



001536092D01

**Clerk of the District Court of Douglas County Nebraska**

Law offices of Ronald J. Palagi, P.C.

Case number *CI17-6577*

Plaintiff

VS.

Transfer Case from the District Court of  
Adams County, Nebraska

Marc Harding, Harding Law Office,

S. Reed Morgan, S. Reed Morgan, P.C.,

David H. Clark, and Alan Andersen

ASSIGNED TO *Ashford*

Defendants

#44 FILED  
IN DISTRICT COURT  
DOUGLAS COUNTY NEBRASKA  
AUG 03 2017  
JOHN M. FRIEND  
CLERK DISTRICT COURT

# CERTIFICATE OF TRANSCRIPT

STATE OF NEBRASKA)  
COUNTY OF ADAMS)

17 AUG -1 P2 :43

IN THE DISTRICT COURT OF  
ADAMS COUNTY, NEBRASKA

ADAMS COUNTY  
CLERK OF DIST. COURT  
I, CHRYSTINE SETLIK, CLERK OF THE DISTRICT COURT, Adams County District Court,  
within and for the County aforesaid, do hereby certify that the foregoing is a full, true and  
correct ORIGINALS of:

CI- 16-326

THE LAW OFFICES OF RONALD J PALAGI, P.C,L.L.O  
vs

HARDING LAW OFFICE, ET AL

1. COMPLAINT
2. PRAECIPE-SUMMONS
3. PRAECIPE-OUT OF STATE SUMMONS
4. PRAECIPE-SUMMONS
5. SUMMONS
6. SUMMONS
7. SUMMONS
8. RETURN-S R MORGAN
9. RETURN-MARC HARDING
10. RETURN- DAVID H CLARK
11. MOTION-DISMISS
12. MOTION-DISMISS
13. ANSWER
14. NOTICE- HEARING
15. MOTION
16. MOTION
17. ORDER
18. NOTICE- HEARING
19. ORDER- PRETRIAL CONFERENCE
20. MOTION
21. AMENDED COMPLAINT
22. MOTION
23. ORDER
24. NOTICE-SERVICE

Scanned



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25. AMENDED ORDER,
26. NOTICE- HEARING
27. MOTION- DISMISS
28. AMEDEDED NOTICE OF HEARING
29. MOTION- DISMISS
30. MEMORANDUM
31. RESPONSE
32. RESPONSE
33. JOURNAL ENTRY
34. NOTICE OF JUDGMENT- MARC HARDING
35. NOTICE OF JUDGMENT- HARDING LAW OFFICE
36. NOTICE OF JUDGMENT-S R MORGAN
37. NOTICE OF JUDGMENT- DAVID H CLARK
38. NOTICE OF JUDGMENT- ALAN ANDERSON
39. NOTICE OF JUDGMENT- S R MORGAN
40. NOTICE OF JUDGMENT- RONALD J PALAGI
41. NOTICE OF JUDGMENT- STEVEN HOWARD
42. NOTICE OF JUDGMENT- JON L JABENIS
43. NOTICE OF JUDGMENT- RONALD J PALAGI

As the same appears from the records of said Court. WITNESS my hand and official seal this 1ST day of AUGUST, 2017



*Christine D. Setlik*  
CHRISTINE D. SETLIK  
CLERK OF THE DISTRICT COURT

# TRIAL DOCKET, ADAMS COUNTY

CASE NO

CI 16-326

DATE

July 21, 2016

ATTORNEYS		CONTRACT DISPUTES
PRO SE	THE LAW OFFICES OF RONALD J PALAGI, P.C., L.L.O.	
PRO SE	HARDING LAW OFFICE, ET AL	
7/3	23	17
7/5	1	17
7/5	9	17
7/5	18	17
7/7	31	17

J. Elling - Notice of Hearing  
 J. Ellingworth - Warning on Contempt Notices - Ms. Colley for: Mr. Reed  
 Motion and Mr. Harding. Contempt made argument. Court granted  
 it leave to file amended complaint. Is given 30 days answer or  
 otherwise plead. Plead set for May 9, 2017 cancelled. Ms. Colley to Jundt  
 J. Ellingworth Amended JCS ORDER  
 J. Ellingworth. Notices Appeared Telephonically. Court ordered counsel  
 but Dan Place. And left a message. He was entering an  
 appearance in this case. Court to May 30, 2017 at 1:00 P.M. for  
 telephone conference. Palagi's letter to Notice  
 J. Ellingworth JCS ORDER

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

FILED

gm

17 JUL 31 P 3:25

THE LAW OFFICES OF RONALD J. PALAGI, P.C., L.L.O.,

Plaintiff,

vs.

MARC HARDING, HARDING LAW OFFICE, S. REED MORGAN, S. REED MORGAN, P.C., DAVID H. CLARK and ALAN ANDERSEN,

Defendants.

Case No. CR 16-326  
CF

ADAMS COUNTY  
CLERK OF DIST. COURT

JOURNAL ENTRY  
& ORDER

The case came on for hearing on the 30<sup>th</sup> day of May, 2017, before Stephen R. Illingworth, District Judge. Ms. Donna Colley appeared on behalf of the Plaintiff; Mr. Jon Jabenis appeared on behalf of Mr. David Clark; Mr. Marc Harding and Dan Placzek on behalf of Marc Harding and the Harding Law Office; Reed Morgan and Steve Howard on behalf of S. Reed Morgan, P.C., and S. Reed Morgan, Pro Se. At issue was Defendants' Motions to Dismiss. Counsel made arguments and the Court took the case under advisement.

ON THIS 31<sup>st</sup> DAY OF JULY, 2017, THE COURT FINDS AND ORDERS AS FOLLOWS:

PROCEDURAL HISTORY

1. Plaintiff filed a complaint in this case on July 20, 2016, alleging tortious interference with a contract and breach of contract. None of the alleged actions took place in Adams

SCANNED



J00037286D14

474A

Notice of Judgment

County.

2. Defendant Marc Harding and Harding Law Office filed a Motion to Dismiss on January 17, 2017.
3. Defendants S. Reed Morgan d/b/a Reed Morgan, P.C., filed a Motion to Dismiss or Alternatively to Transfer Venue to Douglas County on January 18, 2017.
4. Defendant David H. Clark filed an answer on January 27, 2017.
5. Plaintiff filed a Motion for Leave to file amended complaint on May 1, 2017. Plaintiff also filed a Motion to Transfer Venue and Dismiss parties on May 4, 2017.
6. In an order filed May 5, 2017, the Court entered the following order:
  - A. Plaintiff's Motion for Leave to file Amended Complaint was granted. Defendants granted 30 days to file answers or otherwise respond.
  - B. Defendants' Motions to Dismiss were overruled.
  - C. A May 9, 2017, pretrial was cancelled.
7. An amended order was filed on May 9, 2017, which ruled as the previous order but ordered Defendants' Motions to Dismiss were held in abeyance.
8. Defendant Harding Law Office filed a Motion to Dismiss Amended Complaint on May 19, 2017.
9. On May 26, 2017, Defendant S. Reed Morgan, P.C., filed a Motion to Dismiss Amended Complaint.
10. Plaintiff filed a response to the Motions to Dismiss on May 30, 2017, and again on June 15, 2017.

## CONCLUSIONS OF LAW

It is clear that this case should never have been filed in Adams County, Nebraska. None of the parties reside in Adams County. The Plaintiff alleges tortious interference with a contract and breach of contract. The subject matter of the contract was a medical malpractice case filed and tried in Iowa. There is a Defendant that resides in Omaha and Plaintiff alleges the contract was entered into in Douglas County. Defendants cite BNSF R. Co. V. Tyrrell, a United States Supreme Court case decided May 30, 2017. The case reversed the Montana Supreme Court. The Montana case was a consolidation of two cases involving the Federal Employees' Liability Act (FELA), which makes railroads liable in money damages to their employees for on-the-job injuries. Neither worker in the two cases were injured in Montana. Neither incorporated nor headquartered there, BNSF maintained less than 5% of its work force and about 6% of its total track mileage in Montana. BNSF moved to dismiss the suit contending it was not "at home" in Montana as required for the exercise of General Personal Jurisdiction under Daimler A.G. v. Bauman, 571 U.S. \_\_\_\_\_. The Montana Supreme Court held that Montana Court could exercise general personal jurisdiction over BNSF because the railroad did business within the state.

The United States Supreme Court reversed holding that Montana's exercise of personal jurisdiction does not comport with the Fourteenth Amendment's Due Process clause. The Supreme Court said "that the Fourteenth Amendment Due Process clause does not permit a state to hale an out-of-state corporation before its courts when the corporation is not "at home" in the state and the episode-in-suit occurred elsewhere. The Defendants argue that the BNSF case is dispositive of the issue here. I think that position ignores the alleged facts in this case. In BNSF the Court said the due process clause does not permit a state to hale an out-of-state corporation

before its courts when the corporation is not “at home” in the state and the episode-in-suit occurred elsewhere. Defendants meet the first prong because one is an Iowa P.C and one a Texas P.C. They do not meet the second as the episode-in-suit involves contracts executed in Nebraska. In addition, the Defendants P.C.’s created substantial contacts with the State of Nebraska.

In addition, in BNSF, the Court said “In short, the business BNSF does in Montana is sufficient to subject the railroad to specific personal jurisdiction in that state on claims related to the business it does in Montana.”

In summary, the Plaintiff alleges sufficient contacts of events in Nebraska in its Amended Complaint to subject Defendants to the jurisdiction of Nebraska Court. It is, however, clear that proper venue is in Douglas County.

WHEREFORE IT IS ORDERED AS FOLLOWS:

1. The Court overrules Defendant S. Reed Morgan, P.C.’s Motion to Dismiss Amended Complaint.
2. The Court overrules Defendant Harding Law Office’s Motion to Dismiss Amended Complaint.
3. The Court sustains Plaintiff’s Motion to Transfer Venue and orders the case transferred to Douglas County, Nebraska.
4. The Court further sustains Plaintiff’s Motion to Dismiss without prejudice as to Defendant Marc Harding and S. Reed Morgan and hereby dismisses without prejudice as to these defendants.



IT IS SO ORDERED THIS 31<sup>st</sup> DAY OF JULY, 2017.

BY THE COURT:



Stephen R. Illingworth  
District Judge

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that the true and correct copies of the foregoing were served upon:

Ms. Donna Colley, Attorney At Law, 3131 South 72<sup>nd</sup> Street, Omaha, NE 68124

Mr. Daniel M. Placzek, Attorney At Law, PO Box 790, Grand Island, NE 68802-0790

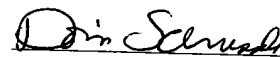
Mr. Jon Jabenis, Attorney At Law, 1001 Farnam Street, 3<sup>rd</sup> Floor, Omaha, NE 68102

Mr. Alan Andersen, Attorney At Law, 409 Elm Street, Coon Rapids, IA 50058

Mr. Marc Harding, Attorney At Law, 1217 S.W. Army Road, Des Moines, IA 50315

Mr. Steve Howard, Attorney At Law, 1411 Harney Street, Suite 100, Omaha, NE 68102

by depositing a copy thereof, duly addressed and postage prepaid in the regular United States Mail this 31<sup>st</sup> day of July, 2017.



Doris Schuessler  
Court Reporter

Doc. No. 47449

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA

NOTICE OF JUDGMENT

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

Judgment has been entered.

Judgment Date: 07/31/2017

If a money judgment other than child support is owed to the court, payment may be made directly to the court or on-line at: [ne.gov/go/paycourts](http://ne.gov/go/paycourts). For information regarding child support payments contact 1-877-631-9973.

Date: JULY 31, 2017

BY THE COURT:

*Christine D. Sedick*  
Clerk



Marc Harding  
1217 SW Army Road  
Des Moines, IA 50315

*MB*

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA

NOTICE OF JUDGMENT

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

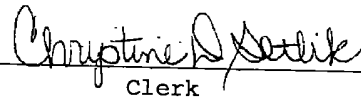
Judgment has been entered.

Judgment Date: 07/31/2017

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Date: JULY 31, 2017

BY THE COURT:

  
Clerk



Harding Law Office  
1217 S.W. Army Road  
Des Moines, IA 50315

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA

NOTICE OF JUDGMENT

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

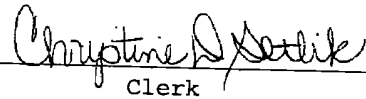
Judgment has been entered.

Judgment Date: 07/31/2017

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Date: JULY 31, 2017

BY THE COURT:

  
Clerk



Doc. No. 47452

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA

NOTICE OF JUDGMENT

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

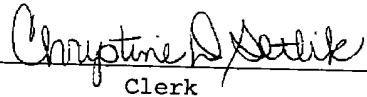
Judgment has been entered.

Judgment Date: 07/31/2017

If a money judgment other than child support is owed to the court, payment may be made directly to the court or on-line at: [ne.gov/go/paycourts](http://ne.gov/go/paycourts). For information regarding child support payments contact 1-877-631-9973.

Date: JULY 31, 2017

BY THE COURT:

  
Clerk



David H Clark  
3036 South 101st Street  
Omaha, NE 68124

Doc. No. 47453

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA

NOTICE OF JUDGMENT

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

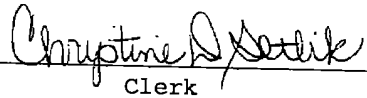
Judgment has been entered.

Judgment Date: 07/31/2017

If a money judgment other than child support is owed to the court, payment may be made directly to the court or on-line at: [ne.gov/go/paycourts](http://ne.gov/go/paycourts). For information regarding child support payments contact 1-877-631-9973.

Date: JULY 31, 2017

BY THE COURT:

  
Clerk



Alan Anderson  
409 Elm Street  
Coon Rapids, IA 50058

Doc. No. 47454

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA

NOTICE OF JUDGMENT

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

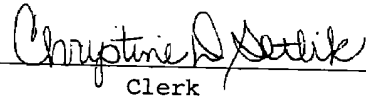
Judgment has been entered.

Judgment Date: 07/31/2017

If a money judgment other than child support is owed to the court, payment may be made directly to the court or on-line at: [ne.gov/go/paycourts](http://ne.gov/go/paycourts). For information regarding child support payments contact 1-877-631-9973.

Date: JULY 31, 2017

BY THE COURT:

  
Clerk



S R Morgan  
d/b/a S. Reed Morgan, P.C.  
413 Eighth Street  
Comfort, TX 78013

Doc. No. 47455

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA

NOTICE OF JUDGMENT

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

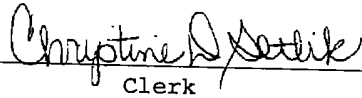
Judgment has been entered.

Judgment Date: 07/31/2017

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Date: JULY 31, 2017

BY THE COURT:

  
Clerk



Ronald J. Palagi, P.C., L.L.O.  
3131 South 72nd Street  
Omaha, NE 68124



IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA

NOTICE OF JUDGMENT

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

Judgment has been entered.

Judgment Date: 07/31/2017

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Date: JULY 31, 2017

BY THE COURT:

*Christine D. Sotnik*  
Clerk



Steven H Howard  
1411 Harney Street Suite 100  
Omaha, NE 68102

Doc. No. 47457

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA

NOTICE OF JUDGMENT

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

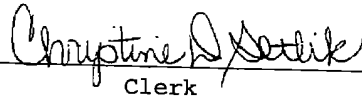
Judgment has been entered.

Judgment Date: 07/31/2017

If a money judgment other than child support is owed to the court, payment may be made directly to the court or on-line at: [ne.gov/go/paycourts](http://ne.gov/go/paycourts). For information regarding child support payments contact 1-877-631-9973.

Date: JULY 31, 2017

BY THE COURT:

  
Clerk



Jon L Jabenis  
1001 Farnam St 3rd FL  
Omaha, NE 68102-1827

Doc. No. 47458

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA

NOTICE OF JUDGMENT

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

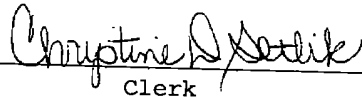
Judgment has been entered.

Judgment Date: 07/31/2017

If a money judgment other than child support is owed to the court, payment may be made directly to the court or on-line at: [ne.gov/go/paycourts](http://ne.gov/go/paycourts). For information regarding child support payments contact 1-877-631-9973.

Date: JULY 31, 2017

BY THE COURT:

  
Clerk



Ronald J Palagi  
3131 So 72nd Street  
Omaha, NE 68124

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O,

Plaintiff,

vs.

MARC HARDING, HARDING LAW  
OFFICE, S. REED MORGAN, S.  
REED MORGAN, P.C., DAVID H.  
CLARK, and ALAN ANDERSEN,

Defendants.

CASE NO.: CI 16 326

**RESPONSE TO DEFENDANTS'  
MOTIONS TO DISMISS**

Comes now the Plaintiff and files this Response to the Defendants' Motions to Dismiss the Plaintiff's Amended Complaint.

The question before the Court is whether the Defendants had sufficient contacts with the State of Nebraska to meet constitutional muster and the long-arm jurisdiction statute of Nebraska.

Plaintiff has alleged that while in Nebraska, the law firm contacted the Harding Firm, and Morgan Firm (hereinafter "the Defendants") and both Defendants agreed to carry out certain obligations under a Nebraska contract with a client, Alan Anderson.

Plaintiff has described and the Defendants concede certain contacts with Nebraska which Plaintiff maintains are substantial connections with the state, resulting in each Defendants' purposeful availment of the benefits and protections of the law of Nebraska.

Most obviously, the Defendants agreed to assist a Nebraska law firm in carrying out the terms of the Nebraska contract. Further, under their own admissions Defendants engaged in the following acts (all directly related to the contract at the heart of this lawsuit) which establish the contacts necessary for Nebraska jurisdiction over each Defendant:

- a. Telephone calls to Palagi Firm in Nebraska while carrying out the duties required under the Nebraska contract;
- b. Emails to Palagi Firm in Nebraska in furtherance of the Nebraska contract;
- c. Letters to the Palagi Firm in Nebraska regarding the lawsuit that was the subject of the Nebraska contract;
- d. Meetings in Nebraska with experts and employees of the Palagi Firm in furtherance of the duties assumed by Defendants under the Nebraska contract; and
- e. Engaging in acts that led to a termination of the underlying Nebraska contract by Anderson.

By letter from a Defendant, the Court's attention has been called to the May 30, 2017, United States Supreme Court decision in *BNSF Railway Co. v. Tyrrell*, No. 16-405, holding that § 56 of the Federal Employers'

Liability Act (FELA) does not address personal jurisdiction and thus limiting the forum in which a railroad is subject to suit where the railroad contacts with the forum were not related to the injury before the Court.

The Court held that BNSF was not subject to general personal jurisdiction in Montana on the unique facts presented. The Court acknowledged BNSF's presence and activities in Montana and noted that **those contacts are sufficient to subject it to personal jurisdiction on related claims.** But they do not support personal jurisdiction for unrelated claims like those of the plaintiffs in that particular case, which had "no relationship to anything that occurred or had its principal impact in Montana."

Here, the Plaintiff is claiming contacts that are directly related to the Nebraska contract which serves as the basis for the entire lawsuit. Thus, the BNSF case is not relevant.

Clearly, these Defendants created substantial contacts with the State of Nebraska regarding the contract that is at the heart of the case. Defendants knew they were agreeing to assist a Nebraska law firm with a Nebraska contract and they regularly had substantive contact with Nebraska in carrying out their obligations.

Simply, there are sufficient contacts in the case before this Court. Nebraska's long-arm statute, Neb. Rev. Stat. § 25-536 (Reissue 2008), extends Nebraska's jurisdiction over nonresidents having any contact with or maintaining any relation to the state as far as the U.S. Constitution permits. When a state construes its long-arm statute to confer jurisdiction to the fullest extent permitted by the due process clause, the inquiry collapses into the single question of whether exercise of personal jurisdiction comports with due process. *Abdouch v. Lopez*, 285 Neb. 718, 829 N.W.2d 662 (2013)

In the case before this Court, the Defendants' acts (1) were intentional, (2) were uniquely or expressly aimed at the forum state, and (3) caused harm to the Plaintiff on a Nebraska contract. Additionally, the Nebraska contract is at the heart of the litigation. Under the holdings in cases such as *Freeburg v. Int'l Port Servs.*, No. A-08-576, 2009 Neb. App. LEXIS 33 (Ct. App. Feb. 17, 2009), Defendants are subject to Nebraska jurisdiction.

In *Freeburg*, the Court held that where a Washington corporation faxed information to a travel agent in Omaha, Nebraska, the corporation voluntarily entered into a contract in Nebraska. Thus, in the breach of contract suit, the District Court in Nebraska was permitted to exercise

personal jurisdiction over the Washington corporation under the long-arm statute, Neb. Rev. Stat. § 25-536.

WHEREFORE, having responded to Defendants' Motions, the Plaintiff would move for an Order overruling such motions and for all other relief to which the Plaintiff is properly entitled.

Dated this 15<sup>th</sup> day of **June, 2017**.

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O.,  
Plaintiff,

By: /s/ Ronald J. Palagi  
RONALD J. PALAGI #13206  
THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.  
3131 South 72nd Street  
Omaha, NE 68124  
(402) 397-5000  
rjp@ronaldjpalagi.com  
Attorneys for Plaintiff



**CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the above and foregoing document was electronically filed with the Clerk of the Court this **15<sup>th</sup>** day of **June 2017**, using the e filing system, which sent notification of such filing to attorneys of record.

/s/ Ronald J. Palagi

## Certificate of Service

I hereby certify that on Friday, June 16, 2017 I provided a true and correct copy of the Response to the following:

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Harding, Marc, represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Anderson, Alan, represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Clark, David, H represented by Jabenis, Jon, L (Bar Number: 12002) service method: Electronic Service to lancejj@aol.com

Clark, David, H represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Morgan, S, Reed, represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Morgan, S, R represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Signature: /s/ Palagi, Ronald, (Bar Number: 13206)

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O,

Plaintiff,

vs.

HARDING LAW OFFICE,  
S. REED MORGAN, P.C.,  
DAVID H. CLARK, and  
ALAN ANDERSON,

Defendants.

CASE NO.: **CI 16 326**

**RESPONSE**

COMES NOW Plaintiff and in response to Defendant's Motion to Dismiss, states that the Motion should be overruled as untimely, not in conformity with the Local Rules, and without merit as shown below.

1. Under Local Rule 10-21, all Motions shall be filed within 10 days of oral notification of a party's intent to file the same. In the absence of oral notification, the motion shall be filed within 5 working days of the requested hearing.
2. Defendant's Motion to Dismiss Plaintiff's Amended Complaint was filed one working day before the hearing.
3. With said Motion, Defendant filed an "Affidavit of S. Reed Morgan in Support of his Motion to Dismiss"

4. Under § 6-1112(b)(6) of the rules of pleading, when a matter outside the pleadings is presented by the parties and accepted by the trial court, a defendant's motion to dismiss is to be treated as a motion for summary judgment.

5. If a motion to dismiss is treated as one for summary judgment, then, under Neb. Rev. Stat. § 25-1332 (Reissue 2008), the movant carries the burden of showing that there is no genuine issue as to any material fact.

6. The evidence of record does not support the assertion that there is no genuine issue as to any material fact and Defendant has made no further showing that a motion for summary judgment is proper.

7. Furthermore, pursuant to *Neb. Rev. Stat. § 25-1332*, a motion for summary judgment must be served at least 10 days before the time fixed for the hearing.

8. Finally, the Court should note that Plaintiff's Amended Complaint sets forth the minimum contacts sufficient to establish personal jurisdiction in Nebraska. Defendant entered into an agreement with a Nebraska attorney regarding a contract signed in Nebraska, communicated with and appeared in Nebraska and had other contacts, all of which are set forth in the Amended Complaint.

WHEREFORE, Plaintiff moves this Court for an Order overruling  
Defendant's Motion to Dismiss.

Dated this **30th** day of **May, 2017**.

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.,  
L.L.O, Plaintiff,

By: /s/ Ronald J. Palagi  
RONALD J. PALAGI #13206  
THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.  
3131 South 72nd Street  
Omaha, NE 68124  
(402) 397-5000  
rjp@ronaldjpalagi.com  
Attorneys for Plaintiff

## NOTICE OF HEARING

Take Notice that hearing on the above is scheduled before the Honorable Stephen R. Illingworth of the Adams County Courthouse on the 30<sup>th</sup> day of **May 2017**, at **1:00 p.m.**, or as soon thereafter as counsel may be heard.

/s/ Ronald J. Palagi

## CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the above and foregoing document was electronically filed with the Clerk of the Court this 30<sup>th</sup> day of **May 2017**, using the efilng system, which sent notification of such filing to attorneys of record.

/s/ Ronald J. Palagi

## Certificate of Service

I hereby certify that on Tuesday, May 30, 2017 I provided a true and correct copy of the Response to the following:

Anderson, Alan, represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan, S, R represented by Pro Se Party (Bar Number: 2) service method: Email

Clark, David, H represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan, S, Reed, represented by Pro Se Party (Bar Number: 2) service method: Email

Clark, David, H represented by Jabenis, Jon, L (Bar Number: 12002) service method:  
Electronic Service to lancejj@aol.com

Harding, Marc, represented by Pro Se Party (Bar Number: 2) service method: Email

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: Email

Signature: /s/ Palagi, Ronald, (Bar Number: 13206)

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O. )

Plaintiff, )

CASE NO. CI 16-326

vs. )

MARC HARDING, HARDING LAW )  
OFFICE, S. REED MORGAN, S. )  
REED MORGAN, P.C., DAVID H. )  
CLARK, and ALAN ANDERSEN, )

Defendants. )

**MEMORANDUM IN SUPPORT OF  
DEFENDANT S. REED MORGAN, P.C.  
MOTION TO DISMISS AMENDED COMPLAINT**

The defendant S. Reed Morgan, P.C. ("Morgan P.C."), through undersigned counsel, moves this Honorable Court pursuant to Neb. Ct. R. of Pldg. 12 (b)(2) to dismiss this action for lack of personal jurisdiction over his person or, alternatively, pursuant to Neb. Ct. R. of Pldg. 12 (b)(4) and (5) for insufficiency of process and insufficiency of service of process, or, alternatively, for failure to state a claim upon which relief may be granted. Morgan P.C. does not have sufficient contacts with the State of Nebraska to sustain either general or specific jurisdiction over his person. Moreover, the Amended Complaint of the Law Offices of Ronald J. Palagi, P.C., L.L.O. ("Palagi") fails to comply with the requirement of Neb. Ct. R. of Pldg. 8(a)(2) to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" and omits alleging necessary elements of its apparent claim that Morgan P.C. undertook to perform an oral contract with Palagi.



## I. Background and Standard of Review

### A. Background

Mr. Palagi's original complaint named "S. Reed Morgan dba S. Reed Morgan, P.C." as a defendant, bringing his action against S. Reed Morgan ("Mr. Morgan") individually. Only Mr. Morgan was served with process, and Morgan P.C. has neither appeared nor been served with process in this action. When Mr. Morgan moved to dismiss this action after being served with the original complaint on the grounds that the court lacks jurisdiction over his person, and, alternatively, for defects in Palagi's pleading, the plaintiff dismissed Mr. Morgan individually. Next, Mr. Palagi amended his complaint to sue Mr. Morgan's law firm, which is a Texas professional corporation. Mr. Morgan is not named as an individual defendant in the Amended Complaint. The only service Morgan, P.C. has received in this action is a copy of Palagi's Amended Complaint via ordinary mail. Since Palagi had complained that Mr. Morgan was appearing *pro se*, the inference that the shift in his litigious target is merely a subterfuge to force Mr. Morgan to retain Nebraska counsel, and thus drive up expenses, is clear, and so it should be regarded as a violation of Neb. Rev. Stat. 25-824(1).

There is little difference between Mr. Palagi's Amended Complaint and his original complaint apart from his change of targeted defendants from the individual lawyers that he claimed tortiously interfered with his contract with the plaintiff in the Iowa case, to their corporate entities. The interference was allegedly with Mr. Palagi's former client, Mr. Alan Anderson, now allegedly interfered with by their law firms. The Amended Complaint is the same, but for a handful of vague, conclusory allegations intended to create the illusion that this Court has personal jurisdiction over the out-of-state law

firms, including Morgan P.C. Those allegations do not meet the criteria for personal jurisdiction carefully articulated by the Nebraska Supreme Court in *Quality Pork Internat. v. Rupari Food Servs.*, 267 Neb. 474, 675 N.W.2d 642 (2004), *Diversified Telecom Servs. v. Clevinger*, 268 Neb. 388, 683 N.W.2d 338 (2004), *Brunkhardt v. Mountain West Farm Bureau Mut. Ins.*, 269 Neb. 222, 691 N.W.2d 147 (2005), *In re Petition of SID No. 1*, 270 Neb. 856, 708 N.W.2d 809 (2006), *VKGS v. Planet Bingo*, 285 Neb. 599, 828 N.W.2d 168 (2013), and *Abdouch v. Lopez*, 285 Neb. 718, 829 N.W.2d 662 (2013).

**B. Standard of Review**

Because the Nebraska Court Rules of pleading are modeled after the Federal Rules of Civil Procedure, the Court looks to the federal decisions for guidance in the absence of settled authority from the state's courts of appeal. *Anderson v. Wells Fargo Fin. Accept.*, 269 Neb. 595 (Neb. 2005); *Kellogg v. Nebraska Dept. of Corr. Servs.*, 690 N.W.2d 574 (Neb. 2005). The Supreme Court of Nebraska has applied this principle to motions to dismiss brought pursuant to Rule 12(b)(2). *Ameritas Inv. Corp. v. McKinney*, 694 NW 2d 191, 198 (Neb. 2005). It is settled authority in Nebraska that in order to subject a defendant to a judgment *in personam*, if the defendant is not within the territory of the forum, due process requires that such defendant have certain minimum contacts with the forum state so that maintenance of the suit does not offend traditional notions of fair play and substantial justice, and, therefore, the *in personam* jurisdiction of Nebraska courts is coeval with the Due Process Clause of the United States Constitution. *Quality Pork Internat. v. Rupari Food Servs.*, *supra*; *Diversified Telecom Servs. v. Clevinger*, *supra*; *Brunkhardt v. Mountain West Farm Bureau Mut. Ins.*, *supra*;

*In re* Petition of SID No. 1, *supra*; VKGS v. Planet Bingo, *supra*; Abdouch v. Lopez, *supra*.

**II. The Court lacks *in personem* jurisdiction over S. Reed Morgan, P.C.**

Mr. Palagi has attempted to cure the defects of his original complaint herein, which included no allegations as to this Court's personal jurisdiction over any party, including Mr. Morgan individually, by adding conclusory allegations that still fail to even allege the constitutionally required minimum contacts with Nebraska. It is "black letter" law that the party seeking to establish a court's *in personam* jurisdiction carries the burden of proof, and the burden does not shift to the party challenging jurisdiction. *Ameritas Inv. Corp. v. McKinney*, *supra* at 198, citing *Epps v. Stewart Information Services Corp.*, 327 F.3d 642 (8th Cir.2003). When considering a motion to dismiss a party from a case for lack of personal jurisdiction under Rule 12(b)(2), the threshold question is whether the nonmoving party has established a *prima facie* case of personal jurisdiction *de novo*. *Ameritas Inv. Corp. v. McKinney*, *supra* at 198, citing *Stanton v. St. Jude Medical, Inc.*, 340 F.3d 690 (8th Cir.2003) and *Epps v. Stewart Information Services Corp.*, *supra*.

In *Quality Pork Internat. v. Rupari Food Servs.*, *supra*, the Nebraska Supreme Court provided a summary of the Due Process considerations for personal jurisdiction over a nonresident defendant to which it has returned in the several cases cited above. Due Process, the Court explained, requires that the defendant's minimum contacts with the forum state be such that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.*, citing *Internat. Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945). See, also, *Williams v. Gould, Inc.*,

232 Neb. 862, 443 N.W.2d 577 (1989); *McGowan Grain v. Sanburg*, 225 Neb. 129, 403 N.W.2d 340 (1987).

In *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985), the Court explained the protection afforded by due process as it relates to personal jurisdiction:

The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful "contacts, ties, or relations." *International Shoe Co. v. Washington*, 326 U. S., at 319. By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," [citation omitted] the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit," *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 297 (1980).

The Court held that this "fair warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of the forum, *Keeton v. Hustler Magazine, Inc.*, 465 U. S. 770, 774 (1984), and the litigation results from alleged injuries that "arise out of or relate to" those activities, *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U. S. 408, 414 (1984).  
*Burger King Corp.*, 471 U.S. at 472-73.

Just as Mr. Morgan is a resident of Texas, as can be seen from Mr. Morgan's Affidavit, attached hereto as Exhibit A and incorporated herein by reference ("the Morgan Affidavit"), his law firm, S. Reed Morgan, P.C. is a Texas professional corporation with no office or operations in Nebraska. Palagi lists the following bare and conclusory allegations to support his assertion that S. Reed Morgan "purposefully availed" himself of Nebraska's jurisdiction:

a. Telephone calls to Palagi Firm in Nebraska while carrying out

- the duties required under the Nebraska contract;
- b. Emails to Palagi Firm in Nebraska in furtherance of the Nebraska contract;
- c. Letters to the Palagi Firm in Nebraska regarding the lawsuit that was the subject of the Nebraska contract;
- d. Meetings in Nebraska with experts and employees of the Palagi Firm in furtherance of the duties assumed by Defendants under the Nebraska contract; and
- e. Actions causing tortious consequences within Nebraska.

Palagi's original complaint and his Amended Complaint imply, without pleading any concise statement that Morgan P.C. entered into a contract with Palagi in Nebraska to represent Alan Anderson in Iowa. Mr. Palagi, having pleaded no factual basis for such an inference, fails to disclose in his Amended Complaint that Morgan P.C. agreed with Palagi's client, Alan Anderson, who was at all times material and remains a resident of Iowa, to provide trial consultation and representation services to Anderson, not Palagi. That by providing these services to Andersen in Iowa, Mr. Palagi was benefited by Mr. Morgan's expertise, hardly transforms the contract with an Iowa resident to try a case in Iowa against an Iowa defendant into a contract in Nebraska. Nor is it a "purposeful availment" by Morgan P.C. of Nebraska's jurisdiction over a matter than concerned only Iowa residents and claims that arose between them in Iowa. Under the canons of ethics, Morgan had to have a contingency fee contract with the client, and Mr. Palagi was removed from the case by the Iowa trial judge.

Any contact Morgan had with Nebraska relevant to Palagi's contentions are *de minimis*. See, Exhibit "A," the Morgan Affidavit. Morgan has had only intermittent business contacts with Nebraska during his career as a trial lawyer. See, Exhibit "A," the Morgan Affidavit. But Palagi would have this Court exercise its jurisdiction over Morgan through Nebraska's long-arm statute, Neb.Rev.Stat. § 25-536 because it provides, in

pertinent part, that a Nebraska court may exercise personal jurisdiction over a person who has "contact with or maintains any other relation to this state to afford a basis for the exercise of personal jurisdiction consistent with the Constitution of the United States." § 25-536(2). This section extends Nebraska court's jurisdiction over nonresidents having any contact with or maintaining any relation to this state as far as the U.S. Constitution permits. *Brunkhardt v. Mountain West Farm Bureau Mut. Ins.*, 269 Neb. 222, 691 N.W.2d 147 (2005). Thus, the question presented by the long-arm statute is, generally, whether the exercise of personal jurisdiction would offend federal principles of due process. *Id.*

The Due Process Clause of the United States Constitution protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he or she has established no meaningful contacts, ties, or relations. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). The defendant's Due Process rights requires the Court to determine whether the defendant's minimum contacts with the forum state are such that the defendant should reasonably anticipate being haled into court there. *Kugler Co. v. Growth Products Ltd.*, 265 Neb. 505, 658 N.W.2d 40 (2003). That analysis applies "[w]here a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there...." (Emphasis supplied.) See *Burger King Corp. v. Rudzewicz*, 471 U.S. at 472, 105 S.Ct. 2174. In *Burger King Corp. v. Rudzewicz*, 471 U.S. at 472 n. 14, 105 S.Ct. 2174, however, the U.S. Supreme Court noted that "because the personal jurisdiction requirement is a waivable right, there are a "variety of legal arrangements" by which a litigant may give "express or implied consent to the personal jurisdiction of the court."

Palagi has not effectively alleged – nor can he so allege – that Mr. Morgan’s law firm has entered into any such arrangement.

The only operative allegation against Morgan in the complaint pleads that he, with two other lawyers, knew of Palagi’s alleged agreement with the Iowa plaintiff, Mr. Anderson, to prosecute a case in Iowa against Iowa defendants, and “knowingly, intentionally, and maliciously endeavored and sought to engage in acts that would cause irreparable damage” to that agreement. Palagi’s attempt to put a little meat on the bare bones of his original complaint fails to address how Mr. Morgan’s Texas law firm, by agreeing with Palagi to try one case in Iowa for an Iowa plaintiff against an Iowa defendant was an arrangement implying personal jurisdiction in Nebraska.

Although Palagi might argue – although he has not so pleaded in two attempts – that the foreseeability of causing injury Nebraska should be sufficient to establish minimum contacts here, the United States Supreme Court has consistently held that this kind of foreseeability is not a “sufficient benchmark” for exercising personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 295 (1980). Instead, “the foreseeability that is critical to due process analysis . . . is that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” *Id.* at 297. In defining when it is that a potential defendant should “reasonably anticipate” out-of-state litigation, the Supreme Court relies on the “purposeful availment” doctrine of *Hanson v. Denckla*, 357 U. S. 235, 253 (1958):

The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant’s activity, **but it is essential in each case that there be some act by which the defendant purposefully avails itself**

**of the privilege of conducting activities within the forum State**, thus invoking the benefits and protections of its laws. [emphasis added]

This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts, *Keeton v. Hustler Magazine, Inc.*, 465 U. S. 770, 774 (1984), *World-Wide Volkswagen Corp. v. Woodson, supra*, at 299. Jurisdiction is only proper where the contacts proximately result from actions by the defendant himself that create a "substantial connection" with the forum State. *McGee v. International Life Insurance Co.*, 355 U. S. 220, 223 (1957). Thus, where the defendant "deliberately" has engaged in significant activities within a State, *Keeton v. Hustler Magazine, Inc., supra*, at 781, or has created "continuing obligations" between himself and residents of the forum, *Travelers Health Assn. v. Virginia*, 339 U. S. 643, 648 (1950), he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Clearly, Palagi has still pleaded no basis for general *in personam* jurisdiction over Mr. Morgan or his law firm in Nebraska that would arise from the substantial activity and purposeful availment required by the Supreme Court so to do. No connection to Nebraska is found in the complaint apart from same activity secondary to the litigation in Iowa that arose solely because Palagi happened to be there and not in Iowa. Mr. Morgan's original affidavit should have obviated any possibility of Palagi's amending his claims to assert the required jurisdictional facts, but he now would try to shoe-horn his way into jurisdiction with a list of miscellany that fails to do more than hint at a causal



relationship between the contacts between Mr. Morgan's law firm and the alleged tortious interference with his contract.

**III. Palagi has failed serve his new Defendant, S. Reed Morgan, P.C. with sufficient process.**

As can be seen from Mr. Morgan's affidavit, Palagi simply mailed a copy of his Amended Complaint to Mr. Morgan's law firm in Comfort, Texas. Neb.Rev.Stat. §25-502.01 requires the plaintiff who has commenced an action against a defendant to file with the clerk of the court a *praecipe* for summons stating the name and address of each party to be served and the manner of service for each party. Morgan P.C. has not been served with such a summons, but it is believed that Palagi has mailed Interrogatories and Requests for Production to an invalid address for Morgan P.C.

The defense of insufficiency of process differs from insufficiency of service of process: the former challenges the content of a summons; the latter challenges the manner or method of service. *Holmstedt v. York County Jail Supervisor*, 739 NW 2d 449 – Neb.App. 2007) citing *Heise v. Olympus Optical Co., Ltd.*, 111 F.R.D. 1 (N.D.Ind.1986). Valid service of process is a prerequisite to the court's exercise of personal jurisdiction. *Omni Capital Int'l v. Rudolf Wolff & Co.*, 484 U.S. 97, 108 S.Ct. 404, 98 L.Ed.2d 415 (1987). It necessarily follows that if a valid summons has not been served properly on the designated defendant, or if that process is insufficient or if that service was insufficient, then the court does not have jurisdiction over the person of that particular defendant. Therefore, the Court may treat Morgan P.C.'s motion to dismiss pursuant to Rule 12(b)(2), (4), and (5) together. The Amended Complaint must be dismissed as to Morgan P.C.

#### **IV. The Complaint fails to state a claim for relief.**

There are two fundamental flaws in Palagi's complaint. He fails to plead as required by Rule 8(a) all of the elements of either the contract that he claims Morgan P.C. entered or the tort of tortious interference. Rule 8(a)(2) requires a plaintiff to plead in the complaint "a short and plain statement of the claim showing that the pleader is entitled to relief." The Nebraska Supreme Court in *Doe v. Bd. of Regents of Univ. of Nebraska*, 788 NW 2d 264 (Neb. 2010) specifically adopted the standards for applying Rule 8(a)(2) when challenged by a Rule 12(b)(6) motion that the United States Supreme Court articulated in *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). In doing so, the state's high court summarized the standard for applying Rule 12(b)(6):

Accordingly, we hold that to prevail against a motion to dismiss for failure to state a claim, a plaintiff must allege sufficient facts, accepted as true, to state a claim to relief that is plausible on its face. In cases in which a plaintiff does not or cannot allege specific facts showing a necessary element, the factual allegations, taken as true, are nonetheless plausible if they suggest the existence of the element and raise a reasonable expectation that discovery will reveal evidence of the element or claim.

78 NW 2d at 278.

To succeed on a claim for tortious interference with a business relationship or expectancy, a plaintiff must prove (1) the existence of a valid business relationship or expectancy, (2) knowledge by the interferer of the relationship or expectancy, (3) an unjustified intentional act of interference on the part of the interferer, (4) proof that the interference caused the harm sustained, and (5) damage to the party whose relationship or expectancy was disrupted. *Aon Consulting v. Midlands Financial*, 748

NW 2d 626 (Neb. 2008); *Macke v. Pierce*, 266 Neb. 9, 661 N.W.2d 313 (Neb. 2003), citing *Huff v. Swartz*, 258 Neb. 820, 606 N.W.2d 461 (Neb. 2000). Whether a liberal reading of Palagi's allegations in paragraph 7 of the complaint could find that of the five elements of the cause of action, sufficient notice is given of four, the language, "endeavored and sought to (sic) engage in acts that would cause irreparable damage" contradicts the required allegation that the defendants' acts caused the harm sustained. Moreover, paragraph 7 is devoid of sufficient facts to suggest any of the elements of the cause of action other than the defendants' knowledge that Palagi had entered an agreement with Mr. Andersen. That defendants had knowledge of its terms does not appear in the plaintiff's spare allegations, and on the critical element of unjustified interference Palagi is silent. There simply must be more meat on the bones of Palagi's claim to move forward.

**V. The venue in which this action is laid is improper**

The complaint herein includes no allegations as to venue, and the plaintiff has laid its action in an improper venue. Nebraska Revised Statute 25-403.01 provides:

Any action, other than the actions mentioned in sections 25-401 to 25-403, may be brought (1) in the county where any defendant resides, (2) in the county where the cause of action arose, (3) in the county where the transaction or some part of the transaction occurred out of which the cause of action arose, or (4) if all defendants are nonresidents of this state, in any county. When an action has been commenced in any other county, the court in which the action has been commenced shall have jurisdiction over the action, but upon timely motion by a defendant, the court shall transfer the action to the proper court in a county in which such action might have been properly commenced. The court in the county to which the action is transferred, in its discretion, may order the plaintiff or the plaintiff's attorney to pay to the defendant all reasonable expenses, including attorney's fees, incurred by the defendant because of the improper venue or in proceedings to transfer the action.

The complaint includes in paragraph 4 a defendant who is a resident of this state, David H. Clark. Plaintiff, as can be seen not from its pleadings but from the signature block on the complaint is a resident of the City of Omaha in Douglas County, Nebraska. The defendant David H. Clark, resides in Omaha, Nebraska. Exhibit A, Affidavit of S. Reed Morgan to the allegations of the complaint relate only to the purported breach of a contract between the defendant Alan Andersen, a resident of the State of Iowa, Exhibit A, Affidavit of S. Reed Morgan, and the other defendants' interference with that contract. As can be seen from the allegations of the complaint, the subject matter of that contract was a medical malpractice case filed and tried in Iowa. The only proper venue provided by Neb.Rev.Stat. 25-403.01 is Douglas County, Nebraska, in the 4<sup>th</sup> Judicial District Court. Pursuant to that statute, this case must be transferred to the 4<sup>th</sup> Judicial District Court.

#### **VI. Conclusion**

Palagi's complaint is entirely defective in both its failure to disclose a basis for the court to exercise personal jurisdiction over Morgan and in its failure to plead either the basics elements of a tort or the amount of its alleged special damages. Because it is clear that Palagi cannot sustain its burden of proof of a basis for the Court's exercise of personal jurisdiction, the action should be dismissed as to Morgan without considering the grounds to do so pursuant to Rule 12(b)(6). In the alternative, should the court not dismiss on jurisdictional grounds, it should fine the complaint deficient and dismiss it unless amended, so it can be determined whether federal removal jurisdiction exists.

Dated May 26, 2017.

S. REED MORGAN, P.C.,  
Defendant

By: /s/ Steven H. Howard, #18582  
Steven H. Howard #18582  
Dowd Howard & Corrigan, L.L.C.  
1411 Harney Street, Suite 100  
Omaha, Nebraska 68102  
(402) 341-1020  
ATTORNEYS FOR DEFENDANT  
S. REED MORGAN, P.C.

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the above and foregoing document was served by email or regular U.S. mail, postage prepaid on this 26 day of May, 2017 to the following interested parties:

Ronald J. Palagi  
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/s/ Steven H. Howard, #18582

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O. )  
 )  
Plaintiff, )

vs. )

CASE NO. D14CI160000326

MARC HARDING, HARDING LAW )  
OFFICE, S. REED MORGAN, S. )  
REED MORGAN, P.C., DAVID H. )  
CLARK, and ALAN ANDERSEN, )  
Defendants. )

AFFIDAVIT OF S. REED MORGAN IN SUPPORT OF HIS MOTION TO DISMISS  
STATE OF TEXAS  
COUNTY OF KENDALL

BEFORE ME, the undersigned authority, personally came and appeared S. Reed Morgan, who did depose and say that:

1. I am of the full age of majority and competent to make this affidavit upon his personal knowledge of the facts related herein.
2. I resides and practice law in the State of Texas, and has done so for 23 years. I am licensed to practice in Texas and Louisiana.
3. I was retained by Alan Andersen, plaintiff in a medical malpractice case, as lead counsel in Polk County District Court, Iowa, and appeared for Mr. Andersen in that cause at trial ("the Iowa Med-Mal Case).
4. Mr. Andersen was at all times pertinent and remains a resident of the State of Iowa.

**EXHIBIT A**

5. In connection with my representation of Mr. Andersen in the Iowa Med Mal Case, this matter was litigated in Polk County, Iowa. I had no occasion to depose anyone in Nebraska, or otherwise to litigate the case in Nebraska.

6. My co-counsel in the Iowa Med Mal Case, Marc Harding of the Harding Law Office, resides and practices law in Iowa.

7. The jury in the Iowa Med Mal Case returned a defense verdict pursuant to which the Iowa Court adjudged that Mr. Andersen take nothing.

8. I have no office, no business, no residence in Nebraska, and I do not have a license to practice law in Nebraska.

9. The only occasions in which I did business on this case in Nebraska was to meet with a nurse in Ron Palagi's office and to have lunch with Mr. Palagi and an expert witness. In addition, I have tried one case in federal court in Nebraska and was co-counsel on another case about five (5) years ago.

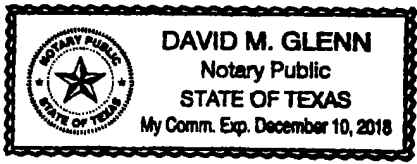
10. The allegations in the complaint in the above encaptioned cause that include David H. Clark ("Clark") are false: (a) Clark never made an appearance in the Iowa Med Mal Case, (b) Clark is not a member of the Iowa bar and never filed a motion in the Iowa Med Mal Case to be admitted *pro hac vice* or on any other basis to appear in the case, (c) Clark is a fee-based contract consultant of Morgan's on issues of rhetoric and does not participate in Morgan's cases in a representative capacity, and (d) Clark never advised Mr. Andersen in any way.

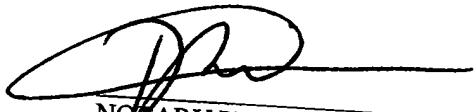
11. Clark resides and practices law in Omaha, Nebraska.

FURTHER AFFIANT SAYETH NAUGHT.

  
S. REED MORGAN

SWORN TO AND SUBSCRIBED BEFORE ME THIS 13<sup>th</sup> DAY OF JANUARY, 2017



  
\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_



## Certificate of Service

I hereby certify that on Tuesday, May 30, 2017 I provided a true and correct copy of the Memorandum to the following:

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: Email

Anderson, Alan, represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan, S, Reed, represented by Pro Se Party (Bar Number: 2) service method: Email

Clark, David, H represented by Jabenis, Jon, L (Bar Number: 12002) service method:  
Electronic Service to lancejjj@aol.com

Ronald J. Palagi, P.C., L.L.O. represented by Palagi, Ronald, (Bar Number: 13206) service  
method: Electronic Service to rjp@ronaldjpalagi.com

Harding, Marc, represented by Pro Se Party (Bar Number: 2) service method: Email

Clark, David, H represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan, S, R represented by Pro Se Party (Bar Number: 2) service method: Email

Signature: /s/ Steven Howard (Bar Number: 18582)

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O. )

Plaintiff, )

CASE NO. CI 16-326

vs. )

MARC HARDING, HARDING LAW )  
OFFICE, S. REED MORGAN, S. )  
REED MORGAN, P.C., DAVID H. )  
CLARK, and ALAN ANDERSEN, )

Defendants. )

**DEFENDANT S. REED MORGAN, P.C.  
MOTION TO DISMISS AMENDED COMPLAINT**

The Defendant S. Reed Morgan, P.C. moves this Honorable Court pursuant to Neb. Ct. R. of Pldg. 12 (b)(2) to dismiss the Plaintiff's action as pleaded in the Amended Complaint filed on or about May 4, 2017, for lack of personal jurisdiction over his person, or, alternatively, pursuant to Neb. Ct. R. of Pldg. 12 (b)(4) or (5) for lack of or insufficiency or service of process, or, alternatively, pursuant to Neb. Ct. R. of Pldg. 12 (b) (6) for failure to state a claim upon which relief may be granted. The grounds for this motion are more fully set forth in this Defendant's attached memorandum.

Dated May 26, 2017.

S. REED MORGAN, P.C.,  
Defendant

By: /s/ Steven H. Howard, #18582  
Steven H. Howard #18582  
Dowd Howard & Corrigan, L.L.C.  
1411 Harney Street, Suite 100  
Omaha, Nebraska 68102  
(402) 341-1020  
ATTORNEYS FOR DEFENDANT  
S. REED MORGAN, P.C.

**NOTICE OF TELEPHONIC HEARING**

You and each of you are hereby notified that a telephone hearing on the foregoing Motion has been scheduled for the 30<sup>th</sup> day of May, 2017 at 1:00 p.m. before the Honorable Stephen R. Illingworth, in the Adams County District Court.

/s/ Steven H. Howard, #18582

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the above and foregoing document was served by email or regular U.S. mail, postage prepaid on this 26<sup>th</sup> day of May, 2017 to the following interested parties:

Ronald J. Palagi  
Donna S. Colley  
3131 South 72<sup>nd</sup> Street  
Omaha, NE 68124  
rjp@ronaldjpalagi.com

Daniel M. Placzek  
P.O. Box 790  
Grand Island, NE 68802-0790  
dplaczek@gilawfirm.com

Jon Lance Jabenis  
1001 Farnam Street, 3<sup>rd</sup> Floor  
Omaha, NE 68102  
lancejj@aol.com

Alan Andersen  
409 Elm Street  
Coon Rapids, IA 50058

Marc Harding  
Harding Law Office  
1217 S.W. Army Road  
Des Moines, IA 50315  
marc@iowalawattorneys.com

/s/ Steven H. Howard, #18582

## Certificate of Service

I hereby certify that on Tuesday, May 30, 2017 I provided a true and correct copy of the Motion-Dismissal to the following:

Anderson,Alan, represented by Pro Se Party (Bar Number: 2) service method: Email

Clark,David,H represented by Jabenis,Jon,L (Bar Number: 12002) service method:  
Electronic Service to lancejjj@aol.com

Ronald J. Palagi, P.C., L.L.O. represented by Palagi,Ronald, (Bar Number: 13206) service  
method: Electronic Service to rjp@ronaldjpalagi.com

Harding,Marc, represented by Pro Se Party (Bar Number: 2) service method: Email

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: Email

Clark,David,H represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan,S,R represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan,S,Reed, represented by Pro Se Party (Bar Number: 2) service method: Email

Signature: /s/ Steven Howard (Bar Number: 18582)

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O,

Plaintiff,

vs.

MARC HARDING, HARDING LAW  
OFFICE, S. REED MORGAN, S.  
REED MORGAN, P.C., DAVID H.  
CLARK, and ALAN ANDERSEN,

Defendants.

CASE NO.: **CI 16-326**

**AMENDED NOTICE OF HEARING**

PLEASE TAKE NOTICE that the hearing on Plaintiff's Motion to Transfer Venue and Dismiss Parties, has been **rescheduled** for **Tuesday, May 30, 2017** at **1:00 p.m., via telephone**, before the Honorable Stephen R. Illingworth, Adams County Courthouse.

DATED this **23<sup>rd</sup>** day of **May, 2017**.

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O,  
Plaintiff,

By: /s/ Ronald J. Palagi

RONALD J. PALAGI #13206

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.

3131 South 72nd Street

Omaha, NE 68124

(402) 397-5000

rjp@ronaldjpalagi.com

Attorneys for Plaintiff

MB

## CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the above and foregoing document was filed electronically on the **23<sup>rd</sup>** day of **May 2017** via the e-filing system, and served on the following parties by U.S. Mail, postage pre-paid:

Marc Harding  
Harding Law Office  
1217 S.W. Army Road  
Des Moines, Iowa 50315

S. Reed Morgan  
S. Reed Morgan P.C.  
413 Eighth Street  
Comfort, Texas 78103

Jon Jabenis  
1001 Farnam Street, 3rd Floor  
Omaha, Nebraska 68102  
Attorney for Defendant Clark

Daniel Placzek  
Leininger, Smith, et al.  
104 No. Wheeler Ave.  
P.O. Box 790  
Grand Island, NE 68802-0790

Alan Anderson  
409 Elm Street  
Coon Rapids, IA 50058

/s/Ronald J. Palagi

## Certificate of Service

I hereby certify that on Wednesday, May 24, 2017 I provided a true and correct copy of the Amended Notice of Hearing to the following:

Morgan,S,Reed, represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Harding,Marc, represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Clark,David,H represented by Jabenis,Jon,L (Bar Number: 12002) service method: Electronic Service to lancejjj@aol.com

Clark,David,H represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Anderson,Alan, represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Morgan,S,R represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Signature: /s/ Palagi,Ronald, (Bar Number: 13206)

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O., )

Case No. CI 16-326

Plaintiff, )

vs. )

MOTION TO DISMISS  
AMENDED COMPLAINT  
AND NOTICE OF HEARING

HARDING LAW OFFICE, )  
S. REED MORGAN, P.C., )  
DAVID H. CLARK, and )  
ALAN ANDERSON, )

Defendants. )

Defendant Harding Law Office moves this Court, pursuant to Neb. Ct. Rule §6-1112 (b)(2), to dismiss Plaintiff's Amended Complaint because this Court lacks personal jurisdiction over this Defendant. In support of this motion, Defendant will offer the Affidavit of Marc Harding dated January 17, 2017. In further support of this motion, Defendant states as follows:

1. Paragraph 3 of Plaintiff's Amended Complaint alleges that this Defendant is an Iowa corporation with its principal place of business in Des Moines, Iowa.

2. Paragraph 12 of Plaintiff's Amended Complaint alleges that the medical malpractice case which is the subject of this action was brought in Polk County District Court.

3. The Polk County District Court in which the medical malpractice lawsuit was brought was located in Polk County, Iowa.

dy



WHEREFORE, Defendant prays that Plaintiff's Amended Complaint be dismissed.

HARDING LAW OFFICE, Defendant

BY LEININGER, SMITH, JOHNSON,  
BAACK, PLACZEK & ALLEN  
104 N. Wheeler Avenue  
P. O. Box 790  
Grand Island, NE 68802-0790  
(308) 382-1930  
dplaczek@gilawfirm.com

By /s/ Daniel M. Placzek  
Daniel M. Placzek, #16641

-----o-----  
NOTICE OF HEARING

TO: THE LAW OFFICES OF RONALD J. PALAGI, P.C., L.L.O., Plaintiff, and  
Donna S. Colley and Ronald J. Palagi, its Attorneys:

You are hereby notified that a hearing on the foregoing Motion to Dismiss Amended Complaint has been scheduled for the 30th day of May, 2017 at 1:00 p.m. The hearing will be held in the County Courtroom of the Honorable Stephen R Illingworth in the Adams County Courthouse, Hastings, Nebraska.

HARDING LAW OFFICE, Defendant

BY LEININGER, SMITH, JOHNSON,  
BAACK, PLACZEK & ALLEN  
104 N. Wheeler Avenue  
P. O. Box 790  
Grand Island, NE 68802-0790  
(308) 382-1930  
dplaczek@gilawfirm.com

By /s/ Daniel M. Placzek  
Daniel M. Placzek, #16641

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2017, I electronically filed the foregoing with the Clerk of the Court using the e-filing system, which sent notification of such filing to the following and by postage prepaid in the United States mail addressed as follows:

Donna S. Colley  
Ronald J. Palagi  
Attorneys at Law  
3131 South 72nd Street  
Omaha, NE 68124  
donna@ronaldjpalagi.com  
rjp@ronaldjpalagi.com

S. Reed Morgan  
d/b/a S. Reed Morgan, P.C.  
413 Eighth Street  
Comfort, TX 78013

Jon L. Jabenis  
Attorney at Law  
1001 Farnam Street, 3rd Floor  
Omaha, NE 68102-1827  
lancejjj@aol.com  
*Represents David H. Clark*

Alan Andersen  
409 Elm Street  
Coon Rapids, IA 50058

By /s/ Daniel M. Placzek  
Daniel M. Placzek, #16641

5461-1/633503

## Certificate of Service

I hereby certify that on Friday, May 19, 2017 I provided a true and correct copy of the Motion Filed to the following:

Ronald J. Palagi, P.C., L.L.O. represented by Palagi,Ronald, (Bar Number: 13206) service method: Electronic Service to rjp@ronaldjpalagi.com

Clark,David,H represented by Jabenis,Jon,L (Bar Number: 12002) service method: Electronic Service to lancejjj@aol.com

Anderson,Alan, represented by Pro Se Party (Bar Number: 2) service method: No Service

Harding,Marc, represented by Pro Se Party (Bar Number: 2) service method: No Service

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: No Service

Morgan,S,R represented by Pro Se Party (Bar Number: 2) service method: No Service

Morgan,S,Reed, represented by Pro Se Party (Bar Number: 2) service method: No Service

Clark,David,H represented by Pro Se Party (Bar Number: 2) service method: No Service

Signature: /s/ Placzek,Daniel,M (Bar Number: 16641)

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O, )

Plaintiff, )  
vs. )

MARC HARDING, HARDING LAW )  
OFFICE, S. REED MORGAN, S. )  
REED MORGAN, P.C., DAVID H. )  
CLARK, and ALAN ANDERSEN, )

Defendants. )

CASE NO.: **CI 16-326**

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that hearing on Plaintiff's Motion to Transfer  
Venue and Dismiss Parties is hereby set for **May 18, 2017 at 10:30 a.m.**,  
via telephone, before the Honorable Stephen R. Illingworth, Adams County  
Courthouse.

DATED this 10<sup>th</sup> day of May, 2017.

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O,  
Plaintiff,

By:  /s/ Ronald J. Palagi

RONALD J. PALAGI #13206

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.

3131 South 72nd Street  
Omaha, NE 68124

(402) 397-5000

rjp@ronaldjpalagi.com

Attorneys for Plaintiff

## CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the above and foregoing document was filed electronically on the 10<sup>th</sup> day of May 2017 via the e-filing system, and served on the following parties by U.S. Mail, postage pre-paid:

Marc Harding  
Harding Law Office  
1217 S.W. Army Road  
Des Moines, Iowa 50315

S. Reed Morgan  
S. Reed Morgan P.C.  
833 Hwy 473  
Comfort, Texas 78103

Jon Jabenis  
Attorney at Law  
1001 Farnam Street  
3rd Floor  
Omaha, Nebraska 68102  
Attorney for Defendant Clark

/s/Ronald J. Palagi

## Certificate of Service

I hereby certify that on Wednesday, May 10, 2017 I provided a true and correct copy of the Notice-Hearing to the following:

Harding, Marc, represented by Pro Se Party (Bar Number: 2) service method: Email

Clark, David, H represented by Pro Se Party (Bar Number: 2) service method: Email

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan, S, Reed, represented by Pro Se Party (Bar Number: 2) service method: Email

Clark, David, H represented by Jabenis, Jon, L (Bar Number: 12002) service method:  
Electronic Service to lancejji@aol.com

Morgan, S, R represented by Pro Se Party (Bar Number: 2) service method: Email

Anderson, Alan, represented by Pro Se Party (Bar Number: 2) service method: Email

Signature: /s/ Palagi, Ronald, (Bar Number: 13206)

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O.

**FILED**

CASE NO.: CI 16 326

2017 MAY -9 P 4: 12

Plaintiff,  
vs.

ADAMS COUNTY **AMENDED**  
CLERK OF DIST. COURT JOURNAL ENTRY  
AND ORDER

MARC HARDING, HARDING  
LAW OFFICE, S. REED MORGAN,  
S. REED MORGAN, P.C., DAVID  
H. CLARK, and ALAN ANDERSON,

Defendants.

This matter came before the court on May 2, 2017 for telephonic hearing before the undersigned Judge. The Plaintiff, Ron Palagi, was represented by Donna Colley, and the defendants Reed Morgan and Marc Harding represented themselves and their offices. The issue was the motions to dismiss filed by the Defendants, alleging that there was no jurisdiction over them personally. The Court asked the Defendants to address the issues, but Ms. Colley interrupted to state that the initial Ron Palagi filings were defective, that they needed to be repleaded, and that the Defendants were asking for summary judgment, which shifted the burden from the Plaintiff to show minimum contacts, to the Defendants to show there was no reasonable way the Plaintiff could possibly prevail. She asked for time to replead, and further raised the new issue to the Court of whether the Defendants could represent themselves without being licensed in Nebraska.

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The Court heard brief arguments, and noted that the Plaintiff would be allowed to replead, that there was an issue over why the Plaintiff filed in Adams County or even in Nebraska, and that the Defendants could represent themselves, and possibly their offices, in the litigation. Donna Colley asked if she could prepare a proposed order, and that was granted, but no other orders were entered. Argument was heard and the Court being duly and sufficiently informed, HEREBY ORDERS:

1. Plaintiff's Motion for Leave to file an Amended Complaint is  
GRANTED. *Defendants were granted leave to file answer or otherwise plead within 30 days. SRE*
2. Defendants' Motions to Dismiss are HELD IN ABEYNCE  
PENDING FURTHER REVIEW.
3. The May 9, 2017 pretrial conference is cancelled.

SO ORDERED, this 9 day of **May**, 2017.



Honorable Stephen Illingsworth



STATE OF NEBRASKA

COUNTY OF ADAMS

I hereby certify that on May 9, 2017, a true and correct copy of the foregoing Amended Journal Entry and Order was served upon each of the following persons by sending the same via e-mail to attorneys and via first Class United States Mail to each individual as set forth below:

MR. RONALD J PALAGI  
@ sue@ronaldjpalagi.com

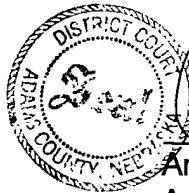
MR. MARC S HARDING  
ATTORNEY AT LAW  
1217 ARMY POST ROAD  
DES MOINES IOWA 50315-5596


MR. JON L JABENIS  
@ lancejj@aol.com

HARDING LAW OFFICE  
1217 ARMY POST ROAD  
DES MOINES IOWA 50315-5596

MR. S REED MORGAN  
@ rmtrialfirm@gmail.com

S. R. MORGAN  
d/b/a S. REED MORGAN PC  
413 8TH STREET  
COMFORT TX 78013



  
Amanda L Bauer  
Adams County District Court

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O, )

Plaintiff, )  
vs. )

HARDING LAW OFFICE, )  
S. REED MORGAN, P.C., )  
DAVID H. CLARK, and )  
ALAN ANDERSON, )

Defendants. )

**CASE NO.: CI 16 326**

**NOTICE OF SERVICE**

TO: **Marc Harding**  
Harding Law Office  
1217 S.W. Army Road  
Des Moines, IA 50315

**S. Reed Morgan**  
S. Reed Morgan, P.C.  
413 Eighth Street  
Comfort, TX 78013

David Clark  
By and through his attorney of record:  
**Jon L. Jabenis**  
1001 Farnam Street, 3rd Floor  
Omaha, NE 68102

It is hereby certified that accurate copies of the following documents  
were served by U.S. mail, postage prepaid:

1. Requests for Production
2. Interrogatories

gm

Dated this 5<sup>th</sup> day of May, 2017.

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O, Plaintiff,

BY: /s/Donna S. Colley  
DONNA S. COLLEY # 21441  
THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.  
3131 South 72nd Street  
Omaha, NE 68124  
(402) 397-5000  
donna@ronaldipalagi.com

Attorneys for Plaintiff

cc: Alan Andersen  
409 Elm Street  
Coon Rapids, Iowa 50058

## Certificate of Service

I hereby certify that on Friday, May 05, 2017 I provided a true and correct copy of the Notice-Service to the following:

Harding, Marc, represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Anderson, Alan, represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Morgan, S, R represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Clark, David, H represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Morgan, S, Reed, represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Clark, David, H represented by Jabenis, Jon, L (Bar Number: 12002) service method: Electronic Service to lancejjj@aol.com

Signature: /s/ Palagi, Ronald, (Bar Number: 13206)

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O,

**FILED**

CASE NO.: CI 16 326

2017 MAY - 2 A 9:53

Plaintiff,

vs.

ADAMS COUNTY  
CLERK OF DIST. COURT

**JOURNAL ENTRY  
AND ORDER**

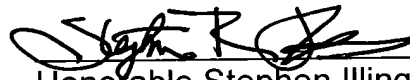
HARDING LAW OFFICE,  
S. REED MORGAN, P.C.,  
DAVID H. CLARK, and  
ALAN ANDERSON,

Defendants.

This matter came before the Court on May 2, 2017 via telephonic conference. Appearing for Plaintiff was Donna Colley, for Defendants, Marc Harding and Steve Morgan. Argument was heard and the Court being duly and sufficiently informed, HEREBY ORDERS:

1. Plaintiff's Motion for Leave to file an Amended Complaint is GRANTED. Defendants shall have 30 days to file their Answers or otherwise respond to any Amended Complaint after the filing thereof.
2. Defendants' Motions to Dismiss are OVERRULED.
3. The May 9, 2017 pretrial conference is cancelled.

So ORDERD, this 2 day of **May**, 2017.



Honorable Stephen Illingsworth

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*[Handwritten mark]*

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O. )

Plaintiff, )

vs. )

HARDING LAW OFFICE, )  
S. REED MORGAN, P.C., )  
DAVID H. CLARK, and )  
ALAN ANDERSON, )

Defendants. )

CASE NO.: CI 16-326

**MOTION TO  
TRANSFER VENUE  
AND DISMISS PARTIES**

COMES NOW Plaintiff, The Law Offices of Ronald J. Palagi, P.C.,  
L.L.O., and hereby moves this Court to move the trial of this action from  
Adams County, Nebraska to Douglas County, Nebraska.

In support of this Motion, Plaintiff shows the Court that all acts that  
form the basis of this lawsuit occurred in Douglas County, Nebraska.

Plaintiff also moves the court to dismiss, without prejudice,  
Defendants Marc Harding and S. Reed Morgan.

Dated this 4<sup>th</sup> day of **May, 2017**.

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O.,  
Plaintiff,

By:

/s/ Ronald J. Palagi  
RONALD J. PALAGI #13206  
THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.  
3131 South 72nd Street  
Omaha, NE 68124  
(402) 397-7990  
rip@ronaldjpalagi.com  
Attorneys for Plaintiff

## Certificate of Service

I hereby certify that on Thursday, May 04, 2017 I provided a true and correct copy of the Motion Filed to the following:

Clark,David,H represented by Jabenis,Jon,L (Bar Number: 12002) service method:  
Electronic Service to lancejjj@aol.com

Morgan,S,Reed, represented by Pro Se Party (Bar Number: 2) service method: Email

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan,S,R represented by Pro Se Party (Bar Number: 2) service method: Email

Harding,Marc, represented by Pro Se Party (Bar Number: 2) service method: Email

Clark,David,H represented by Pro Se Party (Bar Number: 2) service method: Email

Anderson,Alan, represented by Pro Se Party (Bar Number: 2) service method: Email

Signature: /s/ Palagi,Ronald, (Bar Number: 13206)

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O. )

Plaintiff, )

vs. )

HARDING LAW OFFICE, )  
S. REED MORGAN, P.C., )  
DAVID H. CLARK, and )  
ALAN ANDERSON, )

Defendants. )

**CASE NO.: CI 16-326**

**AMENDED COMPLAINT**

**I. PRELIMINARY STATEMENT**

1. This is a civil action in which Plaintiff, The Law Offices of Ronald J. Palagi, P.C., L.L.O., seeks to recover damages incurred as a result of Defendants' tortious interference with a business relationship and breach of contract.



## II. PARTIES

2. Plaintiff, The Law Offices of Ronald J. Palagi, P.C. (hereinafter referred to as "Palagi Firm") is a Nebraska Corporation engaged in the practice of law.

3. Defendant, Harding Law Office (hereinafter referred to as "Harding Firm") is an Iowa corporation with its principle place of business being 1217 S.W. Army Post Road, Des Moines, Iowa 50315.

4. Reed Morgan, P.C. (hereinafter referred to as "Morgan Firm") is a Texas corporation with its principle place of business being 413 Eighth Street, Comfort, Texas 78013.

5. Defendant David H. Clark (hereinafter referred to as "Clark") is an attorney duly authorized to practice law in the state of Nebraska.

6. Defendant Alan Anderson (hereinafter referred to as "Anderson") entered into a contract with Palagi Firm on July 10, 2004 for the purpose of prosecuting a medical malpractice case.

## II. JURISDICTION/VENUE

7. This Court has jurisdiction and venue over the parties to this action under *Neb. Rev. Stat. § 25-536*.

8. In the state of Nebraska, Palagi Firm entered into a contract to provide legal services for Anderson in his personal injury claim.

9. Palagi Firm, while in Nebraska, contacted Defendants Harding Firm, and Morgan Firm, and both Defendants agreed to carry out certain obligations under the Nebraska contract with Anderson, in return for a fee.

10. Unilateral actions by Defendants created substantial connections with the state, resulting in each Defendants' purposeful availment of the benefits and protections of the law of Nebraska.

11. Defendants engaged in one or more of the following acts which establish the contacts necessary for Nebraska jurisdiction over each Defendant:

- a. Telephone calls to Palagi Firm in Nebraska while carrying out the duties required under the Nebraska contract;
- b. Emails to Palagi Firm in Nebraska in furtherance of the Nebraska contract;
- c. Letters to the Palagi Firm in Nebraska regarding the lawsuit that was the subject of the Nebraska contract;
- d. Meetings in Nebraska with experts and employees of the Palagi Firm in furtherance of the duties assumed by Defendants under the Nebraska contract; and
- e. Actions causing tortious consequences within Nebraska.

### III. STATEMENT OF THE CASE

#### A. First Cause of Action: Tortious Interference With A Contract

12. Prior to trial of the medical malpractice case, entitled *Anderson v. Khanna, et al.*, Defendants Harding, Morgan, and Clark entered an appearance with the Polk County District Court for the purpose of participating in the trial.

13. Defendants Harding, Morgan, and Clark knew Palagi Firm had an Agreement with Defendant Anderson and knowingly, intentionally, and maliciously endeavored and sought to engage in acts that would cause irreparable damage to the Agreement between Palagi Firm and Defendant Anderson.

14. As a result of the acts of Defendants Harding, Morgan, and Clark, on July 21, 2014 Palagi Firm received notice from Defendant Anderson that he was terminating his Agreement with Palagi Firm.

#### B. Second Cause of Action: Breach of Contract

15. When Defendant Anderson entered into the Agreement with The Firm on July 10, 2004 he agreed to the following provisions:

“In the event Client should abandon the claim or dismiss The Law Offices before an offer of settlement, or before a judgment or verdict has been rendered by a judge or jury, Client hereby agrees to pay The Law Offices on a *quantum meruit* basis, at the rate of Two Hundred Seventy-five Dollars (\$275.00) per hour for attorney time and Seventy-five Dollars (\$75.00) per hour for paralegal time for all work done up to that time”.

"In the event Client dismisses The Law Offices after Client receives an offer of settlement on the claim, Client agrees to pay The Law Office an attorney fee at forty percent (40%) of the total offer, and all costs advanced within thirty (30) days from the date of dismissal".

[If] sums payable under this Agreement become the subject of a dispute, including litigation, your signature on this Agreement acknowledges our (Palagi Firm) right to recover from you (Anderson) our reasonable attorneys' fees, costs, and expert witness fees that may be incurred in collecting any sums due as a result of services rendered to you under the terms of this Agreement".

16. Defendant Anderson, by engaging in the conduct described above, has breached the Agreement existing between Palagi Firm and Defendant Anderson, thereby denying rightful benefits to Palagi Firm.

#### **IV. INJURIES AND DAMAGES**

17. Defendants' tortious interference with a contract, and breach of contract has caused harm to Palagi Firm in an amount that exceeds \$555,000.00, which includes costs of unpaid attorney fees, paralegal fees, expert fees and failure to reimburse costs advanced.

**V. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants for payment of attorney fees, paralegal fees, and reimbursement of costs advanced, as well as all other damages permitted under the law and supported by the facts that are established at trial along with all allowable costs of this action.

Dated this 4<sup>th</sup> day of May, 2017.

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O,  
Plaintiff,

By: /s/ Ronald J. Palagi  
RONALD J. PALAGI #13206  
THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.  
3131 South 72nd Street  
Omaha, NE 68124  
(402) 397-7990  
rip@ronaldjpalagi.com

Attorneys for Plaintiff

## Certificate of Service

I hereby certify that on Thursday, May 04, 2017 I provided a true and correct copy of the Amended Complaint to the following:

Clark,David,H represented by Jabenis,Jon,L (Bar Number: 12002) service method:  
Electronic Service to lancejji@aol.com

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan,S,R represented by Pro Se Party (Bar Number: 2) service method: Email

Harding,Marc, represented by Pro Se Party (Bar Number: 2) service method: Email

Clark,David,H represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan,S,Reed, represented by Pro Se Party (Bar Number: 2) service method: Email

Anderson,Alan, represented by Pro Se Party (Bar Number: 2) service method: Email

Signature: /s/ Palagi,Ronald, (Bar Number: 13206)

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O. )  
 )  
Plaintiff, )  
vs. )  
 )  
MARC HARDING, HARDING LAW )  
OFFICE, S. REED MORGAN, S. )  
REED MORGAN, P.C., DAVID H. )  
CLARK, and ALAN ANDERSEN, )  
 )  
Defendants. )

**CASE NO.: CI 16 326**

**MOTION FOR LEAVE  
TO FILE AMENDED  
COMPLAINT**

COMES NOW Plaintiff and seeks an Order from the Court granting Plaintiff leave to file an Amended Complaint.

In support of this Motion, Plaintiff states that, as this case has progressed, pleadings have been filed by Defendants that have created the need for clarification of the facts and claims against Defendants.

WHEREFORE, Plaintiff would move this Court for an Order allowing leave to file an Amended Complaint in this matter.

Dated this 1<sup>st</sup> day of **May, 2017**.

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.,  
L.L.O, Plaintiff,

By: /s/ Ronald J. Palagi  
RONALD J. PALAGI #13206  
THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.  
3131 South 72nd Street  
Omaha, NE 68124  
(402) 397-5000  
rjp@ronaldjpalagi.com  
Attorneys for Plaintiff

#### **NOTICE OF HEARING**

Take Notice that Plaintiff will call up his Motion To Compel before the Honorable Stephen R. Illingworth of the Adams County Courthouse on the **2nd** day of **May 2017**, at **9:45 a.m.**, or as soon thereafter as counsel may be heard.

/s/ Ronald J. Palagi

#### **CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the above and foregoing document was electronically filed with the Clerk of the Court this **1<sup>st</sup>** day of **May 2017**, using the e filing system, which sent notification of such filing to attorneys of record.

/s/ Ronald J. Palagi



## Certificate of Service

I hereby certify that on Tuesday, May 02, 2017 I provided a true and correct copy of the Motion Filed to the following:

Clark,David,H represented by Jabenis,Jon,L (Bar Number: 12002) service method: Electronic Service to lancejij@aol.com

Clark,David,H represented by Pro Se Party (Bar Number: 2) service method: Email

Anderson,Alan, represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan,S,Reed, represented by Pro Se Party (Bar Number: 2) service method: Email

Harding,Marc, represented by Pro Se Party (Bar Number: 2) service method: Email

Morgan,S,R represented by Pro Se Party (Bar Number: 2) service method: Email

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: Email

Signature: /s/ Palagi,Ronald, (Bar Number: 13206)

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

THE LAW OFFICE OF, )  
 RONALD J. PALAGI, P.C., L.L.C. )  
 )  
 Plaintiff, )  
 )  
 vs )  
 )  
 MARC HARDING, HARDING LAW )  
 OFFICE, S. REED MORDAN, S. )  
 REED MORGAN, P.C., DAVID H. )  
 CLARK, and ALAN ANDERSEN, )  
 )  
 Defendant. )

Case No. CE 16-326 17  
 ADM. CLERK DIST. COURT  
 ORDER FOR PRETRIAL  
 CONFERENCE 18 PA 38  
 SCHEDULED FOR: May 9, 2017  
 TIME: 3:15 p.m.

FILED

1. The following shall be filed and exchanged by Counsel FORTY-EIGHT HOURS  
PRIOR TO THE CONFERENCE:

- A. Witness lists with addresses and general subjects of testimony;
  - B. Exhibits list, with copies of any exhibit to which foundation waiver is requested;
  - C. Hospital bills, medical bills, repair, etc;
2. The trial attorney must be present for pretrial. The Court may waive this requirement upon proper showing that co-counsel has full knowledge of the case. The counsel should have complete authority for stipulations, waivers, and settlement.
3. All discovery to be completed before the pretrial conference. Additional specific discovery may be authorized as part of the pretrial report.
4. All exhibits, x-rays, charts, and illustrations will be shown and marked at pretrial.
5. Final efforts at settlement will be conducted by parties prior to pretrial and confirmed by parties at pretrial.
6. If counsel have any reservations about authority for stipulations, waiver of foundation

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or jury, or final settlement of claims, clients should be personally present in the courtroom and available to counsel.

7. Counsel for each party shall submit a pretrial memorandum with a statement of facts and a brief of legal issues.


8. DAUBERT/SCHAFERSMAN HEARINGS MUST BE SCHEDULED AT LEAST TWO (2) WEEKS PRIOR TO TRIAL OR ARE WAIVED.

9. Failure to comply with this pretrial order shall result in the pretrial being rescheduled. Sanctions may be imposed for dilatory actions of counsel requiring rescheduling.

10. IF THE PRETRIAL IS HELD BY TELEPHONE THE PETITIONER MUST CONFERENCE THE JUDGE'S BAILIFF ON THE CALL.

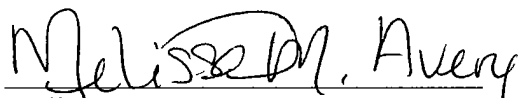
IT IS SO ORDERED.

BY THE COURT:

  
Stephen R. Illingworth  
District Judge

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the true and correct copies of the foregoing were served upon Mr. Reed Morgan, Attorney at Law, 833 Hwy 473 Comfort, TX 78013, Mr. Ronald Palagi, Attorney at Law, 3131 South 72<sup>nd</sup> Street, Omaha, NE 68124, and Mr. Marc Harding, Attorney at Law, 1217 S.W. Army Rd., Des Moines, IA 50315 by depositing a copy thereof, duly addressed and postage prepaid in the regular United States Mail this 18<sup>th</sup> day of May 2017.

  
Melissa M. Avery  
Bailiff

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

THE LAW OFFICE OF )  
RONALD J. PALAGI, P.C., L.L.C. )

Plaintiff, )

vs )

MARC HARDING, HARDING LAW )  
OFFICE, S. REED MORGAN, S. )  
REED MORGAN, P.C., DAVID H. )  
CLARK, and ALAN ANDERSEN, )

Defendant. )

Case No. CI 16-326

NOTICE OF HEARING

ADAMS COUNTY  
CLERK OF DISTRICT COURT

17 MAR 23 P4:41

FILED

You are hereby given notice that the above captioned matter has been set for Telephonic Hearing on The Motions to Dismiss and Motion to Transfer Venue on May 2, 2017 at the hour of 9:45 a.m. in the District Court of Adams County, Nebraska, before the Honorable Stephen R. Illingworth.

The attorneys will need to make arrangements to initiate the telephone conference. Then, once all parties are on the line that will be participating you shall contact the Bailiff who will transfer the call into the Judge.

Govern yourself accordingly.

Dated: March 23 2017.

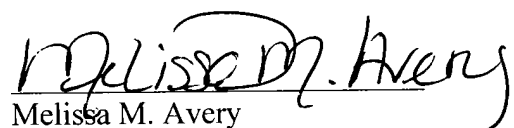
IT IS SO ORDERED.



Stephen R. Illingworth  
District Judge

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the true and correct copies of the foregoing were served upon Mr. Reed Morgan, Attorney at Law, 833 Hwy 473 Comfort, TX 78013, Mr. Ronald Palagi, Attorney at Law 3131 South 72rd Street, Omaha, NE 68124 and Mr. Marc Harding, Attorney at Law, 1217 S.W. Army Rd., Des Moines, IA 50315 by depositing a copy thereof, duly addressed and postage prepaid in the regular United States Mail this 23<sup>rd</sup> day of March 2017.



Melissa M. Avery  
Bailiff

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J00035294D14

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O.,

Plaintiff,

vs.

MARC HARDING, HARDING LAW  
OFFICE, S. REED MORGAN, S.  
REED MORGAN, P.C., DAVID H.  
CLARK, and ALAN ANDERSEN

Defendants.

Case No. CI 16-326

ORDER GRANTING DEFENDANT  
MARC S. HARDING, P.C.'S  
MOTION REQUESTING  
TELEPHONIC HEARING

17 MAR 23 P 4:46  
ADAMS COUNTY  
CLERK OF DISTRICT COURT

FILED

Defendant Marc S. Harding, P.C.'s Motion Requesting Telephonic Hearing comes before the Court for consideration. The Court finds that the motion is timely and should be granted.

IT IS THE ORDER OF THE COURT that the Defendant Marc S. Harding, P.C.'s Motion Requesting Telephonic Hearing is GRANTED.

Plaintiff Ronald J. Palagi shall make timely arrangements for all parties for the conference call.

The call in number for the Court is ~~402-461-7255~~ 402-461-7255

IT IS SO ORDERED this 16 day of March, 2017.

  
Judge



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Journalized

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O. )

Plaintiff, )

vs. )

CASE NO. D14CI160000326 )

MARC HARDING, HARDING LAW )  
OFFICE, S. REED MORGAN, S. )  
REED MORGAN, P.C., DAVID H. )  
CLARK, and ALAN ANDERSEN, )

Defendants. )

**FILED**  
2017 MAR 17 P 4:19  
ADAMS COUNTY  
CLERK OF DIST. COURT

**MOTION BY S. REED MORGAN DBA S. REED MORGAN, P.C.  
TO ATTEND THE PRE-TRIAL HEARING TELEPHONICALLY**

COMES NOW Defendant S. Reed Morgan, dba S. Reed Morgan, P.C. ("Defendant"), specially appearing herein objecting to *in personam* jurisdiction and venue, respectfully submits:

1. Defendant has filed a special appearance in this matter contesting and objecting to personal jurisdiction, or alternatively to venue;
2. Defendant has also filed a motion to dismiss for Plaintiff's Failure to State a Claim Upon which Relief May Be Granted;
3. Defendant is a resident of Comfort, Tx. and respectfully requests a telephonic hearing;

WHEREFORE, PREMISES CONSIDERED, defendant S. Reed Morgan prays that he be permitted to participate May 9, 2017 at the hearing by telephone, now set at 3:15 pm.

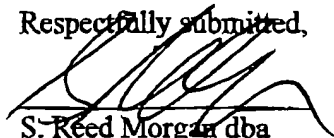
Dated: March 17, 2017

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Respectfully submitted,



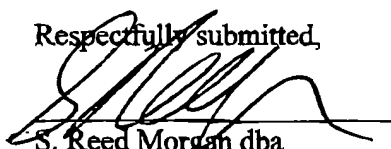
S. Reed Morgan dba  
S. Reed Morgan, P.C.  
*In proprio persona*  
833 HWY 473 Comfort, Tx.  
78013  
830-995-2464  
Fax: 830-9952728  
rmtrialfirm@gmail.com

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT** the defendant, S. REED MORGAN DBA S. REED MORGAN, P.C. specially appearing herein to contest the jurisdiction of this court and the venue of this action, will bring on for hearing his MOTION TO APPEAR TELEPHONICALLY ON THE \_\_\_\_ DAY OF \_\_\_\_ 2017, \_\_M ON \_\_, DAY OF MARCH, 2017, or as soon thereafter as counsel may be heard.

Dated March \_\_\_\_, 2017.

Respectfully submitted,



S. Reed Morgan dba  
S. Reed Morgan, P.C.  
*In proprio persona*  
833 HWY 473 Comfort, Tx. 78013  
830-995-2464  
Fax: 830-9952728  
rmtrialfirm@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was faxed to The Law Office of Ronald Palagi, 3131 South 72nd Street, Omaha, NE 68124. PHONE: (402) 397-5000. FAX: (402) 392-1304.



S. Reed Morgan, d/b/a  
S. Reed Morgan, P.C, appearing pro se  
833 Hwy 473, Comfort, Texas, 78013  
Ph: 830-995-2464  
Fax 830-995-2728  
rmtrialfirm@gmail.com



IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O.,

Plaintiff,

vs.

MARC HARDING, HARDING LAW  
OFFICE, S. REED MORGAN, S.  
REED MORGAN, P.C., DAVID H.  
CLARK, and ALAN ANDERSEN

Defendants.

Case No. CI 16-326

**FILED**

2017 MAR 16 P 3:14

DEFENDANT MARC S.

HARDING, P.C.'S MOTION  
REQUESTING

TELEPHONIC HEARING

ADAMS COUNTY  
CLERK OF DIST. COURT

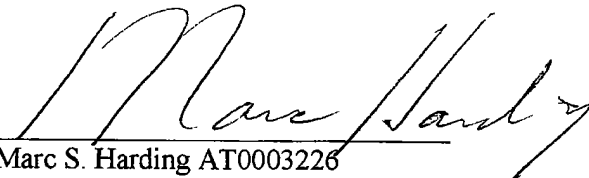
COMES NOW Defendant Marc S. Harding, P.C. and for its Motion Requesting

Telephonic Hearing and states:

1. The Pre-Trial Conference is set for May 9, 2017 at 3:15 P.M. in Adams County.
2. Defendant Marc S. Harding, P.C., located in Des Moines, Iowa, requests a telephonic hearing.
3. Defendant Marc S. Harding, P.C. further requests that Plaintiff Ronald J. Palagi make arrangements for the telephone hearing.

WHEREFORE, Defendant Marc S. Harding, P.C. prays that the May 9, 2017 hearing at 3:15 P.M. be conducted telephonically and that all parties appear by phone. Defendant further prays that Plaintiff Ronald J. Palagi make the arrangements for the telephone hearing.

Respectfully submitted,



Marc S. Harding AT0003226  
1217 Army Post Road  
Des Moines, Iowa 50315-5596  
T: (515) 287-1454

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000495743D14

F: (515) 287-1442  
ATTORNEY FOR PLAINTIFFS

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on March \_\_, 2017 by:

U.S. Mail                       Hand Delivery  
 Fax                                 Overnight  
 Email                               Other  
 ECF System Participant (Electronic Service)

Original filed.

Signature: \_\_\_\_\_

Copies to:

Ronald J. Palagi  
The Law Offices of Ronald J. Palagi, P.C.  
3131 South 72nd Street  
Omaha, NE 68124

ATTORNEY FOR PLAINTIFF

S. Reed Morgan, Esq.  
833 Hwy 473  
Comfort, TX 78013

Jon Jabenis  
1001 Farnam Street, 3<sup>rd</sup> Floor  
Omaha, NE 68102

David Clark  
3036 South 101th Street  
Omaha, NE 68124

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O,

Plaintiff,

vs.

MARC HARDING, HARDING LAW  
OFFICE, S. REED MORGAN, S.  
REED MORGAN, P.C., DAVID H.  
CLARK, and ALAN ANDERSEN,

Defendants.

CASE NO.: CI 16-326

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that the Pre-Trial Conference hearing is hereby set for May 9, 2017 at 3:15 p.m., before the Honorable Stephen R. Illingworth, Adams County Courthouse.

DATED this 14th day of March, 2017.

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O,  
Plaintiff,

By: /s/ Ronald J. Palagi  
RONALD J. PALAGI #13206  
THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.  
3131 South 72nd Street  
Omaha, NE 68124  
(402) 397-5000  
rjp@ronaldjpalagi.com  
Attorneys for Plaintiff

## CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the above and foregoing document was filed electronically on the 14th day of March 2017 via the e-filing system, and served on the following parties by U.S. Mail, postage pre-paid:

Marc Harding  
Harding Law Office  
1217 S.W. Army Road  
Des Moines, Iowa 50315

S. Reed Morgan  
S. Reed Morgan P.C.  
833 Hwy 473  
Comfort, Texas 78103

Jon Jabenis  
Attorney at Law  
1001 Farnam Street  
3rd Floor  
Omaha, Nebraska 68102  
Attorney for Defendant Clark

/s/Ronald J. Palagi

## Certificate of Service

I hereby certify that on Wednesday, March 15, 2017 I provided a true and correct copy of the Notice-Hearing to the following:

Clark,David,H represented by Jabenis,Jon,L (Bar Number: 12002) service method:  
Electronic Service to lancejjj@aol.com

Clark,David,H represented by Pro Se Party (Bar Number: 2) service method: First Class  
Mail

Anderson,Alan, represented by Pro Se Party (Bar Number: 2) service method: First Class  
Mail

Morgan,S,R represented by Pro Se Party (Bar Number: 2) service method: First Class Mail

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: First  
Class Mail

Harding,Marc, represented by Pro Se Party (Bar Number: 2) service method: First Class  
Mail

Morgan,S,Reed, represented by Pro Se Party (Bar Number: 2) service method: First Class  
Mail

Signature: /s/ Palagi,Ronald, (Bar Number: 13206)

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

THE LAW OFFICES OF : CASE NUMBER: CI 16 - 326  
RONALD J. PALAGI, P.C., L.L.O., :  
a Not For Profit Nebraska Corporation, :

Plaintiff, :

-vs- :

***ANSWER***

MARC HARDING, HARDING LAW :  
OFFICE, S. REED MORGAN, S. REED :  
MORGAN, P.C., DAVID H. CLARK, and :  
ALAN ANDERSEN, :

Defendants. :  
\_\_\_\_\_ :

COME NOW the Defendant David H. Clark, hereinafter at times referred to for convenience as either "Clark" or as "Defendant," and for his Answer to the Complaint of the Plaintiff, The Law Offices of Ronald J. Palagi, P.C., L.L.O., hereinafter at times referred to for convenience as either "Palagi" or as "Plaintiff," hereby admits, denies, alleges, and states, as follows, to wit:

**Answer to General Allegations**

1. Clark admits all and singular, generally and specifically, each and every one of the allegations therein contained in paragraph 1 of Palagi's Complaint.
2. Clark admits all and singular, generally and specifically, each and every one of the allegations therein contained in paragraph 2 of Palagi's Complaint.
3. Clark admits all and singular, generally and specifically, each and every one of the allegations therein contained in paragraph 3 of Palagi's Complaint.

4. Clark admits all and singular, generally and specifically, each and every one of the allegations therein contained in paragraph 4 of Palagi's Complaint.
5. As Clark was not privy to such alleged contract and has no personal knowledge of such alleged contract, Clark denies all and singular, generally and specifically, each and every one of the allegations therein contained in paragraph 5 of Palagi's Complaint.

**Answer to First Cause of Action Allegations**

**Tortious Interference with a Contract**

6. Clark denies all and singular, generally and specifically, each and every one of the allegations therein contained in paragraph 6 of Palagi's Complaint.
7. Clark denies all and singular, generally and specifically, each and every one of the allegations therein contained in paragraph 7 of Palagi's Complaint.
8. Clark denies all and singular, generally and specifically, each and every one of the allegations therein contained in paragraph 8 of Palagi's Complaint.

**Answer to Second Cause of Action Allegations**

**Breach of Contract**

9. As Clark was not privy to such alleged contract and has no personal knowledge of such alleged contract, Clark denies all and singular, generally and specifically, each and every one of the allegations therein contained in paragraph 9 of Palagi's Complaint.
10. As Clark was not privy to such alleged conduct and has no personal knowledge of such alleged conduct, Clark denies all and singular, generally and specifically, each and every one of the allegations therein contained in paragraph 10 of Palagi's Complaint.

*Answer to Damages Allegations*

11. Clark denies all and singular, generally and specifically, each and every one of the allegations therein contained in paragraph 11 of Palagi's Complaint.

*Affirmative Defenses*

12. Further Answering, and for Clark's first affirmative defense, Clark shows that he has never entered into any contract in this matter with Plaintiff, with Alan Andersen, or with any other Defendant herein.

13. Further Answering, and for Clark's second affirmative defense, Clark shows that he never entered an appearance or otherwise appeared at, for, or in that trial of the medical malpractice case, as an attorney, or otherwise.

WHEREFORE, having fully answered to Plaintiff's Complaint, Defendant David H. Clark prays that said Complaint be dismissed, with prejudice, at Plaintiff's costs, and for such other and further relief as is just or warranted.

DATED this 27<sup>th</sup> day of January, 2017.

DAVID H. CLARK, Defendant,



By: \_\_\_\_\_

*Jon Lance Jabenis, #12002*  
*Schaefer Shapiro, LLP*  
1001 Farmam Street  
Omaha, Nebraska 68102  
402.341.0700  
Fax: 402.341.3380  
[lancejj@aol.com](mailto:lancejj@aol.com)  
Attorney for Defendant



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing Answer was mailed in the regular U.S. Mail, first class, postage prepaid, on this 27th day of January, 2017, to the following:

Ronald J. Palagi, Esq.  
The Law Offices of Ronald J. Palagi, P.C.  
3131 South 72<sup>nd</sup> Street  
Omaha, NE 68124  
Fax: 402.392.1304



---

## Certificate of Service

I hereby certify that on Monday, January 30, 2017 I provided a true and correct copy of the Answer to the following:

Morgan,S,Reed, represented by Pro Se Party (Bar Number: 2) service method: No Service

Morgan,S,R represented by Pro Se Party (Bar Number: 2) service method: No Service

Clark,David,H represented by Pro Se Party (Bar Number: 2) service method: No Service

Harding,Marc, represented by Pro Se Party (Bar Number: 2) service method: No Service

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: No Service

Anderson,Alan, represented by Pro Se Party (Bar Number: 2) service method: No Service

Ronald J. Palagi, P.C., L.L.O. represented by Palagi,Ronald, (Bar Number: 13206) service method: Electronic Service to rjp@ronaldjpalagi.com

Signature: /s/ Jabenis,Jon,L (Bar Number: 12002)

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O. )

Plaintiff, )

vs. )

MARC HARDING, HARDING LAW )  
OFFICE, S. REED MORGAN, S. )  
REED MORGAN, P.C., DAVID H. )  
CLARK, and ALAN ANDERSEN, )

Defendants. )

CASE NO. D14CI160000326

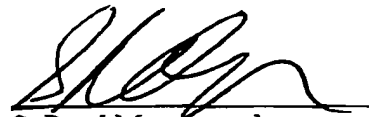
**FILED**  
2017 JAN 18 P 3:52  
ADAMS COUNTY  
CLERK OF DIST. COURT

**DEFENDANTS' S. REED MORGAN DBA S. REED MORGAN, P.C.  
MOTION TO DISMISS, OR, ALTERNATIVELY, TO TRANSFER VENUE**

The defendant S. Reed Morgan dba S. Reed Morgan, P.C. moves this Honorable Court pursuant to Neb. Ct. R. of Pldg. 12 (b)(2) and (6) to dismiss this action for lack of personal jurisdiction over his person and, alternatively, for failure to state a claim upon which relief may be granted. The defendant, S. Reed Morgan, objects to the venue in which this action is laid and moves for transfer to 4th Judicial District Court of Nebraska, Douglas County, Nebraska. The grounds for this motion are more fully set forth in this defendants' attached memorandum.

Dated January 18, 2017.

Respectfully submitted,



S. Reed Morgan and  
S. Reed Morgan, P.C  
*In proprio persona*

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**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O. )  
 )  
Plaintiff, )

vs. )

CASE NO. D14CI160000326

MARC HARDING, HARDING LAW )  
OFFICE, S. REED MORGAN, S. )  
REED MORGAN, P.C., DAVID H. )  
CLARK, and ALAN ANDERSEN, )  
 )  
Defendants. )

**MEMORANDUM IN SUPPORT OF  
DEFENDANTS' S. REED MORGAN AND S. REED MORGAN, P.C.  
MOTION TO DISMISS, OR, ALTERNATIVELY, TO TRANSFER VENUE**

The defendants S. Reed Morgan dba S. Reed Morgan, P.C. ("Morgan") moves this Honorable Court pursuant to Neb. Ct. R. of Pldg. 12 (b)(2) and (6) to dismiss this action for lack of personal jurisdiction over his person and, alternatively, for failure to state a claim upon which relief may be granted. Morgan does not have sufficient contacts with the State of Nebraska to sustain either general or specific jurisdiction over his person. Moreover, the complaint of the Law Offices of Ronald J. Palagi, P.C., L.L.O. ("Palagi") fails to comply with the requirement of Neb. Ct. R. of Pldg. 8 to state the amount of special damages in plaintiff's claim for relief where the recovery of money is demanded.

**I. Standard of review**

Because the Nebraska Court Rules of pleading are modeled after the Federal Rules of Civil Procedure, the court looks to the federal decisions for guidance in the absence of settled authority from the state's courts of appeal. *Anderson v. Wells Fargo Fin. Accept.*, 269 Neb. 595 (Neb. 2005); *Kellogg v. Nebraska Dept. of Corr. Servs.*, 690 N.W.2d 574 (Neb. 2005). The

Supreme Court of Nebraska has applied this principle to motions to dismiss brought pursuant to Rule 12(b)(2). *Ameritas Inv. Corp. v. McKinney*, 694 NW 2d 191, 198 (Neb. 2005).

**II. The court lacks personal jurisdiction over the person of S. Reed Morgan**

The complaint herein includes no allegations as to this court's personal jurisdiction over any party, including Morgan, and no such allegation could be made accurately as to him. It is "black letter" law that the party seeking to establish a court's *in personam* jurisdiction carries the burden of proof, and the burden does not shift to the party challenging jurisdiction. *Ameritas Inv. Corp. v. McKinney*, *supra* at 198, citing *Epps v. Stewart Information Services Corp.*, 327 F.3d 642 (8th Cir.2003). When considering a motion to dismiss a party from a case for lack of personal jurisdiction under rule 12(b)(2), the threshold question is whether the nonmoving party has established a prima facie case of personal jurisdiction de novo. *Ameritas Inv. Corp. v. McKinney*, *supra* at 198, citing *Stanton v. St. Jude Medical, Inc.*, 340 F.3d 690 (8th Cir.2003) and *Epps v. Stewart Information Services Corp.*, *supra*.

Morgan is a resident of Texas, as Palagi pleads in the General Allegations of its complaint. Neither those General Allegations nor the allegations of Palagi's First Cause Of Action - Tortious Interference With A Contract, which contains in paragraph 6 the only other mention of Morgan in the complaint, alleges any contact whatsoever between Morgan and Nebraska. As can be seen from Morgan's affidavit, attached hereto as Exhibit A and incorporated herein by reference, the case in "Polk County District Court" in which it is alleged that Morgan appeared was brought and tried in Polk County, Iowa, on behalf of a resident of Iowa against another resident of Iowa concerning an alleged cause of action that arose in Iowa. And Morgan has no contacts with Nebraska except as shown in Morgan's affidavit. But Palagi would have this court exercise its jurisdiction over Morgan through Nebraska's long-arm statute,

Neb. Rev. Stat. § 25-536. The long-arm statute provides in pertinent part that a Nebraska court may exercise personal jurisdiction over a person who has "contact with or maintains any other relation to this state to afford a basis for the exercise of personal jurisdiction consistent with the Constitution of the United States." § 25-536(2). This section extends Nebraska's jurisdiction over nonresidents having any contact with or maintaining any relation to this state as far as the U.S. Constitution permits. *Brunkhardt v. Mountain West Farm Bureau Mut. Ins.*, 269 Neb. 222, 691 N.W.2d 147 (2005). Thus, the question presented by the long-arm statute is, generally, whether the exercise of personal jurisdiction would not offend federal principles of due process. *Id.*

The Due Process Clause of the United States Constitution protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he or she has established no meaningful contacts, ties, or relations. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). The defendant's Due Process rights requires the court to determine whether the defendant's minimum contacts with the forum state are such that the defendant should reasonably anticipate being haled into court there. *Kugler Co. v. Growth Products Ltd.*, 265 Neb. 505, 658 N.W.2d 40 (2003). That analysis applies "[w]here a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there...." (Emphasis supplied.) See *Burger King Corp. v. Rudzewicz*, 471 U.S. at 472, 105 S.Ct. 2174. In *Burger King Corp. v. Rudzewicz*, 471 U.S. at 472 n. 14, 105 S.Ct. 2174, however, the U.S. Supreme Court noted that "because the personal jurisdiction requirement is a waivable right, there are a "variety of legal arrangements" by which a litigant may give "express or implied consent to the personal jurisdiction of the court." Palagi has alleged – nor can he allege – that Morgan has entered into any such arrangement.

The only operative allegation against Morgan in the complaint pleads that he, with two other lawyers, knew of Palagi's alleged agreement with Mr. Andersen and "knowingly, intentionally, and maliciously endeavored and sought to engage in acts that would cause irreparable damage" to that agreement. Although it has been argued that foreseeability of causing injury in another state should be sufficient to establish such contacts there, the United States Supreme Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 295 (1980). Instead, "the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.* at 297. In defining when it is that a potential defendant should "reasonably anticipate" out-of-state litigation, the Supreme Court relies on the "purposeful availment" doctrine of *Hanson v. Denckla*, 357 U. S. 235, 253 (1958):

The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. [emphasis added]

This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts, *Keeton v. Hustler Magazine, Inc.*, 465 U. S. 770, 774 (1984), *World-Wide Volkswagen Corp. v. Woodson*, *supra*, at 299. Jurisdiction is only proper where the contacts proximately result from actions by the defendant himself that create a "substantial connection" with the forum State. *McGee v. International Life Insurance Co.*, 355 U. S. 220, 223 (1957). Thus where the defendant "deliberately" has engaged in significant activities within a State, *Keeton v. Hustler Magazine*,

*Inc., supra*, at 781, or has created "continuing obligations" between himself and residents of the forum, *Travelers Health Assn. v. Virginia*, 339 U. S. 643, 648 (1950), he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Clearly, Palagi has pleaded no basis for general *in personam* jurisdiction over Morgan in Nebraska that would arise from the substantial activity and purposeful availment required by the Supreme Court so to do. No hint of such a connection to Nebraska is found in the complaint, and Morgan's affidavit obviates any possibility of Palagi's amending his claims to assert the required jurisdictional facts. All Palagi has done is hint at a single effect that he might allege – he does not even allege causality sufficiently – and conceal the potential basis of federal removal jurisdiction.

### **III. The complaint fails to state a claim for relief.**

There are two fundamental flaws in Palagi's complaint. First, he fails to plead as required by Rule 8(a) all of the elements of a tort. Second, he fails to plead as required by Rule 8(a) the amount he would claim as special damages. Rule 8(a)(2) requires a plaintiff to plead in the complaint "a short and plain statement of the claim showing that the pleader is entitled to relief."

The Nebraska Supreme Court in *Doe v. Bd. of Regents of Univ. of Nebraska*, 788 NW 2d 264 (Neb. 2010) specifically adopted the standards for applying Rule 8(a)(2) when challenged by a Rule 12(b)(6) motion that the United States Supreme Court articulated in *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). In doing so, the state's high court summarized the standard for applying Rule 12(b)(6):



Accordingly, we hold that to prevail against a motion to dismiss for failure to state a claim, a plaintiff must allege sufficient facts, accepted as true, to state a claim to relief that is plausible on its face. In cases in which a plaintiff does not or cannot allege specific facts showing a necessary element, the factual allegations, taken as true, are nonetheless plausible if they suggest the existence of the element and raise a reasonable expectation that discovery will reveal evidence of the element or claim.

78 NW 2d at 278.

To succeed on a claim for tortious interference with a business relationship or expectancy, a plaintiff must prove (1) the existence of a valid business relationship or expectancy, (2) knowledge by the interferer of the relationship or expectancy, (3) an unjustified intentional act of interference on the part of the interferer, (4) proof that the interference caused the harm sustained, and (5) damage to the party whose relationship or expectancy was disrupted. *Aon Consulting v. Midlands Financial*, 748 NW 2d 626 (Neb. 2008); *Macke v. Pierce*, 266 Neb. 9, 661 N.W.2d 313 (Neb. 2003), citing *Huff v. Swartz*, 258 Neb. 820, 606 N.W.2d 461 (Neb. 2000). Whether a liberal reading of Palagi's allegations in paragraph 7 of the complaint could find that of the five elements of the cause of action, sufficient notice is given of four, the language, "endeavored and sought to to (sic) engage in acts that would cause irreparable damage" contradicts the required allegation that the defendants' acts caused the harm sustained. Moreover, paragraph 7 is devoid of sufficient facts to suggest any of the elements of the cause of action other than the defendants' knowledge that Palagi had entered an agreement with Mr. Andersen. That defendants had knowledge of its terms does not appear in the plaintiff's spare allegations, and on the critical element of unjustified interference Palagi is silent. There simply must be more meat on the bones of Palagi's claim to move forward.

Significantly, Palagi fails to plead his special damages. Unlike its federal equivalent, Nebraska's Rule 8(a) requires a plaintiff to plead the amount of his special damages when he seeks the recovery of money. By requiring plaintiff's to plead the amount of their special

damages, the state legislature has effectively required them to disclose whether the jurisdictional amount necessary for a federal removal would be met without requiring a round of discovery. Although Palagi has joined a Nebraska resident, David H. Clark, as a defendant, Morgan and Clark are fully prepared to show that joinder is fraudulent and made for the sole purpose of defeating federal jurisdiction. Exhibit A, affidavit of S. Reed Morgan. Accordingly, if Palagi's claim, including any claimed interest thereon, meets or exceeds \$75,000.00, Morgan may remove the case to federal court.

**IV. The venue in which this action is laid is improper**

The complaint herein includes no allegations as to venue, and the plaintiff has laid its action in an improper venue. Nebraska Revised Statute 25-403.01 provides:

Any action, other than the actions mentioned in sections 25-401 to 25-403, may be brought (1) in the county where any defendant resides, (2) in the county where the cause of action arose, (3) in the county where the transaction or some part of the transaction occurred out of which the cause of action arose, or (4) if all defendants are nonresidents of this state, in any county. When an action has been commenced in any other county, the court in which the action has been commenced shall have jurisdiction over the action, but upon timely motion by a defendant, the court shall transfer the action to the proper court in a county in which such action might have been properly commenced. The court in the county to which the action is transferred, in its discretion, may order the plaintiff or the plaintiff's attorney to pay to the defendant all reasonable expenses, including attorney's fees, incurred by the defendant because of the improper venue or in proceedings to transfer the action.

The complaint includes in paragraph 4 a defendant who is a resident of this state, David H. Clark. Plaintiff, as can be seen not from its pleadings but from the signature block on the complaint is a resident of the City of Omaha in Douglas County, Nebraska. The defendant David H. Clark, resides in Omaha, Nebraska. Exhibit A, affidavit of S. Reed Morgan The allegations of the complaint relate only to the purported breach of a contract between the defendant Alan Andersen, a resident of the State of Iowa, Exhibit A, affidavit of S. Reed

Morgan, and the other defendants' interference with that contract. As can be seen from the allegations of the complaint, the subject matter of that contract was a medical malpractice case filed and tried in Iowa. The only proper venue provided by Neb.Rev.Stat. 25-403.01 is Douglas County, Nebraska, in the 4<sup>th</sup> Judicial District Court. Pursuant to that statute, this case must be transferred to the 4th Judicial District Court.

**V. Conclusion**

Palagi's complaint is entirely defective in both its failure to disclose a basis for the court to exercise personal jurisdiction over Morgan and in its failure to plead either the basics elements of a tort or the amount of its alleged special damages. Because it is clear that Palagi cannot sustain its burden of proof of a basis for the court's exercise of personal jurisdiction, the action should be dismissed as to Morgan without considering the grounds to do so pursuant to Rule 12(b)(6). In the alternative, should the court not dismiss on jurisdictional grounds, it should fine the complaint deficient and dismiss it unless amended, so it can be determined whether federal removal jurisdiction exists.

Dated January 18, 2017

Respectfully submitted,



S. Reed Morgan and  
S. Reed Morgan, P.C  
*In proprio persona*

**IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA**

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O. )

Plaintiff, )

vs. )

CASE NO. D14CI160000326

MARC HARDING, HARDING LAW )  
OFFICE, S. REED MORGAN, S. )  
REED MORGAN, P.C., DAVID H. )  
CLARK, and ALAN ANDERSEN, )

Defendants. )

**AFFIDAVIT OF S. REED MORGAN IN SUPPORT OF HIS MOTION TO DISMISS  
STATE OF TEXAS  
COUNTY OF KENDALL**

BEFORE ME, the undersigned authority, personally came and appeared S. Reed Morgan, who did depose and say that:

1. I am of the full age of majority and competent to make this affidavit upon his personal knowledge of the facts related herein.

2. I resides and practice law in the State of Texas, and has done so for 23 years. I am licensed to practice in Texas and Louisiana.

3. I was retained by Alan Andersen, plaintiff in a medical malpractice case, as lead counsel in Polk County District Court, Iowa, and appeared for Mr. Andersen in that cause at trial ("the Iowa Med-Mal Case).

4. Mr. Andersen was at all times pertinent and remains a resident of the State of Iowa.

5. In connection with my representation of Mr. Andersen in the Iowa Med Mal Case, this matter was litigated in Polk County, Iowa. I had no occasion to depose anyone in Nebraska, or otherwise to litigate the case in Nebraska.

6. My co-counsel in the Iowa Med Mal Case, Marc Harding of the Harding Law Office, resides and practices law in Iowa.

7. The jury in the Iowa Med Mal Case returned a defense verdict pursuant to which the Iowa Court adjudged that Mr. Andersen take nothing.

8. I have no office, no business, no residence in Nebraska, and I do not have a license to practice law in Nebraska.

9. The only occasions in which I did business on this case in Nebraska was to meet with a nurse in Ron Palagi's office and to have lunch with Mr. Palagi and an expert witness. In addition, I have tried one case in federal court in Nebraska and was co-counsel on another case about five (5) years ago.

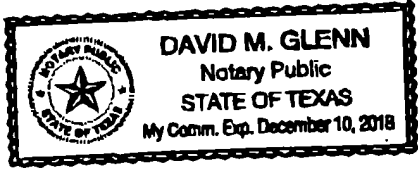
10. The allegations in the complaint in the above encaptioned cause that include David H. Clark ("Clark") are false: (a) Clark never made an appearance in the Iowa Med Mal Case, (b) Clark is not a member of the Iowa bar and never filed a motion in the Iowa Med Mal Case to be admitted *pro hac vice* or on any other basis to appear in the case, (c) Clark is a fee-based contract consultant of Morgan's on issues of rhetoric and does not participate in Morgan's cases in a representative capacity, and (d) Clark never advised Mr. Andersen in any way.

11. Clark resides and practices law in Omaha, Nebraska.

FURTHER AFFIANT SAYETH NAUGHT.

  
S. REED MORGAN

SWORN TO AND SUBSCRIBED BEFORE ME THIS 13<sup>th</sup> DAY OF JANUARY, 2017



*[Handwritten Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

**FILED**

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O.,

Plaintiff,

v.

MARC HARDING, HARDING LAW  
OFFICE, S. REED MORGAN, S.  
REED MORGAN, P.C., DAVID H.  
CLARK, and ALAN ANDERSEN,

Defendants.

2017 JAN 17 P 1:37

Case No. D14CI16000326  
ADAMS COUNTY  
CLERK OF DIST. COURT

MARC HARDING AND HARDING  
LAW OFFICE'S  
MOTION TO DISMISS

**COMES NOW**, Defendants Marc Harding and Harding Law Office, *pro se*, pursuant to Neb. Ct. R. § 6-1112(b)(2) and moves this Honorable Court to dismiss Plaintiff's Complaint against them, based on lack of personal jurisdiction. In support of their motion, Defendants state as follows:

1. In the Complaint, Plaintiff has alleged that Defendant Marc Harding d/b/a Harding Law Office is an Iowa corporation with its principal place of business in Des Moines, Iowa.

[Complaint ¶ 2]

2. Regarding its claim against Defendants Marc Harding and Harding Law Office, Plaintiff has alleged it arises out of a purported agreement it had with Defendant Alan Andersen regarding a medical malpractice case, *Andersen v. Khanna, et al.* brought in Polk County District Court.

[Complaint ¶ 6]

3. Plaintiff has failed to clarify that the Polk County in which *Andersen v. Khanna* was brought is Polk County, Iowa. [Harding Affidavit ¶ 4]

4. Plaintiff has also failed to state that each activity alleged in the Complaint regarding Defendants Marc Harding and Harding Law Office, including entering an appearance and

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interfering with the Agreement, occurred in Polk County, Iowa. [Complaint ¶¶ 6, 7; Harding Affidavit ¶¶ 4-5]

5. Thus, Plaintiff has failed to allege a single contact between Defendants Marc Harding and Harding Law Office and Nebraska.

6. " Before a court can exercise personal jurisdiction over a nonresident defendant, the court must determine, first, whether the long-arm statute is satisfied," and if yes, "whether minimum contacts exist between the defendant and the forum state for personal jurisdiction." *RFD-TV, LLC v. WildOpenWest Fin., LLC*, 288 Neb. 318, 849 N.W.2d 107, 114 (Neb. 2014)

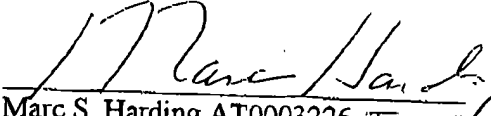
7. The minimum contacts requirement may be met by showing "some act by which the defendant purposely avails himself . . . of the privilege of conducting activities in the forum state." *Kugler Co. v. Growth Products Ltd., Inc.*, 265 Neb. 505, 658 N.W.2d 40, 48 (Neb. 2003).

8. However, it cannot be satisfied by "unilateral activity of those who claim some relationship with a nonresident." *Kugler, supra*, 658 N.W.2d at 48.

9. As Plaintiff has failed to allege a single activity that occurred in Nebraska in the entire complaint, and particularly since it has not identified any such Nebraska activity by Defendants Marc Harding and Harding Law Office, minimum contacts have not been established, and therefore, there is no basis for this court to exercise personal jurisdiction over Defendants Marc Harding and Harding Law Office.

WHEREFORE, Defendants Marc Harding and Harding Law Office request this Honorable Court enter an Order granting their motion to dismiss, or in the alternative, set the matter for an evidentiary hearing in which all may be heard.

Respectfully submitted,

  
Marc S. Harding AT0003226 Iowa



1217 Army Post Road  
Des Moines, Iowa 50315-5596  
T: (515) 287-1454  
F: (515) 287-1442  
ATTORNEY FOR PLAINTIFFS

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on January 14, 2017 by:

- U.S. Mail
- Fax
- Email
- ECF System Participant (Electronic Service)
- Hand Delivery
- Overnight
- Other

Signature: *Cate Palmer*

Original filed.

Copies to:

Ronald J. Palagi  
The Law Offices of Ronald J. Palagi, P.C.  
3131 South 72nd Street  
Omaha, NE 68124

ATTORNEY FOR PLAINTIFF

S. Reed Morgan, Esq.  
413 8th Street  
P.O. Box 38  
Comfort, TX 78013

David Clark  
3036 South 101<sup>st</sup> Street  
Omaha, NE 68124

Alan Anderson  
409 Elm Street  
Coon Rapids, IA 50058

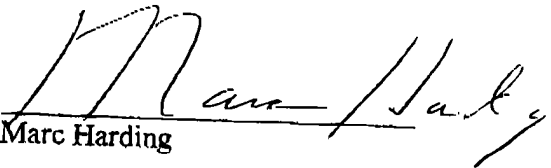
**AFFIDAVIT OF MARC HARDING**

STATE OF IOWA :  
: SS  
COUNTY OF POLK :

I, Marc Harding, state the following under oath:

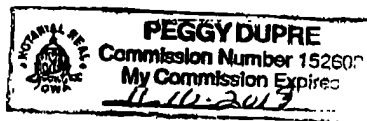
1. I am a citizen and resident of Polk County, Iowa.
2. I am an attorney, licensed to practice in the State of Iowa.
3. I practice law through Harding Law Office, which is an Iowa corporation with its principal place of business at 1217 Army Post Road, Des Moines, IA 50315.
4. The medical malpractice case identified by Plaintiff The Law Offices of Ronald J. Palagi, P.C., L.L.O. in its complaint in Adams County No. D14CI160000326, *Andersen v. Khanna, et al.*, was litigated exclusively in Polk County, Iowa District Court, Case No. LACL100171.
5. All contact I had with Alan Anderson, the plaintiff in the Polk County, Iowa case *Andersen v. Khanna, et al.*, occurred in Iowa.

Further, affiant sayeth not.

  
Marc Harding

Subscribed, sworn and acknowledged before me by Marc Harding on this 17 day of January 2017.

  
Notary Public



## Certificate of Service

I hereby certify that on Thursday, January 12, 2017 I provided a true and correct copy of the Return-Summons/Alias Summons to the following:

Anderson, Alan, represented by Pro Se Party (Bar Number: 2) service method: No Service

Morgan, S, R represented by Pro Se Party (Bar Number: 2) service method: No Service

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: No Service

Morgan, S, Reed, represented by Pro Se Party (Bar Number: 2) service method: No Service

Harding, Marc, represented by Pro Se Party (Bar Number: 2) service method: No Service

Clark, David, H represented by Pro Se Party (Bar Number: 2) service method: No Service

Signature: /s/ Palagi, Ronald, (Bar Number: 13206)

Filed in Adams District Court  
\*\*\* EFILED \*\*\*  
Case Number: D14C1160000326  
Transaction ID: 0004731284  
Filing Date: 01/12/2017 10:13:31 AM CST

**SERVICE RETURN**

Doc. No. 44471

Adams District Court  
500 West 4th, Room 200  
Hastings NE 68901 0009

To: Foreign Officer  
Case ID: CI 16 326 Ronald J. Palagi, P.C., L.L.O v. Harding

Received this Summons on DECEMBER 20, 2016. I hereby certify that on  
DECEMBER 20, 2016 at 12:15 o'clock PM. I served copies of the Summons  
upon the party: DAVID H. CLARK

by PERSONALLY HANDING THE SUMMONS AND COMPLAINT TO  
DAVID H. CLARK AT 3036 SOUTH 101ST STREET  
OMAHA NE 68124

as required by Nebraska state law.

Service and return \$ 103.00

Copy \_\_\_\_\_

Mileage \_\_\_\_\_ miles

TOTAL \$ 103.00

Date: DECEMBER 21, 2016 BY: Thomas J. Gonyea  
(Sheriff or authorized person)

**CERTIFIED MAIL  
PROOF OF SERVICE**

Copies of the Summons were mailed by certified mail,  
TO THE PARTY: \_\_\_\_\_

At the following address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_, as required by Nebraska state law.

Postage \$ \_\_\_\_\_ Attorney for: \_\_\_\_\_

The return receipt for mailing to the party was signed on \_\_\_\_\_.

To: David H Clark  
3036 South 101st Street  
Omaha, NE 68124

From: Ronald J Palagi  
3131 So 72nd Street  
Omaha, NE 68124

**ATTACH RETURN RECEIPT & RETURN TO COURT**

**SERVICE RETURN**

Doc. No. 44473

Adams District Court  
500 West 4th, Room 200  
Hastings, NE 68901 0009

To:

Case ID: CI 16 326 Ronald J. Palagi, P.C., by L.O.V. Harding

Received this Summons on December 20<sup>th</sup> 2016. I hereby certify that on

December 20<sup>th</sup> 2016 at 2:55 o'clock P.M. I served copies of the Summons upon the party:

Harding Law Office - Marc Harding

by Corporate Service @ Harding Law Office, Vicki Clubine

accepted as an Authorized Agent

as required by Nebraska state law.

Service and return \$ 60

Copy -

Mileage - miles

TOTAL \$ 60

Date: 12-20-2016

BY: [Signature]  
(Sheriff or authorized person)

Lauren Summers  
Process Server

**CERTIFIED MAIL  
PROOF OF SERVICE**

Copies of the Summons were mailed by certified mail,

TO THE PARTY:

At the following address:

on the \_\_\_\_\_ day of \_\_\_\_\_, as required by Nebraska state law.

Postage \$ \_\_\_\_\_ Attorney for: \_\_\_\_\_

The return receipt for mailing to the party was signed on \_\_\_\_\_.

To: Marc Harding  
d/b/a Harding Law Office  
1217 S.W. Army Road  
Des Moines, IA 50315

From: Ronald J. Palagi  
3131 So 72nd Street  
Omaha, NE 68124

**ATTACH RETURN RECEIPT & RETURN TO COURT**

DISTRICT COURT, ADAMS COUNTY, NEBRASKA

CASE NO.: CI 16 326 DOC. NO. 44473

AFFIDAVIT OF SERVICE

RONALD J PALAGI

Plaintiff/Petitioner,

vs.

MARC HARDING, HARDING LAW OFFICE; S. REED MORGAN, S. REED MORGAN P.C.; DAVID H CLARK, and ALAN ANDERSEN

Defendant/Respondent.

Received by Absolute Serving on 12/20/2016 to be served upon:

HARDING LAW OFFICE- MARC HARDING

STATE OF IOWA COUNTY OF POLK ss.

I, LAUREN SOMMERS, being duly sworn on oath, and over the age of 18 years, do hereby depose and state that:

On 12/20/2016 at 02:55 PM, I served the within SUMMONS AND COMPLAINT on HARDING LAW OFFICE- MARC HARDING at 1217 SW ARMY POST ROAD , Des Moines, IA 50315 in the manner indicated below:

CORPORATE SERVICE: I served the same on the above company, corporation, government official, etc, by delivering a copy to the person named and described below at the address shown above. :

NAME: VICKI CLUBINE @ HARDING LAW OFFICE TITLE/RELATION: AUTHORIZED TO ACCEPT SERVICE FOR LAW OFFICE AND MARC HARDING

Fee For Service: \$60.00

Sworn to and subscribed before me on this 20th day of December, 2016

by an affiant who is personally known to me or produced identification.

NOTARY PUBLIC

X [Signature] LAUREN SOMMERS

Independent Contractor for:

Absolute Serving 680 18th Street Des Moines, IA 50314

Atty File#: CI 16 326 DOC. 44473 - Our File# 20068



JULIA MCMAHON Commission Number 741404 My Commission Expires 6-23-18

## Certificate of Service

I hereby certify that on Wednesday, December 21, 2016 I provided a true and correct copy of the Return-Summons/Alias Summons to the following:

Clark,David,H represented by Pro Se Party (Bar Number: 2) service method: No Service

Harding,Marc, represented by Pro Se Party (Bar Number: 2) service method: No Service

Morgan,S,Reed, represented by Pro Se Party (Bar Number: 2) service method: No Service

Morgan,S,R represented by Pro Se Party (Bar Number: 2) service method: No Service

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: No Service

Anderson,Alan, represented by Pro Se Party (Bar Number: 2) service method: No Service

Signature: /s/ Palagi,Ronald, (Bar Number: 13206)

**SERVICE RETURN**

Adams District Court  
500 West 4th, Room 200  
Hastings NE 68901 0009

To:  
Case ID: CI 16 326 Ronald J. Palagi, P.C., L.L.O v. Harding

Received this Summons on DECEMBER 20, 2016. I hereby certify that on

DECEMBER 20, 2016 at 1:00 o'clock P.M. I served copies of the Summons  
upon the party:

S.R. MORGAN DBA REED MORGAN, P.C.

by @ 833 HWY 473

(PERSONAL SERVICE) COMFORT, TX 78013

as required by Nebraska state law.

Service and return \$ \_\_\_\_\_

Copy \_\_\_\_\_

Mileage \_\_\_\_\_ miles \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Date: 12-20-16

BY: Pam Jacobs #10037 <sup>EX</sup> 11-30-18  
Pam Jacobs  
(Sheriff or authorized person)

**CERTIFIED MAIL  
PROOF OF SERVICE**

Copies of the Summons were mailed by certified mail,  
TO THE PARTY: \_\_\_\_\_

At the following address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_, as required by Nebraska state law.

Postage \$ \_\_\_\_\_ Attorney for: \_\_\_\_\_

The return receipt for mailing to the party was signed on \_\_\_\_\_

To: S R Morgan  
d/b/a S. Reed Morgan, P.C.  
413 Eighth Street  
Comfort, TX 78013

From: Ronald J Palagi  
3131 So 72nd Street  
Omaha, NE 68124

**ATTACH RETURN RECEIPT & RETURN TO COURT**



## Certificate of Service

I hereby certify that on Wednesday, December 21, 2016 I provided a true and correct copy of the Return-Summons/Alias Summons to the following:

Harding, Marc, represented by Pro Se Party (Bar Number: 2) service method: No Service

Morgan, S, Reed, represented by Pro Se Party (Bar Number: 2) service method: No Service

Clark, David, H represented by Pro Se Party (Bar Number: 2) service method: No Service

Harding Law Office represented by Pro Se Party (Bar Number: 2) service method: No Service

Anderson, Alan, represented by Pro Se Party (Bar Number: 2) service method: No Service

Morgan, S, R represented by Pro Se Party (Bar Number: 2) service method: No Service

Signature: /s/ Palagi, Ronald, (Bar Number: 13206)

Image ID:  
D00044473D14

**SUMMONS**

Doc. No. 44473

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA  
500 West 4th, Room 200  
Hastings NE 68901 0009

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

TO: Marc Harding

**FILED BY**  
Clerk of the Adams District Court  
12/20/2016

You have been sued by the following plaintiff(s):

Ronald J. Palagi, P.C., L.L.O.

Plaintiff's Attorney: Ronald J Palagi  
Address: 3131 So 72nd Street  
Omaha, NE 68124

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: DECEMBER 20, 2016

BY THE COURT:

*Christine D. Sedik*  
clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Marc Harding  
d/b/a Harding Law Office  
1217 S.W. Army Road  
Des Moines, IA 50315

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

44413

THE LAW OFFICE OF  
RONALD J. PALAGI, P.C., L.L.O.,

Case No.: CI 16-326

Plaintiff,

v.

PRAECIPE

MARK HARDING, HARDING LAW  
OFFICE, S. REED MORGAN, S. REED  
MORGAN, P.C., DAVID H. CLARK, and  
ALAN ANDERSEN

Defendants.

TO THE CLERK OF SAID COURT:

**Please issue** a summons to be served on the Defendant as follows:

Mark Harding  
d/b/a/ Harding Law Office  
1217 S.W. Army Road  
Des Moines, Iowa 50315

SHERIFF  
CERTIFIED MAIL  
FEDERAL EXPRESS

\_\_\_\_\_  
\_\_\_\_\_  
XXXXX

/s/Ronald J. Palagi  
LAW OFFICES OF  
RONALD J. PALAGI, P.C.  
3131 South 72<sup>nd</sup> Street  
Omaha, Nebraska 68124  
(402) 397-5000  
Attorney for Plaintiff

Image ID:  
D00044472D14

**SUMMONS**

Doc. No. 44472

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA  
500 West 4th, Room 200  
Hastings NE 68901 0009

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

TO: S R Morgan

**FILED BY**  
Clerk of the Adams District Court  
12/20/2016

You have been sued by the following plaintiff(s):

Ronald J. Palagi, P.C., L.L.O.

Plaintiff's Attorney: Ronald J Palagi  
Address: 3131 So 72nd Street  
Omaha, NE 68124

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: DECEMBER 20, 2016

BY THE COURT:

*Christine D. Sedik*  
clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

S R Morgan  
d/b/a S. Reed Morgan, P.C.  
413 Eighth Street  
Comfort, TX 78013

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

Filed in Adams District Court  
\*\*\* EFILED \*\*\*

Case Number: D14CI160000326

Transaction ID: 0004634138

Filing Date: 12/19/2016 02:32:06 PM CST

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

44472

THE LAW OFFICE OF  
RONALD J. PALAGI, P.C., L.L.O.,

Case No.: CI 16-326

Plaintiff,

v.

PRAECIPE

MARK HARDING, HARDING LAW  
OFFICE, S. REED MORGAN, S. REED  
MORGAN, P.C., DAVID H. CLARK, and  
ALAN ANDERSEN

Defendants.

TO THE CLERK OF SAID COURT:

**Please issue** a summons to be served on the Defendant as follows:

S. Reed Morgan  
d/b/a/ S. Reed Morgan, P.C.  
413 Eighth Street  
Comfort, Texas 78013

SHERIFF  
CERTIFIED MAIL  
FEDERAL EXPRESS

\_\_\_\_\_  
\_\_\_\_\_  
XXXXX

/s/Ronald J. Palagi  
LAW OFFICES OF  
RONALD J. PALAGI, P.C.  
3131 South 72<sup>nd</sup> Street  
Omaha, Nebraska 68124  
(402) 397-5000  
Attorney for Plaintiff

Image ID:  
D00044471D14

**SUMMONS**

Doc. No. 44471

IN THE DISTRICT COURT OF Adams COUNTY, NEBRASKA  
500 West 4th, Room 200  
Hastings NE 68901 0009

Ronald J. Palagi, P.C., L.L.O. v. Marc Harding

Case ID: CI 16 326

TO: David H Clark

**FILED BY**  
Clerk of the Adams District Court  
12/20/2016

You have been sued by the following plaintiff(s):

Ronald J. Palagi, P.C., L.L.O.

Plaintiff's Attorney: Ronald J Palagi  
Address: 3131 So 72nd Street  
Omaha, NE 68124

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: DECEMBER 20, 2016

BY THE COURT:

*Christine D. Sedik*  
clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

David H Clark  
3036 South 101st Street  
Omaha, NE 68124

BY: Foreign Officer  
Method of service: Personal Service

You are directed to make such service within twenty days after date of issue, and show proof of service as provided by law.

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

44471

THE LAW OFFICE OF  
RONALD J. PALAGI, P.C., L.L.O.,

Case No.: CI 16-326

Plaintiff,

v.

PRAECIPE

MARK HARDING, HARDING LAW  
OFFICE, S. REED MORGAN, S. REED  
MORGAN, P.C., DAVID H. CLARK, and  
ALAN ANDERSEN

Defendants.

TO THE CLERK OF SAID COURT:

**Please issue** a summons to be served on the Defendant as follows:

David H. Clark  
3036 South 101st Street  
Omaha, Nebraska 68124  
RESIDENCE SERVICE

SHERIFF  
CERTIFIED MAIL  
PROCESS SERVER

\_\_\_\_\_  
\_\_\_\_\_  
XXXXX

/s/Ronald J. Palagi  
LAW OFFICES OF  
RONALD J. PALAGI, P.C.  
3131 South 72<sup>nd</sup> Street  
Omaha, Nebraska 68124  
(402) 397-5000  
Attorney for Plaintiff

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

THE LAW OFFICES OF )  
RONALD J. PALAGI, P.C., L.L.O, )

Plaintiff, )

vs. )

MARC HARDING, HARDING LAW )  
OFFICE, S. REED MORGAN, S. )  
REED MORGAN, P.C., DAVID H. )  
CLARK, and ALAN ANDERSEN, )

Defendants. )

CASE NO.: CI

**COMPLAINT**

COMES NOW the Plaintiff, The Law Offices of Ronald J. Palagi,  
P.C., L.L.O., and for its Complaint, attests as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff, The Law Offices of Ronald J. Palagi, P.C. (hereinafter referred to as "The Firm") is a Nebraska Corporation engaged in the practice of law.

2. Defendant, Marc Harding d/b/a Harding Law Office (hereinafter referred to as "Harding") is an Iowa corporation with its principle place of business being 1217 S.W. Army Road, Des Moines, Iowa 50315.

3. Defendant S. Reed Morgan d/b/a S. Reed Morgan, P.C. (hereinafter referred to as "Morgan") is a Texas corporation with its principle place of business being 413 Eighth Street, Comfort, Texas 78013.

4. Defendant David H. Clark (hereinafter referred to as "Clark") is an attorney duly authorized to practice law in the State of Nebraska.



5. Defendant Alan Andersen (hereinafter referred to as "Andersen") entered into a contract with The Firm on July 10, 2004 for the purpose of prosecuting a medical malpractice case.

**FIRST CAUSE OF ACTION  
TORTIOUS INTERFERENCE WITH A CONTRACT**

6. Prior to trial of the medical malpractice case, entitled *Andersen v. Khanna, et al.*, Defendants' Harding, Morgan, and Clark entered an appearance with the Polk County District Court for the purpose of participating in the trial.

7. Defendants' Harding, Morgan, and Clark (hereinafter referred to as Lawyer Defendants) knew The Firm had an Agreement with Defendant Andersen and knowingly, intentionally, and maliciously endeavored and sought to engage in acts that would cause irreparable damage to the Agreement between The Firm and Defendant Andersen .

8. As a result of the acts of Lawyer Defendants, on July 21, 2014 The Firm received notice from Defendant Andersen that he was terminating his Agreement with The Firm.

**SECOND CAUSE OF ACTION  
BREACH OF CONTRACT**

9. When Defendant Andersen entered into the Agreement with The Firm on July 10, 2004 he agreed to the following provisions:

"In the event Client should abandon the claim or dismiss The Law Offices before an offer of settlement, or before a judgment or verdict has been rendered by a judge or jury, Client hereby agrees to pay The Law Offices on a *quantum meruit* basis, at the rate of Two Hundred Seventy-five Dollars (\$275.00) per hour for attorney time and Seventy-five Dollars (\$75.00) per hour for paralegal time for all work done up to that time".

"In the event Client dismisses The Law Offices after Client receives an offer of settlement on the claim, Client agrees to pay The Law Office an attorney fee at forty percent (40%) of the total offer, and all costs advanced within thirty (30) days from the date of dismissal".

[If] sums payable under this Agreement become the subject of a dispute, including litigation, your signature on this Agreement acknowledges our (The Firm) right to recover from you (Andersen) our reasonable attorneys' fees, costs, and expert witness fees that may be incurred in collecting any sums due as a result of services rendered to you under the terms of this Agreement".

10. Defendant Andersen, by engaging in the conduct described above, has breached the Agreement existing between The Firm and Defendant Andersen, has denied rightful benefits to The Firm.

### **DAMAGES**

11. The Defendants' tortious interference with a contract, and breach of contract has caused harm to The Firm in the amount of unpaid attorney fees, unpaid paralegal fees, and failure to reimburse costs advanced.

WHEREFORE, The Firm respectfully prays for judgment against the Defendants for payment of attorney fees, paralegal fees, and reimbursement of costs advanced, as well as all other damages permitted under the law and supported by the facts that are established at trial along with all allowable costs of this action.

Dated this 20th day of July, 2016.

THE LAW OFFICES OF  
RONALD J. PALAGI, P.C., L.L.O.,  
Plaintiff,

By: /s/ Ronald J. Palagi  
RONALD J. PALAGI #13206  
THE LAW OFFICES OF  
RONALD J. PALAGI, P.C.  
3131 South 72nd Street  
Omaha, NE 68124  
(402) 397-7990  
Attorneys for Plaintiff