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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY NEVADA

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STACY HUTCHISON,

Plaintiff,

vs.

ENDOSCOPY CENTER OF SOUTHERN NEVADA, LLC, a Nevada Limited Liability Company; GASTROENTEROLOGY CENTER OF NEVADA, LLP; DIPAK DESAI, M.D.; RONALD LAKEMAN, C.R.N.A. LINDA McGREEVY, R.N.; SICOR PHARMACEUTICALS, INC., a Delaware Corporation; SICOR, Inc., a Delaware Corporation; BAXTER HEALTHCARE CORPORATION, a Delaware Corporation; McKESSON CORPORATION, a Delaware Corporation; QUALITY CARE CONSULTANTS LLC, a Nevada Limited Liability Company; DOES I through IX and ROE CORPORATIONS I thought IX, inclusive,

Defendants.

CASE NO. A562216
DEPT NO.

COMPLAINT AND DEMAND FOR JURY

ARBITRATION EXEMPTION CLAIMED: MEDICAL MALPRACTICE AND CLAIM IN EXCESS OF $50,000.00

COMES NOW, Plaintiff, STACY HUTCHISON, by and through her attorneys of record, NIA C. KILLEBREW ESQ. and GERALD I. GILLOCK, ESQ of GILLOCK, MARKLEY & KILLEBREW, P.C., and hereby complain and allege as follows:

I.

PARTIES AND JURISDICTION

1. Plaintiff, STACY HUTCHISON, is, and at all times relevant hereto was, a citizen of the State of Nevada.

2. ENDOSCOPY CENTER OF SOUTHERN NEVADA, LLC, (hereinafter referred to as the "CLINIC") is a Nevada Limited Liability Company, chartered by and existing under and by virtue of the laws of the State of Nevada, having its principal place of business in Las Vegas, Nevada.

3. GASTROENTEROLOGY CENTER OF NEVADA, LLP (hereinafter referred to as "GCN") is, and at all times relevant hereto was, a medical facility duly licensed to do business in the State of Nevada, with its principal place of business in Las Vegas, Nevada.

4. DIPAK DESAI, M.D. (hereinafter referred to as the "OPERATING PHYSICIAN") is, and was at all relevant times herein, a physician licensed to practice medicine in the State of Nevada pursuant to NRS Chapter 630.

5. RONALD LAKEMAN, C.R.N.A. (hereinafter referred to as "CRNA") is, and was at all relevant times herein, a Certified Registered Nurse Anesthetist licensed to practice in the State of Nevada.

6. LINDA McGREEVY, R.N. (hereinafter referred to as "R.N.") is, and was at all relevant times herein, a Registered Nurse licensed to practice nursing in the State of Nevada.

7. Upon information and belief, QUALITY CARE CONSULTANTS, LLC., (hereinafter referred to as "INSPECTION ENTITY") is, and was at all relevant times referenced herein, a Nevada Limited Liability Company, chartered by and existing under and by virtue of the laws of the State of Nevada, having its principal place of business in Las Vegas, Nevada.

8. Defendant, SICOR Pharmaceuticals, Inc. and SICOR, Inc.(hereinafter collectively referred to as "SICOR") are, and were at all relevant times herein, corporations chartered by and existing under and by virtue of the laws of the State of Delaware, with their principal place of business in the State of California and are and were in the business of manufacturing, marketing,

distributing, and selling propofol utilized by physicians and health care providers in connection with the provision of anesthesia services to patients at the CLINIC.

9. Defendant, BAXTER HEALTHCARE CORPORATION (hereinafter referred to as "BAXTER") is, and was at all relevant times herein, a corporation chartered by and existing under and by virtue of the laws of the State of Delaware, with its principal place of business in the State of Illinois and is and was in the business of manufacturing, marketing, distributing, and selling propofol utilized by physicians and health care providers in connection with the provision of anesthesia services to patients at the CLINIC.

10. Defendant, McKESSON CORPORATION (hereinafter referred to as "McKESSON") is, and was at all relevant times herein, a corporation chartered by and existing under and by virtue of the laws of the State of Delaware, with its principal place of business in the State of California and is and was in the business of marketing, distributing, and selling propofol utilized by physicians and health care providers in connection with the provision of anesthesia services to patients at the CLINIC.

11. Jurisdiction is conferred pursuant to NRS 14.080 in so far as Defendants, SICOR, BAXTER and/or McKESSON, manufactured, marketed, distributed and/or sold propofol, which was administered to Plaintiff in connection with the medical procedure(s) at the CLINIC in Nevada. It is reasonably foreseeable to Defendants, SICOR, BAXTER and/or McKESSON, that when its products entered the State of Nevada, that Defendants could be expected to be sued in the state where its products caused the injury.

12. Jurisdiction is appropriate under the Due Process Clause. Upon information and belief Defendants, SICOR, BAXTER and McKESSON were aware of the national distribution system and as a consequence of that awareness, Defendants indirectly and/or directly served the national market and derived economic benefit therefrom. As such, Defendants could reasonably anticipate being subject to suit in any forum within that market where their product caused injury.

13. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendants, DOES I through X, inclusive, and Defendants, ROE CORPORATIONS I through X, inclusive, are unknown to Plaintiff, and are believed to be owners, operators, partners

and/or managing agents of the CLINIC, physicians, certified registered nurse anesthetists, registered nurses, or other health care providers who provided care and treatment to Plaintiff, owners, operators, partners and/or managing agents of the INSPECTION ENTITY, and/or are manufacturers, marketers, distributors and/or sellers of anesthetic agents and medical devices utilized by physicians and health care providers in connection with the provision of anesthesia services to patients at the CLINIC at the relevant time periods who, therefore, sues said Defendants by such fictitious names but are believed to be agents, servants, and/or employees of Defendants. Plaintiff is informed and believes, and therefore alleges, that each of the Defendants designated as a DOE and/or ROE CORPORATION are responsible in some manner for the events and happenings herein referred to, and caused injury and damages proximately thereby to Plaintiff, as herein alleged; that such DOE Defendants and ROE CORPORATIONS Defendants were the agents, servants, or employees of each other and, in doing the things herein alleged, each was acting within the scope and course of said agency, servitude and employment, with the knowledge, permission and consent of the other Defendants. Plaintiff(s) will ask leave of this Court to amend this Complaint to insert the true names and capacities of said DOES I through X, inclusive and ROE CORPORATIONS I through X, inclusive, when the same have been ascertained by Plaintiff, together with the appropriate charging allegations and to join such Defendants in this action.

14. At all times relevant herein, Defendants, and each of them, were the agents, servants, partners and employees of each and every other Defendant, and were acting within the course and scope of their agency, partnership and employment and, to the extent permitted by law, are jointly and severally liable.

II.

GENERAL FACTUAL ALLEGATIONS

15. Defendant, CLINIC owned and operated an endoscopy center located at 700 Shadow Lane, Clark County, Nevada and provided anesthesia services in connection with its provision of endoscopy procedures to its patients.

16. Defendant, OPERATING PHYSICIAN, performed invasive medical procedures requiring anesthesia at the Defendant CLINIC upon the Plaintiff.

17. Defendants, CRNA and RN also performed, assisted and/or observed physicians and/or other health care providers in the performance of medical procedures, including the administration of anesthesia, at the CLINIC.

18. During the relevant time period (hereinafter referred to as "relevant time period"), Defendants treated Plaintiff with contaminated medical equipment and/or medications that were previously exposed to unknown persons at the CLINIC, which included utilizing propofol vials manufactured, marketed, distributed and/or sold by SICOR, BAXTER and/or McKESSON during the relevant time period.

19. Contaminated vials of propofol are defective products unfit for its intended use as the contaminated propofol vials exposes persons to communicable infectious diseases from the prior persons that the contaminated propofol vials were used upon.

20. Plaintiff underwent certain invasive medical procedures, requiring the utilization of anesthesia services at the CLINIC at the relevant time period, as provided by the OPERATING PHYSICIAN, CRNA and/or RN. Plaintiff is informed and believes that she was exposed to contaminated propofol vials at the CLINIC which resulted in plaintiff contracting an INFECTIOUS DISEASE. Health officials and health care providers recommended that Plaintiff be tested for Hepatitis B, Hepatitis C and HIV and continue to undergo testing in the future for all of these infectious diseases.

21. Plaintiff has been tested and diagnosed with Hepatitis C (hereinafter referred to as "INFECTIOUS DISEASE") and is also at risk for contraction of other blood borne pathogens all due to the conduct of the Defendants.

22. Attached hereto as Exhibits "1" ,"2" and "3" are true and correct copies of the merit affidavits of Thomas B. Hargrave, III, M.D., George H. Cox, BSN, MHS, CRNA, and Dana Sutter, R.N., in support of Plaintiff's claims.

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III.

NEGLIGENCE
(As to the CLINIC, OPERATING PHYSICIAN, CRNA & RN Defendants)

23. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

24. At all times mentioned herein, Defendants knew, or in the exercise of reasonable care should have known, that the providing of medical care and treatment was of such a nature that, if it was not properly given, it was likely to injure the persons to whom it was given.

25. Plaintiff alleges that Defendants fell below the standard of care for health care providers who possess the degree of professional learning, skill and ability of other similar health care providers in failing to properly treat Plaintiff.

26. Plaintiff alleges that Defendants were negligent by failing to correctly treat Plaintiff during medical procedures directly resulting in exposure to and contraction of INFECTIOUS DISEASES.

27. As a direct and proximate result of the negligence and carelessness of Defendants in correctly treating Plaintiff, Plaintiff was required to undergo testing and has contracted an INFECTIOUS DISEASE.

28. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered special damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

29. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

30. As a further result of Defendants' conduct, Plaintiff has had to retain the services of attorneys in this matter, and therefore seeks reimbursement of attorneys' fees and costs.

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IV.

RES IPSA LOQUITUR
(As to the CLINIC, OPERATING PHYSICIAN, CRNA & RN Defendants)

31. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

32. The events herein described do not normally occur absent negligent conduct. Moreover, plaintiff contracted a foreign substance, that being an INFECTIOUS DISEASE, following the medical procedure(s) at the CLINIC, and an injury was suffered during the course of treatment to a part of the body not directly involved in the treatment or proximate thereto. The Plaintiff therefore invokes the doctrine of res ipsa loquitur against the CLINIC, OPERATING PHYSICIAN, CRNA and RN, Defendants pursuant to N.R.S. 41A.100(1) (a) and (d).

33. As a direct and proximate result of the negligence and carelessness of Defendants in correctly treating Plaintiff, Plaintiff was required to undergo testing and has contracted an INFECTIOUS DISEASE.

34. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered special damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

35. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

36. As a further result of Defendants' conduct, Plaintiff has had to retain the services of attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.

V.

NEGLIGENT HIRING AND SUPERVISION
(As to the CLINIC and GCN Defendants)

37. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

38. At all times mentioned herein, Defendants knew or in the exercise of reasonable care should have know, that providing of medical care and treatment was of such a nature that, if

it was not properly given, it was likely to injure the persons to whom it was given. Further, Defendants owed a duty to Plaintiff to employ competent medical and staff personnel, including supervisors, adequately trained to provide care and treatment to its patients.

39. As a result of the medical care and treatment of Defendants' employees and/or agents, Defendants breached their duty to Plaintiff by failing to employ professional personnel adequately trained to protect their patients from foreseeable harm, resulting in exposure to and contraction of INFECTIOUS DISEASES.

40. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiff is required to undergo testing and has contracted an INFECTIOUS DISEASE.

41. The Defendants' conduct demonstrated a conscious disregard of known accepted procedures, protocols, care and treatment, all with the knowledge or utter disregard that such conduct could or would expose Plaintiff to contracting an INFECTIOUS DISEASE.

42. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered special damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

43. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

44. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered punitive damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

45. As a further result of Defendants' conduct, Plaintiff has had to retain the services of attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.

VI.

CORPORATE NEGLIGENCE/VICARIOUS LIABILITY
(As to the CLINIC and GCN Defendants)

46. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

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47. Defendants' agents and/or employees were acting in the scope of their employment, under Defendants' control, and in furtherance of Defendants' interests at the time their actions caused injury to Plaintiff.

48. Defendants are vicariously liable for damages resulting from its agents' and/or employees' negligent actions against Plaintiff during the scope of their employment.

49. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiff is required to undergo testing and has contracted an INFECTIOUS DISEASE.

50. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered special damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

51. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

52. As a further result of Defendants' conduct, Plaintiff has had to retain the services of attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.

VII.

BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE
(As to the SICOR, BAXTER and McKESSON, Defendants)

53. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

54. At all times relevant hereto, Defendant SICOR Pharmaceuticals, Inc. and Defendant SICOR, Inc. (collectively referred to as "SICOR") were Delaware corporations with their principal place of business in California and were engaged in the business of manufacturing, distributing, marketing and/or selling propofol. Plaintiffs are informed and believe that SICOR manufactured propofol for Baxter and that Baxter sold the propofol under a Baxter label.

55. At all times relevant hereto, Defendant Baxter Healthcare Corporation ("BAXTER") was a Delaware corporation with its principal place of business in Illinois and was engaged in the business of manufacturing, distributing, selling and/or marketing propofol.

56. In March 1999, Defendant SICOR gave Defendant BAXTER the exclusive right to market propofol manufactured by Defendant SICOR in the United Stated. The agreement between Defendant SICOR and Defendant BAXTER extends through January 1, 2009.

57. At all times relevant hereto, Defendant McKesson Corporation ("McKESSON") was a Delaware corporation with its principal place of business in California and was engaged in the business of manufacturing, distributing, selling and/or marketing propofol.

58. Plaintiff is informed and believes and thereupon alleges that propofol provided by SICOR, BAXTER and/or McKESSON was used to provide anesthetic for the operation wherein Plaintiff was infected.

59. At the time that SICOR, BAXTER and/or McKESSON manufactured, distributed, marketed, and sold, propofol to the CLINIC, Defendants SICOR, BAXTER and McKESSON knew that the propofol was being used or potentially was being used in an endoscopy surgery center, and impliedly warranted that the propofol was safe and fit for the purpose for which the product was ordinarily used at an endoscopy surgery center, which was for anesthesia.

60. Plaintiff reasonably relied upon the skill and judgment of SICOR, BAXTER and McKESSON as to whether the propofol sold was safe and fit for its intended use as anesthesia in an endoscopy surgery center.

61. Contrary to such implied warranty, the larger propofol vials were not safe or fit for their intended use as anesthesia in an endoscopy surgery center, and was and is unreasonably dangerous and unfit for use as anesthesia in an endoscopy surgery center because of the foreseeable misuse of treating multiple patients from the same larger propofol vial.

62. As a direct and proximate result of the conduct of SICOR, BAXTER and McKESSON, Plaintiff has suffered special damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

63. As a direct and proximate result of the conduct of SICOR, BAXTER and McKESSON, Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

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64. As a direct and proximate result of the conduct of SICOR, BAXTER and McKESSON, Plaintiff is entitled to punitive damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

65. As a further result of Defendants' conduct, Plaintiff has had to retain the services of attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.

VIII.

STRICT PRODUCT LIABILITY–DANGEROUSLY DEFECTIVE PRODUCT
(As to the SICOR, BAXTER and McKESSON, Defendants)

66. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

67. In 1983, the Annuals of Internal Medicine published an article entitled "Hepatitis B Virus Transmission Associated With A Multiple-Dose Vial In A Hemodialysis Unit" found at Ann.Intern.Med. 1983; 99; 330-3. Plaintiff is informed and believes and thereupon alleges that the potential for transmission of Hepatitis B or C or HIV from administration of medicine to two or more patients from the same vial has been known since at least 1983.

68. Propofol (i.e., "Diprivan") was initially approved for marketing on October 2, 1989 for use as an anesthetic in outpatient and inpatient procedures.

69. Plaintiff is informed and believes and thereupon alleges that, following the launch of the original formulation of propofol (i.e., "Diprivan"), that the original manufacturer (i.e., ICI Pharmaceuticals; which later became Zeneca Pharmaceuticals) and the FDA began to receive reports of infections associated with the failure of health care providers in the United States to use appropriate aseptic techniques in the administration of propofol; which reports raised concerns among Zeneca, the FDA and the Centers for Disease Control and Prevention (the "CDC") about propofol multi-dosing and its potential contaminant effect.

70. On June 29, 1990, the CDC reported in the MMWR (June 29, 1990/39(25); 426, 247, 433 that 48% to 90% of anesthesia personnel were reusing syringes to administer propofol to multiple patients:

> Two recent surveys of anesthesia personnel show that aseptic technique and infection control practices are frequently not implemented during administration of anesthesia. In these surveys, from 48% to 90% of respondents reused syringes to multiple patients.

71. Plaintiff is informed and believes and thereupon alleges that, between June 1990 and February 1993, the CDC conducted investigations at seven hospitals with unusual outbreaks of infections after surgical procedures using propofol and, focusing on four clusters of post operative infections in four states, the CDC concluded that contamination occurring from propofol administration was caused by mishandling the propofol.

72. On July 6, 1990, Nancy E. Nazari of Stuart Pharmaceuticals sent a "Dear Doctor" letter to health care professionals regarding propofol (i.e., "Diprivan") discussing, among other things, potential multiple-dose vial contamination.

73. On February 5, 1991, Nancy E. Nazari of Stuart Pharmaceuticals sent a "Dear Doctor" letter to health care professionals regarding propofol (i.e., "Diprivan") discussing, among other things, potential multiple-dose vial contamination.

74. On July 20, 1995, The New England Journal of Medicine published an article entitled "Postoperative Infections Traced to Contamination of an Intravenous Anesthetic, Propofol" that describes the above-referenced CDC investigation and, in addition, provided in pertinent part that anesthesia personnel were in fact reusing multidose vials on multiple patients despite written recommendations to the contrary:

> Despite the written recommendations of professional associations, such as the American Society of Anesthesiologists and the American Association of Nurse Anesthetists, which specifically advocate the use of aseptic techniques during the handling of medications, several authors have reported poor compliance with aseptic techniques and infection-control practices by anesthesia personnel. Contamination of multidose vials, use of a single syringe to administer medication to different patients, assembling infusion equipment far in advance of use, and contamination of syringes and catheters have all been implicated in other outbreaks. Studies show that reuse of multidose vials can cause contamination of the medication in the vials and that contamination can occur during the opening of a glass vial whose surface has not been disinfected. Injecting medications into intravenous catheters can cause syringes to become contaminated even if the needle is changed, so that using common syringes to administer medication to different patients can transmit infectious agents. (Emphasis added)

75. On May 5, 2000, Defendant SICOR (under its then name "GensiaSicor Pharmaceuticals, Inc.") filed a Suitability Petition with the FDA requesting permission to supplement an abbreviated new drug application ("ANDA") for "100mg/10mL, single use vial" of propofol and Defendant SICOR stated that "a smaller vial size is safer in that it may reduce the temptation for dosing multiple patients from a single container thereby reducing opportunities for microbial contamination." (Emphasis added)

76. On September 17, 2001, Defendant SICOR (under its then name "GensiaSicor Pharmaceuticals, Inc.") filed a Suitability Petition with the FDA requesting permission to submit an abbreviated new drug application ("ANDA") for 2000mg/200mL vials of propofol. On or about December 17, 2001, the FDA rejected such petition; observing that 20 mL was the propofol "dose commonly used for propofol induction of anesthesia" and the FDA stated that larger doses "could make multi-dosing much more tempting and, hence, more likely."

77. Plaintiff is informed and believes and thereupon alleges that, in or about 2002, 12 patients contracted hepatitis C at a Manhattan physician's endoscopy center caused by medication drawn through multi-use vials.

78. Plaintiff is informed and believes and thereupon alleges that, in or about 2002, 38 patients contracted hepatitis C at a Manhattan pain clinic caused by medication drawn through multi-use vials.

79. In 2003, the World Health Organization reported that single-dose vials should be used and that "the use of multi-dose vials has been reported to be a potential source of infections in 19 studies." Bulletin of the World Health Organization 2003, 81 (7), entitled "Best infection control practices for intradermal, subcutaneous, and intramuscular needle injections." One of the 19 studies referenced involved hepatitis caused by "preparation of multi-dose heparin", which heparin is another Baxter product. (See Oren, "A common-source outbreak of fulminant hepatitis B in a hospital." Annals of Internal Medicine 1989; 110:691-8.

80. In June 2007, the FDA issued an alert that referenced reports of "several clusters of patients who have developed fever, chills, and body aches shortly after receiving propofol from 7 different facilities in 4 different states and stated that the same propofol vial was used on multiple

patients: "To date, all affected patients received propofol for sedation in gastrointestinal suites. Some facilities where the propofol was administered used propofol vials, intended only for single-patient use, for more than one patient."

81. Plaintiff is informed and believes and thereupon alleges that, because of the hepatitis outbreaks in New York described above, the New York State Health Commissioner; Dr. Richard Daines, and the New York City Health Commissioner; Dr. Thomas Frieden, have called for an outright ban on multi-dose vials.

82. Multiple use of propofol by endoscopy surgery centers on more than one patient was a foreseeable misuse of propofol vials.

83. Defendants SICOR, BAXTER and McKESSON knew that the smaller vial sizes were safer for endoscopy surgery centers given the amount of propofol typically used by such centers and the economic allure to such centers to use instead of discarding remaining propofol in a larger vial. As set forth above, Defendant SICOR expressly stated that "a smaller vial size is safer in that it may reduce the temptation for dosing multiple patients from a single container thereby reducing opportunities for microbial contamination." (Emphasis added)

84. Plaintiff is informed and believes and thereupon alleges that Defendants SICOR, BAXTER and McKESSON knew of incidents prior to the shipment of the propofol used in this case wherein a surgery center reportedly used propofol on more than one patient.

85. At the time the propofol was shipped, propofol in larger vial sizes was unreasonably dangerous for use in a endoscopy surgery center, that is dangerous to any extent beyond that which would be contemplated by the ordinary and prudent patient using such product, considering the characteristics of the product (including, but not limited to, the much smaller propofol dosage normally required for one patient undergoing colonoscopy or endoscopy surgery), its propensities, risks (including not limited to the potential for transmitting infectious disease such as hepatitis B or C or HIV if propofol from the same vial was used on multiple patients), its dangers and uses.

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86. Plaintiff is informed and believes and thereupon alleges that the conduct of Defendants SICOR, BAXTER and McKESSON in manufacturing, distributing, marketing and/or selling propofol in larger vials to endoscopy surgery centers was willful, reckless, malicious and in total disregard to the health and safety of the patients or, alternatively, was in conscious and deliberate disregard of known safety procedures, thereby justifying an award of punitive damages.

87. As a direct and proximate result of the conduct of Defendants SICOR, BAXTER and McKESSON, Plaintiff has suffered special damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

88. As a direct and proximate result of the conduct of Defendants SICOR, BAXTER and McKESSON, Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

89. As a direct and proximate result of the conduct of Defendants SICOR, BAXTER and McKESSON, Plaintiff is entitled to punitive damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

90. As a further result of Defendants' conduct, Plaintiff has had to retain the services of attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.

IX.

NEGLIGENCE
(As to the INSPECTION ENTITY Defendant)

91. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

92. Defendant Quality Care Consultants is a Nevada LLC and Dr. Ikramullah Khan and Dr. Javaid Anwar are the "Managers" of Quality Care Consultants.

93. Plaintiff is informed and believes and thereupon alleges that Dr. Ikramullah Khan and Dr. Javaid Anwar have been doing business in the State of Nevada under the name "Quality Care Consultants" since 2004 but are presently not aware of the exact type of business entity, if any, conducting such business prior to the formation of the Nevada LLC named as a Defendant

herein ("Quality Care Consultants"). Plaintiff reserves the right to amend the complaint to add any additional entities owned by Dr. Ikramullah Khan and Dr. Javaid Anwar that did business under the name of Quality Care Consultants with the CLINIC in this case. The Nevada LLC named as a Defendant herein ("Quality Care Consultants") and any and all entities owned by Dr. Ikramullah Khan and Dr. Javaid Anwar that did business under the name of Quality Care Consultants with the CLINIC shall hereinafter be referred to as "QCC."

94. Plaintiff is informed and believes that, from approximately March 2004 to the present time, Dr. Ikramullah Khan was the Vice President of Health Care Services for the MGM MIRAGE Corporation.

95. Plaintiff is informed and believes that, from 2004 through at least 2006, Dr. Ikramullah Khan was a member of the Physicians Advisory Council for Quality Improvement and Utilization Management for Blue Cross and Blue Shield of Colorado.

96. Plaintiff is informed and believes that, given his position with the MGM MIRAGE Corporation, Dr. Ikramullah Khan was in a position to influence decisions regarding what doctors and health care providers would be added to its preferred list of doctors and health care providers, including but not limited to, being in a position to influence decisions regarding whether or not the CLINIC was added to such preferred list.

97. Plaintiff is informed and believes that, during the time period that Plaintiff had surgery at the CLINIC, Dr. Javaid Anwar was a member of the Nevada State Board of Medical Examiners and that, given his role as one of the ultimate decision makers in regulatory matters concerning doctors and health care providers, Dr. Anwar was in a position of influence regarding doctors and health care providers.

98. Plaintiff is informed and believes that QCC, through Dr. Ikramullah Khan or Dr. Javaid Anwar, sent letters to numerous doctors and health care providers soliciting employment to "review and assess the current medical facilities, programs, policies and procedures" and that "[t]his would include onsite review of all facilities in Las Vegas and meetings with physicians and managerial staff at each location." The letters further stated that "[o]n its completion, we will make recommendations for institution of policies and procedures for delivery of quality care in

accordance with national standards." The "Global Fee" charged by QCC for the foregoing services was Twenty-Five Thousand Dollars ($25,000.00). In addition, QCC also proposed to provide "ongoing monitoring services on a monthly basis" after providing the initial report of its onsite review and "recommendations for institution of policies and procedures . . . ."

99. Plaintiff is informed and believes that the CLINIC hired QCC to perform the above-referenced onsite review and "make recommendations for institution of policies and procedures for delivery of quality care in accordance with national standards" and that, in performing such activities, QCC was negligent in failing to detect the dangerous procedures that the CLINIC was using regarding the administration of anesthesia (including, but not limited to, inappropriate aseptic techniques) and/or QCC was negligent in making appropriate recommendations to stop such dangerous procedures.

100. Plaintiff is informed and believes and thereupon alleges that the conduct of QCC in conducting an on-site review and making "recommendations for institution of policies and procedures for delivery of quality care in accordance with national standards" was willful, reckless, malicious and in total disregard to the health and safety of patients or, alternatively, was in conscious and deliberate disregard of known safety procedures (including, but not limited to, being in conscious and deliberate disregard of known safety procedures or standards for quality improvement inspections) thereby justifying an award of punitive damages.

101. As a direct and proximate result of the conduct of QCC, Plaintiff has suffered special damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

102. As a direct and proximate result of the conduct of QCC, Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

103. As a direct and proximate result of the conduct of QCC, Plaintiff is entitled to punitive damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

104. As a further result of Defendants' conduct, Plaintiff has had to retain the services of attorneys in this matter, and therefore seeks reimbursement of attorneys' fees and costs.

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X.

NEGLIGENT UNDERTAKING
(As to the INSPECTION ENTITY Defendant)

105. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

106. Plaintiff is informed and believes that QCC undertook on-site review and issued "recommendations for institution of policies and procedures for delivery of quality care in accordance with national standards" for the CLINIC for the direct or indirect benefit of patients and that, in performing such activities, QCC was negligent in failing to detect the dangerous procedures that the CLINIC was using regarding the administration of anesthesia (including, but not limited to, inappropriate aseptic techniques) and/or QCC was negligent in failing to make appropriate recommendations to stop such dangerous procedures.

107. Plaintiff is informed and believes and thereupon alleges that the conduct of QCC in conducting an on-site review and making "recommendations for institution of policies and procedures for delivery of quality care in accordance with national standards" was willful, reckless, malicious and in total disregard to the health and safety of patients or, alternatively, was in conscious and deliberate disregard of known safety procedures (including, but not limited to, being in conscious and deliberate disregard of known safety procedures or standards for quality improvement inspections) thereby justifying an award of punitive damages.

108. As a direct and proximate result of the conduct of QCC, Plaintiff has suffered special damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

109. As a direct and proximate result of the conduct of QCC, Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

110. As a direct and proximate result of the conduct of QCC, Plaintiff is entitled to punitive damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

111. As a further result of Defendants' conduct, Plaintiff has had to retain the services of attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.

XI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as follows:

1. For general damages in excess of $10,000.00;
2. For special damages in excess of $10,000.00;
3. For punitive damages in an amount to be determined at trial;
4. For reasonable attorneys' fees;
5. For costs of suit; and
6. For any such further relief this Court deems appropriate.

DATED this 1st day of May, 2008.

Respectfully submitted,

GILLOCK, MARKLEY & KILLEBREW, P.C.

BY: _____

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Nevada Bar No.: 004553
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(702) 385-1482

Attorneys for Plaintiff

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XII.

DEMAND FOR JURY TRIAL

Plaintiff herein demands a trial by jury on all issues so triable.

DATED this 1st day of May, 2008.

Respectfully submitted,

GILLOCK, MARKLEY & KILLEBREW, P.C.

BY: _____

NIA C. KILLEBREW, ESQ.
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