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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROSHUNDA ABNEY, an individual;
ROSHUNDA ABNEY, as Personal
Representative of the Estate of Angel
Dewberry; and RAFFINEE DEWBERRY, an
individual,

Plaintiffs,

vs.

UNIVERSITY MEDICAL CENTER OF
SOUTHERN NEVADA, a county hospital
pursuant to NRS 450, et. seq.; VALLEY
HOSPITAL MEDICAL CENTER, INC., a
Nevada corporation; DOE Defendants I
through X, inclusive; and ROE
CORPORATIONS A through Z, inclusive,

Defendants.

Case Number: 2:09-cv-2418

COMPLAINT

- 1. EMTALA VIOLATION FOR FAILURE TO SCREEN AND TREAT ABNEY AGAINST UMC**
- 2. EMTALA VIOLATION FOR FAILURE TO SCREEN AND TREAT ANGEL DEWBERRY AGAINST UMC**
- 3. EMTALA VIOLATION FOR FAILURE TO SCREEN AND TREAT ABNEY AGAINST VALLEY**
- 4. EMTALA VIOLATION FOR FAILURE TO SCREEN AND TREAT ANGEL DEWBERRY AGAINST VALLEY**
- 5. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST RAFFINEE DEWBERRY AGAINST UMC**
- 6. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST ROSHUNDA ABNEY AGAINST UMC**

COMES NOW, Plaintiffs ROSHUNDA ABNEY, an individual, ROSHUNDA ABNEY, as Personal Representative of the Estate of Angel Dewberry, and RAFFINEE DEWBERRY, an individual, by and through their attorneys of record, the law firm of Law Offices of Jacob Hafter & Associates, and for cause of action against the above-named Defendants hereby complains and alleges as follows:

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PRELIMINARY STATEMENT

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2 1. While in active labor, Roshunda Abney went to UMC’s Quick Care center, who
3 referred her to UMC’s emergency department, where she promptly went. She requested care
4 numerous times as her labor progressed. Her fiancé also requested care numerous times.
5 Bystanders in the emergency department waiting room also advocated for Ms. Abney to obtain
6 care. Notwithstanding, after almost 6 hours of waiting, Ms. Abney was told by UMC security
7 and nursing staff that she was not going to be seen any time soon. In agony, Ms. Abney went
8 to Valley’s emergency department for medical assistance. Upon arrival, once the Plaintiffs
9 explained what they had been through at UMC, a Valley representative made a rude and
10 patronizing comment which made the Plaintiffs believe that Valley was unwilling to help her,
11 as well. The Plaintiffs went home, where after about 20 minutes, Ms. Abney’s water broke and
12 she gave birth to Angel Dewberry who presented in a breach fashion. Angel Dewberry died.

13 2. This instant action is brought under the Emergency Medical Treatment and
14 Active Labor Act, 42 U.S.C. § 1395dd, *et. seq.*, (“EMTALA”), as Ms. Abney, and her unborn
15 fetus, went to two hospital emergency departments requesting care for a medical emergency, in
16 that she was in active labor, and she was not provided screening or treatment as required under
17 EMTALA.

18 3. Pursuant to 42 U.S.C. § 1395dd(d)(2)(A), this instant action seeks damages for
19 the personal harm suffered by Roshunda Abney as a result of the lack of screening and medical
20 treatment, as well as by Angel Dewberry, for the same.

21 4. As such cause of action is based upon a federal cause of action, this instant
22 action is brought outside of the statutory caps for malpractice under Nevada state law, and the
23 caps for state actors as set forth under NRS 41.035.

24 5. This action also seeks damages as a result of the emotional distress inflicted
25 upon Roshunda Abney for the humiliation she suffered as a result of her treatment by the
26 Defendants, as well as the emotional distress inflicted upon Raffinee Dewberry as a result of
27 him having to seek his fiancé suffer and have to assist in the emergency and traumatic delivery
28 of his daughter.

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PARTIES

6. At all relevant times, Plaintiff ROSHUNDA ABNEY (“ABNEY”) was and is a United States citizen who was domiciled in the State of Nevada.

7. Roshunda Abney also bringing claims in this instant action on behalf of her daughter, ANGEL DEWBERRY, deceased, who was a United States citizen and was domiciled in the State of Nevada.

8. At all relevant times, Plaintiff RAFFINEE DEWBERRY (“DEWBERRY”) was and is a United States citizen who was domiciled in the State of Nevada.

9. Upon information and belief, it is alleged that at all time relevant hereto, Defendant UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA (“UMC”), was and is doing business as a county hospital pursuant to NRS §450, et. seq., and is domiciled within the State of Nevada.

10. Upon information and belief, it is alleged that at all time relevant hereto, Defendant VALLEY HOSPITAL MEDICAL CENTER, INC., (“VALLEY”) was and is a private hospital that is a wholly owned subsidiary of Universal Health Services, Inc., and is domiciled within the State of Nevada.

11. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOE Defendants I through X and ROE CORPORATIONS A through Z are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants designated as DOE Defendants and ROE CORPORATIONS are responsible in some manner for the events and occurrences referenced in this Complaint, and/or owes money to Plaintiff and/or may be affiliated with one of the other Defendants or may claim some interest in the subject matter of this Complaint. Plaintiff will ask leave of the Court to amend this Complaint and insert the true names and capacities of DOE Defendants I through X and ROE CORPORATIONS A through Z when the identities of the same have been ascertained, and to join said Defendants in this action.

12. The acts performed by representatives of Defendants UMC, and VALLEY,

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1 whether such representatives have been individually named herein as a defendant, or are yet to
2 be identified, were all ones which those representatives had the actual and/or apparent
3 authority to perform, may have been within the scope of their employment, were of the kind
4 they were authorized to perform, and were actuated at least in part by a desire to serve their
5 employers, and therefore the entity defendants are liable for their acts pursuant to the doctrine
6 of respondent superior.

7 **JURISDICTION AND VENUE**

8 13. All of the acts complained of herein occurred in Clark County, Nevada.

9 14. Jurisdiction is proper in this Court pursuant to the EMTALA, specifically 42
10 U.S.C. § 1395dd(d)(2)(A).

11 15. Jurisdiction is also proper in the Court pursuant to 28 U.S.C. § 1331, as this
12 instant action requires the interpretation and application of a federal statute.

13 16. Venue is properly conferred on this Court pursuant to 28 U.S.C. § 1391 (b)
14 because the Defendants are subject to personal jurisdiction in this District and because a
15 substantial part of the events giving rise to the claims alleged herein took place in this District.

16 17. Where applicable, all matters set forth herein are incorporated by reference in the
17 various causes of action which follow.

18 **GENERAL ALLEGATIONS**

19 20. On Monday, November 30, 2009 at approximately 17:25, Plaintiff Abney
20 arrived at UMC's Quick Care clinic located on Craig Road in North Las Vegas ("Quick
21 Care").

22 19. At all relevant times herein, Abney had no health insurance.

23 20. Upon arrival at the Quick Care, Abney was asked for her insurance information.

24 21. When Abney told the registration staff that she did not have insurance, they
25 asked her to pay an upfront fee.

26 22. Abney stated that she did not have money to pay the upfront fee.

27 23. Abney complained of severe abdominal pain.
28

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1 24. Abney indicated that the pain lasted for two (2) days.

2 25. Abney also complained of some vaginal bleeding.

3 26. At approximately 17:35 Abney was placed in an evaluation room and a urine
4 sample was obtained, according to the medical records from the Quick Care.

5 27. At approximately 17:40, Abney was seen by Nickolas Karajohn, M.D., who
6 performed a screening examination.

7 28. At approximately 17:40, Dr. Karajohn ordered a urinalysis and a urine
8 pregnancy test.

9 29. At approximately 17:45, a member of the Quick Care clinical nursing staff
10 entered a note on Abney's chart stating that she was "not able to go – no urine obtained."

11 30. Dr. Karajohn notated in Abney's chart that she was to be "transfer[ed] to UMC
12 ER by POV," for "higher care."

13 31. Dr. Karajohn further stated that with respect to the transfer, Abney was "stable"
14 yet "emergent."

15 32. Dr. Karajohn signed a "HOSPITAL TRANSFER INFORMATION FORM" at
16 17:55 on November 30, 2009.

17 33. The form stated that Dr. Karajohn spoke to UMC's ER regarding the transfer.

18 34. The form stated that UMC ER was the "receiving facility."

19 35. The form stated that the "receiving facility has agreed to accept patient transfer,
20 provide appropriate personnel and treatment, and has available space."

21 36. The form stated that "Charge Nurse Gowin [sic]" accepted the transfer.

22 37. At approximately 18:10 on Monday, November 30, 2009, Abney and her
23 finance, Dewberry, arrived at UMC ER.

24 38. Upon arrival, Abney approached registration and initiated the registration
25 process.

26 39. Abney explained that she was transferred from Quick Care and tried to provide
27 the registration staff with her paperwork from Quick Care.

28 40. UMC ER refused to accept or look at the paperwork.

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1 41. Upon her arrival, Abney was asked by UMC personnel whether there was a
2 chance she could be pregnant.

3 42. Abney answered that there was a chance she was pregnant.

4 43. Abney and Dewberry waited for approximately 6 hours in the ER waiting room
5 at UMC.

6 44. At one point during this wait, when Abney had to urinate, she asked for a cup
7 and gave them a urine sample.

8 45. The urine sample contained blood, or what looked like a red liquid substance.

9 46. At one point, a member of UMC's nursing staff asked Abney about her pain.

10 47. She stated that it was the worse pain of her life and she felt that she was going
11 to die.

12 48. The UMC's staff member then asked her how long she was experiencing the
13 pain.

14 49. Abney responded that she was experiencing the pain for approximately 2 days.

15 50. The UMC's staff member then stated that another 45 minutes would not make a
16 difference.

17 51. Abney's pain intensified during the wait.

18 52. Dewberry tried to obtain assistance for Abney.

19 53. Dewberry's efforts were thwarted by UMC's staff.

20 54. Dewberry's efforts to obtain care for Abney were hindered by UMC's security.

21 55. Security was called twice because of Dewberry's efforts to obtain assistance for
22 Abney.

23 56. The first time security arrived, Security spoke with Dewberry.

24 57. UMC's security officer then dismissed the matter and told Dewberry to go back
25 into the waiting area with Abney.

26 58. The second time, security made it clear that there is no certain time when they
27 would be seen.

28 59. After approximately 6 hours of waiting, Plaintiffs left UMC.

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1 60. Before they left, a member of UMC's nursing staff berated, belittled and
2 embarrassed Abney and Dewberry with inappropriate comments.

3 61. Witnesses in the waiting room tried to help Abney obtain medical attention, by
4 volunteering their position in the line.

5 62. The witnesses were told by UMC staff to be quiet and mind their own business
6 or they would not be allowed to receive care.

7 63. As a result of intimidation by UMC personnel and comments by UMC
8 personnel suggesting that UMC was not willing to help Abney, on Monday, November 30,
9 2009 at approximately 23:45, Abney and Dewberry left UMC.

10 64. Upon Abney's departure from UMC, Abney continued to have labor pains.

11 65. Upon leaving UMC, they drove to Valley.

12 66. Upon arrival at Valley, Abney and Dewberry proceeded to go to the emergency
13 department and sign in at the registration desk.

14 67. Abney was asked by Valley ER staff to complete various pieces of paperwork.

15 68. Abney told the Valley representative that she was in severe pain which
16 prevented her from completing the paperwork.

17 69. Abney requested to be seen by a physician.

18 70. Dewberry told the Valley representative that they were at UMC for about 6
19 hours and were not seen.

20 71. The Valley representative responded by saying that if they waited that long at
21 UMC and were not seen, what makes them think that they would be seen any sooner at Valley?

22 72. At this point, Abney and Dewberry believed no medical services would be
23 forthcoming.

24 73. No Valley representative offered to help the Plaintiffs complete the requisite
25 paperwork.

26 74. Accordingly, Abney and Dewberry left and went home.

27 75. Upon Abney's departure from Valley, Abney continued to have labor pains.

28 76. On their way home, they made one stop at a local drug store where they

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1 purchased some over the counter pain medicine.

2 77. Abney tried to take the pain medicine but immediately vomited.

3 78. Once they arrived home, Abney prepared to take a shower before she went to
4 sleep.

5 79. On Tuesday, December 1, 2009, at approximately 00:50, while in the bathroom,
6 Abney's water broke.

7 80. Abney felt feet hanging from her vagina.

8 81. Abney screamed.

9 82. Dewberry rushed into the bathroom, saw what was occurring and called 911.

10 83. The emergency operator from 911 provided Dewberry basic life support
11 instructions.

12 84. Dewberry followed the instructions.

13 85. Dewberry prepared Abney for delivery and started the delivery.

14 86. The baby presented breach.

15 87. Upon arrival, paramedics completed the delivery, which consisted primarily of
16 the delivery of the head.

17 88. The baby took a few spontaneous respirations and then went into distress.

18 89. Paramedics began emergency neonatal resuscitation.

19 90. Angel Dewberry was born weighing 628 grams, or 1 pound 6.2 ounces.

20 91. Angel Dewberry was 31 centimeters in length.

21 92. Angel Dewberry's head was 21 centimeters in diameter.

22 93. Angel Dewberry's chest was 22 centimeters in diameter.

23 94. On Tuesday, December 1, 2009 at approximately 01:30 paramedics transported
24 both Angel Dewberry and Abney to UMC via separate ambulances.

25 95. Abney admitted to Labor and Delivery.

26 96. On Tuesday, December 1, 2009 at approximately 02:15, Abney and Dewberry
27 were informed that their baby girl was deceased.

28 97. On Tuesday, December 1, 2009 at approximately 17:00, OB Nursing Manager

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1 Lize MacDonald came into room to follow up with Abney.

2 98. Ms. MacDonald said that the baby was non-viable, probably 21 weeks old.

3 99. Ms. MacDonald said that there was nothing that UMC could have done.

4 100. Ms. MacDonald encouraged cremation.

5 101. On Tuesday, December 1, 2009 at approximately 17:50, Plaintiffs contacted
6 Clark County Coroner and requested that an autopsy be performed.

7 102. On Thursday, December 3, 2009, Lisa Gavin, M.D., of the Clark County
8 Coroner's office, performed autopsy examination.

9 103. Dr. Gavin has provided preliminary autopsy results to Plaintiffs, suggesting that
10 the gestational age of Angel Dewberry was 26 weeks, +/- 3 weeks, the toxicology examination
11 was negative and the metabolic panel was negative.

12 104. Final autopsy report has not been provided as of the filing of this Complaint.

13
14 **FIRST CAUSE OF ACTION**

15 **EMTALA VIOLATION FOR FAILURE TO SCREEN AND TREAT ABNEY**

16 **(Against Defendant UMC)**

17 105. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint as
18 if they were fully set forth herein.

19 106. EMTALA, specifically 42 U.S.C. §1395dd(a) states:

20 In the case of a hospital that has a hospital emergency department,
21 if any individual (whether or not eligible for benefits under this
22 subchapter) comes to the emergency department and a request is
23 made on the individual's behalf for examination or treatment for a
24 medical condition, the hospital must provide for an appropriate
25 medical screening examination within the capability of the
26 hospital's emergency department, including ancillary services
27 routinely available to the emergency department, to determine
28 whether or not an emergency medical condition (within the
meaning of subsection (e)(1) of this section) exists.

107. EMTALA, specifically 42 U.S.C. §1395dd(b) states:

(b) Necessary stabilizing treatment for emergency medical conditions and labor

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(1) In general. If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section.

108. EMTALA, specifically 42 U.S.C. §1395dd(b), states:

(e) Definitions. In this section:

(1) The term “emergency medical condition” means—

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

- (i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
 - (ii) serious impairment to bodily functions, or
 - (iii) serious dysfunction of any bodily organ or part;
- or

(B) with respect to a pregnant woman who is having contractions—

- (i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or
- (ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(2) The term “participating hospital” means a hospital that has entered into a provider agreement under section 1395cc of this title.

(3)

(A) The term “to stabilize” means, with respect to an emergency medical condition described in paragraph (1)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the

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1 individual from a facility, or, with respect to an emergency
2 medical condition described in paragraph (1)(B), to deliver
(including the placenta).

3 (B) The term “stabilized” means, with respect to an
4 emergency medical condition described in paragraph
5 (1)(A), that no material deterioration of the condition is
6 likely, within reasonable medical probability, to result from
7 or occur during the transfer of the individual from a
8 facility, or, with respect to an emergency medical condition
9 described in paragraph (1)(B), that the woman has
10 delivered (including the placenta).

11 109. Defendant UMC is a hospital which has an emergency department covered
12 under EMTALA.

13 110. Upon information and belief, Defendant UMC has entered into a provider
14 agreement under 42 U.S.C. § 1395cc.

15 111. As a result of the provider agreement, Defendant UMC is obligated to comply
16 with EMTALA.

17 112. On November 30, 2009, Abney came to the emergency department at UMC.

18 113. Upon her arrival, Abney was in active labor.

19 114. Abney requested an examination and treatment from UMC.

20 115. Upon her arrival, Abney was asked by UMC personnel whether there was a
21 chance she could be pregnant, to which Abney answered in the affirmative.

22 116. Independent witnesses in the waiting room at UMC’s emergency department, in
23 their lay opinion, believed that Abney was in labor.

24 117. These witnesses were timing her contractions and the contractions were
25 increasing in intensity and frequency over the approximate 6 hours which she was at UMC.

26 118. Abney stated that she was in the worse pain of her life.

27 119. Abney provided UMC with a bloody urine specimen during her wait in the
28 waiting room in the emergency department at UMC.

120. Plaintiffs and third party witnesses notified UMC on numerous occasions that
Abney needed medical assistance as her condition was deteriorating.

121. Despite such notifications, UMC failed to provide Abney with the appropriate

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1 medical screening to confirm that she was in active labor, or treat such labor.

2 122. Abney’s condition continued to deteriorate.

3 123. Upon Abney’s departure from UMC, Abney continued to have labor pains.

4 124. Such failure to provide Abney with a timely and appropriate medical screening
5 for her active labor is a violation of 42 U.S.C. § 1395dd(a).

6 125. Wherefore, pursuant to 42 U.S.C. § 1395dd(d)(2)(A), Abney demands judgment
7 against Defendant UMC, and any other Defendant yet to be identified, but responsible for the
8 harm alleged in this cause of action, jointly and severally, for actual, general, special,
9 compensatory damages in the amount of to be determined by a jury, and further demands
10 judgment against each of said Defendants, plus the costs of this action, including attorney’s
11 fees, and such other relief deemed to be just and equitable.

12 126. Plaintiffs have been required to retain the law firm of Law Offices of Jacob
13 Hafter & Associates to prosecute this action and are entitled to recover attorney fees and costs
14 incurred pursuant to N.R.S 18.010, Federal Rule of Civil Procedure 54 and all other applicable
15 law.

16
17 **SECOND CAUSE OF ACTION**
18 **EMTALA VIOLATION FOR FAILURE TO SCREEN AND TREAT ANGEL**
19 **DEWBERRY**

20 **(Against Defendant UMC)**

21 127. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint as
22 if they were fully set forth herein.

23 128. EMTALA specifically addresses the concept of “active labor” with respect to a
24 condition “which may pose a threat [to] the health and safety of the patient or the *unborn*
25 *child.*” 42 U .S.C. § 1395dd(e)(2)(B)-(C) (*emphasis added*).

26 129. Because of the concern of the “unborn child,” courts have found that an unborn
27 fetus is considered a patient to whom hospitals have a duty to provide EMTALA screenings.
28 See, e.g., *Preston v. Meriter Hosp., Inc.*, 307 Wis.2d 704, 733, 747 N.W.2d 173
(Wis.App.,2008).

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1 130. Defendant UMC is a hospital which has an emergency department covered
2 under EMTALA.

3 131. Upon information and belief, Defendant UMC has entered into a provider
4 agreement under 42 U.S.C. § 1395cc.

5 132. As a result of the provider agreement, Defendant UMC is obligated to comply
6 with EMTALA.

7 133. On November 30, 2009, Abney came to the emergency department at UMC.

8 134. Upon her arrival, Abney was in active labor.

9 135. Abney requested an examination and treatment from UMC.

10 136. Upon her arrival, Abney was asked by UMC personnel whether there was a
11 chance she could be pregnant, to which Abney answered in the affirmative.

12 137. Independent witnesses in the waiting room at UMC's emergency department, in
13 their lay opinion, believed that Abney was in labor.

14 138. These witnesses were timing her contractions and the contractions were
15 increasing in intensity and frequency over the approximate 6 hours which she was at UMC.

16 139. Abney stated that she was in the worse pain of her life.

17 140. Abney provided UMC with a bloody urine specimen during her wait in the
18 waiting room in the emergency department at UMC.

19 141. Plaintiffs and third party witnesses notified UMC on numerous occasions that
20 Abney needed medical assistance as her condition was deteriorating.

21 142. Despite such notifications, UMC failed to provide Abney with the appropriate
22 medical screening to confirm that she was in active labor, or treat such labor.

23 143. Abney's condition continued to deteriorate.

24 144. Upon Abney's departure from UMC, Abney continued to have labor pains.

25 145. At the time, Angel Dewberry had a gestational age of 26 weeks +/- 3 weeks.

26 146. Active labor of a woman whose fetus is 26 weeks is a serious condition which
27 may pose a threat to the health and safety of the patient or the unborn child.

28 147. Numerous people, including the Plaintiffs and third party witnesses, notified

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1 UMC on various occasions that Abney needed medical assistance.

2 148. Despite such notifications, UMC failed to provide Abney or her unborn fetus
3 with the appropriate medical screening to confirm that she was in active labor, or treat such
4 labor.

5 149. Such failure to provide Angel Abney with a timely and appropriate medical
6 screening for her mother's active labor is a violation of 42 U.S.C. § 1395dd(a).

7 150. Wherefore, pursuant to 42 U.S.C. § 1395dd(d)(2)(A), Abney, on behalf of the
8 Estate of her deceased child, Angel Dewberry, demands judgment against Defendant UMC,
9 and any other Defendant yet to be identified, but responsible for the harm alleged in this cause
10 of action, jointly and severally, for actual, general, special, compensatory damages in the
11 amount of to be determined by a jury, and further demands judgment against each of said
12 Defendants, plus the costs of this action, including attorney's fees, and such other relief
13 deemed to be just and equitable.

14 151. Plaintiffs have been required to retain the law firm of Law Offices of Jacob
15 Hafter & Associates to prosecute this action and are entitled to recover attorney fees and costs
16 incurred pursuant to N.R.S 18.010, Federal Rule of Civil Procedure 54 and all other applicable
17 law.

18 **THIRD CAUSE OF ACTION**

19 **EMTALA VIOLATION FOR FAILURE TO SCREEN AND TREAT ABNEY**

20 **(Against Defendant Valley)**

21 152. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint as
22 if they were fully set forth herein.

23 153. Defendant Valley is a hospital which has an emergency department covered
24 under EMTALA.

25 154. Upon information and belief, Defendant Valley has entered into a provider
26 agreement under 42 U.S.C. § 1395cc.

27 155. As a result of the provider agreement, Defendant Valley is obligated to comply
28 with EMTALA.

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1 156. On November 30, 2009, Abney came to the emergency department at Valley.

2 157. Upon her arrival, Abney was complaining of the worse pain in her life which
3 progressed over two days, intermittent pain and vaginal bleeding.

4 158. Upon her arrival at Valley, Abney was in active labor.

5 159. Upon her arrival at Valley, Abney requested medical treatment for her severe
6 pain and vaginal bleeding.

7 160. Upon her arrival at Valley, Abney and Dewberry explained what they had been
8 through previously that day with respect to the lack of care at UMC.

9 161. Abney was asked by Valley ER staff to complete various pieces of paperwork.

10 162. Abney told the Valley representative that she was in severe pain which
11 prevented her from completing the paperwork, but did request a physician.

12 163. Dewberry then told the Valley representative that just came from UMC where
13 they were waiting for about 6 hours and were not seen.

14 164. The Valley representative responded by saying that if they waited that long at
15 UMC and were not seen, what makes them think that they would be seen any sooner at Valley?

16 165. At this point, Abney and Dewberry were very discouraged and construed the
17 comment by the Valley representative to suggest that they would not be seen, or would not be
18 seen in a reasonable time frame at Valley.

19 166. Accordingly, Abney and Dewberry left and went home.

20 167. Upon Abney's departure from Valley, Abney continued to have labor pains.

21 168. Such comments by the Valley ER staff were deemed by the Plaintiffs to be a
22 refusal of care.

23 169. The refusal was a failure to provide Abney with a timely and appropriate
24 medical screening for her active labor and a violation of 42 U.S.C. § 1395dd(a).

25 170. Valley's failure to appropriately screen and treat Abney are even more
26 egregious, as they had the chance to identify and correct the failures of UMC in refusing to
27 provide, however, the unprofessional remarks by their registration staff created a hole in the
28 safety net that lead to the traumatic breach delivery at the Plaintiffs' home.



1 171. Wherefore, pursuant to 42 U.S.C. § 1395dd(d)(2)(A), Abney demands
2 judgment against Defendant Valley, and any other Defendant yet to be identified, but
3 responsible for the harm alleged in this cause of action, jointly and severally, for actual,
4 general, special, compensatory damages in the amount of to be determined by a jury, and
5 further demands judgment against each of said Defendants, plus the costs of this action,
6 including attorney’s fees, and such other relief deemed to be just and equitable.

7 172. Plaintiffs have been required to retain the law firm of Law Offices of Jacob
8 Hafter & Associates to prosecute this action and are entitled to recover attorney fees and costs
9 incurred pursuant to N.R.S 18.010, Federal Rule of Civil Procedure 54 and all other applicable
10 law.

11
12 **FOURTH CAUSE OF ACTION**
13 **EMTALA VIOLATION FOR FAILURE TO SCREEN AND TREAT ANGEL**
14 **DEWBERRY**
15 **(Against Defendant Valley)**

16 173. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint as
17 if they were fully set forth herein.

18 174. EMTALA specifically addresses the concept of “active labor” with respect to a
19 condition “which may pose a threat [to] the health and safety of the patient or the *unborn*
20 *child.*” 42 U .S.C. § 1395dd(e)(2)(B)-(C) (*emphasis added*).

21 175. Because of the concern of the “unborn child,” courts have found that an unborn
22 fetus is considered a patient to whom hospitals have a duty to provide EMTALA screenings.
23 See, e.g., *Preston v. Meriter Hosp., Inc.*, 307 Wis.2d 704, 733, 747 N.W.2d 173
(Wis.App.,2008).

24 176. Defendant Valley is a hospital which has an emergency department covered
25 under EMTALA.

26 177. Upon information and belief, Defendant Valley has entered into a provider
27 agreement under 42 U.S.C. § 1395cc.

28 178. As a result of the provider agreement, Defendant Valley is obligated to comply

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1 with EMTALA.

2 179. On November 30, 2009, Abney came to the emergency department at Valley.

3 180. Upon her arrival, Abney was complaining of the worse pain in her life which
4 progressed over two days, intermittent pain and vaginal bleeding.

5 181. Upon her arrival, Abney was in active labor.

6 182. At the time, Angel Dewberry had a gestational age of 26 weeks +/- 3 weeks,
7 according to a preliminary report by Lisa Gavin, M.D., of the Clark County Coroner's Office.

8 183. Active labor of a woman whose fetus is 26 weeks is a serious condition which
9 may pose a threat [to] the health and safety of the patient or the unborn child.

10 184. In response to Abney's request for medical assistance, the Valley representative
11 responded in an off handed comment which was interpreted by Plaintiffs that Valley was
12 refusing to provide screening or care to her or her unborn fetus.

13 185. Upon Abney's departure from Valley, Abney continued to have labor pains.

14 186. Such failure to provide Angel Abney with a timely and appropriate medical
15 screening for her mother's active labor is a violation of 42 U.S.C. § 1395dd(a).

16 187. Valley's failure to appropriately screen and treat Abney are even more
17 egregious, as they had the chance to identify and correct the failures of UMC in refusing to
18 provide, however, the unprofessional remarks by their registration staff created a hole in the
19 safety net that lead to the traumatic breach delivery at the Plaintiffs' home.

20 188. Wherefore, pursuant to 42 U.S.C. § 1395dd(d)(2)(A), Abney, on behalf of the
21 Estate of her deceased child, Angel Dewberry, demands judgment against Defendant Valley,
22 and any other Defendant yet to be identified, but responsible for the harm alleged in this cause
23 of action, jointly and severally, for actual, general, special, compensatory damages in the
24 amount of to be determined by a jury, and further demands judgment against each of said
25 Defendants, plus the costs of this action, including attorney's fees, and such other relief
26 deemed to be just and equitable.

27 189. Plaintiffs have been required to retain the law firm of Law Offices of Jacob
28 Hafter & Associates to prosecute this action and are entitled to recover attorney fees and costs

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1 incurred pursuant to N.R.S 18.010, Federal Rule of Civil Procedure 54 and all other applicable
2 law.

3
4 **FIFTH CAUSE OF ACTION**
5 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST RAFFINEE**
6 **DEWBERRY**

7 **(Against Defendant UMC)**

8 190. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint as
9 if they were fully set forth herein.

10 191. Dewberry was put in a position where he was unable to help his fiancé while
11 she was in active labor.

12 192. Moreover, Defendant UMC belittled, harassed and humiliated him in response
13 to his attempts to have UMC recognize that Abney was in immediate need of medical
14 assistance.

15 193. As a result, Dewberry was forced to participate in a traumatic emergency
16 delivery of his baby girl.

17 194. The shock of the delivery and subsequent death has been devastating to
18 Dewberry.

19 195. Dewberry has been unable to sleep, work or engage in his ordinary daily
20 activities as a result of such emotional distress.

21 196. Dewberry has sought assistance from counselors to assist him in dealing with
22 this tragedy.

23 197. Had UMC provided appropriate medical screening and care, he would not have
24 been placed in a position to respond to the traumatic birth of his baby girl.

25 198. Wherefore, Dewberry demands judgment against Defendant UMC, and any
26 other Defendant yet to be identified, but responsible for the harm alleged in this cause of
27 action, jointly and severally, for actual, general, special, compensatory damages in the amount
28 of to be determined by a jury, and further demands judgment against each of said Defendants,
plus the costs of this action, including attorney's fees, and such other relief deemed to be just

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1 and equitable.

2 199. Plaintiffs have been required to retain the law firm of Law Offices of Jacob
3 Hafter & Associates to prosecute this action and are entitled to recover attorney fees and costs
4 incurred pursuant to N.R.S 18.010, Federal Rule of Civil Procedure 54 and all other applicable
5 law.

6
7 **SIXTH CAUSE OF ACTION**
8 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST ROSHUNDA**
9 **DEWBERRY**

10 **(Against Defendant UMC)**

11 200. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint as
12 if they were fully set forth herein.

13 201. Abney sought care from UMC when she was in active labor, and no appropriate
14 care was provided.

15 202. Moreover, Defendant UMC belittled, harassed and humiliated her in response to
16 her attempts to have UMC recognize that she was in immediate need of medical assistance.

17 203. As a result, Abney was forced to undergo a traumatic emergency delivery of her
18 baby girl.

19 204. The shock of the delivery and subsequent death has been devastating to Abney.

20 205. Abney has been unable to sleep, work or engage in her ordinary daily activities
21 as a result of such emotional distress.

22 206. Abney has sought assistance from counselors to assist her in dealing with this
23 tragedy.

24 207. Had UMC provided appropriate medical screening and care, she would not have
25 been placed in a position to undergo to the traumatic birth of her baby girl in her home.

26 208. Wherefore, Abney demands judgment against Defendant UMC, and any other
27 Defendant yet to be identified, but responsible for the harm alleged in this cause of action,
28 jointly and severally, for actual, general, special, compensatory damages in the amount of to be
determined by a jury, and further demands judgment against each of said Defendants, plus the

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1 costs of this action, including attorney’s fees, and such other relief deemed to be just and
2 equitable.

3 209. Plaintiffs have been required to retain the law firm of Law Offices of Jacob
4 Hafter & Associates to prosecute this action and are entitled to recover attorney fees and costs
5 incurred pursuant to N.R.S 18.010, Federal Rule of Civil Procedure 54 and all other applicable
6 law.

7
8 **ATTORNEY FEES**

9 As a result of the Defendants’ actions as set forth above, Plaintiffs have been required
10 to retain the law firm of Law Offices of Jacob Hafter & Associates, to prosecute this action and
11 has incurred and will continue to incur costs and attorney fees for which the Plaintiff is entitled
12 to a separate award pursuant to N.R.S 18.010, as well as any other applicable statute or rule, in
13 an amount to be determined by the Court.

14
15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs hereby request a trial by jury of no less than twelve (12) persons on all issues
17 so triable pursuant to Fed.R.Civ.P. 38(b).

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, the Plaintiffs pray for judgment against the Defendants as follows:

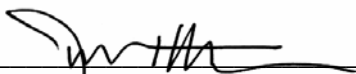
- 21 1. For a judgment for the Plaintiff for all money damages available in a sum to be
22 determined;
- 23 2. For a finding by this Court that as this instant action is based, in part, on a private
24 federal cause of action, not in tort, the limitations on damages set forth in NRS 41.035 do not
25 apply to Defendant UMC.
- 26 3. For an award of attorney fees to the Plaintiff for his reasonable attorney’s fees, court
27 costs and necessary disbursements incurred in connection with this lawsuit; and,
- 28 4. For such other and further relief as the Court deems just and equitable.

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1 Dated this 23rd day of December, 2009.

2 LAW OFFICE OF JACOB HAFTER & ASSOCIATES.

3
4 By: 

5 JACOB L. HAFTER, ESQ.
6 Nevada Bar Number 9303
7 MICHAEL K. NAETHE, ESQ.
8 Nevada State Bar No. 11222
9 7201 W. Lake Mead Blvd., Ste 210
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Attorneys for Plaintiffs

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