted leave to add Kia and NHG back into the case. (*See* Order Denying  
4 Plaintiff's "Motion for Reconsideration" Regarding Denial of Additional Claims of "Ostensible Agency"  
5 and "Corporate Negligence/Negligent Supervision," filed on December 8, 2020; *see* Order Granting in  
6 Part and Denying in Part Plaintiff's Motion for Leave to Amend Complaint, filed on December 15,  
7 2020.)

8 Choloe filed her Amended Complaint on December 16, 2020. Both Kia and NHG accepted  
9 service of that complaint. (*See* Acceptance of Service, filed on December 28, 2020.)

10 Choloe filed a Writ of Mandamus with the Nevada Supreme Court on January 21, 2021, which  
11 was also noticed on this Court that same date, regarding the issues of ostensible agency and corporate  
12 negligence/negligent supervision. That writ is still pending with the Court.

## 13 **II. FACTUAL BACKGROUND**

14 On July 9, 2016, Frank Delee, M.D. ("Delee"), performed a cesarean section on Choloe at  
15 Sunrise Hospital. Choloe is an African-American female, who was 29 years old. She was discharged  
16 home on "post-operative day one" even though the standard of care for "a routine cesarean is a 3-4 night  
17 stay in the hospital." The standard of care was also breached relating to the first discharge because  
18 Choloe "had not even attempted to tolerate clear liquids and she had not passed flatus when she was  
19 released on post-operative day number one." (*See* Affidavit of Lisa Karamardian, M.D., dated June 29,  
20 2017<sup>1</sup>, attached hereto as Exhibit 1, at ¶ 4; *see* Amended Affidavit of Lisa Karamardian, M.D., dated  
21 November 8, 2020<sup>2</sup>, attached hereto as Exhibit 2, at ¶ 4.)

22 On July 14, 2016, Choloe presented at Sunrise Hospital's emergency room because she was in  
23 extreme pain. She was admitted into Sunrise Hospital's "medical/surgical unit because of the diagnosis  
24 of sepsis." She was five days post-partum and experiencing "severe abdominal pain and reports of  
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26 <sup>1</sup> This affidavit was attached to Plaintiff's Complaint for Medical Malpractice, filed on June 30,  
27 2017, as Exhibit 1.

28 <sup>2</sup> This affidavit was attached to Plaintiff's Reply in Support of Motion for Reconsideration and reply  
in Support of Motion for Leave of Court to Amend Complaint, filed on November 11, 2020, as Exhibit 4.

1 nausea, vomiting, fever, and chills." (See Ex. 1, at ¶ 5; see Ex. 2, at ¶ 5.) She had various conversations  
2 with doctors arranged by Sunrise Hospital. Ali Kia, M.D. ("Kia"), was assigned to provide Choloe care.  
3 (See Ex. 7, at 12:21 - 13:3 & 18:3-12.) She had never met him before and did not know who he was. She  
4 was treated by various nurses and other doctors, as well. (See Affidavit of Choloe Green, dated January  
5 30, 2019, attached hereto as Exhibit 3, at ¶ 5.)

6 Choloe was discharged two days later, on July 16, 2016, by Ali Kia, M.D. (Kia"). (See Ex. 2, at ¶  
7 5.) Choloe's discharge was discussed between Delee and the doctors treating her at Sunrise Hospital.  
8 (See Ex. 1, at ¶ 5; see Ex. 2, at ¶ 5; see Affidavit of Robert S. Savluk, M.D., dated October 16, 2020<sup>3</sup>,  
9 attached hereto as Exhibit 4, at ¶ 13.)

10 This discharge violated the standard of care because "[1] she was not able to tolerate a regular  
11 diet[,] . . . [2] her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel  
12 obstruction, . . . [and] [3] [a]n intraperitoneal abscess was suspected on a CT scan." Despite these  
13 issues, both Sunrise Hospital, through Kia, and Delee agreed to discharge Choloe home. (See Ex. 1, at ¶  
14 5; see Ex. 2, at ¶ 5; see Ex. 4, at ¶¶ 12-13.)

15 Dr. Savluk opined Dr. Kia's care of Choloe violated the standard of care, as follows:

- 16 1. Failure to continue appropriate antibiotics during the patients hospitalizations  
17 when she was clearly fighting an infection.
- 18 2. Failure to continue antibiotics post-discharge in a patient clearly not having  
19 recovered from her infection.
- 20 3. Failure to follow up the radiographic studies which were clearly suspicious for an  
21 intra-abdominal abscess.
- 22 4. Discharging a patient with evidence of a small bowel obstruction or ileus without  
23 any explanation or resolution.
- 24 5. Pre maturely discharging the patient before she had adequately recovered from the  
25 septic process.

26 (See Ex. 4, at ¶ 15.)

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<sup>3</sup> This affidavit was attached to Plaintiff's Amended Complaint for Medical Malpractice, filed on  
December 16, 2020, as Exhibit B.

1 One day after her second discharge from Sunrise Hospital, July 17, 2016, Choloe was admitted  
2 into Centennial Hills Hospital ("Centennial"), again in severe pain and with no real bowel movement.  
3 The imaging studies at Centennial showed her condition had worsened in the one day since her discharge  
4 from Sunrise Hospital. (*See* Ex. 1, at ¶ 6; *see* Ex. 2, at ¶ 6; *see* Ex. 4, at ¶ 14.) Choloe remained  
5 hospitalized at Centennial through September 2, 2016. (*See* Complaint for Medical Malpractice, filed on  
6 June 30, 2017, at ¶ 9.) She was then discharged to a rehabilitation facility. (*See* Ex. 1, at ¶ 7; *see* Ex. 2, at  
7 ¶ 7; *see* Ex. 4, at ¶ 14.)

8 Dr. Karamardian opined that based on the above breaches to the standard of care by Delee,  
9 Sunrise Hospital, and Kia, Choloe's "hospital course was protracted with multiple complications and . . .  
10 [then] discharged to a step down facility once her antibiotic course was felt to be completed, still on a  
11 feeding tube and in need of rehabilitation." (*See* Ex. 2, at ¶¶ 5-7.) Dr. Savluk opined that due to Kia's  
12 failures to follow the standard of care, "Choloe Green went on to develop an acute abdomen requiring  
13 surgery, intra-abdominal abscess requiring percutaneous drainage and sepsis related ARDS (severe)  
14 which required 6 plus weeks in the ICU and resulted in severe physical deconditioning and prolonged  
15 sub-acute care." (*See* Ex. 4, at ¶ 16.)

16 Choloe turned 30 years old during her second admission at Sunrise Hospital. (*See* Response to  
17 Defendant Frank J. Delee, M.D.'s First Set of Interrogatories to Plaintiff, attached hereto as Exhibit 5, at  
18 Response to Interrogatory No. 1.) After she was discharged from Centennial and then the rehabilitation  
19 facility, she had to undergo a huge change of lifestyle, especially for a 30-year-old, single woman with  
20 four children. During her time at Centennial and the rehabilitation facility, she was diagnosed with  
21 chronic obstructive pulmonary disease ("COPD") and now requires constant, 24-hour use of oxygen  
22 tanks. She also suffers other health issues related to COPD. (*See* Ex. 5, at Response to Interrogatory No.  
23 4.) Choloe was not discharged from the rehabilitation facilities until October 25, 2016, more than three  
24 months after the cesarian section that lead to her prolonged hospitalization. (*See* Pre-Admission  
25 Information, attached hereto as Exhibit 9.) Choloe needed rehabilitation care because it was determined  
26 she "require[d] 24hr physician oversight for medical management." (*See* Ex. 9, at CG1730.)

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1 These health issues caused by Delee, Kia, NHG, and Sunrise Hospital burden the State of Nevada  
2 through Medicaid, her insurance provider. (*See* Ex. 5, at Response to Interrogatory No. 2.) These health  
3 issues also prevent Choloe from obtaining meaningful employment to care for her family. (*See* Ex. 5, at  
4 Response to Interrogatory No. 11.)

### 5 **III. LEGAL ARGUMENT**

6 A plaintiff's complaint may be dismissed only when it fails "to state a claim upon which relief  
7 may be granted." NRCP 12(b)(5). Under Rule 8(a)(1) of the Nevada Rules of Civil Procedure  
8 ("NRCP"), a complaint, when properly pled, must provide "a short and plain statement of the claim  
9 showing that the pleader is entitled to relief." When a court evaluates whether to dismiss a claim  
10 pursuant to NRCP 12(b)(5), all allegations of material fact made by the plaintiff must be taken as true  
11 and construed in favor of the plaintiff. *Simpson v. Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966 (1997).  
12 This is a rigorous standard to overcome, as every fair inference must be construed in the nonmoving  
13 party's favor. *Id.* Dismissal is only appropriate if the moving party can prove "beyond a doubt" that  
14 under no set of facts would the plaintiff be entitled to relief. *Id.*

15 There is a strong presumption against dismissal for failure to state a claim. *See Gilligan v. Jamco*  
16 *Development Corp.*, 108 F.3d 246, 249 (9th Cir.1997). The issue is not whether the plaintiff ultimately  
17 will prevail, but whether the plaintiff is entitled to offer evidence in support of her claims. *See Jackson*  
18 *v. Carey*, 353 F.3d 750, 755 (9th Cir. 2003).

19 Here, Kia's motion, and NHG's joinder thereto, seeks dismissal for "failure to state a claim"  
20 based on a procedural technicality, not based on the substance of the allegations. Kia/NHG do not argue  
21 the affidavits in support of Choloe's claim are lacking or violate NRS 41A.071's affidavit requirement.  
22 Kia has been on notice of the instant lawsuit since he was first served with his Notice of Deposition on  
23 August 24, 2018, although he did not appear for the original deposition or notify counsel of his inability  
24 to appear. (*See* Ex. 6.) Ultimately, Kia and NHG became parties to this action on June 14, 2019, less  
25 than three years after Choloe's second discharge from Sunrise Hospital, which was the discharge that  
26 was approved by Kia, and less than one year after discovery of Choloe's legal injury by Kia.

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1 Because Kia/NHG became parties to this action within the applicable statute of limitations,  
2 although they were improperly dismissed by Judge Silva, and Choloe's Amended Complaint properly  
3 relates back to her original complaint to allow adding Kia and NHG back into this case, this Court  
4 should deny the instant motion.

5 **A. Kia and NHG were properly brought into this case well-within the statute of**  
6 **limitations.**

7 Under NRS 41A.097(2), an action for professional negligence must be brought within three years  
8 of the date of injury or within one year after the plaintiff discovers the injury. "Injury," as used in that  
9 statute includes both physical damage and the negligence causing the damage, which the Nevada  
10 Supreme Court refers to as "legal injury." *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 250  
11 (1983). The existence of a "legal injury" is important in the professional negligence context because not  
12 all injuries suffered give rise to a professional negligence claim. The *Massey* Court reasoned:

13 [W]hen injuries are suffered that have been caused by an unknown act of negligence by  
14 an expert, the law ought not to be construed to destroy a right of action before a person  
15 even becomes aware of the existence of that right.

16 Furthermore, to adopt a construction that encourages a person who experiences an injury,  
17 dysfunction or ailment, and has no knowledge of its cause, to file a lawsuit against a  
health care provider to prevent a statute of limitations from running is not consistent with  
the unarguably sound proposition that unfounded claims should be strongly discouraged.

18 *Id.* at 727.

19 The expert affidavit requirement of NRS 41A.071 only requires the affidavit contain the  
20 following:

- 21 1. Supports the allegations contained in the action;
- 22 2. Is submitted by a medical expert who practices or has practiced in an area that is  
23 substantially similar to the type of practice engaged in at the time of the alleged  
professional negligence;
- 24 3. Identifies by name, *or describes by conduct*, each provider of health care who is  
25 alleged to be negligent; and
- 26 4. Sets forth factually a specific act or acts of alleged negligence separately as to  
each defendant in simple, concise and direct terms.

27 (Emphasis added).

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1 NRS 41A.071, a procedural rule, governs the threshold initial pleading requirements in  
2 professional negligence actions, including the expert affidavit requirement. *Borger v. Eighth Jud. Dist.*  
3 *Ct.*, 120 Nev. 1021, 1028, 102 P.3d 600, 605 (2004). That statute does not govern the ultimate trial, so  
4 this Court is required to “liberally construe this procedural rule of pleading in a manner that is consistent  
5 with our NRCP 12 jurisprudence.” *Id.*

6 Here, the only reason Judge Silva granted judgment on the pleadings, dismissing Kia and NHG  
7 from the instant suit, was based on her incorrect interpretation of NRS 41A.071's affidavit requirement.  
8 Judge Silva did not believe the affidavit attached to Sunrise Hospital's complaint, Dr. Karamardian's  
9 affidavit attached to Choloe's original complaint, did not describe Kia/NHG's conduct because they  
10 were not listed by name. Counsel for Choloe, Delee, and Sunrise Hospital all agreed that Kia/NHG's  
11 conduct was properly described in that affidavit to keep Kia and NHG in the case. At that time,  
12 Kia/NHG did not argue any statute of limitations issues.

13 A few months later, Judge Silva invited Choloe to file a motion to amend her complaint to add  
14 Kia and NHG back into this case. (*See Court Minutes*, dated July 23, 2020.) Choloe then had to incur the  
15 expense of obtaining expert affidavits to add Kia and NHG back into the case. She obtained an affidavit  
16 from Dr. Savluk to detail Kia's violations of the standard of care. (*See Ex. 4.*) Dr. Karamardian also  
17 amended her affidavit to clarify that the second discharge from Sunrise Hospital was ordered by Kia.  
18 (*See Ex. 2.*) Judge Silva granted Choloe leave to add Kia and NHG back into the case despite dismissing  
19 them less than one year prior. Additionally, Judge Silva denied Kia's request for costs related to his  
20 motion for judgment on the pleadings because Choloe's motion to add Kia and NHG back into the case  
21 was pending. (*See Order Denying, Without Prejudice, Third-Party Defendant Dr. Kia's Verified*  
22 *Memorandum of Costs and Disbursements*, filed on December 3, 2020.)

23 When Choloe originally brought this case, it was unclear who the main actors at Sunrise Hospital  
24 were relative to Choloe's care. She was treated by various doctors and nurses, and she did not want to  
25 bring multiple individuals into this case when their involvement was not clear based on the pre-litigation  
26 medical records she received from Sunrise Hospital. The *Massey* court's interpretation of the applicable  
27 statute of limitations confirms this decision because a plaintiff should not be encouraged to add every  
28 single healthcare provider to the lawsuit to avoid a statute of limitations issue. 99 Nev. at 727.



1 Choloe discovered she suffered a “legal injury” by Kia during his November 14, 2018,  
2 deposition. She would have discovered that injury earlier if Kia had shown up to his original deposition.  
3 Sunrise Hospital then added Kia and NHG into this action less than one year later, on June 14, 2019.  
4 NHG then delayed this lawsuit by waiting until December 27, 2019, to answer that complaint.

5 If Kia had shown up to his original deposition and NHG had not waited over six months to  
6 answer Sunrise Hospital’s third-party complaint, then timing would not be at issue. Kia and NHG  
7 created this issue to avoid liability on the merits of this case.

8 **B. Even if this Court finds the instant suit against Kia and NHG was brought outside**  
9 **the statute of limitations, NRCP prevents dismissal because the addition of those**  
10 **parties relates back to the original complaint.**

11 NRCP 15 governs amendments to pleadings, including “relation back amendments, and states:

12 An amendment to a pleading relates back to the date of the original pleading when:

13 (1) the amendment asserts a claim or defense that arose out of the conduct,  
14 transaction, or occurrence set out--or attempted to be set out--in the  
15 original pleading; or

16 (2) the amendment changes a party or the naming of a party against whom  
17 a claim is asserted, if Rule 15(c)(1) is satisfied and if, within the period  
18 provided by Rule 4(e) for serving the summons and complaint, the party to  
19 be brought in by amendment:

(A) received such notice of the action that it will not be  
prejudiced in defending on the merits; and

(B) knew or should have known that the action would have  
been brought against it, but for a mistake concerning the  
proper party's identity.

20 NRCP 15(c). “An amended pleading adding a defendant that is filed after the statute of limitations has  
21 run will relate back to the date of the original pleading under NRCP 15(c) if “the proper defendant (1)  
22 receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to  
23 its prejudice by the amendment.” *Costello v. Casler*, 127 Nev. 436, 440-41, 254 P.3d 631, 634 (2011)  
24 (citing *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979). The district court must  
25 liberally construe NRCP 15(c) “to to allow relation back of the amended pleading where the opposing  
26 party will be put to no disadvantage.” *Id.* (citing *E.W. French & Sons. Inc. v. General Portland Inc.*, 885

27 ////

28 ////

1 F.2d 1392, 1396 (9th Cir. 1989) ("[C]ourts should apply the relation back doctrine of [Federal] Rule  
2 15(c) liberally."). "Modern rules of procedure are intended to allow the court to reach the merits, as  
3 opposed to disposition on technical niceties." *Id.*

4 First, the claims brought against Kia and NHG arose out of the same conduct, transaction, and  
5 occurrence that Choloe attempted to set out in her original complaint and affidavit attached to the  
6 complaint. *See* NRCP 15(c)(1). Choloe complained her second discharge from Sunrise Hospital violated  
7 the standard of care in her original complaint, and it was Kia/NHG's conduct that resulted in Choloe's  
8 second discharge from Sunrise Hospital. (*See* Ex. 1, at ¶ 5; *see* Ex. 2, at ¶ 5.) There should be no  
9 question whether Kia/NHG's involvement in this case arose out of the same conduct, transaction, and  
10 occurrence complained of in the original complaint.

11 Second, Kia and NHG were served with the Amended Complaint and Summons in accordance  
12 with NRCP 4(e). (*See* Acceptances of Service, filed on December 28, 2020.) Kia/NHG argue they  
13 somehow did not receive service properly under this rule arguing the time should be calculated based on  
14 the filing of the original complaint, but that argument defies common sense. The very fact an amendment  
15 had to first be obtained shows that the NRCP 4(e) timing for service must be based on the date the  
16 amended complaint was filed, not the original complaint.

17 Third, both Kia and NHG received notice of this case prior to the instant Amended Complaint.  
18 Kia first received notice when he was served the Notice of Deposition on August 24, 2018. Kia received  
19 notice as to his actual involvement in the substance of this case during his deposition on November 14,  
20 2018. Finally, he was an actual party to this case beginning June 14, 2019, when Sunrise Hospital filed  
21 its third-party complaint. There is no question, based on these facts, that he knows he is a proper party to  
22 this case.

23 While it is unknown whether Kia informed NHG, his "employer," of this case prior to the third-  
24 party complaint, NHG has been on notice of this case since 2019. The exact date NHG was served is  
25 unknown because a proof of service was never filed. However, NHG delayed this case further by  
26 preventing the deposition of Choloe until it answered the third-party complaint. Erin Jordan, Esq.,  
27 counsel for NHG was included in emails relating to setting the deposition of Choloe dating back to  
28 October 30, 2019. The parties agreed to take Choloe's deposition on December 17, 2019. Ms. Jordan did

1 not respond to that email stream until one day before Choloe's deposition, stating, "Sunrise Hospital  
2 informed us on Thursday that they would not be dismissing NHG from their Third Party Complaint. As  
3 we have not appeared and we do not have a single medical record, we request that the Plaintiffs  
4 deposition set for tomorrow be postponed." The parties agreed to postpone Choloe's deposition to avoid  
5 duplicative discovery. It is unknown why NHG thought Sunrise Hospital would dismiss it from the case.  
6 NHG never filed a motion to dismiss Sunrise Hospital's third-party complaint prior to filing its answer  
7 on December 27, 2019. Because NHG was a party to this case, it has actual notice of this case and  
8 knows it's a proper party based on its relationship to Kia.

9         Neither Kia or NHG have been misled to their prejudice regarding being added back into this  
10 case. Judge Silva denied their request for costs because she planned on granting Choloe leave to add  
11 them back in.

12         Finally, the reason why Kia and NHG were not included in the original complaint is because it  
13 was not clear that Choloe suffered a legal injury by Kia based on the pre-litigation medical records.  
14 Choloe did not want to sue multiple healthcare providers on the off chance that they could be liable.  
15 NRS 41A discourages including parties simply to avoid statute of limitations issues. *See Massey*, 99  
16 Nev. at 727. Choloe did not discover Kia caused her legal injury until his November of 2018 deposition.  
17 She further did not learn of Kia's affiliation with NHG until that deposition.

18         Neither Kia nor NHG are disadvantaged by their addition to this case. When they were in this  
19 case, they received a copy of all discovery conducted and even engaged in the discovery process. Kia and  
20 NHG's actions in this case have actually worked to the disadvantage of Choloe, Delee, and Sunrise  
21 Hospital. Choloe would have discovered Kia caused her legal injury sooner if he had actually shown up  
22 to his original deposition. NHG caused this case to be delayed over six months, including delaying  
23 Choloe's deposition, because it simply refused to file an answer or any other kind of responsive pleading  
24 prior to its December 27, 2019, answer to Sunrise Hospital's third-party complaint. Kia and NHG  
25 omitted those facts from their instant motion. Because they suffer no disadvantage, and actually  
26 disadvantaged all other parties in this case, this Court must liberally construe NRCP 15(c) because the  
27 modern rules of procedure intend this case be heard on the merits and not dismissed on "technical  
28 niceties." *See Costello*, 127 Nev. at 441.

1 At the end of the day, this case should be heard on the merits. The affidavits filed in support of  
2 the original complaint and Amended Complaint show Choloe has a good faith basis to have her case  
3 heard on the merits, as NRS 41A.071 contemplates, and there should be no further procedural delays in  
4 this case.

5 **IV. CONCLUSION**

6 Based on the foregoing, this Court should deny Kia/NHG's instant motion because the claims  
7 against Kia and NHG were brought well-within the statute of limitations and those claims relate back to  
8 Choloe's original complaint, specifically the allegation regarding her second discharge from Sunrise  
9 Hospital.

10 DATED this 4th day of February, 2021.

11 LAW OFFICE OF DANIEL MARKS

12 /s/ Nicole M. Young

13 DANIEL MARKS, ESQ.  
14 Nevada State Bar No. 002003  
15 NICOLE M. YOUNG, ESQ.  
16 Nevada State Bar No. 12659  
17 610 South Ninth Street  
18 Las Vegas, Nevada 89101  
19 Attorneys for Plaintiff  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 4th  
3 day of February, 2021, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically  
4 transmitted a true and correct copy of the above and foregoing **OPPOSITION TO DEFENDANT ALI**  
5 **KIA, M.D.'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT** by way of Notice  
6 of Electronic Filing provided by the court mandated E-file & Serve System, as follows:  
7 following:

8 Erik K. Stryker, Esq.  
9 WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP  
10 300 South 4<sup>th</sup> Street, 11<sup>th</sup> floor  
Las Vegas, Nevada 89101  
Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

11 Sherman Mayor, Esq.  
12 HALL PRANGLE & SCHOONVELD, LLC.  
13 1160 N. Town Center Dr., Ste. 200  
Las Vegas, Nevada 89144  
Attorneys for Sunrise Hospital and Medical Center LLC.

14 Linda K. Rurangirwa, Esq.  
15 Collinson, Daehnke, Inlow & Greco  
2110 E. Flamingo Road, Suite 212  
Las Vegas, Nevada 89119  
16 Attorney for Ali Kia, M.D.

17 Erin Jordan, Esq.  
18 Lewis Brisbois Bisgaard & Smith, LLP  
6385 S. Rainbow Blvd., Suite 600  
Las Vegas, Nevada 89118  
19 Attorney for Nevada Hospitalist Group, LLP

20  
21  
22 /s/ Nicole M. Young

23 An employee of the  
24 LAW OFFICE OF DANIEL MARKS  
25  
26  
27  
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# **EXHIBIT 1**

---

AFFIDAVIT OF DR. LISA KARAMARDIAN

STATE OF California  
COUNTY OF Orange } : s

DR. LISA KARAMARDIAN, being first duly sworn, under penalty of perjury, does say and  
depose the following:

1. That I am a medical doctor licensed in the State of California and am board certified in the field of Obstetrics and Gynecology.
2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
3. That I have reviewed Plaintiff Choloe Green's medical records relating to the care and treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center, Valley Hospital Medical Center and Centennial Hills Medical Center.
4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released home on post-operative day number one. This was a breach of the standard of care by Dr. DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.
5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented again to Sunrise Hospital, now five (5) days post-partum, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16, 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated the standard of care. Ms. Green was discharged despite the fact that she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT scan, yet she was still sent home. This was a violation of the standard of care by Sunrise Hospital and Dr. DeLee.





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## **EXHIBIT 2**

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STATE OF CALIFORNIA )  
COUNTY OF ORANGE ): s

DR. LISA KARAMARDIAN, being first duly sworn, under penalty of perjury, does say and depose the following:

1. That I am a medical doctor licensed in the State of California and am board certified in the field of Obstetrics and Gynecology.
2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for Medical Malpractice against Dr. Frank DeLee, Sunrise Hospital and Medical Center, **and Ali Kia, M.D.**
3. That I have reviewed Plaintiff Choloe Green's medical records relating to the care and treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center, **Ali Kia, M.D.**, Valley Hospital Medical Center and Centennial Hills Medical Center.
4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released home on post-operative day number one. This was a breach of the standard of care by Dr. DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green had not even attempted to tolerate clear liquids and she had not passed flatus when she was released on post-operative day number one.
5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented again to Sunrise Hospital , now five (5) days post-partum, with severe abdominal pain and reports of nausea, vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16, 2016, by **Ali Kia, M.D.** The discharge was discussed and confirmed by Dr. DeLee. This discharge violated the standard of care. Ms. Green was discharged despite the fact that she was not able to tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple dilated loops of bowel, thought to be related to a small bowel

1 obstruction, yet she was sent home. An intraperitoneal abscess was suspected on a CT  
2 scan, yet she was still sent home. This was a violation of the standard of care by Sunrise  
3 Hospital, Ali Kia, M.D., and Dr. DeLee.

- 4 6. The day after she was released from Sunrise Hospital, Ms. Green presented at Centennial  
5 Hills Hospital, on July 17, 2016. At the time of presentation she was now 7 days  
6 postpartum, had not had a bowel movement, and was unable to even tolerate liquids. She  
7 was still in severe pain. Her imaging studies had worsened and she was now admitted,  
8 again, with the diagnosis of small bowel obstruction. An NG tube was finally placed and  
9 a general surgery evaluation ordered. She was admitted for concern for bowel perforation.  
10 She underwent an exploratory laparotomy on July 18th for what was presumed to be a  
11 perforated viscus, but none was found intraoperatively, just diffuse ascites. Infarcted  
12 mesentery was removed and post-op her condition deteriorated, culminating in a rapid  
13 response call on July 20th when she was found to be hypoxic. By the 22nd she had diffuse  
14 pulmonary infiltrates, suggestive of pulmonary edema or ARDS, and her condition worsened. CT  
15 guided drain placement cultures of fluid revealed enterococcus faecalis, supporting the fact that  
16 there must have been a bowel perforation. She then developed a pneumothorax and eventually  
17 needed a tracheostomy and PEG tube placement. On August 5, 2016, there was difficulty with  
18 her airway support.

- 19 7. Because of the violations of the standard of care, her hospital course was protracted with  
20 multiple complications and she was apparently discharged to a step down facility once her  
21 antibiotic course was felt to be completed, still on a feeding tube and in need of rehabilitation.

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1 8. That in my professional opinion, to a degree of medical probability, the standard of care  
2 was breached by Dr. DeLee, Sunrise Hospital and Medical Center, and Ali Kia, M.D., in  
3 their treatment of Ms. Green.

4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

5 **A notary public or other officer completing  
this certificate verifies only the identity of the  
individual who signed the document to which this  
certificate is attached, and not the truthfulness,  
accuracy, or validity of that document.**

6   
LISA KARAMARDIAN, MD.

7 SUBSCRIBED and SWORN to before me  
8 this 8 day of ~~October~~ November, 2020.

9   
10 NOTARY PUBLIC in and for said  
COUNTY and STATE



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## **EXHIBIT 3**

---

**AFFIDAVIT OF CHLOE GREEN**

STATE OF NEVADA        )  
                                  ) ss:  
COUNTY OF CLARK        )

CHLOE GREEN, being first duly sworn deposes and says under penalty of perjury:

1. That I am the Plaintiff in this action and made this affidavit in opposition to the motion for summary judgment filed by Sunrise Hospital.
2. I delivered my baby on July 9, 2016, at Sunrise Hospital, and my doctor was Dr. Frank DeLee.
3. After I was discharged from Sunrise Hospital on July 10, 2016, I continued to suffer from stomach pain and nausea.
4. I followed-up with Dr. Delee in his office on July 14, 2016, and he told me I would be fine.
5. Later that same day, on July 14, 2016, I went to Sunrise Hospital's emergency room because I had severe stomach pain and nausea. I was admitted into the hospital on that date. During my stay, I was treated at Sunrise Hospital by various doctors. I did not chose those doctors. They were assigned to me. I assumed those doctors who came to my bedside, ordered tests and gave me medication were employees and/or agents of Sunrise Hospital. I was never specifically told by any doctor that they were employed by anyone other than Sunrise Hospital. I was discharged on Saturday, July 16, 2016, and was told to follow-up with Dr. Delee in his office the following Monday. At that time I did not know how or why I was discharged because the symptoms I came to the hospital with continued and worsened.
6. The following day, Sunday, July 17, 2016, I went to Centennial Hills Hospital emergency room because I was still in extreme pain. I was told that I had a bowel obstruction and needed emergency surgery. I was also diagnosed as being septic. During my admission with Centennial Hills Hospital my lungs collapsed, and I was put into a medically

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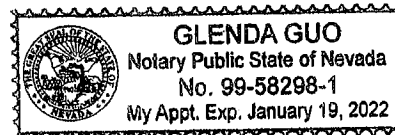
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1 induced coma. I was eventually discharged from that hospital on September 2, 2016. I  
2 now suffer from COPD and require constant use of an oxygen tank. I also suffer from  
3 additional health issues relating to the COPD.

4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

5  
6   
7 \_\_\_\_\_  
8 CHOLOE GREEN

9 SUBSCRIBED and SWORN to before me  
10 this 30<sup>th</sup> day of January, 2019.



13   
14 \_\_\_\_\_  
15 NOTARY PUBLIC in and for said  
16 COUNTY and STATE  
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## **EXHIBIT 4**

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## AFFIDAVIT OF ROBERT S. SAVLUK, M.D.

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN LUIS OBISPO )

ROBERT S. SAVLUK, M.D., being first duly sworn under penalty of perjury, deposes and says:

1. That I have been asked to address issues relating to the care and treatment of patient Choloe Green provided at the Sunrise Hospital by Dr. Ali Kia (hospitalist).
2. That I practiced Internal Medicine (functioning as a hospitalist before the term was coined) and Critical Care Medicine for 36 years.
3. I graduated from the University of California at Los Angeles School of Medicine in 1977 with a doctor of medicine degree and completed my residency in Internal Medicine at University of Medical Center, Fresno, California.
4. That I am board certified in Internal Medicine and was boarded in Critical Care Medicine through 2018.
5. That I am familiar with the roles of hospitalist, and subspecialists in taking care of their patients in a hospital setting.
6. That I am particularly familiar with the case of a septic patient including but not limited to fluid resuscitation, antibiotics, and all manners of supporting medications and equipment.
7. That I am particularly familiar with the source identification and its importance in the treatment of a septic patient. In addition, I am very familiar with the coordination of the various physicians to treat that condition.

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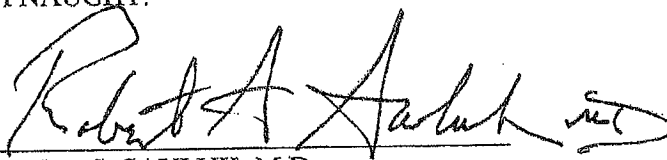
- 1 8. In preparation for this affidavit, I have reviewed summaries of the two hospitalizations at  
2 Sunrise Hospital between August 9 and August 16, 2016 consisting of 33 pages plus an  
3 additional 45 pages of organized records related to medications and vital signs. I also  
4 reviewed 337 pages of Centennial Hills hospital records and the affidavit of Dr. Lisa  
5 Karamardian.  
6
- 7 9. That Choloe Green was a 29 year old G5 P3 obese individual at the time she was  
8 admitted to Sunrise Hospital on 7/09/2016 for repeat c-section for a transverse  
9 presentation. She underwent the procedure through the previous surgical scar (low  
10 transverse), under spinal anesthesia, delivering a 6 lb 7 oz male child.  
11
- 12 10. Post operatively she developed itching secondary to the spinal anesthetic. By the next day  
13 she was ambulatory and taking a regular diet. No mention of bowel activity or urination.  
14 She was deemed ready for discharge and sent home on Norco and Ibuprofen for pain.  
15
- 16 11. That on July 14, 2016 she presented to the Sunrise Hospital ED with 2 days history of  
17 nausea, vomiting, and abdominal pain. She had 2 BM's that day. She was febrile and  
18 tachycardic with a marked leucocytosis. She met the criteria for sepsis and the sepsis  
19 bundle was initiated. She had blood cultures drawn, a fluid bolus given and a broad  
20 spectrum antibiotics initialed appropriately for an intra-abdominal source. An ultra sound  
21 of the pelvis and CT scan of the abdomen and pelvis were ordered. The ultra sound  
22 showed no retained products of conception but a moderate amount of complex free fluid  
23 in the cul-de-sac. The CT scan showed a gastric band in place, distention of doudenum  
24 and jejunum and free fluid with small amount of gas in the peritoneal cavity in the lower  
25 abdomen, anterior to an enlarged uterus. The impressions were 1) small bowel  
26 obstruction and 2) intraperitonal abscess suspected.  
27  
28

12. The patient was admitted to medicine at the request of Dr. DeLee (who was going to be out of town) by Dr. Ali Kia at 9:10 p.m. on July 14, 2016. Dr. Kim also consulted by ED but did not see patient stating "OB can manage care on an out-patient basis." On July 15, 2016, the WBC was 20,600 with left shift. No additional antibiotics were given outside the first dose. At 17:33 patient seen by case worker with plan that patient would go home with sister or mother on out patient antibiotics and follow up with Dr. DeLee.
13. At 22:31 on July 15, 2016, Dr. Ali Kia saw the patient and noted patient having abdominal pain with distention. Additionally she was agitated and having no flatus on bowel movements. The discharge was halted. On the morning of July 16, 2016 an x-ray of the abdomen was done which revealed multiple dilated small bowel loops, small bowel obstruction versus ileus. Despite this, patient discharged home at 20:26 on Norco, dilaudid, motrin iron, and prenatal vitamins but no antibiotics. She was to follow up with Dr. DeLee in two days.
14. The patient presented to Centennial Hills Hospital the next day with an acute abdomen and was taken to surgery on July 18, 2016 where she was noted to have more than a liter of foul smelling fluid in her abdomen, plus an omental infarct which was resected. She then went on to develop severe ARDS and severe physical deconditioning requiring 6 plus weeks in the ICU, a PEG, a trach and finally discharge to a sub-acute facility.
15. Dr. Ali Kia's care of his patient Choloe Green fell below the standard of care for a hospitalist for the following reasons:
1. Failure to continue appropriate antibiotics during the patients hospitalizations when she was clearly fighting an infection.
  2. Failure to continue antibiotics post-discharge in a patient clearly not having

- 1 recovered from her infection.
- 2 3. Failure to follow up the radiographic studies which were clearly suspicious for an
- 3 intra-abdominal abscess.
- 4 4. Discharging a patient with evidence of a small bowel obstruction or ileus without
- 5 any explanation or resolution.
- 6 5. Pre maturely discharging the patient before she had adequately recovered from the
- 7 septic process.
- 8
- 9 16. Finally due to the failures noted above, Choloe Green went on to develop an acute
- 10 abdomen requiring surgery, intra-abdominal abscess requiring percutaneous drainage and
- 11 sepsis related ARDS (severe) which required 6 plus weeks in the ICU and resulted in
- 12 severe physical deconditioning and prolonged sub-acute care.
- 13
- 14 17. The conduct described in paragraph 5 of Dr. Karamardian's affidavit dated June 29, 2017
- 15 relating to Ms. Green's discharge from Sunrise Hospital relates to the care provided to
- 16 Ms. Green at Sunrise by Dr. Ali Kia and any other medical providers that were involved
- 17 in the decision to discharge Ms. Green on July 16, 2016, this decision to discharge her
- 18 violated the standard of care.
- 19
- 20 18. My opinions are expressed to a reasonable decree of medical probability and/or certainty
- 21 and are based on my education, training, experience, and review of the medical records
- 22 outlined previously which reflect the care given Choloe Green by the aforementioned
- 23 Physician.
- 24
- 25 19. This affidavit is intended as a summary of my opinion and there obviously may be further
- 26 explanation of these opinions at the time of trial and/or depositions, should I be asked
- 27 follow-up questions related to any opinions.
- 28

1 20. I hereby reserve the right to amend or supplement my opinions in a report and/or  
2 deposition or as information is provided.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT.  
4

5   
6 ROBERT S. SAVLUK, M.D.

7  
8 SUBSCRIBED and SWORN TO  
9 Before me this \_\_\_\_ day of October, 2020.

10 see attached

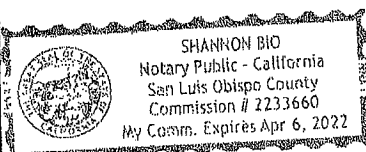
11 NOTARY PUBLIC in and for said  
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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Luis Obispo

Subscribed and sworn to (or affirmed) before me on this 16th  
day of October, 2020, by Robert S. Savluk

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.



(Seal)

Signature

A handwritten signature in dark ink, appearing to read 'Robert S. Savluk', written over a horizontal line.

---

## **EXHIBIT 5**

---

LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,

Case No. A-17-757722-C  
Dept. No. VIII

Plaintiff,

v.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
Limited-Liability Company.

Defendants.

**RESPONSE TO DEFENDANT FRANK J. DELEE, M.D.'S FIRST SET OF  
INTERROGATORIES TO PLAINTIFF**

COMES NOW the Plaintiff Choloe Green, by and through her attorney, Daniel Marks, Esq., of the  
Law Office of Daniel Marks, and hereby submits her Response to Defendants Frank J. DeLee, M.D.'s First  
Set of Interrogatories to Plaintiff as follows:

**INTERROGATORY NO. 1:**

Please provide the following information personal identification information:

- (a) Your full name;
- (b) All names by which you have ever been known or names/aliases which you have used;
- (c) Your date of birth;
- (d) Your place of birth;

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- 1 (e) The number of individuals living with you, including the person's name, age, and  
2 relationship to you;  
3 (f) Your present residence address, and any address at which you lived during the past ten years;  
4 (g) Your telephone numbers, including cellular service provider(s)/carrier(s) at the time of the  
5 alleged incident; and  
6 (h) Your social security number.

7 **RESPONSE TO INTERROGATORY NO. 1:**

- 8 (a) Choloe Shacana Green  
9 (b) Cece  
10 (c) July 15, 1986  
11 (d) Las Vegas, Nevada  
12 (e) Betty Jimerson, 50s, Mother  
13 Brandon Green, 17, child  
14 Tamyah Green, 9, child  
15 Kai Hanks, 6, child  
16 Israel Hanks, 2, child  
17 (f) Present Address: 4828 Golden Shimmer, Las Vegas, Nevada 89139 (1 ½ years)  
18 Past Addresses: 5434 Lavender Grove Court, Las Vegas, Nevada 89103 (2 years)  
19 3213 Denvers Dream, North Las Vegas, Nevada (1 year)  
20 3668 Asbury Hill Ave., Las Vegas, NV 89110  
21 Plaintiff does not remember the addresses of all other prior residences.  
22 (g) Present: 702-628-0392; Metro PCS  
23 (h) [REDACTED]

24 **INTERROGATORY NO. 2:**

25 Please identify your health care insurer and/or coordinator of benefits, any health insurance claim  
26 number (HICN), any Medicare number, and whether you have been diagnosed with end stage renal disease.  
27 (Your social security number from Interrogatory No. 1 will be provided to Medicare and/or Medicaid for  
28 determination of Plaintiff's Medicare and/or Medicaid eligibility for reporting purposes mandated by Section

1 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007.) IF YOU HAVE EVER APPLIED FOR  
2 OR RECEIVED BENEFITS FROM MEDICARE OR MEDICAID AT ANY TIME, WHETHER PRIOR  
3 TO OR AFTER THE ACCIDENT AT ISSUE, OR IF YOU HAVE EVER APPLIED FOR OR RECEIVED  
4 BENEFITS FROM THE SOCIAL SECURITY ADMINISTRATION, PLEASE SO INDICATE IN YOUR  
5 RESPONSE REGARDLESS OF ANY RELATIONSHIP TO THE INCIDENT(S) AT ISSUE.

6 **RESPONSE TO INTERROGATORY NO. 2:**

7 Plaintiff is on Medicaid, Recipient Number [REDACTED] 007. Plaintiff has not been diagnosed with end  
8 stage renal disease.

9 **INTERROGATORY NO. 3:**

10 Please describe the details of the incident, in your own words, describing factually, without legal  
11 conclusions, with as much specificity as possible, the circumstances of the Incident (i.e., who, what, when,  
12 where, and how).

13 **RESPONSE TO INTERROGATORY NO. 3:**

14 Plaintiff was a long-time patient of Defendant Dr. Delee. He had delivered, via C-Section, all of  
15 Plaintiff's children. On July 9, 2016, Dr. Delee delivered Plaintiff's fourth child, Israel Hanks, via C-Section.  
16 Even though Plaintiff had not had a bowel movement since the C-Section on July 9, 2016, Dr. Delee  
17 discharged Plaintiff from Sunrise Hospital on July 10, 2016. That was only one day after the C-section. After  
18 Plaintiff got home she soon discovered that her recovery from the C-section was nothing like her recovery  
19 from her prior three (3) C-Sections. On July 13, 2016, Plaintiff went to Valley Hospital because she was  
20 experiencing pain because she still had not had a bowel movement since the C-Section. Her pain was so  
21 severe that she had to have her 15 year old son help her get dressed. Valley Hospital gave her an injection  
22 in her abdomen and discharged her that same day because she had an appointment with Dr. Delee the  
23 following day.

24 On July 14, 2016, Plaintiff was scheduled to see Dr. Delee in the afternoon. However, Plaintiff's pain  
25 was so severe that she arrived at his office that morning hoping to be seen sooner. Plaintiff told Dr. Delee  
26 that she was in severe pain, had not had a bowel movement, and that something was not right. In response,  
27 Dr. Delee, prescribed her a stool softener, patted her on the back and said she would be fine. Plaintiff also  
28 remembers that Dr. Delee removed her staples that morning.

1 Unfortunately, everything was not alright like Dr. Delee told her. Later that day, Plaintiff's pain  
2 became worse. She then went to Sunrise Hospital where she was admitted from July 14, 2016 through July  
3 16, 2016. Dr. Delee did not visit or speak with Plaintiff during this hospital stay. Even though Sunrise  
4 Hospital diagnosed Plaintiff with a small bowel obstruction, it discharged her on July 16, 2016. The notes  
5 from her discharge say that she would follow-up with Dr. Delee on Monday, July 18, 2016, in his office.

6 However, Plaintiff's condition continued to deteriorate after she was discharged on July 16, 2016.  
7 The following day Plaintiff was admitted to Centennial Hills Hospital where she underwent emergency  
8 surgery. She was admitted at Centennial Hills from July 17, 2016 through September 2, 2016. During the  
9 majority of that time Plaintiff was in a medically induced coma because her body became so weak from  
10 sepsis. Her lungs collapsed and a tracheotomy was performed.

11 After she was discharged from Centennial Hills Plaintiff then required rehabilitation to learn how  
12 to talk and perform everyday activities again. She now has COPD and requires an oxygen tank 24/7 to  
13 breathe.

14 **INTERROGATORY NO. 4:**

15 Please list each and every bodily injury (whether physical, emotional, or otherwise) you believe you  
16 sustained due to the incident that is the subject of this litigation, and the extent of your recovery from each.

17 **RESPONSE TO INTERROGATORY NO. 4:**

18 Since the incident at issue, Plaintiff now suffers from a variety of health issues that she did not have  
19 before. These health issues are abnormal for a woman in her early-30s. Plaintiff has severe lung issues. She  
20 has COPD, which requires that she carry an oxygen tank with her at all times to help her breathe and the use  
21 of inhalers as needed. She even needs the oxygen tank while she sleeps. Because of the weakened state of  
22 her lungs, Plaintiff now has heart issues and now requires blood pressure medication. Plaintiff also has  
23 issues with her memory. She is going to consult with a neurologist regarding this issue. She also has  
24 developed severe anxiety relating to doctors and hospitals based on the incident at issue in this case.

25 Plaintiff is still treating for the above issues. She would like to believe that the health issues  
26 described above are not permanent given her young age, but she has not seen any improvement with the  
27 function of her lungs since she was released from the hospital in September of 2016.

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1 **INTERROGATORY NO. 5:**

2 If you contend that your injuries at issue in this litigation were caused by the negligence of  
3 Defendants, please describe and explain all facts, without legal conclusions, that support your contention.

4 **RESPONSE TO INTERROGATORY NO. 5:**

5 Objection. This interrogatory calls for an expert medical opinion which Plaintiff is not qualified to  
6 form. Plaintiff reserves her right to submit her Initial Expert Disclosure in this case by the date such  
7 disclosures must be made.

8 See expert affidavit attached to Plaintiff's Complaint in this case.

9 **INTERROGATORY NO. 6:**

10 With regard to any hospital, medical provider, including but not limited to family practitioners,  
11 psychologists and therapists, who have provided treatment to you as a result if this incident:

- 12 (a) Identify each hospital, medical provider, psychologists, psychiatrists or therapist;  
13 (b) State the dates (beginning and end), description, and costs of each hospitalization or medical  
14 treatment;  
15 (c) The name of the individual who referred you to that treatment provider; and  
16 (d) IDENTIFY ANY TREATMENT WHICH WAS PAID FOR, REIMBURSED BY, OR  
17 SUBJECT TO A RIGHT OF RECOVERY BY MEDICARE OR MEDICAID, including the  
18 amount of each and every right of recovery.

19 **RESPONSE TO INTERROGATORY NO. 6:**

- 20 1. Sunrise Hospital and Medical Center  
21 Date(s) of Treatment: July 9, 2016 and July 13, 2016 to July 16, 2016  
22 2. Valley Hospital  
23 Date(s) of Treatment: July 13, 2016  
24 3. Centennial Hills Hospital  
25 Date(s) of Treatment: July 17, 2016 to September 2, 2016  
26 4. Canyon Vista Post Acute  
27 Date(s) of Treatment: September/October 2016

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5. Health South Rehabilitation

Date(s) of Treatment: September/October 2016

6. Axis Healthcare Clinic (Primary Care)

Date(s) of Treatment: September/October 2016 through Present

7. Dr. Leonard Parilak of Silver State Cardiology

Date(s) of Treatment: September/October 2016 through Present

8. Pulmonary Associates

Date(s) of Treatment: September/October 2016 through Present

9. Center for Wellness and Pain Care

Date(s) of Treatment: September/October 2016 through Present

10. Dr. Skanker Dixit of Neurology Center of Nevada

Date(s) of Treatment: Has not been seen yet but has appointment scheduled

11. Dignity Health ER on Blue Diamond and Decatur

All of Plaintiff's medical expenses/treatment was covered by Medicaid. Plaintiff believes she may have gone to an additional rehabilitation facility and will update this list once to discovers the name. Discovery is ongoing and Plaintiff reserves the right to supplement this list.

**INTERROGATORY NO. 7:**

Please list all health care providers with whom/which you have treated or consulted dating from five years prior to the incident that is the subject of this litigation to the present, **including all care provides with whom/which you treated for reasons not claimed to be due to the incident**, specifically listing:

- (a) The name of each care provider;
- (b) The address of each care provider;
- (c) The reason you obtained treatment from or consulted with each care provider; and
- (d) The inclusive dates you treated with each provider.

PLEASE IDENTIFY ANY TREATMENT WHICH IS SUBJECT TO A LIEN AS WELL AS ANY TREATMENT THAT WAS PAID FOR, REIMBURSED BY, OR SUBJECT TO A RIGHT OF RECOVERY BY MEDICARE OR MEDICAID, including the amount of each and every lien and/or right of recovery.

1 **RESPONSE TO INTERROGATORY NO. 7:**

2 For the five years preceding the subject incident through the present date, Plaintiff was treated by  
3 Dr. Delee and would receive emergency care at UMC Quick Care located at Nellis and Charleston, Valley  
4 Hospital, and Sunrise Hospital. She also received treatment from Axis Healthcare Clinic, 6771 W.  
5 Charleston Blvd., Las Vegas, Nevada 89146, and Nevada Comprehensive Pain Center. In addition, Plaintiff  
6 saw Dr. Bernie Hanna regarding her lap band.

7 **INTERROGATORY NO. 8:**

8 Please identify each healthcare provider, including but not limited to physicians, psychologists, or  
9 therapists, who has advised you that you will in the future require further treatment or hospitalization for any  
10 injury or symptom wholly or partially resulting from the incident, including but not limited to the following  
11 information:

- 12 (a) The name and address of the healthcare provider;
- 13 (b) The purpose of the treatment;
- 14 (c) A description of the recommended future treatment in detail;
- 15 (d) The date(s) and location(s) the recommended future treatment is expected to occur;
- 16 (e) The estimated cost of the recommended future treatment; and
- 17 (f) Whether the healthcare provider has stated that such future medical treatment is reasonable  
18 and probable to occur as required above to a reasonable degree of medical probability.

19 **RESPONSE TO INTERROGATORY NO. 8:**

20 Plaintiff has been told by her cardiologist and pulmonologist that she will need future treatment  
21 because her lungs are not strong enough to allow her to breathe without use of an oxygen tank. She is going  
22 to consult with a neurologist regarding her memory issues. Discovery is still ongoing and Plaintiff is in the  
23 process of discovering whether her injuries from the incident at issue are permanent, including what her  
24 future treatment and the cost of the treatment will be.

25 **INTERROGATORY NO. 9:**

26 If you are claiming that any of the injuries you believe were caused or aggravated by the incident that  
27 is the subject of this litigation are permanent, please state:

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- 1 (a) Which injuries you are claiming are permanent;  
2 (b) What, if any, disabilities you contend such injuries will cause;  
3 (c) The nature of any future treatment that you claim will be necessary; and  
4 (d) The dollar amount of the cost of any future treatment that you claim will be necessary; and  
5 the name, address, and telephone number of the person or health care provider advising of  
6 such necessity.

7 **RESPONSE TO INTERROGATORY NO. 9:**

8 Plaintiff's pulmonologist has designated that Plaintiff is permanently disabled to the DMV.  
9 Discovery is ongoing and Plaintiff is still in the process of determining the full extent of her injuries and  
10 whether her injuries are permanent.

11 **INTERROGATORY NO. 10:**

12 If your responses to interrogatory number 9 are anything but an unequivocal "no," please identify  
13 each medical or health care provider from which you sought medical treatment for your injuries or  
14 conditions, including the name, address, date(s) of each treatment, including the last date of treatment for  
15 each provider.

16 **RESPONSE TO INTERROGATORY NO. 10:**

17 See Response to Interrogatory No. 6.

18 **INTERROGATORY NO. 11:**

19 Please state and describe in detail any ongoing physical limitations and/or handicaps hinder your  
20 performance of daily life activities, including but not limited to the specific activities of daily living  
21 (including household activities, personal hygiene activities, and recreational activities/hobbies) which you  
22 are now incapable of performing, or which your performance is now hindered as a result of your ongoing  
23 physical limitations and/or handicaps. Plaintiff also has issues with her memory, which she is going to  
24 consult with a neurologist about.

25 **RESPONSE TO INTERROGATORY NO. 11:**

26 Plaintiff is a woman who is in her early-30s. However, Plaintiff is unable to engage in ANY of the  
27 activities that a normal woman in her early-30s can perform because she requires constant use of an oxygen  
28 tank, including while she is sleeping. Most significant is that Plaintiff cannot care for her children by herself.

1 Where she once used to play with her children and take them to the park, she can no longer play with them  
2 because she gets fatigued very quickly. Plaintiff can no longer cook, clean, or do yard work. In addition, she  
3 needs assistance with her personal hygiene, including bathing and brushing her hair. Because she requires  
4 an oxygen tank at all times, it is difficult for her to walk, let alone run. She has extreme difficulty going up  
5 stairs and she is unable to drive unless someone is in the car with her.

6 **INTERROGATORY NO. 12:**

7 Please list all pharmacies (including the address of each pharmacy location) in which you have filled  
8 proscriptions for medication of any kind from five years prior to July 9, 2016, through the present. If you  
9 have used any online or mail order pharmacies during this time frame, please identify the same.

10 **RESPONSE TO INTERROGATORY NO. 12:**

- 11 1. CVS on Ann and Decatur
- 12 2. Walgreens on Windmill and Blue Diamond

13 **INTERROGATORY NO. 13:**

14 Please describe in detail all prescription and non-prescription medications, including all pills,  
15 patches, liquids, or medicines, that you took, ingested, consumed, or applied between your discharge from  
16 Sunrise Hospital on July 10, 2016 until your admission to Centennial Hills Hospital on July 17, 2016,  
17 excluding the medications administered during your treatment at Valley Hospital on July 13, 2016 and  
18 Sunrise Hospital from July 14, 2016 through July 16, 2016. Please include in your response the dosages,  
19 amounts, times (of ingestion, consumption, or application), types, nature, reasons, and the names of all  
20 prescribing physicians.

21 **RESPONSE TO INTERROGATORY NO. 13:**

22 Plaintiff only took the medications prescribed by Dr. Delee, Sunrise Hospital and Valley Hospital.

23 **INTERROGATORY NO. 14:**

24 Please itemize all expenses that you claim you have incurred as a result of the incident that is the  
25 subject of this litigation, including medical expenses, specifically listing:

- 26 (a) A description of each expense claimed;
- 27 (b) The name of the person or entity to whom or which each expense was paid or is owing;
- 28 (c) Whether each expense is paid or unpaid;



1 (d) The dollar amount of each expense;

2 (e) The amount of each expense "payable as a benefit to the plaintiff as a result of the injury...  
3 pursuant to the United States Social Security Act, any state or federal income disability or  
4 worker's compensation act, any health, sickness or income-disability coverage, and any  
5 contract or agreement of any group, organization, partnership or corporation to provide, pay  
6 for or reimburse the cost of medical, hospital, dental or other health care services."

7 **RESPONSE TO INTERROGATORY NO. 14:**

8 The only expenses incurred by Plaintiff as the result of the incident at issue are the medical bills,  
9 which were paid by Medicaid. Those bills have already been produced in this case.

10 **INTERROGATORY NO. 15:**

11 For each expense paid as a benefit, as defined in interrogatory 14(e) above, please state the identity  
12 of each insurer, contract or agreement provider, disability agency or other office that made such payments  
13 on your behalf, including the address, telephone number, policy number and group number sufficient to  
14 allow service of a subpoena to obtain all records relating to same.

15 **RESPONSE TO INTERROGATORY NO. 15:**

16 All medical bills were paid by Medicaid.

17 **INTERROGATORY NO. 16:**

18 If you have incurred any out of pocket expenses for health care or other treatment which was not paid  
19 by your insurance or other benefits (including medical expenses, pharmacy co-pays, travel costs for  
20 treatment, etc.) that you claim to have incurred as a result of the incident, please itemize all out-of-pocket  
21 expenses that you claim to have incurred as a result of the incident that is the subject of this litigation,  
22 including medical expenses, specifically listing:

23 (a) A description of each expense claimed;

24 (b) The name of the person or entity to whom or which each expense was paid;

25 (c) Whether each expense is paid or unpaid; and

26 (d) The dollar amount of each expense.

27 **RESPONSE TO INTERROGATORY NO. 16:**

28 None.

1 **INTERROGATORY NO. 17:**

2 If you claim you missed time from your employment or some other enterprise in which you earned  
3 money as a result of the incident is that the subject of this litigation, for each job or other enterprise from  
4 which you claim you missed time, please list the following:

- 5 (a) The name, address and telephone number of the employer;
- 6 (b) The specific injuries, symptoms, illnesses or disabilities which you claim caused you to miss  
7 time;
- 8 (c) The total number of hours you claim you missed from the job or other enterprise;
- 9 (d) Your work schedule during the six months prior to the alleged incident;
- 10 (e) The dollar amount of income lost due to the missed time;
- 11 (f) The nature and amount of any benefit other than income you claim you lost due to the missed  
12 time;
- 13 (g) Any dollar amount that you were paid even though you did not work, specifically listing the  
14 inclusive dates you did not work, but for which you were paid;
- 15 (h) The date you returned to work; and
- 16 (i) Your gross income for the past five (5) years.

17 **RESPONSE TO INTERROGATORY NO. 17:**

18 Plaintiff planned on going back to work for Mind Body Solutions, after she gave birth to Israel. At  
19 that job, Plaintiff earned \$10/hour and worked approximately 50 hours per week. Plaintiff worked there for  
20 approximately one (1) year before she stopped working prior to the birth of Israel.

21 Prior to working at Mind Body Solutions, Plaintiff was a stay-at-home mother, and she worked over  
22 the years in various temporary and part-time positions. See Response to Interrogatory No. 18, below.

23 **INTERROGATORY NO. 18:**

24 If you claim loss of income as a result of this incident, state your business or occupation during the  
25 past ten (10) years and please state as to each employer:

- 26 (a) Name and address of the employer;
- 27 (b) The dates of employment;
- 28 (c) Your job title and the nature of the duties you performed;

- 1 (d) The reason you left or changed employment;  
2 (e) The name of your immediate supervisor;  
3 (f) The salary, wage or commission you received; and  
4 (g) For any employer who has terminated you in the past ten (10) years, identify employer by  
5 name and address, position, and the reason(s) for each instance of termination.

6 **RESPONSE TO INTERROGATORY NO. 18:**

- 7 1. Mind Body Solutions, 5120 S. Jones, Las Vegas, Nevada 89109  
8 Approximately 1 year prior to birth of Israel  
9 Medical transportation  
10 Maternity Leave  
11 Supervisor: Stacy Brown  
12 \$10/hour  
13 2. Wildden and Wildden, 1797 E. Cactus Ave, Las Vegas, Nevada 89183  
14 Employed in 2015  
15 Earned \$2,591  
16 3. HKM II, 1220 Melody Lane 180, Roseville, CA 95678  
17 Employed 2015  
18 Earned \$1,948  
19 4. Linden and Associates, 4900 Richmond Sq., Ste 102, Oklahoma City, OK 73118  
20 Employed 2015  
21 Earned \$2,759  
22 5. Freshco Specialty, 6229 Dara St., Las Vegas, North Las Vegas, NV 89081  
23 Employed 2014  
24 Earned \$2,640  
25 6. New World Associates, 3711 Lillo St., Las Vegas, NV 89103  
26 Employed 2012  
27 Earned \$170

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1 **INTERROGATORY NO. 19:**

2 Please list each and every educational institution you attended, beginning with high school. Please  
3 indicate the dates you attended each institution, your course of study, and whether you received a diploma.

4 **RESPONSE TO INTERROGATORY NO. 19:**

5 Plaintiff attended Western High School from approximately 2000 to 2001.

6 **INTERROGATORY NO. 20:**

7 If you have ever made any claim or filed any lawsuit against any person, group, organization,  
8 corporation, industrial commission or any other entity, please identify and describe in detail the following  
9 for each claim or lawsuit;

- 10 (a) The nature of the claim and/or lawsuit;
- 11 (b) The date that the claim was made or the lawsuit was filed;
- 12 (c) The person or entity against whom or which you made the claim or filed the lawsuit;
- 13 (d) The entity to whom the claim was submitted and/or the court in which the lawsuit was filed;
- 14 (e) The underlying facts that resulted in the claim being made or lawsuit being filed;
- 15 (f) The claim number and/or case number of each claim and/or lawsuit;
- 16 (g) The court in which any lawsuit was filed;
- 17 (h) The current status of each claim and/or lawsuit; and
- 18 (i) How each was resolved.

19 **RESPONSE TO INTERROGATORY NO. 20:**

20 Plaintiff was in two (2) car accidents, one in 2010 and one in 2015, which both settled for \$5,000  
21 and \$16,000. In those accidents Plaintiff's neck and back were injured.

22 **INTERROGATORY NO. 21:**

23 Have you ever filed for personal bankruptcy in any jurisdiction? If so, please identify the bankruptcy  
24 action by name, case number, jurisdiction, filing date, trustee in bankruptcy, and status of disposition.

25 **RESPONSE TO INTERROGATORY NO. 21:**

26 No.

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1 **INTERROGATORY NO. 22:**

2 If you have ever been convicted of a felony or misdemeanor involving moral turpitude, please  
3 identify and describe the date of the conviction, the city and state of the conviction, the court in which you  
4 were convicted, the case number, and the offense for which you were convicted.

5 **RESPONSE TO INTERROGATORY NO. 22:**

6 Objection. The information requested is only admissible in court if the conviction is less than 10  
7 years old. Notwithstanding the forgoing objection, Plaintiff has not been convicted on any felonies or  
8 misdemeanors in the last 10 years.

9 **INTERROGATORY NO. 23:**

10 Please state the factual bases supporting the allegations in paragraph 6 of the complaint.

11 **RESPONSE TO INTERROGATORY NO. 23:**

12 The factual bases of paragraph 6 of Plaintiff's complaint is stated in that paragraph, which reads:  
13 "That on or about July 9, 2016, Dr. DeLee performed a cesarean section (C-Section) on Choloe at Sunrise  
14 Hospital. Choloe was discharged from the hospital the following day, on July 10, 2016, even though she did  
15 not have bowel movement prior to being discharged from the hospital."

16 It is not understood what additional information Defendant requests in this interrogatory.

17 **INTERROGATORY NO. 24:**

18 Please state the factual bases supporting the allegations in paragraph 7 of the complaint.

19 **RESPONSE TO INTERROGATORY NO. 24:**

20 The factual bases of paragraph 7 of Plaintiff's complaint is stated in that paragraph, which reads: "On  
21 July 13, 2016, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe notified Dr. Delee  
22 that she had not had a bowel movement post C-section. He did not provide any care or treatment to Choloe  
23 regarding her lack of a bowel movement."

24 It is not understood what additional information Defendant requests in this interrogatory.

25 **INTERROGATORY NO. 25:**

26 With respect to your allegation in paragraph 8 of your complaint that "The discharge was discussed  
27 and confirmed by Dr. DeLee," please provide each fact on which you base his contention.

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1 **RESPONSE TO INTERROGATORY NO. 25:**

2 The medical records from Plaintiff's admission to Sunrise Hospital from July 14, 2016 through July  
3 16, 2016, document conversations the doctors at Sunrise Hospital had with Dr. Delee.

4 **INTERROGATORY NO. 26:**

5 Please state the factual bases supporting the allegations in paragraph 10 of the complaint.

6 **RESPONSE TO INTERROGATORY NO. 26:**

7 This interrogatory calls for an expert medical opinion, which Plaintiff is not qualified to form.  
8 Plaintiff reserves her right to disclose her initial expert disclosures in accordance with the deadline provided  
9 for such disclosures.

10 **INTERROGATORY NO. 27:**

11 Please state the date on which you first consulted with an attorney following the incident. (Please  
12 note that this interrogatory is not seeking privileged information. This interrogatory only inquires as to the  
13 timing of your contact with an attorney following incident, and is not inquiring as to the substance of any  
14 such attorney-client communications).

15 **RESPONSE TO INTERROGATORY NO. 27:**

16 Objection. This interrogatory seeks information that is protected by the attorney-client privilege,  
17 which also protects the timing of Plaintiff's contact with her attorney and/or any other attorneys she  
18 consulted with regarding this matter.

19 **INTERROGATORY NO. 28:**

20 List the name, address, and telephone number of all persons whom you expect to call as expert  
21 witnesses upon the trial of this action, and for each person, please list the subject matter on which the expert  
22 is expected to testify, and the title of the treatises and all other documents upon which the expert relied in  
23 making his or her opinion. For any non-retained expert witnesses, please: (a) state the subject matter on  
24 which the witness is expected to present evidence; (b) provide a summary of the facts and opinions to which  
25 the witness is expected to testify; (c) the qualifications of that witness to present evidence as an expert  
26 witness; and (d) the compensation the witness for providing testimony at deposition and trial.

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1 **RESPONSE TO INTERROGATORY NO. 28:**

2 Discovery is ongoing, and Plaintiff reserves the right to disclose all expert and/or non-retained expert  
3 witnesses in accordance in NRCP 16.1.

4 **INTERROGATORY 29:**

5 Please identify by title, author, and publication date every source you contend supports your  
6 allegation that Defendants fell below the applicable standard of care, as alleged in paragraph 10 of the  
7 complaint.

8 **RESPONSE TO INTERROGATORY NO. 29:**

9 Discovery is ongoing and Plaintiff reserves the right to supplement this request.

10 **INTERROGATORY NO. 30:**

11 Please set forth a detailed account of every meeting and/or conversation you or anyone acting on your  
12 behalf had or overheard regarding this incident with Defendants or employees or persons purporting to be  
13 representatives of Defendants, related to the facts and circumstances giving rise to this action including, but  
14 not limited to:

- 15 (a) The date and time of each conversation;
- 16 (b) The parties and witnesses to each conversation;
- 17 (c) The location of each conversation;
- 18 (d) All statements made by you, or by anyone else on your behalf;
- 19 (e) If someone other than you made the contact, provide the name, address and telephone  
20 number of said individual(s) and his or her relationship to you;
- 21 (f) All statements made by Defendants or anyone else acting on your behalf;
- 22 (g) Name(s) and job title(s) of the individual(s) with whom the conversation(s) took place;
- 23 (h) Whether the conversation occurred in person or via another medium and identify the  
24 medium;
- 25 (i) If the conversation was via telephone, identify the telephone number(s) called and the  
26 telephone service carrier, if the call was placed by you; and
- 27 (j) Please designate which, if any, of the statements made by Defendants, or anyone else acting  
28 on their behalf, that you contend they knew to be false at the time the statement was made.

1 **RESPONSE TO INTERROGATORY NO. 30:**

2       Objection. This interrogatory seeks information that is outside of Plaintiff's personal knowledge.  
3 With regard to conversations that are within her personal knowledge, Plaintiff only remembers the  
4 conversation that she had with Dr. Delee on or about July 14, 2016. Plaintiff told Dr. Delee that she was in  
5 severe pain, had not had a bowel movement, and that something was not right. In response, Dr. Delee,  
6 prescribed her a stool softener, patted her on the back and said she would be fine. Plaintiff also remembers  
7 that Dr. Delee removed her staples that morning.

8 **INTERROGATORY NO. 31:**

9       Please set forth a detailed account of every meeting and/or conversation you or anyone acting on your  
10 behalf had or overheard regarding this incident with any other person(s), related to the facts and  
11 circumstances giving rise to this action including, but not limited to:

- 12       (a)    The date and time of each conversation;
- 13       (b)    The parties and witnesses to each conversation;
- 14       (c)    The locations of each conversation;
- 15       (d)    All statements made by you, or by anyone else on your behalf;
- 16       (e)    If someone other than you made the contact, provide the name, address and telephone  
17               number of said individual(s) and his or her relationship to you;
- 18       (f)    All statements made by any other person(s);
- 19       (g)    Name(s) and job title(s) of the individual(s) with whom the conversation(s) took place;
- 20       (h)    Whether the conversation occurred in person via another medium and identify the medium;  
21               and
- 22       (i)    If the conversation was via telephone, identify the telephone number(s) called and the  
23               telephone service carrier, if the call was placed by you.

24 **RESPONSE TO INTERROGATORY NO. 31:**

25       Objection. This interrogatory is unduly burdensome, overly broad, vague, and seeks information that  
26 is outside of Plaintiff's personal knowledge. Notwithstanding the foregoing objection, Plaintiff only  
27 remembers the one conversation she had with Dr. Delee on or about July 14, 2016.

28       ////



1 **INTERROGATORY NO. 32:**

2 State the names, addresses, and telephone numbers of all persons, not previously identified, who  
3 witnessed the incident giving rise to the instant litigation, or who witnessed the events leading up to or  
4 immediately after said incident, known to you, your attorney, agent or any investigator or detective employed  
5 by you or your attorney or anyone acting on your behalf.

6 **RESPONSE TO INTERROGATORY NO. 32:**

7 See all disclosures made under NRCP 16.1 by Plaintiff and all Defendants.

8 DATED this 14 day of December 2018.

9 LAW OFFICE OF DANIEL MARKS

10   
DANIEL MARKS, ESQ.

11 Nevada Bar No. 002003

12 NICOLE M. YOUNG, ESQ.

13 Nevada Bar No. 12659

14 610 South Ninth Street

15 Las Vegas, Nevada 89101


16 Attorneys for Plaintiff

1 VERIFICATION

2 STATE OF NEVADA )  
3 COUNTY OF CLARK ) ss.

4 CHLOE GREEN, being first duly sworn, deposes and says:

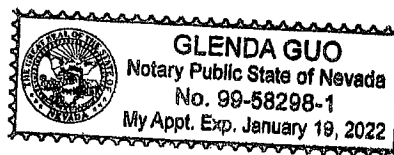
5 That CHLOE GREEN is the Plaintiff in the above-entitled matter; that he has read the above and  
6 foregoing, **RESPONSE TO DEFENDANT FRANK J. DELEE, M.D.'S FIRST SET OF**  
7 **INTERROGATORIES TO PLAINTIFF** and knows the contents thereof; that the same are true of his  
8 knowledge except for those matters stated upon information and belief, and as to those matters, he believes  
9 them to be true.

10  
11   
12 CHLOE GREEN

13  
14 SUBSCRIBED AND SWORN to before me

15 this 14<sup>th</sup> day of December, 2018

16  
17   
18 NOTARY PUBLIC in and for said  
19 COUNTY and STATE

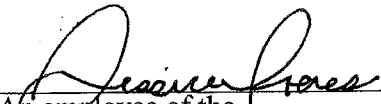


**CERTIFICATE OF SERVICE BY ELECTRONIC SERVICE**

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 14 day of December, 2018, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted a true and correct copy of the above and foregoing **RESPONSE TO DEFENDANT FRANK J. DELEE, M.D.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF** by way of Notice of Electronic Filing provided by the court mandated E-file & Serve system, to the e-mail address on file for the following:

Erik Stryker, Esq.  
WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP  
300 South 4<sup>th</sup> Street, 11<sup>th</sup> floor  
Las Vegas, Nevada 89101  
Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

Michael E. Prangle, Esq.  
HALL PRANGLE & SCHOONVELD, LLC.  
1160 N. Town Center Dr., Ste. 200  
Las Vegas, Nevada 89144  
Attorneys for Sunrise Hospital and Medical Center LLC.

  
An employee of the  
LAW OFFICE OF DANIEL MARKS

---

## **EXHIBIT 6**

---

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

\* \* \* \* \*

4

CHLOE GREEN, an individual, )

5

Plaintiff, )

6

vs. )

Case No.: A-17-757722-C

Dept. No.: VIII

7

FRANK J. DELEE, M.D., an )

individual; FRANK J. DELEE )

8

MD, PC, a Domestic )

Professional Corporation, )

9

SUNRISE HOSPITAL AND MEDICAL )

CENTER, LLC, a Foreign )

10

Limited-Liability Company, )

11

Defendants. )

12

13

**CERTIFIED  
COPY**

14

15

16

SCHEDULED DEPOSITION OF ALI KIA, M.D.

17

Taken on Friday, September 21, 2018

18

At 9:55 a.m.

19

Taken at 610 South Ninth Street

20

Las Vegas, Nevada

21

22

23

24

25

Reported By: Terri M. Hughes, CCR No. 619

1 SCHEDULED DEPOSITION OF ALI KIA, M.D., taken at the Law  
2 Office of Daniel Marks, 610 South Ninth Street, Las Vegas,  
3 Nevada, on Friday, September 21, 2018, at 9:55 a.m.,  
4 before Terri M. Hughes, Certified Court Reporter, in and  
5 for the State of Nevada.

6 APPEARANCES:

7 For the Plaintiff:

8 DANIEL MARKS, ESQ.  
9 NICOLE M. YOUNG, ESQ.  
10 Law Office of Daniel Marks  
11 610 South Ninth Street  
12 Las Vegas, Nevada 89101  
13 (702) 386-0536

14 For the Defendants, Frank J. DeLee, M.D. and Frank J.  
15 DeLee, M.D., P.C.:

16 ERIC K. STRYKER, ESQ.  
17 Wilson Elser Moskowitz Edelman & Dicker LLP  
18 300 South Fourth Street  
19 11th Floor  
20 Las Vegas, Nevada 89101  
21 (702) 727-1400

22 For the Defendant, Sunrise Hospital and Medical Center,  
23 LLC:

24 TYSON J. DOBBS, ESQ.  
25 Hall Prangle and Schoonveld LLC  
1160 North Town Center Drive  
Suite 200  
Las Vegas, Nevada 89144  
(702) 212-1457

E X H I B I T S

Page

1 - Deposition Subpoena; Proof of Service.....

4

1 MR. MARKS: Okay. On the record.

2 This is the time, place and notary for the  
3 deposition of Ali Kia. We have the deposition subpoena  
4 and the return of service for today's deposition who was  
5 served Friday, August 24th at 11:58 a.m. and setting the  
6 depo for today at 9:30. I have 9:55 a.m.

7 Counsel, we all agree?

8 MR. STRYKER: I concur and agree.

9 MR. DOBBS: Concur.

10 MR. MARKS: All right. But we've all agreed  
11 that we're not going to wait more than 25 minutes for the  
12 doctor. He hasn't called, so we'll just move forward and  
13 try to get him to show next time.

14 MR. DOBBS: Thank you very much.

15 MR. MARKS: All right. Thank you.

16 (Exhibit 1 was marked for identification.)

17 (Thereupon, the taking of the scheduled  
18 deposition was concluded at 9:56 a.m.)

19 \* \* \* \* \*

20

21

22

23

24

25



1 CERTIFICATE OF REPORTER

2

3 STATE OF NEVADA )  
4 ) ss:  
5 COUNTY OF CLARK )

6

7 I, Terri M. Hughes, CCR No. 619, do hereby  
8 certify: That I reported the scheduled deposition of ALI  
9 KIA, M.D., commencing on Friday, September 21, 2018, at  
10 9:55 a.m.

11 That I thereafter transcribed my said shorthand  
12 notes into typewritten form, and that the typewritten  
13 transcript of said scheduled deposition is a complete,  
14 true and accurate transcription of my said shorthand  
15 notes.

16 I further certify that I am not a relative or  
17 employee of counsel of any of the parties, nor a relative  
18 or employee of the parties involved in said action, nor a  
19 person financially interested in said action.

20 IN WITNESS WHEREOF, I have set my hand in my  
21 office in the County of Clark, State of Nevada, this 1st  
22 day of October, 2018.

23

24

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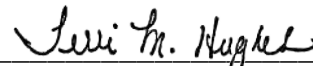
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33

34

35



Terri M. Hughes, CCR No. 619

<b>A</b>	<b>DeLee</b> 1:7,7 2:11 2:12 <b>depo</b> 4:6 <b>deposition</b> 1:16 2:1 3:3 4:3,3,4,18 5:6 5:9	<b>Hall</b> 2:18 <b>hand</b> 5:12 <b>Hospital</b> 1:9 2:16 <b>Hughes</b> 1:25 2:4 5:6,20	<b>Nevada</b> 1:2,20 2:3 2:5,10,15,20 5:3 5:13 <b>NICOLE</b> 2:8 <b>Ninth</b> 1:19 2:2,9 <b>North</b> 2:19 <b>notary</b> 4:2 <b>notes</b> 5:8,10	<b>service</b> 3:3 4:4 <b>set</b> 5:12 <b>setting</b> 4:5 <b>shorthand</b> 5:8,9 <b>show</b> 4:13 <b>South</b> 1:19 2:2,9 2:14 <b>ss</b> 5:3 <b>State</b> 2:5 5:3,13 <b>Street</b> 1:19 2:2,9 2:14 <b>STRYKER</b> 2:13 4:8 <b>subpoena</b> 3:3 4:3 <b>Suite</b> 2:19 <b>Sunrise</b> 1:9 2:16
<b>A-17-757722-C</b> 1:6 <b>a.m</b> 1:18 2:3 4:5,6 4:18 5:7 <b>accurate</b> 5:9 <b>action</b> 5:11,12 <b>agree</b> 4:7,8 <b>agreed</b> 4:10 <b>Ali</b> 1:16 2:1 4:3 5:6 <b>APPEARANCES</b> 2:6 <b>August</b> 4:5	<b>Dept</b> 1:6 <b>Dicker</b> 2:13 <b>DISTRICT</b> 1:1 <b>DOBBS</b> 2:18 4:9 4:14 <b>doctor</b> 4:12 <b>Domestic</b> 1:8 <b>Drive</b> 2:19	<b>I</b> <b>identification</b> 4:16 <b>individual</b> 1:4,7 <b>interested</b> 5:12 <b>involved</b> 5:11	<b>O</b> <b>October</b> 5:13 <b>office</b> 2:2,9 5:13 <b>Okay</b> 4:1	
<b>B</b>	<b>E</b>	<b>J</b>	<b>P</b>	<b>T</b>
<b>B</b> 3:1	<b>E</b> 3:1 <b>Edelman</b> 2:13 <b>Elser</b> 2:13 <b>employee</b> 5:11,11 <b>ERIC</b> 2:13 <b>ESQ</b> 2:8,8,13,18 <b>Exhibit</b> 4:16	<b>J</b> 1:7,7 2:11,11,18	<b>P.C</b> 2:12 <b>Page</b> 3:2 <b>parties</b> 5:11,11 <b>PC</b> 1:8 <b>person</b> 5:12 <b>place</b> 4:2 <b>Plaintiff</b> 1:5 2:7 <b>Prangle</b> 2:18 <b>Professional</b> 1:8 <b>Proof</b> 3:3	<b>T</b> 3:1 <b>taken</b> 1:17,19 2:1 <b>Terri</b> 1:25 2:4 5:6 5:20 <b>Thank</b> 4:14,15 <b>time</b> 4:2,13 <b>today</b> 4:6 <b>today's</b> 4:4 <b>Town</b> 2:19 <b>transcribed</b> 5:8 <b>transcript</b> 5:9 <b>transcription</b> 5:9 <b>true</b> 5:9 <b>try</b> 4:13 <b>typewritten</b> 5:8,8 <b>TYSON</b> 2:18
<b>C</b>	<b>F</b>	<b>K</b>	<b>Q</b>	<b>U</b>
<b>called</b> 4:12 <b>Case</b> 1:6 <b>CCR</b> 1:25 5:6,20 <b>Center</b> 1:9 2:16,19 <b>CERTIFICATE</b> 5:1 <b>Certified</b> 2:4 <b>certify</b> 5:6,10 <b>CHOLOE</b> 1:4 <b>Clark</b> 1:2 5:4,13 <b>commencing</b> 5:7 <b>Company</b> 1:10 <b>complete</b> 5:9 <b>concluded</b> 4:18 <b>concur</b> 4:8,9 <b>Corporation</b> 1:8 <b>counsel</b> 4:7 5:11 <b>County</b> 1:2 5:4,13 <b>Court</b> 1:1 2:4	<b>financially</b> 5:12 <b>Floor</b> 2:14 <b>Foreign</b> 1:9 <b>form</b> 5:8 <b>forward</b> 4:12 <b>Fourth</b> 2:14 <b>Frank</b> 1:7,7 2:11 2:11 <b>Friday</b> 1:17 2:3 4:5 5:7 <b>further</b> 5:10	<b>K</b> 2:13 <b>Kia</b> 1:16 2:1 4:3 5:7	<b>R</b> <b>record</b> 4:1 <b>relative</b> 5:10,11 <b>reported</b> 1:25 5:6 <b>Reporter</b> 2:4 5:1 <b>return</b> 4:4 <b>right</b> 4:10,15	<b>V</b>
<b>D</b>	<b>G</b>	<b>L</b>	<b>S</b>	
<b>Daniel</b> 2:2,8,9 <b>day</b> 5:13 <b>Defendant</b> 2:16 <b>Defendants</b> 1:11 2:11	<b>going</b> 4:11 <b>GREEN</b> 1:4	<b>Las</b> 1:20 2:2,10,15 2:20 <b>Law</b> 2:1,9 <b>Limited-Liability</b> 1:10 <b>LLC</b> 1:9 2:17,18 <b>LLP</b> 2:13	<b>S</b> 3:1 <b>scheduled</b> 1:16 2:1 4:17 5:6,9 <b>Schoonveld</b> 2:18 <b>September</b> 1:17 2:3 5:7 <b>served</b> 4:5	<b>Vegas</b> 1:20 2:2,10 2:15,20 <b>VIII</b> 1:6 <b>vs</b> 1:6
	<b>H</b>	<b>M</b>		
	<b>H</b> 3:1	<b>M</b> 1:25 2:4,8 5:6 5:20 <b>M.D</b> 1:7,16 2:1,11 2:12 5:7 <b>marked</b> 4:16 <b>Marks</b> 2:2,8,9 4:1 4:10,15 <b>MD</b> 1:8 <b>Medical</b> 1:9 2:16 <b>minutes</b> 4:11 <b>Moskowitz</b> 2:13 <b>move</b> 4:12		
		<b>N</b>		

<b>W</b>	<b>6</b>			
wait 4:11	610 1:19 2:2,9			
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we've 4:10	<b>7</b>			
WHEREOF 5:12	702 2:10,15,20			
Wilson 2:13	727-1400 2:15			
WITNESS 5:12	<b>8</b>			
	89101 2:10,15			
<b>X</b>	89144 2:20			
X 3:1				
<b>Y</b>	<b>9</b>			
YOUNG 2:8	9:30 4:6			
	9:55 1:18 2:3 4:6			
<b>Z</b>	5:7			
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212-1457 2:20				
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25 4:11				
<b>3</b>				
300 2:14				
386-0536 2:10				
<b>4</b>				
4 3:3				
<b>5</b>				

*Steven D. Grierson*

LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
NICOLE M. YOUNG, ESQ.  
Nevada State Bar No. 12659  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; Fax (702) 386-6812  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHLOE GREEN, an individual,

Case No. A-17-757722-C  
Dept. No. VIII

Plaintiff,

v.

Date of Deposition: September 21, 2018  
Time of Deposition: 9:30 a.m.

FRANK J. DELEE, M.D., an individual;  
FRANK J. DELEE MD, PC, a Domestic  
Professional Corporation, SUNRISE HOSPITAL  
AND MEDICAL CENTER, LLC, a Foreign  
Limited-Liability Company.

Defendants.

**DEPOSITION SUBPOENA**

THE STATE OF NEVADA SENDS GREETINGS TO:

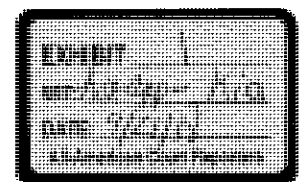
Ali Kia, M.D.  
2470 E. Flamingo Road  
Las Vegas, Nevada 89119

**YOU ARE HEREBY COMMANDED**, that all and singular, business and excuses set aside, you  
appear and attend on the 21st day of September, 2018, at the hour of 9:30 a.m. at the **Law Office of Daniel  
Marks, 610 South Ninth Street, Las Vegas, Nevada 89101.**

////

////

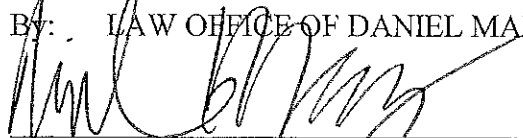
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1 If you fail to attend, you will be deemed guilty of contempt of Court and liable to pay all losses and damages  
2 caused by your failure to appear.

3 Please see Exhibit "A" attached hereto for information regarding the rights of the person subject to  
4 this Subpoena.

5 By: LAW OFFICE OF DANIEL MARKS

6 

7 DANIEL MARKS, ESQ.

8 Nevada State Bar No. 002003

9 NICOLE M. YOUNG, ESQ.

10 Nevada State Bar No. 12659

11 610 South Ninth Street

12 Las Vegas, Nevada 89101

13 Attorney for Plaintiff

EXHIBIT "A"

NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon

specified conditions.

**(d) Duties in Responding to Subpoena.**

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.



P SER  
Law Offices Of: DANIEL MARKS  
610 So. NINTH St.  
Las Vegas, NV 89101  
702 386-0536  
*Attorney for: Plaintiff*

DISTRICT COURT  
CLARK COUNTY NEVADA

CHLOE GREEN

*Plaintiff*

FRANK J. DELEE, M.D., ET AL.

*Defendant*

Case Number: **A-17-757722-C**

Dept/Div: **8**

**PROOF OF SERVICE**

BRENT ALLEN REID, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Wednesday August 22 2018; 1 copy(ies) of the:


**DEPOSITION SUBPOENA; NEVADA RULES OF CIVIL PROCEDURE; NOTICE OF TAKING DEPOSITION**

**I served the same on Friday August 24 2018 at 11:58AM by:**

**Serving Witness ALI KIA, M.D.**

Substituted Service, by leaving the copies with or in the presence of: KRIS OBERSHAW, SUPERVISOR Authorized Agent. at the Witness's Business located at 3022 S. DURANGO DR. #100, Las Vegas, NV 89117.

Pursuant to NRS 53.045, I declare under the penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.  
**Executed: Tuesday August 28 2018**

  
Affiant: BRENT ALLEN REID #R-061962  
LEGAL WINGS, INC. - NV LIC #389  
1118 FREMONT STREET  
Las Vegas, NV 89101  
(702) 384-0305, FAX (702) 384-8638