

5-19-2011

Arregui v. Gallegos-Main Clerk's Record v. 1 Dckt. 38496

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LAW CLERK

Vol. 1 of 3

(VOLUME I)

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

MARTHA A. ARREGUI,

Plaintiff-Appellant,

-vs-

**ROSALINDA GALLEGOS-MAIN, an
individual; FULL LIFE CHIROPRACTIC,
P.A., an Idaho professional association,**

Defendants-Respondents

And

**JOHN AND JANE DOES I through X,
whose true identities are unknown,**

Defendants.

Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County

Honorable RENAE J. HOFF, District Judge

Sam Johnson
JOHNSON & MONTELEONE, LLP.

Attorney for Appellant

Richard H. Greener
Loren K. Messerly
GREENER BURKE SHOEMAKER, PA.

Attorneys for Respondents



38496

IN THE SUPREME COURT OF THE
STATE OF IDAHO

MARTHA A. ARREGUI,)

Plaintiff-Appellant,)

-vs-)

ROSALINDA GALLEGOS-MAIN, an)
individual; FULL LIFE CHIROPRACTIC,)
P.A., an Idaho professional association,)

Defendants-Respondents,)

And)

JOHN AND JANE DOES I through X,)
whose true identities are unknown,)

Defendants.)

Supreme Court No. 38496

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE RENAE J. HOFF, Presiding

Sam Johnson, JOHNSON & MONTELEONE, LLP.,
405 South Eighth St., Ste. 250, Boise, Idaho 83702

Attorney for Appellant

Richard H. Greener and Loren K. Messerly, GREENER BURKE SHOEMAKER, P.A.,
950 W. Bannock St., Ste. 900, Boise, Idaho 83702

Attorneys for Respondents

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Date: 4/7/2011

Time: 11:16 AM

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This Judicial District Court - Canyon County

User: RANDALL

ROA Report

Case: CV-2009-0003450-C Current Judge: Renae J. Hoff

Martha A Arregui vs. Rosalinda Main Gallegos, etal.

Martha A Arregui vs. Rosalinda Main Gallegos, Full Life Chiropractic

Personal Injury

Date		Judge
4/1/2009	New Case Filed-Personal Injury	Renae J. Hoff
	Summons Issued (2)	Renae J. Hoff
	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Johnson, Samuel (attorney for Arregui, Martha A) Receipt number: 0380627 Dated: 4/1/2009 Amount: \$88.00 (Check) For: Arregui, Martha A (plaintiff)	Renae J. Hoff
4/2/2009	Notice Of Service (fax)	Renae J. Hoff
4/21/2009	Filing: 17 - All Other Cases Paid by: Greener Burke Shoemaker Receipt number: 0385306 Dated: 4/21/2009 Amount: \$58.00 (Check) For: Gallegos, Rosalinda Main (defendant)	Renae J. Hoff
	Answer to Complaint and Demand for Jury Trial	Renae J. Hoff
5/8/2009	Notice of Compliance (fax)	Renae J. Hoff
5/20/2009	Notice of Service Re: Discovery	Renae J. Hoff
6/10/2009	Notice of Deposition Upon Oral Examination (fax)	Renae J. Hoff
6/15/2009	Notice Of Service (fax)	Renae J. Hoff
6/26/2009	Notice Of Service (fax)	Renae J. Hoff
7/2/2009	Notice Of Service (fax)	Renae J. Hoff
7/6/2009	Request For Trial Setting (fax)	Renae J. Hoff
7/28/2009	Order to File Stipulated Trial Dates	Renae J. Hoff
8/11/2009	Stipulated trial dates (fax)	Renae J. Hoff
9/29/2009	Hearing Scheduled (Jury Trial 01/10/2011 09:00 AM) 5 day	Renae J. Hoff
	Hearing Scheduled (Pre Trial 12/21/2010 11:00 AM)	Renae J. Hoff
	Order Setting Case for trial & PT	Renae J. Hoff
11/6/2009	amended Notice Of Taking Deposition (fax)	Renae J. Hoff
12/10/2009	Notice of vacating the deposition of defendant rosalinda gallegos (fax)	Renae J. Hoff
12/18/2009	Second Amended Notice Of Deposition Upon Oral Examination (fax)	Renae J. Hoff
1/22/2010	Third amended Notice Of Taking Deposition (fax)	Renae J. Hoff
3/4/2010	Notice Of Service (fax)	Renae J. Hoff
	Notice Of Service (fax)	Renae J. Hoff
4/14/2010	Notice Of Service (fax)	Renae J. Hoff
7/7/2010	Stipulation re: disclosure of expert witnesses	Renae J. Hoff
7/12/2010	Order on Stipulation to Extend Deadlines for Disclosure of Expert Witnesses	Renae J. Hoff
7/13/2010	Notice Of Taking Deposition allen han (fax)	Renae J. Hoff
7/21/2010	Notice Of Taking Deposition Duces Tecum of Allen C Han MD (fax)	Renae J. Hoff
8/16/2010	Plaintiff's disclosure of expert witness (Fax)	Renae J. Hoff
9/29/2010	Notice Of Taking Deposition of Javier Liera (fax)	Renae J. Hoff
	Notice Of Taking Deposition Duces Tecum Upon Oral Examination of Plaintiffs Expert Don Reading (fax)	Renae J. Hoff
9/30/2010	Notice Of Service (fax)	Renae J. Hoff
	defendants list of expert witnesses (fax)	Renae J. Hoff
10/12/2010	Notice Of Taking Deposition plaintiff's expert sarah tamai (fax)	Renae J. Hoff

Date: 4/7/2011

This Judicial District Court - Canyon County

User: RANDALL

Time: 11:16 AM

ROA Report

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Case: CV-2009-0003450-C Current Judge: Renae J. Hoff

Martha A Arregui vs. Rosalinda Main Gallegos, etal.

Martha A Arregui vs. Rosalinda Main Gallegos, Full Life Chiropractic

Personal Injury

Date		Judge
10/15/2010	Notice Of Service (fax)	Renae J. Hoff
10/26/2010	Defendants Statement of Undisputed Material Facts	Renae J. Hoff
	Defendants Motion for summary judgment	Renae J. Hoff
	Affidavit of counsel in support of defendants motion for summary judgment	Renae J. Hoff
	Memorandum in support of defendants' motion for summary judgment	Renae J. Hoff
	Notice Of Hearing on defendants motion for summary judgment 11-23-10	Renae J. Hoff
	Hearing Scheduled (Motion Hearing 11/23/2010 09:00 AM) defs motn for summ judg	Renae J. Hoff
11/3/2010	Notice Of Taking Deposition lore wooten (fax)	Renae J. Hoff
	Notice Of Taking Deposition jose arregui (fax)	Renae J. Hoff
	Notice Of Taking Deposition rosa chavez (fax)	Renae J. Hoff
	Notice Of Deposition of Daniela Chavez (fax)	Renae J. Hoff
	Notice Of Deposition of Rosa Chavez (fax)	Renae J. Hoff
11/4/2010	Notice of deposition of Rosalia Richardson (MD) (fax)	Renae J. Hoff
	Amended Notice of deposition of Lore B Wootton (MD) (fax)	Renae J. Hoff
11/5/2010	Plaintiff's disclosure of rebuttal expert witnesses (fax)	Renae J. Hoff
11/10/2010	Motion for additional time to oppose defendants motion for summary judgment (fax)	Renae J. Hoff
	Affidavit of sam johnson (fax)	Renae J. Hoff
	Notice Of Service of Discovery (fax)	Renae J. Hoff
11/12/2010	Memorandum in opposition to defendants motion for summary judgment (fax)	Renae J. Hoff
11/15/2010	Affidavit of sarah tamai (fax)	Renae J. Hoff
11/16/2010	Reply to Pltf's Opposition to def's Motion for summary Jmt	Renae J. Hoff
	Motion to Strike the Affd of Sarah Tamai, DC	Renae J. Hoff
	Memorandum in supprt of def's motion to strike the affd of sarah Tamai DC	Renae J. Hoff
	Affidavit of counsel of def's motn to strike the affd of Sarah Tamai DC	Renae J. Hoff
	Motion for order shortening time on def's motion to strike	Renae J. Hoff
	Notice Of Hearing on def's motion to strike the affd of Sarah Tamai DC	Renae J. Hoff
11/22/2010	Notice Of Service (fax)	Renae J. Hoff
11/23/2010	Hearing result for Motion Hearing held on 11/23/2010 09:00 AM: District Court Hearing Held Court Reporter: Carole Bull Number of Transcript Pages for this hearing estimated: less than 100 pages defs motn for summ judg	Renae J. Hoff
	Hearing result for Motion Hearing held on 11/23/2010 09:00 AM: Motion Held defs motn for summ judg / defs. motion to strike affidavit of Dr. Tamai	Renae J. Hoff
	Hearing result for Motion Hearing held on 11/23/2010 09:00 AM: Termination Granted defs motn for summ judg / motn to stike affid. of Dr. Tamai -both motions granted - DA to prepare order.	Renae J. Hoff
11/24/2010	Order Granting Def Motion to Strike Affidavit and Mo for Summary Judgment	Renae J. Hoff

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Date: 4/7/2011

User: RANDALL

Time: 11:16 AM

ROA Report

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Case: CV-2009-0003450-C Current Judge: Renae J. Hoff

Martha A Arregui vs. Rosalinda Main Gallegos, etal.

Martha A Arregui vs. Rosalinda Main Gallegos, Full Life Chiropractic

Personal Injury

Date		Judge
12/2/2010	Final Judgment	Renae J. Hoff
	Civil Disposition entered for: Full Life Chiropractic, Defendant; Gallegos, Rosalinda Main, Defendant; Arregui, Martha A, Plaintiff. Filing date: 12/2/2010	Renae J. Hoff
	Hearing result for Pre Trial held on 12/21/2010 11:00 AM: Hearing Vacated	Renae J. Hoff
	Hearing result for Jury Trial held on 01/10/2011 09:00 AM: Hearing Vacated 5 day	Renae J. Hoff
	Case Status Changed: closed	Renae J. Hoff
12/3/2010	Plaintiff's Motion for reconsideration (fax)	Renae J. Hoff
12/7/2010	Memorandum for Costs (fax)	Renae J. Hoff
	Affidavit of Counsel in Support of Motion for Costs (fax)	Renae J. Hoff
12/8/2010	Amended Memorandum of Costs	Renae J. Hoff
	Amended Affidavit of Counsel in Support of Motion for Costs	Renae J. Hoff
12/15/2010	Objection to defendants amended memorandum of costs (fax)	Renae J. Hoff
	Memorandum in support of pltf's motion for reconsideration (fax)	Renae J. Hoff
12/16/2010	Hearing Scheduled (Motion Hearing 01/27/2011 09:00 AM) pltf motn reconsideration	Renae J. Hoff
	Case Status Changed: Closed pending clerk action	Renae J. Hoff
	Notice Of Hearing 1/27/2011 (fax)	Renae J. Hoff
1/13/2011	Transcript Filed - 11/23/10 hrg	Renae J. Hoff
1/20/2011	Def's reply to pltf's objection to def's amended memorandum for costs	Renae J. Hoff
	Def's opposition to pltf's motion for Reconsideration	Renae J. Hoff
	Affidavit of counsel in support to pltf's motion for reconsideration	Renae J. Hoff
1/25/2011	Reply Memorandum in support of motion for reconsideration (fax)	Renae J. Hoff
1/27/2011	Hearing result for Motion Hearing held on 01/27/2011 09:00 AM: Motion Denied pltf motn reconsideration	Renae J. Hoff
	Hearing result for Motion Hearing held on 01/27/2011 09:00 AM: District Court Hearing Held	Renae J. Hoff
	Court Reporter: Carole Bull	
	Number of Transcript Pages for this hearing estimated: less than 100 pages	
1/28/2011	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Johnson, Samuel (attorney for Arregui, Martha A) Receipt number: 0086089 Dated: 1/28/2011 Amount: \$101.00 (Check) For: Arregui, Martha A (plaintiff)	Renae J. Hoff
	Bond Posted - Cash (Receipt 86091 Dated 1/28/2011 for 300.00) 100.00 clerk's record 200.00 Reporter's transcript	Renae J. Hoff
	Notice of Appeal	Renae J. Hoff
	Appealed To The Supreme Court	Renae J. Hoff
1/31/2011	Order denying Pltf's Motion for Reconsideration	Renae J. Hoff
2/4/2011	S C - Order Suspending Appeal	Renae J. Hoff
2/22/2011	SC-Order Withdrawing Suspension of Appeal	Renae J. Hoff

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Date: 4/7/2011

Time: 11:16 AM

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Third Judicial District Court - Canyon County

User: RANDALL

ROA Report

Case: CV-2009-0003450-C Current Judge: Renae J. Hoff

Martha A Arregui vs. Rosalinda Main Gallegos, etal.

Martha A Arregui vs. Rosalinda Main Gallegos, Full Life Chiropractic

Personal Injury

Date		Judge
2/24/2011	defendants Motion for costs (fax)	Renae J. Hoff
	Notice Of Hearing 3/24/2011 (fax)	Renae J. Hoff
	Hearing Scheduled (Motion Hearing 03/24/2011 09:00 AM) def motn for costs	Renae J. Hoff
3/1/2011	Request for Additional Transcript and Clerk's Record (fax)	Renae J. Hoff
3/24/2011	Hearing result for Motion Hearing held on 03/24/2011 09:00 AM: Motion Granted def motn for costs	Renae J. Hoff
	Hearing result for Motion Hearing held on 03/24/2011 09:00 AM: District Court Hearing Held Court Reporter: Carole Bull Number of Transcript Pages for this hearing estimated: less than 100 pages	Renae J. Hoff
3/30/2011	Order Granting Def Motion for Costs & Judgment against Plaintiff \$8,933.23	Renae J. Hoff
	Civil Disposition Judgment against Pit for Costs \$8,933.23 entered for: Full Life Chiropractic, Defendant; Gallegos, Rosalinda Main, Defendant; Arregui, Martha A, Plaintiff. Filing date: 3/30/2011	Renae J. Hoff
4/6/2011	Affidavit and Application for Writ of Execution	Renae J. Hoff
	Writ Issued - Canyon	Renae J. Hoff
	Miscellaneous Payment: Writs Of Execution Paid by: Grener Burke Shoemaker Receipt number: 0103564 Dated: 4/6/2011 Amount: \$2.00 (Check)	Renae J. Hoff

000004

ORIGINAL

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Attorneys for Plaintiff

FILED
A.M. 10 P.M.

APR 01 2009

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

MARTHA A. ARREGUI,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an individual; FULL LIFE CHIROPRACTIC, P.A., an Idaho professional association; and John and Jane Does I through X, whose true identities are unknown,

Defendants.

Case No.

CV 09-3450
11-11

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

COMES NOW Plaintiff, Martha A. Arregui, through her attorneys of record, Johnson & Monteleone, L.L.P., and for cause(s) of action against Defendants alleges as follows:

1. Plaintiff, Martha A. Arregui, is now, and at all relevant times herein was, a resident of Canyon County, Idaho.

2. Defendant, Rosalinda Gallegos-Main, is now, and at all relevant times herein was, a resident of Canyon County, Idaho and was and is a licensed Chiropractor specializing in chiropractic care in the state of Idaho.
3. Defendant, Full Life Chiropractic, P.A., is now, and at all relevant times herein was, a corporation/professional association authorized to do business in, and doing business in, the state of Idaho, said business including, *inter alia*, the provision of chiropractic care and treatment.
4. John/Jane Does I through X, Defendants (“the Doe Defendants”), are individuals or entities, political, corporate, or otherwise, whose true identities are unknown at the present time, but who engaged in the activities and conduct set forth herein. Alternatively, John/Jane Does I through X are entities or individuals who are now, or at the material and operative times were, the agents, employees, independent contractors, subdivisions, franchisees, wholly-owned subsidiaries, or divisions of Defendants herein, or are entities or individuals acting on behalf of, or in concert with, the individual Defendant(s) named herein.
5. On or about June 4, 2007, Defendant Rosalinda Gallegos-Main, in her capacity as a health care professional, treated Plaintiff for a condition that then existed in Plaintiff’s back and neck.
6. On or about the same date, Defendant Full Life Chiropractic, P.A., in its capacity as a chiropractic facility, treated Plaintiff for a condition that then existed in Plaintiff’s back and neck.

7. On or about the same date, Defendants owed Plaintiff a duty to medically treat Plaintiff in a competent and non-negligent manner, and in conformance with the applicable community standard of chiropractic care.
8. On or about the same date, Defendants failed to meet the applicable community standard of chiropractic care, were negligent and/or reckless in their acts or omissions, and breached the duty they owed to Plaintiff when they caused Plaintiff to suffer a stroke during a manipulation of Plaintiff's neck.
9. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff sustained serious bodily injuries, including the aforementioned stroke, and physical and mental pain and suffering, loss in the enjoyment of life, emotional distress, and impairment of faculties.
10. The above described injuries may have permanent residual effects, and Plaintiff will continue to experience pain and suffering and will continue to be limited in her normal and usual activities.
11. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff has been required to obtain the service of duly qualified medical doctors and other health care professionals to treat her injuries, and in connection therewith, has incurred, and will incur in the future, special damages in an amount as may be proven at trial.
12. As a further result of the injuries sustained, plaintiff has suffered a loss of income and profits and an impairment of her earning capacity in a sum to be proven at trial.
13. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff has been required to retain the services of Johnson & Monteleone, L.L.P. in connection with the

prosecution of this action and requests an award of his attorney fees and costs incurred in the prosecution and maintenance of the instant action.

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

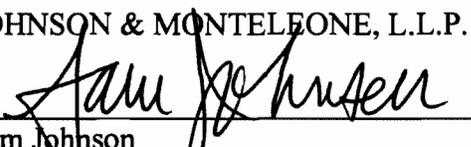
1. For Plaintiff's special and general damages in amounts which may be proven at trial;
2. For Plaintiff's reasonable costs and attorney fees incurred herein; and
3. For such other and further relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of no less than twelve persons on all issues so triable.

DATED: This 31 day of March, 2009.

JOHNSON & MONTELEONE, L.L.P.



Sam Johnson
Attorneys for Plaintiff

ORIGINAL

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Email: rgreener@greenerlaw.com

F I L E D
A.M. 4:52 P.M.
✓ **APR 21 2009**

CANYON COUNTY CLERK
C. DYE, DEPUTY

Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUI,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an
individual; FULL LIFE CHIROPRACTIC,
P.A., an Idaho professional association; and
John and Jane Does I through X, whose true
identities are unknown,

Defendants.

Case No. CV 09-3450

ANSWER TO COMPLAINT AND
DEMAND FOR JURY TRIAL

Fee Category: I.1.a.
Filing Fee: \$58.00

COME NOW Defendants Rosalinda Gallegos-Main and Full Life Chiropractic, P.A.
(collectively, "Defendants"), by and through their counsel of record, Greener Burke Shoemaker
P.A., and by way of answer to the Complaint and Demand for Jury Trial ("Complaint") filed by
Plaintiff Martha A. Arregui ("Plaintiff"), plead and allege as follows:

I.

ADMISSIONS AND DENIALS

1. Defendants deny each and every allegation set forth in the Complaint not specifically admitted herein.

2. In response to paragraphs 1 and 4 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore, deny the same.

3. In response to paragraph 2 of the Complaint, Defendants admit that Dr. Rosalina Gallegos-Main was at all times relevant to this matter a resident of the State of Idaho and was a licensed Chiropractor within the State of Idaho. Defendants deny any remaining allegations set forth therein.

4. In response to paragraph 3 of the Complaint, Defendants admit the allegations set forth therein.

5. In response to paragraph 5 of the Complaint, Defendants admit that on or about June 4, 2007 Defendant Rosalinda Gallegos-Main treated Plaintiff. Defendants deny any remaining allegations set forth therein.

6. In response to paragraphs 6, 8, 9, 10, 11, 12, and 13 of the Complaint, Defendants deny the allegations set forth therein.

7. In response to paragraph 7 of the Complaint, Defendant Rosalinda Gallegos-Main, an individual, admits that she owes Plaintiff a duty regarding her treatment as a licensed chiropractor, but denies any remaining allegations set forth therein.

II.

AFFIRMATIVE DEFENSES

The following defenses are not stated separately as to each claim for relief or allegation of Defendants. Nevertheless, the following defenses are applicable, where appropriate, to any and all of Plaintiff's claims for relief. In addition, Defendants, in asserting the following defenses, do not admit that the burden of proving the allegations or denials contained in the defenses is upon Defendants but, to the contrary, assert that by reason of denials and/or by reason of relevant statutory and judicial authority, the burden of proving the facts relevant to many of the defenses and/or the burden of proving the inverse of the allegations contained in many of the defenses is upon Plaintiff. Moreover, in asserting any defense, Defendants do not admit any responsibility or liability of Defendants but, to the contrary, specifically deny any and all allegations of responsibility and liability in the Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a claim against Defendants upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants, and/or any and all of Defendants' agents or employees, complied with any and all applicable standards of health care practice of the community in which the care was provided.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims for damages are precluded due to the fact that Defendants did not directly or indirectly cause the incident giving rise to the Plaintiff's alleged claims and that such alleged claims were the result of an intervening or superseding cause or causes.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims for damages are precluded and/or limited due to the fact that the incidents giving rise to her claims were not proximately caused by any act or omission of Defendants.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims for damages are precluded and/or limited due to the fact that the incidents giving rise to their claims were not reasonably foreseeable by Defendants.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are precluded to the extent that Plaintiff's injuries, if any, were caused by a pre-existing medical condition which, if known to Plaintiff, was not disclosed nor was it detectable by Defendants.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's injuries and/or damages, if any, were causally contributed to by the comparative conduct of Plaintiff. This defense is set forth to preserve the same, given the fact that no formal discovery has taken place. Should the evidence not support this defense, Defendants will withdraw the same.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has failed to take reasonable steps to mitigate her damages.

RULE 11 STATEMENT

Defendants have considered and believe that they may have additional defenses, but do not have enough information at this time to assert such additional defenses under Rule 11 of the Idaho Rules of Civil Procedure. Defendants do not intend to waive any such defenses and specifically assert their intention to amend this answer if, pending research and after discovery, facts come to light giving rise to such additional defenses.

ATTORNEY'S FEES AND COSTS

Defendants have been required to retain the services of Greener Burke Shoemaker P.A. in order to answer the allegations raised in the Complaint filed by Plaintiff. Defendants are entitled to recover any reasonable attorney's fees and costs of suit pursuant to Idaho Code § 12-121, Rule 54 of the Idaho Rules of Civil Procedure, or any other applicable rule or statute.

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury as to all issues so triable pursuant to Rule 38(b) of the Idaho Rules of Civil Procedure, and will not stipulate to a jury of less than twelve (12) jurors.

WHEREFORE, Defendants pray for entry of judgment against Plaintiff, as follows:

1. That Defendants be dismissed with prejudice and Plaintiff take nothing thereby;
2. That Defendants be awarded their costs, including reasonable attorney's fees pursuant to Idaho Code § 12-121, Rule 54 of the Idaho Rules of Civil Procedure, and any other applicable rule or statute;
3. That judgment be entered in favor of Defendants on all claims for relief raised in the Complaint; and
4. For such other and further relief as the Court deems just and proper.

DATED THIS 21st day of April, 2009.

GREENER BURKE SHOEMAKER P.A.

By 
 Richard H. Greener
 Jon T. Simmons
 Attorneys for Defendants Rosalinda Gallegos-Main
 and Full Life Chiropractic, P.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of April, 2009, a true and correct copy of the within and foregoing instrument was served upon:

Sam Johnson
Thomas J. Lloyd III
Johnson & Monteleone, L.L.P.
405 South Eighth Street, Suite 250
Boise, ID 83702
[Attorneys for Plaintiff]

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
- Email



Richard H. Greener
Jon T. Simmons

Sam Johnson
 JOHNSON & MONTELEONE, L.L.P.
 405 South Eighth Street, Suite 250
 Boise, Idaho 83702
 Telephone: (208) 331-2100
 Facsimile: (208) 947-2424
jason@treasurevalleylawyers.com
 Idaho State Bar No. 4777

FILED
 A.M. *7:30* P.M.
 JUL 06 2009 ✓

CANYON COUNTY CLERK
 D. BUTLER, DEPUTY

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

<p>MARTHA A. ARREGUI, Plaintiff, v. ROSALINDA GALLEGOS-MAIN, an individual; FULL LIFE CHIROPRACTIC, P.A., an Idaho professional association; and John and Jane Does I through X, whose true identities are unknown, Defendants.</p>	<p>Case No. CV 09-3450 REQUEST FOR TRIAL SETTING</p>
---	---

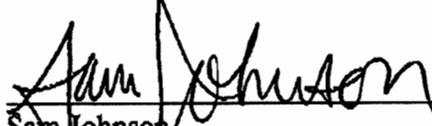
COMES NOW the Plaintiff, by and through her counsel of record, Sam Johnson of Johnson & Monteleone, L.L.P., and hereby requests a trial setting and status conference herein. Plaintiff provides the following information for the benefit of Court and counsel:

1. Type of action: personal injury arising from the provision of chiropractic care;
2. Trial by jury requested: Yes;

3. Estimated time required for trial: five (5) days;
4. Name and address of opposing counsel: Richard H. Greener, Greener, Burke, & Shoemaker, P.A., 950 W. Bannock St., Ste. 900, Boise, ID 83702.
5. Unavailable dates for Plaintiff's counsel: See unavailable dates attached hereto;
6. Name of member of firm who will try the case: Sam Johnson;
7. Parties have not agreed to proceed with less than 12 jurors;
8. Pre-trial hearing is requested;
9. Discovery is ongoing.

DATED: This 6 day of July, 2009.

JOHNSON & MONTELEONE, L.L.P.



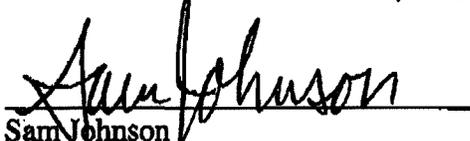
Sam Johnson
Attorneys for Plaintiff

CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION

I CERTIFY that on the 6 day of July, 2009, I caused a true and correct copy of the foregoing document to be:

<input type="checkbox"/> mailed <input type="checkbox"/> hand delivered <input checked="" type="checkbox"/> transmitted fax machine to: (208) 319-2601	Richard H. Greener GREENER, BURKE, & SHOEMAKER, P.A. The Banner Bank Building 950 W. Bannock St., Ste. 900 Boise, ID 83702
---	--

JOHNSON & MONTELEONE, L.L.P.



Sam Johnson
Attorneys for Plaintiffs

UNAVAILABLE DATES FOR SAM JOHNSON
July, 1-16, 22, 2009
August, 2009
September, 2009
October, 2009
November, 2009
December, 2009
January, 2010
February, 2010
March, 2010
April, 2010
October, 2010
November, 2010
December, 2010

Last updated by GDR on 07/06/09.

FILED
A.M. 1:15 P.M.

JUL 28 2009

**CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY**

THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

_____)	
MARTHA A. ARREGUI,)	CASE NO. CV 2009-3450*C
Plaintiff,)	
-vs-)	ORDER TO FILE STIPULATED
)	TRIAL DATES
)	
ROSALINDA GALLEGOS-MAIN,)	
an individual; FULL LIFE)	
CHIROPRACTIC, P.A., an Idaho)	
professional association; and JOHN)	
and JANE DOES I-X, whose true)	
Identities are unknown,)	
Defendants.)	
_____)	

A Request for Trial having been filed in the above entitled matter,

IT IS HEREBY ORDERED that the parties are to submit to the Court, within fourteen (14) days from the date of this order, three agreed upon prioritized sets of trial dates for scheduling

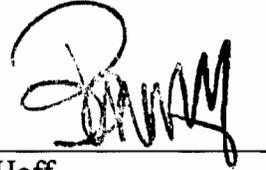
ORDER TO FILE
STIPULATED TRIAL DATES

the trial after March 2010.

IT IS FURTHER ORDERED that if the parties do not file the stipulated available dates, within fourteen (14) days of the date of this order, then the Court will set the trial on the first available date of the Court.

DATED:

JUL 28 2009



Renae Hoff
District Judge

ORDER TO FILE
STIPULATED TRIAL DATES

CERTIFICATE OF SERVICE

STATE OF IDAHO,)
) ss
COUNTY OF CANYON)

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER was forwarded to the following:

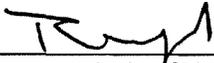
Sam Johnson
JOHNSON & MONTELEONE, LLP
405 South Eighth Street, Ste. 250
Boise, ID 83702

Richard H. Greener
GREENER, BURKE & SHOEMAKER, P.A.
950 W. Bannock St., Ste. 900
Boise, ID 83702

Either by depositing the same in the U.S. mail, first class postage prepaid, or by personal service.

DATED this 26 day of July, 2009.

William H. Hurst
Clerk of the District Court



by Deputy Clerk of the Court

ORDER TO FILE
STIPULATED TRIAL DATES

AUG 11 2009

Richard H. Greener, ISB No. 1191
GREENER BURKE SHOEMAKER P.A.
The Banner Bank Building
950 West Bannock Street, Suite 900
Boise, ID 83702
Telephone: (208) 319-2600
Facsimile: (208) 319-2601
Email: rgreener@greenerlaw.com

Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

FILED
To: Canyon County Clerk
Fax No: 208-451-7525
From: D. Carlson
Date: 8-11-09 Page: 3
A.M. 4:30 P.M.
AUG 11 2009 ✓

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUI,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an
individual; FULL LIFE CHIROPRACTIC,
P.A., an Idaho professional association; and
John and Jane Does I through X, whose true
identities are unknown,

Defendants.

Case No. CV 09-3450

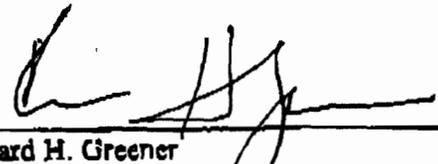
STIPULATED TRIAL DATES

The parties hereto, by and through their respective counsel of record, pursuant to this Court's Order of July 28, 2009, hereby provide the following agreed-upon available dates for trial in this matter. These dates are listed in order of preference by the parties, as requested by the Court's July 28, 2009 Order.

June 21 - June 25, 2010
July 19 - July 23, 2010
July 5 - July 9, 2010
January 10 - January 14, 2011

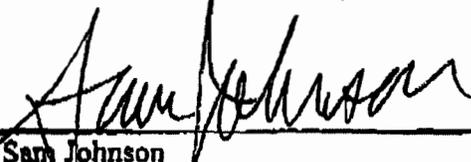
DATED this 11th day of August, 2009.

GREENER BURKE SHOEMAKER P.A.

By 
Richard H. Greener
Attorneys for Defendants Rosalinda Gallegos-
Main and Full Life Chiropractic, P.A.

DATED this 11th day of August, 2009.

JOHNSON & MONTELEONE, L.L.P.

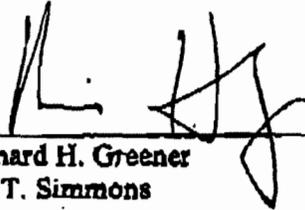
By 
Sam Johnson
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of August, 2009, a true and correct copy of the within and foregoing instrument was served upon:

Sam Johnson
Thomas J. Lloyd III
Johnson & Monteleone, L.L.P.
405 South Eighth Street, Suite 250
Boise, ID 83702
[Attorneys for Plaintiff]

- U.S. Mail
- Facsimile 944-2424
- Hand Delivery
- Overnight Delivery
- Email



Richard H. Greener
Jon T. Simmons

F I L E D
A.M. 1:45 P.M.

SEP 29 2009

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUI,

Plaintiff,

-vs-

ROSALINDA GALLEGOS-MAIN,
an individual; FULL LIFE
CHIROPRACTIC, P.A., an Idaho
professional association; and John
and Jane Does I through X, whose
true identities are unknown,

Defendants.

CASE NO. CV 2009-3450*C

ORDER SETTING CASE FOR TRIAL
AND PRETRIAL CONFERENCE

IT IS HEREBY ORDERED that the above entitled matter is scheduled for a five (5) day jury trial before the District Judge Renae Hoff, at 9:00 A.M. on **January 10-14, 2011** at the Canyon County Courthouse, Caldwell, Idaho. A pretrial conference is scheduled for **December 21, 2010 at 11:00 A.M.** The parties are requested to proceed with alternative dispute resolution/mediation between now and the pretrial conference.

IT IS FURTHER ORDERED that all parties must comply with the following schedule:

1. Join parties or amend the pleadings at least sixty (60) days prior to the date of trial.

ORDER SETTING CASE FOR TRIAL
AND PRETRIAL CONFERENCE

2. All discovery is to be completed at least sixty (30) days prior to trial.

3. All pretrial motions are to have been filed and argued at least twenty-eight (28) days prior to trial. All motions for summary judgment shall be filed and noticed in compliance with I.R.C.P. Rule 56(c).

4. All briefs filed by the parties shall not exceed twenty (20) pages.

5. All parties must file with the Court at least seven (7) days before trial:

A. A concise written statement of the theory of recovery or defense, the elements of that theory and supporting authorities.

B. A written list identifying stipulated facts, all witnesses and all exhibits to be introduced at trial with a statement whether the exhibit is stipulated admissible.

C. A written statement that the parties have discussed settlement or the use of extrajudicial procedures including alternative dispute techniques to resolve the dispute.

D. Proposed jury instructions and verdict forms, if applicable.

Attorneys attending the pretrial conference must have authorization to enter into stipulations regarding factual issues and admission of exhibits.

Each party is hereby notified that noncompliance with this Order may result in the Court imposing sanctions.

DATED: SEP 28 2009



Renae Hoff
District Judge

ORDER SETTING CASE FOR TRIAL
AND PRETRIAL CONFERENCE

CERTIFICATE OF SERVICE

STATE OF IDAHO,)
) ss
COUNTY OF CANYON)

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER was forwarded to the following:

Richard H. Greener
GREENER BURKE SHOEMAKER, P.A.
950 W. Bannock St., Ste. 900
Boise, ID 83702

Sam Johnson
Thomas J. Lloyd, III
Johnson & Montelsone, LLP.
405 South Eighth St., Ste. 250
Boise, ID 83702

Either by depositing the same in the U.S. mail, first class postage prepaid, or by personal service.

DATED this 29 day of September, 2009.

William H. Hurst
Clerk of the District Court



By Deputy Clerk of the Court

ORDER SETTING CASE FOR TRIAL
AND PRETRIAL CONFERENCE

FILED
A.M. 3:00 P.M.

JUL 07 2010

**CANYON COUNTY CLERK
, DEPUTY**



Sam Johnson
JOHNSON & MONTELEONE, L.L.P.
405 South Eighth Street, Suite 250
Boise, Idaho 83702
Telephone: (208) 331-2100
Facsimile: (208) 947-2424
sam@treasurevalleylawyers.com
Idaho State Bar No. 4777

Attorneys for Plaintiff

ORIGINAL

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

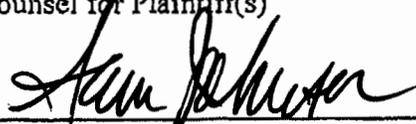
<p>MARTHA A. ARREGUI, Plaintiff, v. ROSALINDA GALLEGOS-MAIN, an individual; FULL LIFE CHIROPRACTIC, P.A., an Idaho professional association; and John and Jane Does I through X, whose true identities are unknown, Defendants.</p>	<p>Case No. CV 09-3450 STIPULATION RE: DISCLOSURE OF EXPERT WITNESSES</p>
---	---

The parties hereby stipulate to the following scheduling items:

1. The Plaintiff shall disclose all expert witnesses to be used at trial by August 15, 2010.
2. The Defendants shall disclose all expert witnesses to be used at trial by September 30, 2010.

DATED: This 1 day of July, 2010.

Counsel for Plaintiff(s)



SAM JOHNSON
ATTORNEY AT LAW
405 S. 8th St., Ste.250
Boise, ID 83702

DATED: This 30th day of JUNE, 2010.

Counsel for Defendant(s)



RICHARD A. GREENER
ATTORNEY AT LAW
950 W. Bannock St., Ste. 900
Boise, ID 83702

FILED
AUG 9 20 10 PM

JUL 12 2010

CANYON COUNTY CLERK
JULIETA A. DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUI,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an individual; FULL LIFE CHIROPRACTIC, P.A., an Idaho professional association; and John and Jane Does I through X, whose true identities are unknown,

Defendants.

Case No. CV 09-3450

**ORDER ON STIPULATION TO
EXTEND DEADLINES FOR
DISCLOSURE OF EXPERT
WITNESSES**

The Court, having reviewed the executed Stipulation of the parties and their respective counsel regarding the deadlines for expert disclosures, and, good cause appearing therefor,

IT IS HEREBY ORDERED That expert disclosure deadlines are as follows:

- a. Plaintiff's expert disclosures are due on or before August 15, 2010; and
- b. Defendants' expert disclosures are due on or before September 30, 2010.

DATED THIS _____ day of July, 2010.

JUL 12 2010

Honorable Renae [Signature]
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of July, 2010, a true and correct copy of the within and foregoing instrument was served upon:

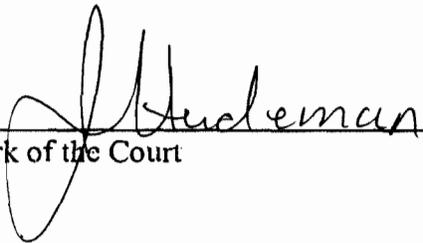
Sam Johnson
Johnson & Monteleone, L.L.P.
405 South Eighth Street, Suite 250
Boise, ID 83702
[Attorneys for Plaintiff]

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
- Email

Richard H. Greener, ISB No. 1191
GREENER BURKE SHOEMAKER P.A.
The Banner Bank Building
950 West Bannock Street, Suite 900
Boise, ID 83702

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
- Email

[Attorneys for Defendants]



 Clerk of the Court

Sam Johnson
Idaho State Bar No. 4777
sam@treasurevalleylawyers.com
JOHNSON & MONTELEONE, L.L.P.
405 South Eighth Street, Suite 250
Boise, Idaho 83702
Telephone: (208) 331-2100
Facsimile: (208) 947-2424

FILED
A.M. *2:40* P.M.
AUG 16 2010 ✓
CANYON COUNTY CLERK
D. BUTLER, DEPUTY

Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

<p>MARTHA A. ARREGUI, Plaintiff, v. ROSALINDA GALLEGOS-MAIN, an individual; FULL LIFE CHIROPRACTIC, P.A., an Idaho professional association; and John and Jane Does I through X, whose true identities are unknown, Defendants.</p>	<p>Case No. CV 09-3450 PLAINTIFF'S DISCLOSURE OF EXPERT WITNESSES</p>
---	---

COMES NOW Plaintiff, by and through her attorney of record, Sam Johnson of Johnson & Monteleone, L.L.P., and discloses the following expert witnesses that may be called to testify at the trial of this matter:

Expert Witnesses

- Allen C. Han, M.D.
Neurological Associates, CTD
3875 E. Overland Rd., Ste. 203

Meridian, ID 83642

Dr. Allen Han is a treating physician of Plaintiff and is anticipated to testify at trial with opinions regarding his treatment of Plaintiff as reflected in the medical records, diagnoses, prognoses, causation, and all other opinions related to the medical condition of Plaintiff at all times relevant to this incident, including both pre-incident and post-incident, as may be applicable. Dr. Han will testify to those opinions set forth in his medical report, dated February 1, 2008, which has been previously disclosed to Defendants on several occasions. He may testify to those matters and items set forth in his deposition taken by Defendants on July 26, 2010. Dr. Han's *curriculum vitae* is appended hereto.

2. Dr. Sarah Tamai, D.C.
Fire Mountain Spine & Rehabilitation Center
2530-H Vista Way
Oceanside, California 92054

Plaintiff plans to call Dr. Sarah Tamai, D.C., to testify as an expert witness at the trial of this matter. Dr. Tamai's *curriculum vitae* is appended hereto. The subject matter of Dr. Tamai's testimony will center on whether the Defendant Dr. Gallegos-Main met the standard of skill and care ordinarily exercised by chiropractic physicians in a similar setting and in like circumstances. Dr. Tamai's testimony will include her opinion that the Defendant Dr. Gallegos-Main failed to meet the standard of healthcare practice when treating Plaintiff on or about June 4, 2007.

3. Don Reading
Ben Johnson Associates, Inc.
6070 Hill Rd.
Boise, ID 83703

Plaintiff plans to call Dr. Don Reading, Ph.D., as an expert witness at the trial of this matter to offer his opinions surrounding Plaintiff's claim for past and future lost earnings which have been previously disclosed by Plaintiff. Dr. Reading's *curriculum vitae* is appended hereto.

Plaintiff reserves the right to amend or supplement this disclosure to include additional data, facts, documents, exhibits, and/or any other information relevant to the testimony of the above-identified witnesses. Plaintiff further reserves the right to amend this list by addition, deletion, substitution, or withdrawal of witnesses.

Plaintiff reserves the right to call all expert witnesses, disclosed and identified by Defendants, to discuss any matter for which they are competent to testify, including any matter within the scope of their expertise based upon their training, education, and/or experience.

DATED: This 16 day of August, 2010.

JOHNSON & MONTELEONE, L.L.P.



Sam Johnson
Attorneys for Plaintiff

CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION

I CERTIFY that on this 16 day of August, 2010 a true and correct copy of the foregoing document to be:

<input type="checkbox"/> mailed <input type="checkbox"/> hand delivered <input type="checkbox"/> transmitted fax machine to: (208) 319-2601	Christopher C. Burke Greener, Burke & Shoemaker, P.A. The Banner Bank Building 950 W. Bannock St., Ste. 900 Boise, ID 83702
--	---

JOHNSON & MONTELEONE, L.L.P.



Sam Johnson
Attorneys for Plaintiff

CV for Dr. Allen C. Han, M.D.

NEUROLOGICAL ASSOCIATES, CTD.

STEPHEN W. ASHER, M.D.
ALLEN C. HAN, M.D.
MARTHA A. CLINE, M.D.

ANDERSON PLAZA MEDICAL BUILDING
SUITE 212
222 N. SECOND STREET
BOISE, IDAHO 83702

TELEPHONE (208) 343-3976
IF NO ANSWER, CALL 327-8401
FAX 381-4612

ALLEN C. HAN, M.D.

CURRICULUM VITAE
July 13, 2006

Date of Birth: [REDACTED]
Citizenship: U.S.A.
Office address: 222 North Second Street, Suite 212
Boise, ID 83702
Office telephone: (208) 343-3976

EDUCATION:

1980 B.A. Biology Brown University, Providence, RI
1983 M.D. Brown Medical University, Providence, RI
7/83-7/84 Internship
Roger Williams General Hospital, Providence, RI
7/84-7/86 Residency (Neurology)
Oregon Health Sciences University, Portland, OR
7/86 - 7/87 Chief Resident (Neurology)
Oregon Health Sciences University, Portland, OR
7/87 - 7/88 Fellowships (EEG, EMG, Evoked Potentials)
Oregon Health Sciences University, Portland, OR

EMPLOYMENT:

8/88 - 7/90 Central Plains Clinic Neurologist
Sioux Falls, SD
9/90 - Present Neurological Associates Neurologist
Boise, ID

BOARD CERTIFICATION:

American Board of Psychiatry and Neurology, June 1989

ALLEN C. HAN, M.D.

July 13, 2006

Page 2

MEMBERSHIPS:

American Academy of Neurology, active 1989.

AFFILIATIONS:

Clinical Assistant Professor of Medicine,
University of Washington, Seattle, WA

Affiliate Faculty Status, Department of Nursing,
Idaho State University, 2000-2001

DRUG STUDY RESEARCH:

- 1992 Sanofi Winthrop, Clopidogrel vs Aspirin Therapy for Ischemic Stroke Prevention. Ongoing
- 1993 Parke Davis, Gabapentin Monotherapy for Complex Partial Seizures and Secondary Seizures.
- 1994 Glaxo, Ondansetron Therapy for Alzheimer's Disease.
- 1996 Parke-Davis, Milameline Study for Alzheimer's.
- 1997 Genetech, Recombinant human nerve growth factor (rhNGF) for diabetic neuropathy.
- 1997 Novartis Pharmaceuticals, Exelon for Alzheimer's.

CV for Dr. Sarah Tamai, D.C.

Curriculum Vitae

Dr. Sarah R. Tamai, D.C.

2530-H Vista Way

Oceanside, CA 92054

(760) 435-9390

email: drsarah@firemountainpine.com

Current Licenses and Certifications:

- Doctor of Chiropractic (California, DC 27545)
- State of California Radiographic Supervisor
- Pettibon System Practitioner
- Active Release Technique Practitioner

Education:

- | | | |
|---|----------------------|-------------|
| • Palmer College of Chiropractic West | DC degree, cum laude | 1996 – 1999 |
| • University of California, Los Angeles | Anthropology, B.S. | 1990 – 1995 |

Career Development:

- | | |
|--|------------|
| • Bio Geometric Integration I | 2001 |
| • Pettibon System Fundamentals of Spine & Posture Correction | 2006- 2007 |
| • Pettibon System X-ray Positioning, Analysis & Adjusting | 2005- 2007 |
| • Pettibon System Soft Tissue Clinic Protocols & Home Care | 2005, 2007 |
| • Pettibon Team Training | 2006 |
| • Active Release Technique Certification | 2008 |
| • Kinesiotaping | 2008, 2009 |

Professional Experience:

- | | |
|--|----------------|
| • Chiropractic practice, Oceanside, CA | 2002 – present |
| • Treating doctor at US Open at Torrey Pines | 2008 |
| • Chiropractic practice, Carlsbad, CA | 2001 –2002 |
| • Locum tenens , Redwood City, CA | 2001 |
| • Chiropractic practice, San Ramon and San Carlos, Costa Rica | 2000 –2001 |
| • Palmer College of Chiropractic West 13thQ internship with Dr. Michael Moore, DC, Redding, CA | 1999 |
| • Palmer College of Chiropractic West Clinic | 1998 –1999 |
| • Chiropractic Assistant, San Francisco, CA | 1995 –1999 |

Major Professional Service:

- Panama Mission, October 2000 team served over 30,000 individuals
- Costa Rica Mission, April 2000 team served over 20,000 individuals

Professional Organizations:

- Palmer West Alumni, 1999
- CCA Member 2005, 2006, 2007, 2008
- International Chiropractic Association 1997 – 2000, 2007-2009

Educational Programs and Presentations:

- LeTip International 2007 – present
- Oceanside Chamber of Commerce 2008-2009
- CORE 2006, 2007
- Loral Langemeier business development seminars 2007, 2008
- Nutritional seminars, 2004, 2006, 2008
- X-ray recertification seminar, 2004, 2006, 2008, 2010
- Parker Seminars, 2003, 2004, 2005, 2006
- Activator Technique I, II 1999
- Thompson Drop Technique, 1999
- Chiropediatric World Tour, 1999
- Fountainhead Experience, Palmer College of Chiropractic, 1999
- Pediatric seminar with Dr. Claudia Anrig, DC, 1998
- Patient Appreciation Days, Dr. Sophia Rodriguez, DC, 1998
- Hands-on Assistant to Alan Cheng, Chiropractor to Oakland A's 1997, 1998
- Motion Palpation Technique 1998
- Fred Schofield professional development 1998, 1999
- COPE (professional speaking in chiropractic) 1999

CV for Don Reading

Don C. Reading

Present position Vice President and Consulting Economist

Education B.S., Economics C Utah State University
M.S., Economics C University of Oregon
Ph.D., Economics C Utah State University

Honors and awards Omicron Delta Epsilon, NSF Fellowship

Professional and business history Ben Johnson Associates, Inc.:
1989 ---- Vice President
1986 ---- Consulting Economist

Idaho Public Utilities Commission:
1981-86 Economist/Director of Policy and Administration

Teaching:
1980-81 Associate Professor, University of Hawaii-Hilo
1970-80 Associate and Assistant Professor, Idaho State University
1968-70 Assistant Professor, Middle Tennessee State University

Firm experience Dr. Reading provides expert testimony concerning economic and regulatory issues. He has testified on more than 35 occasions before utility regulatory commissions in Alaska, California, Colorado, the District of Columbia, Hawaii, Idaho, Nevada, North Dakota, Texas, Utah, Wyoming, and Washington.

Dr. Reading has more than 30 years experience in the field of economics. He has participated in the development of indices reflecting economic trends, GNP growth rates, foreign exchange markets, the money supply, stock market levels, and inflation. He has analyzed such public policy issues as the minimum wage, federal spending and taxation, and import/export balances. Dr. Reading is one of four economists providing yearly forecasts of statewide personal income to the State of Idaho for purposes of establishing state personal income tax rates.

In the field of telecommunications, Dr. Reading has provided expert testimony on the issues of marginal cost, price elasticity, and measured service. Dr. Reading prepared a state-specific study of the price elasticity of demand for local telephone service in Idaho and recently conducted research for, and directed the preparation of, a report to the Idaho legislature regarding the status of telecommunications competition in that state.

Dr. Reading's areas of expertise in the field of electric power include demand forecasting, long-range planning, price elasticity, marginal and average cost pricing,

Don C Reading

production-simulation modeling, and econometric modeling. Among his recent cases was an electric rate design analysis for the Industrial Customers of Idaho Power. Dr. Reading is currently a consultant to the Idaho Legislature's Committee on Electric Restructuring.

Since 1999 Dr. Reading has been affiliated with the Climate Impact Group (CIG) at the University of Washington. His work with the CIG has involved an analysis of the impact of Global Warming on the hydro facilities on the Snake River. It also includes an investigation into water markets in the Northwest and Florida. In addition he has analyzed the economics of snowmaking for ski area's impacted by Global Warming.

Among Dr. Reading's recent projects are a FERC hydropower relicensing study (for the Skokomish Indian Tribe) and an analysis of Northern States Power's North Dakota rate design proposals affecting large industrial customers (for J.R. Simplot Company). Dr. Reading has also performed analysis for the Idaho Governor's Office of the impact on the Northwest Power Grid of various plans to increase salmon runs in the Columbia River Basin.

Dr. Reading has prepared econometric forecasts for the Southeast Idaho Council of Governments and the Revenue Projection Committee of the Idaho State Legislature. He has also been a member of several Northwest Power Planning Council Statistical Advisory Committees and was vice chairman of the Governor's Economic Research Council in Idaho

While at Idaho State University, Dr. Reading performed demographic studies using a cohort/survival model and several economic impact studies using input/output analysis. He has also provided expert testimony in cases concerning loss of income resulting from wrongful death, injury, or employment discrimination. He is currently an adjunct professor of economics at Boise State University (Idaho economic history, urban/regional economics and labor economic.)

Dr. Reading has recently completed a public interest water rights transfer case. He has also just completed an economic impact analysis of the 2001 salmon season in Idaho.

Don C. Reading

- Publications* The Economic Impact of the 2001 Salmon Season In Idaho, Idaho Fish and Wildlife Foundation, April 2003.
- The Economic Impact of a Restored Salmon Fishery in Idaho, Idaho Fish and Wildlife Foundation, April, 1999.
- The Economic Impact of Steelhead Fishing and the Return of Salmon Fishing in Idaho, Idaho Fish and Wildlife Foundation, September, 1997.
- A Cost Savings from Nuclear Resources Reform: An Econometric Model@ (with E. Ray Canterbury and Ben Johnson) *Southern Economic Journal*, Spring 1996.
- A Visitor Analysis for a Birds of Prey Public Attraction, Peregrine Fund, Inc., November, 1988.
- Investigation of a Capitalization Rate for Idaho Hydroelectric Projects, Idaho State Tax Commission, June, 1988.
- "Post-PURPA Views," In Proceedings of the NARUC Biennial Regulatory Conference, 1983.
- An Input-Output Analysis of the Impact from Proposed Mining in the Challis Area (with R. Davies). Public Policy Research Center, Idaho State University, February 1980.
- Phosphate and Southeast: A Socio Economic Analysis* (with J. Eyre, et al). Government Research Institute of Idaho State University and the Southeast Idaho Council of Governments, August 1975.
- Estimating General Fund Revenues of the State of Idaho* (with S. Ghazanfar and D. Holley). Center for Business and Economic Research, Boise State University, June 1975.
- "A Note on the Distribution of Federal Expenditures: An Interstate Comparison, 1933-1939 and 1961-1965." In *The American Economist*, Vol. XVIII, No. 2 (Fall 1974), pp. 125-128.
- "New Deal Activity and the States, 1933-1939." In *Journal of Economic History*, Vol. XXXIII, December 1973, pp. 792-810.

Richard H. Greener, ISB No. 1191
 Loren K. Messerly, ISB No. 7434
 GREENER BURKE SHOEMAKER P.A.
 The Banner Bank Building
 950 West Bannock Street, Suite 900
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 Telephone: (208) 319-2600
 Facsimile: (208) 319-2601
 Email: rgreener@greenerlaw.com
 lmesserly@greenerlaw.com

Attorneys for Defendants Rosalinda Gallegos-Main
 and Full Life Chiropractic, P.A.

FILED
 A.M. 3:75 P.M.
 SEP 30 2010 ✓
 CANYON COUNTY CLERK
 D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUI,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an
 individual; FULL LIFE CHIROPRACTIC,
 P.A., an Idaho professional association; and
 John and Jane Does I through X, whose true
 identities are unknown,

Defendants.

Case No. CV 09-3450

**DEFENDANTS' LIST OF EXPERT
 WITNESSES**

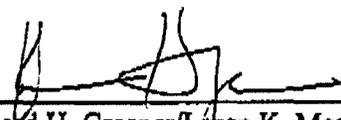
Defendants hereby disclose the following list of retained expert witnesses which they intend to have testify during the trial of this matter. Defendants have also concurrently served supplemental responses to discovery requests upon all parties to this litigation supplementing requests regarding expert witnesses and their anticipated testimony.

- 1. Robert E. Ward III, DC, NMD, CIME
1000 Pocatello Creek Road, Suite S3
P.O. Box 3052
Pocatello, ID 83206
(208) 221-2225
- 2. George Dohrmann, MD, PhD
Neurosurgery
39 S. LaSalle Street, Suite 707
Chicago, IL 60603-1618
(312) 944-6800
- 3. Donald A. Eckard, MD
Acalola, Inc.
1205 Pacific Highway, #3004
San Diego, CA 92101
(619) 319-0048
- 4. Kenneth Hooper
Hooper Cornell, PLLC
250 Bobwhite Court, Suite 300
Boise, ID 83706
(208) 344-2527

Defendants reserve the right to supplement this list to include any additional experts if necessary. Defendants also reserve the right to obtain expert opinion testimony from any of the expert witnesses identified by Plaintiff or any of Plaintiff's treating physicians.

DATED THIS 30th day of September, 2010.

GREENER BURKE SHOEMAKER P.A.

By 
Richard H. Greener/Loren K. Messerly
Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

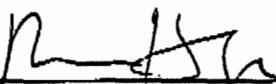
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of September, 2010, a true and correct copy of the within and foregoing instrument was served upon:

Sam Johnson
Johnson & Montelcone, L.L.P.
405 South Eighth Street, Suite 250
Boise, ID 83702

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
- Email

[Attorney for Plaintiff]



Richard H. Greener/Loren K. Messerly

Richard H. Greener, ISB No. 1191
 GREENER BURKE SHOEMAKER P.A.
 The Banner Bank Building
 950 West Bannock Street, Suite 900
 Boise, ID 83702
 Telephone: (208) 319-2600
 Facsimile: (208) 319-2601
 Email: rgreener@greenerlaw.com

Attorneys for Defendants Rosalinda Gallegos-Main
 and Full Life Chiropractic, P.A.

F I L E D
 A.M. 2:10 P.M.
OCT 12 2010 ✓
 CANYON COUNTY CLERK
 D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUI,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an
 individual; FULL LIFE CHIROPRACTIC,
 P.A., an Idaho professional association; and
 John and Jane Does I through X, whose true
 identities are unknown,

Defendants.

Case No. CV 09-3450

**NOTICE OF DEPOSITION DUCES
 TECUM UPON ORAL EXAMINATION
 OF PLAINTIFF'S EXPERT, SARAH
 TAMAI, D.C.**

**October 19, 2010 at 10:30 a.m. PST
 Holiday Inn Occanside Marina
 1401 Carmelo Drive
 Occanside, CA 92054**

PLEASE TAKE NOTICE that counsel for Defendants will take the testimony upon oral examination of Sarah Tamai, DC who shall give testimony pursuant to the Idaho Rules of Civil procedure, before a court reporter and notary public for the State of Idaho, on Tuesday, October 19, 2010, beginning at the hour of 10:30 a.m., Pacific Standard Time, and continuing from day to day until completed. The deposition shall take place at the Holiday Inn, Occanside Marina located at 1401 Carmelo Drive, Occanside, CA 92054 (760-231-7000) in a conference room

**NOTICE OF DEPOSITION DUCES TECUM UPON ORAL EXAMINATION OF
 PLAINTIFF'S EXPERT, SARAH TAMAI, DC - 1**

designated by the hotel, at which time and place you are notified to appear and take such part in said examinations as shall be deemed just and proper.

Deponent is requested to produce and make available for inspection and/or copying the following documents and/or materials:

1. Copies of all documents reviewed by the Deponent in preparation for rendering any opinions in this lawsuit;
2. Copies of each and every document relied upon by the Deponent in forming any opinions in this lawsuit;
3. Copies of any and all notes, memorandums, calculations, emails, reports or any other documents prepared and/or maintained by the Deponent in connection with this lawsuit.
4. A copy of each and every report prepared by Deponent or at Deponent's direction in connection with this lawsuit.
5. A copy of each and every article, journal, publication, manual, treatise or other similar authority upon which Deponent expects or intends to reply upon in supporting any opinion which Deponent may have formed in connection with this lawsuit.
6. A copy of the Deponent's current resume or curriculum vitae.
7. A complete listing of all cases that the Deponent has provided testimony in (either at trial, at a deposition or through an affidavit) at any time in the preceding four years.

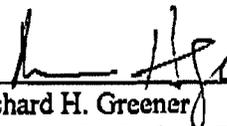
8. Copies of any depositions transcripts that the Deponent gave in other cases or copies of any affidavit that the Deponent authored in any other cases, wherein she testified as an expert witness or gave expert opinions.

This request not only calls for the documents in the possession of the Deponent, but also for all documents that are in the custody or control of Deponent's employees, representatives and/or attorney.

The words "document" and "documents" as used herein shall include, but are not limited to, any of the following: draft reports, notes, summaries, phone diaries, opinion letters or reports, emails, letters, facsimiles, contracts/agreements, invoices, memorandums, drawings, sketches, statements, photographs, video recordings (digital or otherwise), audio recordings (digital or otherwise) or any other electronic files or written materials of any nature whatsoever. This definition includes originals or copies of documents. Any documents which contains any comments, notations, additions, insertions or markings of any kind which is not part of another document is to be considered as a separate document.

DATED THIS 12th day of October, 2010

GREENER BURKE SHOEMAKER P.A.

By 
Richard H. Greener
Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

CERTIFICATE OF SERVICE

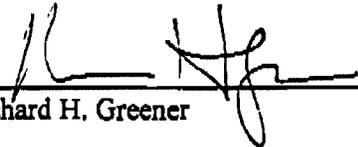
I HEREBY CERTIFY that on the 12th day of October, 2010, a true and correct copy of the within and foregoing instrument was served upon:

Sam Johnson
Johnson & Monteleone, L.L.P.
405 South Eighth Street, Suite 250
Boise, ID 83702
[Attorneys for Plaintiff]

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
- Email

Associated Reporting, Inc.
1618 W. Jefferson
Boise, ID 83702

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
- Email (production@associatedreportinginc.com)



Richard H. Greener

ORIGINAL

F I L E D
A.M. 4:50 P.M.

OCT 26 2010

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

Richard H. Greener, ISB No. 1191
Loren K. Messerly, ISB No. 7434
GREENER BURKE SHOEMAKER P.A.
The Banner Bank Building
950 West Bannock Street, Suite 900
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Facsimile: (208) 319-2601
Email: rgreener@greenerlaw.com
lmesserly@greenerlaw.com

Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUI,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an
individual; FULL LIFE CHIROPRACTIC,
P.A., an Idaho professional association; and
John and Jane Does I through X, whose true
identities are unknown,

Defendants.

Case No. CV 09-3450

**DEFENDANTS' STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Defendants Rosalinda Gallegos-Main, an individual, and Full Life Chiropractic, P.A., by
and through their attorneys of record, Greener Burke Shoemaker, P.A., maintain that the
following undisputed facts are established in the record.

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1. Plaintiff first sought treatment from Dr. Main on May 3, 2005. (Affidavit of Counsel in Support of Defendants' Motion for Summary Judgment ("Aff. Counsel") at ¶ 2 and Exhibit A at pp. 12-14.)
2. Plaintiff was not seen again by Dr. Main until June 4, 2007. (Aff. Counsel at ¶ 2 and Exhibit A at pp. 14-16.)
3. Plaintiff's expert, Sarah Tamai, D.C., is a chiropractor licensed in the State of California. Dr. Tamai is not licensed in any other states. (Aff. Counsel at ¶ 3 and Exhibit B at 3:21-25.)
4. Dr. Tamai has never been to Idaho and she does not know where Dr. Main's chiropractic clinic is located, other than in Idaho. (Aff. Counsel at ¶ 3 and Exhibit B 33:22-23 and 74:20-22.)
5. Dr. Tamai has only talked to one chiropractic physician in Idaho, Dr. Eri Crum, for "about three minutes" to touch base with him to see if Plaintiff's attorneys in this case were good guys. (Aff. Counsel at ¶ 3 and Exhibit B 33:25-34:22.)
6. Dr. Tamai does not know if there is a different standard of care for chiropractic physicians practicing in Caldwell, Idaho or for chiropractic physicians practicing anywhere else in the country. Dr. Tamai is unable to testify to the "local standard of care" required of Dr. Main in connection with Dr. Main's diagnosis, care and treatment of Plaintiff. (Aff. Counsel at ¶ 3 and Exhibit B 75:17-23 and 81:12-23.)
7. Dr. Tamai does not know if there is a Chiropractic Board for the State of Idaho. (Aff. Counsel at ¶ 3 and Exhibit B 76:7-77:5.)
8. Dr. Tamai submitted an expert report on October 15, 2010. In her report, Dr. Tamai opined that Dr. Main deviated from the standard of care by failing to gather case history

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- information and failing to perform a complete examination of the affected areas. (Aff. Counsel at ¶¶ 3 and 4 and Exhibit B at 70:3-5 and Exhibit C.)
9. Dr. Tamai's standard of care which she quoted in her expert report and used as the basis of her opinions expressed in her report was taken from a PowerPoint Presentation prepared by Leslie M. Wise. Dr. Tamai is not sure if this definition has been adopted by the National Chiropractic Board or the California Chiropractic Board. (Aff. Counsel at ¶ 3 and Exhibit B at 73:7-18, 110:24-111:7 and 113:24-114:4.)
 10. Dr. Tamai reviewed the deposition of Dr. Main and "portions" of Plaintiff's deposition as part of her work to develop the opinions to which she testified. (Aff. Counsel at ¶¶ 3 and 4 and Exhibit B at 13:14-14:14.)
 11. Dr. Tamai's definition of statement of care detailed in her expert report is "[t]he level at which the average, prudent provider in a given community would practice. It is how similarly qualified practitioners would have managed the patient's care under the same or similar circumstances." (Aff. Counsel at ¶ 4 and Exhibit C at p. 1.)
 12. Dr. Tamai also rendered the opinion that the treatment rendered by Dr. Main to Plaintiff on June 4, 2007 was appropriate for the symptoms presented by Plaintiff and was not in violation of the standard of care. (Aff. Counsel at ¶ 3 and Exhibit B at 124:16-23, 144:5-18 and 157:14-21.)
 13. Dr. Tamai agreed with Dr. Main's diagnosis of torticollis. She testified that the devices used by Dr. Main in the June 4th treatment of Plaintiff (Arthostem and PTLMS) were not contraindicated for treatment of torticollis. (Aff. Counsel at ¶ 3 and Exhibit B at 26:7-13 and 45:25-46:6.)

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14. Dr. Tamai does not know if a standard of care would require all the tests she noted as missing to be performed in an examination. Dr. Tamai agrees that in certain circumstances, such as that on June 4, 2007, it would be acceptable to perform an abbreviated examination if the patient is in pain. Finally, Dr. Tamai could not distinguish if her criticism was with Dr. Main's record keeping or her examination. (Aff. Counsel at ¶ 3 and Exhibit B at 124:16-23, 144:5-18 and 157:14-21.)
15. Dr. Tamai's opinions stated in her report and deposition are final. She will not be performing any additional work or modification of her opinions. (Aff. Counsel at ¶ 3 and Exhibit B at 147:12-19.)
16. Plaintiff's complaint alleges that Dr. Main "in her capacity as a health care professional treated Plaintiff" and that Defendant Full Life Chiropractic, PA "in its capacity as a chiropractic facility treated Plaintiff." (See Complaint and Demand for Jury Trial at ¶¶ 5 and 6.)
17. Plaintiff's complaint also alleges that "Defendants owed Plaintiff a duty to medically treat Plaintiff in a competent and non-negligent manner." (See *Id.* at ¶ 7.)
18. Plaintiff alleged in her complaint that "Defendants failed to meet the applicable community standard of chiropractic care." (See *Id.* at ¶ 8.)
19. Plaintiff's complaint alleges that "as a direct and proximate result of the acts and omissions of Defendants, Plaintiff sustained serious bodily injuries." (See *Id.* at ¶ 9.)

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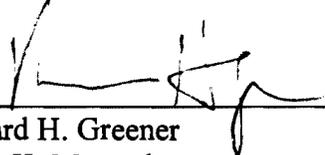
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DATED THIS 20th day of June, 2010.

GREENER BURKE SHOEMAKER P.A.

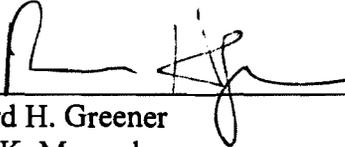
By 
Richard H. Greener
Loren K. Messerly
Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of October, 2010, a true and correct copy of the within and foregoing instrument was served upon:

Sam Johnson
Johnson & Monteleone, L.L.P.
405 South Eighth Street, Suite 250
Boise, ID 83702
[Attorneys for Plaintiff]

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
- Email


Richard H. Greener
Loren K. Messerly

000057

ORIGINAL

FILED
A.M. 4:50 P.M.

OCT 26 2010

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

Richard H. Greener, ISB No. 1191
Loren K. Messerly, ISB No. 7434
GREENER BURKE SHOEMAKER P.A.
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Boise, ID 83702
Telephone: (208) 319-2600
Facsimile: (208) 319-2601
Email: rgreener@greenerlaw.com
lmesserly@greenerlaw.com

Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUI,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an
individual; FULL LIFE CHIROPRACTIC,
P.A., an Idaho professional association; and
John and Jane Does I through X, whose true
identities are unknown,

Defendants.

Case No. CV 09-3450

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

COMES NOW, Defendants Rosalinda Gallegos-Main, an individual, and Full Life Chiropractic, P.A., by and through their attorneys of record, Greener Burke Shoemaker, P.A., and moves the court, pursuant to Rule 56(a) of the Idaho Rules of Civil Procedure, for an order granting summary judgment against Plaintiff Martha A. Arregui on the grounds and for the

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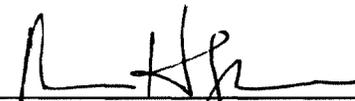
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 1

reasons that the Plaintiff has failed to submit affirmative proof by direct expert testimony that Defendants violated the applicable standard of care in their treatment of Plaintiff on June 4, 2007, as required by I.C. §§ 6-1012 and 6-1013. Plaintiff's claims against Defendants are such that they are subject to the requirements of I.C. §§ 6-1012 and 6-1013 and Plaintiffs failure to meet those requirements is grounds for dismissal of Plaintiff's claims as a matter of law.

This motion is made and based upon papers and pleadings on file herein, Defendants' Memorandum in Support of Defendants' Motion for Summary Judgment, Defendants' Statement of Undisputed Facts and Affidavit of Counsel in Support of Defendant's Motion for Summary Judgment all filed concurrently herewith, and all other and further evidence and arguments presented at the hearing of this matter.

DATED THIS 26th day of October, 2010.

GREENER BURKE SHOEMAKER P.A.

By 
Richard H. Greener
Loren K. Messerly
Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

000059

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of October, 2010, a true and correct copy of the within and foregoing instrument was served upon:

Sam Johnson
Johnson & Monteleone, L.L.P.
405 South Eighth Street, Suite 250
Boise, ID 83702
[Attorneys for Plaintiff]

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
- Email



Richard H. Greener
Loren K. Messerly

1. I am over the age of 18 years and am an attorney with Greener Burke Shoemaker P.A., attorneys for Defendants herein. I make this affidavit based upon my personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of Defendants' Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents and Requests for Admissions.

3. Attached hereto as Exhibit B are true and correct excerpts from the DRAFT copy of the deposition transcript of Sarah R. Tamai, D.C. taken on October 19, 2010.

4. Attached hereto as Exhibit C is a true and correct copy of Dr. Tamai's expert report dated October 15, 2010 which was marked at Dr. Tamai's deposition as Exhibit 7.

Further, your affiant saith naught.



Richard H. Greener

SUBSCRIBED AND SWORN before me this 26th day of October, 2010.



Notary Public for Idaho

Residing at

10msw ID

My commission expires

10-24-12

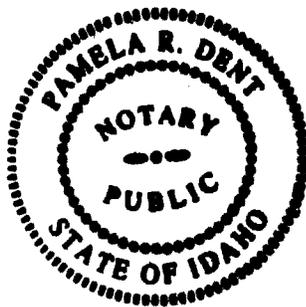


EXHIBIT A

000064

Richard H. Greener, ISB No. 1191
GREENER BURKE SHOEMAKER P.A.
950 West Bannock Street, Suite 900
Boise, ID 83702
Telephone: (208) 319-2600
Facsimile: (208) 319-2601
Email: rgreener@greenerlaw.com

Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUL,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an
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P.A., an Idaho professional association; and
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identities are unknown,

Defendants.

Case No. CV 09-3450

**ROSALINDA GALLEGOS-MAIN'S
RESPONSES TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF
DOCUMENTS, AND REQUESTS FOR
ADMISSIONS**

Defendant Rosalinda Gallegos-Main ("Defendant"), by and through her counsel of record, Greener Burke Shoemaker P.A., in accordance with the requirements of Idaho Rules of Civil Procedure 33, and 34, and 36, hereby files her responses to Plaintiff's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions to Defendant Rosalinda Gallegos-Main.

**ROSALINDA GALLEGOS-MAIN'S RESPONSES TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND
REQUESTS FOR ADMISSIONS - 1**

GENERAL OBJECTIONS

A. Defendant objects to each discovery request to the extent it could be construed as requesting the disclosure of information prepared by or at the direction of Defendant's attorneys, to the extent that it could be construed as requesting the disclosure of information prepared by or for Defendant or her representatives in contemplation of litigation or trial, to the extent that it could be construed as requesting the disclosure, release, or review of confidential communications by and between Defendant and her attorneys, and to the extent it is otherwise covered by the attorney-client privilege and/or the attorney work product privilege.

B. Defendant objects to each discovery request that seeks the identification of all communications, all acts, all people, or the production of all documents regarding any given claim as being overbroad, burdensome, and not calculated to lead to the discovery of admissible evidence. It would be impossible for Defendant to identify all oral communications between any parties and/or nonparties that support her position.

C. Defendant responds that all answers are based upon information presently available after diligent investigation, and Defendant reserves the right to supplement or amend her responses should additional information become available at a later point. Consequently, the responses contained herein are not intended to and shall not preclude Defendant from making any contentions or from relying on any facts, documents, or witnesses at trial based upon additional evidence deduced during the discovery process.

D. Defendant objects to the definitions in Plaintiff's discovery requests to the extent they attempt to impose obligations upon Defendant that are contrary to or inconsistent with the Idaho Rules of Civil Procedure.

E. Defendant objects to Plaintiff's discovery requests to the extent that they seek information that is obtainable in a more convenient, less burdensome, and less expensive method than through these discovery requests.

F. These responses are made solely for the purpose of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any other ground that would require the exclusion of any statement contained in these responses, all of which objections and grounds are hereby reserved and may be interposed at the time of trial.

INTERROGATORIES

INTERROGATORY NO. 1: State the full name and address of Defendant Rosalinda Gallegos-Main.

ANSWER TO INTERROGATORY NO. 1: Rosalinda Gallegos-Main, 2921 East Loon Creek, Meridian, Idaho 83642.

INTERROGATORY NO. 2: As to Defendant Rosalinda Gallegos-Main's current employment please state:

a. If Defendant Rosalinda Gallegos-Main is self-employed, state the full name and address of Defendant Rosalinda Gallegos-Main's place of business and the nature of Defendant's practice or business being performed under such name and at such address; and

b. If Defendant Rosalinda Gallegos-Main is not self-employed, or if Defendant Rosalinda Gallegos-Main is only partially self-employed, please state the full name and address of Defendant Rosalinda Gallegos-Main's employer, the title and position of Defendant Rosalinda Gallegos-Main with said employer and the nature of the service performed by Defendant Rosalinda Gallegos-Main for said employer.

ANSWER TO INTERROGATORY NO. 2: Without waiving the general objections above, Defendant responds as follows:

- a. Defendant is a director and corporate officer of Full Life Chiropractic, P.A., along with her husband, Jonathan E. Main. They incorporated under the Idaho Secretary of State on June 4, 2002. Later that same year, their business began operating under the assumed business name of Full Life Chiropractic and Rehab. In January 2005, the business began operating under a new assumed name, OneLife, which was the name of the business at the time of the alleged incident. The OneLife practice was recently sold to Dr. Ryan G. Hein, D.C.**
- b. Defendant is currently operating her chiropractic practice with her husband in Meridian, Idaho under the assumed business name of Main Health Solutions.**

INTERROGATORY NO. 3: State the full name, address, position, and duties of each person who witnessed the care and treatment provided to Plaintiff by Defendant Rosalinda Gallegos-Main.

ANSWER TO INTERROGATORY NO. 3: Without waiving the general objections above, Defendant states that no other persons or employees were present in the treatment room on any of the occasions that Defendant saw Plaintiff for care and treatment. It is not a standard practice for Defendant to have others present during her examinations or treatment of her patients. By way of further response, Romy Tellez – 1215 Ivy Street #42, Nampa, Idaho 83646, (208) 392-8108 – a staff member who works as a receptionist and general office assistant, is believed to have been present in the clinic at the time of Plaintiff's appointments in 2005 and 2007. Ms. Tellez may have some information regarding her interactions with Plaintiff during those visits.

Additionally, Maria Beasley – 202 Forest Park Way, Caldwell, Idaho 83605, (208) 629-9907 – was in the waiting room with Plaintiff prior to Defendant’s original examination of Plaintiff on May 3, 2005. Ms. Beasley warned Defendant to “be careful about treating the next patient” (referring to Plaintiff).

INTERROGATORY NO. 4: State the full name, address, title, and position of each person, other than Defendant Rosalinda Gallegos-Main herself and persons heretofore listed, who have knowledge of facts relating to this case.

ANSWER TO INTERROGATORY NO. 4: Without waiving the general objections above, Defendant states that discovery in this matter has just began and accordingly reserves the right to supplement her response to this Interrogatory as more information is made available. Defendant identifies the following individuals at this time.

Dr. Jonathan E. Main, D. C. – c/o Greener Burke Shoemaker P.A. – Dr. Main is anticipated to have knowledge and information regarding Defendant’s chiropractic practice, both as a business partner and as her husband. He is also anticipated to have knowledge regarding the alleged incident, business practices, and patient care employed by Defendant. He also has information regarding Defendant’s chiropractic experience, her experience with diagnosis and care of patients, and the standard policies and procedures of their practice.

Rosa (or Arosa) Chavez – 16855 North Damandy Loop, Nampa, Idaho 83687, (208) 463-9211 – Ms. Chavez was referred by Plaintiff to Defendant for treatment after the alleged incident. Ms. Chavez signed up for a treatment program with Defendant and followed that program for several weeks before her treatment was discontinued because she moved out of state. Ms. Chavez is believed to have worked with Plaintiff during the duration of her

treatments with Defendant. Defendant believes that Ms. Chavez has recently returned to the Caldwell/Nampa area.

Claudia Daniela Chavez – 16855 North Damandy Loop, Nampa, Idaho 83687, (208) 463-9211, (208) 965-0922 – Claudia was also referred by Plaintiff to Defendant for treatment after Plaintiff's alleged injury. Claudia signed up for an extensive treatment program and completed the entire program. Defendant understood and Claudia also worked with Plaintiff at the time of the referral and for an extensive time thereafter. Defendant believes that Claudia no longer works with Plaintiff, but that she opened up her own beauty salon in Nampa or Caldwell.

Stacy Wright – current contact information unknown – Ms. Wright is believed to be the x-ray technician employed by Defendant's clinic in 2005 that took Plaintiff's initial x-rays on May 3, 2005. Ms. Wright does not work at the clinic at this time and has not been employed there for some time.

Maribel Sierra, current contact information unknown – Ms. Sierra is believed to be the x-ray technician employed by Defendant in 2007 and is believed to be the individual whom took Plaintiff's initial x-rays on June 4, 2007. Ms. Sierra no longer is employed by OneLife and upon Defendant's belief has moved out of state.

By way of further response, see also those individuals identified in Interrogatory No. 3, above.

INTERROGATORY NO. 5: State the full name, address, title, and position of each person, other than Defendant Rosalinda Gallegos-Main herself, whom you intend to call at the trial of this matter and include the substance of those individuals' testimony.

ANSWER TO INTERROGATORY NO. 5: Without waiving the general objections above, Defendant states that this lawsuit has only just commenced and Defendant has not yet determined what witnesses she will call to testify at the trial of this matter. Defendant will disclose her witnesses at such time as required by the Idaho Rules of Civil Procedure, deadlines set by the Court, and/or stipulations entered into by the parties regarding such disclosures; and these responses will be supplemented consistent with the Idaho Rules of Civil Procedure. Notwithstanding these objections, please see Defendant's Answers to Interrogatory Nos. 3 and 4, above.

INTERROGATORY NO. 6: State the full name and address of each person known to Defendant Rosalinda Gallegos-Main who possesses any opinion relating to the chiropractor care that was provided to Plaintiff in this case, state the relationship of that person to Defendant Rosalinda Gallegos-Main, and provide what that opinion is.

ANSWER TO INTERROGATORY NO. 6: In addition to the general objections above, Defendant objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. Without waiving any of the foregoing objections, Defendant states that this lawsuit has only just commenced and Defendant has not yet determined which expert witnesses she will call to testify in the trial of this matter. Defendant will disclose her expert witnesses at such time as required by the Idaho Rules of Civil Procedure, deadlines set by the Court, and/or stipulations entered into by the parties regarding such disclosures; and these responses will be supplemented consistent with the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 7: State whether or not you were named or covered under any policy of medical liability insurance or any other type of liability insurance at the time of care and

treatment as alleged in the Complaint. If your answer is that you were so named and covered, then state the following as to each such policy:

- a. Name of each company;
- b. The name of each policy number; and
- c. The effective period and the maximum liability limits for each policy, both for each person and each occurrence with the aggregate amount of each policy.

ANSWER TO INTERROGATORY NO. 7: In addition to the general objections stated above, Defendant objects to this Interrogatory as it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Without waiving any of the foregoing objections, Defendant held an insurance policy through NCMIC Insurance Company during the timeframe relevant to the instant litigation. The policy was effective from August 9, 2002 through current, is identified by policy number as CM00096587, and carries limits of \$1,000,000/\$3,000,000. By reference to this policy, Defendant is not making any assumptions or confirmations of coverage as related to the referenced policy.

INTERROGATORY NO. 8: State whether or not you have ever been involved in any proceedings regarding termination, suspension or revocation of your chiropractor license and/or hospital privileges. If so, identify the proceedings, and the result of such proceedings.

ANSWER TO INTERROGATORY NO. 8: In addition to the general objections above, Defendant objects that this Interrogatory is irrelevant and unlikely to lead to the discovery of admissible evidence. Notwithstanding and without waiving any of these objections, Defendant has never been involved in any disciplinary action or proceeding relating to her chiropractic license or privileges.

INTERROGATORY NO. 9: State the status of your chiropractor license with the state of Idaho as well as the status of any chiropractor license held by you, if any, from an area or jurisdiction other than Idaho.

ANSWER TO INTERROGATORY NO. 9: In addition to the general objections above, Defendant objects that this Interrogatory is irrelevant and unlikely to lead to the discovery of admissible evidence. Without waiving any of the foregoing objections, Defendant's chiropractic license with the State of Idaho is currently active. Defendant has, in the past, held chiropractic licenses in the states of Texas and Colorado during the 2000-2002 timeframe. Defendant did practice for a short time in Texas, but did not practice at any time in Colorado. She obtained a license in Colorado because she and her husband were considering moving to Colorado at one time. Defendant has let her license for Colorado and Texas both expire because she was no longer practicing or planning to practice in those states. Defendant had no disciplinary actions or other issues with her licenses in Texas or Colorado.

INTERROGATORY NO. 10: State the name and address of each person whom you intend to call as an expert witness at the trial, and for each such person, state the subject matter on which the expert is expected to testify, state the substance of the facts and the opinions to which the expert is expected to testify, and state the underlying facts and data upon which the expert opinions are based in conformity with Rule 705, Idaho Rules of Evidence. For each such expert, please state the fields of knowledge in which the person is an expert, the specific areas within those fields and knowledge in which he/she is an expert, the qualifications and background of the expert, including but not limited to any publications, or articles which the expert has written or upon which the expert intends to rely.

ANSWER TO INTERROGATORY NO. 10: Without waiving the general objections above, this lawsuit has only just commenced and Defendant has not yet determined what expert or experts she will call to testify at the trial of this matter. Defendant will disclose her experts at such time as required by the Idaho Rules of Civil Procedure, deadlines set by the Court, and/or Stipulations entered into by the parties regarding such disclosures; and these responses will be supplemented consistent with the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 11: Please state whether you have ever been subjected to professional discipline at any time by any governmental or private entity, in any form, in relation to your provision of or refusal to provide, professional, chiropractor services.

ANSWER TO INTERROGATORY NO. 11: In addition to the general objections above, Defendant objects that this Interrogatory is irrelevant and unlikely to lead to the discovery of admissible evidence. Without waiving any of the foregoing objections, Defendant has never been involved in any professional discipline action at any time by any governmental or private entity, in any form, in relation to her provision of or refusal to provide, professional, chiropractor services.

INTERROGATORY NO. 12: Identify each and every article, paper, and textbook you intend to use during the trial of this case. State the author, publisher, date or dates of publication, edition, and pages to be used.

ANSWER TO INTERROGATORY NO. 12: Without waiving any of the general objections above, Defendant states that this lawsuit has only just commenced. At this time, Defendant has not yet identified which documents or other materials she may use during the trial in this matter. Defendant reserves the right to supplement her response to this

interrogatory at such time as necessary and in accordance with the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 13: Identify each and every rule, regulation, guideline, by-law, or other documentary information of any public entity or any hospital, medical association, professional organization, licensing authority, accrediting authority, inspection/review authority, or other private body which you intend to use at the trial of this action.

ANSWER TO INTERROGATORY NO. 13: Without waiving any of the general objections above, Defendant states that this lawsuit has only just commenced. At this time, Defendant has not yet identified which documents or other materials she may use during the trial in this matter. Defendant reserves the right to supplement her response to this interrogatory at such time as necessary and in accordance with the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 14: Describe your professional educational, training, and experience, including dates and locations for all formal chiropractic training, and collegiate education.

ANSWER TO INTERROGATORY NO. 14: Without waiving any of the general objections above, Defendant's experience and training are extensive and span over the duration of her practice and education starting in 1997 and continuing to present. While Defendant is unable to identify every specific training session, class, conference, or other similar event, her education, training, and experience is detailed in general in her curriculum vitae which is attached hereto and identified by bates number as OneLife00041 to OneLife00046.

INTERROGATORY NO. 15: State the time, date and place at which you first saw Plaintiff in your professional capacity.

ANSWER TO INTERROGATORY NO. 15: Without waiving any of the general objections above, Defendant first saw Plaintiff on May 3, 2005 at the OneLife clinic in Nampa, Idaho.

INTERROGATORY NO. 16: Did you make any diagnosis or recommendation for treatment during your first professional visit with Plaintiff? If so, what was it? Please set forth in specific detail each and every reason for such diagnosis or recommendation.

ANSWER TO INTERROGATORY NO. 16: In addition to the general objections above, Defendant objects to this Interrogatory as overly broad and unduly burdensome in requesting "each and every reason" for Defendant's diagnosis and recommendation. Additionally, Defendant's records and complete chart relating to her treatment of Plaintiff is in already in Plaintiff's possession, and accordingly, the information sought is equally available to requesting party. Without waiving the foregoing, based upon the information provided by Plaintiff, the symptoms explained by Plaintiff, and Defendant's examination of Plaintiff, Defendant did make a diagnosis and recommendation for treatment during Plaintiff's May 3, 2005 appointment. Defendant's diagnosis, based upon the information provided by Plaintiff and Defendant's examination of Plaintiff, included: (1) pain, weakness, and stiffness in the joints of the right wrist, hand, and thumb (similar to tendonitis); (2) inflammation of the joints in the hands and knee/lower leg; (3) internal joint wear and tear of the knee; (4) cervical segment dysfunction; (5) dysfunction of the motion of the cervical spine which could be caused by stress or posture; and (6) lumbar segmental dysfunction in the lower back.

The recommended treatment plan presented by Defendant during the May 3, 2005 visit was designed to care for Plaintiff's physical ailments as chronic issues. Defendant typically refers to this treatment plan as "Phase I" or the "symptomatic phase." Phase I typically runs for about four weeks consisting of visits three times per week. The treatment plan was to consist of ultrasound therapy, chiropractic adjustments, and manual therapy with the overall goal to reduce symptoms and to enhance and improve function. The specific goals of the treatment plan presented to Plaintiff were: (1) help repair damaged areas and decrease muscle spasms; (2) stabilize conditions and restore activities of daily living; (3) strengthen muscles; (4) improve joint motion; (5) decrease required medicines; (6) improve functional capacity for work; and (7) improve posture.

Plaintiff was scheduled to begin her treatment plan immediately, with her next appointment scheduled for May 6, 2005. Plaintiff canceled the May 6, 2005 appointment. She did go in for one appointment on May 10, 2005. Plaintiff did not keep any of her other return appointments and did not complete the treatment plan as outlined.

INTERROGATORY NO. 17: For such recommendation in Interrogatory No. 16, set forth in specific detail each and every reason for using the chiropractic procedure performed upon Plaintiff.

ANSWER TO INTERROGATORY NO. 17: In addition to the general objections above, Defendant objects to this Interrogatory as overly broad and unduly burdensome as to the terms "each and every reason." Defendant additionally objects to this Interrogatory as vague and ambiguous as to the terms "chiropractic procedure." Without waiving any of the foregoing objections, Defendant used the May 3, 2005 visit to make an assessment of Plaintiff and only conducted a physical examination of Plaintiff. Defendant did not make any adjustments or manipulations or otherwise provide any treatment to Plaintiff on that day. The

May 3, 2005 visit included and extensive interview of and questions with Plaintiff, a physical examination, spinal x-rays, and a thermal scan of Plaintiff.

INTERROGATORY NO. 18: Please set forth in specific detail each and every examination of Plaintiff you performed and, for each examination, please state:

- a. the date and time of such examination;
- b. the place such examination occurred;
- c. the names of all persons present;
- d. a detailed description of the examination;
- e. a detailed description of Plaintiff's condition at the time of the examination; and
- f. a detailed description of everything you told Plaintiff during the examination.

ANSWER TO INTERROGATORY NO. 18: In addition to the general objections above, Defendant objects to this Interrogatory as overly broad and unduly burdensome specifically in requesting "a detailed description of everything you told Plaintiff during the examination." It is impossible to recall every detail of an event which took place nearly four years ago. Without waiving any of the foregoing objections, Defendant's medical chart, which Plaintiff has a complete copy of, includes a complete description of every appointment and treatment Plaintiff had with Defendant. Defendant has explained the details of the May 3, 2005 appointment in great detail in response to Interrogatories 16 and 17 above.

During Plaintiff's second visit, on May 10, 2005, Plaintiff began by watching an orientation video. Following the orientation video, Defendant and Plaintiff discussed the information contained on the video and reviewed the treatment plan selected by Plaintiff. Defendant then performed a basic exam of Plaintiff before making any adjustment, including looking at her feet, looking at her spine, and performing other standard checks, which is

common with all new patients. Plaintiff was then escorted to the adjustment room and Defendant performed her first adjustments on Plaintiff. Defendant adjusted Plaintiff's cervical spine at C4 using an activator tool and also made adjustment at C6 using the diversified technique. Defendant then used the Arthrostim device on vertebrae T4-T9. Defendant also used the Thomson Technique Adjustment on Plaintiff's pelvis.

With respect to those appointments scheduled later in May 2005, Plaintiff called to cancel on May 16, 2005 due to a toothache and also on May 17, 2005 as the tooth was pulled and she was swollen, and then did not show up for her scheduled appointment on May 23, 2005. Plaintiff was not seen again until June 4, 2007.

Plaintiff presented to Defendant in the morning of June 4, 2007 seeking relief of the severe pain from which she was suffering. Because Plaintiff had previously been examined and treated by Defendant, and because Plaintiff presented in such pain, Defendant agreed to attempt to treat Plaintiff's symptoms. Defendant ordered x-rays to be taken, performed an initial examination, and then provided some treatment to Plaintiff. A review of the x-rays showed results that Defendant would typically expect to see after two additional years of Plaintiff not taking proper care of her spine and not following treatment recommendations as outlined on prior visits in 2005. Nothing in the x-rays caused Defendant any concern. Defendant then examined Plaintiff and gave what treatment she could based upon Plaintiff's current status. The exam included Plaintiff laying face down on an exam table while Defendant utilized a Pettibon PTLMS (Pettibon Tendon Ligament Muscle Stimulator) on the posterior muscles of Plaintiff's legs and spine. This is in essence a deep massage to help eliminate muscle spasms and reduce pain. Defendant then had Plaintiff lay down on her back, with her face up, and tested Plaintiff's range of motion to determine if an adjustment was

possible. Defendant determined a manual adjustment would be too difficult because of muscle tightness in Plaintiff's neck. Defendant then had Plaintiff sit up and used the Arthrostim device in an attempt to help alleviate the muscle tightness and reduce pain. When Plaintiff left the office, she was still in a lot of pain and discomfort. Defendant recommended that Plaintiff drink a lot of water, and invited her to return to the clinic that evening for a new patient orientation regarding the clinic treatment plans and her future care.

Plaintiff returned to the clinic that evening for the new patient orientation and brought a friend with her to the orientation. Plaintiff signed up for a lengthy treatment plan following the orientation meeting. Plaintiff never followed-up on the treatment plan.

INTERROGATORY NO. 19: State the date, time and place you last saw Plaintiff in your professional capacity and detailed description of the condition of Plaintiff at that time.

ANSWER TO INTERROGATORY NO. 19: In addition to the general objections above, Defendant objects to this Interrogatory as broad and ambiguous as to the terms "professional" and "condition." Without waiving the foregoing objections, Plaintiff returned to OneLife clinic in the evening of June 4, 2007 to attend an orientation class wherein Defendant reviews a set of "normal" x-rays and a set of "abnormal" x-rays. The class is to demonstrate the impact of our neurological and spinal system on our overall health and is used to present a long-term treatment plan or program to change your state of health.

During the evening orientation, Plaintiff presented with increased symptoms and complaints of some numbness in her face. All of Plaintiff's symptoms are typical for severe torticollis like Plaintiff was experiencing, so the symptoms did not cause Defendant concern.

INTERROGATORY NO. 20: Have any other lawsuits or complaints, whether involving litigation or otherwise, ever been brought against you alleging professional negligence or malpractice? If so, for each, state the following:

- a. The names and last known address of each person who brought the action or made the complaint against you and the law firm representing them; and
- b. The docket number of each respective lawsuit against you.

ANSWER TO INTERROGATORY NO. 20: In addition to the general objections above, Defendant objects to this Interrogatory as the information sought is not likely to lead to the discovery of admissible evidence. Defendant further objects as the information sought is in the possession and control of Plaintiff and/or her counsel. Without waiving the foregoing objections, and by way of further response, the only other lawsuit brought against Defendant was the lawsuit brought by Plaintiff's counsel on behalf of Reyna B. Ruiz.

INTERROGATORY NO. 21: State the name, address and specialty of each and every person with whom you have discussed or consulted about the care and treatment of Plaintiff at any time from the time you first treated Plaintiff to the present. For each, state:

- a. The purpose of each such discussion or consultation;
- b. The date and location of each such discussion or consultation;
- c. The name, address, employer, title and position of each person who was present during each such discussion or consultation.

ANSWER TO INTERROGATORY NO. 21: In addition to the general objections above, Defendant objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Without waiving the foregoing objections, to the extent this Interrogatory is seeking information regarding any medical

consultations which Defendant made in regard to her two treatments of Plaintiff, Defendant states that she did not consult with any medical providers regarding her treatment of Plaintiff.

INTERROGATORY NO. 22: Please describe each document, object, photograph, film, video, diagram, reproduction, or thing you intend to introduce or utilize as an exhibit at the trial of this matter or which will be reviewed by any witness of your, including in your answer the following information:

- a. A description of the document or article, whether prepared or intended to be prepared, for identification;
- b. A general description of the contents of the exhibit or proposed exhibit; and
- c. The fact or facts intended to be proved by use of the exhibit or the relevance of which is felt to justify the use of the exhibit.

ANSWER TO INTERROGATORY NO. 22: Without waiving the general objections above, this lawsuit has only just commenced. At this time, Defendant has not yet identified which documents, objects, photographs, films, videos, diagrams, reproductions, or things she intends to use as an exhibit at trial of this matter. Defendant reserves the right to supplement her response to this interrogatory at such time as necessary and in accordance with the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 23: Does Defendant claim that there is some person or entity who is not a party to this lawsuit whose fault is claimed to have caused or contributed to Plaintiffs injuries or damages? If so, state the name and address of each person or entity Defendant claims caused Plaintiffs injuries or damages. Adacountysheriif.org public info DR

ANSWER TO INTERROGATORY NO. 23: Without waiving the foregoing objections, Defendant states that discovery in this matter has only just begun. Defendant is not aware of

all of Plaintiff's actions on or around the June 4, 2007 timeframe. Defendant reserves the right to supplement this response with additional information as necessary.

INTERROGATORY NO. 24: With regard to each such person or entity listed in your answer to the preceding Interrogatory, state as follows:

- a.) All facts you rely upon in making this claim.
- b.) The names and addresses of all witnesses you rely upon in making such claim; and
- c.) State fully and completely the basis for asserting such claim.

ANSWER TO INTERROGATORY NO. 24: Without waiving the general objections above, Defendant states that discovery in this matter has only just begun. Defendant is not aware of all of Plaintiff's actions on or around the June 4, 2007 timeframe. Defendant reserves the right to supplement this response with additional information as necessary.

INTERROGATORY NO. 25: Does Defendant Rosalinda Gallegos-Main have any opinion why this patient had the outcome that occurred in this case? If so, give your opinion in full and all facts you rely upon in support of your opinion.

ANSWER TO INTERROGATORY NO. 25: In addition to the general objections above, Defendant objects to this Interrogatory as vague and ambiguous as to the terms "outcome." Defendant further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Without waiving any of the foregoing objections, Defendant is unable to form any opinion as to what happened to Plaintiff. Defendant does not know the details of Plaintiff's actions on and around the June 4, 2007 timeframe.

INTERROGATORY NO. 26: Do you claim Plaintiff's negligence or fault contributed to Plaintiff's own injuries or damages in this case? If so, state as follows:

- a.) All facts you rely upon in making this claim;
- b.) The names and addresses of all witnesses you rely upon in making such claim; and
- c.) State fully and completely the basis for asserting such claim.

ANSWER TO INTERROGATORY NO. 26: In addition to the general objections above, Defendant objects to this Interrogatory as it seeks a legal conclusion. Without waiving the foregoing objections and by way of further response, see response to Interrogatory No. 23 above.

INTERROGATORY NO. 27: Does Defendant know of any other documents not previously listed in these interrogatories which relate to Plaintiffs claimed damages or Plaintiff's claimed injuries? If so, state as follows:

- a.) The nature of same;
- b.) Contents of same; and
- c.) Name and address of the person in whose possession the same now are.

ANSWER TO INTERROGATORY NO. 27: Without waiving the general objections above, Defendant is unaware of any documents related to Plaintiff's claimed damages and injuries other than those documents provided to this office by Plaintiff.

INTERROGATORY NO. 28: Did you render any treatment to Plaintiff which is not recorded in her medical records? If you answer this in the affirmative, state as follows regarding such treatment:

- a.) The date(s) and time;

- b.) The nature;
- c.) The indication(s) for;
- d.) The name(s) of all individuals present; and
- e.) The outcome.

ANSWER TO INTERROGATORY NO. 28: Without waiving the general objections above, Defendant responds that all treatments and appointments which Defendant had with Plaintiff are reflected in the chart notes and records produced herewith and identified by bates number as OneLife00001 to OneLife00040.

INTERROGATORY NO. 29: Did you receive any information from any nurse(s), doctor(s), or other healthcare provider(s) about Plaintiff's medical condition which is not recorded in her medical records? If you answer this in the affirmative, state as follows:

- a.) The identity of all nurse(s), doctor(s) or other healthcare provider(s) providing such information;
- b.) The date(s) the information was provided;
- c.) The manner in which such information was provided (for example, verbally, by telephone, in written form); and
- d.) A detailed account of all such information.

ANSWER TO INTERROGATORY NO. 29: Without waiving the general objections above, Defendant responds that she did not receive any information from anyone about Plaintiff's medical condition that are not recorded in her OneLife medical records.

INTERROGATORY NO. 30: Did you give any recommendations or orders for treatment of Plaintiff which are not recorded in her medical records from you? If you answer this in the affirmative, state as follows:

- a.) The name(s) of the person to whom the orders were communicated;
- b.) The manner in which the orders were communicated (for example, verbally, by telephone, or in written form);
- c.) The date and time the orders were complicated; and
- d.) A complete account of the orders so complicated.

ANSWER TO INTERROGATORY NO. 30: Without waiving the general objections above, Defendant responds that all of her recommendations and orders for treatment are recorded in the OneLife medical records.

INTERROGATORY NO. 31: With respect to each Request for Admission below which you deny in whole or in part

- a.) State in full and complete detail each and every fact upon which the denial is based;
- b.) State the name, address and telephone number of every person having knowledge of each and every fact disclosed by you in your answer or part a.) of this Interrogatory; and
- c.) Identify in full and complete detail each and every document or writing of any kind which contains any statement of or reference to each of any of the facts disclosed by you in your answer to part 1.) of this Interrogatory.

ANSWER TO INTERROGATORY NO. 31: In addition to the general objections, Defendant objects to this interrogatory as overly broad and unduly burdensome. Without waiving the foregoing objections above, please see Responses to Request for Admission Nos. 1-7 below.

**REQUESTS FOR PRODUCTION
OF DOCUMENTS AND TANGIBLE ITEMS**

REQUEST FOR PRODUCTION NO. 1: Please produce a copy of any document or other tangible object referenced in any of your answers to the above Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Without waiving any of the general objections above, see those document produced herewith and identified by bates numbers as OneLife00001 to OneLife00068. In addition to the documents produced herewith, Defendant is in possession of radiology films which were ordered by Defendant. These radiology films can be made available for inspection upon request.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all documents, writings, or other physical evidence you intend to offer as an exhibit at the trial of this action or at any deposition, including, but not limited to, all writings, memoranda, correspondence, reports, photographs, and diagrams.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Without waiving the general objections above, this lawsuit has only just commenced. At this time, Defendant has not yet identified which documents, writings, or other physical evidence she may use as exhibits at any deposition or trial of this matter. Notwithstanding these objections, please see documents produced with these discovery responses. Defendant reserves the right to supplement her response to this request for production at such time as necessary and in accordance with the Idaho Rules of Civil Procedure.

REQUEST FOR PRODUCTION NO. 3: Please produce all written records of any kind, whether private notes, telephone call memoranda, patient scheduling entries, or other written entries not found in medical records or the clinic file or office file for Plaintiff regarding the facts in this case or the treatment given to Plaintiff.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: In addition to the general objections above, Defendant objects to this request as overly broad and unduly burdensome. Defendant objects further to the extent that this request is seeking documents or information that may be protected by the attorney-client privilege and/or work product doctrine. Without waiving these objections or any of the general objections above, produced herewith is a complete copy of the file maintained by Defendant in relation to her treatment of Plaintiff. Any other documents or information related to scheduling are not in the possession of Defendant and may be obtained from the OneLife Clinic.

REQUEST FOR PRODUCTION NO. 4: With regard to each expert witness you expect to call at trial, attach a complete and current curriculum vitae regarding such expert witness(es) and a list of all matters in which the expert has testified, either at a trial or hearing or by deposition.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Without waiving the general objections above, this lawsuit has only just commenced and Defendant has not yet determined what expert or experts she may call to testify at the trial of this matter. Defendant will disclose her experts at such time as required by the Idaho Rules of Civil Procedure, deadlines set by the Court, and/or stipulations entered into by the parties regarding such disclosures; and these responses will be supplemented consistent with the Idaho Rules of Civil Procedure.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that Plaintiff was not in any way negligent or otherwise legally responsible for causing the incident complained of in Plaintiff's Complaint.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: In addition to the general objections above, Defendant objects to this Request as it seeks a legal conclusion. Without waiving any of the foregoing objections, Defendant is unable to respond to this request as

Defendant is not aware of all of Plaintiff's actions in the timeframe surrounding the alleged incident, nor is Defendant assured that the information provided to Defendant during Plaintiff's appointments in 2005 and 2007 was complete and accurate.

REQUEST FOR ADMISSION NO. 2: Admit that no third party caused the injuries for which Plaintiff seeks compensation in this lawsuit.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: In addition to the general objections above, Defendant objects to this Request as it seeks a legal conclusion. Without waiving any of the foregoing objections, Defendant is unable to respond to this request as Defendant is not aware of all of Plaintiff's actions in the timeframe surrounding the alleged incident and therefore is not able to determine the involvement, if any, of a third-party.

REQUEST FOR ADMISSION NO. 3: Admit that Plaintiff's lawsuit was filed within all applicable statutes of limitation.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: In addition to the general objections above, Defendant objects to this Request as it seeks a legal conclusion. Without waiving any of the foregoing objections, based upon the information currently available to Defendant, admit.

REQUEST FOR ADMISSION NO. 4: Admit that the Court in which this case has been filed has personal jurisdiction over Defendant Rosalinda Gallegos-Main.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: In addition to the general objections above, Defendant objects to this Request as it seeks a legal conclusion. Defendant further objects to this Request as it is not likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 5: Admit that the Court in which this case has been filed has personal jurisdiction over Defendant Full Life Chiropractic, P.A.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: In addition to the general objections above, Defendant objects to this Request as it seeks a legal conclusion. Defendant further objects to this Request as it is not likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 6: Admit that the Court in which this case has been filed has subject matter jurisdiction over the controversy set forth in the Complaint.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: In addition to the general objections above, Defendant objects to this Request as it seeks a legal conclusion. Defendant further objects to this Request as it is not likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 7: Please admit that the injuries sustained by Plaintiff and complained of in the Complaint were the direct and proximate result of your negligence.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: In addition to the general objections above, Defendant objects to this Request as it seeks a legal conclusion. Without waiving the foregoing objections, denied.

DATED THIS 8th day of May, 2009.

GREENER BURKE SHOEMAKER P.A.

By _____
Richard H. Greener
Jon T. Simmons
Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

VERIFICATION

Rosalinda Gallegos-Main, being first duly sworn on oath, deposes and says:

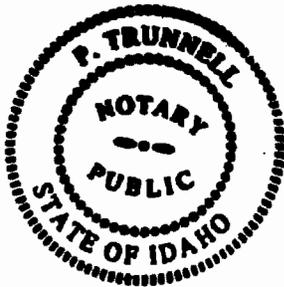
That she is a Defendant in the above-entitled action; and that she has read the within and foregoing ROSALINDA GALLEGOS-MAIN'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS, knows the contents thereof, and confirms that the facts therein stated are true and correct to the best of her knowledge and belief.

Rosalinda Gallegos-Main
Rosalinda Gallegos-Main

STATE OF IDAHO)
) ss.
County of Ada)

On this 7th day of May, 2009, before me, P. Trunnell, a notary public in and for said state, personally appeared Rosalinda Gallegos-Main, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



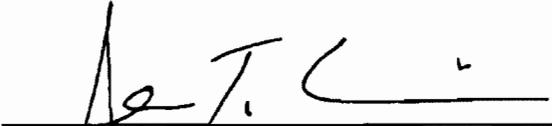
P. Trunnell
Name: P. Trunnell
Notary Public for Idaho
Residing at Boise, Idaho
My commission expires September 22, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of May, 2009, a true and correct copy of the within and foregoing instrument was served upon:

Sam Johnson
Thomas J. Lloyd III
Johnson & Monteleone, L.L.P.
405 South Eighth Street, Suite 250
Boise, ID 83702
[Attorneys for Plaintiff]

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
- Email



Richard H. Greener
Jon T. Simmons

EXHIBIT B

000093

REALTIME ROUGH DRAFT/ASCII AND CERTIFIED COPY ORDER TERMS
AND CONDITIONS:

YOUR REQUEST FOR THIS REALTIME ROUGH DRAFT/ASCII CONSTITUTES
AN ORDER FOR A FINAL CERTIFIED COPY OF THE TRANSCRIPT WHEN
PREPARED, IN ADDITION TO THE COST OF THIS ROUGH DRAFT/ASCII.

THE REAL-TIME ROUGH DRAFT IS UNEDITED AND UNCERTIFIED AND
MAY CONTAIN UNTRANSLATED STENOGRAPHIC SYMBOLS, AN OCCASIONAL
REPORTER'S NOTE, A MISSPELLED PROPER NAME, AND/OR
NONSENSICAL WORD COMBINATIONS. ALL SUCH ENTRIES WILL BE
CORRECTED ON THE FINAL CERTIFIED TRANSCRIPT.

CCP SECTION 2025(r)(2) WHEN PREPARED AS A ROUGH DRAFT
TRANSCRIPT, THE TRANSCRIPT OF THE DEPOSITION MAY NOT BE
CERTIFIED AND MAY NOT BE USED, CITED, OR TRANSCRIBED AS THE
CERTIFIED TRANSCRIPT OF THE DEPOSITION PROCEEDINGS. THE
ROUGH DRAFT TRANSCRIPT MAY NOT BE CITED OR USED IN ANY WAY
OR AT ANY TIME TO REBUT OR CONTRADICT THE CERTIFIED
TRANSCRIPT OF THE DEPOSITION PROCEEDINGS AS PROVIDED
BY THE DEPOSITION OFFICER.

ENCINITAS, CALIFORNIA, TUESDAY, OCTOBER 19, 2010, 10:41 A.M.

**** UNCERTIFIED ROUGH DRAFT ****

**** NOT TO BE CITED ****

BY MR. GREENER:

Q. Let the record reflect that this deposition is
being taken pursuant to federal rules of civil procedure
pursuant to agreement between the parties as to time and
place. With that out of the way, would you please state
your full name for the record.

A. Sarah R. Tamai.

Q. And you are a licensed chiropractic physician; are
you not?

A. I am.

Page 2

1 Q. And I would like to just kind of go through some
 2 preliminary matters with you before we get into the
 3 substance of your opinions and the like. Have you given a
 4 deposition before coming here today?
 5 A. No.
 6 Q. This is your first time?
 7 A. Yes.
 8 Q. Okay. Because of that, I'm going to just go
 9 through a little bit of background as far as what we are
 10 doing here. I am sure that Mr. Monteleone has already
 11 explained this to you. You recognize you're testifying
 12 under oath?
 13 A. Yes.
 14 Q. Every question that I ask of you and every answer
 15 you give and everything mentioned by Mr. Monteleone is all
 16 being recorded by the court reporter. And at the end of all
 17 of this, you will have a chance to review it and look at it.
 18 It's important that you know, though, that this is a
 19 document that will be available in court if this matter
 20 proceeds to trial and can be used by, frankly, either side
 21 for a variety of different purposes. With that out of the
 22 way, do you have any questions as far as this is concerned?
 23 A. No.
 24 Q. You probably already knew that.
 25 A. Yes.

Page 3

1 Q. Because you have not had a deposition before or
 2 given one before, I would like to have an understanding with
 3 you. Because it's essential that we are communicating. So
 4 if I ask a question of you that you find you don't
 5 understand or that is confusing to you in any way, will you
 6 let me know?
 7 A. Sure.
 8 Q. And then I'm going to rephrase my question,
 9 Doctor, so that you and I are, hopefully, communicating. Is
 10 that agreeable?
 11 A. Sounds great.
 12 Q. With that agreement in place, if you answer a
 13 question I ask of you and you don't indicate otherwise, I'm
 14 going to proceed with the understanding that you understood
 15 my question. Is that also agreeable?
 16 A. Yes.
 17 Q. All right. And I have your CV and I want to hit
 18 on it just briefly, but I want to just go ahead and cover
 19 some of this stuff right now.
 20 A. Okay.
 21 Q. How long have you been licensed in the State of
 22 California as a chiropractic physician?
 23 A. Nine years.
 24 Q. And licensed anywhere else other than California?
 25 A. No.

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1 **** UNCERTIFIED ROUGH DRAFT ****
 2 **** NOT TO BE CITED ****
 3 Q. And do you have any areas of specialty that you
 4 hold out yourself as focusing on?
 5 A. "Specialty" meaning?
 6 Q. In terms of chiropractic.
 7 A. So do I --
 8 Q. Pediatric or geriatric or?
 9 A. I would say muscle sports, so more of an active.
 10 So it's active release technique we do a lot of.
 11 Q. And I trust that your licensed has never been
 12 subject to any disciplinary proceeding --
 13 A. No.
 14 Q. -- or revoked or suspended?
 15 A. No.
 16 Q. Have you ever been sued?
 17 A. No.
 18 Q. Have you ever been a party to a lawsuit?
 19 A. No.
 20 Q. Lucky you. You were hired as expert in this
 21 case by --
 22 A. Yes.
 23 Q. -- Mr. Johnson or Mr. Monteleone's firm, right?
 24 A. Yes.
 25 Q. And when was that? I have your report, just help

Page 5

1 us along here, I will be getting to it, but your report
 2 indicates a reference to correspondence of September -- if I
 3 can see it -- 9th of 2010. Is that about the time you were
 4 contacted?
 5 A. I would say, yeah maybe. The end of August or
 6 beginning of September. I don't recall the exact date.
 7 Q. Do you know how you came into contact with the
 8 plaintiff's firm?
 9 A. A friend of a friend of a friend I guess.
 10 Q. Can you trace it for me?
 11 A. Sure. There's Jake, another chiropractor in my
 12 office.
 13 Q. Her name?
 14 A. Jake Daly. And he is a chiropractor as well. And
 15 he is a friend of Eri Crum, a classmate. He graduated with
 16 Eri Crum who practices in Boise Idaho.
 17 Q. Eri Crum?
 18 A. Eri, E-R-I.
 19 Q. Did you all go to Western Division of Palmer?
 20 A. I went in a different year, but they were in the
 21 same class.
 22 Q. Did you know Dr. Crum?
 23 A. No. Personally, no. I mean I know the name now,
 24 but...
 25 Q. So that's how this matter came to you?

1 A. Not that I recall, no.
 2 Q. You said when you first talked to him you
 3 questioned whether or not you qualified to serve as an
 4 expert. Can you tell me what the basis for that question in
 5 your mind was?
 6 A. I have never done a deposition. I have never been
 7 in court. In my opinion I would assume that an expert
 8 witness would be someone who is a little bit more savvy in
 9 the legal side of, perhaps, chiropractic.
 10 Q. Okay. And I was going to get into this in a
 11 little bit greater detail. What is the nature of your
 12 practice in terms of what techniques and modalities you use?
 13 Do you regard yourself to be a pettibon practitioner?
 14 A. Yes. I am not certified, but I was at one point.
 15 Q. You were certified by California as a pettibon?
 16 A. It's not by California; it's by the pettibon
 17 system.
 18 Q. When was that?
 19 A. I would say 2006.
 20 Q. And how long were you certified?
 21 A. One year.
 22 Q. And what did you have to do to get certified?
 23 A. Complete their standard of courses, so there's a
 24 set of three. And then you have to submit x-rays. Having
 25 done basically classes there or classes online they now have

1 them. But going through making sure that you are competent
 2 in their field of practice.
 3 I'm still on the Web site, but I am not considered
 4 a certified. They would say that I am on the list for
 5 having knowledge of pettibon system, but I am not certified
 6 at this moment.
 7 Q. Why did you let the certification go in 2006 or at
 8 the end of 2006?
 9 A. I started doing more, as I mentioned previously,
 10 active release technique.
 11 Q. What is that?
 12 A. It is a manual muscle, patented manual muscle
 13 technique. It's patented.
 14 Q. And it's called?
 15 A. Active release technique.
 16 Q. You and I both speak rapidly. We have to slow
 17 down a little bit and sorry to bother you with that.
 18 A. That's fine.
 19 Q. Just do the best you can. I wrote down active
 20 release?
 21 A. Release technique.
 22 Q. And what is that?
 23 A. It's a muscle technique.
 24 Q. And how do --
 25 A. For --

1 Q. -- you -- is it like a pressure point or a release
 2 point? How would you explain it to my as a layperson?
 3 A. As a layperson I would say it is a muscle
 4 technique used primarily to address adhesions, perhaps
 5 sprains/strains, tendinis issues, chronic overuse or acute
 6 injuries. Primarily with the muscles.
 7 **** UNCERTIFIED ROUGH DRAFT ****
 8 **** NOT TO BE CITED ****
 9 Q. When you're talking become adhesions, are you
 10 talking about adhesions resulting from surgery?
 11 A. No. It's not per surgical.
 12 Q. What is the technique? Are you using a device
 13 or --
 14 A. Hands.
 15 Q. -- your hands?
 16 A. Hands.
 17 Q. Just hands?
 18 A. Uh-huh.
 19 Q. Is that what you're doing now? Is that your
 20 primary focus in your practice?
 21 A. We do adjustments as well; but we do a lot of
 22 active release technique, yes.
 23 Q. When you say you do adjustments, what kind of
 24 adjustments do you do? Do you practice the diversified
 25 methodology?

1 A. We do some pettibon adjustments, P-E-T-T-I-B-O-N
 2 we do diversified; activator; and some blocking, SOT
 3 blocking.
 4 Q. SOT blocking?
 5 A. Uh-huh.
 6 Q. That's a yes?
 7 A. Yes.
 8 Q. Okay. Does that cover your modalities of
 9 treatment?
 10 A. Yes.
 11 Q. Okay. And so what is SOT blocking?
 12 A. Sacro-occipital technique. They are blocks that
 13 you use for the pelvis to help level them out. Very light,
 14 hardly any force.
 15 Q. It's all in the pelvic area?
 16 A. A lot of it, yes.
 17 Q. Anything in the cervical area?
 18 A. Uh-huh. But we don't do the blocking up there.
 19 Q. I might come back to this a bit when I go through
 20 your CV.
 21 A. Okay.
 22 Q. Let me move to just another background subject.
 23 A. Okay.
 24 Q. Did you review any documents to prepare for this
 25 deposition, Doctor?

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1 A. Yes.
 2 Q. Tell me what you reviewed.
 3 A. I reviewed part of the deposition for Martha
 4 Arregui. I reviewed the full deposition, I believe it was,
 5 for Dr. Gallegos-Main. I reviewed the records. I reviewed
 6 a letter from Dr. Han. And the medical records.
 7 Did I say the medical records?
 8 Q. Yes. The chart?
 9 A. Uh-huh.
 10 Q. Is that a yes?
 11 A. Yes.
 12 Q. In reviewing the chart, did you review all of the
 13 medical records?
 14 A. No. I don't think I did. I don't know.
 15 MR. MONTELEONE: Can we go off the record for a
 16 second?
 17 MR. GREENER: Yeah.
 18 (Discussion off the record.)
 19 BY MR. GREENER:
 20 Q. Back on the record.
 21 A. Yes.
 22 Q. Doctor, what I was interested in in my last
 23 question was everything that you have looked at in terms of
 24 getting ready to come here and testify today. Were you
 25 responding to that?

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1 A. Yes.
 2 Q. And then Mr. Monteleone has indicated you also
 3 looked at another document that he provided you this
 4 morning?
 5 A. Yes.
 6 Q. And do you have a copy of that here?
 7 MR. MONTELEONE: It has my double secret notes on
 8 it.
 9 MR. GREENER: Oh, good.
 10 THE WITNESS: I saw that too. Do you want me to
 11 mention those as well?
 12 MR. MONTELEONE: Doctor, you will need to probably
 13 reference each of the medical literature articles you
 14 reviewed in doing your work here today as best you can
 15 recall.
 16 BY MR. GREENER:
 17 Q. That would be good.
 18 A. I didn't bring all of that information. I
 19 reviewed -- there was a spine article. There was an article
 20 from Neurology I believe dated 2003.
 21 Q. Why don't you go ahead and just identify them and
 22 then hand them to me if you would.
 23 A. Okay.
 24 Q. Would you do that, please?
 25 A. Sure.

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1 Q. While we are doing that -- and let's stay on the
 2 record a minute. This might move us along. I was going to
 3 hand you a deposition notice and ask you if you brought any
 4 documents with you here today.
 5 MR. GREENER: And I guess I will you, Jason.
 6 Other than the documents you're giving me, did you bring
 7 documents responsive to our duces tecum request?
 8 And I will just preface it by saying I know we did
 9 not send this out with 30 days' notice, but one reason why
 10 is because we were trying to get the doctor's date that was
 11 convenient to the doctor so we could do it. And then we
 12 asked for this information in our document production
 13 request anyway. I think we are entitled to what we have in
 14 here to the extent has it.
 15 MR. MONTELEONE: What I have done is I have
 16 collected some of the documents that I think would be
 17 responsive to this, but without that 30 days to cull them
 18 together and respond to the deposition duces tecum notice,
 19 don't have anything to produce.
 20 In fact, the copies of the medical literature
 21 articles are my working copies. I can't even really give
 22 you copies of these. They just happen to be the same
 23 articles that Dr. Tamai reviewed. I don't have anything to
 24 produce for you today, Counsel.
 25 MR. GREENER: Would it be possible for us to get

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1 copies of those?
 2 MR. MONTELEONE: Do you want to just read the
 3 citations into the record? I will get you copies that are
 4 clean copies that don't have my notes, I'm happy to do that.
 5 MR. GREENER: I was going to have her read your
 6 notes to me.
 7 MR. MONTELEONE: If she can read rather
 8 inscrutable, illegible handwriting. And, more importantly,
 9 if there's anything intelligent in any of it.
 10 BY MR. GREENER:
 11 Q. I think this is the quickest way to go through
 12 this. Here is a copy of the notice of deposition.
 13 (Ex 1)
 14 BY MR. GREENER:
 15 Q. Let's do this. Here is a copy of your notice of
 16 deposition. Have you seen this before?
 17 A. This?
 18 Q. Yes.
 19 A. Yes.
 20 Q. This is the document that kind of brought us here
 21 today, Doctor.
 22 A. Okay.
 23 Q. And let's go through the documents we asked for
 24 and let's see if they even exist. Number 1. I wanted to
 25 have copies of documents reviewed by you in preparation for

1 THE WITNESS: For the examination.
 2 BY MR. GREENER:
 3 Q. Okay. That's what I want to get at. In your
 4 opinion her examination that she did on that date was a
 5 deviation from the standard of care?
 6 A. Yes.
 7 Q. But her diagnosis you agree with; do you not?
 8 A. The torticollis?
 9 Q. Yes.
 10 A. Yes.
 11 Q. And you don't disagree with her treatment of her
 12 on that date or her treatment plan?
 13 A. No.
 14 MR. MONTELEONE: Object to the form.
 15 THE WITNESS: Of what was written in the record,
 16 yes.
 17 Say it again.
 18 BY MR. GREENER:
 19 Q. And I take it that although you believe she
 20 violated the standard of care in terms of the examination,
 21 you do not have an opinion that she violated the standard of
 22 care in terms of her treatment of the plaintiff on June 4 of
 23 2007?
 24 MR. MONTELEONE: Object to the form.
 25 THE WITNESS: No. According to what was written

1 in the record.
 2 BY MR. GREENER:
 3 Q. She did not?
 4 A. Correct.
 5 Q. Okay. That's no, she did not violate the standard
 6 of care --
 7 A. Standard of care.
 8 Q. -- according to what was written in the record --
 9 A. According to what -- yes.
 10 Q. -- in terms of the treatment she provided?
 11 A. In terms of the treatment she provided.
 12 Q. Yes?
 13 A. Yes.
 14 Q. Good.
 15 A. I'm actually very confused as to what you just
 16 said.
 17 MR. MONTELEONE: I was going to say. Doctor, are
 18 you tracking the question --
 19 THE WITNESS: No.
 20 MR. MONTELEONE: -- that Mr. Greener is asking
 21 you?
 22 THE WITNESS: No. He kind of went one way and
 23 then he went this way.
 24 BY MR. GREENER:
 25 Q. Well, you'll get another chance.

1 A. Good. Round 2.
 2 MR. MONTELEONE: No, I get the other chance.
 3 BY MR. GREENER:
 4 Q. I want to go back to the September 16th
 5 conversation. And, I'm sorry, in these depositions you will
 6 find that we get into a topic and -- I actually have an
 7 outline to cover and I never stay with the outline. We
 8 start talking about something and it leads to something
 9 else. Just bear with me. If you don't know for some reason
 10 where I am in my line of questioning, say wait a minute,
 11 what are you talking about here. Is that agreeable?
 12 A. Yes.
 13 Q. Back to September 16 --
 14 A. Okay.
 15 Q. -- and that conversation. Do you remember
 16 anything in any more substance other than what we talked
 17 about?
 18 A. No.
 19 Q. Okay. And so on September -- did Mr. Johnson
 20 have -- this says Sam Johnson's work copy on it. Did you
 21 have a copy of the September 16 -- I would like to mark this
 22 if I could.
 23 MR. MONTELEONE: Let me see it.
 24 BY MR. GREENER:
 25 Q. Let me ask you this.

1 Whose handwriting is that?
 2 A. I don't know.
 3 Q. I take it it's not yours?
 4 A. No.
 5 MR. GREENER: Well, look at it and see if I can
 6 mark it.
 7 MR. MONTELEONE: That's the problem I have,
 8 Counsel. This is a working copy. I can tell you that's Sam
 9 Johnson's handwriting.
 10 MR. GREENER: All right. Okay.
 11 MR. MONTELEONE: As is on the first page of
 12 September 16.
 13 MR. GREENER: What I'm thinking what I might do --
 14 can I have it back for a second?
 15 What I would like to do is maybe use something to
 16 cover this up and have it copied here.
 17 Well, maybe I don't need to do that. Just to move
 18 it along, I would like to conditionally mark this and then
 19 talk about it. Because I want to ask her a question about
 20 the difference between this and her actual expert report of
 21 last Friday.
 22 MR. MONTELEONE: Why don't we take a break? I
 23 will make a copy that doesn't have the handwritten
 24 interlineated notes.
 25 MR. GREENER: That's fine.

1 There's some other e-mails that I haven't seen
 2 that are attached. I would like to have those. I don't
 3 think there is any --
 4 MR. MONTELEONE: Right. And that's the issue,
 5 Counsel. Without the 30 days allowable under the procedural
 6 rules to figure out exactly you're entitled to in your duces
 7 tecum notice, that's why we don't have the production. And
 8 I understand the scheduling of the matter is the reason why
 9 it's --
 10 MR. GREENER: Well, there's that. And, Jason,
 11 also, in truth, we had asked for all this -- I can show you
 12 the interrogatory, or pardon me, the document production
 13 request. We asked for all of this information anyways and
 14 it hasn't been produced. I think we are on solid ground to
 15 say we are entitled to it.
 16 Let's work this out. Okay?
 17 MR. MONTELEONE: I agree.
 18 MR. GREENER: Let me ask you this before we take a
 19 quick break.
 20 MR. MONTELEONE: And, for the record, I agree on
 21 working it out. I am not sure I agree on the notice.
 22 BY MR. GREENER:
 23 Q. Okay. Do you remember discussing with Mr. Johnson
 24 at any time whether an adjustment of the cervical spine was
 25 indicated?

1 A. Yes.
 2 Q. And what did you tell him?
 3 A. I said personally I wouldn't have done one.
 4 Q. And in your opinion Dr. Gallegos-Main didn't do
 5 one either, did she?
 6 A. According to the record, no.
 7 According to her records, no.
 8 Q. And her testimony.
 9 A. But according to Martha's, she doesn't know if it
 10 was an adjustment, but her head was rotated when she was
 11 face down and face up.
 12 Q. And she doesn't know what kind of work was done on
 13 her in those positions?
 14 A. No.
 15 Q. Okay. And then there's another question. Should
 16 the chiropractor have phoned ambulatory services under those
 17 circumstances. And do you recall discussing that with
 18 Mr. Johnson?
 19 A. Yes.
 20 Q. And what did you tell him in that regard?
 21 A. I said that if she had been my patient and had
 22 difficulty walking, I probably would have called for care.
 23 Q. You say "probably." Are you certain of that?
 24 A. Yes. If I had seen her not walking well, yes.
 25 Q. In this particular case are you aware of the fact

1 that she went to an emergency room in Weiser, Idaho, on
 2 June 5th?
 3 **** UNCERTIFIED ROUGH DRAFT ****
 4 **** NOT TO BE CITED ****
 5 A. Yes.
 6 Q. Have you reviewed those records?
 7 A. No.
 8 Q. Do you know whether or not the medical doctor on
 9 June 5th came to essentially the same diagnosis as
 10 Dr. Gallegos-Main on June 4?
 11 A. No.
 12 Q. Would that be of significance to you if the
 13 medical doctor did?
 14 MR. MONTELEONE: Object to the form.
 15 THE WITNESS: I don't know.
 16 BY MR. GREENER:
 17 Q. When you say you don't know, what causes you to
 18 answer that question that way?
 19 MR. MONTELEONE: Object to the form.
 20 THE WITNESS: If I didn't review it, I don't know
 21 what tests were performed or not performed.
 22 BY MR. GREENER:
 23 Q. We will get into that then.
 24 A. Okay.
 25 Q. That's fine. I just wanted to -- let's take a

1 break. Was there a difference between your report of
 2 October 15 and this document other than the handwriting?
 3 "This document" being your rough draft or your draft of
 4 September 16, 2010?
 5 A. This one includes those questions that he asked
 6 me. He asked me to basically opine on those two questions.
 7 Q. So you added those?
 8 A. Uh-huh.
 9 Q. That's a yes?
 10 A. Yes.
 11 Q. And then the e-mail is not attached to your expert
 12 report. May I see the one you have there? I want to make
 13 sure it's the same one I have.
 14 MR. GREENER: Okay. Let's go off the record.
 15 (Recess held.)
 16 BY MR. GREENER:
 17 Q. Doctor, back on the record. And I will probably
 18 remind you periodically, you are still under oath and you
 19 recognize that. We're waiting to have some documents
 20 copied. In the meantime let's go back and look at
 21 Exhibit 1, your deposition notice, and get through it and
 22 get it out of the way. I would like to ask you this. Have
 23 you ever been to Idaho?
 24 A. No.
 25 Q. And have you talked to any chiropractic physician

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1 in Idaho?
 2 A. I talked to Eri Crum for about three minutes.
 3 Q. And when was that?
 4 A. After the first conversation with Sam Johnson at
 5 some point.
 6 Date? I don't know.
 7 Q. Did you call him?
 8 A. Yes.
 9 Q. And what was your purpose in calling him?
 10 A. To touch base with him to say are they good
 11 attorneys, have you worked with them before.
 12 Q. What did he tell you?
 13 A. He said he had worked with them before and that
 14 they were good guys.
 15 Q. Did he say they are really smart lawyers?
 16 A. Oh, sure.
 17 Q. And so then did you talk about anything else or
 18 was that the extent of your conversation?
 19 A. No, that was it.
 20 Q. Other than Dr. Crum, have you talked to any other
 21 chiropractic physicians in Idaho?
 22 A. No.
 23 Q. As we sit here today do you know if there is any
 24 difference between the standard of care for chiropractic
 25 physicians in Caldwell Napa, Idaho, and chiropractic

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1 physicians who practice where you practice in California?
 2 A. Are you --
 3 MR. MONTELEONE: Object to the form.
 4 THE WITNESS: Are you asking if there's a
 5 difference?
 6 BY MR. GREENER:
 7 Q. Yes. Do you know if there is or not?
 8 A. I am not aware of a difference, no.
 9 Q. Do you know if the standard of care is the same?
 10 MR. MONTELEONE: Object to the form.
 11 THE WITNESS: I believe it is. Because we are
 12 both, what, regulated or under the national board of
 13 chiropractic examiners. But I can't say with 100 percent
 14 certainty yes or no.
 15 BY MR. GREENER:
 16 Q. So it is really your supposition?
 17 MR. MONTELEONE: Object to the form.
 18 THE WITNESS: It is my estimation. I am
 19 not. . . .
 20 BY MR. GREENER:
 21 Q. It's your estimation?
 22 A. Uh-huh.
 23 Q. Do you have those documents? Let's go ahead and
 24 finish up Exhibit No. 1. That's what I said I was going to
 25 do before we do the documents. There's an e-mail attached

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1 to the draft of your report dated September 16, 2010. Other
 2 than that e-mail, do you recall if there are any other
 3 e-mail transmissions between you and Mr. Johnson?
 4 A. I don't recall.
 5 Q. And would you need to go back to your server to
 6 make that determination?
 7 A. Yes.
 8 Q. Would you be willing to do that and --
 9 A. Sure.
 10 Q. -- then let Mr. Monteleone know if there is
 11 anything else in there? And then I would ask him to advise
 12 me if there are any other e-mail transmissions. I think we
 13 are entitled to those. And I would make the request for
 14 them or any writings of any kind between you and
 15 Mr. Monteleone's firm. Would you be kind enough to do that?
 16 A. Yes.
 17 You're requesting e-mails?
 18 Q. Yes.
 19 A. Yes.
 20 Q. Okay. And so that kind of covers -- we are on
 21 item number 3 on the second page of the notice of
 22 deposition.
 23 So in terms of that, would there be any other kind
 24 of document -- other than notes you made, drafts of your
 25 opinion or report, and your final report, and the e-mails we

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1 have just referenced -- would there be any other kinds of
 2 writings that you would have either received or sent related
 3 to this matter?
 4 A. No.
 5 The other are -- I mean at the very end of the
 6 report there are references, but that's it.
 7 Q. Right.
 8 A. You have those, right?
 9 Q. Those references are a part of your report?
 10 A. Yes.
 11 **** UNCERTIFIED ROUGH DRAFT ****
 12 **** NOT TO BE CITED ****
 13 Q. Then item number 5, if you look at that. It says
 14 we request a copy of every article, journal, publication,
 15 manual, treatise, or other similar authority upon which you
 16 intend to rely to support your opinion. Are there are there
 17 any such documents?
 18 A. Yes.
 19 Q. What are they?
 20 A. Those. These.
 21 Q. All right. And those are the -- let's take those
 22 up then.
 23 MR. MONTELEONE: There's four articles that are
 24 being referenced. The first one is risk of vertebral
 25 basilar stroke and chiropractic care by Cassidy, Boyle,

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1 MR. MONTELEONE: Basilar stroke.
 2 We'll make Exhibit 2 risk of vertebral basilar
 3 stroke and chiropractic care.
 4 MR. GREENER: Spinal magazine 2008.
 5 (Ex 2)
 6 MR. MONTELEONE: And Exhibit 3 is the Neurology
 7 article.
 8 (Ex 3)
 9 MR. GREENER: Regarding manipulations and
 10 dissections of 2003.
 11 MR. MONTELEONE: Correct.
 12 MR. GREENER: Number 4 will be cervical artery
 13 stroke and informed consent from the MJA 2000.
 14 (Ex 4)
 15 MR. GREENER: And number 5 will be the quack
 16 document.
 17 (Ex 5)
 18 BY MR. GREENER:
 19 Q. While those are being marked so we can identify
 20 them, could you tell me when did you read these?
 21 A. When they were e-mailed to me.
 22 Q. When was that?
 23 A. I don't have a date for you.
 24 Q. Sometime in September or October of this year?
 25 A. Yes.

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1 Q. And prior to your receiving them by e-mail, had
 2 you ever read them before?
 3 A. Yes.
 4 Q. And in what context did you read these? Let's
 5 look at Exhibit No. 2. Do you have that before you?
 6 A. Yes.
 7 Q. We have already identified that sufficiently; have
 8 we not?
 9 MR. MONTELEONE: I think so, Counsel.
 10 BY MR. GREENER:
 11 Q. Exhibit No. 2. When in point of time did you
 12 become aware of that document and read it?
 13 A. The entire document? I had not read the entire
 14 document.
 15 The reference, the abstract? I had read about, I
 16 would say, earlier this year and perhaps last year.
 17 Q. Was that the first time you had ever read it, to
 18 your recollection?
 19 A. Yes.
 20 Q. So this particular document, did it impact the way
 21 you practice chiropractic?
 22 A. No.
 23 Q. You do cervical adjustments of the neck on human
 24 beings; do you not?
 25 A. I do.

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1 Q. Men and women both?
 2 A. Yes.
 3 Q. And perhaps children?
 4 A. Yes.
 5 Q. And when you do those, what type of adjustment
 6 technique or modality do you use? I am assuming you use
 7 diversified.
 8 A. Yes.
 9 Q. And what level of force do you deliver? Does it
 10 depend?
 11 A. Yes.
 12 Q. And what would it depend on?
 13 A. It would depend on what that patient presented
 14 with and what their injuries were and who I was working
 15 with.
 16 Q. And say that person presented with torticollis.
 17 You have had that occur and diagnosed a person, a woman,
 18 presenting with torticollis?
 19 A. Yes.
 20 Q. And would torticollis only occur in the neck or
 21 can it occur elsewhere?
 22 A. It is typically not called torticollis if it's
 23 elsewhere, but it can.
 24 Q. It's really a muscle spasm, isn't it?
 25 A. Correct.

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1 Well, the kind that we would be able to treat,
 2 yes. There are other kinds that are not treatable by
 3 chiropractors.
 4 Q. Such as?
 5 A. Congenital.
 6 Q. Any others?
 7 A. I believe there are four, but that's the only one
 8 that I can recall off the top of my head.
 9 Q. Now going back to a person presents to you,
 10 Doctor, with torticollis --
 11 A. Yes.
 12 Q. -- and complaining of a severe headache and
 13 complaining of dizziness and complaining of some numbness in
 14 her face, would you, depending upon the way she presented
 15 with those symptoms, undertake a cervical adjustment?
 16 A. Not using diversified technique, no.
 17 Q. What technique would you use?
 18 A. I may not adjust that person at that time.
 19 **** UNCERTIFIED ROUGH DRAFT ****
 20 **** NOT TO BE CITED ****
 21 Q. Would there be any adjustment that that person
 22 would be a candidate for, in your opinion?
 23 A. Perhaps activator.
 24 Q. Of the type that Dr. Main used?
 25 A. No. According to the record of what I read, it

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1 was arthrostim or PTLMS.
 2 Q. Would either of those be contraindicated under
 3 those circumstances?
 4 A. For torticollis?
 5 Q. Yes.
 6 A. No.
 7 Q. Has Exhibit No. 2, the abstract that you read,
 8 changed anything about the way you practice?
 9 A. No.
 10 Q. Is Exhibit No. 2 of any significance to your
 11 opinion? Did you use it really other than you read it and
 12 it was interesting, but does it provide any underpinning or
 13 basis for your opinions?
 14 A. Opinions on?
 15 Q. That you're expressing here today on
 16 Dr. Gallegos-Main.
 17 A. No.
 18 Q. How about Exhibit No. 3? When did you read that
 19 for the first time? The Neurology journal.
 20 A. When this one was e-mailed to me.
 21 Q. Okay. Sometime in September/October?
 22 A. Uh-huh.
 23 Q. That's a yes?
 24 A. Yes.
 25 Q. Has that had any impact on how you do your

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1 chiropractic, practice your chiropractic?
 2 A. No.
 3 Q. Is that of any significance or is that a -- does
 4 that information in the Neurology journal form any basis for
 5 your opinion?
 6 A. Repeat the question.
 7 Q. Sure. Does that Exhibit No. 3, the Neurology
 8 journal, did you use that at all in developing your opinion?
 9 A. In this report?
 10 Q. Yes.
 11 A. Or the way I practice?
 12 Q. In the report.
 13 A. No.
 14 Q. Because of your last answer I want to make sure I
 15 didn't miss something. Did the Exhibit No. 2, the risk of
 16 vertebral basilar strokes in the spine magazine -- I know
 17 you said that didn't affect the way you practiced. Was
 18 there anything about that that you used in forming your
 19 opinions? I think you said no, but I want to make sure I
 20 didn't miss anything.
 21 A. I believe I said no; and I would say no again.
 22 Q. Okay. Let's go to Exhibit No. 4. Do you have
 23 that in front of you? When did you receive that?
 24 A. In the same e-mail as Exhibit 3.
 25 Q. When did you first read it?

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1 A. When it was sent to me.
 2 Q. Has that had any effect on the way you practice?
 3 A. No.
 4 Q. And I take it that that wasn't used by you in
 5 forming your opinions in this case?
 6 A. Correct.
 7 Q. Exhibit No. 5. Sent to you at the same time,
 8 correct?
 9 A. Yes.
 10 I have seen this before.
 11 Q. Oh, you saw it before?
 12 A. Uh-huh.
 13 Q. That was a yes?
 14 A. Yes.
 15 Q. And what occasioned you seeing it prior to
 16 receiving it from Mr. Johnson?
 17 A. It had been discussed by several journals,
 18 American Chiropractic Association I believe, the ACA,
 19 discussing this Web page.
 20 Q. Has that had any effect on the way you practice
 21 chiropractic?
 22 A. No.
 23 Q. And was Exhibit No. 5 used by you in any way in
 24 formulating your opinions in this case?
 25 A. So when you say "formulating opinions," it wasn't

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1 referenced. So in reading the articles --
 2 Q. It wasn't.
 3 A. Right.
 4 So I didn't reference it, but I read it as a
 5 journal that's out there. But it doesn't affect the way I
 6 practice.
 7 Q. Right. I understand.
 8 A. I am confused the way you're asking the question.
 9 Q. I will ask it again.
 10 A. Okay.
 11 Q. Is there anything in Exhibit No. 5 that you can
 12 point me to that you used in formulating your opinions that
 13 are set forth in your report of October 15 of 2010?
 14 A. No.
 15 Q. Okay. Other than Exhibits 2 through 5 and the
 16 references that you cited in your report of October 15,
 17 2010, are there any other documents that you would refer me
 18 to that you used in any way in developing your opinions or
 19 had reference to?
 20 A. I read something online, but it was referencing
 21 the first article. Exhibit 2.
 22 Q. And did that have any impact on your opinion?
 23 A. No.
 24 Q. Okay. Let's go back to Exhibit No. 1 for a minute
 25 and get done with this, the duces tecum request. I have

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1 (Ex 7)
 2 BY MR. GREENER:
 3 Q. Here is Exhibit 7. And that is a copy of your
 4 expert report of October 15.
 5 A. Yes.
 6 Q. And that was prepared by you. It's a multipage
 7 document. It hasn't been Bates numbered yet. But it looks
 8 like the body of it. Do you have a page number on this,
 9 Doctor?
 10 A. A page number meaning -- I mean I believe it's
 11 seven pages. Is that what you are asking?
 12 Q. Is it seven pages in length? I guess would you do
 13 me a favor? We don't have a Bates number on this. You have
 14 a pen there. Let's circle -- let's number each page and
 15 circle it in the lower right-hand corner just so we have a
 16 reference. If I ask you a question, I will know what page
 17 we are on.
 18 A. Okay.
 19 Q. Tell me when you're done.
 20 A. Okay.
 21 Q. I have seven pages. This is your report to Sam
 22 Johnson dated October 15, 2010. I think there is a copy of
 23 your signature on page 6, correct?
 24 A. Yes.
 25 Q. And then just for the record, page 7 references

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1 six items. And what do we have here on page 7?
 2 A. The references.
 3 Q. Yes.
 4 What are they?
 5 A. Do you want me to read them?
 6 Q. No, no. What's their significance to your
 7 opinion? Are these materials you used to developing your
 8 opinion?
 9 A. Yes.
 10 Q. Does this detail your research?
 11 A. Yes.
 12 Q. All right. And so maybe we can kind of go through
 13 this to pin down with a little bit more precision the two to
 14 three hours on research. Item number 1 makes reference, on
 15 page 7 of Exhibit 7, to Leslie M. Wise, professor of
 16 clinical sciences at Sherman College of Straight
 17 Chiropractic, a power point presentation of August 10, 2008,
 18 at a certain reference. Did you pull this up on the
 19 Internet?
 20 A. Yes.
 21 Q. You didn't attend this, you just --
 22 A. No.
 23 **** UNCERTIFIED ROUGH DRAFT ****
 24 **** NOT TO BE CITED ****
 25 Q. What use did you make of this?

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1 A. This was -- these are noted in the report in
 2 parentheses.
 3 Q. Is this the first time -- when you were preparing
 4 your report, was that the first time you ever reviewed this
 5 particular power point presentation?
 6 A. Yes.
 7 Q. You never reviewed it before?
 8 A. No.
 9 Q. Did you ever talk to Dr. Wise?
 10 A. No.
 11 Q. What was your purpose in reviewing this?
 12 A. I was looking for a standard of care that was
 13 clean and easily understood and something that was, I felt,
 14 representative of the standard of care in chiropractic.
 15 Q. And did you find all of your questions in that
 16 regard answered with the Leslie M. Wise power point?
 17 A. All of my questions?
 18 Q. Yes. Regarding standard of care.
 19 A. I felt that it was appropriate.
 20 Q. Was there any other part -- was there anything
 21 else that you relied upon in determining what the standard
 22 of care was?
 23 A. Those are documented in number 2 and number 3.
 24 Q. All right. And number 4 as well?
 25 A. Number 4 is the definition of torticollis.

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1 Q. And what about numbers 5 and 6? Did they have
 2 anything to do with standard of care?
 3 A. No. Those are referencing pettibon.
 4 Q. 1 through 3 would be where you gleaned the
 5 standard of care?
 6 A. Yes.
 7 Q. What in terms of the standard of care as it
 8 relates to this case did you obtain from the Leslie M. Wise
 9 power point presentation?
 10 A. Where it's stated here, the quote, the level at
 11 which the average, prudent provider in a given community
 12 would practice. It is how similarly qualified practitioners
 13 would have managed the patient's care under the same or
 14 similar circumstances.
 15 Q. So that is a direct quote from Dr. Wise?
 16 A. Yes.
 17 Q. That's not your definition of standard of care?
 18 A. No.
 19 Q. And this does make reference to in a given
 20 community. Would that then be -- if we look at this then,
 21 and we're looking now at page 1 of the report that you
 22 prepared in the second paragraph where you write an apt
 23 definition of standard of care can be defined as, quote, the
 24 level at which the average, prudent provider in a given
 25 community would practice. It is how similarly qualified

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1 practitioners would have managed the patient's care under
 2 the same or similar circumstances. End of quote.
 3 I read this correctly, didn't I?
 4 A. Yes.
 5 Q. And do you adopt that standard of care for the
 6 purposes of your opinion in this case?
 7 MR. MONTELEONE: Object to the form.
 8 THE WITNESS: Did I?
 9 BY MR. GREENER:
 10 Q. Do you agree with that standard of care for the
 11 purposes of your opinion in this case?
 12 A. Yes.
 13 Q. So if I am understanding that correctly then, that
 14 would be the level at which the average, prudent provider in
 15 Caldwell or Napa, Idaho, would practice?
 16 MR. MONTELEONE: Object to the form.
 17 THE WITNESS: Perhaps given community could be the
 18 chiropractic profession.
 19 BY MR. GREENER:
 20 Q. Well, do you understand where Dr. Main's clinic is
 21 located?
 22 A. No. I know it's in Idaho, but no.
 23 Q. With this language here, wouldn't the standard of
 24 practice be applied have to be the level at which the
 25 average, prudent provider in the community in which she

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1 practices?
 2 A. Well, that's what I was saying before --
 3 MR. MONTELEONE: Excuse me for interrupting,
 4 Dr. Tamai.
 5 Object to the form.
 6 THE WITNESS: I was saying that a given community
 7 would be or could be also construed as chiropractic
 8 profession, not necessarily a physical location.
 9 BY MR. GREENER:
 10 Q. And where do you -- how do you obtain that
 11 construction from this language?
 12 A. It says the level at which an average, prudent
 13 provider in a given community.
 14 A community can be a physical location, but it can
 15 also be a -- it could chat on an Internet site. I mean a
 16 group. So you can have a community of chiropractors.
 17 Q. Do you know if there is any different standard of
 18 practice of chiropractic physicians in Caldwell, Idaho,
 19 than, for example, other locations in the country including
 20 California?
 21 MR. MONTELEONE: Object to the form.
 22 THE WITNESS: I don't know Caldwell. I don't
 23 know.
 24 BY MR. GREENER:
 25 Q. All right. In terms of the standard of practice,

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1 is there anything else that you obtained -- let me ask it
 2 this way -- from Dr. Wise power point presentation, other
 3 than what you specifically set forth in your report?
 4 A. Other than what I put in the report?
 5 Q. Yes.
 6 A. I don't believe so, no.
 7 Q. And then the Council on Chiropractic Practice
 8 Clinical Practice Guideline. Did I read that correctly?
 9 A. Yes.
 10 Q. Third edition 2008.
 11 You took that off the Internet as well, right?
 12 A. Yes. I have also seen a hard copy of it.
 13 Q. What is that?
 14 A. That is a guideline that is put together that --
 15 there are two. So the CCP, the Council on Chiropractic
 16 Practice Clinical Practice Guideline, and the Guidelines for
 17 Chiropractic Quality Assurance and Practice Parameters,
 18 Proceedings of Mercy Center Consensus Conference.
 19 Those two documents in general in the chiropractic
 20 community are the basis or the guidelines that are often
 21 quoted in standard of care referencing treatment guidelines.
 22 Q. Do you know if they are followed in the State of
 23 Idaho?
 24 A. I do not.
 25 Q. Do you know if they are adopted by any

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1 chiropractic board in the State of Idaho?
 2 A. Adopted by the board?
 3 Q. Yes. Do you know?
 4 A. I don't know if there's a board in Idaho. I
 5 believe it's national.
 6 Q. And do you know if any of these references that
 7 you have there -- such as the council on chiropractic
 8 practice clinical practice guideline or the guidelines for
 9 chiropractic quality assurance and practice parameters,
 10 proceedings of Mercy Center consensus conference -- do you
 11 know if those have been adopted by the legislature in the
 12 State of Idaho?
 13 A. Which legislature?
 14 Q. The Idaho legislature.
 15 A. For chiropractors?
 16 Q. Yes. As being applicable to chiropractors.
 17 A. Repeat the beginning of the question.
 18 Q. I just want to know do you know whether or not the
 19 Idaho legislature has adopted any of these four chiropractic
 20 practitioners in the State of Idaho to be applicable --
 21 A. I don't know that the legislature has control over
 22 chiropractor's practice.
 23 Q. So your answer is no, you don't know?
 24 A. I don't know.
 25 Q. How about in California? Has the California

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1 legislature adopted any of these guidelines that you have
 2 referenced?
 3 A. As I stated previously, I don't think the
 4 legislature has reference or controls what happens to the
 5 chiropractic profession in California.
 6 Q. You have a chiropractic board in California; do
 7 you not?
 8 A. We do.
 9 Q. Do you know if your -- what is it called?
 10 A. I don't know what it's called off the top of my
 11 head.
 12 Q. Do you know if --
 13 A. California Board of Examiners. I believe that's
 14 what it is called.
 15 Q. But whatever name it is called, do you know
 16 whether or not that board or that entity --
 17 A. Yes.
 18 **** UNCERTIFIED ROUGH DRAFT ****
 19 **** NOT TO BE CITED ****
 20 Q. Let me back up.
 21 A. Okay.
 22 Q. Would that be -- who licenses you? Is it the
 23 Board of Examiners for chiropractors or --
 24 A. Yes, yes.
 25 Q. Do you know if whoever licenses you has adopted

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1 the items set forth in footnotes 2 and 3 of your expert
 2 report that's Exhibit No. 7?
 3 A. Is there more to the question?
 4 Q. I'll ask it again.
 5 A. Okay.
 6 Q. Let's do it individually. Do you know if the
 7 board that licenses you in California has ever formally
 8 adopted the guidelines for chiropractic quality assurance
 9 and practice parameters, proceedings of Mercy Center
 10 Consensus Conference so that they are mandatory requirements
 11 on you as a chiropractor practicing in California?
 12 A. I do not know.
 13 Q. Would you know if that had occurred?
 14 A. Yes.
 15 Q. And --
 16 A. I hope so.
 17 Q. Thank you.
 18 I would like to ask you the same question. Do you
 19 know if the board that licenses you has adopted the council
 20 on chiropractic practice clinical practice guideline, third
 21 edition 2008 referenced in footnote number 2 to your expert
 22 report Exhibit 7 so that it is binding on chiropractors
 23 practicing in the State of California?
 24 A. I do not know.
 25 Q. And do you know if the power point by Leslie M.

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1 Wise has been adopted by the board that licenses you in the
 2 State of California so that it is binding on chiropractors
 3 in California?
 4 A. I do not know.
 5 Q. Does the practice of chiropractic in California in
 6 terms of standard of care vary from community to community
 7 within California, to your knowledge?
 8 MR. MONTELEONE: Object to the form.
 9 THE WITNESS: I do not believe so.
 10 The California board licenses us, but the
 11 governing board is the national board.
 12 BY MR. GREENER:
 13 Q. Okay. What's the name of the national board?
 14 A. National Board of Chiropractic Examiners.
 15 Q. And does the National Board of Chiropractic
 16 Examiners, do you know whether they have adopted any of
 17 these same items that we have just been talking about --
 18 specifically footnotes 1, 2 and 3 to your expert report --
 19 so that any of those, according to the national board, are
 20 binding on chiropractors practicing in the United States of
 21 America?
 22 A. I do not know that.
 23 Q. You would know if it had occurred, wouldn't you?
 24 MR. MONTELEONE: Object to --
 25 THE WITNESS: I don't know.

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1 MR. MONTELEONE: -- the form.
 2 THE WITNESS: If they sent a letter to me, I would
 3 know.
 4 BY MR. GREENER:
 5 Q. Do you know if the national board has adopted any
 6 policies or guidelines that you can point me to that apply
 7 to standard of care of chiropractors in the United States?
 8 A. I do not know. I know they have a Web site and
 9 they are responsible for licensing.
 10 Q. I have asked you about whether the standard of
 11 care varies within the State of California. Do you, in your
 12 opinion -- strike that. Do you know, as a practicing
 13 chiropractor in the United States, if there is any kind of a
 14 difference at all between chiropractors practicing in
 15 California and chiropractors practicing in Idaho?
 16 MR. MONTELEONE: Object to the form.
 17 THE WITNESS: In terms of standard of care --
 18 BY MR. GREENER:
 19 Q. Yes.
 20 A. -- expectations or the way they practice?
 21 Q. In terms of the standard of care that is
 22 applicable to them in their practice.
 23 A. I do not know.
 24 Q. So, for example, if we talk about the Mercy
 25 guidelines, you know what I'm talking about, don't you?

1 A. -- that she didn't?
 2 Q. Exactly. I would like to know what you are
 3 critical of in terms of her diagnosis, care, and treatment.
 4 A. As I stated in the report, the biggest thing that
 5 I had a problem with, just as a treat -- another
 6 chiropractic physician, was the fact that she -- so
 7 Martha -- Arregui?
 8 Q. You're close.
 9 A. Sorry.
 10 -- presented initially in 2005 and she did a very
 11 basic examination. And then she returned in 2007
 12 complaining of a new condition. And Dr. Gallegos-Main did a
 13 re-exam. However, for billing purposes, it would have been
 14 labeled as a re-examination, but it should have been a new
 15 examination because it was a new complaint.
 16 So she was an existing patient, correct;
 17 however -- for example, if you had come to see me previously
 18 for a lower back issue and we treated it or not treated it,
 19 and you came back two years later and said you know what,
 20 now I have a shoulder problem, and if I didn't do a complete
 21 examination, a new examination of that shoulder, I believe
 22 that that is not good judgment on the part of the
 23 practitioner.
 24 Q. Do you believe that's a deviation of the standard
 25 of care?

1 MR. MONTELEONE: Object to the form.
 2 THE WITNESS: That's what I'm saying. Standard of
 3 care for an average, prudent provider? Yes.
 4 But, you know, you were asking before if the
 5 national board had adopted this as a standard of care or the
 6 California board has adopted it. I can't say with certainty
 7 yes or no because I don't know if it was adopted or not.
 8 BY MR. GREENER:
 9 Q. Okay. So just to refine this down. It's your
 10 opinion that her examination on June 4, because of
 11 presenting with a new symptomology that had not been
 12 presented in 2005, required a re-examine -- required a real
 13 examination rather than just a re-examination?
 14 A. Yes.
 15 Q. Okay. Let me take a step back.
 16 The 2005 diagnosis, care, and treatment that you
 17 talk about in your report, Doctor, in your opinion does
 18 anything that Dr. Main did or didn't do in 2005 have any
 19 effect on what occurred in 2007 in terms of your opinion?
 20 A. In terms of treatment of that injury?
 21 Q. Yes.
 22 A. No.
 23 But as a reference point to say -- say in 2005 she
 24 had done -- she had had the same complaint and an
 25 examination had been done then, then a re-examination may

1 have been more appropriate.
 2 However, because in 2005 it was completely
 3 different set of chief complaints that she had come to
 4 Dr. Main for, taking that into consideration looking at
 5 2007, she really didn't to much of an OPQRST.
 6 Q. What is that?
 7 A. OPQRST is a simple way that they taught us in
 8 school to break down a subjective complaint.
 9 Q. What does it stand for?
 10 A. O -- there's some variance depending on what
 11 people say. But O is object. What is it, what is the
 12 problem. P is pain. So a lot of times is it painful, what
 13 kind of pain, where is the pain. Quality. Q is quality.
 14 The type. So is it dull, is it throbbing, is it sharp, is
 15 it achy. S is sight. So show exact exactly where it is.
 16 And T is timing.
 17 Q. What is it?
 18 A. Timing. Is it better in the morning, is it worse
 19 at night.
 20 Q. When did it onset?
 21 A. When did it start. You know, what are things -- P
 22 can also be palliative. That's why I was saying there's
 23 some variance. What makes it better, what makes it worse.
 24 And then oftentimes in there is rating the pain on a scale
 25 of one to 10. So one being very minimal, 10 being

1 excruciating. And that oftentimes is the intake, the
 2 subjective part of what the patient will bring to you, or
 3 you should be asking them. They say a lot of it can come
 4 from the symptoms of what a patient has. Sometimes it's not
 5 so much the examination, it's a lot of times being very good
 6 at looking at what the patient is telling you.
 7 Q. Just to kind of move us along.
 8 A. That's fine.
 9 **** UNCERTIFIED ROUGH DRAFT ****
 10 **** NOT TO BE CITED ****
 11 Q. Listen to this question carefully. I want to make
 12 sure we are on the same page. If I understand your
 13 testimony correctly, what Dr. Gallegos-Main did or did not
 14 do in 2005 doesn't have any relationship to what occurred in
 15 terms of the diagnosis, care, and treatment of the plaintiff
 16 on June 4 of 2007?
 17 A. What I'm saying is that in terms of occurrence,
 18 yes, she did not do a complete examination.
 19 Q. In 2005 -- ?
 20 A. 2007.
 21 Q. She a complete exam in 2005.
 22 A. There were some things that were missing, but it
 23 was more complete than the 2007 for sure.
 24 Q. Well, in your opinion was there anything done in
 25 2005 that deviated from the standard of care?

1 MR. MONTELEONE: Object to the form.
 2 THE WITNESS: Like I said before, I don't know if
 3 there is -- if the national board adopted that standard of
 4 care.
 5 BY MR. GREENER:
 6 Q. But in your opinion. In your opinion was there
 7 anything done --
 8 A. My standard of care?
 9 Q. Yes.
 10 A. In 2005 it really wasn't a great exam to begin
 11 with. But it was not the same body part, it wasn't the same
 12 complaint.
 13 It was just those records I think were provided as
 14 a base or a reference point.
 15 Q. But you can't tell me whether there was a
 16 deviation from the standard of care in 2005 in terms of her
 17 diagnosis, care, and treatment?
 18 MR. MONTELEONE: Object to the form.
 19 THE WITNESS: I don't think she was ever really
 20 treated.
 21 BY MR. GREENER:
 22 Q. In terms of what Dr. Main did.
 23 A. No. I think there were some things that were
 24 missing. But the standard of care as you're trying to ask
 25 me for is -- I would have done it differently.

1 three orthopedic tests, which for each body part there can
 2 be anywhere from two at minimum to, you know, however many
 3 you wanted to do, say like the lumbar probably has at least
 4 15 that you could probably use or do to help you in your
 5 diagnosis.
 6 Q. Are they discretionary or are they essential?
 7 A. It depends on what the problem the patient is
 8 presenting with.
 9 Q. Are there any essential tests that she didn't do
 10 in your opinion?
 11 A. She didn't mention anything about muscle
 12 involvement. She did dermatomes and she did myotomes in
 13 2005. But I didn't see that in 2007.
 14 Q. In all fairness, isn't the 2005 exam -- let me
 15 strike that and back up.
 16 Have you done IMEs? Independent medical
 17 examination evaluations.
 18 A. No, I have not.
 19 Q. Have you ever looked at other chiropractor's chart
 20 notes and records?
 21 A. IMEs?
 22 Q. No. Have you ever had occasion to review other
 23 chiropractors chart notes or records to see how complete
 24 they are, to see what is written down and what's not?
 25 A. In passing perhaps with other colleagues, but not

1 Q. You would have done it differently --
 2 A. Yes.
 3 Q. -- but do you know of any standard of care that
 4 was violated by that? That's what I'm trying to find out.
 5 If you do, tell me; if you don't, tell me that.
 6 MR. MONTELEONE: Object to the form.
 7 THE WITNESS: As stated in the report there
 8 were -- in the 2005 visits or visit, I think she didn't make
 9 the second visit. So the subjective part, the clinical
 10 profile, if you look on page 1 at the bottom, one, two,
 11 three, four, five, and six.
 12 BY MR. GREENER:
 13 Q. Page? Which one at the bottom?
 14 MR. MONTELEONE: Which exhibit number?
 15 THE WITNESS: Exhibit No. 7, page 1, at the bottom
 16 where it started with one, two -- and then continue onto
 17 page 2 -- 3, 4, 5, 6.
 18 BY MR. GREENER:
 19 Q. Yeah.
 20 A. In 2005 that was covered much better. Where she
 21 sort of dropped the ball a little bit was on the examination
 22 in 2005.
 23 Q. And where did she drop the ball in that regard?
 24 A. There is somehow patient noted, but she didn't
 25 really mention -- she did one, I think one or two, maybe

1 for the purposes of reviewing the quality of their chart
 2 notes.
 3 Q. In doing this in passing, have you noticed that
 4 some chiropractic physicians are more detailed in what they
 5 are writing down in the chart notes and in their records
 6 than others?
 7 A. Yes.
 8 Q. And isn't that kind of part of human nature that
 9 some people are more meticulous about writing down each and
 10 everything they do and others simply don't write down as
 11 thoroughly as others?
 12 A. To a degree. But if you have a chart note and
 13 someone came in to see you and if you were to pass that on
 14 to, say, even another chiropractor, perhaps even an MD says
 15 what happened on this visit, you would want to be able to
 16 explain to them what transpired.
 17 If there is nothing written down, they don't have
 18 anything to reference as to what they had, what they can
 19 complained of, what you did.
 20 Q. But that would mean that maybe the chiropractor
 21 failed to adequately record everything done?
 22 A. Yes.
 23 Q. But it doesn't necessarily lead to the conclusion
 24 that the chiropractor because of not recording something and
 25 actually having done it violated the standard of care, does

1 marking it.
 2 And I basically explained in this paragraph why,
 3 as I just stated to you previously, why because although she
 4 was a returning patient, it was a new chief complaint. So
 5 she should have done a much better job of taking the OPQRST,
 6 taking the history of what happened, if there are any new
 7 issues that happened in the last two years, that might
 8 affect either this new chief complaint or just affect her
 9 health history in general.
 10 Q. So your critical of her history that she took that
 11 she recorded in the chart notes?
 12 A. Uh-huh.
 13 Q. You don't feel that those comply to the standard
 14 of care; is that correct?
 15 A. No. That's correct.
 16 Q. Okay. And then anything else about the history?
 17 A. That's the history. I mean the OPQRST is --
 18 Q. So we have covered the history?
 19 A. The history was that specific chief complaint, but
 20 she also didn't find out if there was anything that
 21 transpired in the past two years, sometimes patients don't
 22 realize, that might affect the new issue of why they are
 23 there.
 24 Q. And then let's go to the -- we get into the exam
 25 section. Let me back up for a minute. I'm sorry. Strike

1 that. Go to the last paragraph on page 4. There you talk
 2 about -- and we don't need to read it specifically. But you
 3 talk about the examination. Do you have an opinion as to
 4 whether or not the examination deviated from the standard of
 5 care?
 6 **** UNCERTIFIED ROUGH DRAFT ****
 7 **** NOT TO BE CITED ****
 8 A. Yes.
 9 Q. And your opinion is yes, it did. In what respect
 10 did it?
 11 A. She marked range of motion, but she didn't mention
 12 anything about, again, about soft tissue. So soft tissue
 13 meaning muscles, ligaments, tendons, skin, palpable pain in
 14 certain areas. She only marked that there was one
 15 orthopedic test that was performed. And even with
 16 torticollis, it's very painful to move, even if she
 17 attempted to do some other ones, she didn't mark it on the
 18 form that they couldn't perform them. It was just -- the
 19 assumption was that I took, looking at the examination form,
 20 that it wasn't done.
 21 Q. In your opinion that could have been due to the
 22 inability because of pain of the patient in having the test
 23 performed?
 24 A. It's possible.
 25 Q. So you don't know whether or not Dr. Main

1 attempted to or considered performing those other tests?
 2 MR. MONTELEONE: Object to the form.
 3 BY MR. GREENER:
 4 Q. Or do you know if she did?
 5 A. I don't know.
 6 Q. Okay. And go ahead then.
 7 The leg check really has nothing to do with the
 8 PICA stroke, does it?
 9 A. The leg check is -- no. The leg check is to see
 10 if you have a patient either prone or supine, S-U-P-I-N-E,
 11 on the table, that is to see if they have what's called a
 12 functional short leg. So an anatomic short leg, but
 13 functionally it can be from muscle spasm.
 14 Q. That paragraph deals with her exam, which you are
 15 critical of.
 16 Let me clear on this. In terms of your opinion on
 17 the examination performed by Dr. Gallegos-Main, are you
 18 critical of the examination or of what was recorded?
 19 In other words, was she a poor record keeper?
 20 A. I have no way --
 21 MR. MONTELEONE: Object to the form.
 22 THE WITNESS: I have no way to make that
 23 distinction.
 24 BY MR. GREENER:
 25 Q. Okay. Then next we go onto the top of page 5 onto

1 the x-ray, right?
 2 A. Yes.
 3 Q. And what is your opinion -- which is part of the
 4 exam, of course, right?
 5 A. Yes.
 6 Q. What is your opinion on the x-rays performed?
 7 A. She, as I stated in this paragraph, she did one
 8 view. Typically two views are considered a full series. If
 9 you do -- she did a lateral, so looking from the side.
 10 Whereas, a complete view would be to take a look
 11 at it from the other dimension, from the front or the back.
 12 And she only did one.
 13 And if she was stating that she did pettibon, I
 14 have some familiarity with it -- and this I don't think has
 15 changed since I have taken the classes -- but a full
 16 pettibon series they consider seven views to be a complete
 17 pettibon series.
 18 Q. Okay.
 19 A. So of those five are cervical views and two are
 20 lumbar.
 21 Q. In the last sentence of, I think it's the first
 22 full paragraph on page 5, you write:
 23 "With Ms. Arregui in torticollis
 24 spasm, according to Dr. Gallegos-Main,
 25 both would be appropriate based on a

1 Q. They are not recorded.
 2 A. -- checks were done.
 3 Q. Bad recordkeeping.
 4 MR. MONTELEONE: Object to the form.
 5 BY MR. GREENER:
 6 Q. Right?
 7 A. I would say so or bad examination.
 8 Q. Okay. Then if we will drop down to the second
 9 paragraph -- or the last full paragraph on page 15. This
 10 has to do with plaintiff on June 4, 2007; does it not?
 11 A. Yes.
 12 Q. And there it says plaintiff presented to
 13 defendant -- you know, maybe it would be easier for me to
 14 just identify this.
 15 Would you read on that answer from there to the
 16 end? And then I would like to ask you if you see anything
 17 that is set forth there that is in violation of the standard
 18 of care?
 19 A. Okay. So start at the very beginning?
 20 Q. Where it says plaintiff presented to defendant.
 21 A. Okay. Plaintiff presented to defendant --
 22 Q. Just --
 23 A. Oh, just read it?
 24 Q. -- read it to yourself.
 25 A. Oh, okay.

1 upon plaintiff's current status. If she had done a complete
 2 examination, I would say that that is a fair and accurate
 3 judgment. But you can't really recommend a treatment plan
 4 if you haven't done a fair examination.
 5 Q. So you're quarreling with whether or not she did a
 6 fair and complete examination?
 7 A. Yes.
 8 Q. Under circumstances where a patient presents in a
 9 lot of pain and is requesting immediate relief, would a
 10 reasonable chiropractor maybe not do an extensive
 11 examination, but do an abbreviated form of an examination?
 12 A. Yes.
 13 Q. And that's acceptable and within the standard of
 14 care, isn't it?
 15 MR. MONTELEONE: Object to the form.
 16 THE WITNESS: Yes. But they couldn't recommend
 17 complete treatment plan based on a modified or a brief
 18 examination.
 19 BY MR. GREENER:
 20 Q. In terms of taking a history -- let's take that
 21 component -- likewise, when a patient presents in a
 22 significant amount of pain and is a repeat patient, can
 23 there be certainly an abbreviated kind of history done just
 24 in terms of focusing on where is the pain, what is going on?
 25 A. Yes.

1 Q. Read over to, if you would, the beginning of
 2 interrogatory number 19.
 3 A. 19?
 4 Q. Yeah, on the next page. Just stop there.
 5 A. Okay.
 6 (Pause in proceedings.)
 7 THE WITNESS: Okay.
 8 BY MR. GREENER:
 9 Q. If her answers set forth in the section that we
 10 have been talking about from pages 15 through 16 of the
 11 responses to plaintiff's first set of interrogatories
 12 request for production of documents and request for
 13 admissions are accurate in terms of what happened, is there
 14 anything there that is recorded that would be a deviation of
 15 the standard of care?
 16 **** UNCERTIFIED ROUGH DRAFT ****
 17 **** NOT TO BE CITED ****
 18 MR. MONTELEONE: Object to the form.
 19 THE WITNESS: She didn't do an examination. I
 20 mean she examined, but -- okay. Can I explain?
 21 BY MR. GREENER:
 22 Q. Yeah. Sure.
 23 A. In the sentence where it says in nothing in the
 24 x-rays caused defendant any concern. Defendant then
 25 examined plaintiff and gave what treatment she could based

1 Q. And that would not be contrary to the standard of
 2 care?
 3 A. Focusing on pain and finding out what is going on.
 4 But then also trying to complete a palpatory examination or
 5 at least marking what -- if they couldn't perform something,
 6 noting that. I have done that before. I know that they
 7 cannot do these other orthopedic tests that would be
 8 probably within the standard of care and I would note that
 9 on the chart.
 10 Q. Of course, some patients could present -- you have
 11 patients present in such an amount of pain that you can't do
 12 any orthopedic exams, right?
 13 A. You could try to do -- there's two cervical
 14 compression and distraction where they really don't have to
 15 move where you try to lift and compress. You could do those
 16 at minimum.
 17 Q. And that's part of the exam. But going back to
 18 the history when someone is coming in and they're really
 19 having problems, have you on occasion taken a real
 20 abbreviated history in terms of where is the pain, what is
 21 going on here, you have seen the patient before, and then
 22 you don't go into anything really much further on the
 23 history?
 24 A. I would do more than that on the history.
 25 Q. What would you do?

1 A. If they came with the same complaint of
 2 torticollis and spasm?
 3 Q. Right.
 4 A. How long have you had it, has it gotten worse.
 5 The P part of OP. Has it gotten worse, has anything made it
 6 better. Have you seen anyone else, have you gone to see
 7 your primary care physician. What other things have you
 8 tried at home. Are you sleeping through the night. Knowing
 9 if the pain is keeping them up at night is an indicator
 10 oftentimes of how severe it is.
 11 Q. And you don't know whether Dr. Main did that or
 12 did not do that?
 13 A. I do not know that.
 14 Q. Would you record all of that during taking the
 15 history while this person is in a lot of pain? Would you go
 16 through all of that and record all of that?
 17 A. I would chart note very quickly. Basically
 18 whatever makes it worse, makes it better. Pain started last
 19 Tuesday, has gotten worse. Or pain was really bad last
 20 week, has gotten slightly better, but not good. Scale of
 21 one to 10.
 22 Q. So just talking about what we have been talking
 23 about here with a person presenting with a tremendous amount
 24 of pain, doesn't a chiropractor approach that patient with
 25 what is functionally necessary for the patient under the

1 patient's circumstances where they are there in that type of
 2 physical condition?
 3 A. I am not sure I understand your question.
 4 "Functionally necessary"?
 5 Q. Yeah. You didn't understand that term.
 6 In other words, what will best get that patient
 7 from point A to point B where you can see if you can do
 8 something to alleviate the pain or determine what else to
 9 do?
 10 A. Is the chiropractor equipped for a torticollis?
 11 Q. Let's use torticollis. Strike that. I think we
 12 have covered everything we need to do there. So you are not
 13 going to do any additional work and modify your opinion, I
 14 trust?
 15 A. Not that I --
 16 MR. MONTELEONE: Object to the form.
 17 THE WITNESS: Not that I am aware of. Unless
 18 something in terms of evidence comes up that someone would
 19 ask me to render my opinion upon.
 20 MR. GREENER: Counsel, if there is any additional
 21 work done, we would like to be advised of it, if there are
 22 any modifications. We would like to take the deposition or
 23 get updated on the deposition of the witness on that.
 24 BY MR. GREENER:
 25 Q. In your opinion are chart records in terms of

1 completeness all that important if the chiropractic
 2 physician was able to reach a correct diagnosis?
 3 A. Chart notes are very important.
 4 Q. But a doctor can maybe not completely fill out the
 5 chart notes and still reach a correct diagnosis and properly
 6 diagnosis and care for a chiropractic patient?
 7 MR. MONTELEONE: Object to the form.
 8 THE WITNESS: It's possible, but a lot more likely
 9 if do you a complete examination.
 10 MR. GREENER: Okay. That's all I have.
 11 Thank you very much.
 12 MR. MONTELEONE: Let me ask a few questions to
 13 clarify things a little bit.
 14 BY MR. MONTELEONE:
 15 Q. If you would look at Exhibit 13, which are
 16 Dr. Gallegos-Main's answers to plaintiff's first set of
 17 discovery and go to interrogatory 28, please.
 18 MR. GREENER: What page is that on?
 19 MR. MONTELEONE: That is on page 20.
 20 BY MR. MONTELEONE:
 21 Q. Okay. And in there the plaintiff asks the
 22 defendant chiropractor did you render any treatment to
 23 plaintiff which is not recorded in your medical records.
 24 And Dr. Gallegos-Main responded defendant responds that all
 25 treatments and appointments which defendant had with

1 plaintiff are reflected in the chart notes and records
 2 produced herewith. Did I read that correctly?
 3 A. Yes.
 4 **** UNCERTIFIED ROUGH DRAFT ****
 5 **** NOT TO BE CITED ****
 6 Q. Does that give you some level of comfort that if
 7 any treatment was rendered, it should be recorded in
 8 Dr. Gallegos-Main's notes?
 9 MR. GREENER: Object to the form.
 10 THE WITNESS: Yes.
 11 BY MR. MONTELEONE:
 12 Q. And the fact that certain items, particularly
 13 three of the four orthopedic tests, are not shown to have
 14 been performed in Dr. Gallegos-Main's records, does that
 15 give you a level of comfort that, in fact, those tests were
 16 not performed and it was not simply a recordkeeping
 17 oversight?
 18 MR. GREENER: Same objection.
 19 THE WITNESS: Yes.
 20 BY MR. MONTELEONE:
 21 Q. Same series of questions with respect to
 22 interrogatories 29 and 30. Interrogatory number 29 asks
 23 Dr. Gallegos-Main did she receive any information from any
 24 nurse, doctor, or other health care provider about
 25 plaintiff's medical conditions. And she responds she did

1 THE WITNESS: Not that I recall.
 2 BY MR. MONTELEONE:
 3 Q. You were asked by counsel about whether you're
 4 mindful of certain risk categories that a patient that you
 5 work on may have. Does that include the potential risks for
 6 a VBA stroke resulting from a cervical manipulation?
 7 A. Yes. It's something that is mentioned a lot in
 8 the community. And it's something that I think all
 9 chiropractors are aware of and don't want to want to happen
 10 to them.
 11 Q. In reading Martha Arregui's deposition transcript,
 12 the portions that were provided to you, did it contain a
 13 description of a cervical rotational adjustment?
 14 A. She -- according to her deposition, she didn't
 15 know what it was. But she said that her head -- she said
 16 her head was rotated from side to side when she was both
 17 face down and face up. So I don't know.
 18 According to the patient, I mean according to the
 19 plaintiff -- I'm just trying to recall from the deposition.
 20 The patient said she was face down and her head was rotated
 21 from side to side, both face down and face up. According to
 22 her testimony she doesn't know if that was an adjustment or
 23 not. But her head was rotated. So I don't know because she
 24 doesn't know.
 25 Q. Would the rotation of the head as described by

1 adjustment presuming that adjustment occurred?
 2 MR. GREENER: Object to the form.
 3 THE WITNESS: No. If reasonable and prudent is
 4 the basis that you're taking it for, no. That would not be
 5 a recommended treatment.
 6 BY MR. MONTELEONE:
 7 Q. And it would, therefore, by definition, be
 8 unreasonable and imprudent for a cervical rotational
 9 adjustment to be performed on a patient with torticollis?
 10 MR. GREENER: Same objection.
 11 THE WITNESS: Yes.
 12 MR. MONTELEONE: I don't have any further
 13 questions.
 14 BY MR. GREENER:
 15 Q. Just so I can be clear on this. Counsel mentioned
 16 other orthopedic tests. Give me just a list of the
 17 orthopedic tests that in your opinion Dr. Gallegos-Main
 18 should have performed that the records do not reflect that
 19 she did.
 20 A. As I mentioned before, there's cervical
 21 compression and cervical distraction. She performed the
 22 shoulder depression test, but she did not perform -- there's
 23 an extension rotation. There are a couple of different
 24 names for it, so I don't know what you would call it. There
 25 is Soto Hall, which was on the form, which was not marked

1 Martha Arregui in her deposition be consistent with a
 2 cervical rotational adjustment in chiropractic?
 3 MR. GREENER: Object to the form.
 4 THE WITNESS: It's possible. It could also be the
 5 range of motion, but it's possible it was an attempt to an
 6 adjustment as well.
 7 BY MR. MONTELEONE:
 8 Q. Even with it being done with face up and face
 9 down?
 10 A. You can do a cervical adjustment face up or face
 11 down.
 12 Q. Right. But with the description that the head was
 13 turned side to side in both the face down or supine position
 14 as well as face up, is it more likely that that is a
 15 cervical rotational adjustment than a simple ROM check?
 16 MR. GREENER: Same objection.
 17 THE WITNESS: Yes. Because you wouldn't
 18 necessarily need to do range of motion both prone and
 19 supine, but I don't know.
 20 BY MR. MONTELEONE:
 21 Q. To wrap up. I want to ask you about what a
 22 reasonable and prudent chiropractor would do. I want to get
 23 away from this term standard of care. With a diagnosis of
 24 torticollis, was it reasonable and prudent for
 25 Dr. Gallegos-Main to have performed any cervical rotational

1 either. There is -- she didn't have any radiation, but they
 2 are other tests to check for impingement coming down through
 3 the arm.
 4 Q. Do you do those if you don't have the radiation?
 5 A. Not at that time, no. If she started -- no.
 6 According to Exhibit 13 when she started having the numbness
 7 in the face and in the arm, if she had come in for an
 8 examination at that point, I would have done those, yes.
 9 Q. Any others?
 10 A. Off the top of my head. There's Spurling's,
 11 there's Jackson's. Yergason's is shoulder, but you can use
 12 it for the neck as well. I believe it's spelled
 13 Y-E-R-J-E-S-O-N (sic).
 14 Q. Do you know if the standard of care requires all
 15 of those tests be performed under the circumstances that
 16 Ms. Arregui presented on on June 4, 2007?
 17 MR. MONTELEONE: Object to the form.
 18 THE WITNESS: If the standard of care is what we
 19 discussed as the sentence in my report, I don't think it's
 20 written down that all of those tests need to be performed,
 21 but I don't know. But I would say some of them.
 22 BY MR. GREENER:
 23 Q. And then as we sit here today, you're unable to
 24 form an opinion on whether or not there was actually an
 25 adjustment or it was a range of motion test in the two

EXHIBIT C

000112

OCT 15 2010



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October 15, 2010

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RE: Martha Arregui vs. Rosalinda Gallegos-Main, D.C.

Dear Mr. Johnson,

Thank you for your correspondence dated September 09, 2010 regarding Ms. Arregui. I reviewed the medical records from both May 2005 and June 2007 available to me as well as the depositions from Martha Arregui and Rosalinda Gallegos-Main, D.C. that were kindly provided, and my responses to your questions regarding standard of care within the chiropractic profession are below.

An apt definition of standard of care can be defined as "The level at which the average, prudent provider in a given community would practice. It is how similarly qualified practitioners would have managed the patient's care under the same or similar circumstances." According to Leslie Wise, D.C. an initial evaluation would include history, palpation, range of motion, leg checks, instrumentation, ortho/neuro evaluations, imaging if deemed necessary.(1) After the initial examination is performed then a working diagnosis is established and a course of care is prescribed. The first visit with Dr. Gallegos-Main, D.C. will be discussed in reference to the above definitions and recommendations. Dr. Wise, D.C. also addresses re-examinations to which I will refer for June 4, 2007 visit of Ms. Arregui to Dr. Gallegos-Main, D.C.

There are also several documents which serve as guidelines for the chiropractic community, and these include the Council on Chiropractic Practice Clinical Practice Guidelines (2) and Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of Mercy Center Consensus Conference, otherwise known as Mercy Guidelines (3) which I shall reference as well in relation to both the 2005 and 2007 visits. CCP guidelines states a case history usually contains:

1. Patient clinical profile with age, gender, occupation
2. Primary reasons for seeking chiropractic care

3. Chief complaint if one exists
 - A. Trauma, by etiology when possible
 - B. Chief complaint
 - C. Characteristic of chief complaint
 - D. Intensity/frequency/location, radiation/onset/location.
 - E. Aggravating/arresting factors
 - F. Previous interventions, treatments, medications, surgery
 - G. Quality of pain, if present
 - H. Sleeping position and sleep patterns
4. Family History
 - A. Associated health problems of relatives
 - B. Causes of parents' or siblings' death and age of death
5. Past health history
 - A. Overall health status
 - B. Previous illnesses
 - C. Surgery
 - D. Previous injury or trauma
 - E. Medications and reactions
 - F. Allergies
 - G. Pregnancies and outcomes
 - H. Substance abuse and outcomes
6. Social and occupational history
 - A. Level of education
 - B. Job description
 - C. Work schedule
 - D. Recreational activities
 - E. Lifestyle (hobbies, level of exercise, drug use, nature of diet)
 - F. Psychosocial and mental health

Once the history is completed, then an examination is performed which may include the following:

1. Clinical examination procedures
 - A. Palpation (static, osseous, and muscular, motion)
 - B. Range of motion
 - C. Postural examination
 - D. Muscle strength testing
 - E. Orthopedic/neurological tests
 - F. Mental status examination procedures
 - G. Quality of life assessment instruments
 - H. Substance abuse and outcomes
2. Imaging and instrumentation
 - A. Plain film radiography
 - B. Videofluoroscopy

- C. Computerized tomography
 - D. Magnetic resonance imaging
 - E. Range of motion
 - F. Thermography
 - G. Temperature reading instruments
 - H. Electromyography
 - I. Pressure algometry
 - J. Nerve/function tests
 - K. Electroencephalography
3. Review of systems
- A. Musculoskeletal
 - B. Cardiovascular and respiratory
 - C. Gastrointestinal
 - D. Genitourinary
 - E. Nervous system
 - F. Eye, ear, nose, throat
 - G. Endocrine

For clarity I shall begin chronologically in 2005, with initial visit dated 5/3/2005 where upon Ms. Arregui completed a basic OPQRST history of her initial complaints on the intake paperwork. She noted right wrist and thumb pain with weakness as her chief complaint, then she noted lower back pain and stiffness, ankles and knees noted below, and thirdly, midback stiffness. Lacking is follow up by Dr. Gallegos-Main, D.C. adding to her intake as to the onset of her current chief complaint as well as palliative or provocative measures for her 3 complaints other than icy hot for her right wrist/thumb pain and weakness.

Dr. Gallegos-Main, D.C. then performed range of motion, myotome, dermatome and reflex examination of the upper extremities. Although the dermatomal area of right forearm and wrist and thumb was circled on exam form, presumably by Dr. Gallegos-Main, D.C., there is only an arrow to explain there was an aberrant finding, not whether it was hypersensitive or hyposensitive. Additionally, there was only 1 orthopedic test performed for that region of the available 8 on her examination form, and no mention of tenderness to palpation or visual deformities such as edema or noticeable arthritic changes. She writes "1st MCP" and I infer that she refers to the first metacarpal phalangeal joint probably dysfunction. There was also a lack of any mention of muscle or tendon involvement or affect these may have had on pain and weakness in affected area.

Headaches were mentioned at top of form, but no OPQRST was performed on this subjective concern, though I can infer that the cervical range of motion was performed based on the thought it may be cervicogenic in nature. There is no mention of palpatory findings either within normal limits (WNL) or abnormalities noted in cervical musculature or osseously, nor cervical orthopedic tests performed though there were 7 available on her examination form.

Internal derangement of the knee was second diagnosis on Dr. Gallegos-Main, D.C.'s sheet and noted as Ms. Arregui's second complaints, but there was no examination of said body parts performed. No range of motion, no orthopedic tests performed and no follow up as to onset of knee or ankle pain or stiffness, palliative or provocative measures for her complaints.

Lower back or lumbar region was also involved as Ms. Arregui's second chief complaint. Again, Dr. Gallegos-Main, D.C. failed to follow up and complete the OPQRST of this area of concern. She performed lumbar range of motion which was within normal limits. Of the available 17 lumbopelvic orthopedic tests available on her examination form, only 2 were performed, SLR and Ely's. There was no further examination was documented, and no mention of inspection, palpation, muscle, tendon or structural dysfunction or abnormality noted.

For third area of complaint of right midback stiffness there was a complete lack of follow up. No note in the file that it may be addressed in the future, no examination.

Based on the above observations, I would state Dr. Gallegos-Main's examination of Ms. Arregui's initial examination was incomplete and substandard to the profession's recommendations for appropriate care, based on both CCP and Mercy guidelines.

Moving onto re-examination performed June 4, 2007, there was no subsequent OPQRST performed on Ms. Arregui's *new* chief complaint of neck pain/torticollis/tiredness. On the returning patient form, 8 out of 10 was circled as was area on right side of neck, but other than that there was no other pertinent history for her return visit. Although Ms. Arregui was a returning patient, she presented 2 years later with a new chief complaint, not an exacerbation of a previous issue for which she had sought Dr. Gallegos-Main, D.C.'s treatment. This is a significant gap in information gathering of the case history as the CCP and Mercy guidelines have references for reassessment; however, this is relation to an initial examination of an area of chief complaint, not merely that she was a returning patient, thus requiring a re-examination of an existing area.

During the examination, cervical range of motion was performed, but no palpatory findings other than working diagnosis of torticollis was mentioned. According to the deposition, the range of motion was passive, but this was not noted on exam form either. Dermatomes were noted within normal limits, and again 1 orthopedic test, shoulder depression, was performed. This may have been due to the inability of patient to do the tests, but this was not noted on examination form (example CNP as cannot perform). According to deposition, Dr. Gallegos-Main, D.C. stated she performed a leg check with Ms. Arregui, but this was not reflected on examination form either. No muscle, tendon, or other soft tissue dysfunction or palpatory abnormality noted, though her working diagnosis was torticollis, which by definition treatable by chiropractic based on spasmodic muscles. There are other forms of torticollis; however, they are not treatable by chiropractic or adjustments. (4)

Diagnostic imaging was performed in the form of a lateral cervical only and not available for review, but typically a cervical series is a 2 view, lateral and AP (anterior/posterior.) Dr. Gallegos-Main, D.C. stated she is a Pettibon practitioner, but typically in a Pettibon series, there are 7 views performed. (lateral cervical, flexion and extension cervical, lateral lumbopelvic, AP lumbopelvic, nasium, and vertex views).(5) These 7 views allow the Pettibon practitioner to view the 6 functional spinal units. Even for a focused re-examination, based on the information above, Dr. Gallegos-Main, D.C.'s examination could be deemed below the standard of care in the chiropractic profession.

Treatment rendered June 4, 2007 according to the re-examination sheet was written as PTLMS and arthrostim. PTLMS is part of the Pettibon System and is defined as the Pettibon Tendon Ligament, Muscle Stimulator which helps reduce muscle spasms and flush the body of toxins. It is designed to disperse inflammation in joints, reduces scar tissue to reconstruct, and increases mobility of joints. (6) The arthrostim is a mechanical loading device that is low impact, similar to the Activator. With Ms. Arregui in torticollis spasm, according to Dr. Gallegos-Main, both would be appropriate based on a complete examination and history, though I personally might have exchanged the PTLMS for the vibracussor, a vibration instrument associated with the arthrostim, all of which are used in my personal practice.

In summary, Dr. Gallegos-Main, D.C. performed both 2005 and 2007 examinations below the standard of care within the chiropractic profession. There are several instances where she failed to gather case history information and then failed to perform a complete examination of the affected areas. This report was written with the assumption that the medical reports are true and complete. Given the medical reports I have reviewed, I have constructed a report based on my clinical experience, my education, and evidence-based guidelines.

Upon review of Ms. Arregui's testimony in conjunction with chief complaint of neck stiffness/tiredness and the other symptoms noted by Dr. Gallegos-Main, her diagnosis of torticollis, as well as patient stated symptoms and her deposition of events that occurred, a traditional or diversified adjustment would be contraindicated. Torticollis, again by definition, is muscle spasm which would be best treated by addressing the musculature directly.

Lastly, when Ms. Arregui began to experience dizziness and uneven gait, and her inability to drive herself home, this should have alerted Dr. Gallegos-Main, D.C. that Ms. Arregui was having an unexpected reaction and as a health professional, Dr. Gallegos-Main, D.C. should not have let her leave alone without assistance at minimum and requested emergency room transport at maximum.

Thank you again for the opportunity to serve as an expert witness in this case. Should you have any additional questions, please do not hesitate to contact me.

Sincerely,



Sarah Tamai, D.C.
Tamai Chiropractic, Inc.

1. Leslie M Wise, Professor of Clinical Sciences at Sherman College of Straight Chiropractic, Power point presentation dated August 10, 2008, [http://www.lesliewisdc.com/pdf/August 08 Standard of Care Palmetto Chiro Assoc pwpt.pdf](http://www.lesliewisdc.com/pdf/August%2008%20Standard%20of%20Care%20Palmetto%20Chiro%20Assoc%20pwpt.pdf)
2. Council on Chiropractic Practice Clinical Practice Guideline Third Edition- 2008, taken from <http://www.ccp-guidelines.org/guideline-2008.pdf>
3. Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of Mercy Center Consensus Conference, Scott Haldeman, David Chapman-Smith, Donald M. Petersen, Jr. copyright 2005, taken from http://www.chiro.org/documentation/FULL/Mercy_Recommendations.shtml
4. Wikipedia definitions of torticollis: congenital, acquired, and spasmodic torticollis. <http://en.wikipedia.org/wiki/Torticollis>
5. Team Training Seminar, 2006 ,The Pettibon System X ray series, Friday p.7
6. Team Training Seminar, 2006, PTLMS Thursday p.1-5

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUI,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an
individual; FULL LIFE CHIROPRACTIC,
P.A., an Idaho professional association; and
John and Jane Does I through X, whose true
identities are unknown,

Defendants.

Case No. CV 09-3450

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Defendants Rosalinda Gallegos-Main (Dr. Main) and Full Like Chiropractic, PA
(collectively hereinafter "Defendants"), by and through their counsel of record, Greener Burke
Shoemaker P.A., hereby submit this Memorandum in Support of Motion for Summary Judgment
against Plaintiff Martha A. Arregui (Plaintiff) on her Complaint against Defendants. In support

of this Memorandum, Defendants rely upon their Separate Statement of Undisputed Material Facts and the Affidavit of Counsel, filed concurrently herewith.

I. INTRODUCTION

Plaintiff was a chiropractic patient of Dr. Main. Plaintiff presented to Dr. Main on June 4, 2007 complaining of neck pain, headache and dizziness. Dr. Main evaluated Plaintiff, reviewed the chart, conducted a re-examination and determined that she could not perform a manual chiropractic adjustment of Plaintiff's neck. Instead of performing a manual adjustment, Dr. Main utilized two chiropractic devices in attempt to give Plaintiff some relief.

Plaintiff's claims against Defendants is that their treatment on June 4, 2007 did not comply with the appropriate standard of care and caused Plaintiff to suffer a stroke, and therefore that Defendants are liable to Plaintiff for damages. However, Plaintiff does not have any direct expert testimony to establish the applicable standard of care and that Defendants deviated from the applicable standard of care in their treatment of Plaintiff on June 4, 2007.

Plaintiff is unable to establish compliance with the provisions of I.C. §§ 6-1012 and 6-1013. The record reveals that she has failed to submit admissible evidence as to Dr. Main's alleged breach of the applicable standard of care in her treatment of Plaintiff.

This Memorandum will establish that Plaintiff has failed to submit affirmative proof by direct expert testimony that Dr. Main violated the applicable standard of care in her treatment of Plaintiff on June 4, 2007. Accordingly, Plaintiff's complaint against Defendants should be dismissed and Defendants should be awarded summary judgment on Plaintiff's claims as a matter of law.

II. FACTS

The facts critical to this motion are based upon the background facts set forth in Defendants' Statement of Undisputed Material Facts ("SUMF"). Plaintiff's sole evidence of chiropractic malpractice is testimony by Plaintiff's standard of care expert, Sarah Tamai, D.C. Dr. Tamai was deposed on October 19, 2010 in Oceanside California. Her deposition established that she does not possess the knowledge to affirmatively prove by direct expert testimony that Dr. Main breached the applicable standard of care of a chiropractic physician practicing in Caldwell, Idaho on June 4, 2007 or any other date. Dr Tamai testified: 1) she is not licensed as a chiropractic physician in Idaho (SUMF at ¶ 3); 2) she has never been to Idaho (SUMF at ¶ 4); 3) she has not spoken with any chiropractic physician in Idaho to determine the local standard of care (SUMF at ¶ 5); and 4) she doesn't know what the local standard of care is for a chiropractic physician practicing in Caldwell, Idaho is (SUMF at ¶ 6).

The record demonstrates that Dr. Tamai reviewed the deposition of Dr. Main and "portions" of Plaintiff's deposition as part of her work to develop the opinions to which she testified. (SUMF at ¶ 10.) Dr. Tamai issued an expert report on October 15, 2010 in this case. (SUMF at ¶ 8.) Dr. Tamai testified that the standard of care which she quoted in her expert report, and which she used as the basis for her opinions in her expert report, was taken from a PowerPoint Presentation and that she was not aware of the source for that quote. (SUMF at ¶ 9.) Significantly, the definition of standard of care quoted by Dr. Tamai in her report acknowledges the applicability of a local standard of care for a finding of chiropractic malpractice. Specifically the definition in her report states "[t]he level at which the average, prudent provider in a given community would practice. It is how similarly qualified practitioners would have managed the

patient's care under the same or similar circumstances.” (SUMF at ¶ 11.) The record proves that Dr. Tamai doesn't have knowledge of this chiropractic standard of care in Idaho.

Dr. Tamai's opinion as to standard of care does not comply with the legal requirements of Idaho law to hold a health care provider liable for any negligent act. Without expert testimony by a chiropractic physician who has the foundational background to testify to a deviation from the standard of care set forth in I.C. §§ 6-1012 and 6-1013, a plaintiff is unable to go proceed with a chiropractic negligence claim.

III. ARGUMENT

A. Summary Judgment Standard

Under IRCP 56, summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Sewell v. Neilsen, Monroe, Inc.*, 109 Idaho 192, 706 P.2d 81 (Ct. App. 1985).

Pursuant to the Idaho Rules of Civil Procedure, when a summary judgment motion is supported by depositions or affidavits, the adverse party “may not rest upon the mere allegations or denials of his pleadings, but his response must set forth specific facts showing that there is a genuine issue for trial.” I.R.C.P. 56(e); *Arnold v. Diet Center, Inc.*, 113 Idaho 581, 746 P.2d 1040 (Ct. App. 1987). If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against her. *See* I.R.C.P. 56.

Even if the nonmoving party can establish disputed facts, this alone will not defeat summary judgment if the nonmoving party has not established sufficient facts to make a prima facie case. A complete failure of proof concerning an essential element of the nonmoving party's case renders all other facts immaterial. *Batell v. Beeks*, 115 Idaho 101, 765 P.2d 126

(1988) (citing *Celotex v. Catrett*, 117 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986)). The moving party is entitled to summary judgment as a matter of law where the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she bears the burden of proof at trial. *Celotex*, 447 U.S. at 322, 106 S.Ct. at 2552-53.

In order to survive summary judgment in a malpractice case, the plaintiff must prove both that the defendant breached a duty and that this breach proximately caused the plaintiff's injuries. *See Sheridan v. St. Luke's Regional Medical Center*, 135 Idaho 775, 25 P.3d 88 (Idaho 2001); *Conrad v. St. Clair*, 100 Idaho 401, 404, 599 P.2d 292, 295 (1979). The plaintiff must also provide direct expert testimony establishing the applicable standard of care and that the health care provider failed to meet such standard. This requirement is established by Idaho Code § 6-1012 which reads in relevant part:

In any case, claim or action for damages due to injury to or death of any person, brought against any physician and surgeon **or other provider of health care**...on account of the provision of or failure to provide health care...such claimant or plaintiff **must, as an essential part of his or her case in chief, affirmatively prove by direct expert testimony** and by a preponderance of all the competent evidence, that such defendant then and there negligently failed to meet the applicable standard of health care practice of the community in which such care allegedly was or should have been provided...

See I.C. § 6-1012, emphasis added.

In addition to any requirements Plaintiff must meet with respect to the submission of expert evidence, any testimony Plaintiff offers regarding the requisite standard of care and a breach thereof must meet the standards for admissibility set forth in the Idaho Rules of Evidence. *Mains v. Cach*, 143 Idaho 221, 141 P.3d 1090 (2006) citing *Dulaney v. St. Alphonsus Reg'l Med. Ctr.*, 137 Idaho 160, 45 P.3d 816 (2002) (holding that the liberal construction and reasonable inferences does not apply when deciding whether or not testimony in support of a motion for

summary judgment is admissible.) In order for a plaintiff to avoid summary judgment for the defense in a malpractice case the plaintiff must offer admissible expert testimony and lay the foundation required by Idaho Code § 6-1013. (*Id.*)

Plaintiff has failed to establish, through direct expert testimony, the applicable standard of care and that Dr. Main breached that applicable standard of care. Plaintiff's failure to establish these facts and provide the requisite opinion testimony requires that her claims against Defendants be dismissed.

B. Plaintiff Has Not Submitted Direct Expert Evidence Establishing An Applicable Standard of Care Pursuant to I.C. §§ 6-1012 and 6-1013.

The plain and unambiguous language of Idaho Code § 6-1012 requires that the Plaintiff “[i]n any case...for damages due to injury...brought against any physician and surgeon **or other provider of health care**...on account of the provision of or failure to provide health care...plaintiff must...affirmatively prove by **direct expert testimony**...that such defendant...failed to meet the applicable **standard of health care practice of the community** in which such care...was or should have been provided...As used in this act, the term ‘**community**’ **refers to that geographical area...nearest to which such care was...provided.**” *See* I.C. § 6-1012, emphasis added.

The Idaho Supreme Court in *Mains* addresses this issue stating that “[a]n expert testifying as to the standard of care in medical malpractice actions must show that he or she is familiar with the standard of care for the particular health care professional for the relevant community and time. The expert must also state how he or she became familiar with that standard of care.” *See Mains*, 143 Idaho at 225. In this case, Plaintiff has offered the expert opinion testimony of Dr. Tamai, a chiropractic physician licensed in the State of California, which does not comply with this requirement. Dr. Tamai testified that she was not licensed in the State of Idaho, that she has

never been to the State of Idaho, that she has not discussed the local standard of care with any chiropractic physicians practicing in the State of Idaho, that she does not know if the State of Idaho has a Chiropractic Board and that she does not know if the standard of care in Caldwell Idaho is different from any other location in the country. (SUMF at ¶¶ 3, 4, 5, 6 and 7.)

Further, the definition of standard of care on which Dr. Tamai relied was obtained from a PowerPoint Presentation, and she doesn't even know if that definition has been adopted within the state she practices in, let alone elsewhere. (SUMF at ¶ 9.)

Although Dr. Tamai acknowledges the appropriate standard of care for a chiropractic physician is a "community" standard, Dr. Tamai has no idea what the applicable community standard in the State of Idaho is, let alone in the Nampa/Caldwell geographical area. Dr. Tamai's testimony lacks the requisite legal foundation to be admissible in evidence. Plaintiff clearly has not met the threshold requirements of a malpractice claim and accordingly her claims against Defendants should be dismissed in their entirety.

C. I.C. §§ 6-1012 and 6-1013 Apply to Plaintiff's Claims.

Plaintiff, in order to establish a *prima facie* case, is required to provide affirmative proof by direct expert testimony as to the applicable community standard of care and how defendants violated that duty of care pursuant to I.C. §§ 6-1012 and 6-1013. Plaintiff's claims sound in malpractice. Plaintiff alleges in her complaint that Dr. Main "in her capacity as a health care professional treated Plaintiff" (SUMF at ¶ 16); that "Defendants owed Plaintiff a duty to medically treat Plaintiff in a competent and non-negligent manner" (SUMF at ¶ 17); that "Defendants failed to meet the applicable community standard of chiropractic care" (SUMF at ¶ 18); and that "as a direct and proximate result of the acts and omissions of Defendants, Plaintiff sustained serious bodily injuries." (SUMF at ¶ 19). In order for Plaintiff to go to trial on these

allegations, Plaintiff must demonstrate compliance with I.C. §§ 6-1012 and 6-1013 which she has utterly failed to do.

In *Hough v. Fry*, 131 Idaho 230, 233, 953 P.2d 980,983 (1998) the Idaho Supreme Court established a test as to whether someone was a health care provider within the meaning of I.C. § 6-1012 stating, “the statute applies when the damages complained of result from providing or failing to provide health care. Thus, to determine if I.C. § 6-1012 applies, courts need only look to see if the injury occurred on account of the provision of or failure to provide health care.” *See also Jones v. Crawforth*, 147 Idaho 11, 205 P.3d 660 (2009) (holding that a cell saver technician was an “other provider of health care” under the statute and applying the *Hough* test.)

As Defendants are clearly “health care providers” and Plaintiff’s claims allege chiropractic negligence in providing health care, Idaho case law (*Hough supra* and *Jones supra*) is dispositive as to any question regarding the applicability of I.C. §§ 6-1012 and 6-1013 to this case. Since Dr Tamai’s testimony does not comply with the requirements of these statutes, summary judgment dismissing Plaintiff’s complaint is required as a matter of law.

D. Plaintiff’s Claims Do Not Fall Outside the Scope of I.C. §§ 6-1012 and 6-1013.

Other Plaintiffs faced with a motion such as this in healthcare malpractice actions, have tried to distinguish their claims as “ordinary negligence” claims in an attempt to side-step the requirements of I.C. §§ 6-1012 and 6-1013. This approach was rejected in *Hough*, which held: “Hough’s complaint, in either its original or amended form, alleges that the injury occurred while Sands was providing her with.....a type of medical care...Section 6-1012 requires plaintiffs to provide expert testimony in any action arising ‘on account of the provision or failure to provide health care.’...Since I.C. § 6-1012 clearly applies, the district court did not abuse its discretion in

holding that to allow Hough to amend her complaint would be fruitless.” *Hough v. Fry*, 131 Idaho 230, 233, 953 P.2d 980,983 (1998).

In this case, Plaintiff’s claims are clearly based upon health care treatment which Plaintiff received from Defendants. Accordingly, the requirements of I.C. §§ 6-1012 and 6-1013 apply; Plaintiff has failed to meet these requirements and her complaint should accordingly be dismissed as a matter of law. Again, Plaintiff has failed to meet these requirements and this is an additional compelling basis for dismissing Plaintiff’s claims and granting summary judgment.

IV. CONCLUSION

Based upon the foregoing, no cause of action has been stated for this case. Plaintiff has failed to submit any admissible evidence that Dr. Main deviated from the applicable standard of care. Further, Plaintiff has failed to submit any admissible evidence that any deviation from the standard of care proximately caused Plaintiff’s injury. Accordingly, summary judgment should be granted in favor of Defendants as to all of Plaintiff’s claims.

DATED THIS 26th day of October, 2010.

GREENER BURKE SHOEMAKER P.A.

By



Richard H. Greener
Loren K. Messerly

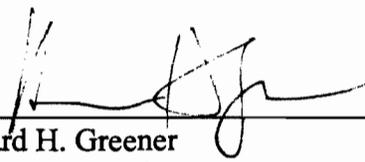
Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of October, 2010, a true and correct copy of the within and foregoing instrument was served upon:

Sam Johnson
Johnson & Monteleone, L.L.P.
405 South Eighth Street, Suite 250
Boise, ID 83702
[Attorneys for Plaintiff]

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
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A.M. 4:30 P.M.
NOV 12 2010 ✓

Attorneys for Plaintiff

CANYON COUNTY CLERK
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**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

MARTHA A. ARREGUI,	Case No. CV 09-3450
Plaintiff,	
v.	MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
ROSALINDA GALLEGOS-MAIN, an individual; FULL LIFE CHIROPRACTIC, P.A., an Idaho professional association; and John and Jane Does I through X, whose true identities are unknown,	
Defendants.	

INTRODUCTION

This case involves Plaintiff Martha Arregui's (hereinafter "Arregui") claim for bodily injuries brought against her chiropractor for negligently causing Arregui to suffer a stroke when treating Arregui on June 4, 2007. It is now before the Court on *Defendants' Motion for Summary Judgment*. In the motion for summary judgment, Defendants contend Plaintiff Martha Arregui "failed to submit affirmative proof by direct

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT -- 1

expert testimony that Defendants violated the applicable standard of care in their treatment of Plaintiff on June 4, 2007, as required by I.C. §§ 6-1012 and 6-1013.” *See Defendants’ Motion for Summary Judgment, p. 2.*

For purposes of this Motion only, Arregui concedes the mandates of Idaho Code §§ 6-1012 and 6-1013 apply here. The remainder of this memorandum shall thus demonstrate Arregui has satisfied the proof requirements concerning the community standard of health care practice applicable to her case.

FACTUAL SUMMARY

1. In this action, Arregui alleges that on or about June 4, 2007, Defendant Dr. Main, in her capacity as a health care professional, treated Arregui for a condition that then existed in her back and neck. *See Complaint and Demand for Jury Trial, ¶5.* In their Answer to the Complaint, the “Defendants admit that on or about June 4, 2007 Defendant Rosalinda Gallegos-Main treated Plaintiff.” *See Answer to Complaint and Demand for Jury Trial, ¶5 (emphasis added).*
2. Arregui likewise alleges that on or about the same date, Defendant Dr. Main owed Arregui a duty to medically treat her in a competent and non-negligent manner, and in conformance with the applicable community standard of chiropractic care. *See Complaint and Demand for Jury Trial, ¶7.* In their Answer to the Complaint, “Defendant Rosalinda Gallegos-Main, an individual, admits that she owes Plaintiff a duty regarding her treatment as a licensed chiropractor” *See Answer to Complaint and Demand for Jury Trial, ¶7 (emphasis added).*

3. In this action, Arregui further alleges that on or about the same date, Defendant Dr. Main failed to meet the applicable community standard of chiropractic care, was negligent and/or reckless in the acts or omissions, and breached the duty owed to Arregui when she caused Arregui to suffer a stroke during a manipulation of the neck. *See Complaint and Demand for Jury Trial*, ¶8. Although the Defendants denied these allegations in their Answer to the Complaint, Arregui has affirmative proof in the form of direct, expert testimony that Defendant Dr. Main failed to meet the applicable standard of health care practice in the locale where the chiropractic care was provided – the Nampa/Caldwell community. *See Affidavit of Sarah Tamai, D.C., filed contemporaneously herewith.*

STANDARD OF REVIEW

A party seeking summary judgment must satisfy a stringent standard before she can prevail on the motion:

The burden of proving the absence of a material fact rests at all times upon the moving party. *McCoy*, 120 Idaho at 769, 820 P.2d at 364; *Petricevich*, 92 Idaho at 868, 452 P.2d at 365. This burden is onerous because even “circumstantial” evidence can create a genuine issue of material fact. *McCoy*, 120 Idaho at 769, 820 P.2d at 364; *Petricevich*, 92 Idaho at 868, 452 P.2d at 365.

Harris v. State, Dept. of Health & Welfare, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992).

“[A]ll doubts are to be resolved against the moving party.” *Ashley v. Hubbard*, 100 Idaho 67, 69, 593 P.2d 402, 404 (1979). The motion must be denied “if the evidence is such that conflicting inferences can be drawn therefrom and if reasonable [people] might reach different conclusions.” *Id.*

Doe v. Durtschi, 110 Idaho 466, 470, 716 P.2d 1238, 1242 (1986).

...[T]he Court must liberally construe facts in the existing record in favor of the nonmoving party, and draw all reasonable inferences from the record in favor of the nonmoving party. *Thompson*, 126

Idaho at 529, 887 P.2d at 1036; *Bonz v. Sudweeks*, 119 Idaho 539, 541, 808 P.2d 876, 878 (1991). Summary judgment is appropriate if “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *McCoy v. Lyons*, 120 Idaho 765, 769, 820 P.2d 360, 364 (1991). If there are conflicting inferences contained in the record or reasonable minds might reach different conclusions, summary judgment must be denied. *Bonz*, 119 Idaho at 541, 808 P.2d at 878.

State v. Rubbermaid, Inc., 129 Idaho 353, 356, 924 P.2d. 615, 618 (1996).

ARGUMENT

I. Arregui has Affirmative Proof by Direct Expert Testimony that Defendants Failed to Meet the Applicable Standard of Health Care Practice in the Community where the Chiropractic Care was Provided.

Arregui has affirmative proof that the Defendants, then and there, on June 4, 2007, negligently failed to meet the standard of health care as such standard existed at the time and at the place where treatment was provided to her in the Nampa-Caldwell community.

Idaho Code § 6-1013 expressly states:

[P]rovided, this section shall not be construed to prohibit or otherwise preclude a competent expert witness who resides elsewhere from adequately familiarizing [her]self with the standards and practices of (a particular) such area and thereafter giving opinion testimony in such a trial. (Emphasis added).

This is precisely what happened here. As the record demonstrates, Arregui retained Dr. Sarah Tamai, D.C., as an expert witness to testify in this case. In this capacity, Dr. Tamai submitted her report on October 15, 2010. *See Dr. Tamai's report attached as Exhibit "B" to the Affidavit of Sarah Tamai, D.C.* In it, Dr. Tamai outlined the standard of care and the areas where she believed Defendant Dr. Main deviated from the standard of care. *Id.* Since the time of her report, Dr. Tamai has confirmed the

standard of care she described therein represents the same standard of care which existed on June 4, 2007, in Nampa/Caldwell. *See Affidavit of Sarah Tamai, D.C., ¶3.* As such, Plaintiff's competent expert witness, Dr. Tamai, D.C., who happens to reside elsewhere, has adequately familiarized herself with the standard of care, as it then existed on June 4, 2007, in the Nampa-Caldwell community by consulting with a competent chiropractic physician who has been practicing in the given community now for a number of years.

As such, summary judgment is not warranted.

CONCLUSION

Based upon the foregoing, Plaintiff respectfully asks this Court to deny the *Defendant's motion for summary judgment.*

DATED this 12 day of November, 2010.

JOHNSON & MONTELEONE, L.L.P.



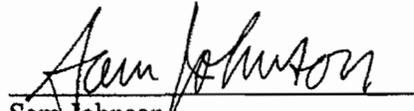
Sam Johnson
Attorneys for Plaintiff

CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION

I CERTIFY that on the 12 day of November, 2010, I caused a true and correct copy of the foregoing document to be:

<input type="checkbox"/> mailed <input type="checkbox"/> hand delivered <input type="checkbox"/> transmitted fax machine to: (208) 319-2601	Richard H. Greener Greener, Burke & Shoemaker, P.A. The Banner Bank Building 950 W. Bannock St., Ste. 900 Boise, ID 83702
--	---

JOHNSON & MONTELEONE, L.L.P.



Sam Johnson
Attorney for Plaintiff

11-24 P. 14

FILED
A.M. P.M.

Sam Johnson
JOHNSON & MONTELEONE, L.L.P.
405 South Eighth Street, Suite 250
Boise, Idaho 83702
Telephone: (208) 331-2100
Facsimile: (208) 947-2424
sam@treasurevalleylawyers.com
Idaho State Bar No. 4777

NOV 15 2010

CANYON COUNTY CLERK
B RAYNE, DEPUTY

ORIGINAL

Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

<p>MARTHA A. ARREGUI, Plaintiff, v. ROSALINDA GALLEGOS-MAIN, an individual; FULL LIFE CHIROPRACTIC, P.A., an Idaho professional association; and John and Jane Does I through X, whose true identities are unknown, Defendants.</p>	<p>Case No. CV 09-3450 AFFIDAVIT OF SARAH TAMAI, D.C.</p>
---	---

STATE OF IDAHO)
) ss:
County of Ada)

Sarah Tamai, D.C., being first duly sworn, deposes and states:

1. I am an appropriately-licensed, California chiropractor actively engaged in the practice of chiropractic medicine with my principal office located in

AFFIDAVIT OF SARAH TAMAI, D.C.

Oceanside California. A true and accurate copy of my current *curriculum vitae* is attached hereto as Exhibit "A" and incorporated herein by reference.

2. From my training, education, and practice, I have developed specialized knowledge regarding the standards of care required of chiropractic physicians.

3. I have educated myself regarding the local standards of care prevailing in the Nampa-Caldwell area of Idaho, as they existed in June 2007. In addition to my education and experience, I have spoken with a local chiropractor, who maintained a chiropractic practice, in Caldwell, Idaho, in June 2007, the time period relevant to this litigation, as it was the time period, when Defendant chiropractically treated Plaintiff, Martha Arregui. It is my understanding that this chiropractor was appropriately licensed in Idaho as a chiropractor and maintained an active practice of chiropractic medicine during the relevant period. This chiropractor indicated to me that he was familiar with the local standards of care for performing chiropractic procedures in the Nampa and Caldwell communities by licensed chiropractors at the time that the chiropractic care at issue in this case was rendered to the patient. This physician further confirmed to me that the local standards of care at that time were, in all respects, consistent with and, in fact, identical to the standards of care upon which my opinions in this case have been based, namely, the standards of care in Oceanside, California in June 2007.

4. From my training and experience identified hereinabove, as well as my communications with the aforementioned chiropractor, I have actual knowledge regarding the local standards of care prevailing in the Nampa-Caldwell area of Idaho in

DEFENDANT'S EXHIBIT

June 2007 for the performance by a licensed chiropractor of the procedures and examination which were performed on Martha Arregui, Plaintiff, by Rosalinda Gallegos-Main, D.C., Defendant.

5. All of my opinions set forth herein and those contained in my October 15, 2010, report are made and held by me to a reasonable degree of medical probability. A true and accurate copy of my October 15, 2010 report is attached hereto as Exhibit "B" and incorporated herein by reference.

6. It is a very basic chiropractic tenet that in treating a patient diagnosed with torticollis, one not perform a rotational, cervical adjustment also known as a traditional or diversified adjustment. Failure to follow this basic tenet will likely result in serious injury to the patient. This is basic chiropractic school teaching and fundamental to the treatment of patients for cervical conditions.

7. The prevailing standards of care for chiropractors treating torticollis as presented by Martha Arregui in June 2007 would dictate that the chiropractor refrain from treating a patient in the manner described by Plaintiff in this case. Defendant's decision to apply a cervical adjustment to her patient was a breach of the prevailing community standards of care in June 2007 in the Nampa-Caldwell area of Idaho.

8. Dr. Gallegos-Main's patient examinations in both 2005 and 2007 were performed below the standard of care within the chiropractic profession; the doctor also failed to call paramedics or other emergency medical personnel or even to assist Plaintiff, once Plaintiff was experiencing symptoms of stroke in Defendant's office in June 2007. Each of these amounted to the breach of the applicable standards of care, as

they existed in the Nampa-Caldwell area of Idaho in June 2007. As a result, Plaintiff suffered serious health consequences.

9. National standards of care applicable to chiropractors throughout the United States are the same as the standards of care I have followed in my chiropractic practice in California. I confirmed this by speaking with a chiropractor who was practicing in the Nampa-Caldwell area of Idaho in June 2007, and these are the same standards of care that apply to the facts of this case.

11. Further your affiant sayeth naught.

Sara Tamai, D.C.

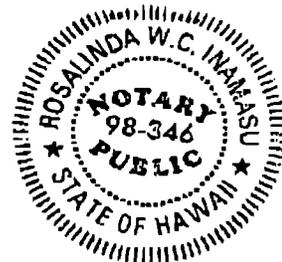
Subscribed and sworn to before me, this 12 day of November, 2010.



Rosalinda W.C. Inamasu
Notary Public for Idaho Maine, Hawaii
Residing at: Kohala, Maui, Hawaii
My Commission Expires: JUL 21 2014

M/n

NOTARY CERTIFICATE, STATE OF HAWAII
Doc. Description/ID: Affidavit
Doc. Date: 11/12/10 Pages: 4
Notary Name: Rosalinda W.C. Inamasu 2nd Circuit
Rosalinda W.C. Inamasu Notary Signature 11/12/10 Cert. Date



AFFIDAVIT OF SARA TAMAI, D.C.

Curriculum Vitae

Dr. Sarah R. Tamai, D.C.

2530-H Vista Way

Oceanside, CA 92054

(760) 435-9390

email: drsarah@firemountainspine.com

Current Licenses and Certifications:

- Doctor of Chiropractic (California, DC 27545)
- State of California Radiographic Supervisor
- Pettibon System Practitioner
- Active Release Technique Practitioner

Education:

- Palmer College of Chiropractic West DC degree, cum laude 1996 – 1999
- University of California, Los Angeles Anthropology, B.S. 1990 – 1995

Career Development:

- Bio Geometric Integration I 2001
- Pettibon System Fundamentals of Spine & Posture Correction 2006- 2007
- Pettibon System X-ray Positioning, Analysis & Adjusting 2005- 2007
- Pettibon System Soft Tissue Clinic Protocols & Home Care 2005, 2007
- Pettibon Team Training 2006
- Active Release Technique Certification 2008
- Kinesiotaping 2008, 2009

Professional Experience:

- Chiropractic practice, Oceanside, CA 2002 – present
- Treating doctor at US Open at Torrey Pines 2008
- Chiropractic practice, Carlsbad, CA 2001 –2002
- Locum tenens , Redwood City, CA 2001
- Chiropractic practice, San Ramon and San Carlos, Costa Rica 2000 –2001
- Palmer College of Chiropractic West 13thQ internship with Dr. Michael Moore, DC, Redding, CA 1999
- Palmer College of Chiropractic West Clinic 1998 –1999
- Chiropractic Assistant, San Francisco, CA 1995 –1999

Major Professional Service:

- Panama Mission, October 2000 team served over 30,000 individuals
- Costa Rica Mission, April 2000 team served over 20,000 individuals

Professional Organizations:

- Palmer West Alumni, 1999
- CCA Member 2005, 2006, 2007, 2008
- International Chiropractic Association 1997 - 2000, 2007-2009

Educational Programs and Presentations:

- LeTip International 2007 - present
- Oceanside Chamber of Commerce 2008-2009
- CORE 2006, 2007
- Loral Langemeier business development seminars 2007, 2008
- Nutritional seminars, 2004, 2006, 2008
- X-ray recertification seminar, 2004, 2006, 2008, 2010
- Parker Seminars, 2003, 2004, 2005, 2006
- Activator Technique I, II 1999
- Thompson Drop Technique, 1999
- Chiropediatric World Tour, 1999
- Fountainhead Experience, Palmer College of Chiropractic, 1999
- Pediatric seminar with Dr. Claudia Anrig, DC, 1998
- Patient Appreciation Days, Dr. Sophia Rodriguez, DC, 1998
- Hands-on Assistant to Alan Cheng, Chiropractor to Oakland A's 1997, 1998
- Motion Palpation Technique 1998
- Fred Schofield professional development 1998, 1999
- COPE (professional speaking in chiropractic) 1999

OCT 15 2010



2530-H Vista Way
Oceanside, CA 92054

760-435-9390
(fax) 760-435-9393

www.firemountainspine.com

October 15, 2010

Sam Johnson
Johnson and Monteleone, LLP
Attorneys and Counselors at Law
405 S. 8th Street, Suite 250
Boise, ID 83702

RE: Martha Arregui vs. Rosalinda Gallegos-Main, D.C.

Dear Mr. Johnson,

Thank you for your correspondence dated September 09, 2010 regarding Ms. Arregui. I reviewed the medical records from both May 2005 and June 2007 available to me as well as the depositions from Martha Arregui and Rosalinda Gallegos-Main, D.C. that were kindly provided, and my responses to your questions regarding standard of care within the chiropractic profession are below.

An apt definition of standard of care can be defined as "The level at which the average, prudent provider in a given community would practice. It is how similarly qualified practitioners would have managed the patient's care under the same or similar circumstances." According to Leslie Wise, D.C. an initial evaluation would include history, palpation, range of motion, leg checks, instrumentation, ortho/neuro evaluations, imaging if deemed necessary.(1) After the initial examination is performed then a working diagnosis is established and a course of care is prescribed. The first visit with Dr. Gallegos-Main, D.C. will be discussed in reference to the above definitions and recommendations. Dr. Wise, D.C. also addresses re-examinations to which I will refer for June 4, 2007 visit of Ms. Arregui to Dr. Gallegos-Main, D.C.

There are also several documents which serve as guidelines for the chiropractic community, and these include the Council on Chiropractic Practice Clinical Practice Guideline (2) and Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of Mercy Center Consensus Conference, otherwise known as Mercy Guidelines (3) which I shall reference as well in relation to both the 2005 and 2007 visits. CCP guidelines states a case history usually contains:

1. Patient clinical profile with age, gender, occupation
2. Primary reasons for seeking chiropractic care

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3. Chief complaint if one exists
 - A. Trauma, by etiology when possible
 - B. Chief complain
 - C. Characteristic of chief complaint
 - D. Intensity/frequency/location, radiation/onset/location.
 - E. Aggravating/arresting factors
 - F. Previous interventions, treatments, medications, surgery
 - G. Quality of pain, if present
 - H. Sleeping position and sleep patterns
4. Family History
 - A. Associated health problems of relatives
 - B. Causes of parents' or siblings' death and age of death
5. Past health history
 - A. Overall health status
 - B. Previous illnesses
 - C. Surgery
 - D. Previous injury or trauma
 - E. Medications and reactions
 - F. Allergies
 - G. Pregnancies and outcomes
 - H. Substance abuse and outcomes
6. Social and occupational history
 - A. Level of education
 - B. Job description
 - C. Work schedule
 - D. Recreational activities
 - E. Lifestyle (hobbies, level of exercise, drug use, nature of diet)
 - F. Psychosocial and mental health

Once the history is completed, then an examination is performed which may include the following:

1. Clinical examination procedures
 - A. Palpation (static, osseous, and muscular, motion)
 - B. Range of motion
 - C. Postural examination
 - D. Musole strength testing
 - E. Orthopedic/neurological tests
 - F. Mental status examination procedures
 - G. Quality of life assessment instruments
 - H. Substance abuse and outcomes
2. Imaging and instrumentation
 - A. Plain film radiography
 - B. Videofluroscopy

- C. Computerized tomography
- D. Magnetic resonance imaging
- E. Range of motion
- F. Thermography
- G. Temperature reading instruments
- H. Electromyography
- I. Pressure algometry
- J. Nerve/function tests
- K. Electroencephalography

3. Review of systems

- A. Musculoskeletal
- B. Cardiovascular and respiratory
- C. Gastrointestinal
- D. Genitourinary
- E. Nervous system
- F. Eye, ear, nose, throat
- G. Endocrine

For clarity I shall begin chronologically in 2005, with initial visit dated 5/3/2005 where upon Ms. Arregui completed a basic OPQRST history of her initial complaints on the intake paperwork. She noted right wrist and thumb pain with weakness as her chief complaint, then she noted lower back pain and stiffness, ankles and knees noted below, and thirdly, midback stiffness. Lacking is follow up by Dr. Gallegos-Main, D.C. adding to her intake as to the onset of her current chief complaint as well as palliative or provocative measures for her 3 complaints other than icy hot for her right wrist/thumb pain and weakness.

Dr. Gallegos-Main, D.C. then performed range of motion, myotome, dermatome and reflex examination of the upper extremities. Although the dermatomal area of right forearm and wrist and thumb was circled on exam form, presumably by Dr. Gallegos-Main, D.C., there is only an arrow to explain there was an aberrant finding, not whether it was hypersensitive or hyposensitive. Additionally, there was only 1 orthopedic test performed for that region of the available 8 on her examination form, and no mention of tenderness to palpation or visual deformities such as edema or noticeable arthritic changes. She writes "1st MCP" and I infer that she refers to the first metacarpal phalangeal joint probably dysfunction. There was also a lack of any mention of muscle or tendon involvement or affect these may have had on pain and weakness in affected area.

Headaches were mentioned at top of form, but no OPQRST was performed on this subjective concern, though I can infer that the cervical range of motion was performed based on the thought it may be cervicogenic in nature. There is no mention of palpatory findings either within normal limits (WNL) or abnormalities noted in cervical musculature or osseously, nor cervical orthopedic tests performed though there were 7 available on her examination form.

Internal derangement of the knee was second diagnosis on Dr. Gallegos-Main, D.C.'s sheet and noted as Ms. Arregui's second complaints, but there was no examination of said body parts performed. No range of motion, no orthopedic tests performed and no follow up as to onset of knee or ankle pain or stiffness, palliative or provocative measures for her complaints.

Lower back or lumbar region was also involved as Ms. Arregui's second chief complaint. Again, Dr. Gallegos-Main, D.C. failed to follow up and complete the OPQRST of this area of concern. She performed lumbar range of motion which was within normal limits. Of the available 17 lumbopelvic orthopedic tests available on her examination form, only 2 were performed, SLR and Ely's. There was no further examination was documented, and no mention of inspection, palpation, muscle, tendon or structural dysfunction or abnormality noted.

For third area of complaint of right midback stiffness there was a complete lack of follow up. No note in the file that it may be addressed in the future, no examination.

Based on the above observations, I would state Dr. Gallegos-Main's examination of Ms. Arregui's initial examination was incomplete and substandard to the profession's recommendations for appropriate care, based on both CCP and Mercy guidelines.

Moving onto re-examination performed June 4, 2007, there was no subsequent OPQRST performed on Ms. Arregui's new chief complaint of neck pain/torticollis/tiredness. On the returning patient form, 8 out of 10 was circled as was area on right side of neck, but other than that there was no other pertinent history for her return visit. Although Ms. Arregui was a returning patient, she presented 2 years later with a new chief complaint, not an exacerbation of a previous issue for which she had sought Dr. Gallegos-Main, D.C.'s treatment. This is a significant gap in information gathering of the case history as the CCP and Mercy guidelines have references for reassessment; however, this is relation to an initial examination of an area of chief complaint, not merely that she was a returning patient, thus requiring a re-examination of an existing area.

During the examination, cervical range of motion was performed, but no palpatory findings other than working diagnosis of torticollis was mentioned. According to the deposition, the range of motion was passive, but this was not noted on exam form either. Dermatomes were noted within normal limits, and again 1 orthopedic test, shoulder depression, was performed. This may have been due to the inability of patient to do the tests, but this was not noted on examination form (example CNP as cannot perform). According to deposition, Dr. Gallegos-Main, D.C. stated she performed a leg check with Ms. Arregui, but this was not reflected on examination form either. No muscle, tendon, or other soft tissue dysfunction or palpatory abnormality noted, though her working diagnosis was torticollis, which by definition treatable by chiropractic based on spasmodic muscles. There are other forms of torticollis; however, they are not treatable by chiropractic or adjustments. (4)

Diagnostic imaging was performed in the form of a lateral cervical only and not available for review, but typically a cervical series is a 2 view, lateral and AP (anterior/posterior.) Dr. Gallegos-Main, D.C. stated she is a Pettibon practitioner, but typically in a Pettibon series, there are 7 views performed. (lateral cervical, flexion and extension cervical, lateral lumbopelvic, AP lumbopelvic, nasium, and vertex views).(5) These 7 views allow the Pettibon practitioner to view the 6 functional spinal units. Even for a focused re-examination, based on the information above, Dr. Gallegos-Main, D.C.'s examination could be deemed below the standard of care in the chiropractic profession.

Treatment rendered June 4, 2007 according to the re-examination sheet was written as PTLMS and arthrostim. PTLMS is part of the Pettibon System and is defined as the Pettibon Tendon Ligament, Muscle Stimulator which helps reduce muscle spasms and flush the body of toxins. It is designed to disperse inflammation in joints, reduces scar tissue to reconstruct, and increases mobility of joints. (6) The arthrostim is a mechanical loading device that is low impact, similar to the Activator. With Ms. Arregui in torticollis spasm, according to Dr. Gallegos-Main, both would be appropriate based on a complete examination and history, though I personally might have exchanged the PTLMS for the vibracussor, a vibration instrument associated with the arthrostim, all of which are used in my personal practice.

In summary, Dr. Gallegos-Main, D.C. performed both 2005 and 2007 examinations below the standard of care within the chiropractic profession. There are several instances where she failed to gather case history information and then failed to perform a complete examination of the affected areas. This report was written with the assumption that the medical reports are true and complete. Given the medical reports I have reviewed, I have constructed a report based on my clinical experience, my education, and evidence-based guidelines.

Upon review of Ms. Arregui's testimony in conjunction with chief complaint of neck stiffness/tiredness and the other symptoms noted by Dr. Gallegos-Main, her diagnosis of torticollis, as well as patient stated symptoms and her deposition of events that occurred, a traditional or diversified adjustment would be contraindicated. Torticollis, again by definition, is muscle spasm which would be best treated by addressing the musculature directly.

Lastly, when Ms. Arregui began to experience dizziness and uneven gait, and her inability to drive herself home, this should have alerted Dr. Gallegos-Main, D.C. that Ms. Arregui was having an unexpected reaction and as a health professional, Dr. Gallegos-Main, D.C. should not have let her leave alone without assistance at minimum and requested emergency room transport at maximum.

Thank you again for the opportunity to serve as an expert witness in this case. Should you have any additional questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Tamai', with a long, sweeping horizontal line extending to the right.

Sarah Tamai, D.C.
Tamai Chiropractic, Inc.

1. Leslie M Wise, Professor of Clinical Sciences at Sherman College of Straight Chiropractic, Power point presentation dated August 10, 2008, [http://www.lesliewisecdc.com/pdf/August 08 Standard of Care Palmetto Chiro Assoc pwpt.pdf](http://www.lesliewisecdc.com/pdf/August%2008%20Standard%20of%20Care%20Palmetto%20Chiro%20Assoc%20pwpt.pdf)
2. Council on Chiropractic Practice Clinical Practice Guideline Third Edition- 2008, taken from <http://www.ccp-guidelines.org/guideline-2008.pdf>
3. Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of Mercy Center Consensus Conference, Scott Haldeman, David Chapman-Smith, Donald M. Petersen, Jr. copyright 2005, taken from http://www.chiro.org/documentation/FULL/Mercy_Recommendations.shtml
4. Wikipedia definitions of torticollis: congenital, acquired, and spasmodic torticollis. <http://en.wikipedia.org/wiki/Torticollis>
5. Team Training Seminar, 2006 ,The Pettibon System X ray series, Friday p.7
6. Team Training Seminar, 2006, PTLMS Thursday p.1-5

F I L E D
A.M. 4:00 P.M.

NOV 16 2010

CANYON COUNTY CLERK
B RAYNE, DEPUTY

Richard H. Greener, ISB No. 1191
Loren K. Messerly, ISB No. 7434
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lmesserly@greenerlaw.com

Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

ORIGINAL

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUI,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an
individual; FULL LIFE CHIROPRACTIC,
P.A., an Idaho professional association; and
John and Jane Does I through X, whose true
identities are unknown,

Defendants.

Case No. CV 09-3450

**AFFIDAVIT OF COUNSEL IN
SUPPORT OF DEFENDANTS'
MOTION TO STRIKE THE
AFFIDAVIT OF SARAH TAMAI, D.C.**

STATE OF IDAHO)
) ss.
County of Ada)

I, Loren K. Messerly, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of 18 years and am an attorney with Greener Burke Shoemaker P.A., attorneys for Defendants herein. I make this affidavit based upon my personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of Plaintiff's Disclosure of Expert Witnesses.

3. Attached hereto as Exhibit B is a true and correct of Defendants' First Supplemental Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents dated September 30, 2010 which details Defendants' expert disclosures in this litigation.

4. Attached hereto as Exhibit C is a true and correct copy of the FINAL deposition transcript for the deposition of Sarah Tamai, D.C. taken October 19, 2010.

Further, your affiant saith naught.

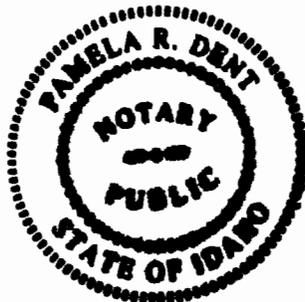


Loren K. Messerly

SUBSCRIBED AND SWORN before me this 16th day of November, 2010.



Notary Public for Idaho
Residing at Nampa, Idaho
My commission expires: 10-24-12

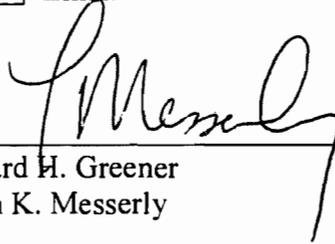


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of November, 2010, a true and correct copy of the within and foregoing instrument was served upon:

Sam Johnson
Johnson & Monteleone, L.L.P.
405 South Eighth Street, Suite 250
Boise, ID 83702
[Attorneys for Plaintiff]

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
- Email



Richard H. Greener
Loren K. Messerly

EXHIBIT A

000152

Sam Johnson
 Idaho State Bar No. 4777
sam@treasurevalleylawyers.com
 JOHNSON & MONTELEONE, L.L.P.
 405 South Eighth Street, Suite 250
 Boise, Idaho 83702
 Telephone: (208) 331-2100
 Facsimile: (208) 947-2424

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT FOR THE STATE
 OF IDAHO, IN AND FOR THE COUNTY OF CANYON

<p>MARTHA A. ARREGUI, Plaintiff, v. ROSALINDA GALLEGOS-MAIN, an individual; FULL LIFE CHIROPRACTIC, P.A., an Idaho professional association; and John and Jane Does I through X, whose true identities are unknown, Defendants.</p>	<p>Case No. CV 09-3450 PLAINTIFF'S DISCLOSURE OF EXPERT WITNESSES</p>
---	---

COMES NOW Plaintiff, by and through her attorney of record, Sam Johnson of Johnson & Monteleone, L.L.P., and discloses the following expert witnesses that may be called to testify at the trial of this matter:

Expert Witnesses

- Allen C. Han, M.D.
 Neurological Associates, CTD
 3875 E. Overland Rd., Ste. 203

Meridian, ID 83642

Dr. Allen Han is a treating physician of Plaintiff and is anticipated to testify at trial with opinions regarding his treatment of Plaintiff as reflected in the medical records, diagnoses, prognoses, causation, and all other opinions related to the medical condition of Plaintiff at all times relevant to this incident, including both pre-incident and post-incident, as may be applicable. Dr. Han will testify to those opinions set forth in his medical report, dated February 1, 2008, which has been previously disclosed to Defendants on several occasions. He may testify to those matters and items set forth in his deposition taken by Defendants on July 26, 2010. Dr. Han's *curriculum vitae* is appended hereto.

2. Dr. Sarah Tamai, D.C.
Fire Mountain Spine & Rehabilitation Center
2530-H Vista Way
Oceanside, California 92054

Plaintiff plans to call Dr. Sarah Tamai, D.C., to testify as an expert witness at the trial of this matter. Dr. Tamai's *curriculum vitae* is appended hereto. The subject matter of Dr. Tamai's testimony will center on whether the Defendant Dr. Gallegos-Main met the standard of skill and care ordinarily exercised by chiropractic physicians in a similar setting and in like circumstances. Dr. Tamai's testimony will include her opinion that the Defendant Dr. Gallegos-Main failed to meet the standard of healthcare practice when treating Plaintiff on or about June 4, 2007.

3. Don Reading
Ben Johnson Associates, Inc.
6070 Hill Rd.
Boise, ID 83703

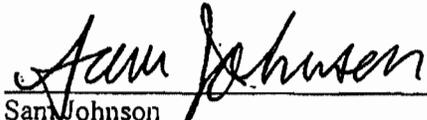
Plaintiff plans to call Dr. Don Reading, Ph.D., as an expert witness at the trial of this matter to offer his opinions surrounding Plaintiff's claim for past and future lost earnings which have been previously disclosed by Plaintiff. Dr. Reading's *curriculum vitae* is appended hereto.

Plaintiff reserves the right to amend or supplement this disclosure to include additional data, facts, documents, exhibits, and/or any other information relevant to the testimony of the above-identified witnesses. Plaintiff further reserves the right to amend this list by addition, deletion, substitution, or withdrawal of witnesses.

Plaintiff reserves the right to call all expert witnesses, disclosed and identified by Defendants, to discuss any matter for which they are competent to testify, including any matter within the scope of their expertise based upon their training, education, and/or experience.

DATED: This 16 day of August, 2010.

JOHNSON & MONTELEONE, L.L.P.



Sam Johnson
Attorneys for Plaintiff

CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION

I CERTIFY that on this 16 day of August, 2010 a true and correct copy of the foregoing document to be:

<input type="checkbox"/> mailed <input type="checkbox"/> hand delivered <input type="checkbox"/> transmitted fax machine to: (208) 319-2601	Christopher C. Burke Greener, Burke & Shoemaker, P.A. The Banner Bank Building 950 W. Bannock St., Ste. 900 Boise, ID 83702
--	---

JOHNSON & MONTELEONE, L.L.P.



Sam Johnson
Attorneys for Plaintiff

EXHIBIT B

000157

Richard H. Greener, ISB No. 1191
GREENER BURKE SHOEMAKER P.A.
950 West Bannock Street, Suite 900
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Facsimile: (208) 319-2601
Email: rgreener@greenerlaw.com

Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

MARTHA A. ARREGUI,

Plaintiff,

v.

ROSALINDA GALLEGOS-MAIN, an
individual; FULL LIFE CHIROPRACTIC,
P.A., an Idaho professional association; and
John and Jane Does I through X, whose true
identities are unknown,

Defendants.

Case No. CV 09-3450

**DEFENDANTS' FIRST
SUPPLEMENTAL RESPONSES TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS**

Defendants Rosalinda Gallegos-Main and Full Life Chiropractic, PA (hereinafter collectively "Defendants"), by and through their counsel of record, Greener Burke Shoemaker P.A., in accordance with the requirements of Idaho Rules of Civil Procedure 33, and 34, hereby supplements her responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents as follows:

**DEFENDANTS' FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS - 1**

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GENERAL OBJECTIONS

A. Defendant objects to each discovery request to the extent it could be construed as requesting the disclosure of information prepared by or at the direction of Defendant's attorneys, to the extent that it could be construed as requesting the disclosure of information prepared by or for Defendant or her representatives in contemplation of litigation or trial, to the extent that it could be construed as requesting the disclosure, release, or review of confidential communications by and between Defendant and her attorneys, and to the extent it is otherwise covered by the attorney-client privilege and/or the attorney work product privilege.

B. Defendant objects to each discovery request that seeks the identification of all communications, all acts, all people, or the production of all documents regarding any given claim as being overbroad, burdensome, and not calculated to lead to the discovery of admissible evidence. It would be impossible for Defendant to identify all oral communications between any parties and/or nonparties that support her position.

C. Defendant responds that all answers are based upon information presently available after diligent investigation, and Defendant reserves the right to supplement or amend her responses should additional information become available at a later point. Consequently, the responses contained herein are not intended to and shall not preclude Defendant from making any contentions or from relying on any facts, documents, or witnesses at trial based upon additional evidence deduced during the discovery process.

D. Defendant objects to the definitions in Plaintiff's discovery requests to the extent they attempt to impose obligations upon Defendant that are contrary to or inconsistent with the Idaho Rules of Civil Procedure.

E. Defendant objects to Plaintiff's discovery requests to the extent that they seek information that is obtainable in a more convenient, less burdensome, and less expensive method than through these discovery requests.

F. These responses are made solely for the purpose of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any other ground that would require the exclusion of any statement contained in these responses, all of which objections and grounds are hereby reserved and may be interposed at the time of trial.

INTERROGATORIES

INTERROGATORY NO. 10: State the name and address of each person whom you intend to call as an expert witness at the trial, and for each such person, state the subject matter on which the expert is expected to testify, state the substance of the facts and the opinions to which the expert is expected to testify, and state the underlying facts and data upon which the expert opinions are based in conformity with Rule 705, Idaho Rules of Evidence. For each such expert, please state the fields of knowledge in which the person is an expert, the specific areas within those fields and knowledge in which he/she is an expert, the qualifications and background of the expert, including but not limited to any publications, or articles which the expert has written or upon which the expert intends to rely.

ANSWER TO INTERROGATORY NO. 10: *Without waiving the general objections above, this lawsuit has only just commenced and Defendant has not yet determined what expert or experts she will call to testify at the trial of this matter. Defendant will disclose her experts at such time as required by the Idaho Rules of Civil Procedure, deadlines set by the Court, and/or Stipulations*

entered into by the parties regarding such disclosures; and these responses will be supplemented consistent with the Idaho Rules of Civil Procedure.

FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10: In addition to any prior responses to this Interrogatory and without waiving any former objections raised to this Interrogatory, Defendant states that she anticipates calling the following expert witnesses at trial in this matter:

1. Robert Ward III, DC, NMD, CIME

Dr. Ward is a licensed Doctor of Chiropractic Medicine practicing in Idaho. He is also a board certified Independent Medical Examiner. He is the President of the Liaison Committee on Naturopathic Medicine, a member of the American Academy of Aesthetic Medicine, a member of the American College of Chiropractic Orthopedists, and a member of the ACA Council on diagnostic Imaging. A copy of Dr. Ward's CV is attached hereto as Exhibit A setting forth his education, training, professional experience, and publications.

Dr. Ward has reviewed the treatment records of Dr. Gallegos-Main and the medical records of the Plaintiff. Dr. Ward has reviewed the deposition transcripts of Dr. Gallegos-Main, the Plaintiff and Dr. Alan Han. He will also review any additional medical depositions and/or expert depositions taken in this case in the future, which may modify his opinions.

Dr. Ward will testify as to the standard of care for the practice of chiropractic medicine in Idaho at the time in question. He will testify that, in his opinion, Dr. Gallegos-Main met the applicable standard of care in her dealings with the Plaintiff at all times relevant to this litigation. Dr. Ward will testify that Dr. Gallegos-Main's examination and treatment methodology all met the standard of care for the State of Idaho. Dr. Ward will testify

regarding the conservative treatment approach utilized by Dr. Gallegos-Main in utilization of the Pettibon® and ArthroStim/Accustim® devices.

Dr. Ward will also be provided with the testimony and opinions of Plaintiff's experts and will be prepared to comment on all opinions expressed within his area of expertise. He is also expected to comment on and rebut the testimony and opinions of Dr. Tamai.

2. George J. Dohrmann, MD, PhD

Dr. Dohrmann is a neurosurgeon practicing in Chicago, Illinois. A copy of his CV is attached hereto as Exhibit B setting forth his education, training and experience. Dr. Dohrmann is a specialist in strokes, their causes and treatment. He has reviewed all of the radiological films from Intermountain Medical Imaging, St. Luke's, Mercy Medical Center and Imaging Center of Idaho as well as the treatment records maintained by Dr. Gallegos-Main and the medical records of Plaintiff. He has also reviewed the depositions of Dr. Gallegos-Main, the Plaintiff and Dr. Alan Han. He will review any additional medical and/or expert depositions taken in this case in the future, which may modify his opinions.

Dr. Dohrmann will testify that in his opinion the stroke suffered by Plaintiff was not caused by a dissection, but rather was likely caused by a preexisting blood clot of unknown origin totally unrelated to anything done by Dr. Gallegos-Main. He will testify that the preexisting blood clot which caused the stroke was not caused by any treatment by Dr. Gallegos-Main and that the blood clot was not dislodged or freed by any treatment provided by Dr. Gallegos-Main. He will testify that any chiropractic treatment by Dr. Gallegos-Main could only have effect on the arteries in Plaintiff's neck and that those arteries show no sign of injury and that the stroke was in the Plaintiff's brain, all facts which support his opinions.

Dr. Dohrmann will testify that given the preexisting condition of the clot, this stroke could have occurred at any time and could have been precipitated by activities of normal daily living. Dr. Dohrmann will testify that in his opinion, Plaintiff was suffering from the onset of her stroke prior to any involvement with Dr. Gallegos-Main.

Dr. Dohrmann will testify that based upon the location and type of stroke suffered by Plaintiff, he anticipates that Plaintiff should recover to be virtually normal without any noticeable deficit. He will also testify that neurological deficits can continue to improve for up to three or four years following a neurological injury.

Dr. Dohrmann will be provided with the testimony of Plaintiff's experts once deposed and transcribed and will be prepared to comment on all opinions expressed within his area of expertise. He will also comment upon and rebut the opinions of Dr. Han.

3. Donald Eckard, MD

Dr. Eckard is a neuroradiologist. A copy of his CV is attached hereto as Exhibit C detailing his education, training and professional experience. Dr. Eckard is an expert in reading and reviewing radiology films of the nervous system. He has reviewed all of the radiological films from Intermountain Medical Imaging, St. Luke's, Mercy Medical Center and Imaging Center of Idaho as well as the treatment records maintained by Dr. Gallegos-Main and the medical records of Plaintiff. He has also reviewed the depositions of Dr. Gallegos-Main, the Plaintiff and Dr. Alan Han. He will review any additional medical and/or expert depositions taken in this case in the future and may have additional opinions as a result of such review.

Dr. Eckard will testify that the radiology films for Plaintiff do not show any evidence of a dissection and that, in his opinion, had Plaintiff suffered a dissection, it would have been

reflected in Plaintiff's various radiology films, even though taken months after her stroke. Dr. Eckard will also testify that the radiology films for Plaintiff reflect that Plaintiff's arterial system in her neck was clear, undamaged and did not reveal any location where a blood clot could have formed or been lodged.

Dr. Eckard will also testify that Plaintiff's radiological films reflect that the location of the actual stroke was in a distal branch of the PICA and that based upon the location of the stroke, Plaintiff should not be experiencing the residual complaints which she has and continues to complain of. He will testify that in his opinion, based upon what he sees in the 2009 CT radiology study, Plaintiff should be able to lead a normal life.

Dr. Eckard will be provided with the testimony of Plaintiff's experts once deposed and transcribed and will be prepared to comment on all opinions expressed within his area of expertise. He will also comment upon and rebut certain opinions of Dr. Han.

4. Ken Hooper

Mr. Hooper is a Certified Public Accountant practicing in Boise, Idaho. He is licensed in Idaho, Washington and Georgia. A copy of his CV is attached hereto as Exhibit D detailing his education, training and experience.

Mr. Hooper will undertake an economic analysis to determine lost earnings or lost earning capacity of Plaintiff, if any, and provide the present day value of any such losses. He will also respond to, comment upon and may rebut the opinions of Plaintiff's expert, Don Reading, once those opinions are provided to Defendants.

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5. Other Expert Testimony

Defendants reserve the right to call any of Plaintiff's treating physicians and/or any of Plaintiff's expert witnesses during trial in this matter and obtain from those witnesses any expert opinions and/or expert testimony.

As discovery continues in this case, Defendants reserve the right to supplement this response and add additional experts as necessary based upon new and/or additional information obtained from Plaintiff.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 4: With regard to each expert witness you expect to call at trial, attach a complete and current curriculum vitae regarding such expert witness(es) and a list of all matters in which the expert has testified, either at a trial or hearing or by deposition.

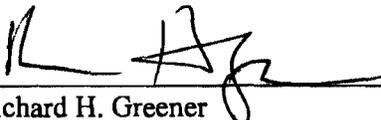
RESPONSE TO REQUEST FOR PRODUCTION NO. 4: *Without waiving the general objections above, this lawsuit has only just commenced and Defendant has not yet determined what expert or experts she may call to testify at the trial of this matter. Defendant will disclose her experts at such time as required by the Idaho Rules of Civil Procedure, deadlines set by the Court, and/or stipulations entered into by the parties regarding such disclosures; and these responses will be supplemented consistent with the Idaho Rules of Civil Procedure.*

FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

In addition to any prior responses to this Request and without waiving any former objections raised to this Request, please see Exhibit A through D attached hereto and identified in the supplemental response to Interrogatory No. 4 above.

DATED THIS 30 day of September, 2010.

GREENER BURKE SHOEMAKER P.A.

By 
Richard H. Greener
Attorneys for Defendants Rosalinda Gallegos-Main
and Full Life Chiropractic, P.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of September, 2010, a true and correct copy of the within and foregoing instrument was served upon:

Sam Johnson
Johnson & Monteleone, L.L.P.
405 South Eighth Street, Suite 250
Boise, ID 83702
[Attorney for Plaintiff]

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery
- Email


Richard H. Greener