

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

MARK J. GARDBERG, ESQ., IN HIS  
CAPACITY AS RECEIVER FOR, AND  
ACTING ON BEHALF OF, FLAMINGO-  
PECOS SURGERY CENTER, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,

Appellant,

vs.

WILLIAM D. SMITH M.D., AN  
INDIVIDUAL; AND SHELDON  
FREEDMAN, M.D., AN INDIVIDUAL,

Respondents.

MARK J. GARDBERG, ESQ., IN HIS  
CAPACITY AS RECEIVER FOR, AND  
ACTING ON BEHALF OF, FLAMINGO-  
PECOS SURGERY CENTER, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,

Appellant,

vs.

WILLIAM D. SMITH M.D., AN  
INDIVIDUAL; AND SHELDON  
FREEDMAN, M.D., AN INDIVIDUAL,

Respondents.

No. 83556

Electronically Filed  
Mar 30 2022 11:59 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

No. 83805

**APPELLANT’S RESPONSE TO ORDER TO SHOW CAUSE**

Appellant hereby responds to this Honorable Court’s February 28, 2022 Order  
to Show Cause (“SC-Order”):<sup>1</sup>

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<sup>1</sup> Until very recently, “Appellant” referenced Appellant Mark J. Gardberg, Esq., in his capacity as receiver for, and acting on behalf of, Flamingo-Pecos Surgery Center, LLC, a Nevada Limited Liability Company. On March 15, 2022, a certain order from the Honorable Judge Nancy L. Allf was entered (in A-16-733627-B), and, such

1. Appellant respectfully incorporates by reference, as if fully set forth herein, the Procedural Background from Appellant's February 7, 2022 Response filed with this Court ("Appellant's Response"), including the footnotes clarifying numbering inconsistencies, and Appellant respectfully requests that this Court take judicial notice of this Court's docket.

2. This Court issued an Order to Show Cause on February 28, 2022, based on Appellant failing to demonstrate that the District Court has entered a final judgment (page 2 of 2).

3. Undersigned counsel apologizes for the oversight and attaches hereto as Exhibit 1 a copy of the December 8, 2017 Notice of Entry of Order Regarding Consolidated Motions to Dismiss, that granted in part and denied in part said motions. This should have been included in Appellant's Response, and for that I apologize.

4. The December 8, 2017 Notice of Entry of Order resolved the first, second, third, and eighth causes of action pleaded in the Second Amended Complaint. The District Court's more recent dismissal of the remaining claims with the granting of summary judgment thus transitioned this matter to final and appealable form.

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order granted certain petitions filed by Respondents that sought, among other things, to remove/replace Mr. Gardberg. Undersigned counsel respectfully submits this Response and shall expeditiously inform Her Honor via an e-filed status report.

5. In light of the foregoing, Appellant respectfully submits that this Honorable Court has jurisdiction to permit this consolidated appeal to proceed with the submission of briefs and appearance at oral argument.

Dated March 30, 2022.

Respectfully submitted,

IQBAL LAW PLLC

A handwritten signature in black ink, appearing to read 'Mohamed A. Iqbal, Jr.', written over a horizontal line.

MOHAMED A. IQBAL, JR.

Nevada Bar No. 10623

101 Convention Center Drive, Suite 1175

Las Vegas, NV 89109

*Attorneys for Appellant*

### **CERTIFICATE OF SERVICE**

I certify that I am an employee of IQBAL LAW PLLC and that on March 30, 2022, I caused a true and correct copy of the **APPELLANT’S RESPONSE TO ORDER TO SHOW CAUSE** to be served as follows:

\_\_\_ By placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

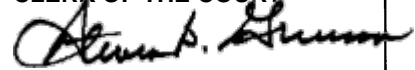
\_\_\_ Pursuant to NEFCR 9, to be sent via facsimile; and/or

\_X\_ Pursuant to NEFCR 9, by transmitting via the Court’s electronic filing services by the document(s) listed above to the Counsel set forth on the service list.

/s/ Marie-Claire Alsanjakli  
An Employee of IQBAL LAW PLLC

# **EXHIBIT 1**

# **EXHIBIT 1**



MARC P. COOK  
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GEORGE P. KELESIS  
Nevada State Bar No. 000069  
COOK & KELESIS, LTD.  
517 S. 9<sup>th</sup> Street  
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Facsimile: 702-737-7712  
Email: mcook@bckltd.com  
*Attorneys for Defendant Sheldon Freedman*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

FLAMINGO-PECOS SURGERY CENTER,  
LLC a Nevada limited liability company,

Plaintiff,  
vs.

WILLIAM SMITH MD, an individual;  
PANKAJ BHATANAGAR MD, an  
individual; MAJORIE BELSKY MD, an  
individual; SHELDON FREEDMAN MD,  
an individual; MATHEW NG MD, an  
individual; DANIEL BURKHEAD MD, an  
individual; and DOE MANAGERS,  
DIRECTORS, AND OFFICERS 1-25, ROE  
BUSINESS ENTITIES 1-25;

Defendant.

CASE NO. A-17-750926-B  
DEPT. NO. XV

**NOTICE OF ENTRY OF ORDER  
REGARDING CONSOLIDATED  
MOTIONS TO DISMISS**

Hearing Date: November 29, 2017  
Hearing Time: 9:00 A.M.

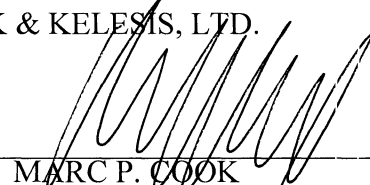
PLEASE TAKE NOTICE that on the 6th day of December, 2017, an Order Regarding  
Defendants' Motions to Dismiss was entered in the above-captioned matter.

A copy of said Order is attached hereto.

Dated this 8 day of December, 2017.

COOK & KELESIS, LTD.

By :



MARC P. COOK  
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GEORGE P. KELESIS  
Nevada State Bar No. 000069  
517 S. 9<sup>th</sup> Street  
Las Vegas, Nevada 89101  
*Attorneys for Defendant, Sheldon J. Freedman*

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that on the 8<sup>th</sup> day of December, 2017, in accordance  
3 with NRCP 5(b), NEFCRRR Administrative Order 14-2 and NEFCR 9(e), the undersigned provided  
4 the clerk with a service list of parties to be served with the above and foregoing **NOTICE OF**  
5 **ENTRY OF ORDER REGARDING CONSOLIDATED MOTIONS TO DISMISS** as follows:

6 Timothy R. Mulliner, Esq.  
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8 101 Convention Center Drive  
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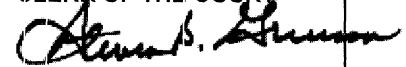
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30 An employee of COOK & KELESIS, LTD.

ORIGINAL

Electronically Filed  
12/7/2017 2:57 PM  
Steven D. Grierson  
CLERK OF THE COURT



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*Attorneys for Defendants*

DISTRICT COURT  
CLARK COUNTY, NEVADA

FLAMINGO-PECOS SURGERY CENTER,  
LLC a Nevada limited liability company,

Plaintiff,

vs.

WILLIAM SMITH MD, an individual;  
PANKAJ BHATANAGAR MD, an  
individual; MAJORIE BELSKY MD, an  
individual; SHELDON FREEDMAN MD,  
an individual; MATHEW NG MD, an  
individual; DANIEL BURKHEAD MD, an  
individual; and DOE MANAGERS,  
DIRECTORS, AND OFFICERS 1-25, ROE  
BUSINESS ENTITIES 1-25;

Defendant.

CASE NO. A-17-750926-B  
DEPT. NO. XV

**ORDER REGARDING  
CONSOLIDATED MOTIONS TO  
DISMISS**

Hearing Date: November 29, 2017  
Hearing Time: 9:00 AM

The above-captioned action having come on for hearing on the 29<sup>th</sup> day of November,  
2017 on the following motions:

Defendant Sheldon J. Freeman, M.D.'s Motion to Dismiss Complaint, First  
Amended Complaint and Second Amended Complaint Pursuant to N.R.C.P.  
12(b)(5) and 12(b)(6) and for Attorneys Fees Pursuant to NRS 18.020;

Defendants Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Motion to Dimiss  
Second Amended Complaint;

and,

Defendant Daniel L. Burkhead, M.D.'s Motion to Dismiss Second Amended  
Complaint;

and the related joinders thereto; Todd E. Kennedy appearing for Plaintiff; Bryce Kurimoto

appearing for Defendants Bhatnagar, and Ng; Marc P. Cook appearing for Sheldon



1 Freedman, M.D.; and Dylan E. Houston appearing for Daniel Burkhead, M.D., the court having  
2 considered the papers on file therein and having heard arguments of counsel, and good cause  
3 appearing therefor:

4 **IT IS ORDERED, ADJUDGED AND DECREED** that the motions to dismiss are  
5 granted in part and denied in part as set forth more fully below.

6 Specifically, the Motions to Dismiss are granted without prejudice as to Causes of Action  
7 I - Grossly Negligent Hiring, II - Grossly Negligent Supervision, and III - Grossly Negligent  
8 Retention, all of which relate to non-employer liability for actions against an employee and the  
9 economic loss doctrine, merit dismissal, even pursuant to the Motion to Dismiss standards.

10 Similarly, Cause of Action VII - Breaches of NRS Chapter 86, is not an appropriate  
11 Cause of Action under Chapter 86 and, therefore, is also dismissed without prejudice.

12 Defendants' motions are denied as to the remaining causes of action in Plaintiff's Second  
13 Amended Complaint as the claims as pled, state causes of action, without prejudice subject to  
14 future motion work.

15 The Motion to Dismiss based on the revoked limited liability company is also denied  
16 without prejudice.

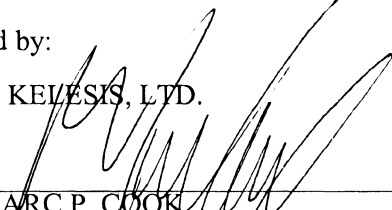
17 DATED and DONE this 10<sup>th</sup> day of December, 2017.

18  
19   
20 DISTRICT JUDGE

21 Submitted by:

22 COOK & KELESIS, LTD.

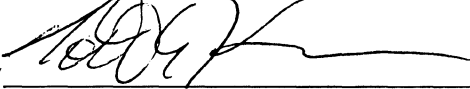
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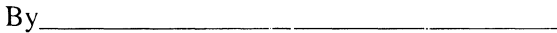
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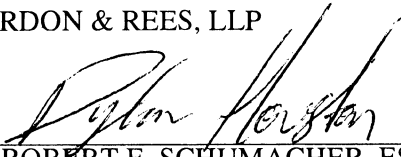
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