

BEFORE THE HON'BLE DISTRICT FORUM (SOUTH- WEST)
LOCAL SHOPPING CENTRE, SHEIKH SARAI, PHASE-II, DELHI

CONSUMER DISPUTE CASE NO. 342 /2018

In the matter of:-

Mr. Michal Siemaszko

... Complainant

Versus

Dr. Sangeeta Taneja & Ors.

... Opposite Parties

Reply of Complainant to Opposition of Opposite Party 1,2 and 4 to Consumer
Complaint under Section 12 of the Consumer Protection Act

1. It is submitted that the reply from Opposite parties, dated 29.11.2018, contains multiple false statements as well as fails to address key points of lawsuit filed before Honorable Court in August 2018.
2. It is submitted that before deciding to come to India as a medical tourist and making travel arrangements, Complainant confirmed availability of specific diagnostic imaging examinations with Opposite Parties, obtained referrals for all examinations from his doctor, booked two diagnostic imaging examinations via Opposite Parties' online service and only then made travel arrangements to New Delhi, India-for the sole purpose of conducting these examinations.

In the very first email Complainant exchanged with Opposite Parties, on February 9th 2018, after speaking with Opposite Party No. 4 on the phone for the first time, it was specified which diagnostic imaging examinations are being sought:

(...) 1. Scans

a) PET/MRI scan of abdomen/pelvis/uro-genital area with contrasts/radiotracers

b) SPECT/CT scan of abdomen/pelvis/uro-genital area with contrasts/radiotracers (...)

(Copy of email communication with Opposite Party No. 4, between February 9th and February 15th 2018, prior to coming to India is appended as CW-2/A)

In that same email Complainant did refer specifically to the Siemens BioGraph device to be used for these examinations:

(...) As far as I know, you have a simultaneous PET/MRI scanner (Siemens BioGraph or similar, i.e. <http://petmri.in/>). If you also have a simultaneous SPECT/CT scanner (as far as I know, most modern scanners can do simultaneous SPECT/CT), then this could also be done in one test, otherwise separate SPECT and separate CT. (...)

(Copy of email communication with Opposite Party No. 4, between February 9th and February 15th 2018, prior to coming to India is appended as CW-2/A)

Availability of these specific diagnostic imaging examinations Complainant needed to be conducted was confirmed by the Opposite Parties in writing 4 days later, on February 13th 2018, 2 weeks before Complainant arrived in India:

(...) PET/MRI and SPECT/CT scans are available. (...)

(Copy of email communication with Opposite Party No. 4, between February 9th and February 15th 2018, prior to coming to India is appended as CW-2/A)

Referrals for both examinations, along with brief description of symptoms, was issued by doctor Complainant worked with since 2013.

(Copy of referrals for diagnostic imaging examinations with brief description of symptoms, issued by Dr. Andrzej Gliwa is appended as CW-2/B)

In addition, both examinations–PET/MRI and PET/CT–were booked via Opposite Parties' online service on February 15th 2018, after Complainant received from Opposite Parties confirmation of their availability.

(Copy of confirmations of booking of two diagnostic imaging examinations from February 15th 2018 is appended as CW-2/C)

Following that email from February 15th 2018 sent to Opposite Parties, on February 16th 2018 Complainant contacted Opposite Party No. 4 via phone regarding some of the questions from that email—i.e. how soon those examinations can be scheduled and how much time does Complainant need on-site in New Delhi, India, to conduct these in addition to any consultations needed—and was told that approximately two days are needed for both examinations and one week total in New Delhi, India, is enough.

Only then, Complainant made transport and accommodation arrangements to travel to India for the sole purpose of conducting these examinations.

Despite having confirmed all in writing and gained Complainant's trust, Opposite Parties committed diagnostic error during March 5th 2018 PET/MRI examination and denied conducting PET/CT examination on March 6th 2018—therefore both objectives of Complainant's medical tourism trip to India would have been effectively nullified had Complainant not sought to conduct these elsewhere, subsequently to Opposite Parties' breaches of trust/care.

Thus, it is submitted that any claims on part of Opposite Parties related to Complainant conducting examinations elsewhere being “Complainant's choice” and not a direct result of negligence on part of Opposite Parties—misdiagnosis during PET/MRI exam on March 5th 2018 and subsequent denial of care due to canceling PET/CT examination on March 6th 2018, considering the fact that conducting these detailed, high-resolution diagnostic imaging examinations was the sole purpose of Complainant's travel to India, and had these not been conducted elsewhere the Complainant would have suffered even greater damages and could not consult neurologist/neurosurgeon, plastic surgeon and radiologist upon returning from India to establish comprehensive diagnosis and receive treatment recommendations—are therefore dismissed.

3. It is submitted that prior to filing lawsuit, Complainant attempted to settle these matters out of court when the Opposite parties were served on April 5th 2018 with legal notice, following which Complainant waited close to 3 months for response from Opposite Parties but no such reply

was ever provided and in addition Complainant was misinformed by Opposite Parties that they prepared and sent out such reply.

Prior to filing lawsuit, Complainant attempted to settle these matters out of court and the Opposite parties were served on April 5th 2018 with legal notice.

(Copy of legal notice from April 4th 2018 is appended as CW-2/D),

(Copy of proof of posting of legal notice on April 4th 2018 is appended as CW-2/E),

(Copy of proof of delivery of legal notice on April 5th 2018 is appended as CW-2/F)

Following serving legal notice to the Opposite parties on April 5th 2018, the Complainant patiently waited for response from the Opposite Parties for close to 3 months.

At the end of June 2018, Complainant contacted Opposite Party No. 4 via phone and was told by Opposite Party No. 4 that reply was prepared and sent out to Complainant's legal representative. Following that phone call, Complainant contacted his legal representative and was told no such reply was received. Same day, Complainant sent email message to Opposite Party No. 4 informing once again he is still willing to settle these matters out of court and is asking for information when reply Opposite Party No. 4 mentioned was sent.

(Copy of email communication with Opposite Party No. 4 from June 20th 2018, asking regarding reply to legal notice is appended as CW-2/G)

Complainant waited then another week but received no reply from Opposite Party No. 4 and neither phone calls were answered nor email or Whatsapp messages replied to.

(Copy of email communication with Opposite Party No. 4 from June 25th 2018, asking again regarding reply to legal notice is appended as CW-2/H),

(Copy of Whatsapp communication with Opposite Party No. 4 from June 25th 2018, asking again regarding reply to legal notice is appended as CW-2/I)

No reply to legal notice was ever received by either the Complainant nor his legal representative—despite being informed by Opposite Party No. 4 this was done.

It was only after these 3 months and being misinformed and dismissed by the Opposite Parties that the Complainant instructed his legal representative to start working on lawsuit, and in August 2018—after being notarized in person by the Complainant and shipped to his legal representative—lawsuit document with annexures was filed before this Court.

It is submitted that Opposite Parties clearly ignored being given opportunity to settle these matters out of court and continue to deny their delays do not cause damages to Complainant, both material and immaterial.

It is submitted that this present lawsuit would not have been filed had the Opposite Parties properly responded during the course of close to 3 months after being served with legal notice on April 5th 2018, and because the Opposite Parties failed to respond, and dared to misinform Complainant about sending a reply when no such reply was sent out, further aggravated this situation.

Therefore, it is submitted that any claims on part of Opposite Parties that Complainant filed lawsuit to harass or tarnish reputation of Opposite Parties—instead of being a direct result of negligence on part of Opposite Parties, including not responding to legal notice served to Opposite Parties on April 5th, 2018, for over 3 months and falsely claiming that such reply was issued—are therefore baseless and are dismissed.

4. It is submitted that all symptoms Complainant suffers from—genital, urological, neurological as well as scars in left groin area—are connected to the same event in January 2014—criminal assault committed on Complainant in apartment he lived in—and that Complainant did inform Opposite Parties about criminal aspect of these injuries and that properly conducted diagnostic imaging examinations were essential—in addition to having comprehensive diagnosis established and treatment

recommendations offered—for medico-legal expertise to be prepared in order to successfully prosecute this crime.

Complainant clearly explained to Opposite Parties that these injuries are a result of crime committed in January 2014 against Complainant when he was attacked at night in apartment where he lived in January 2014, and that so far, he focused mostly on urological symptoms. The very first email Complainant exchanged with Opposite Parties, on February 9th 2018, after speaking with Opposite Party No. 4 on the phone for the first time, mentions:

(...) Medical problem which is being solved thus is related to bodily injury due to assault in January 2014. (...)

(Copy of email communication with Opposite Party No. 4, between February 9th and February 15th 2018, prior to coming to India is appended as CW-2/A)

Therefore, it is submitted that Opposite Parties' claims of Complainant not having "clean hands"—meaning, Complainant not being open about his intent and not informing Opposite Parties about criminal aspect of these injuries and necessity of medico-legal expertise for conducting criminal investigation, not for medico-legal cases—are an example of either deliberately misstating facts or mistakenly evaluating information received, and are therefore dismissed.

5. It is submitted that multiple claims in reply from Opposite Parties dated 29.11.2018—regarding report from low-resolution Computer Tomography examination of pelvis area, conducted in Vienna on February 13th 2018 being made available by Complainant to Opposite Parties prior to or on March 5th 2018—are false.

English translation of report from low-resolution CT exam conducted in Vienna on February 13th 2018 was ordered by Complainant on March 9th 2018 and only completed on March 12th 2018—a week after Opposite Parties already performed PET/MRI examination and issued their report from that examination. **Until March 12th 2018 only German language of that report was available, which Complainant never showed to Opposite Parties and Opposite Parties were only made aware such report exists via legal notice served to Opposite Parties on April 5th 2018 to which this report was annexed.**

(Copy of payment receipt for sworn translation service from March 9th 2018 for the amount of 4000 INR is appended as CW-2/J),

(Copy of email communication with translator, between March 10th and March 13th 2018 is appended as CW-2/K),

(Copy of sworn English translation of report from Computed Tomography examination of pelvis, conducted on February 13th 2018 is appended as CW-2/L),

(Copy of legal notice from April 4th 2018 is appended as CW-2/D)

English translation of report from low-resolution CT exam conducted in Vienna on February 13th 2018 did not exist before or on March 5th 2018, therefore it could not be shared by Complainant with Opposite Parties before PET/MRI examination conducted by Opposite Parties on March 5th 2018. Until March 12th 2018, only German language version of that report was available, therefore it was impossible for Complainant to share it with Opposite Parties prior to or the day that PET/MRI examination was conducted on March 5th 2018. In addition, Complainant did not feel the need to inform Opposite Parties, who have such high self-esteem, about findings which simply corroborate actual physical symptoms Complainant does suffer from and trusted that Opposite Parties were able to provide even better, higher-resolution data of these injuries, so comprehensive diagnosis can be established and treatment recommendations offered.

Opposite Parties were only made aware that such low-resolution CT exam was conducted in Vienna on February 13th 2018 and provided with English translation of report from that exam when they were served with legal notice on April 5th 2018.

(Copy of legal notice from April 4th 2018 is appended as CW-2/D),

(Copy of proof of posting of legal notice on April 4th 2018 is appended as CW-2/E),

(Copy of proof of delivery of legal notice on April 5th 2018 is appended as CW-2/F)

Thus, it is submitted that any claims on part of Opposite Parties related to English translation of report from this CT exam being made available to Opposite Parties before April 5th 2018 by Complainant and therefore Opposite Parties' claims of having

conducted their PET/MRI exam on March 5th 2018 after taking information from this report into consideration, are dismissed.

6. It is submitted that Opposite Parties, despite mentioning the report from low-resolution CT examination conducted in Vienna on February 13th 2018 numerous times in their reply dated 29.11.2018, did not even thoroughly read that report, therefore any claims on part of Opposite Parties regarding contents of that report—related to length of time Complainant had diagnosis for, related to what that report actually corroborates, and related to further more detailed examinations not being necessary—are grossly mistaken.

That **CT exam was conducted on February 13th 2018**, which is **less than 3 weeks before** Opposite Parties conducted their PET/MRI examination on **March 5th 2018**. Therefore, it is submitted that **Opposite Parties' claims that Complainant had diagnosis for years before coming to India—and not only 3 weeks earlier and that supposedly that was a complete diagnosis—are mistaken and are therefore dismissed.**

That CT exam report from February 13th 2018 **clearly mentions multiple problems**, such as:

- a. (...) *Condition after penetrating trauma left pelvic, dysaesthesia, neurological impairment. (...)*
- b. (...) *The skin scar is also detectable by computer topographically as low subcutaneous compression zone in the course via the proximal and anterior portion of the tensor fascia latae muscle. (...)*
- c. (...) *Severe cutaneous scarring (...) around the left superior anterior iliac spur and neighboring parts of the tensor fascia lata muscle. (...)*

(Copy of sworn English translation of report from Computed Tomography examination of pelvis, conducted on February 13th 2018 is appended as CW-2/L)

In addition, that CT exam report **clearly indicates this it is not a final diagnosis**—as it was only a low-resolution CT exam, that does not have the capability to gather data related to neurological and other symptoms Complainant suffers from—therefore **it explicitly states that further examinations are required, including neurological examinations**, as

well as consultation of a specialized centre for reconstructive peripheral nerve surgery, i.e.:

(...) *We recommend a **consultation of a specialized centre for reconstructive peripheral nerve surgery** (e.g. Millesi Center) **after neurological testing**. (...)*

(Copy of sworn English translation of report from Computed Tomography examination of pelvis, conducted on February 13th 2018 is appended as CW-2/L)

Therefore, even more so, it is submitted that the claims on part of Opposite Parties related to Complainant having had a diagnosis of “only scar” which Complainant “knew for years”, therefore further or more comprehensive diagnosis was not needed are dismissed.

7. It is submitted that all symptoms, of which detailed, high-resolution, diagnostic imaging studies Complainant needed to be conducted—including urological, neurological, genital and presence of scars in left groin area—were communicated to Opposite Parties multiple times—in writing via email, almost 3 weeks before coming to India, visually via diagram specifically prepared to address these symptoms holistically, and in person during consultation with Opposite Party No. 2 on March 1st 2018, then summarized in email Complainant sent after this meeting.

The very first email Complainant exchanged with Opposite Parties, from February 9th 2018, after speaking with Opposite Party No. 4 on the phone for the first time, mentions:

(...) *Short description is provided via info-graphic (PDF attached). Textual description follows. (...)*

(...) *a) Scar - all the other symptoms described appeared at the same time as the scar; neurological damage - numbness with tingling of le thigh - can be felt radiating from area where the scar is;*

b) Thigh - frequent numbness with tingling of entire thigh area, up to knee and sometimes further down - can be felt radiating from area where the scar is; disorder of cremasteric reflex;

c) Bladder - neurogenic bladder, urine retention problems - both appeared at the same time as the scar;

d) Penis - form and function significantly changed; block can be still felt while urinating, i.e inside urethra running inside penis - those can also be traced back to the scar, i.e. present ever since; (...)

(Copy of email communication with Opposite Party No. 4, between February 9th and February 15th 2018, prior to coming to India is appended as CW-2/A),

(Copy of visual description of symptoms Complainant provided to Opposite Parties in first email from February 9th 2018 is appended as CW-2/M)

Thus, it is submitted that it was clearly conveyed by Complainant to the Opposite Parties which symptoms Complainant is suffering from-neurological, urological, genital-in addition to and directly related to scars on left groin area and that these are all connected to the same event in January 2014.

8. It is submitted that based on latest medical reports Complainant has available since late April 2018—that is, 9 reports total from 8 different medical professionals—the presence of multiple puncture wounds in left groin area being a direct cause of genital, urological and neurological symptoms is confirmed and that these are the same exact symptoms Complainant suffers from and needed to evaluate via high-resolution diagnostic imaging examinations—as clearly communicated to Opposite Parties—so such comprehensive diagnosis can be established.

As per Opposite Parties' mistaken claims, it is not a solitary report on which Complainant is basing his claim, but 9 reports from 8 different medical professionals, gathered over the course of 4 years since assault in January 2014, all corroborating symptoms Complainant suffers, all of which were clearly communicated to the Opposite Parties and which the Opposite Parties all missed in their failed examination conducted on March 5th 2018.

- a. Report from examinations and consultations with physician specializing in neurology and plastic surgery, conducted on April 6th 2018 and April 20th 2018—combining findings from medical examinations conducted so far and providing clear explanation of how multiple stab/puncture wounds are related to all the other symptoms present—neurological, urological, genital;

(Copy of report from examinations and consultations with physician specializing in neurology and plastic surgery, conducted on April 6th and 20th 2018 is appended as CW-2/N)

- b. Report from Optical Coherence Tomography examination conducted on April 6th 2018—confirming presence of multiple stab/puncture wounds in left groin area, around which scars formed;

(Copy of report from Optical Coherence Tomography examination conducted on April 6th 2018 is appended as CW-2/O)

- c. Report from Ultrasound examination of nervous system, conducted on April 6th 2018—confirming again exactly same nerve damage as report from Magnetic Resonance examination of nervous system, conducted on March 12th 2018; it is worth mentioning that this study was performed by world-class specialist in ultrasound evaluation of nervous system, Doc. Doctor Gerd Bodner, author of over two hundred publications (https://www.ncbi.nlm.nih.gov/pubmed/?term=Bodner%20G%5BAuthor%5D&cauthor=true&cauthor_uid=11883543, <https://www.semanticscholar.org/author/Gerd-Bodner/4998219>) and the only textbook on sonography of the peripheral nervous system (<https://www.springer.com/gp/book/9783540490838>);

(Copy of report from Ultrasound examination of nervous system, conducted on April 6th 2018 is appended as CW-2/P)

- d. Report from Ultrasound examination of left lateral abdominal wall, conducted on March 8th 2018—confirming presence of scars;

(Copy of report from Ultrasound examination of left lateral abdominal wall, conducted on March 8th 2018 is appended as CW-2/Q)

- e. Report from Magnetic Resonance examination of nervous system, conducted on March 12th 2018—confirming multiple neurological problems including (1) entrapment of the lateral cutaneous nerve of the left thigh due to scarring in the left tensor fascia lata with

altered signal and restricted diffusion as well as (2) altered signal in the left genitofemoral nerve;

(Copy of report from Magnetic Resonance examination of nervous system, conducted on March 12th 2018 is appended as CW-2/R)

- f. Report from MR & CT Urography, conducted on March 12th 2018—confirming presence of lymphangioma;

(Copy of report from MR & CT Urography, conducted on March 12th 2018 is appended as CW-2/S)

- g. Report from Computed Tomography examination of pelvis, conducted on February 13th 2018—confirming severe scarring and fascia compression, and clearly stating further examinations are needed, including neurological examinations and consultation with neurosurgeon, in order to even arrive at a comprehensive diagnosis;

(Copy of sworn English translation of report from Computed Tomography examination of pelvis, conducted on February 13th 2018 is appended as CW-2/L)

- h. Report from Ultrasound examination of urinary tract and erectile examination, conducted on January 11th 2016—confirming urological symptoms, including urine retention, excessive bladder capacity and neurogenic bladder, as well as erectile dysfunction problems;

(Copy of report from Ultrasound examination of urinary tract, conducted on January 11th 2016 is appended as CW-2/T)

- i. Report from Ultrasound examination of urinary tract, conducted on January 29th 2014—confirming urological symptoms, including urine retention problems;

(Copy of sworn English translation of report from Ultrasound examination of urinary tract, conducted on January 29th 2014 is appended as CW-2/U)

Report from examinations and consultations with physicians specializing in neurology, plastic surgery and radiology provides clear explanation of

how stab/puncture wounds—visible as scars also at the time of visit in New Delhi, India—directly connect to neurological, urological and genital symptoms Complainant suffers from:

(...) We studied the provided recently performed Neuro MRI of the patient pelvis with our radiologist (...) The MRI showed a thickening of the left lateral cutaneous femoral nerve at the area of the positive Tinel sign and a thickening of the left genitofemoral nerve at the anterior-medial aspect of the psoas muscle, a region just before the genital branch of the genitofemoral nerve enters the spermatic cord. In addition, docent (...) performed a high-resolution Ultrasound study of the inguinal area on the left side which showed the same thickening of the nerve and scar formation. (...)

(...) we found a clear pathology of the lateral cutaneous femoral nerve and the to a lower extent of the genitofemoral nerve on the left inguinal area. There are several punctiform skin hyperpigmentation in the inguinal area and the distance to the lesion of the most superficial nerve is about 5cm. The symptoms the patient suffered could be explained by the assumption of a needle attack including the injection of an unknown substance. (...)

(Copy of report from examinations and consultations with physician specializing in neurology and plastic surgery, conducted on April 6th and 20th 2018 is appended as CW-2/N)

Reports and diagnostic imaging from Ultrasound (USG) examination of nerves in pelvis area—conducted by world-class specialist in Ultrasound evaluation of nervous system—as well as Magnetic Resonance (MR Neurography) examination of nerves in pelvis and left thigh—both confirm same nerve damage, directly related to symptoms Complainant suffers:

- a. *(...) Ultrasound reveals a marked swelling of the femoral cutaneous lateral nerve at the level of the anterior superior iliac spine. The nerve swelling extends approximately for 15 mm. (...) The cross sectional diameter of the thickened nerve is 3 times above the normal value. The findings correspond to the previous MRI. (...)*
- b. *(...) Functional nerve imaging reveals hourglass-shaped restricted diffusion in the lateral cutaneous nerve of the thigh across the inguinal ligament. (...) MR scan findings are suggestive of entrapment of the lateral cutaneous nerve of the left thigh due to scarring in the left tensor fascia lata with altered signal and*

restricted diffusion. (...) There is also thickening and altered signal in the left genitofemoral nerve. (...)

(Copy of report from Ultrasound examination of nervous system, conducted on April 6th 2018 is appended as CW-2/P),

(Copy of report from Magnetic Resonance examination of nervous system, conducted on March 12th 2018 is appended as CW-2/R)

Reports and diagnostic imaging from Computed Tomography (CT) examination of pelvis, Ultrasound examination of left lateral abdominal wall, and Optical Coherence Tomography (OCT) examination of scars from stab/puncture wounds– resulting from January 2014 assault and clearly visible during visit in New Delhi, India, and visible to this day– both confirm presence of scar tissue forming around multiple stab/puncture wounds in groin area:

(...) Condition after penetrating trauma left pelvic, dysaesthesia, neurological impairment. (...) The skin scar is also detectable by computer topographically as low subcutaneous compression zone in the course via the proximal and anterior portion of the tensor fascia latae muscle. (...) Severe cutaneous scarring (...) around the left superior anterior iliac spur and neighboring parts of the tensor fascia lata muscle. (...)

(Copy of sworn English translation of report from Computed Tomography examination of pelvis, conducted on February 13th 2018 is appended as CW-2/L),

(Copy of report from Ultrasound examination of left lateral abdominal wall, conducted on March 8th 2018 is appended as CW-2/Q),

(Copy of report from Optical Coherence Tomography examination conducted on April 6th 2018 is appended as CW-2/O)

Reports from Ultrasound (USG) examinations of urinary bladder– conducted in January 2016 as well as few weeks after the January 2014 assault–both show significant urological problems which require further examinations in order to establish comprehensive diagnosis, but which Complainant could not afford for a long time:

- a. *(...) Urinary bladder (...) Post-void retention ca. 390 ml!!! (...)*
- b. *(...) Huge residual urine: 260ml (...) Diagnosis: Erectile dysfunction, Neurogenic bladder disorder (...)*

(Copy of sworn English translation of report from Ultrasound examination of urinary tract, conducted on January 29th 2014 is appended as CW-2/U),

(Copy of report from Ultrasound examination of urinary tract, conducted on January 11th 2016 is appended as CW-2/T)

Thus, it is submitted that the existence of Complainant's permanent bodily injuries including all symptoms Complainant suffers from—genital, urological, neurological as well as scars in left groin area—is an undeniable fact and any contrary claims are thus dismissed.

9. It is submitted that PET/MRI examination conducted by the Opposite Parties on March 5th 2018 and examination conducted by Mahajan Imaging on March 12th 2018 were both conducted on 3 Tesla Magnetic Resonance devices manufactured by Siemens and both have functional nerve imaging / Neurography protocol implemented by this same manufacturer.

Contrary to claims of Opposite Parties, it is highly unlikely that same manufacturer would implement same protocol differently on 3 Tesla Magnetic Resonance devices produced by them.

In addition, functional nerve imaging / Neurography being a protocol implemented on both of these devices produced by same manufacturer further shifts responsibility onto Opposite Parties—to focus on specific parts of body where symptoms are present, including left thigh and scar tissue around multiple puncture wounds in left groin area, presence of which connects all other symptoms Complainant suffers from, and to choose appropriate settings so neurological analysis of area affected (pelvis and left thigh) can be properly performed.

Opposite Parties clearly either did not know how to operate their device—as it was admitted by doctor from Apollo Hospital, who operated that device on March 5th 2018, i.e. that it was the first time he is doing this specific examination—or failed to focus on specific parts of body where symptoms are present, including left thigh and scar tissue around multiple puncture wounds in left groin area, presence of which connects all other symptoms Complainant suffers from, and to choose appropriate settings so neurological analysis of area affected (pelvis and left thigh)

can be properly performed. As competent and reasonable professionals they should have known which settings to use and which areas to focus on—being provided with written, visual and verbal description of symptoms by Complainant numerous times. Therefore, results produced from two different examinations conducted within the course of one week on device from the same vendor and using same the protocol would not be so strikingly different and would corroborate symptoms which Opposite Parties were tasked with properly diagnosing.

Thus, it is submitted that claims on part of Opposite Parties—that results produced from two different MRI examinations conducted within the course of one week differ because of different manufacturer or different magnetic field strength or different implementation of functional nerve imaging/Neurography protocol and not Opposite Parties failure to focus on specific parts of body where symptoms are present, including left thigh and scar tissue around multiple puncture wounds in left groin area, and to choose appropriate settings so neurological analysis of area affected (pelvis and left thigh) can be properly performed—are therefore dismissed.

10. It is submitted that Opposite Parties committed multiple diagnostic errors during their March 5th 2018 PET/MRI examination—by failing to focus on specific parts of body where symptoms are present, including left thigh and scar tissue around multiple puncture wounds in left groin area, presence of which connects all other symptoms Complainant suffers from, by failing to choose appropriate settings so neurological analysis of area affected (pelvis and left thigh) can be properly performed considering symptoms present, and by failing to administer any intracavernosal injection to properly perform genital blood flow assessment.

After in person meeting with Opposite Party No. 2 on March 1st 2018, Complainant then sent email to Opposite Party No. 2 with a brief summary in which details about diagnostic imaging examinations to be performed by Opposite Parties were outlined:

(...) You mentioned we'll be starting with whole body PET/MRI with FDG, followed by focused PET/MRI studies like PET/MRI Neurography, PET/MRI Urography, so tissue assessment in area where scarred skin lesions can be seen, and genital blood flow

assessment. If we cannot cover all these different organs/tissues/functions of the body (especially since with PET/MRI we'll be evaluating function as well as anatomy) within one session, these more specific tests will be scheduled separately, using specialized contrasts/tracers for properly evaluating these organs/tissues and their functions. (...)

(Copy of email communication with Opposite Party No. 2 from March 2nd 2018, summarizing in-person meeting with Opposite Party No. 2 is appended as CW-2/V)

Subsequently, in email sent to Opposite Party No. 4 on March 3rd 2018, details about diagnostic imaging examinations to be performed by Opposite Parties were again outlined:

- (...) 1) whole body PET/MRI with FDG,*
- 2) focused PET/MRI studies (please consult Dr. Jena for more details on these)*
- a) PET/MRI Neurography of pelvis/abdomen/uro-genital area with contrast*
- b) PET/MRI Urography*
- c) PET/MRI so tissue assessment in area where scarred skin lesions can be seen (i.e. left side of the body, around pelvis area)*
- d) PET/MRI genital blood flow assessment (...)*

(Copy of email communication with Opposite Party No. 4 and No. 2 from March 3rd 2018 is appended as CW-2/W)

Having re-assured Complainant about their capabilities multiple times before Complainant even came to India and having being provided with specific description of symptoms Complainant suffers from, Opposite Parties, as competent and reasonable professionals should have known:

- which areas of body to focus on considering symptoms present, specifically pelvis, left thigh and scar tissue around multiple puncture wounds in left groin area, presence of which connects all other symptoms Complainant suffers from,
- which settings to use so neurological analysis of area affected (pelvis and left thigh) can be properly performed considering symptoms present,
- that in order to properly conduct genital blood flow assessment intracavernosal injection must be administered

It is submitted, considering:

- that existence of Complainant's permanent bodily injuries and all symptoms Complainant suffers from—genital, urological, neurological as well as scars in left groin area—is an undeniable fact by now,
- that both low-resolution and similar resolution examinations conducted prior to and after March 5th 2018 PET/MRI exam clearly corroborate all symptoms Complainant suffers from,
- that device on which Opposite Parties conducted their March 5th 2018 PET/MRI exam is a 3 Tesla MRI device which produces high-resolution, detailed diagnostic imaging data,
- that 3 Tesla MRI device from same manufacturer a week later, on March 12th 2018, clearly corroborated presence of severe scarring, multiple neurological problems and fascia compression,
- that report from March 5th 2018 PET/MRI exam conducted by Opposite Parties clearly misses presence of any of these symptoms,
- that data from March 5th 2018 PET/MRI exam conducted by Opposite Parties clearly cannot be complete due to the errors Opposite Parties committed in choosing appropriate settings so neurological analysis of area affected (pelvis and left thigh) can be properly performed considering symptoms present and in failing to administer any intracavernosal injection to properly perform genital blood flow assessment

that it is clear that the Opposite Parties committed multiple diagnostic errors during their March 5th 2018 PET/MRI examination.

Further, it is submitted that Opposite Parties—in their reply dated 29.11.2018—quoting **report from their failed March 5th 2018 PET/MRI exam** is misleading as that report **clearly states that none of the symptoms Complainant suffers from are present**, and not that some or any of the symptoms were actually properly recognized:

- a. (...) **No** demonstrable altered intensity / enhancing / FDG avid lesion / abnormality seen underneath the fiducial marker. The lumbar plexus appears unremarkable with no evidence of any abnormality in relation to the lumbar plexus. (...)
- b. (...) “**IMPRESSION: No** demonstrable soft tissue lesion in pelvis and inguinal region and no other metabolically active abnormality in the remaining whole body. Suggest clinical correlation.” (...)

Therefore, it is submitted that, if it is clearly written that none of the symptoms Complainant suffers from were detected by Opposite Parties because of diagnostic errors they committed, then mentioning such quotes in Opposite Parties' reply dated 29.11.2018 clearly cannot serve any other purpose but to issue claims which are misleading and contradictory to reality.

It is submitted that, in light of all symptoms Complainant suffers being corroborated in 9 reports from 8 different medical professionals by now—including world-class specialist in ultrasound evaluation of nervous system, Doc. Dr. Gerd Bodner—any claims on part of Opposite Parties that Complainant is only relying on examinations conducted at Mahajan Imaging to reach conclusion that March 5th 2018 PET/MRI exam is erroneous are therefore dismissed.

Further, it is submitted that any claims on part of Opposite Parties that somehow their failed study conducted on March 5th 2018—missing severe scaring, multiple neurological problems and fascia compression—is more correct than 9 other reports from 8 different medical professionals—including world-class specialist in ultrasound evaluation of nervous system—or that such discrepancy in results can amount in any way to differences in opinion, not diagnostic errors on part of Opposite Parties, are dismissed.

In addition, inference from such claims on part of Opposite Parties', suggesting Complainant would have went to all this trouble to make travel arrangements and take his time just to have these detailed diagnostic imaging studies conducted because he did not really suffer from all symptoms communicated to Opposite Parties—despite all these been know fully confirmed by now, multiple times—is further preposterous and insulting.

It is submitted that, since data from March 5th 2018 PET/MRI exam conducted by Opposite Parties cannot possibly be complete due to the errors Opposite Parties committed—in choosing appropriate settings so neurological analysis of area affected (pelvis and left thigh) can be properly performed considering symptoms present and in failing to administer any intracavernosal injection to properly perform genital

blood flow assessment—**Opposite Parties' requests that Complainant obtain second-opinion based on such incomplete data are therefore dismissed.**

Further, conducting such second-opinion is an additional expenditure and the Complainant already spent well above what even the most involved single PET/MRI exam should have cost; Opposite Parties' negligence in conducting March 5th 2018 exam and failure to settle these matters out of court when served with legal notice on April 5th 2018 cost Complainant further additional expenditures. Thus, expecting that the Complainant—despite having enough medical reports already, which all corroborate symptoms Complainant in fact suffers from—should spend additional money to evaluate data that cannot possibly be complete would not be wise.

Finally, it is submitted that Opposite Parties' comparison of an ultrasound evaluation of fetus in womb with 3 Tesla Magnetic Resonance evaluation of adult human body in their reply dated 29.11.2018—where specific symptoms and areas to evaluate are provided and specific protocols to be utilized during such exam are agreed to, output of which should be high-resolution diagnostic imaging data due to MRI being sensitive and specific and not operator dependent like ultrasound—is thus dismissed.

11. It is submitted that—despite confirming availability of both PET/MRI and PET/CT examinations in writing, despite Complainant providing referrals for and booking both examinations and, as a medical tourist, traveling to India specifically to have these examinations conducted—Opposite Parties disregarded their commitments, the context of Complainant's travel to India, and in addition to committing diagnostic errors during the March 5th 2018 PET/MRI examination, subsequently canceled the PET/CT examination on March 6th 2018.

On March 6th 2018, one day after PET/MRI examination, Complainant having scheduled and paid for detailed CT exam and being prepared to take that examination—in hospital clothes—was suddenly informed by Opposite Party No. 4 that examination is canceled. Then, Complainant was told that Opposite Parties' doctors need to confirm this examination is needed—despite Complainant booking both examinations, having

referral for both examinations, presenting this referral to Opposite Parties, and Opposite Parties confirming in writing both examinations will be conducted—and despite Opposite Parties' doctors confirming this examination can be taken, Complainant was subsequently denied again, for no reason at all, to have this examination conducted.

(Copy of payment receipt for PET/CT examination to be conducted on March 6th 2018 at “The Pet Suite”/Department of Molecular Imaging & Nuclear Medicine of Apollo Hospital in New Delhi, India is appended as CW-2/X),

(Copy of email communication with Opposite Party No. 4 from March 5th 2018 is appended as CW-2/Y),

(Copy of email communication with Opposite Party No. 4, between March 6th and March 7th 2018, regarding refund for canceled PET/CT examination is appended as CW-2/Z)

It is true that for this particular examination, Complainant received refund the same week. However, Opposite Parties' mistaken assumptions that for the Complainant—having traveled for the specific purpose of having specific diagnostic imaging studies performed—it would be reasonable to spend his time and money and leave New Delhi, India, without having any of these symptoms examined and addressed in detail is further proof of grave logical errors and unreasonableness on part of Opposite Parties.

It is submitted that both objectives of Complainant's medical tourism trip to India would have been effectively nullified and Complainant would have suffered even greater material and immaterial damages had Complainant not sought to conduct these examinations elsewhere, subsequently to Opposite Parties' breaches of trust/care.

Obviously, if none of the symptoms Complainant suffers from were present in report produced by the Opposite Parties, and Complainant came to India to conduct comprehensive diagnostic imaging studies knowing that all these symptoms in fact are present and are all corroborated in properly conducted studies by now, then Complainant absolutely had to perform these examinations properly elsewhere—it was a direct result of negligence on part of the Opposite Parties.

Without high-resolution diagnostic imaging data from at least these MRI and CT studies performed by Mahajan Imaging–PET/MRI being impossible to arrange elsewhere on such short notice–Complainant would return back empty-handed due to not being able to gather any additional data to supplement medical documentation, thus not being able to consult neurologist/neurosurgeon nor plastic surgeon nor radiologist to evaluate these findings, establish comprehensive diagnosis and receive treatment recommendations.

Opposite Parties’ negligence necessitated Complainant seeking other facility to conduct diagnostic imaging studies, and subsequent failure to settle these matters out of court and compensate Complainant for material and immaterial damages, not only are delaying Complainant from obtaining full, comprehensive diagnosis–as Complainant will have to conduct PET/MRI examination again in order to fill in missing data related to blood flow in genito-urinary area–but also from selecting most adequate treatment options. This situation resulted in at least 6+ month additional delay in proper treatment in addition to significant additional costs generated for the Complainant.

These failures on part of Opposite Parties clearly cost the Complainant additional money, time, and a lot of stress and anxiety–to have these conducted properly was the sole purpose of this travel. Because Complainant was not able to arrange on such short notice for another PET/MRI examination and could only perform high-resolution MR and CT examinations, and because Complainant due to financial loss this situation caused was not able to have the PET/MRI examination conducted elsewhere outside India, a complete diagnosis–connecting blood flow problems in uro-genital area related to erectile dysfunction–is still missing and is thus causing delay which causes further suffering, these being most intimate parts of body.

Therefore, it is submitted that any claims on part of Opposite Parties related to Complainant conducting examinations elsewhere being “Complainant's choice” and not an absolute necessity considering purpose of this medical tourism trip and a direct result of negligence on part of Opposite Parties–diagnostic errors during PET/MRI exam on March 5th 2018 and subsequent denial of care due to canceling PET/CT examination on March 6th 2018–and that

these and subsequent actions on part of Opposite Parties' did not directly cause both material and immaterial damages to Complainant—are therefore dismissed.

12. It is submitted that, contrary to Opposite Parties' claims, all 3 components required to consider this specific case as medical negligence are clearly present:

- a. **Duty of care**—Complainant paid to have specific exam conducted, bill for this service being attached to both legal notice served on April 5th 2018 and lawsuit document filed in August 2018; By paying for specific exam—with additional specifications outlined in writing, as evidenced in annexed email communication—doctor-patient relationship was established between Complainant and Opposite Parties; in addition, prior to making travel arrangements and arriving in India as a medical tourist, Complainant received confirmation in writing from Opposite Parties regarding both diagnostic imaging examinations needed to be conducted, booked both examinations, as well as provided referrals for both examinations;
- b. **Breach of duty**—the extent of failure on part of the Opposite Parties is evident as above-mentioned; 9 reports from 8 different medical professionals corroborate all symptoms Complainant communicated to Opposite Parties numerous times; Opposite Parties committed multiple breaches of trust/care due to diagnostic errors during their March 5th 2018 PET/MRI examination—by failing to focus on specific parts of body where symptoms are present, including left thigh and scar tissue around multiple puncture wounds in left groin area, presence of which connects all other symptoms Complainant suffers from, by failing to choose appropriate settings so neurological analysis of area affected (pelvis and left thigh) can be properly performed considering symptoms present, and by failing to administer any intracavernosal injection to properly perform genital blood flow assessment—thus missed all of the symptoms Complainant suffers from, apparently attempting to convince Complainant that none of these symptoms exist or, as is evidenced in Opposite Parties reply dated 29.11.2018, that these can be attributed to differences in opinion, which is impossible considering the breadth of 9 medical reports from 8 different medical professionals, gathered over the

course of 4 years since assault in January 2014, all corroborating symptoms Complainant suffers; not only is report provided by Opposite Parties a case of misdiagnosis but data provided by Opposite Parties is clearly missing information which 3 Tesla MRI device from same manufacturer, using same protocol, gathered properly a week later at Mahajan Imaging, in addition to missing proper data related to genital blood flow due to not administering intracavernosal injection; this is in addition to canceling the March 6th 2018 PET/CT examination, which was the 2nd of the two specific diagnostic imaging examinations which were the purpose of Complainant's medical tourism trip to India;

- c. **Damage**—as above-mentioned, damage stemming from Opposite Parties' actions is clearly both material—due to additional expenses being necessary, such as medical, translation, notary, shipping, and legal costs—and immaterial—with stress and anxiety this situation caused, related to absolute necessity of seeking and conducting examinations elsewhere so as to not cause further damages—as conducting such specific diagnostic imaging examinations was the sole purpose of Complainant's medical tourism trip to India, related to seeking legal help, related to work on legal notice, related to being misled that reply to legal notice was sent after close to 3 months where given to Opposite Parties to settle these matters out of court, related to work on lawsuit document, related to work on this reply, and most importantly related to fact that this situation caused an additional 6+ month delay in completing all necessary examinations—as Complainant will have to conduct PET/MRI examination again in order to fill in missing data related to blood flow in genito-urinary area—and obtaining fully relevant treatment options, and not being able to focus both time, energy and financial resources solely on treatment; the mere fact of such situation—in the context of continuing suffering due to injuries to these most intimate parts of body and not being able to complete all relevant diagnostic imaging and start treatment—is damaging to Complainant's both physical and mental health;

In light of the above, any claims of the Opposite Parties that their actions—including misdiagnosis, denial of care, multiple breaches of trust and multiple examples of conflicting, erroneous information

provided–do not cause any damages to Complainant, including stress, anxiety, and delays in obtaining comprehensive diagnosis and receive treatment recommendations, are completely unrealistic and are thus dismissed.

Furthermore, Opposite Parties' claims of conducting themselves “*with care and empathy*” are a direct contradiction, reverse of what is actually taking place, and are thus dismissed.

13. It is submitted that Opposite Parties' demands for images and exams from examinations which Complainant conducted elsewhere are dismissed.

All symptoms Complainant suffers from–genital, urological, neurological as well as scars in left groin area directly connected to these symptoms–are corroborated in 9 reports from 8 different medical professionals by now–including world-class specialist in ultrasound evaluation of nervous system, Doc. Dr. Gerd Bodner–and are an undeniable fact.

Opposite Parties do not possess any knowledge, expertise nor adequate ethics–as was demonstrated in their handling of March 5th 2018 and March 6th 2018 examinations and their subsequent actions–greater than these specialists to refute these findings or form alternative opinions which would better correlate with symptoms Complainant does suffer from.

Complainant does possess imaging data from these examinations, some of which was already provided with lawsuit document and will provide full data available from these examinations but only to independent medico-legal expert, and along with data from failed examination Opposite Parties conducted, entire body of data would be evaluated to form such “second opinion” with actual legal value for this case, not being a partial, skewed opinion which Opposite Parties would likely form considering their stake in this matter.

14. In regards to separate reply from Opposite Party No. 4, it is submitted that from the very beginning Opposite Party No. 4 was involved in mediating between Complainant and Opposite Parties No. 1, 2 and 3:

- before Complainant decided to travel to India–based on confirmation received from Opposite Party No. 4 regarding availability of specific diagnostic imaging examinations,
- during visit to India–both in writing, as evidenced in annexed email communication, and in person–and
- after leaving India–when contacted regarding legal notice Opposite Parties were served on April 5th 2018, via phone, email and Whatsapp

Therefore, it is submitted that any information received from and actions of Opposite Party No. 4 should be treated as those of Opposite Parties No. 1, 2 and 3 as it is assumed they were consulted by Opposite Party No. 4 each step of the way–considering Opposite Party No. 2 was included in all emails exchanged between Complainant and Opposite Party No. 4 (via "Carbon Copy", meaning copy of each email sent to Opposite Party No. 4 was also sent to Opposite Party No. 2).

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Forum/ Commission may kindly be pleased to:

- a) Uphold the present Consumer Complaint;
- b) Award Litigation costs to the Complainant.
- c) Pass any other order that this Hon'ble Fourm may deem fit in the facts and circumstances of the present case.

COMPLAINANT

THROUGH

RAKESH MALHOTRA
ADVOCATE
TRITENT LEGAL LAW FIRM