

and *

DR. GAUTUM RAO, M.D. *

22 S. Greene Street *

Baltimore, MD 21201 *

SERVE ON: Allan Carey *

250 W. Pratt Street *

24th Floor *

Baltimore, MD 21201 *

Defendants. *

* * * * *

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Blake Ward, Individually, and as Personal Representative of the Estate of Lisa Ward, Rachel Gilley and Candice Testerman, by and through their undersigned attorney’s herby sue the Defendants University of Maryland Obstetrical and Gynecological Associates, P.A., University of Maryland Medical Systems Corporation, and Dr. Gautum Rao, M.D. and allege the following:

JURISDICTION AND VENUE

1. Baltimore City is an appropriate venue for this claim pursuant to §§ 6- 201(a) and (b) of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, as the defendants conducts its principal business in and regularly conducts its business in Baltimore City, Maryland.

2. Jurisdiction is proper in Baltimore City Circuit Court as the damages sustained by Plaintiffs are in excess of Thirty Thousand Dollars (\$30,000.00), which exceed the jurisdiction of the District Court for Baltimore City, Maryland. This action is against Health Care Providers

based in the State of Maryland, arises out of claims for medical injury, and seeks damages in excess of the concurrent jurisdiction of the District Court.

3. This case originally was filed in the Health Care Alternative Dispute Resolution Office (“HCADRO”), along with Certificates of Qualified Experts, Medical Reports, and a Waiver of Arbitration attached as Exhibit 1. An Order of Transfer to this Court was signed October 25, 2022. Accordingly, all conditions precedent to filing this case in this Court have occurred.

THE PARTIES

4. At the time of the events that are relevant to this case, Plaintiff Lisa Ward (deceased) and the Estate of Lisa Ward through Blake Ward was a resident of the State of Maryland, residing in Colora, Maryland. Plaintiff Blake Ward, Individually and as Representative of the Estate of Lisa Ward was a resident of the State of Maryland, residing in Colora, Maryland. This claim is properly brought by Plaintiff Blake Ward, Individually, and as Personal Representative of the Estate of Lisa Ward by the Register of Wills in Maryland, as he is a “primary beneficiary” under the terms and provisions of § 3-904(a) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland (the “Wrongful Death Act.”).

5. At the time of the events that are relevant to this case, Rachel Gilley was a resident of the State of Maryland. Plaintiff Rachel Gilley is the natural born daughter of the Decedent, Lisa Ward. This claim is properly brought by Plaintiff Rachel Gilley, Individually, as she is a “primary beneficiary” under the terms and provisions of § 3-904(a) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland (the “Wrongful Death Act.”).

6. At the time of the events that are relevant to this case, Plaintiff Candice Testerman was a resident of the State of Maryland. Plaintiff Candice Testerman is the natural born daughter of the Decedent, Lisa Ward. This claim is properly brought by Plaintiff Candice Testerman,

Individually, as she is a “primary beneficiary” under the terms and provisions of § 3-904(a) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland (the “Wrongful Death Act.”).

7. At all times relevant to this Complaint, the Defendant Health Care Provider, University of Maryland Obstetrical and Gynecological Associates, P.A. [hereinafter “UMOG”] was an acute care community medical association offering comprehensive health care and Obstetrical and Gynecological care and services to the public. It employs many community physicians and nurses, including primary care doctors, surgeons, OBGYN doctors and midwives, and clinical specialists, including but not limited to Dr. Gautum Rao, M.D, and it promotes its ability to provide a “talented team” as well as “cutting-edge” and “state of the art” care, and more specifically state of the art general OBGYN care. UMOG owed all of its patients a duty to render and provide them health care within the ordinary standards of medical care, and to exercise reasonable skill and care in the diagnosis and treatment of their medical conditions, including general OBGYN care, administration of medical devices and surgical treatment associated with such care, including Hysterectomies (Robotic Assisted Laparoscopic and open procedures) and associated conditions, and biopsies. UMOG was, at all times relevant hereto, obligated to supervise its staff and to provide its patients with diagnostic and medical services and treatment commensurate with the condition from which its patient suffered.

8. At all times relevant to this Complaint, the Defendant Health Care Provider, University of Maryland Medical Systems Corporation [hereinafter “UMMS”] was an acute care community hospital offering comprehensive health care services to the public. It employs hundreds of community physicians and nurses, including emergency room physicians, primary care doctors, surgeons, cardiologists, radiologists, OBGYN physicians, midwives specialists and

Oncologists, physicians and nurses, and clinical specialists, including but not limited to Dr. Gautum Rao, M.D, and it promotes its ability to provide a “talented team” as well as “cutting-edge” and “state of the art” care, and more specifically state of the art general OBGYN care. UMMS owed all of its patients a duty to render and provide them health care within the ordinary standards of medical care, and to exercise reasonable skill and care in the diagnosis and treatment of their medical conditions, including general OBGYN care, administration of medical devices and surgical treatment associated with such care, including Hysterectomies (Robotic Assisted Laparoscopic and open procedures) and associated conditions, and biopsies. UMMS was, at all times relevant hereto, obligated to supervise its staff and to provide its patients with diagnostic and medical services and treatment commensurate with the condition from which its patient suffered.

9. At all times relevant to this Complaint, the Defendant Health Care Provider, Dr. Gautum Rao, M.D. [hereinafter “Dr. Rao”] was licensed to practice medicine in the state of Maryland and held himself out to the public as a competent practitioner of Obstetrics and Gynecology and Gynecological Oncology. At all times relevant in rendering care to Lisa Ward, Dr. Rao acted individually and as the actual and/or apparent agent, servant and/or employee of UMMS and/or UMOG and did so within the scope of his employment and authority.

10. At all times relevant hereto, each of the Health Care Providers, including their principals, and/or actual and/or apparent agents, servants and/or employees acted as the actual and/or apparent agents, servants and/or employees of each other.

FACTS

11. For the time period relevant to this case, Lisa Ward (“Mrs. Ward”) was a 58-year-old woman, married to Blake Ward. Mrs. Ward was seen by Dr. Rao on January 14, 2021, for a post-operative checkup after a Hysteroscopy/dilatation and curettage procedure was

performed on her in December 2020. She reported moderate bleeding and abdominal distension, likely due to the uterine fibroids. Dr. Rao's assessment plan noted in part,

...She is here today for a postoperative check. . . I have informed her that no endometrial hyperplasia or carcinoma was found but no endometrial tissue was identified. I discussed with her the differential diagnosis of her postmenopausal vaginal bleeding which include atrophy, endometrial polyp, uterine fibroid, and endometrial hyperplasia/carcinoma. I discussed with her the options of definitive treatment of her postmenopausal vaginal bleeding consisting of a hysterectomy or close observation. She desires definitive treatment. I recommended surgery consisting of a robot-assisted total laparoscopic hysterectomy/bilateral salpingectomy/cystoscopy/possible bilateral salpingo-oophorectomy/possible lymph node dissection...

12. Mrs. Ward was scheduled for robot-assisted total laparoscopic hysterectomy/right salpingo-oophorectomy/left salpingectomy/cystoscopy on April 8, 2021, performed by Dr. Rao, and of note, Dr. Rao's findings consisted of an enlarged uterus consistent with uterine fibroids. The uterus was enlarged "mostly due to a 10 cm partially calcified posterior fundal fibroid which would likely have to be detached from her uterus and removed separately through the vagina..." Additionally it was noted in the findings that, "No peritoneal implants, retroperitoneal LAD, **or any evidence of metastatic uterine cancer seen within the abdomen or pelvis.**"

13. Dr. Rao negligently performed the hysterectomy using EndoShears with monopolar cautery, vessel seal extend forceps, with bipolar cautery, and prograsp forceps. According to the medical records, the procedure was "somewhat difficult due to her enlarged uterus..." The anterior peritoneum was dissected off the uterus to separate the bladder from the lower uterine segment and the cervix. "Right ureterolysis was carefully performed with sharp dissection and electrocautery to free the right ureter from the lower uterine segment/cervix. The uterine arteries were skeletonized, coagulated and cut bilaterally. A circumferential incision was made around the

vaginal apex and the uterosacral ligaments using the colpotomizer as a guide.” However, during the procedure, Dr. Rao encountered a complication he should have anticipated. **“The specimens [was] too large to remove through the vagina intact. Therefore, the uterus and cervix including several very large fibroids were divided into multiple sections carefully using the EndoShears with monopolar cutting. No power morcellation was done. The specimen was removed in several fragments through the vagina and sent to pathology.”** This method was a breach in the standard of care, and a deviation from known and accepted instructions directly from the FDA. This breach caused cancer to spread through Mrs. Ward’s body and ultimately lead to her premature death.

14. Mr. and Mrs. Ward recalled a meeting with Dr. Rao after Mrs. Ward underwent her Robotic Assisted Total Laparoscopic Hysterectomy RSO, LS¹ on April 8, 2021, wherein she was told that she had cancer and that it had spread. Dr. Rao stated to the both of them, **“I am very sorry and that I would be just as upset as you are if I were in your shoes.”** Dr. Rao was fully aware that Mrs. Ward preferred an open procedure compared to a laparoscopic procedure based on the size of her uterus in conjunction with the unambiguous literature on this topic. Dr. Rao cut up Mrs. Ward’s uterus piece by piece, which was an absolute contraindication based on her age and the size of her uterus, among other criteria, and a breach of the standard of care. As a result of Dr. Rao cutting up Ms. Ward’s uterus, he spread leiomyosarcoma all throughout her abdomen leaving her with very little chance of survival and fighting for her life for months to come. Prior to Dr. Rao’s negligent actions, Lisa Ward was NOT terminal, her cancer was contained and treatable (pursuant to multiple medical records from several health care providers including Dr.

¹ Per hysterectomy operative note, “the specimen was too large to remove through the vagina intact. Therefore, the uterus and cervix including several very large fibroids were divided into multiple sections carefully using the EndoShears with monopolar cutting. No power morcellation was done. The specimen was removed in several fragments through the vagina and sent to pathology.”

Rao's own medical records)², and more likely than not she would have had a complete recovery and would have led a full life without complication.

15. On April 11, 2021, secondary to postoperative bleeding following Dr. Rao's initial surgery on April 8, 2021, he made no comment whatsoever about metastatic disease being present in the abdomen or pelvis. All biopsies that were obtained at the time of that surgical procedure were negative for metastatic disease.

16. Throughout the following month, Mrs. Ward experienced continued bleeding, pain, blood clots, distension in the bowel and exudate throughout the pelvis, as well as anemia and suspected kidney injury. CT scans indicated mild left lower atelectasis. More specifically, on April 11, 2021, during a surgical exploration of Mrs. Ward for post-operative bleeding, there was no comment whatsoever about metastatic disease being present in the abdomen or pelvis and the biopsies performed were negative for metastatic disease.

17. On April 26, 2021, a final diagnosis and surgical pathology report was completed which indicated, in part:

Final Diagnosis – A, Cervix, uterus (Total laparoscopic hysterectomy): Multiple portions of a leiomyosarcoma of the uterus (at least 8.0 cm in greatest dimension). The tumor exhibits high cellularity, a high mitotic rate (up to 20 mitoses/10 hpf, including numerous atypical forms), foci of marked nuclear pleomorphism, and areas of coagulative necrosis. Immunostains for smooth muscle actin, p16, Caldesmon and CD10 are positive while an immunostain for desmin shows focal positivity. The Ki-67 index is approximately 50% in areas. Immunostains for estrogen receptor, AE1/AE3, SMMS-1, calponin and p53 are negative. These findings support the above interpretation. Synoptic Report Uterus: Sarcoma.

² In a note five months prior to the April 8, 2021, procedure evidenced in pertinent part, "TVUS 11-13-20: Uterus 15x14x15.5 cm with 10x9.2.9.4 cm partially calcified posterior fundal fibroid. 1.6x2x1.8 cm anterior lower uterine segment fibroid. EST 1.8 cm, slightly heterogenous." Importantly, NO EVIDENCE OF METASTATIC DISEASE.

18. The final diagnosis identified was “Ectocervical/vaginal cuff margin: uninvolved by sarcoma Lymph-vascular invasion: not identified Regional Lymph Nodes: no lymph nodes submitted or found Pathologic Staging (p TNM, AJCC 8th Edition): pT1bpNX.” Mrs. Ward was referred to oncologist Dr. Meyer and Dr. Amanda Fader, at John Hopkins Hospital for further evaluation and treatment. Of note in the medical records, Mrs. Ward and her husband were concerned that the tumor was not removed intact but rather morcellated causing the cancer to spread throughout her body.

19. Post-Operatively, Mrs. Ward was seen by Amanda Fader, M.D. (“Dr. Fader”) on May 11, 2021, wherein Dr. Fader stated that she had no idea why Dr. Rao performed Mrs. Ward’s surgery the way he did. Dr. Fader stated to Mrs. Ward that she would never have even attempted taking the uterus out laparoscopically based on the size and further stated that had the procedure been done correctly, everything would have been removed intact.

20. Dr. Fader further explained that “Dr. Rao is an excellent GYN oncologist and cannot speak for him or his team regarding decisions made in the operating room. Discussed the goal of surgery when sarcoma is suspected is **intact removal of the tumor and that cut through cancer procedures in this setting may lead to dissemination of tumor.**” Mrs. Ward was sent for further imaging of her chest, abdomen and pelvis, to assess if there was residual tumor. Ultimately, she was diagnosed with Leiomyosarcoma which had spread through her body as a direct and proximate consequence of Dr. Rao morcellating the tumor he removed on April 8, 2021.

21. On May 27, 2021, Mrs. Ward underwent an x-lap tumor debulking procedure by Dr. Meyer, as well as ometectomy and small bowel resection with cytoreduction and adjuvant chemotherapy. For the ten months after, Mrs. Ward continued with her chemotherapy treatments, while enduring tremendous pain and suffering, both mental and physical, hoping and praying that

she would survive this horrific ordeal. Ultimately and tragically, Mrs. Ward passed away on March 23, 2022, as a direct consequence and result of the cancer that was negligently spread throughout her body by Dr. Rao in morcellating the tumor, in breach of the accepted standards of care.

22. It is the accepted medical standard that uterine sarcoma is more common in women undergoing surgery for uterine fibroids (noncancerous growths in a woman's uterus) than previously thought, and it is further accepted that because it can be hard to distinguish between a uterine sarcoma and a uterine fibroid prior to surgery, when laparoscopic morcellation is used for myomectomy or hysterectomy in women with presumed uterine fibroids that are actually uterine sarcomas, the surgical procedure poses a risk of spreading cancerous tissue beyond the uterus, worsening a woman's chance of long-term survival.

23. The FDA estimates that a hidden uterine sarcoma may be present in approximately 1 in 225 to 1 in 580 women undergoing surgery for uterine fibroids. The FDA also estimates that a leiomyosarcoma (a specific type of uterine sarcoma) may be present in approximately 1 in 495 to 1 in 1100 women undergoing surgery for uterine fibroids. Although there are benefits to the use of laparoscopic morcellation such as reducing the risk of infection, when used in myomectomy or hysterectomy procedures, there is an increased risk of spreading unsuspected cancer and benign tissue within the abdomen and pelvis. The risk of unsuspected cancer increases with age, particularly in women over 50 years of age, which is precisely what occurred to Mrs. Ward.

24. Any procedure that involves inadvertently cutting into a tumor within the abdominal cavity is likely to cause tumor dissemination. Due to this increased risk, the FDA continues to recommend use of laparoscopic morcellation only in appropriate women undergoing myomectomy or hysterectomy. In addition, the FDA recommends that when morcellation is

appropriate, only contained morcellation be performed. In addition to the black boxed warning released by the FDA 11/24/2014, the FDA recommends:

- Laparoscopic morcellation is contraindicated in gynecologic surgery in which the tissue to be morcellated is known or suspected to contain malignancy.
- Laparoscopic morcellation is contraindicated for removal of uterine tissue containing suspected fibroids in patients who are post-menopausal or over 50 years of age, or candidates for en bloc tissue removal, for example, through the vagina or via a mini-laparotomy incision.
- The risk of occult cancer, including uterine sarcoma, increases with age, particularly in women over 50 years of age.
- Uncontained morcellation has been associated with the spread of benign uterine tissue (for example, parasitic myomas and disseminated peritoneal leiomyomatosis), potentially requiring additional surgeries.
- Laparoscopic morcellation should only be used with a containment system.
- The FDA recommends health care providers share this information with patients and warns against laparoscopic morcellation in gynecologic surgeries to treat patients with suspected or confirmed cancer, and in women over age 50 having a myomectomy or hysterectomy for uterine fibroids.

25. The FDA recommends **health care providers share this information with patients** and warns against using laparoscopic morcellation in gynecologic surgeries to treat patients with suspected or confirmed cancer, and in women over age 50 having a myomectomy or hysterectomy for uterine fibroids. Dr. Rao did not warn Mrs. Ward in a breach in the standard of care. He took away her right to make an informed decision. In furtherance of this breach and negligence, Dr. Rao performed the laparoscopic morcellation in direct violation of the FDA guidelines and known and accepted medical standards of practice. These breaches resulted in the untimely death of Mrs. Ward.

26. All the abundance of information relative to the risks associated with laparoscopic morcellation in women presenting with symptomatic uterine leiomyomata was readily available to Dr. Rao and had been widely publicized throughout the literature for at least 10 years prior to the

surgical procedure he performed on Lisa Ward on April 8, 2021. It was obligatory upon him, under the prevailing medical standards of care, to be aware of and knowledgeable about the sizable and potentially fatal risks associated with laparoscopic morcellation in woman presenting with enlarged symptomatic uterine leiomyomata. Lisa Ward was just such a woman. It is a breach in the standard of care to ignore this information relative to the safe care and surgical management of women presenting with symptomatic uterine leiomyomata. It is a breach in the standard of care to subsequently proceed in a manner that completely disregarded this wealth of extensively researched and publicized information, and to surgically manage Lisa Ward in a manner that would clearly endanger her health and potentially result in her death if an occult uterine leiomyosarcoma were ultimately found to be present, which indeed happened.

BREACHES IN STANDARD OF CARE - COUNTS I – III

COUNT I **(Survival Action against all Defendants)**

27. Plaintiff Blake Ward, as Personal Representative of the Estate of Lisa Ward, repeats and incorporates by reference all of the allegations set forth in paragraphs 1 through 26 above as set forth herein, and brings this survival action for the injuries the Decedent sustained as a result of Defendants' negligence prior to the time of her death, and for funeral expenses.

28. At all times relevant hereto, the Decedent, Lisa Ward, was a patient of the named Defendant(s), who were under a duty to provide her with proper, adequate, timely and acceptable medical care and treatment including types of surgical procedures and disseminating full and complete knowledge and risks of a procedure, relating to, among other things, treatment of her fibroids and leiomyosarcoma.

29. As a direct and proximate result of the breaches in standards of care by the Defendants, who owed Mrs. Ward a duty of care, but who breached their obligations by failing to

employ ordinary treatment protocols, observations, techniques and reasonable skill, learning and attention required under the circumstances, utilization of surgical procedures including laparoscopic morcellation, disseminating full and complete knowledge and risks of a procedure as well as blood typing, Lisa Ward suffered conscious pain and suffering, and died. The Estate of Lisa Ward also incurred economic damages, including funeral expenses.

30. The Defendant Health Care Providers, individually and/or through their actual and/or apparent agents, servants, and/or employees, breached the aforesaid duty of care, and were negligent in that they, among other things:

- A. Failed to be aware of, know, understand and communicate the medical literature demonstrating the danger of open morcellation of symptomatic uterine leiomyomata in women presenting with the same;
- B. Failed to discuss the danger of occult malignancy and open uncontained laparoscopic morcellation planned at the time of her robotic assisted surgical procedure with Ms. Ward prior to the procedure preoperatively;
- C. Failed to adequately and appropriately discuss alternative surgical approaches with Ms. Ward that would allow removal of the grossly enlarged myomatous uterus intact;
- D. Failed to appropriately document in the medical record the content of the conversation with Mrs. Ward regarding the potential risk for occult malignancy in the enlarged myomatous uterus, the dangers associated with open morcellation if occult malignancy was found, as well as alternative surgical approaches that would allow in bloc resection;

- E. Failed to consider as part of preoperative planning a minimally invasive approach that would require morcellation, and not have a plan in place to prevent pelvic spillage and dissemination of uterine tissue intraoperatively;
- F. Failed to consider preoperatively a safer and more oncologically appropriate approach for the removal of Mrs. Ward's grossly enlarged uterus (such as the use of a tissue containment bag), in order to minimize the potential dissemination of a uterine leiomyosarcoma;
- G. Failed to convert to an alternate safer surgical approach when Dr. Rao became aware immediately at the beginning of the surgical procedure that he would be unable to remove the uterine mass without resorting to morcellation;
- H. Negligently proceeded with open uncontained morcellation of Mrs. Ward's myomatous tumor mass when Dr. Rao became aware at the beginning of the surgical procedure that he would be unable to remove the uterine mass without resorting to morcellation; and,
- I. Otherwise failed to provide appropriate health care and information regarding risks to Lisa Ward.

31. As a direct and proximate result of the above-mentioned deviations from the applicable standards of care and negligence by the Defendant Health Care Providers, Mrs. Ward suffered extensive medical expenses, pain, suffering, and emotional and mental distress, and eventually her untimely death.

32. All of the injuries, damages, and losses caused to Lisa Ward were due solely to the medical negligence, carelessness and unskillful treatment by the named Defendants, who did not practice medical care competently, and who failed to exercise the degree of skill and care necessary

under the circumstances. Defendants, acting individually and for the benefit of the other, departed from generally accepted medical practices and procedures, and were otherwise careless, negligent without any negligence on the part of the Decedent or any Plaintiff herein contributing thereto.

WHEREFORE, Plaintiff, the Estate of Lisa Ward, demands judgment against the Defendant(s) for compensatory damages in excess of the concurrent jurisdiction of the District Court of Maryland, and for interest, fees, and costs, and such further relief as this Court deems just and appropriate.

COUNT II
(Wrongful Death against all Defendants)

33. Plaintiffs adopt and incorporate by reference all of the allegations set forth in paragraphs 1 through 32 above as if they were fully set forth herein.

34. Plaintiff Blake Ward was married to the Decedent, Lisa Ward. Accordingly, he is a primary beneficiary under Maryland's Wrongful Death Act. As a direct and proximate result of the above-described negligence of the named Defendants, Plaintiff Blake Ward was caused and will in the future continue to experience mental anguish, emotional pain and suffering, loss of society, loss of companionship, loss of comfort, loss of protection, loss of attention, loss of advice, loss of counsel, loss of household services, financial support and loss of love resulting from the death of his wife.

35. Plaintiffs Rachel Gilley and Candice Testerman are the natural born children of the Decedent, Lisa Ward. Accordingly, they are primary beneficiaries under Maryland's Wrongful Death Act. As a direct and proximate result of the above-described negligence of the named Defendants, Plaintiffs Rachel Gilley and Candice Testerman were caused and will in the future continue to experience mental anguish, emotional pain and suffering, loss of society, loss of companionship, loss of comfort, loss of protection, loss of attention, loss of advice, loss of counsel,

loss of household services, financial support and loss of love resulting from the death of their mother.

36. The Defendant Health Care Provider(s), individually and/or through their actual and/or apparent agents, servants, and/or employees, breached the aforesaid duty of care, and were negligent in that they, among other things:

- A. Failed to be aware of, know, understand and communicate the medical literature demonstrating the danger of open morcellation of symptomatic uterine leiomyomata in women presenting with the same;
- B. Failed to discuss the danger of occult malignancy and open uncontained laparoscopic morcellation planned at the time of her robotic assisted surgical procedure with Ms. Ward prior to the procedure preoperatively;
- C. Failed to adequately and appropriately discuss alternative surgical approaches with Ms. Ward that would allow removal of the grossly enlarged myomatous uterus intact;
- D. Failed to appropriately document in the medical record the content of the conversation with Mrs. Ward regarding the potential risk for occult malignancy in the enlarged myomatous uterus, the dangers associated with open morcellation if occult malignancy was found, as well as alternative surgical approaches that would allow in bloc resection;
- E. Failed to consider as part of preoperative planning a minimally invasive approach that would require morcellation, and not have a plan in place to prevent pelvic spillage and dissemination of uterine tissue intraoperatively;

- F. Failed to consider preoperatively a safer and more oncologically appropriate approach for the removal of Mrs. Ward's grossly enlarged uterus (such as the use of a tissue containment bag), in order to minimize the potential dissemination of a uterine leiomyosarcoma;
- G. Failed to convert to an alternate safer surgical approach when Dr. Rao became aware immediately at the beginning of the surgical procedure that he would be unable to remove the uterine mass without resorting to morcellation;
- H. Negligently proceeded with open uncontained morcellation of Mrs. Ward's myomatous tumor mass when Dr. Rao became aware at the beginning of the surgical procedure that he would be unable to remove the uterine mass without resorting to morcellation; and,
- I. Otherwise failed to provide appropriate health care and information regarding risks to Lisa Ward.

WHEREFORE, Plaintiffs Blake Ward, Rachel Gilley, and Candice Testerman demand judgment against the Defendant(s) for compensatory damages in excess of the concurrent jurisdiction of the District Court of Maryland, and for interest, fees, and costs, and such further relief as this Court deems just and appropriate.

COUNT III
(Medical Malpractice - Informed Consent against all Defendants)

37. Plaintiffs adopt and incorporate by reference all of the allegations set forth in paragraphs 1 through 36 above as if they were fully set forth herein.

38. Mrs. Ward relied upon the expertise of the Defendant(s) to adequately inform her of the condition that she faced and all of the available surgical procedures to treat her, including and especially the benefits and risks associated with those procedures, whether rare or common,

and to be informed of the nature of all examinations, evaluations and procedures they were to perform, so that she could decide and make an informed decision as to whether to consent to a procedure, if there was a sufficient medical basis to perform said procedure inclusive of those risks, or to choose a different procedure.

39. Dr. Rao and Defendant(s), individually and as actual and/or apparent agents, servants, and/or employees of UMOG and UMMS, failed to advise and inform Mrs. Ward as to the scope of available surgical procedures, including all material risks and benefits, including the FDA warning that Laparoscopic morcellation is contraindicated in gynecologic surgery in which the tissue to be morcellated and is known or suspected to contain malignancy, so that she would have been able to make a sound informed and intelligent decision based upon full disclosure by Dr. Rao and the Defendant(s) as to whether to proceed with laparoscopic morcellation or to choose a procedure that would not disturb the tumor, and that had a lower risk (or no risk) of contaminating her body with cancer. Had Mrs. Ward been informed of the risks associated with laparoscopic morcellation, she would have elected, as any prudent reasonable patient in her position would, to reject morcellation and utilize a different procedure that would keep the tumor intact so as to not disseminate cancer throughout her body. Therefore, Mrs. Ward was not able to give valid consent.

40. The standards of care applicable to Defendant(s), and each of them, required that they inform Plaintiff Mrs. Ward regarding the scope of available surgical procedures, the material risks and benefits, and to document same. They breached the standards of care by failing to offer and document such information.

41. As a direct and proximate result of Defendant's failure to properly inform and obtain consent from Mrs. Ward, Mrs. Ward (through her estate), her husband Blake Ward, and her children Rachel Gilley and Candice Testerman, have experienced and will experience severe

emotional distress, and has and will be legally and otherwise responsible for the above-referenced extraordinary costs and expenses of funeral costs and loss of household services and earnings capacity.

42. All of Plaintiffs damages, and losses claimed herein are due to the failure of Dr. Rao and the Defendant(s) to obtain informed consent, without any negligence on the part of any Plaintiff contributing thereto.

WHEREFORE, Plaintiffs Blake Ward, Rachel Gilley, and Candice Testerman demand judgment against the Defendant(s) for compensatory damages in excess of the concurrent jurisdiction of the District Court of Maryland, and for interest, fees, and costs, and such further relief as this Court deems just and appropriate.

Respectfully Submitted,

Date:

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