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VIA TRUEFILING

The Honorable Patricia Guerrero, Chief Justice
The Honorable Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, California 94102

Re: *Naranjo v. Drs. Med. Ctr. of Modesto, Inc.*, 90 Cal.App.5th 1193 (2023)
Supreme Court Case No. S280374
Letter in Support of Petition for Review

Dear Honorable Justices:

This law firm represents the California Hospital Association ("CHA"). Pursuant to California Rules of Court, rule 8.500(g), we submit this letter on CHA's behalf in support of the Petition for Review filed by Doctors Medical Center of Modesto, Inc., in the above-referenced matter ("*Naranjo*"). Almost all of CHA's member hospitals operate emergency departments and are directly affected by *Naranjo*'s central issue: whether California hospitals are required to make pricing disclosures to patients before treatment, beyond detailed and specific state and federal requirements governing hospital pricing disclosures. *Naranjo* concluded that under California's Unfair Competition Law ("UCL") and Consumers Legal Remedies Act ("CLRA"), hospitals must disclose Evaluation and Management Services Fees ("EMS Fees") to emergency patients before treatment. The Fifth District's holding in *Naranjo* conflicts directly with prior Court of Appeal decisions, including *Saini v. Sutter Health*, 80 Cal. App. 5th 1054 (2022), *Gray v. Dignity Health*, 70 Cal. App. 5th 225 (2021), and *Nolte v. Cedars-Sinai Med. Ctr.*, 236 Cal. App. 4th 1401 (2015).

We therefore urge this Court to grant review of *Naranjo*. Doing so will allow the Court to resolve the irreconcilable split between *Naranjo* and the majority view of two other districts (*Nolte, Gray,* and *Saini*); provide guidance to hospitals, litigants, and lower courts in similar lawsuits; and protect the ability of hospital emergency departments to provide immediate lifesaving care to patients.

I. Interest of California Hospital Association

CHA is a non-profit association dedicated to representing the interests of California's hospitals. It is the largest hospital advocacy organization in California and one of the largest hospital trade associations in the nation, serving more than four hundred hospitals and health systems and 97 percent of the patient beds in California. CHA's members include general acute care hospitals, acute psychiatric hospitals, academic medical centers, county hospitals, and multi-hospital health systems. Its members furnish vital health care services to millions of our state's residents every year. CHA provides its members with state and federal representation in the legislative, judicial, and regulatory arenas in its continuing efforts to improve health care quality, access, and coverage.

CHA's member hospitals have a vital interest in the resolution of *Naranjo*, which addresses whether California hospitals are obligated to separately and specifically disclose EMS Fees to emergency patients before treating them. Under state and federal law, hospitals are required to make a schedule of standard charges available to consumers on the hospital's website or at the hospital location, as well as post a notice in the emergency department that the schedule is available for review. *See* Cal. Health & Safety Code §§ 1339.50–1339.59; 42 U.S.C. § 300gg-18(e); 45 C.F.R. § 180.60(a)(1).

Hospitals are also required to provide emergency care to patients without any delay or questioning related to their ability to pay. *See* Cal. Health & Safety Code § 1317(d) (providing that hospitals must render emergency services "without first questioning the patient or any other person as to his or her ability to pay therefor"); 42 U.S.C. § 1395dd(a) & (h) (providing that Medicare-participating hospitals must deliver emergency services upon request and may not delay such services "to inquire about the individual's method of payment or insurance status").

These obligations involve competing policy interests in the emergency care context: (i) on one hand, providing for hospital pricing transparency, enabling consumers to make more informed decisions when seeking care; and (ii) on the other, to ensure timely treatment of patients requiring emergency care without regard for payment status. In balancing these interests, state and federal legislation imposed specifically delineated disclosure obligations on hospitals. But *Naranjo*, in apparent disregard of the resulting careful balance of policy interests, imposes additional disclosure obligations on hospitals.

II. Supreme Court Review Is Warranted to Resolve the Split in Authority Created by the Fifth District's Decision in *Naranjo*

The Court should grant review to resolve conflicting appellate decisions related to hospitals' pricing disclosure obligations, which are causing confusion and uncertainty among CHA's member hospitals. To provide high-quality patient care in compliance with the law, CHA members need clarity and guidance on this critical issue.

Three decisions by the First and Second Districts have held that California hospitals have no duty to make disclosures beyond those required by the state and federal statutes governing hospital pricing disclosures. In *Nolte*, the Second District held that the defendant hospital was not required to disclose or explain a hospital facilities fee to plaintiff patient before he received treatment from a hospital-affiliated physician. 236 Cal. App. 4th at 1409 (affirming dismissal of patient's UCL claim). In *Gray*, the First District found that the rule in *Nolte* is even more compelling in the emergency care setting and held that hospitals are not required to disclose EMS Fees to emergency patients before treating them. 236 Cal. App. 5th at 240 (affirming dismissal of patient's UCL and CLRA claims). Most recently, in *Saini*, the First District affirmed *Gray* and held that the defendant hospital had no duty to post additional signage in the emergency room about EMS Fees. 80 Cal. App. 5th at 1062 (affirming dismissal of patient's UCL and CLRA claims).

Both the *Gray* and *Saini* courts noted that in the emergency care setting, there are "competing interests served by ensuring that patients are fully apprised in advance of the costs of emergency services and ensuring that patients have timely access to emergency services," and "the state and federal legislative bodies are in a superior position to balance these competing interests and have done so in crafting the applicable 'multifaceted statutory and regulatory scheme.'" *Saini*, 80 Cal. App. 5th at 1062–1063; *see also Gray*, 70 Cal. App. 5th at 240–241. Given "the balance struck by the existing regulatory scheme," there was "no basis to require further disclosure by hospitals." 80 Cal. App. 5th at 1061, 1063; *see also* 70 Cal. App. 5th at 240–241. This Court denied plaintiffs' petitions for review in both *Gray* and *Saini*.

Naranjo is directly contrary. Unlike *Saini*, *Gray*, and *Nolte*, the Fifth District held in *Naranjo* that the defendant hospital owed "a duty to its emergency room patients to disclose 'the existence of and amounts of its EMS Fees'" before treating them, and the hospital's failure to disclose EMS Fees to the plaintiff patient was actionable under the UCL and the CLRA. 90 Cal. App. 5th at 847, 861, 862. In deciding *Naranjo*, the Fifth

District relied on its previous decision addressing the same issue, *Torres v. Adventist Health Sys.*, 77 Cal. App. 5th 500 (2022). Although the *Naranjo* court considered *Saini*, *Gray*, and *Nolte*, the court disagreed with the holdings in those decisions because they "did not 'address whether the hospital had a duty to disclose based on its exclusive knowledge of material facts." 90 Cal. App. 5th at 857–858.

In deciding *Naranjo* and *Torres*, the Fifth District departed from the prior decisions of the First and Second Districts, creating the irreconcilable division among appellate districts, noted above, on the crucial question: whether California hospitals have a duty to disclose EMS Fees to emergency patients before treatment. Faced with these conflicting appellate opinions, hospitals are uncertain as to their pricing disclosure obligations and require the Court's guidance to provide high-quality, legally compliant care to patients in need.

This Court's review would also provide clarity to litigants and lower courts involved in pending and future disputes about hospitals' pricing disclosure obligations. Numerous California hospitals have been, and continue to be, subject to serial lawsuits brought by the attorneys for plaintiff in *Naranjo*: class actions based on the hospital not providing disclosure about EMS Fees to emergency patients before treatment. This recurring issue remains unresolved.

In addition to *Naranjo* and the other appellate cases discussed above, CHA is aware of six similar California lawsuits addressing disclosure of EMS Fees, with four of them still pending.[1] These cases, as well as similar non-California cases, suggest that more

[1] The pending cases are *Sarun v. Dignity Health*, Los Angeles County Super. Ct. ("LASC") No. BC483764; *Fleschert v. Cedars-Sinai Med. Ctr.*, LASC No. 19STCV05681; *Moran v. Prime Healthcare Management, Inc. et al.*, Fourth Appellate District Division 3 No. G060920 (Orange County Super. Ct. No. 30-2013-00689394); *Capito v. San Jose Healthcare Sys. LP*, Supreme Court No. S279862 (Sixth Appellate District No. H049022). The resolved cases are *Yebba v. AHMC Healthcare Inc.*, No. G058817, 2021 WL 2657058 (Cal. Ct. App. June 29, 2021), review denied (Sept. 29, 2021); *Thomas v. Daughters of Charity Health System, et al.*, LASC No. BC528457. We refer to these unpublished California cases not as authority, but to show that hospital pricing disclosures remain a recurring legal issue in California. *See, e.g., Mangini v. J.G. Durand Int'l*, 31 Cal. App. 4th 214, 219–20 (1994) (citing two depublished cases to show that a "recurring issue remains unresolved").

litigation related to California hospitals' pricing disclosure obligations will come. This Court's review of *Naranjo* will assist lower courts and foster judicial efficiency by providing clear guidelines for judging the merits of pending and future lawsuits.[2]

III. *Naranjo* Imposes on Hospitals Burdensome Disclosure Obligations in Excess of Statutory Obligations Established

This Court's review is also warranted because *Naranjo* unreasonably burdens and hampers hospitals' ability to provide immediate care to emergency patients. As discussed above, the state and federal statutes governing hospitals' pricing disclosure obligations seek to balance the public policy of increasing pricing transparency while simultaneously ensuring immediate treatment of emergency patients. *Naranjo* disrupts this balance by adding an extra-statutory "duty to disclose" that would overload hospitals' emergency departments as they labor to provide urgent, often lifesaving, care.

Allowing *Naranjo* to stand would impose an unreasonable duty on hospitals because disclosing pricing before treatment, especially emergency treatment, is an unworkable burden. Hospitals cannot determine the costs of patient care prior to treatment, especially emergency care. The treatment necessary for a particular patient depends on the severity of the patient's condition, which is impossible for either the patient or the hospital to know in advance. Besides, a patient's financial responsibility for treatment costs depends on his or her insurance status and coverage. Even assuming a patient has insurance, the hospital cannot foresee whether, and to what extent, the insurer will provide coverage for the services ultimately rendered to the patient. This Court's review of *Naranjo* is thus warranted to ensure hospitals are not hampered in providing immediate emergency care.

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[2] The ongoing controversies surrounding EMS Fees are numerous. Apart from the cases cited above relating to hospitals' obligation to disclose the fee pre-treatment, six cases, already resolved, relate to the reasonableness or fairness of the amount of the EMS Fee charged. *Solorio v. Fresno Cmty. Hosp. & Med. Ctr.*, No. F073953, 2018 WL 3373411 (Cal. Ct. App. July 11, 2018); *Doster v. Pomona Valley Hosp. Med. Ctr.*, No. B280005, 2018 WL 2382150 (Cal. Ct. App. May 25, 2018); *Hefczyc v. Rady Children's Hosp.-San Diego*, 17 Cal. App. 5th 518 (2017); *Kendall v. Scripps Health*, 16 Cal. App. 5th 553 (2017); *Caudle v. Northbay Healthcare Grp.*, No. A148912, 2017 WL 6546377 (Cal. Ct. App. Dec. 22, 2017); *Hale v. Sharp Healthcare*, 232 Cal. App. 4th 50 (2014). By granting review in *Naranjo*, this Court can provide clarity on at least the disclosure issue.

* * * * *

For the reasons stated above, CHA respectfully asks the Court to grant the Petition for Review in *Naranjo* to resolve the split in authority; provide much-needed guidance to hospitals, litigants, and lower courts; and preserve the ability of emergency departments to provide the prompt care patients require.

Respectfully submitted,

By: _____
Lowell C. Brown
Attorney for California Hospital Association

cc: See attached proof of service

CERTIFICATE OF SERVICE

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 West Fifth Street, 48th Floor, Los Angeles, California 90013-1065. My email address is katryn.smith@afslaw.com.

I hereby certify that on June 28, 2023, I caused to be electronically filed the foregoing **LETTER TO SUPREME COURT** IN **SUPPORT OF PETITION FOR REVIEW FILED IN *NARANJO V. DRS. MED. CTR. OF MODESTO, INC.*** with the California Supreme Court, using the TrueFiling system.

I certify that, except as noted, and on information and belief, all participants in this action are registered to use TrueFiling and that service will be accomplished by TrueFiling. All other parties will be served as indicated on the service list by either:

☒ (U.S. Mail) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business. On this date, I placed the document(s) in envelopes addressed to the person(s) on the attached service list and sealed and placed the envelopes for collection and mailing following ordinary business practices.

☒ (By Electronic Service through TrueFiling) By emailing true and correct copies to the person(s) at the electronic notification address(es) shown on the accompanying service list. The document was/were served electronically and the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 28, 2023, at Los Angeles, California.

Katryn F. Smith

***Naranjo v. Drs. Med. Ctr. of Modesto, Inc.*,**
Supreme Court Case No. S280374

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