

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

ALI KIA, M.D.,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, THE HONORABLE
CRYSTAL ELLER, PRESIDING,

Respondent,

and

CHLOE GREEN, FRANK J.
DELEE, M.D., FRANK J. DELEE,
MD, PC, SUNRISE HOSPITAL AND
MEDICAL CENTER, LLC, AND
NEVADA HOSPITALIST GROUP,
LLP,

The Real Parties in Interest.

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Dist. Court Case No.: A-15-714654-B

APPENDIX, VOL. II

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Kia v. Eller

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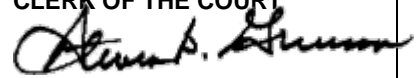
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TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

CHLOE GREEN,

Plaintiff,

vs.

FRANK J. DELEE, M.D., FRANK J.)

DELEE, M.D., PC, SUNRISE)

HOSPITAL AND MEDICAL CENTER,)

LLC,)

Defendants.)

CASE NO. A-17-757722-C

DEPT. NO. IX

Transcript of Proceedings

BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

TUESDAY, NOVEMBER 17, 2020

APPEARANCES [ALL VIA VIDEO CONFERENCE]:

For the Plaintiff:

DANIEL MARKS, ESQ.

NICOLE M. YOUNG, ESQ.

For Sunrise Hospital:

SHERMAN BENNETT MAYOR, ESQ.

For Dr. Delee:

ERIC K. STRYKER, ESQ.

For Dr. Kia:

LINDA RURANGIRWA, ESQ.

RECORDED BY:

GINA VILLANI, DISTRICT COURT

TRANSCRIBED BY:

KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

1 TUESDAY, NOVEMBER 17, 2020 AT 9:42 A.M.

2

3 THE COURT: 17-757722-C, *Choloe Green versus Frank*
4 *Delee, M.D.*

5 MR. MARKS: Your Honor, Daniel Marks for the
6 plaintiff.

7 THE COURT: Good morning. And who is present on
8 behalf of defendant, Sunrise Hospital?

9 MR. MAYOR: Sherman Mayor, Your Honor. Thank you.

10 THE COURT: All right. Good morning. And, then,
11 is there someone present on behalf of Nevada Hospitalist?
12 All right. I don't hear anybody. So, I'm getting a -- I'm
13 getting feedback. Is there anybody who is signed on to
14 BlueJeans using two separate devices?

15 MR. STRYKER: There is, Your Honor. Eric Stryker
16 on behalf of defendant, Delee. I'll mute my other device.

17 THE COURT: All right.

18 MR. STRYKER: My apologies.

19 THE COURT: All right. Good morning. And thank
20 you for that. That causes that feedback issue. All right.

21 So, we are here on a couple of different motions.
22 First, we're here -- well, at least -- not first, but in
23 order that I have them, is Plaintiff's Motion for
24 Reconsideration. And, then, we are also here for Defendant
25 Sunrise Hospital and Medical Center's Motion to Retax

1 and/or Settle the Costs. And we are also here for
2 Defendants Delee -- Defendant Delee's Joinder to
3 Plaintiff's Motion for Reconsideration and Motion for Leave
4 to Amend the Complaint. And, then, there's the Motion to -
5 - for Leave to Amend the Complaint. So, we have a couple
6 different things. I'm going to start with the Motion for
7 Reconsideration. And I'll start with counsel for
8 plaintiff. Is there anything you would like to add outside
9 of the Pleadings?

10 MR. MARKS: Well, yes, Your Honor. And I will try
11 to be brief. I think the operative document we were all
12 working with is your minute order from July 23rd, which I
13 think we all probably read a dozen times or more. And you
14 state the correct law of *Schoenfeld* [sic]. And, then, in
15 *Schoenfeld*, I think where you started -- you know, I don't
16 have any pleasure in telling your Court they're wrong or
17 erred, especially in *BlueJeans* where I'm not, you know,
18 with you in the courtroom. But where I think it went off
19 track, *Schoenfeld* was essentially a plaintiff's summary
20 judgment that the plaintiff got summary judgment so the
21 Supreme Court was saying here are the factors that
22 generally are questions of fact but in the rare case there
23 could be a summary judgment for one party as a matter of
24 law.

25 But the Court cited an 1865 U.S. Supreme Court

1 case, *Ananger* [phonetic], that it -- it appears that the
2 Nevada Supreme Court cited those, and you recited them.
3 Obviously, a lot of law has come down in the agency area
4 since 1865. We know, even going through the pandemic, the
5 lines are blurred between 1099s and W-2s in our society now
6 to a large extent.

7 The Court apparently didn't look at *McCrosky*,
8 which is only three years old. And *McCrosky* is a Nevada
9 Supreme Court case and that, I would say, fine-tuned the
10 standard and brought it up to date, that when you're in a
11 hospital you sign a bunch of forms. Essentially, the
12 patient can't check every doctor's corporate structure.
13 This is more of a societal decision that the individual
14 patient, especially in illness, can't go back and go: Hey,
15 Doc, are you an LLC, are you a PC, are you employed by the
16 hospital?

17 So, while the *McCrosky* court reaffirmed the
18 *Schoenfeld* test, it brought it into the modern era by
19 saying, you know, the patient in that case had signed a
20 COA. That COA was much more pro-defense than the one
21 Sunrise attached. But our Supreme Court said it's
22 debatable whether a typical patient would understand the
23 COA to mean the hospital is not liable for the physician's
24 negligence. If you look at it in practical terms, you
25 might see 10 or more medical providers in a hospital stay,

1 maybe even more. The Court -- the Nevada Supreme Court
2 didn't want the patient to have to check credentials of
3 everybody and potentially sue 10 individual doctors.
4 That's not the intent of the reading of these cases.

5 Now, if -- let's assume this was a business case
6 and there was an issue regarding, is somebody employed or
7 not that could come out in business or could come out in a
8 personal injury case where somebody, you know, is doing
9 repairs and you call ABC Plumbing and you sue them and they
10 go: Oh, no, this guy that came out really has his own
11 professional corporation, he's XYZ. I would submit that
12 that's going to be an issue of fact for the jury.

13 The Court went off on the affidavit requirement,
14 but the affidavit requirement is not where we are. The
15 affidavit would have been years ago, testing on a Motion to
16 Dismiss the Gatekeeper Rule. We're now at summary judgment
17 where you look at depositions, you look at the exhibits,
18 you look at the affidavits, you look at everything. And a
19 lot of the *Schoenfeld* factors are the intent of the
20 plaintiff. It -- the first factor is whether the patient
21 entrusted herself to the hospital. There's no dispute.

22 THE COURT: Yeah. There's no dispute with that.

23 MR. MARKS: Whether the hospital --

24 THE COURT: But, hold on. Let me interrupt you
25 right there. Are -- is your argument to the Court that I

1 should not and cannot consider the Complaint and the
2 affidavit and the deficiencies thereof in making the
3 decision that I made?

4 MR. MARKS: Correct. Correct. Because, under
5 *Zohar*, in other words, the law you cited has been, I would
6 say, fine-tuned for lack of a better word.

7 THE COURT: Sure.

8 MR. MARKS: It's not over -- but I think that --

9 THE COURT: And *Zohar* says to read those together.
10 Right? And, so, I agree with you on that.

11 MR. MARKS: *Zohar* --

12 THE COURT: But, again, I feel a little bit like
13 we're going back in time and we're repeating history --

14 MR. MARKS: But I wanted to make --

15 THE COURT: Counsel, hold on. We're repeating
16 history. And those were my prior questions previously, in
17 that where in the affidavit and where in the Complaint do
18 we have these potential other defendants that would be
19 considered proper to this action if they're not on notice?
20 And I --

21 MR. MARKS: Okay. So, --

22 THE COURT: Answer that question for me.

23 MR. MARKS: I'm going to answer it. *Zohar* talks
24 about conduct. It specifically says you don't have to name
25 the people. And, if you recall, I believe it was on Nevada

1 Hospitalist's Motion to Dismiss against Sunrise that my
2 distinguished colleague for Sunrise argued to the Court the
3 affidavit was sufficient. And the Court, almost sua
4 sponte, decided no, as it related to Dr. Kia in that
5 motion, and that effectively led Sunrise to file this
6 Motion, which had been previously denied, you recall, by
7 Judge Smith, on the same facts. If you read *McCrosky* and
8 you read *Zohar* together, it's conduct. *Zohar* says you
9 don't have to name the parties as long as the conduct is
10 delineated, which it was.

11 Now, we have in our Motion to Amend, having
12 amended affidavit from Lisa Karamardian, who specifically
13 named Dr. Kia, and we had another affidavit from Dr.
14 Salvuk, who said in reading the affidavit of Lisa -- Dr.
15 Karamardian, it's clear she was talking about the
16 discharge. So, you don't, in your minute order, have any
17 analysis of *Zohar* and *McCrosky*, which are more recent
18 cases. I think if you look at the more recent cases, you
19 should reconsider because summary judgment is a different
20 standard. You're not limited. There's nothing in *McCrosky*
21 that says you're limited to the affidavit. There's nothing
22 in *Schoenfeld* that says you're limited to the affidavit.

23 Ostensible agency is a question of fact whether
24 the patient believed this doctor was working for Sunrise.
25 And we use working, the Court has said not in the

1 legalistic sense, it's not: Was the -- did he have is own
2 PC? It's working under the four parts, which are really
3 laymen. Someone shows up at your bedside, they're working.
4 The Court -- you went off, Your Honor, with all due
5 respect, I think on an overly legalistic: He's an
6 independent contractor. But *Schoenfeld McCrosky* had made a
7 public policy that the people in the hospital, if they show
8 up at your bedside and you go through the four-part test,
9 those are questions of fact that the jury would have to
10 decide, not the Court, with all due respect to the Court.

11 And that's the --

12 THE COURT: So, I don't -- so, hold on. I'm going
13 to -- I apologize for interrupting you. But I'm going to
14 ask where in my minute order I discuss anything with him
15 having to be an independent contractor.

16 MR. MARKS: You don't. That's the point. You
17 don't look at *McCrosky*, which essentially supports our view
18 that whether he's in independent contractor or employed is
19 a question of fact for the jury, not the Court. So, you
20 cite --

21 THE COURT: I don't disagree with you. I agree
22 with you as to what *McCrosky* holds and I'm familiar with
23 *Zohar*. But what you're asking me to do is overlook the
24 fact that Dr. Kia was not named as a defendant, that there
25 was nothing in the Complaint or the affidavit that put him

1 on notice of the potential claims against him. And I --
2 you want me to just overlook that and I simply cannot.

3 MR. MARKS: No. No, I don't. I mean, I --
4 remember, I'm -- we're suing -- right now, we're arguing
5 Sunrise. Sunrise was on notice that the conduct of Dr. Kia
6 in the discharge was negligent. That's in the affidavit
7 and the Complaint.

8 THE COURT: I agree.

9 MR. MARKS: And --

10 THE COURT: I don't disagree with you on that.

11 MR. MARKS: So, offensive agency arises when you
12 don't name the individual doctor. But the Supreme Court,
13 as a matter of public policy, is saying because the
14 individual patient in a bed, drugged, very sick, doesn't
15 have to run around and sue 10 doctors. They can prove to
16 the jury that these individual doctors were part of the
17 medical team that treated her and prove the *Schoenfeld*
18 factors and get liability.

19 This isn't a case where Sunrise didn't know the
20 theory. Sunrise knew, based on the affidavit of Lisa
21 Karamardian and the Complaint, that we were suing them
22 because of the discharge. And that was, whether we use the
23 word ostensible agency or not, we were suing them. They
24 have to act through agents. They're a corporation. It has
25 to act through employees or agents.

1 The problem is, you're saying: Why didn't you sue
2 Dr. Kia? Then we wouldn't be arguing ostensible agency.
3 Under your theory, Your Honor, with all due respect, you're
4 saying: If you don't name the people, then there's no
5 ostensible agency.

6 Ostensible agency is quite simply when you don't
7 name. If you named, then it's direct liability and/or you
8 could be saying vicarious liability. Ostensible agency is
9 a public policy of the Supreme Court, saying you go to a
10 hospital, you used to think everybody was employed by the
11 hospital unless you pick up the phone like you go to your
12 internist, OB/G, dermatologist, you know you're -- that's
13 your doctor. You're in a hospital. You don't sign with
14 each doctor. They don't come -- Dr. Kia didn't come and
15 have the person sign and say, you're employing Dr. Kia,
16 like you would if you went to his office.

17 The court is saying, as a matter of policy, number
18 one, they don't want 10 doctors sued. That doesn't make
19 sense. Every time you go to the hospital, you're going to
20 sue 10 or 15 doctors. Number two, in your sickened
21 condition, you have no way to know the legal relationship
22 of all these people. So, you can't -- the Court is saying,
23 as a matter of public policy, we're not going to let
24 hospitals, which are the big building where everybody --
25 you get your treatment, avoid liability on this blurred

1 distinction between 1099 and W-2.

2 It doesn't matter how they get paid. If they --
3 if the hospital essentially sends the person, you go to the
4 ER, and their own COA says: We have hospital-based
5 physicians such as hospitalists and emergency room. That's
6 what this is. They call them hospital based. They don't,
7 in red, say, you know: Alert, your emergency room is an
8 independent contractor. If you have a problem, you better
9 get to them separately and sue them separately, your
10 hospitalist, who is an independent contractor. There's no
11 evidence Dr. Kia had her sign a separate form: You're
12 employing me separately.

13 So, normally, under those conditions, -- forget
14 it's a malpractice case. Under those conditions of
15 employment law or agency law, certainly it wouldn't be
16 summary judgment for the defendant. The *Schoenfeld* court
17 thought, initially the District Court, it would be summary
18 judgment for the plaintiff. The Supreme Court said: No,
19 you got to deal with each case on a case-by-case basis.
20 But most of the time it's a question of fact. And we're at
21 summary judgment. We're not limited -- the affidavit
22 requirement is no longer operative. We're way beyond that.

23 So, we should be able to prove our case if, on the
24 directed verdict stage, you hear all the evidence, you look
25 the witnesses in the eye, and you conclude no reasonable

1 jury could rule in our favor. At that stage, it's a
2 different standard; otherwise, it goes to the jury. But to
3 cut the case off at summary judgment, essentially saying
4 they prevailed as a matter of law that no facts could
5 support ostensible agency, I think is just plain error at
6 this point, Your Honor.

7 And utilizing the affidavit as the shield, I
8 believe is incorrect under *Zohar*. *Zohar* is saying: Look
9 at conduct, not name. Sunrise was on notice. We're not
10 talking about whether Dr. Kia was on notice. Sunrise
11 clearly is on notice. And we're suing Sunrise for the
12 actions of their agents and they had plenty of notice.

13 So, that's why we're asking to reconsider, go back
14 to Judge Smith's original Order. This was argued
15 extensively over a year ago. And we would --

16 THE COURT: But that was the argument where you
17 said ostensible agency did not apply. Correct?

18 MR. MARKS: No. We -- Judge Smith found
19 ostensible agency applied. It was a question --

20 THE COURT: I know what he found. But your
21 argument during that hearing was that ostensible agency did
22 not apply. Correct?

23 MR. MARKS: Your Honor, I do not --

24 MR. MAYOR: Yes.

25 MR. MARKS: I don't recall. I mean, there's an

1 Abe Lincoln quote about I don't remember what I said. This
2 is a year and a half ago. I honestly didn't -- I looked
3 through everything the last weekend but I didn't go back to
4 the Judge Smith hearing. But I think Abe Lincoln said: I
5 don't remember what I argued, you know, in the past, but I
6 know I'm right now.

7 Judge Smith found ostensible agency applied and
8 was a question of fact. If it's -- I just think you went
9 off track on the affidavit requirement.

10 THE COURT: Yeah. I --

11 MR. MARKS: I think the law should be it's a
12 question of fact. And we'd ask you respectfully to
13 reconsider that.

14 THE COURT: All right. I'm going to turn to
15 counsel for defendant. And I want you to focus on the
16 ostensible agency, kind of two-part: One, the argument
17 that because Sunrise was on notice, then that is sufficient
18 at this point to continue with the litigation. And, two, -
19 - well, let's start with that. Go ahead.

20 MR. MAYOR: Your Honor, Sherman Mayor here.

21 First, just so we're clear on the law, there's a
22 case called *Renown versus Vanderford*, a 2010 Nevada Supreme
23 Court case, that makes it absolutely clear that a hospital
24 does not have a nondelegable duty to provide competent
25 medical center. So, counsel's belief somehow that every

1 provider in the hospital is the liability of the hospital
2 is not only not true, it is refuted by *Renown versus*
3 *Vanderford*. There is no automatic liability for the
4 hospital for anybody who provides care in the hospital.

5 In this case, in plaintiff's original Complaint,
6 they did not plead any kind of agency. They certainly
7 didn't ever mention the words ostensible agency or even
8 allude ostensible agency. Nowhere in their expert
9 affidavit did they mention agency, ostensible agency, or
10 Sunrise liability for Dr. Kia. In fact, there was no
11 reference to Dr. Kia.

12 Counsel continues to argue *Zohar* to the Court.
13 The *Zohar* case referenced the first version of NRS 41A.071.
14 Since *Zohar*, since the passage of *Zohar*, NRS 41A.071 was
15 amended. And the amendment, in particular in our brief in
16 part 4, requires a defendant. And the amendment occurred
17 in 2015, prior to the plaintiff's Complaint in this case.
18 The amendment states that the plaintiff must set forth
19 factually a specific act or acts of alleged negligence
20 separately as to each defendant, separately as to each
21 defendant. There is no separation whatsoever for Dr. Kia
22 because he's not even mentioned. He's not referenced
23 whatsoever. There's no Does or Roes anywhere in the
24 Complaint. There's no fictitious persons mentioned.

25 And when this matter was first argued before Judge

1 Smith, counsel for plaintiff argued to the Court that the
2 Motion for Partial Summary Judgment to Dismiss Ostensible
3 Agency should be denied because there was no claim for
4 ostensible agency. There was nothing to be denied. In
5 fact, we gave the Court in our summary judgment a copy of
6 Judge Smith's minute order journal entry where he states
7 that. So, plaintiff is now arguing there is a claim. Then
8 they argued against a summary judgment arguing there wasn't
9 a claim. And, of course, there wasn't a claim. We were --
10 in anticipation they might bring one, we were arguing. But
11 they hadn't actually brought it. You actually have to
12 plead your causes of action in order to have them.

13 And, in this case, what complicates matters for
14 plaintiff is the statute of limitations for medical
15 malpractice expired on August 9, 2018, more than two years
16 ago. That is significant because the Nevada Supreme Court
17 has stated, in a case called *Badger*, which we've provided
18 in our brief to the Court, that you can't add a new theory
19 or a new cause of action after the expiration of the
20 statute of limitations. And that's what they're trying to
21 do here. Ostensible agency has never been plead. They
22 argued it wasn't plead to defeat the summary judgment in
23 the first place.

24 And, Your Honor, just -- I know that Your Honor's
25 read the briefs. I want Your Honor to consider that a

1 parallel motion today that the plaintiff has brought is a
2 Motion to Amend to Add Dr. Kia and Add Nevada Hospitalist
3 Group as Defendants. The reason I mention that is because
4 they describe Nevada Hospitalist Group in their Motion to
5 Amend as the employer of Dr. Kia. And Nevada Hospitalist
6 Group is the entity that selected Dr. Kia.

7 I mean, you can't have it every which way you want
8 to have it. The hospital didn't select Dr. Kia. And the
9 case is not *Schoenfeld*, it's *Schlotfeldt*. And they didn't
10 select -- in *Schlotfeldt*, the key element to have
11 ostensible agency is that the hospital selected the doctor.
12 Ostensible agency is based on the theory of vicarious
13 liability. The hospital didn't select Dr. Kia. And we've
14 provided the Court with four different deposition sections
15 telling you that it was Nevada Hospitalist Group's private
16 call schedule that selected Dr. Kia to treat the plaintiff,
17 Choloe Green. They have nothing, no evidence whatsoever,
18 none to contradict that. They keep arguing: Well, it's
19 subject to a hospital contract. We gave the Court an
20 affidavit. There is no hospital contract. There's
21 nothing. We didn't select -- we didn't select Dr. Kia to
22 treat.

23 So, they didn't plead ostensible agency. They
24 haven't complied with .071 in arguing ostensible agency.
25 You have to have an affidavit that supports your theory,

1 that at least names your theories, they -- the statute of
2 limitations has expired. And they're trying to add in
3 Nevada Hospitalist Group, arguing that it is the employer
4 of Dr. Kia. And we've presented evidence to the Court that
5 Nevada Hospitalist Group is the entity, the private entity
6 that selected Dr. Kia to treat Choloe Green. There is
7 absolutely no basis in this case for ostensible agency.

8 And, at this point, you can't bring -- when I say
9 you can't, I mean the plaintiff's argument that you should
10 bring -- allow ostensible agency after the expiration of
11 the statute of limitations would render the statute of
12 limitations meaningless. We'd be trying a different case.

13 Yes, we were aware that they contended early on
14 there was an improper discharge. They claimed Sunrise
15 Hospital's nurses improperly discharged. They never
16 claimed the hospital is liable for Dr. Kia. They never
17 named him. They never named agency. Ostensibly, they
18 never named Dr. Kia. So, it's too late and the summary
19 judgment is well taken. And, at this point, we're on a
20 Motion to Reconsider where the standard is that the Court's
21 ruling is clearly erroneous. The ruling is not erroneous.
22 That -- there is no basis at this point by summary judgment
23 to have an ostensible agency claim.

24 In *Schlotfeldt*, what the Court said was ostensible
25 agency is an issue like summary judgment motions where the

1 plaintiff has to produce a genuine issue of material fact,
2 otherwise it's granted. And they haven't produced an
3 actual fact.

4 And, so, we ask that the Court affirm its earlier
5 ruling and deny their reconsideration as to ostensible
6 agency. Thank you, Judge.

7 THE COURT: All right. And just for the record to
8 be -- I appreciate your argument that he was an independent
9 contractor and there's no proof of ostensible agency. But
10 I think that's going far beyond the issue that we have
11 before us with the lack of Dr. Kia being named and the lack
12 of any explanation in the expert affidavit or Complaint:
13 A, putting him on notice; or, B, explaining how he was and,
14 you know, negligent. I agree that negligence is a question
15 of fact. But we have to get there. Otherwise, any person
16 can be brought into any litigation without notice that they
17 are facing the kind of claims that are against them.

18 And that would be in direct conflict with Nevada's
19 long-standing requirement of notice, that you have -- this
20 -- we are a notice pleading jurisdiction. And there is no
21 such notice for Dr. Kia. I agree that Dr. -- that Sunrise
22 Hospital was on notice that they were being sued on
23 allegations of negligence and medical malpractice. But
24 that's different than Dr. Kia.

25 So, I am going to deny the Motion for

1 Reconsideration --

2 MR. STRYKER: Your Honor, Eric Stryker for the
3 lead defendant. May I be heard?

4 THE COURT: Sure. Go ahead.

5 MR. STRYKER: I apologize, Your Honor. I --

6 THE COURT: No problem. I didn't --

7 MR. STRYKER: I did not mean to step on your
8 order.

9 THE COURT: -- and I didn't mean to forget you.
10 So, please go ahead.

11 MR. STRYKER: That's okay.

12 I want to kind of focus in on the questions that
13 the Court is asking. I'm not going to get into the
14 ostensible agency issues. Those aren't my issues to
15 litigate right now. I want to go to the question that the
16 Court asked: Where are the other doctors, by name or
17 conduct, referred to in the original affidavit plaintiff
18 attached to her Complaint? And I can answer that.

19 The original affidavit of Dr. Karamardian attached
20 to the original Complaint said that there were two acts of
21 professional negligence. First, when the patient was
22 discharged from Sunrise Hospital the day after Dr. Delee,
23 my client, performed a c-section. The second act of
24 professional negligence was when she was discharged from
25 Sunrise Hospital when she returned to the hospital and was

1 treated by Dr. Kia and discharged on July 16th, 2016. As my
2 brief on behalf of the Delee defendants makes clear, that
3 second discharge was an act -- allegedly, an act of
4 professional negligence on the face of the plaintiff's
5 expert affidavit, that is conduct.

6 And as -- what we carefully did is in our Joinder
7 we actually cut and pasted the image of the discharge
8 orders so the Court could see exactly what the order looked
9 like. And, I mean, I think the Court can probably agree
10 that decisions -- a decision made by a physician to
11 discharge a patient rather than keep her in the hospital
12 and perform surgery is conduct. And that conduct is on the
13 face of the original affidavit attached to the original
14 Complaint. It was conduct of only one physician because
15 only one physician issued that discharge order on July 16,
16 2016. That doctor was Dr. Kia.

17 Now, --

18 THE COURT: Right. But I know you're seeing that
19 --

20 MR. STRYKER: We have --

21 THE COURT: -- but where in the affidavit does it
22 say Dr. Kia?

23 MR. STRYKER: The wonderful thing Dr. -- the
24 wonderful thing, Your Honor, about Nevada law is that the
25 affidavit doesn't have to. The affidavit can -- when the

1 statute says, the affidavit must describe by name or
2 conduct, that's disjunctive. You can do one or the other.
3 You can name Dr. Kia by name. Or you can describe Dr.
4 Kia's act of professional negligence by conduct. And the
5 face of the affidavit says the patient should not have been
6 discharged by Sunrise Hospital on July 16th, 2016. That is
7 naming Dr. Kia by conduct rather than his actual name. And
8 that's okay. Under the statute, under *Zebegan* [phonetic]
9 interpreting the statute, as long as they describe the
10 specific conduct attributable to the medical malpractice --
11 or, I should say professional negligence defendant, it
12 passes muster.

13 And the -- I guess the central question --

14 THE COURT: Well, --

15 MR. STRYKER: -- that the Court has to --

16 THE COURT: Okay. Hold on, counsel.

17 MR. STRYKER: Yes.

18 THE COURT: Paragraph 5 of the affidavit says,
19 quote:

20 This was a violation of the standard of care by
21 Sunrise Hospital and Dr. Delee.

22 MR. STRYKER: And the expert made a mistake.

23 THE COURT: Okay.

24 MR. STRYKER: Because the expert didn't realize
25 that Dr. Delee did not issue that order, Dr. Kia did. And

1 that's why we --

2 THE COURT: Okay. And I understand that. But,
3 then, how does that not render that affidavit deficient?

4 And you -- here's a secondary challenge to this.
5 There was issues and notice of these deficiencies when this
6 initial motion was argued before Judge Smith in the spring
7 of 2019. So, it's not like: Oh, we had no idea this was
8 an issue. This was an issue brought up back then.

9 So, I -- if I am to accept the argument that
10 anyone can be brought into the litigation based on what is
11 clear -- and I agree with you that that's a mistake. And
12 I'm sorry. And it's frustrating to me. And I feel very
13 disappointed on behalf of the plaintiff that this is kind
14 of the situation that we're in. But it's -- this issue has
15 been known for quite some time. And if I were to accept
16 the argument that, well, yeah, that was an error but that
17 makes it okay, that would be: A, me disregarding the plain
18 language of .071, which would be error; and, B,
19 disregarding notice pleading requirement, that would also
20 be error; and, C, really supporting a theory that anybody,
21 myself included, could be brought into a litigation if
22 somehow by argument alone, I would be considered an agent
23 or agency liability based on the affidavit and the
24 Complaint as written.

25 So, I ask, again, kind of the same question, where

1 in affidavit and where in the Complaint does Dr. Kia and
2 let's call Nevada Hospitalist brought into this?
3 Unfortunately, it's not there.

4 Conduct -- I would agree with you if said this was
5 a violation of standard of care, period. Because, then,
6 that could be read broader. And it could be read with a
7 broader stroke of anyone who was involved in that
8 discharge. But that's not what it reads. It specifically
9 named Sunrise Hospital and Dr. Delee. So, focus --

10 MR. MARKS: Your Honor --

11 THE COURT: -- your argument as to that.

12 MR. STRYKER: I'll turn it to plaintiff shortly.
13 But, just to kind of respond to the question, I think that
14 it's -- obviously, Dr. Delee had nothing to do with this.
15 Obviously, Dr. Delee is frustrated that he's being blamed
16 for a nonparty physician's order discharging a patient when
17 he was out of town. That having been said, it's the Delee
18 defendant's position that if you were to look at the
19 sentence as a whole, it describes the conduct of
20 discharging the patient on July 16th, 2016. It's
21 unfortunate that the sentence went on to say, by Sunrise
22 and Dr. Delee, but that could be considered surplusage to
23 the extent that the plaintiff's expert witness or
24 plaintiff's counsel made a mistake.

25 As to why the issue was not handled sooner, I

1 can't speak to plaintiff's counsel. It's -- he's the
2 captain of the ship of his pleadings. But when Sunrise
3 Hospital brought Dr. Delee into the case, I think a couple
4 years ago, it appeared to all the parties that the problem
5 was addressed.

6 But I'll let plaintiff's counsel speak to that.
7 And I thank the Court for her time.

8 THE COURT: Absolutely.

9 MR. MARKS: Your Honor, I think Mr. Stryker meant
10 brought Dr. Kia in.

11 I think that for whatever reason, it's been kind
12 of confusing to argue this by BlueJeans. Your Honor, if
13 you look at that sentence, I don't think it was a mistake.
14 The -- if you look earlier, what Dr. Karamardian is saying
15 is: The discharge was discussed with Dr. Delee. I don't -
16 - she clearly didn't mention Dr. Kia. But she's saying the
17 discharge.

18 Now, my opponent is saying the discharge is the
19 nurses. We know the discharge was signed by Dr. Kia. She
20 doesn't have to mention Dr. Kia by name, as Mr. Stryker
21 said. The discharge was a violation of the of the standard
22 of care by Sunrise.

23 MR. STRYKER: Where is that case? Where is that
24 case that says he doesn't have to be named?

25 THE COURT: Hold on. Hold on.

1 MR. MARKS: And --

2 THE COURT: Hold on, counsel.

3 MR. MARKS: And Dr. Delee is named because of the
4 discussion earlier in the paragraph. I don't think that is
5 a mistake.

6 The point is if we name Dr. Kia, we wouldn't be in
7 this situation of arguing, necessarily, there would be
8 ostensible agency. And I think Mr. Stryker pointed that
9 out correctly. There's a detailed affidavit by Dr.
10 Karamardian. If you would at least go back and look at the
11 affidavit, and re-read *Zohar*, and look at *McCrosky*, and
12 reconsider your decision.

13 *Badger* is not applicable. *Badger* is bringing in a
14 different defendant after a six-month foreclosure date.
15 That's just a different issue. This is saying: We sued
16 Sunrise, can Sunrise get summary judgment or is there a
17 question of fact? There -- if we had named Kia, we
18 certainly wouldn't be here on a Sunrise Motion for Summary
19 Judgment, it would be Sunrise versus Dr. Kia, presumably,
20 which is what you had previously.

21 Now, if Kia had stayed in, my opponent had argued
22 against Dr. Kia being dismissed, essentially saying the
23 affidavit was sufficient. How can you argue the affidavit
24 was sufficient at that point and now argue the affidavit's
25 not sufficient at this point? Everybody should be in.

1 And, then, the Court can parse it out if the evidence
2 doesn't support it.

3 THE COURT: All right. And I --

4 MR. MARKS: But, for today's purposes --

5 THE COURT: I respectfully disagree. Even looking
6 at *Zohar*, it specifically says:

7 We conclude that reason and public policy dictate
8 that courts should read the Complaint and the
9 plaintiff's expert affidavit together when determining
10 whether the expert affidavit meets the requirements of
11 NRS 41A.071.

12 It cites to *Great Basin*. It cites to *Washoe*
13 *Medical Center*. This makes sure there aren't any frivolous
14 cases and, quote:

15 Furthers their purposes of our notice pleading
16 standard and comports with the Nevada Rules of Civil
17 Procedure.

18 If you go and you read cases that happened after
19 *Zohar*, it kind of reiterates that. And it, again, says
20 that they want to make sure that people are placed on
21 notice of the claims against them.

22 I cannot read the affidavit and the Complaint
23 together to find where Dr. Kia would be included. And I
24 appreciate the argument and the zealous representation to -
25 - for me to find otherwise. But I cannot. I do not

1 believe that my decision was clearly erroneous. And, so, I
2 am going to deny the Motion for Reconsideration.

3 MR. MAYOR: Your Honor, that pertains to the
4 ostensible agency claim. That's the only thing Sunrise is
5 arguing here is that there's claims for ostensible agency
6 issues to be dismissed and reaffirm.

7 THE COURT: Correct.

8 MR. MAYOR: Okay.

9 MR. MARKS: Your Honor, --

10 MR. MAYOR: We didn't --

11 MR. MARKS: -- the Motion -- go ahead, sir.

12 MR. MAYOR: We hadn't -- just so we're clear,
13 Judge, Sunrise is not taking a position on the issue of
14 Motion to Amend to add Dr. Kia or not. We've taken a
15 position that they haven't plead and they haven't brought
16 ostensible agency. And that was what the summary judgment
17 granted and that's -- we're seeking to reaffirm and deny
18 their reconsideration about ostensible agency. That's the
19 only issue we're arguing here.

20 THE COURT: And I understand that. And I
21 understand why you're arguing that, that you're not
22 addressing the Motion to Amend because that's a different
23 issue. I understand that.

24 MR. MARKS: Your Honor, the Motion to Amend was
25 set for Thursday on the chambers calendar. I didn't know

1 if it was still that or if you were going to do it today.

2 THE COURT: Well, I think we can go ahead --

3 MR. MARKS: It's still on.

4 THE COURT: We can go ahead and do that today.
5 Yeah. And I'll take it off my chambers calendar. I think
6 that makes sense.

7 So, I have reviewed the Motion for Leave to Amend
8 the Complaint. And I have reviewed the Opposition. Hold
9 on here. I got to click into that Motion.

10 [Pause in proceedings]

11 THE COURT: All right. So, okay, there's the
12 Motion to Amend was filed on October 16th of 2020. The
13 Limited Opposition was filed on October 26th. And, of
14 course, -- not here. I don't see an Opposition to the
15 Motion to Amend in general. So, let me hear first from
16 counsel for plaintiff.

17 MR. MARKS: Well, Your Honor, first, again,
18 looking at your minute order, I think you found good cause
19 but you thought the affidavit wasn't sufficient. We have
20 done an amended affidavit.

21 I would point out there was some confusion about
22 the deadlines. In the scheduling order there had been a
23 deadline and we certainly complied. We had filed it
24 previously within that deadline. I think the Court thought
25 we didn't. You're allowed to amend within the scheduling

1 order deadline. And, then, certainly the defendant can
2 move to dismiss or assert whatever defenses. But there's
3 still the liberality pleading to amend. So, we've
4 corrected any -- the Court found good cause to amend. You
5 had some problems with the affidavit, which have been
6 corrected. So, I think based on your minute order of July
7 23rd, the amendment should be allowed.

8 Without belaboring, I think we briefed it
9 adequately. There isn't really, I thought, a major
10 opposition. So, I think it should be allowed to go
11 forward.

12 THE COURT: Well, I agree that there's a --
13 there's some amendments that are allowed to be made. But
14 you still have to address statute of limitation issues,
15 whether or not there's new causes of action that are being
16 raised for the very first time, and I think that is the
17 issue specifically that Sunrise Hospital has raised in
18 their Opposition.

19 So, it -- narrow your argument to me as to why I
20 should just grant this motion carte blanche in light of key
21 issues like statute of limitations and notice.

22 MR. MARKS: Well, Your Honor, I think you should
23 grant it and, then, they can file their motion and we can
24 brief it if there's an issue regarding statute of
25 limitations. I think the relation-back doctrine and Rule

1 15(a) applies. And I think the Court, at least from your
2 prior order, seemed to be agreeing with us that we can
3 amend, but felt that we needed a more detailed affidavit,
4 which we've supplied. In -- on the last page of your
5 minute order you say:

6 Despite finding good cause to amend, the Court
7 cannot grant the Motion at this time until they comply
8 with 41A.071.

9 We did that.

10 Now, if they feel they have statute of limitations
11 or other issues, they certainly can raise that at the
12 appropriate time. So, you said:

13 Accordingly, Plaintiff's Motion to Amend is denied
14 without prejudice.

15 So, I thought, based on the fact we had done it
16 prior to the -- these scheduling orders have to mean
17 something, meaning someone can amend prior to that
18 deadline, we corrected what the Court was concerned about
19 on the July 23rd minute order, and, based on that, I think
20 we should be allowed to amend. Obviously, once we do that,
21 counsel can raise whatever they're raising.

22 *Badger* is a different person. At -- you know, to
23 deal with Sunrise's objection, *Badger* is they're suing A
24 and they bring in B. We're -- this is a claim for
25 corporate negligence against Sunrise. Sunrise was on

1 notice of the factual basis for it. It's not a new party.
2 It's not a totally different party, as in *Badger*. They
3 keep citing the case where they bring in a different party,
4 a guarantor, and not a different, you know, cause of action
5 against the same party. The factual basis for that cause
6 of action is the same. When the factual basis is the same,
7 the relation-back doctrine should apply.

8 Dr. Kia is not here, I don't believe. Obviously,
9 they could file a motion or do what they're going to do
10 once they're served. But, right now, it's within the time
11 frame of the scheduling order to set -- you don't deal with
12 the statute of limitations at this point. That would come
13 up at a later time, based on what Dr. Kia is going to file.

14 And we did everything in accordance with your July
15 23rd minute order. So, I think the Motion, then, should be
16 granted.

17 THE COURT: All right. Would either other counsel
18 present want --

19 MR. MAYOR: Yes.

20 THE COURT: -- any argument in relation to that --
21 to this Motion?

22 MR. MAYOR: Yes, Your Honor. This is Sherman
23 Mayor for Sunrise Hospital.

24 I just want to make sure that I'm clear where
25 we're going. The Court has denied Plaintiff's Motion to

1 Reconsider the Dismissal of the Ostensible Agency Claim.
2 That's one ruling. Is that correct?

3 THE COURT: Correct.

4 MR. MAYOR: And, then, secondly, there was an
5 argument that plaintiff attempted to bring in a corporate
6 negligence claim. And the Court has denied that Motion to
7 Reconsider as well. Is that correct?

8 MR. MARKS: I didn't hear the Court rule on that
9 yet.

10 MR. MAYOR: I -- well, that's why I'm asking.

11 THE COURT: Right. So, these are kind of
12 intertwined, if you will. Right? So, --

13 MR. MAYOR: Yes.

14 THE COURT: So, let me hear argument from you, Mr.
15 Mayor, in regard to whether or not I should grant the
16 Motion or deny the Motion for Reconsideration regarding the
17 corporate negligence, negligent supervision.

18 MR. MAYOR: And the reason I'm separating these,
19 Your Honor, is there -- in my view, there was three issues.
20 One was ostensible agency, one was corporate negligence,
21 and the third one was the amendment to bring in Dr. Kia.

22 THE COURT: Right.

23 MR. MAYOR: And, so, we're clear, Sunrise Hospital
24 did not oppose or support the amendment to bring in Dr.
25 Kia. We did not address that. We addressed the first two

1 arguments, ostensible agency and the corporate negligence.

2 But, with regard to the corporate negligence, the
3 plaintiffs have offered no new facts and no new law to
4 justify reconsideration of the denial of their late effort
5 to bring in a corporate negligence claim. The Court found
6 that under Rule 16(b), the standard to consider bringing in
7 a corporate negligence claim at this late date would --
8 it's a good cause standard. It's not the liberal standard
9 of Rule 15(a) and, therefore, you go to the diligence of
10 the parties seeking to amend.

11 And the Court specifically found in its August 28th
12 Order that there was not good cause to allow such an
13 amendment at this late date. And to hold otherwise would,
14 in fact, render the statute of limitations, or medical
15 malpractice, meaningless.

16 And, under *Badger*, in that case, the Nevada
17 Supreme Court states, and I'm quoting from *Badger*:

18 We have refused to allow a new claim based upon a
19 new theory of liability asserted in an Amended Pleading
20 to relate back under Rule 16(c) after the statute of
21 limitations had run.

22 That is -- that statement in *Badger*, a 2016 case,
23 is precisely on point here. A claim never previously
24 served -- never previously asserted for corporate
25 negligence is clearly a new claim or a new theory of

1 liability. Under *Badger*, it's more than two years after
2 the statute of limitations expired, it's too late. And
3 plaintiff would argue that they still had a deadline -- the
4 deadline for amendments had not yet been expired, wasn't
5 set to expire until September of 2020. But that's a
6 deadline for amendments, for legal amendments, for
7 amendments that can be amended. This one can't. It's
8 untimely. The statute of limitations is gone. And, so,
9 you can't bring in a new theory more than four years after
10 the events at issue and more than three years after they
11 filed their Complaint, and now bring in a corporate
12 negligence claim. And the Court -- and with a lot of
13 discovery done. And the Court found that there wasn't good
14 cause to permit that.

15 And, you know, there's a case called *Stephens*
16 *versus Music* -- I have it here somewhere. *Stephens versus*
17 *Music Company* something. It's a Nevada Supreme Court case
18 saying that in any statute where the -- where leave is
19 required of the Court to amend, then you have to show a
20 basis for it. It's not automatically granted. Otherwise,
21 there would be no reason to have a statute saying leave of
22 court. Here, the corporate negligence claim is untimely by
23 at least two years since the passage of the statute of
24 limitations. And it's untimely in the flow of the case and
25 it's more than three years since they've filed their

1 Complaint. And it violates the theory of *Badger* and it
2 should be denied. And the Court did deny it and we're
3 asking that reconsideration be affirmed. Thank you, Judge.

4 THE COURT: All right. Thank you.

5 MR. MARKS: Your Honor, just briefly.

6 We think the applicable laws is *Costello*, not
7 *Badger*. *Badger* is bringing in a different party. This is
8 a different theory on the same facts. We think *Costello*
9 applies and we think, therefore, reconsideration should be
10 granted on that.

11 THE COURT: All right. I'm going to deny
12 reconsideration as to the new claims of corporate
13 negligence, or negligent supervision. I am going to grant
14 the Motion to Amend as to -- to the extent that plaintiff
15 can add in Dr. Kia. I anticipate that this will then be
16 subject of additional litigation. But we'll cross that
17 bridge when we get there. And, so, to that extent, the
18 Motion to Amend is granted in part and denied in part.

19 And does either party have any questions as to my
20 ruling on this Motion?

21 MR. MAYOR: Are you -- Plaintiff's Motion to Amend
22 was to add Dr. Kia and Nevada Hospitalist Group. Is it --

23 MR. MARKS: Yeah.

24 MR. MAYOR: I'm sorry, Judge.

25 THE COURT: Correct. Correct.

1 MR. MARKS: Correct.

2 MR. MAYOR: Did you grant it as to both?

3 THE COURT: Yes.

4 MR. MARKS: Thank you.

5 MR. STRYKER: Thank you, Your Honor.

6 THE COURT: Now, adding that --

7 MR. MAYOR: Thank you, Your Honor.

8 THE COURT: Just to be clear, again, I anticipate
9 additional litigation. So, we'll see what happens when
10 that -- when we cross that bridge.

11 So, I would ask --

12 MR. MARKS: Do you want me to prepare --

13 THE COURT: I'm sorry?

14 MR. MAYOR: There's a final issue of -- there's a
15 final Motion to Retax before the Court today, too, as well,
16 Judge.

17 THE COURT: Correct. Correct. Before we get
18 there --

19 MR. MAYOR: And, --

20 THE COURT: Hold on. Before we get there, --

21 MR. MAYOR: I'm sorry.

22 THE COURT: -- I'm going to ask counsel for
23 Sunrise Hospital to draft the Order regarding the denial of
24 the Motion to Reconsider. I am going to ask counsel for
25 plaintiff to draft the Order regarding my granting in part

1 and denial in part of the Motion to Amend the Complaint.
2 I'm ordering both of you to meet and confer on those draft
3 Orders before they're submitted to chambers within 30 days.
4 They need to be submitted on or before -- actually, they
5 need to be submitted before December 15th. I'm going to set
6 this for a status for those Orders. And if they're signed
7 -- if they're received and signed, then we'll be off
8 calendar.

9 MR. MARKS: So, is it on calendar for 9 a.m. on
10 the 15th, subject to the Orders being signed by the Court,
11 or it's in chambers?

12 THE COURT: It will be -- no, no, no. It will be
13 set for hearing. And it will be taken off calendar if I
14 receive the Orders.

15 MR. MARKS: Okay. Very well. Thank you.

16 THE COURT: Okay. All right. And, then, last we
17 have the Motion to Retax Costs. It doesn't appear to me
18 there's much opposition. But I'll hear from anyone who
19 would like to argue any opposition to the Motion.

20 MR. MAYOR: Your Honor, it's Sunrise's Motion.
21 But there was an Opposition filed. I have to advise the
22 Court of that.

23 THE COURT: I did see that. It was filed on
24 November 17th. But the Opposition didn't seem like -- I
25 didn't get -- the Opposition was limited, I guess, in that

1 it was asking us to wait because --

2 MR. MAYOR: That was our Motion, Judge. In our
3 Motion, what we're saying is that Dr. Kia was seeking costs
4 because he was dismissed from the case.

5 THE COURT: Right.

6 MR. MAYOR: Sunrise is asking that that ruling be
7 delayed to see if Dr. Kia is brought back into the case.
8 And we thought that the Motion for Costs would be premature
9 then. And we're just asking for it to be deferred to see
10 what happens with Dr. Kia.

11 THE COURT: Hold on here.

12 MS. RURANGIRWA: Your Honor, this is Linda
13 Rurangirwa on behalf of Dr. Kia.

14 THE COURT: Good morning.

15 MS. RURANGIRWA: Good morning.

16 Opposition with regard to the Motion to Retax is
17 that the costs that were incurred up until that time were
18 incurred as a result of Sunrise bringing us into the case.
19 If -- and, as Your Honor noted, there will be further
20 litigation with regard to the Motion to Amend. But any
21 costs associated with bringing Dr. Kia back into the
22 Complaint going forward would be associated with plaintiff
23 as opposed to Sunrise Hospital. I think those are separate
24 issues. I think we can have a ruling on the costs
25 associated with Sunrise Hospital's failure to maintain Dr.

1 Kia in the case, based on their Third-Party Complaint.

2 THE COURT: All right. Let me hear from Sunrise
3 as to that issue.

4 MR. MAYOR: Yes. And our Opposition is that the
5 majority of the costs they're claiming are for deposition
6 transcripts that they will need if they're brought back
7 into the case. And, essentially then, we would be funding
8 their participation in this case for their own defense if
9 they're brought back in. We would agree that if Dr. Kia is
10 not brought back in the case, then we would owe them the
11 costs they've alleged when they were dismissed. But if
12 they're brought back in, they will be using the transcripts
13 that they paid for, the deposition transcripts, that's a
14 majority of the costs, in defense of Dr. Kia, if he's
15 brought back in the case. So, they would -- if he comes
16 back in, they would essentially have us funding their
17 transcripts.

18 So, we're asking the Court just wait to see what
19 happens with Dr. Kia. If he's brought back in, then we
20 don't owe it. And if he's not brought back in, we do owe
21 it.

22 THE COURT: All right. I do think it's a little
23 early to make this determination. So, I'm going to deny
24 this Motion without prejudice. And, especially in light of
25 my ruling on the Motion to Amend the Complaint. When this

1 litigation is all said and done, at some point, perhaps we
2 can break up the costs, depending on what happens.

3 Any questions?

4 MR. MAYOR: May I prepare that Order as well, Your
5 Honor? It will be just if -- it'll just be deferring it
6 until -- it'd be denied without prejudice and to be
7 deferred to a later date.

8 THE COURT: That's fine. And just share it with
9 opposing counsel and have it submitted jointly, please.

10 MR. MAYOR: Will do.

11 THE COURT: All right. Anything else we need to
12 address this morning?

13 MR. MARKS: No, Your Honor. Thank you very much
14 for your time.

15 THE COURT: All right. Thank you.

16 MR. STRYKER: No, Your Honor. Thank you.

17 MS. RURANGIRWA: Thank you, Your Honor.

18 THE COURT: Take care, everyone. Stay well.

19 MR. MAYOR: Thank you, Judge. Bye-bye.

20 THE COURT: All right.

21

22 PROCEEDING CONCLUDED AT 10:35 A.M.

23 * * * * *

24

25

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

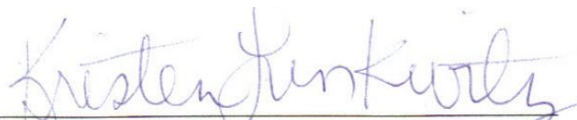
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20 KRISTEN LUNKWITZ

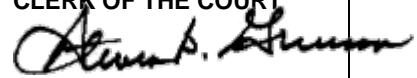
21 INDEPENDENT TRANSCRIBER

22

23

24

25



MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No. 11953
SHERMAN B. MAYOR, ESQ.
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(702) 889-6400 – Office
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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.: IX

**NOTICE OF ENTRY OF ORDER
DENYING, WITHOUT PREJUDICE,
THIRD-PARTY DEFENDANT DR.
KIA'S VERIFIED MEMORANDUM OF
COSTS AND DISBURSEMENTS**

...

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...

PLEASE TAKE NOTICE that the Order Denying, Without Prejudice, Third-Party Defendant Dr. Kia's Verified Memorandum of Costs and Disbursements was entered in the above entitled matter on the 3rd day of December, 2020, a copy of which is attached hereto.

DATED this 4th day of December, 2020.

HALL PRANGLE & SCHOONVELD, LLC

/s/ Charlotte Buys, Esq.
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No. 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
T. CHARLOTTE BUYS, ESQ.
Nevada Bar No. 14845
1140 N. Town Center Dr., Ste. 350
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 4th day of December, 2020, I served a true and correct copy of the foregoing

NOTICE OF ENTRY OF ORDER DENYING, WITHOUT PREJUDICE, THIRD-PARTY

DEFENDANT DR. KIA'S VERIFIED MEMORANDUM OF COSTS AND

DISBURSEMENTS as follows:

X the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules;

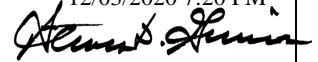
_____ U.S. Mail, first class postage pre-paid to the following parties at their last known address;

_____ Receipt of Copy at their last known address:

DANIEL MARKS, ESQ.
Nevada Bar No. 2003
NICOLE M. YOUNG, ESQ.
Nevada Bar No. 12659
610 South Ninth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

ERIC K. STRYKER, ESQ.
Nevada Bar No. 5793
BRIGETTE E. FOLEY, ESQ.
Nevada Bar No. 12965
300 S. 4th Street
Las Vegas, NV 89101
Attorneys for Defendants
Frank J. Deelee, M.D. and Frank J. Deelee, M.D., PC

/s/: Casey Henley
An employee of HALL PRANGLE & SCHOONVELD, LLC


CLERK OF THE COURT

ORDR

MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
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efile@hpslaw.com
Attorneys for Defendant / Third-Party Plaintiff
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.: IX

**ORDER DENYING, WITHOUT
PREJUDICE, THIRD-PARTY
DEFENDANT DR. KIA'S VERIFIED
MEMORANDUM OF COSTS AND
DISBURSEMENTS**

**Hearing Date: November 17, 2020
Hearing Time: 9:00 a.m.**

This cause having come on to be heard on November 17, 2020, upon Defendant, Sunrise Hospital and Medical Center's ("Sunrise Hospital") Motion to Retax and/or Settle the Costs sought by Third-Party Defendant Ali Kia, M.D.'s Verified Memorandum of Costs and Disbursements; and SUNRISE HOSPITAL being represented by SHERMAN BENNETT MAYOR, ESQ. of the law firm HALL PRANGLE & SCHOONVELD, LLC; and Ali Kia, M.D. being represented by LINDA K. RURANGIRWA, ESQ. of the law firm of COLLINSON, DAEHNKE, INLOW & GRECO; and the Court having reviewed the papers and pleadings on file herein; and

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TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

1 having heard argument of counsel; and being otherwise duly advised in the premises, the Court
2 makes the following Findings of Fact and, based upon such Findings, issues the following
3 Decision:

4 **FACTS/LAW**

5 1. Judgment was rendered in favor of Ali Kia, M.D. dismissing him from this
6 litigation as a Third-Party Defendant on August 26, 2020.

7 2. As a result, and per NRS 18.020 *et seq.*, Dr. Kia filed a Memorandum of Costs
8 and Disbursements seeking reimbursement from Third-Party Plaintiff Sunrise Hospital.

9 3. Sunrise Hospital did not contest the amount of costs or reimbursements sought by
10 Dr. Kia's Memorandum. Rather, the Hospital contended that since there was a pending motion
11 by Plaintiff, Choloe Green, to bring Dr. Kia back into the litigation as a Defendant, that the
12 Memorandum of Costs and Disbursements was premature and should be deferred to determine
13 the status of Dr. Kia in this litigation.

14 4. Sunrise Hospital argued that if Plaintiff Choloe Green's Motion to Amend is
15 granted and Dr. Kia re-enters the litigation, then Dr. Kia's costs and disbursements, as described
16 in his Memorandum (including deposition transcripts), may be of value to him as a Defendant in
17 this litigation and therefore, he arguably suffered no loss of taxable costs or disbursements.

18 5. Per *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev.
19 1348, 1352, 971 P.2d 383, 385 (Nev. 1998), an award of costs is within the sound discretion of
20 the trial Court. In exercising such discretion, this Court finds that the Memorandum of Costs and
21 Disbursements for the reasons stated herein, is premature and accordingly, such Memorandum of
22 Costs and Disbursements is DENIED, WITHOUT PREJUDICE.

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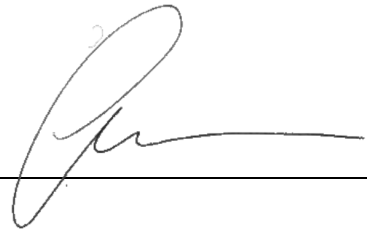
ORDER

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Third-Party Defendant Ali Kia, M.D.'s Memorandum of Costs and Disbursements is premature, and, therefore, DENIED, WITHOUT PREJUDICE,

2. Similarly, Sunrise Hospital's Motion to Retax and/or Settle Costs is premature and therefore DENIED, WITHOUT PREJUDICE, to be renewed pending a refiling, if any, of Dr. Kia's Memorandum of Costs and Disbursements.

Dated this 3rd day of December, 2020



EC

F39 17A 6A3C F938
Cristina D. Silva
District Court Judge

Respectfully Submitted by and
Approved as to Form and Content:
DATED this 2nd day of December, 2020.

Approved as to Form and Content:
DATED this 2nd day of December, 2020.

HALL PRANGLE & SCHOONVELD, LLC

COLLINSON, DAEHNKE, INLOW & GRECO

/s/ Charlotte Buys, Esq.
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No. 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
T. CHARLOTTE BUYS, ESQ.
Nevada Bar No. 14845
1140 N. Town Center Dr., Ste. 350
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

/s/ Linda K. Rurangirwa, Esq.
PATRICIA EGAN DAEHNKE, ESQ.
Nevada Bar No. 4976
LINDA K. RURANGIRWA, ESQ.
Nevada Bar No. 8843
2110 E. Flamingo Road, Suite 212
Las Vegas, NV, 89119
Attorneys for Third-Party Defendant Ali Kia,
M.D.

Casey Henley

From: Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>
Sent: Tuesday, December 1, 2020 5:49 PM
To: Charlotte Buys; Richean Martin
Cc: Mike Prangle; Tyson Dobbs; Sherman Mayor; Casey Henley
Subject: RE: Green v. DeLee, et al.; Proposed Order Denying Memorandum of Costs

[External Email] CAUTION!.

This is approved. You may use my electronic signature.

Thanks,

Linda K. Rurangirwa
Collinson, Daehnke, Inlow & Greco

From: Charlotte Buys <cbuys@HPSLAW.COM>
Sent: Tuesday, December 1, 2020 5:10 PM
To: Linda K. Rurangirwa <Linda.Rurangirwa@cdiglaw.com>; Richean Martin <richean.martin@cdiglaw.com>
Cc: Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Sherman Mayor <smayor@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: Green v. DeLee, et al.; Proposed Order Denying Memorandum of Costs

Dear Ms. Rurangirwa,

Enclosed please find Defendant Sunrise Hospital's proposed Order Denying, Without Prejudice, Third Party Defendant Dr. Kia's Verified Memorandum of Costs and Disbursements.

As you will see, the Order is only a few paragraphs in length and we ask that you provide us with approval of the Order or any proposed changes thereto by Thursday at 5:00 p.m., as it is our intention to provide the Court with the proposed Order by this Friday, December 6, 2020.

Very truly yours,

Sherman B. Mayor and Charlotte Buys



Charlotte Buys
Associate
O: 702.212.1478
Email: cbuys@HPSLAW.COM

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 Order Denying was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/3/2020

15 E-File Admin

efile@hpslaw.com

16 S. Vogel

brent.vogel@lewisbrisbois.com

17 Eric Stryker

eric.stryker@wilsonelser.com

18 Johana Whitbeck

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19 Erin Jordan

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21 Angela Clark

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22 Daniel Marks

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23 Tyson Dobbs

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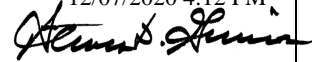
24 Alia Najjar

alia.najjar@wilsonelser.com

25 Charlotte Buys

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1	Patricia Daehnke	patricia.daehnke@cdiglaw.com
2	Nicolle Etienne	netienne@hpslaw.com
3	Sherman Mayor	smayor@hpslaw.com
4	Casey Henley	chenley@hpslaw.com
5	Nicole Lord	nicole.lord@wilsonelser.com
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8	Laura Lucero	laura.lucero@cdiglaw.com
9	Nicole Young	nyoung@danielmarks.net
10	Reina Claus	rclaus@hpslaw.com
11	Camie DeVoge	cdevoge@hpslaw.com
12	Deborah Rocha	deborah.rocha@cdiglaw.com
13	Brigette Foley	Brigette.Foley@wilsonelser.com
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CLERK OF THE COURT

ORDR

MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
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efile@hpslaw.com
Attorneys for Defendant / Third-Party Plaintiff
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.: IX

**ORDER DENYING PLAINTIFF'S
"MOTION FOR RECONSIDERATION"
REGARDING DENIAL OF
ADDITIONAL CLAIMS OF
"OSTENSIBLE AGENCY" AND
"CORPORATE
NEGLIGENCE/NEGLIGENT
SUPERVISION"**

**Hearing Date: November 17, 2020
Hearing Time: 9:00 a.m.**

This cause having come on to be heard on November 17, 2020, upon Plaintiff's "Motion for Reconsideration" regarding denial of Plaintiff's proposed claims of ostensible agency and "corporate negligence/negligent supervision," and Defendant, SUNRISE HOSPITAL AND MEDICAL CENTER being represented by SHERMAN BENNETT MAYOR, ESQ. of the law firm HALL PRANGLE & SCHOONVELD, LLC; and PLAINTIFF being represented by DANIEL MARKS, ESQ.

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LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

and NICOLE M. YOUNG, Esq. of the LAW OFFICE OF DANIEL MARKS; and Defendants FRANK DELEE, M.D. and FRANK J. DELEE MD, PC being represented by ERIC K. STRYKER, Esq. the law firm of WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP; and the Court having reviewed the papers and pleadings on file herein; and having heard argument of counsel; and being otherwise duly advised in the premises, the Court finds as follows:

FINDINGS

PLAINTIFF HAS FAILED TO SATISFY THE REQUIREMENTS TO “RECONSIDER” THIS COURT’S DECISION OF SEPTEMBER 25, 2020 DENYING PROPOSED CLAIMS OF “OSTENSIBLE AGENCY” AND “CORPORATE NEGLIGENCE/NEGLIGENT SUPERVISION”

1. Plaintiff filed a Motion for Reconsideration on October 12, 2020, seeking reconsideration of this Court’s September 25, 2020 Order denying proposed claims of “ostensible agency” and “corporate negligence/negligent supervision.”

2. In order to grant a Motion for Reconsideration, in Nevada, there must be “new facts” or “new law” or a showing that the Court’s decision was clearly erroneous. *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (Nev. 1976); *see also Masonry and Tile Contractors Ass’n. of So. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741 (Nev. 1997).

3. Applying the law to Plaintiff’s Motion for Reconsideration, there is not sufficient basis to “reconsider” and change this Court’s September 25, 2020 Order denying Plaintiff’s request to add proposed theories of liability of “ostensible agency” and “corporate negligence/negligent supervision.”

...

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LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Green v. Frank Delee, M.D., et al.
Case No. A-17-757722-C

ORDER

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED,

1. That Plaintiff's Motion for Reconsideration of this Court's September 25, 2020 Order denying Plaintiff's proposed claims of "ostensible agency" and "corporate negligence/negligent supervision" is hereby DENIED.

Dated this 7th day of December, 2020


EC

ECB D85 D49D 1BCA
Cristina D. Silva
District Court Judge

Respectfully Submitted by and
Approved as to Form and Content:

Approved as to Form and Content:

DATED this 4th day of December, 2020.

DATED this 4th day of December, 2020.

HALL PRANGLE & SCHOONVELD, LLC

LAW OFFICE OF DANIEL MARKS

/s/ T. Charlotte Buys, Esq.
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No. 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
T. CHARLOTTE BUYS, ESQ.
Nevada Bar No. 14845
1140 N. Town Center Dr., Ste. 350
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

/s/Nicole M. Young, Esq.
DANIEL MARKS, ESQ.
Nevada Bar No. 2003
NICOLE M. YOUNG, ESQ.
Nevada Bar No. 12659
610 South Ninth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

...
...
...

1 Approved as to Form and Content:

2 DATED this 4th day of December, 2020.

3 WILSON ELSEER MOSKOWITZ
4 EDELMAN & DICKER LLP

5 /s/ Eric K. Stryker, Esq.

6 ERIC K. STRYKER, ESQ.

Nevada Bar No. 5793

7 BRIGETTE E. FOLEY, ESQ.

8 Nevada Bar No. 12965

300 S. 4th Street

9 Las Vegas, NV 89101

10 *Attorneys for Defendants*

Frank J. Deelee, M.D. and Frank J. Deelee,

11 *M.D., PC*

Casey Henley

From: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>
Sent: Friday, December 4, 2020 10:03 AM
To: Nicole Young; Charlotte Buys; Daniel Marks; Lord, Nicole N.
Cc: Sherman Mayor; Mike Prangle; Tyson Dobbs; Casey Henley
Subject: RE: Green v. DeLee, et al., Proposed Order Denying Motion for Reconsideration

[External Email] CAUTION!.

Yes you can e-sign if for me – thank you and have a good weekend!

Eric K. Stryker
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
6689 Las Vegas Blvd. South, Suite 200
Las Vegas, NV 89119
702.727.1242 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
eric.stryker@wilsonelser.com

From: Nicole Young [mailto:NYoung@danielmarks.net]
Sent: Friday, December 4, 2020 9:28 AM
To: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Charlotte Buys <cbuys@HPSLAW.COM>; Daniel Marks <DMarks@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: RE: Green v. DeLee, et al., Proposed Order Denying Motion for Reconsideration

[EXTERNAL EMAIL]

Hi Charlotte:

You may use my e-signature to submit your proposed order to the court.

Hope you have a great weekend!
Nicole

Nicole M. Young, Esq.
Associate Attorney
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 386-0536
Facsimile: (702) 386-6812

From: Stryker, Eric K. [mailto:Eric.Stryker@wilsonelser.com]
Sent: Tuesday, December 01, 2020 5:41 PM

To: Charlotte Buys <cbuys@HPSLAW.COM>; Daniel Marks <DMarks@danielmarks.net>; Nicole Young <NYoung@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: RE: Green v. DeLee, et al., Proposed Order Denying Motion for Reconsideration

Hi Charlotte,

You have my authority to e-sign the order for me as-is.

Thank you,

Eric K. Stryker
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
6689 Las Vegas Blvd. South, Suite 200
Las Vegas, NV 89119
702.727.1242 (Direct)
702.727.1400 (Main)
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eric.stryker@wilsonelser.com

From: Charlotte Buys [<mailto:cbuys@HPSLAW.COM>]
Sent: Tuesday, December 1, 2020 5:05 PM
To: Daniel Marks <DMarks@danielmarks.net>; Nicole Young <NYoung@danielmarks.net>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: Green v. DeLee, et al., Proposed Order Denying Motion for Reconsideration

[EXTERNAL EMAIL]

Dear Counsel,

Enclosed please find Defendant Sunrise Hospital's proposed Order denying Plaintiff's Motion for Reconsideration regarding denial of proposed claims of "ostensible agency" and "corporate negligence/negligent supervision."

As you will see, the Order is only a few paragraphs in length and we ask that you provide us with approval of the Order or any proposed changes thereto by Thursday at 5:00 p.m., as it is our intention to provide the Court with the proposed Order by this Friday, December 6, 2020.

Very truly yours,

Sherman B. Mayor and Charlotte Buys

Charlotte Buys
Associate



**1140 North Town Center Dr.
Suite 350
Las Vegas, NV 89144
F: 702.384.6025**

O: 702.212.1478
Email: cbuys@HPSLAW.COM

Legal Assistant: Casey Henley
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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at www.wilsonelser.com or refer to any of our offices.

Thank you.

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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at 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 Order Denying Motion 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: 12/7/2020

15 E-File Admin

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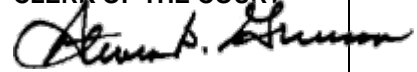
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Sunrise Hospital and Medical Center, LLC

**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.: IX

**NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF'S "MOTION
FOR RECONSIDERATION"
REGARDING DENIAL OF
ADDITIONAL CLAIMS OF
"OSTENSIBLE AGENCY" AND
"CORPORATE
NEGLIGENCE/NEGLIGENT
SUPERVISION"**

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PLEASE TAKE NOTICE that the Order Denying, Plaintiff's Motion for Reconsideration Regarding Denial of Additional Claims of Ostensible Agency and Corporate Negligence/Negligent Supervision was entered in the above entitled matter on the 7th day of December, 2020, a copy of which is attached hereto.

DATED this 8th day of December, 2020.

HALL PRANGLE & SCHOONVELD, LLC

/s/ Charlotte Buys, Esq.
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No. 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No. 11953
SHERMAN B. MAYOR, ESQ.
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Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 8th day of December, 2020, I served a true and correct copy of the foregoing

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S "MOTION FOR RECONSIDERATION" REGARDING DENIAL OF ADDITIONAL CLAIMS OF "OSTENSIBLE AGENCY" AND "CORPORATE NEGLIGENCE/NEGLIGENT SUPERVISION" as follows:

X the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules;

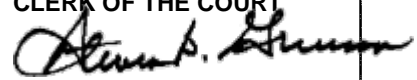
_____ U.S. Mail, first class postage pre-paid to the following parties at their last known address;

_____ Receipt of Copy at their last known address:

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Attorneys for Defendants
Frank J. Deelee, M.D. and Frank J. Deelee, M.D., PC

/s/: Casey Henley
An employee of HALL PRANGLE & SCHOONVELD, LLC



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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CHLOE 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.

Defendants.

**NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

PLEASE TAKE NOTICE that a Order Granting in Part and Denying in Part Plaintiff's Motion for
Leave to Amend Complaint was entered in the above-entitled action on the 15th day of December, 2020, a
copy of which is attached hereto.

DATED this 15 day of December, 2020.

LAW OFFICE OF DANIEL MARKS

/s/ Nicole 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
2 **CERTIFICATE OF SERVICE BY ELECTRONIC FILING**

3 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 15
4 day of December, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically
5 transmitted a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER**
6 **GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR LEAVE TO**
7 **AMEND COMPLAINT** by way of Notice of Electronic Filing provided by the court mandated E-file &
8 Serve system, to the e-mail address on file for the following:

9 Erik K. Stryker, Esq.
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13 Attorneys for Frank J. Delee M.D. and Frank J. Delee P.C.

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22 Las Vegas, Nevada 89119
23 Attorney for Ali Kia, M.D.

24 Erin Jordan, Esq.
25 Lewis Brisbois Bisgaard & Smith, LLP
26 6385 S. Rainbow Blvd., Suite 600
27 Las Vegas, Nevada 89118
28 Attorney for Nevada Hospitalist Group, LLP

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/s/ Jessica Flores
An employee of the
LAW OFFICE OF DANIEL MARKS

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(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.

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.

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR
LEAVE TO AMEND COMPLAINT**

This matter having come on for hearing on November 17, 2020, on Plaintiff's Motion for Leave to Amend Complaint, which was filed on October 16, 2020; Plaintiff appearing by and through her counsel, Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of Daniel Marks, via Blue Jeans; Defendant Frank J. Delee, M.D., appearing by and through its counsel Eric K. Stryker, Esq., of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, via Blue Jeans; and Defendant Sunrise Hospital and Medical Center, LLC, appearing by and through its counsel Sherman B. Mayor, Esq., of Hall Prangle & Schoonveld, LLC, via Blue Jeans; the Court having reviewed the papers and pleadings on file, having heard the arguments of counsel, and good cause appearing:

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

1 limitations so long as the proper defendant (1) receives actual notice of the action; (2) knows that it is
2 the proper party; and (3) has not been misled to its prejudice by the amendment. *Echols v. Summa Corp.*,
3 95 Nev. 720, 722, 601 P.2d 716, 717 (1979).

4 THIS COURT FURTHER FINDS that NRCP 15(c) is liberally construed to allow relation back
5 of the amended pleading where the opposing party will be put to no disadvantage. *See E.W. French &*
6 *Sons, Inc. v. General Portland Inc.*, 885 F.2d 1392, 1396 (9th Cir.1989) (discussing Federal Rule of
7 Civil Procedure 15).

8 THIS COURT FURTHER FINDS that good cause to allow for the filing of an amended
9 complaint to add Dr. Ali Kia and Nevada Hospitalist Group, LLP, to the instant action. As the Nevada
10 Court of Appeals noted in *Nutton v. Sunset Station, Inc.*, the liberality reflected in NRCP 15(a)
11 recognizes that discovery is a fluid process through which unexpected and surprising evidence is
12 uncovered with regularity, and parties should have some ability to tailor their pleadings and reframe the
13 case around what they might have learned after the initial pleadings were filed. 131 Nev. 279, 284, 357
14 P.3d 966, 970 (Nev. App. 2015).

15 THIS COURT FURTHER FINDS that plaintiff has attached affidavits to her proposed amended
16 complaint in compliance with NRS 41A.071 to allow Dr. Ali Kia and Nevada Hospitalist Group, LLP, to
17 be added as defendants to this action.

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Leave to
19 Amend Complaint, which was filed on October 16, 2020, is GRANTED IN PART to the extent that
20 Plaintiff is granted leave to file an Amended Complaint adding Dr. Ali Kia and Nevada Hospitalist
21 Group, LLP, as defendants to the instant suit.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all other relief requested in
23 relation to the Motion for Leave to Amend Complaint, filed on October 16, 2020, and the Motion for
24 Leave to Amend Complaint, filed on June 3, 2020, which was before this Court on reconsideration, is

25 ////

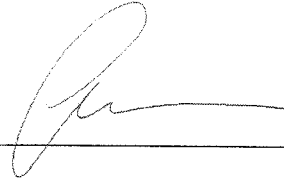
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DENIED, including Plaintiff's request to amend her complaint to add ostensible agency as a theory of liability against Defendant Sunrise Hospital and to add a claim of corporate negligence against Defendant Sunrise Hospital.

Dated this 15th day of December, 2020



EC

CAA CB5 8D32 4813
Cristina D. Silva
District Court Judge

Respectfully Submitted:

Approved as to Form and Content:

DATED this 10th day of December, 2020.
LAW OFFICE OF DANIEL MARKS

DATED this 10th day of December, 2020.
HALL PRANGLE & SCHOONVELD, LLC

/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
Attorney for Plaintiff

/s/ Charlotte Buys

SHERMAN MAYOR, ESQ.
Nevada State Bar No. 001491
CHARLOTTE BUYS, ESQ.
Nevada State Bar No. 14845
1160 N. Town Center Drive Suite #200
Las Vegas, Nevada 89144
Attorney for Sunrise Hospital

Approved as to Form and Content:

DATED this 10th day of December, 2020.

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

/s/ Eric K. Stryker

ERIC K. STRYKER, ESQ.
Nevada State Bar No. 005793
300 South 4th Street, 11th floor
Las Vegas, Nevada 89101
Attorney for Frank DeLee, M.D. and
Frank DeLee, M.D., PC's

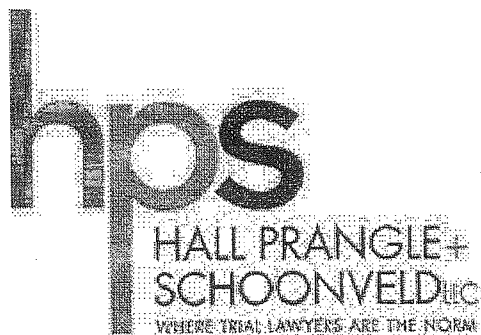
Associate Attorney
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 386-0536
Facsimile: (702) 386-6812

From: Charlotte Buys [mailto:cbuys@HPSLAW.COM]
Sent: Thursday, December 10, 2020 2:51 PM
To: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Nicole Young <NYoung@danielmarks.net>; Office <office@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: RE: Green v. Delee- Proposed Order re Motion to Amend

You can use my electronic signature on Plaintiff's proposed Order on the Motion for Leave.

Very truly yours,

Charlotte Buys



Charlotte Buys
Associate
O: 702.212.1478
Email: cbuys@HPSLAW.COM

1140 North Town Center Dr.
Suite 350
Las Vegas, NV 89144
F: 702.384.6025

Legal Assistant: Casey Henley
O: 702.212.1449
Email: chenley@hpslaw.com

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From: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>
Sent: Thursday, December 10, 2020 1:40 PM
To: Nicole Young <NYoung@danielmarks.net>; Charlotte Buys <cbuys@HPSLAW.COM>; Office <office@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: RE: Green v. Delee- Proposed Order re Motion to Amend

[External Email] CAUTION!.

You can e-sign the revised order on my behalf – thank you.

Eric K. Stryker
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
6689 Las Vegas Blvd. South, Suite 200
Las Vegas, NV 89119
702.727.1242 (Direct)
702.727.1400 (Main)
702.727.1401 (Fax)
eric.stryker@wilsonelser.com

From: Nicole Young [mailto:NYoung@danielmarks.net]
Sent: Thursday, December 10, 2020 10:14 AM
To: Charlotte Buys <cbuys@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Office <office@danielmarks.net>; Lord, Nicole N. <Nicole.Lord@wilsonelser.com>
Cc: Sherman Mayor <smayor@HPSLAW.COM>; Mike Prangle <mprangle@HPSLAW.COM>; Tyson Dobbs <tdobbs@HPSLAW.COM>; Casey Henley <CHenley@HPSLaw.com>
Subject: RE: Green v. Delee- Proposed Order re Motion to Amend

[EXTERNAL EMAIL]

Good morning:

Attached is the revised order. While the judge did not specifically find the affidavits comply with NRS 41A.071, her order granting the motion shows she believes those affidavits do comply. That was the reason she denied the motion over the summer. To resolve this issue, I took out the specific language regarding each element so it is more general.

Please provide your consent to affix your electronic signature to submit the order to the judge. I want to submit this order no later than tomorrow afternoon in light of the status check in chambers scheduled for December 15th.

Thank you!

Nicole

Nicole M. Young, Esq.

APPENDIX 000271

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

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**

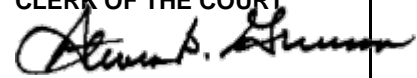
11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/15/2020

15 E-File Admin	efile@hpslaw.com
16 S. Vogel	brent.vogel@lewisbrisbois.com
17 Eric Stryker	eric.stryker@wilsonelser.com
18 Johana Whitbeck	johana.whitbeck@lewisbrisbois.com
19 Erin Jordan	erin.jordan@lewisbrisbois.com
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21 Angela Clark	angela.clark@wilsonelser.com
22 Daniel Marks	office@danielmarks.net
23 Tyson Dobbs	tdobbs@hpslaw.com
24 Alia Najjar	alia.najjar@wilsonelser.com
25 Charlotte Buys	cbuys@hpslaw.com

26
27
28

1	Patricia Daehnke	patricia.daehnke@cdiglaw.com
2		
3	Nicolle Etienne	netienne@hpslaw.com
4	Sherman Mayor	smayor@hpslaw.com
5	Casey Henley	chenley@hpslaw.com
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7	Linda Rurangirwa	linda.rurangirwa@cdiglaw.com
8	Amanda Rosenthal	amanda.rosenthal@cdiglaw.com
9	Laura Lucero	laura.lucero@cdiglaw.com
10	Nicole Young	nyoung@danielmarks.net
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12	Reina Claus	rclaus@hpslaw.com
13	Camie DeVoge	cdevoge@hpslaw.com
14	Deborah Rocha	deborah.rocha@cdiglaw.com
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COMP
LAW OFFICE OF DANIEL MARKS
DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
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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

17

18

19

20

21

22

23

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28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the
3 16th day of December, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I
4 electronically transmitted a true and correct copy of the above and foregoing **AMENDED**
5 **COMPLAINT FOR MEDICAL MALPRACTICE** by way of Notice of Electronic Filing
6 provided by the court mandated E-file & Serve System, as follows:
7 following:

8 Erik K. Stryker, Esq.
9 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP
10 300 South 4th Street, 11th 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
15 /s/ Nicole M. Young
16 _____
17 An employee of the
18 LAW OFFICE OF DANIEL MARKS
19
20
21
22
23
24
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27
28

EXHIBIT A

1 AFFIDAVIT OF DR. LISA KARAMARDIAN

2 STATE OF California
3 COUNTY OF Orange } : s

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

- 6 1. That I am a medical doctor licensed in the State of California and am board certified in
7 the field of Obstetrics and Gynecology.
- 8 2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for
9 Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
- 10 3. That I have reviewed Plaintiff Choloe Green's medical records relating to the care and
11 treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center,
12 Valley Hospital Medical Center and Centennial Hills Medical Center.
- 13 4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean
14 section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released
15 home on post-operative day number one. This was a breach of the standard of care by Dr.
16 DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a
17 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green
18 had not even attempted to tolerate clear liquids and she had not passed flatus when she
19 was released on post-operative day number one.
- 20 5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented
21 again to Sunrise Hospital , now five (5) days post-partum, with severe abdominal pain
22 and reports of nausea, vomiting, fever, and chills. She was admitted to the
23 medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16,
24 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated
25 the standard of care. Ms. Green was discharged despite the fact that she was not able to
26 tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple
27 dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was
28 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 faecalis, 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

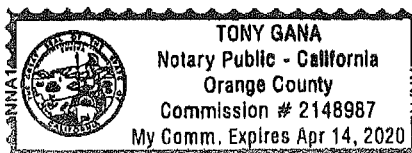


EXHIBIT B

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

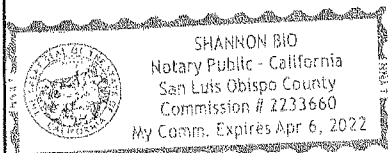
NOTARY PUBLIC in and for said
COUNTY and STATE

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

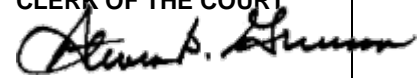
proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature

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



ANS
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
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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;
ALI KIA, M.D. an individual; and NEVADA
HOSPITALIST GROUP, LLP.

Defendants.

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

**DEFENDANT SUNRISE HOSPITAL
AND MEDICAL CENTER'S ANSWER
TO PLAINTIFF'S AMENDED
COMPLAINT FOR MEDICAL
MALPRACTICE**

COMES NOW, Defendant, SUNRISE HOSPITAL AND MEDICAL CENTER, LLC
("Sunrise Hospital") by and through its counsel of record, HALL PRANGLE &
SCHOONVELD, LLC and hereby submits its Answer to Plaintiff's Amended Complaint for
Medical Malpractice. If any numbered paragraph is not answered, this answering Defendant,
Sunrise Hospital, states that such unanswered paragraph should be deemed to be denied.

...

1 1. Answering paragraph 1 of Plaintiff's Amended Complaint, this answering
2 Defendant states it is without sufficient information to form a belief as to the truth or falsity of
3 the allegations contained in said paragraph and therefore denies the same.

4 2. In answering paragraph 2 of Plaintiff's Amended Complaint, this answering
5 Defendant states it is without sufficient information to form a belief as to the truth or falsity of
6 the allegations contained in said paragraph and therefore denies the same.

7 3. In answering paragraph 3 of Plaintiff's Amended Complaint, this answering
8 Defendant states it is without sufficient information to form a belief as to the truth or falsity of
9 the allegations contained in said paragraph and therefore denies the same.

10 4. In answering paragraph 4 of Plaintiff's Amended Complaint, this answering
11 Defendant states it is without sufficient information to form a belief as to the truth or falsity of
12 the allegations contained in said paragraph and therefore denies the same.

13 5. In answering paragraph 5 of Plaintiff's Amended Complaint, this answering
14 Defendant, Sunrise Hospital and Medical Center, LLC (hereinafter "Sunrise Hospital"), admits
15 that it is licensed to do business and is doing business in the State of Nevada, Clark County,
16 Nevada. This answering Defendant is without knowledge as to the remainder of this paragraph
17 and therefore denies same.

18 6. In answering paragraph 6 of Plaintiff's Amended Complaint, this answering
19 Defendant states it is without sufficient information to form a belief as to the truth or falsity of
20 the allegations contained in said paragraph and therefore denies the same.

21 7. In answering paragraph 7 of Plaintiff's Amended Complaint, this answering
22 Defendant states it is without sufficient information to form a belief as to the truth or falsity of
23 the allegations contained in said paragraph and therefore denies the same.

24 8. In answering paragraph 8 of Plaintiff's Amended Complaint, this answering
25 Defendant states it is without sufficient information to form a belief as to the truth or falsity of
26 the allegations contained in said paragraph and therefore denies the same.
27
28

1 9. In answering paragraph 9 of Plaintiff's Amended Complaint, this answering
2 Defendant states it is without sufficient information to form a belief as to the truth or falsity of
3 the allegations contained in said paragraph and therefore denies the same.

4 10. In answering paragraph 10 of Plaintiff's Amended Complaint, this answering
5 Defendant Sunrise Hospital denies that it "discharged" Choloe Green on July 16, 2016. This
6 answering Defendant is without knowledge as to the remainder of the allegations contained in
7 said paragraph and therefore denies the same.

8 11. In answering paragraph 11 of Plaintiff's Amended Complaint, this answering
9 Defendant denies the allegations contained in paragraph 11. This Defendant, Sunrise Hospital,
10 asserts that such allegations have been precluded by Court order.

11 12. In answering paragraph 12 of Plaintiff's Amended Complaint, this answering
12 Defendant states it is without sufficient information to form a belief as to the truth or falsity of
13 the allegations contained in said paragraph and therefore denies the same.

14 13. In answering paragraph 13 of Plaintiff's Amended Complaint, this answering
15 Defendant hereby incorporates, repeats, and realleges its answers to paragraphs 1 through 12,
16 inclusive, as though fully set forth herein.

17 14. In answering paragraph 14 of Plaintiff's Amended Complaint, this answering
18 Defendant, Sunrise Hospital, denies the allegations contained in Paragraph 14 as to the Hospital.
19 This answering Defendant is without sufficient information to form a belief as to the truth or
20 falsity of the allegations in the remainder of the paragraph and therefore denies same.

21 15. In answering paragraph 15 of Plaintiff's Amended Complaint, this answering
22 Defendant, Sunrise Hospital, denies the allegations contained in paragraph 15 as to the Hospital.
23 This answering Defendant is without sufficient information to form a belief as to the truth or
24 falsity of the allegations in the remainder of the paragraph and therefore denies same.

25 16. In answering paragraph 16 of Plaintiff's Amended Complaint, this answering
26 Defendant states it is without sufficient information to form a belief as to the truth or falsity of
27 the allegations contained in said paragraph and therefore denies the same.
28

1 17. In answering paragraph 17 of Plaintiff's Amended Complaint, this answering
2 Defendant states it is without sufficient information to form a belief as to the truth or falsity of
3 the allegations contained in said paragraph and therefore denies the same.

4 18. In answering paragraph 18 of Plaintiff's Amended Complaint, this answering
5 Defendant denies the allegations contained in paragraph 18.

6
7 **AFFIRMATIVE DEFENSES**

8 **GENERAL DENIAL**

9 Defendant, Sunrise Hospital, denies each and every allegation contained in Plaintiff's
10 Amended Complaint that is not specifically admitted to be true.

11 **FIRST AFFIRMATIVE DEFENSE**

12 Plaintiff's Amended Complaint fails to state a claim against this answering Defendant,
13 Sunrise Hospital, upon which relief can be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 If Plaintiff has sustained any injuries or damages, such were the result of intervening
16 and/or superseding events, factors, occurrences, or conditions, which were in no way caused by
17 Defendant, Sunrise Hospital, and for which Defendant, Sunrise Hospital, is not liable.

18 **THIRD AFFIRMATIVE DEFENSE**

19 The incident alleged in Plaintiff's Amended Complaint and the resulting damages, if any,
20 to Plaintiff was proximately caused or contributed to by Plaintiff's own negligence, if any, and if
21 such negligence was greater than the alleged negligence of Defendant Sunrise Hospital,
22 Plaintiff's recovery, if any, is barred as to Sunrise Hospital.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 The risks and consequences, if any, attendant to the recommendations and treatment
25 proposed by this Defendant were fully explained to the Plaintiff who freely consented to such
26 treatment and thereby assumed risks involved in such matter.

27 . . .

28 . . .

FIFTH AFFIRMATIVE DEFENSE

The damages, if any, alleged by Plaintiff were not the result of any acts of omission, or commission, or negligence by Sunrise Hospital, but were the results of known risks which were consented to by the Plaintiff, such risks being inherent in the nature of the care rendered and such risks were assumed by the Plaintiff when she consented to treatment.

SIXTH AFFIRMATIVE DEFENSE

In all medical care and attention rendered directly by this Defendant, Sunrise Hospital, to Plaintiff, such care satisfied the applicable hospital standard of care as more fully described in NRS 41A.015 and NRS 41A.017. This Defendant, Sunrise Hospital, denies that it was negligent in rendering care and treatment.

SEVENTH AFFIRMATIVE DEFENSE

In the event this answering Defendant, Sunrise Hospital, is found liable, then this answering Defendant, Sunrise Hospital, shall only be severally liable for that portion of the judgment, which represents the percentage of negligence attributable to this answering Defendant, Sunrise Hospital.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff failed to file her Amended Complaint before the running of the applicable statute of limitation, thereby barring her claims for relief.

NINTH AFFIRMATIVE DEFENSE

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

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...

TENTH AFFIRMATIVE DEFENSE

Defendant, Sunrise Hospital, asserts that Plaintiff's Amended Complaint should be dismissed, as to Sunrise Hospital, on the basis that Plaintiff has not complied with NRS 41A.071 as to Defendant, Sunrise Hospital.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant Sunrise Hospital avails itself of all affirmative defenses as set forth in NRS 41A.021, 4A.031, 41A.035, 41A.071, 41A.100, 42.020, 41.1395 and all applicable subparts.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's recovery, if any, for non-economic damages is limited, or capped, at \$350,000.00 per NRS 41A.035.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff has been reimbursed from any source, including collateral sources, for any special damages claimed to have been sustained as a result of the incidents alleged in Plaintiff's Amended Complaint, Defendant Sunrise Hospital may elect to offer those amounts, or write-offs or write-downs of medical bills, into evidence, if Defendant so elects, and, Plaintiff's special damages can be reduced by those amounts pursuant to NRS 42.021(1).

FOURTEENTH AFFIRMATIVE DEFENSE

Paragraph 11 of Plaintiff's Amended Complaint should be dismissed, per Order of the Court, as any issues with regard hospital liability via ostensible agency/vicarious liability for non-hospital employees has been dismissed by the Court.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate, if any, her damages and, thus, monetary recovery, if any, should be reduced accordingly.

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

Pursuant to N.R.C.P. 11, as amended, all possible Affirmative Defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer, and therefore, Defendant reserves the right to amend its Answer to allege additional Affirmative Defenses or to withdraw Affirmative Defenses if subsequent investigation warrants.

EIGHTEENTH AFFIRMATIVE DEFENSE

As records are obtained, discovery occurs, and this litigation is pursued, this defendant reserves the right to abandon or vacate any of these affirmative defenses, or any part thereof, as needed to be consistent with facts of the case as such becomes known.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by virtue of the Complaint;
2. For reasonable attorney's fees and costs of suit incurred herein; and
3. For such other and further relief as the Court deems just and proper.

DATED this 17th day of December, 2020.

HALL PRANGLE & SCHOONVELD, LLC

By: /s/ T. Charlotte Buys, Esq.
MICHAEL E. PRANGLE, ESQ.
Nevada Bar No.: 8619
TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
SHERMAN B. MAYOR, ESQ.
Nevada Bar No. 1491
T. CHARLOTTE BUYS, ESQ.
Nevada Bar No. 14845
1140 N. Town Center Dr., Ste. 350
Las Vegas, NV 89144
Attorneys for Defendant
Sunrise Hospital and Medical Center, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 17th day of December, 2020, I served a true and correct copy of the foregoing **DEFENDANT SUNRISE HOSPITAL AND MEDICAL CENTER'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT FOR MEDICAL MALPRACTICE** to the following parties via:

XX the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules;

_____ U.S. Mail, first class postage pre-paid to the following parties at their last known address;

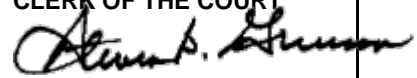
_____ Receipt of Copy at their last known address:

Daniel Marks, Esq.
Nicole M. Young, Esq.
LAW OFFICE OF DANIEL MARKS
610 South Ninth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

Eric K. Stryker, Esq.
WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP
300 S. 4th Street
Las Vegas, NV 89101
Attorney for Defendants
Frank J. DeLee, M.D. and
Frank J. DeLee, M.D., PC

/s/ Casey Henley

An employee of HALL PRANGLE & SCHOONVELD, LLC



ANS
ERIC K. STRYKER, ESQ.
Nevada Bar No. 5793
BRIGETTE E. FOLEY, ESQ.
Nevada Bar No.: 12965
WILSON, ELSER, MOSKOWITZ,
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Telephone: (702) 727-1400
Facsimile: (702) 727-1401
Eric.Stryker@wilsonelser.com
Brigette.Foley@wilsonelser.com
*Attorney for Defendants, Frank J. DeLee, M.D.
and Frank J. DeLee M.D., P.C.*

DISTRICT COURT

CLARK COUNTY, NEVADA

CHOLOE GREEN, an individual,

Plaintiff,

v.s.

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.: IX

**DEFENDANTS FRANK J. DELEE,
M.D. AND FRANK J. DELEE M.D.,
PC'S ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT FOR
MEDICAL MALPRACTICE**

Defendants Frank J. DeLee, M.D., and Frank J. DeLee M.D., PC (hereinafter, "answering Defendants"), by and through their counsel of record Eric K. Stryker, Esq. of the law firm of Wilson Elser, Moskowitz Edelman & Dicker, LLP, hereby answer Plaintiff's Amended Complaint for Medical Malpractice on file herein, as follows:

1. Answering paragraph 1 of Plaintiff's Amended Complaint on file herein, these answering Defendants state they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds deny each and every allegation contained therein.

2. Answering paragraph 2 of Plaintiff's Amended Complaint on file herein, Defendant Frank J. DeLee, M.D. admits that he was a licensed medical doctor in the State of Nevada at the

1 time of the incidents alleged, and Frank J. DeLee M.D., PC was a domestic professional
2 corporation licensed in Nevada at the time of the incident alleged.

3 3. Answering paragraphs 3 and 4 of Plaintiff's Amended Complaint on file herein,
4 these answering Defendants admit the allegations contained therein.

5 4. Answering paragraphs 5, 6 and 7 of Plaintiff's Amended Complaint on file herein,
6 these answering Defendants state they do not have sufficient knowledge or information upon
7 which to base a belief as to the truth of the allegations contained therein, and upon said grounds
8 deny each and every allegation contained therein.

9 5. Answering paragraph 8 of Plaintiff's Amended Complaint on file herein, these
10 answering Defendants deny all allegations of negligence or wrongdoing by these answering
11 Defendants. As to the remaining allegations, these answering Defendants are without knowledge
12 and therefore deny same.

13 6. Answering paragraphs 9 and 10 of Plaintiff's Amended Complaint on file herein,
14 these answering Defendants deny each and every allegation contained therein.

15 7. Answering paragraphs 11 and 12 of Plaintiff's Amended Complaint on file herein,
16 these answering Defendants state they do not have sufficient knowledge or information upon
17 which to base a belief as to the truth of the allegations contained therein, and upon said grounds
18 deny each and every allegation contained therein.

19 8. Answering paragraph 13 of Plaintiff's Amended Complaint on file herein, these
20 answering Defendants repeat, reallege and incorporate their responses to paragraphs 1 through 12,
21 inclusive, of the Amended Complaint, as though fully set forth in full herein.

22 9. Answering paragraphs 14 and 15 of Plaintiff's Amended Complaint on file herein,
23 these answering Defendants deny all allegations of negligence or wrongdoing by these answering
24 Defendants. As to the remaining allegations, these answering Defendants are without knowledge
25 and therefore deny same.

26 10. Answering paragraphs 16 and 17 of Plaintiff's Amended Complaint on file herein,
27 these answering Defendants state they do not have sufficient knowledge or information upon
28 which to base a belief as to the truth of the allegations contained therein, and upon said grounds
deny each and every allegation contained therein.

1 11. Answering paragraph 18 of Plaintiff's Amended Complaint on file herein, these
2 answering Defendants deny each and every allegation contained therein.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 Plaintiff's Amended Complaint fails to state a claim against these answering Defendants
6 upon which relief can be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 The loss, injuries, and damages that the Plaintiff alleges, if any, were directly and
9 proximately caused by the negligence, carelessness or fault of the Plaintiff, which is greater than
10 the alleged negligence, carelessness, or fault of these answering Defendants, and, therefore,
11 Plaintiff's claims against these answering Defendants are barred.

12 **THIRD AFFIRMATIVE DEFENSE**

13 These answering Defendants state that the damages, if any, alleged by the Plaintiff was the
14 result of independent intervening acts, over which these answering Defendants had no control or
15 right of control, which resulted in a superseding cause of Plaintiff's alleged damages.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 That the damage sustained by the Plaintiff, if any, was caused by the acts of third persons
18 who are not agents, servants or employees of these answering Defendants, and were not acting on
19 behalf of these answering Defendants in any manner or form, and, as such, these answering
20 Defendants are not liable in any manner to the Plaintiff.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 These answering Defendants allege that the Plaintiff failed to mitigate their damages.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 The Plaintiff's claims are barred by the applicable statute of limitations.

25 **SEVENTH AFFIRMATIVE DEFENSE**

26 These answering Defendants allege that at all times mentioned herein, these answering
27 Defendants acted reasonably and in good faith, with regard to the acts and transactions which are
28 the subject of this pleading.

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 The complained of acts of these answering Defendants were justified under the
3 circumstances.

4 **NINTH AFFIRMATIVE DEFENSE**

5 The injuries suffered by the Plaintiff, if any, as set forth in the Amended Complaint, were
6 caused by a pre-existing condition.

7 **TENTH AFFIRMATIVE DEFENSE**

8 These answering Defendants have been forced to retain the services of an attorney to
9 defend this action and are entitled to an award of reasonable attorney's fees and costs incurred
10 herein.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 The injuries or damages, if any, complained of by Plaintiff in the Amended Complaint for
13 damages were caused by the forces of nature and not by any acts or omissions of these answering
14 Defendants.

15 **TWELFTH AFFIRMATIVE DEFENSE**

16 The damages claimed by Plaintiff in the Amended Complaint were not the result of any
17 acts of omission or commission or negligence but were the result of a known risk, which was
18 consented to, such risk being inherent in the nature of the treatment, procedures, and medical care
rendered to the Plaintiff, and that such risks were assumed.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 That Plaintiff failed to join an indispensable party to this action.

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 That in the event these answering Defendants may be found liable for negligence, to which
23 each of these answering Defendants deny, each Defendant is only severally liable and not jointly
24 liable as to the other Defendants and that Plaintiff shall only recover that portion of any judgment
25 that represents the percentage of negligence attributable to each Defendant.

26 **FIFTEENTH AFFIRMATIVE DEFENSE**

27 Plaintiff's non-economic damages, if any, may not exceed \$350,000.00 pursuant to NRS
28 §41A.035.

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff is entitled to recover any future damages from Defendants, Defendants may satisfy that amount through periodic payments pursuant to NRS §42.021.

EIGHTEENTH AFFIRMATIVE DEFENSE

This Court has no personal jurisdiction over Defendants.

NINETEENTH SEVENTH DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonably inquiry upon the filing of Plaintiff's Complaint and, therefore, these answering Defendants reserve the right to amend their Answer to allege additional affirmative defenses if subsequent investigation so warrants.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Defendants prays as follows:

- 3 1. That Plaintiff takes nothing by reason of their Amended Complaint on file herein;
4 2. For all attorneys' fees incurred in the defense of Plaintiff's Amended Complaint
5 against these answering Defendants;
6 3. For costs and disbursements incurred herein; and
7 4. For such other and further relief as the Court may deem just and proper in these
8 premises.

9 DATED this 30th day of December, 2020.

10 WILSON, ELSER, MOSKOWITZ,
11 EDELMAN & DICKER LLP

12 By: /s/Eric K. Stryker

13 ERIC K. STRYKER, ESQ.

14 Nevada Bar No. 5793

15 BRIGETTE E. FOLEY, ESQ.

16 Nevada Bar No.: 12965

17 6689 Las Vegas Blvd., Suite 200

18 Las Vegas, NV 89119

19 *Attorney for Defendants, Frank J. DeLee,*
20 *M.D. and Frank J. DeLee M.D., P.C*

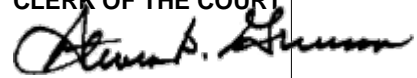
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☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk

☐ by placing 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

Nicholas

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MDSM

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Nevada Bar No. 4976

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Linda K. Rurangirwa
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COLLINSON, DAEHNKE, INLOW & GRECO
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(702) 979-2132 Telephone
(702) 979-2133 Facsimile

Attorneys for Defendant
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

COLLINSO, DAEHNKE, INLOW & GRECO

/s/ Linda K. Rurangirwa

BY: _____

PATRICIA EGAN DAEHNKE

Nevada Bar No. 4976

LINDA K. RURANGIRWA

Nevada Bar No. 9172

2110 E. Flamingo Road, Suite 212

Las Vegas, Nevada 89119

Tel. (702) 979-2132

Fax (702) 979-2133

Attorneys for Defendant

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, 2016.¹ 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.²

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.³

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

¹ See Plaintiff’s Complaint, attached hereto as Exhibit “A.”

² *Id.*, Affidavit of Dr. Lisa Karamardian ¶¶ 4-5.

³ *Id.*, ¶ 9

1 Dr. Kia's actions were negligent and the hospital was found vicariously liable on a theory of
2 ostensible agency.⁴ The motion was granted and the Third-Party Complaint was filed on June
3 14, 2019.⁵ In order to satisfy the expert affidavit requirement set forth in NRS 41A.071,
4 Sunrise relied on the expert affidavit of Dr. Karamardian that was filed with Plaintiff's
5 Complaint.⁶

6 On March 19, 2020, Third-Party Defendant NHG filed a Motion for Judgment on the
7 Pleadings on the grounds that Sunrise did not attach an affidavit of merit specifying breaches
8 in the standard of care by Dr. Kia or NHG.⁷ Dr. Kia filed a Joinder to such motion on April
9 13, 2020.⁸ The Motion was heard on April 29, 2020 and granted. Specifically, the Court
10 found:

11 When evaluating complaints that assert claims of medical negligence, a
12 Plaintiff must comply with NRS 41A.071, which requires not only a complaint
13 but also an accompanying affidavit setting forth the professional negligence
14 allegations. The Supreme Court held "that courts should read the complaint
15 and the plaintiff's NRS 41A.071 expert affidavit together when determining
16 whether the expert affidavit meets the requirements of NRS 41A.071." *Zohar*
17 *v. Zbiegien*, 130 Nev. 733, 739, 334 P.3d 402, 406 (2014) (citing *Great Basin*
18 *Water Network v. Taylor*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010);
19 *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148
20 P.3d 790, 794 (2006)). The same decision went on to hold that the NRS
21 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

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

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

25 ⁶ See Exhibit B, p. 7, line 3-8.

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

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

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

13 Here, Third-Party Plaintiff Sunrise Hospital incorporated Plaintiff's affidavit in
14 the filing of their Third-Party Complaint. Plaintiff's complaint and affidavit do
15 not identify Dr. Kia or Nevada Hospitalist Group ("NHG"). Nor does either
16 document identify any John Doe, "unknown" or "unidentified" potential
17 defendants that could arguably be Dr. Kia and/or NHG. Because neither Dr.
18 Kia nor NHG are identified in the complaint or the affidavit there is no
19 identified specific act or specific acts of alleged professional negligence by Dr.
20 Kia and NHG. Instead, the complaint and affidavit only identifies Sunrise
21 Hospital and Dr. DeLee when laying the facts and circumstances that form the
22 cause of action involving the alleged professional negligence. Because the
23 Plaintiff's affidavit fails to meet the third and fourth prongs of the NRS
24 41A.071 affidavit requirements regarding professional negligence claims
25 against Defendants Dr. Kia and NHG, so does the Third-Party Complaint,
26 rendering it void ab initio. The Court recognizes that the opposition argues that
27 this Third-Party Complaint is brought only for the purposes of contribution and
28 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.⁹

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, 2020.¹⁰ 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.¹¹

⁹ 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."

¹⁰ See Amended Complaint for Medical Malpractice, attached hereto as Exhibit "G."

¹¹ *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.¹²

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 ¹² *Id.*, Affidavit of Robert S. Savluk, M.D., ¶15.

1 plaintiff's legal conclusions and "[t]hreadbare recitals of the elements of a cause of action,
2 supported by mere conclusory statement, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662,
3 678 (2009)(analyzing the federal counterpart to NRC 12). Moreover, the court may not take
4 into consideration matters outside of the pleadings being attacked. *Breliant v. Preferred*
5 *Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

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

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

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

15 In *Winn v. Sunrise Hospital and Medical Center*, the Nevada Supreme Court
16 explained that NRS 41A.097(2), by its terms, requires a plaintiff "to satisfy both the one-year
17 discovery period *and* the three year injury period." 128 Nev. Adv. Op. 23, 277 P.3d 458, 461
18 (2012) (emphasis added).

19 With regard to the one year statute of limitations, generously assuming for purposes of
20 this Motion that Plaintiff discovered her injury at the time she filed her Complaint on June 30,
21 2017, Plaintiff needed to file an Amended Complaint naming Dr. Kia by June 30, 2018.
22 Plaintiff failed to file her Amended Complaint naming Dr. Kia until December 2020, over two
23 years after the expiration of the statute of limitations. Even when Sunrise filed its Motion for
24 Leave to File a Third-Party Complaint on May 1, 2019 alleging that Dr. Kia and NHG were
25 negligent, Plaintiff still did not seek to amend the Complaint to add Dr. Kia and NHG until
26 over one year and five months later.

27 The three year limitation period provided in NRS 41A.087(2) "begins to run when a
28 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.4th 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

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

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

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

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

¹⁴ 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: _____

PATRICIA EGAN DAEHNKE

Nevada Bar No. 4976

LINDA K. RURANGIRWA

Nevada Bar No. 9172

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Las Vegas, Nevada 89119

Tel. (702) 979-2132

Fax (702) 979-2133

Attorneys for Defendant

ALI KIA, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st 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.

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NICOLE M. YOUNG, ESQ.
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Frank J. Delee, M.D. and Frank J. Delee, M.D., P.C.*

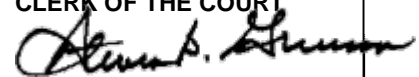
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By /s/ Linda K. Rurangirwa
An employee of COLLINSON, DAEHNKE,
INLOW & GRECO

EXHIBIT A



COMP
LAW OFFICE OF DANIEL MARKS
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Nevada State Bar No. 002003
NICOLE M. YOUNG, ESQ.
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(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.

////

////

APPENDIX 000319

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.

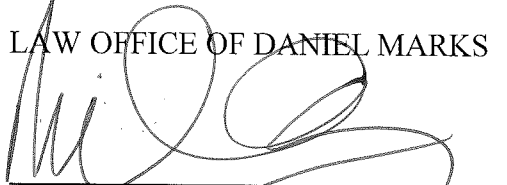
11. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been damaged in an amount in excess of \$15,000.00.
12. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which is attached hereto as Exhibit "1".
13. Choloe has been forced to retain 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 _____
15 NOTARY PUBLIC in and for said
16 COUNTY and STATE

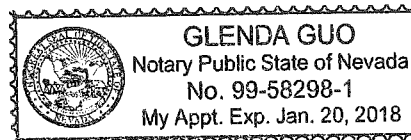


EXHIBIT 1

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.

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

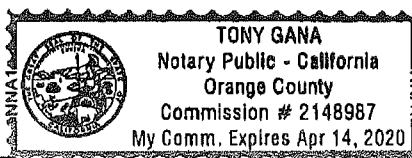
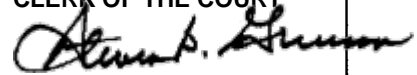


EXHIBIT B



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TYSON J. DOBBS, ESQ.
Nevada Bar No.: 11953
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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.

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 24th 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

May, 2019, at the hour of 3:00 ^{CDs} a.m./p.m. in Department 9.

DATED April 29, 2019.

DISTRICT COURT JUDGE

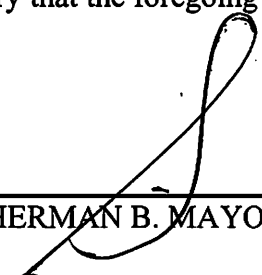
**DECLARATION OF SHERMAN B. MAYOR, ESQ., IN SUPPORT OF ORDER
SHORTENING TIME FOR SUNRISE HOSPITAL'S MOTION
FOR LEAVE TO FILE THRID PARTY COMPLAINT**

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

SHERMAN B. MAYOR, ESQ., attests and states as follows:

1. Your affiant is an attorney licensed to practice law in the State of Nevada and is practicing with the law firm of Hall, Prangle and Schoonveld, LLC. Your affiant is a counsel of record for Defendant, Sunrise Hospital and Medical, LLC., in the above-entitled matter.
2. Sunrise Hospital recently filed a Motion for Partial Summary Judgment. That motion sought, in part, to dismiss any claim of vicarious liability or ostensible agency that might be imposed against Sunrise Hospital as a result of care and treatment rendered to Plaintiff by Ali Kia, M.D. during the hospitalization at issue in this case.
3. The court, by minute order dated April 1, 2019, determined that there was a factual question as to whether Dr. Kia was an ostensible agent of the hospital when he cared for Plaintiff, Chole Green. Accordingly, the motion for partial summary judgment to dismiss the ostensible agency claim as to Dr. Kia was denied. The final proposed order for this ruling has been submitted to the court for consideration.
4. As a result, Sunrise Hospital is seeking leave to file a third-party complaint against Ali Kia, M.D. (a physician who is not named in Plaintiff's underlying complaint for medical malpractice). In addition, Ali Kia, M.D. was an agent and/or employee of Nevada Hospitalist Group, LLP. Leave is also sought to add Nevada Hospitalist Group, LLP as a third-party defendant.

- 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 4th 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
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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 24th 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, A11 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, A11 MD
3 07/16/16 0522 DNUR.CCV Order Source: TELEPHONE & VERIFIED
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

Electronic Signature of KIA, A11 MD on 07/16/16

Order Date: 07/16/16

Category Procedure Name
DISCHG DISCHARGE ORDER

Order Number

—Service—

Date

Time

Pri

Qty

Ord

Source

Status

TRN

Ordered By

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 DKE/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: COCS2 IDEV - Discharge Report	PAGE 52
PATIENT: GREEN, CHLOE S ACCOUNT NO: D00113938887 ATTEND DR: K1a, Ali MD REPORT STATUS: FINAL	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

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, Ali 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:

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, Ali MD
3	07/16/16 1521 DR.KIAAL	Order Source: EPOH
4	07/16/16 1521 DR.KIAAL	Order Status: KIAAL
5	07/16/16 1554 DNURAW	order viewed from Order Management
6	07/16/16 1736 DNURNP	order acknowledged

Electronic Signature of Dr. Kia, Ali MD on 07/27/16 at 01:10:16 PM

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)
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.
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(702) 384-6025 – Facsimile
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 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
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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 **THIRD-PARTY PLAINTIFF SUNRISE HOSPITAL CLAIM FOR INDEMNITY AND**
23 **CONTRIBUTION AGAINST ALI KIA, M.D., AND NEVADA HOSPITALIST GROUP**

24 18. Third-Party Plaintiff, Sunrise Hospital repeats and realleges and incorporates each and
25 every allegation contained in paragraphs 1-17 as though fully set forth herein.
26
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- 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
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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 24th day of April, 2019.

10 HALL PRANGLE & SCHOONVELD, LLC

11 By: _____

12 MICHAEL E. PRANGLE, ESQ.

13 Nevada Bar No.: 8619

14 TYSON J. DOBBS, ESQ.

15 Nevada Bar No.: 11953

16 SHERMAN B. MAYOR, ESQ.

17 Nevada Bar No. 1491

18 1160 N. Town Center Dr., Ste. 200

19 Las Vegas, NV 89144

20 *Attorneys for Defendant*

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

Steven D. Grier

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 *ug*

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**
AND MEDICAL CENTER, LLC, a Foreign
Limited-Liability Company.

Arbitration Exempt -- Action
for Medical Malpractice

16 **Defendants.**

17
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 Choloe at Sunrise Hospital. Choloe 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, Choloe had an appointment with Dr. DeLee. At that appointment, Choloe
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 Choloe regarding her lack of a bowel movement.
- 16 8. On July 14, 2016, after still not having a bowel movement post C-section, Choloe 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 Choloe 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, Choloe 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 Choloe 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 Choloe and as a direct and proximate result of that breach, Choloe 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 22nd day of June, 2017.

Glenda Guo
NOTARY PUBLIC in and for said
COUNTY and STATE

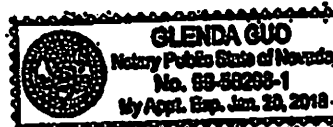


EXHIBIT 1

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 Chloe 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 faecalis, 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

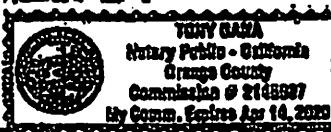
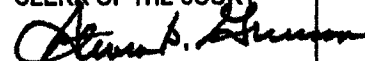


EXHIBIT C

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

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.
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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
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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.

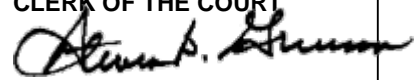
4 26. WHEREFORE, Third-Party Plaintiff Sunrise Hospital and Medical Center prays that
5 judgment be entered in its favor and against Third-Party Defendants, Ali Kia, M.D.,
6 and Nevada Hospitalist Group, LLP, in an amount commensurate with the relative
7 degree of fault by Dr. Kia in causing the Plaintiff's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

9 DATED this 14th 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.
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

EXHIBIT D



1 S. BRENT VOGEL
Nevada Bar No. 006858
2 E-Mail: Brent.Vogel@lewisbrisbois.com
ERIN E. JORDAN
3 Nevada Bar No. 10018
E-Mail: Erin.Jordan@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
702.893.3383
6 FAX: 702.893.3789
*Attorneys for Third-Party Defendant Nevada
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

HEARING REQUESTED

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

25
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

12 Nevada Bar No. 10018

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Tel. 702.893.3383

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:

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

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

In this case, the Third-Party Plaintiff Sunrise Hospital filed a Third-Party Complaint that
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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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2020, a true and correct copy of THIRD-PARTY DEFENDANT NEVADA HOSPITALIST GROUP, LLP'S MOTION FOR JUDGMENT ON THE PLEADINGS 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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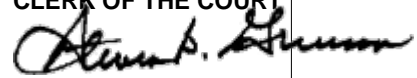
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By /s/ Johana Whitbeck
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EXHIBIT E



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 13th 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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15 *Attorneys for Plaintiff Choloe Green*

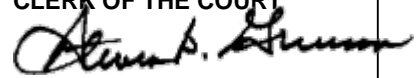
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4 *Attorneys for Third-Party Defendant*
Nevada Hospitalist Group, LLP
5

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;
FRANK J. DELEE, MD, PC, a Domestic
16 Professional Corporation, SUNRISE
HOSPITAL AND MEDICAL CENTER, LLC,
17 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 1st day of September, 2020

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7
8 By /s/ Erin E. Jordan

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17 *Hospitalist Group, LLP*
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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 Plaintiff,

13 vs.

14 FRANK J. DELEE, M.D., an individual;
15 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

12
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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

19 S. BRENT VOGEL

Nevada Bar No. 6858

20 ERIN E. JORDAN

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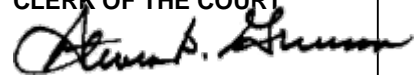
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EXHIBIT A

EXHIBIT A



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8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 CHOLOE GREEN, an individual,
12 Plaintiff,

13 vs.

14 FRANK J. DELEE, M.D., an individual;
15 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
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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
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7

8 By /s/ Erin E. Jordan

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17 *Hospitalist Group, LLP*
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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.

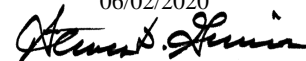
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24 *Sunrise Hospital and Medical Center, LLC*

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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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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
16 HOSPITAL AND MEDICAL CENTER, LLC,
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17 Defendants.

18
19 SUNRISE HOSPITAL AND MEDICAL
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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

**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.

9
10 
DISTRICT COURT JUDGE

MK
28B 6D1 A711 ED7D
Cristina D. Silva

11 Submitted by:

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13 /s/ Erin E. Jordan
14 S. BRENT VOGEL
15 Nevada Bar No. 6858
ERIN E. JORDAN
16 Nevada Bar No. 10018
LEWIS BRISBOIS BISGAARD & SMITH LLP
17 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
18 Brent.Vogel@lewisbrisbois.com
Erin.Jordan@lewisbrisbois.com
19 Attorneys for Third-Party Defendant Nevada
Hospitalist Group, LLP

20 Approved as to Form:

21 LAW OFFICE OF DANIEL MARKS

HALL PRANGLE & SCHOONVELD, LLC

22 /s/ Nicole M. Young
23 Daniel Marks, Esq.
24 Nicole M. Young, Esq.
610 S. 9th St.
Las Vegas, NV 89101
25 nyoung@danielmarks.net
26 Attorneys for Plaintiff

/s/ Sherman B. Mayor
Michael E. Prangle, Esq.
Sherman B. Mayor, Esq.
1160 N. Town Center Dr., Suite 200
Las Vegas, NV 89144
smayor@hpslaw.com
tdobbs@hpslaw.com
Attorneys for Defendant/Third-Party Plaintiff
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

Erik Stryker, Esq.
6689 Las Vegas Blvd., Suite 200
Las Vegas, NV 89119
eric.stryker@wilsonelser.com
Attorneys for Defendants Frank J. Delee, M.D.
and Frank J. Delee, M.D., PC

Patricia E. Daehnke, Esq.
Linda K. Rurangirwa, Esq.
COLLINSON, DAEHNKE, INLOW,
GRECO
2110 E. Flamingo Road, Suite 212
Las Vegas, NV 89119
patricia.daehnke@cdiglaw.com
linda.rurangirwa@cdiglaw.com
Attorneys for Third-Party Defendant Ali Kia,
M.D.

Whitbeck, Johana

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>
Sent: Tuesday, May 26, 2020 11:07 AM
To: Kelli N. Wightman <kwightman@HPSLAW.COM>; Jordan, Erin <Erin.Jordan@lewisbrisbois.com>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Sherman Mayor <smayor@HPSLAW.COM>; Grijalva, Trisha E. <Trisha.Grijalva@wilsonelser.com>; 'linda.rurangirwa@cdiglaw.com' <linda.rurangirwa@cdiglaw.com>; Patricia.Daehnke@cdiglaw.com; Laura Lucero (Laura.Lucero@cdiglaw.com) <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: [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
610 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 386-0536
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>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Nicole Young <NYoung@danielmarks.net>; Sherman Mayor <smayor@HPSLAW.COM>; Grijalva, Trisha E. <Trisha.Grijalva@wilsonelser.com>; 'linda.rurangirwa@cdiglaw.com' <linda.rurangirwa@cdiglaw.com>; Patricia.Daehnke@cdiglaw.com; Laura Lucero (Laura.Lucero@cdiglaw.com) <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

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

Legal Assistant to:
Mari Schaan
Sherman Mayor

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From: Jordan, Erin <Erin.Jordan@lewisbrisbois.com>
Sent: Thursday, May 21, 2020 12:46 PM
To: Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Nicole Young <NYoung@danielmarks.net>; Sherman Mayor <smayor@HPSLAW.COM>; Kelli N. Wightman <kwightman@HPSLAW.COM>; Grijalva, Trisha E. <Trisha.Grijalva@wilsonelser.com>; 'linda.rurangirwa@cdiglaw.com' <linda.rurangirwa@cdiglaw.com>; Patricia.Daehnke@cdiglaw.com; Laura Lucero (Laura.Lucero@cdiglaw.com) <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

[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>

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

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

'linda.rurangirwa@cdiglaw.com' <linda.rurangirwa@cdiglaw.com>; Patricia.Daehnke@cdiglaw.com; Laura Lucero (Laura.Lucero@cdiglaw.com) <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: [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

6689 Las Vegas Blvd. South, Suite 200

Las Vegas, NV 89119

702.727.1242 (Direct)

702.727.1400 (Main)

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eric.stryker@wilsonelser.com

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>; smayor@HPSLAW.COM; Kelli N. Wightman <kwightman@HPSLAW.COM>; Stryker, Eric K. <Eric.Stryker@wilsonelser.com>; Grijalva, Trisha E. <Trisha.Grijalva@wilsonelser.com>; 'linda.rurangirwa@cdiglaw.com' <linda.rurangirwa@cdiglaw.com>;

Patricia.Daehnke@cdiglaw.com; Laura Lucero (Laura.Lucero@cdiglaw.com) <Laura.Lucero@cdiglaw.com>

Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Whitbeck, Johana <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

T: 702.693.4354 F: 702.893.3789

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

Representing clients from coast to coast. View our locations nationwide.

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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at 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

16 S. Vogel

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19 Erin Jordan

erin.jordan@lewisbrisbois.com

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21 Angela Clark

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22 Daniel Marks

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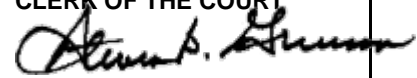
alia.najjar@wilsonelser.com

25 Charlotte Buys

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2	Nicolle Etienne	netienne@hpslaw.com
3	Trisha Grijalva	trisha.grijalva@wilsonelser.com
4	Sherman Mayor	smayor@hpslaw.com
5	Nicole Lord	nicole.lord@wilsonelser.com
6	Linda Rurangirwa	linda.rurangirwa@cdiglaw.com
7	Amanda Rosenthal	amanda.rosenthal@cdiglaw.com
8	Laura Lucero	laura.lucero@cdiglaw.com
9	Nicole Young	nyoung@danielmarks.net
10	Reina Claus	rclaus@hpslaw.com
11	Deborah Rocha	deborah.rocha@cdiglaw.com
12	Brigette Foley	Brigette.Foley@wilsonelser.com
13	Richean Martin	richean.martin@cdiglaw.com
14	Joshua Daor	joshua.daor@lewisbrisbois.com
15		
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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.

////

////

11. 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.
12. 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.
13. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 13 herein by reference.
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.
15. 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.
16. This Complaint is supported by the Affidavit of Lisa Karamardian, M.D., a copy of which is attached hereto as Exhibit "A".
17. This Complaint is supported by the Affidavit of Robert Savluk, M.D., a copy of which is attached hereto as Exhibit "B".
18. Choloe has been forced to retain counsel to bring this action and should be awarded his reasonable attorneys fees and costs.

////

////

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

17

18

19

20

21

22

23

24

25

26

27

28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the
3 16th day of December, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I
4 electronically transmitted a true and correct copy of the above and foregoing **AMENDED**
5 **COMPLAINT FOR MEDICAL MALPRACTICE** by way of Notice of Electronic Filing
6 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 4th Street, 11th 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
15 /s/ Nicole M. Young
16 _____
17 An employee of the
18 LAW OFFICE OF DANIEL MARKS
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 AFFIDAVIT OF DR. LISA KARAMARDIAN

2 STATE OF California
3 COUNTY OF Orange } : s

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

- 6 1. That I am a medical doctor licensed in the State of California and am board certified in
7 the field of Obstetrics and Gynecology.
- 8 2. This affidavit is executed pursuant to NRS 41A.071 in support of a Complaint for
9 Medical Malpractice against Dr. Frank DeLee and Sunrise Hospital and Medical Center.
- 10 3. That I have reviewed Plaintiff Choloe Green's medical records relating to the care and
11 treatment she received from Dr. Frank DeLee, Sunrise Hospital and Medical Center,
12 Valley Hospital Medical Center and Centennial Hills Medical Center.
- 13 4. A review of the medical records reveals that on July 9, 2016, Ms. Green had a cesarean
14 section birth at Sunrise Hospital with Dr. DeLee as the obstetrician. She was released
15 home on post-operative day number one. This was a breach of the standard of care by Dr.
16 DeLee and Sunrise Hospital. The typical post-operative course for a routine cesarean is a
17 3-4 night stay in the hospital. The standard of care was also breached because Ms. Green
18 had not even attempted to tolerate clear liquids and she had not passed flatus when she
19 was released on post-operative day number one.
- 20 5. A review of the medical records also reveals that on July 14, 2016, Ms. Green presented
21 again to Sunrise Hospital , now five (5) days post-partum, with severe abdominal pain
22 and reports of nausea, vomiting, fever, and chills. She was admitted to the
23 medical/surgical unit because of the diagnosis of sepsis. She was discharged on July 16,
24 2016. The discharge was discussed and confirmed by Dr. DeLee. This discharge violated
25 the standard of care. Ms. Green was discharged despite the fact that she was not able to
26 tolerate a regular diet. Further, on the day of her discharge, her KUB showed multiple
27 dilated loops of bowel, thought to be related to a small bowel obstruction, yet she was
28 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 faecalis, 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

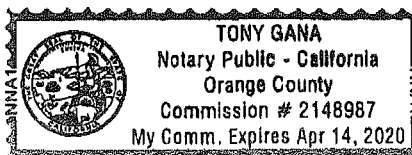


EXHIBIT B

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.

////

////

- 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.
26
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.

All attached

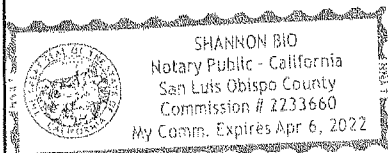
NOTARY PUBLIC in and for said
COUNTY and STATE

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.

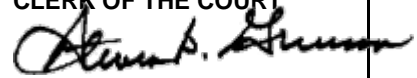


(Seal)

Signature

A handwritten signature in black 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

CHLOE 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, Chloe 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 ////

28 ////

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
18
19
20
21
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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 16th
3 day of October, 2020, pursuant to NRCP 5(b) and Administrative Order 14-2, I electronically transmitted
4 a true and correct copy of the above and foregoing **MOTION FOR LEAVE OF COURT TO AMEND**
5 **COMPLAINT** by way of Notice of Electronic Filing provided by the court mandated E-file & Serve
6 System, as follows:
7 following:

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

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

14
15
16 /s/ Nicole M. Young
17 An employee of the
LAW OFFICE OF DANIEL MARKS
18
19
20
21
22
23
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25
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27
28

EXHIBIT 1

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

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 CHOLOE GREEN, an individual,

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

11 Plaintiff,

12 v.

13 FRANK J. DELEE, M.D., an individual;
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
individual; and NEVADA HOSPITALIST
16 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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////

- 1 11. On July 14, 2016, after still not having a bowel movement post C-section, Choloe went to
2 the emergency room at Sunrise Hospital, with severe abdominal pain and reports of nausea,
3 vomiting, fever, and chills. She was admitted to the medical/surgical unit because of the
4 diagnosis of sepsis. Sunrise Hospital, through Ali Kia, M.D., discharged Choloe on July 16,
5 2016, despite having a small bowel obstruction. The discharge was discussed and confirmed
6 by Dr. DeLee.
- 7 12. That Choloe presented at Sunrise Hospital on July 14, 2016, seeking treatment from the
8 hospital, not a specific doctor. Upon her admission, Sunrise Hospital provided various
9 healthcare professionals, including doctors and nurses to provide emergency care/treatment
10 to Choloe. Throughout her stay from July 14-16, 2016, Choloe believed all healthcare
11 professionals that provided her care/treatment were employees and/or agents of the hospital.
12 She was never provided the opportunity to affirmatively chose who provided her
13 care/treatment. She was never informed the doctors or nurses providing care/treatment were
14 not employees and/or agents of the hospital.
- 15 13. On July 17, 2016, Choloe went to the emergency room at Centennial Hills Hospital where
16 she was admitted until she was finally discharged on September 2, 2016. Centennial Hills
17 admitted Choloe with the diagnosis of small bowel obstruction. She had an NG Tube placed,
18 underwent surgery, had diffuse pulmonary infiltrates, suggestive of pulmonary edema or ARDS,
19 and eventually needed a tracheostomy and PEG tube placement.

20 **COUNT I**

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

- 22 14. Plaintiff restates and incorporates the allegations set forth in Paragraphs 1 through 13 herein
23 by reference.
- 24 15. That Defendant Dr. DeLee, Sunrise Hospital, Dr. Kia, and Nevada Hospitalist Group, LLP,
25 breached the standard of care in their treatment of Choloe and as a direct and proximate
26 result of that breach, Choloe has been damaged.
- 27 16. That as a direct and proximate result of all of the Defendants' negligence, Choloe has been
28 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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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.

SUBSCRIBED AND SWORN to before me
this ____ day of June, 2020.

APPENDIX 000426

EXHIBIT A

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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 faecalis, 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

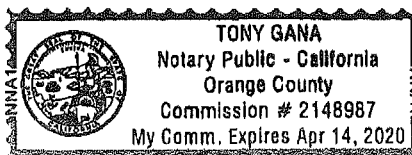


EXHIBIT B

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.

////

////

- 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.
26
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.

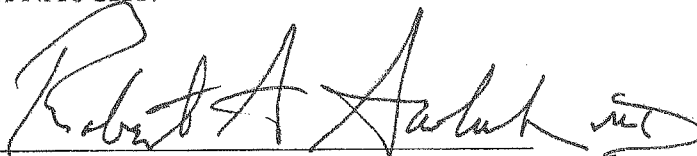
15. Dr. Ali Kia's care of his patient Choloe Green fell below the standard of care for a hospitalist for the following reasons:

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 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*

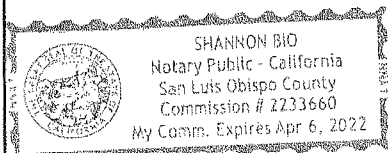
11 NOTARY PUBLIC in and for said
12 COUNTY and STATE

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)
21)
22)
23)
24)
25)

**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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