

***Supreme Court Case No. 66473***  
***District Court Case No. A-13-680935***

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IN THE SUPREME COURT OF THE STATE OF NEVADA Electronically Filed  
Jul 21 2015 08:53 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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JA CYNTA McCLENDON,

*Appellant,*

v.

DIANE COLLINS; and ROE CORPORATIONS I through X; and  
DOES I through X, inclusive,

*Respondent.*

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**RESPONDENT'S APPENDIX**

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District Court, Clark County  
The Honorable Jerry A. Wiese  
Civil Case No. A-13-680935

---

McCormick, Barstow, Sheppard,  
Wayte & Carruth LLP  
Wade M. Hansard  
Nevada Bar No. 8104  
Daniel I. Aquino  
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Attorneys for Defendant DIANE COLLINS

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of July, 2015, a true and correct copy of this completed **RESPONDENT'S APPENDIX** upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

By /s/ Cheryl A. Schneider  
Cheryl A. Schneider, an Employee of  
MCCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP



CLERK OF THE COURT

1 **JMEM**  
2 ADAM E. BRIGMAN, ESQ.  
3 Nevada Bar No.: 11926  
4 CRAM VALDEZ BRIGMAN & NELSON  
5 8831 W. Sahara Avenue  
6 Las Vegas, Nevada 89117  
7 Telephone: (702) 255-0700  
8 Facsimile: (702) 255-2159  
9 *Attorney for Plaintiff*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 JA CYNTA McCLENDON

13 Plaintiff,

14 vs.

15 DIANE COLLINS,

16 Defendant,

Case No. : A-13-680935-C

Dept. No.: XXX

STP No. 13-1744

17 **JOINT PRE-TRIAL MEMORANDUM**

18 COMES NOW Plaintiff, JA CYNTA McCLENDON, by and through her attorney, ADAM  
19 E. BRIGMAN, ESQ., of Cram Valdez Brigman & Nelson, and Defendant DIANE COLLINS, by  
20 and through her attorney, BYRON F. BROWNE, ESQ., of the law firm of Barski Drake Browne,  
21 PLC., and hereby submit their Joint Pretrial Memorandum, pursuant to EDCR 2.67.

22 **I. STATEMENT OF FACTS**

23 On May 25, 2012, while exiting from the I-95 north at the exit ramp to enter westbound Lake  
24 Mead Blvd., Plaintiff's vehicle was rear-ended by Defendant's vehicle. Plaintiff alleges injuries as  
25 a result of the collision.

26 ///

27 ///

## II. CLAIMS FOR RELIEF

1. For compensatory damages in excess of \$10,000 each, according to proof at trial;
2. Medical special damages and incidental expenses incurred;
3. Interest from the time of service of this Complaint as allowed by NRS 17.130;
4. Costs of suit and attorney's fees; and
5. For such other and further relief as the Court may deem appropriate.

## III. AFFIRMATIVE DEFENSES

### THIRD AFFIRMATIVE DEFENSE

#### (Contributory Negligence)

Plaintiff did not exercise ordinary care, caution or prudence in this incident and the resulting accident and damages, if any, were proximately caused and contributed to by Plaintiff's own negligence and such negligence was greater than the negligence, if any, of the Defendants.

### FIFTH AFFIRMATIVE DEFENSE

#### (Not a Substantial Factor)

The Complaint, and each cause of action thereof, is barred on the grounds that Defendants' materials and/or conduct referred to in the Complaint were not a substantial factor in bringing about the injuries and damages complained of by Plaintiff.

### SIXTH AFFIRMATIVE DEFENSE

Defendants hereby request a credit in the amount of any advanced sums of money, if any, either to or on behalf of Plaintiff prior to trial in this action.

### EIGHTH AFFIRMATIVE DEFENSE

Plaintiff is precluded from bringing this action pursuant to Nevada Revised Statute 17.225(3).

Pursuant to NRCP 8, as amended, all possible affirmative defenses may not have been alleged herein in so far as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer and, therefore, the answering Defendants reserve the right to amend their Answer to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE the answering Defendants pray that said Plaintiff take nothing by reason of the Complaint and the causes of action therein contained, and that the said Defendants do have and

1 recover judgment for costs incurred and for such other and further relief as to the court may be  
2 deemed proper.

#### 3 IV. ABANDONED DEFENSES

##### 4 FIRST AFFIRMATIVE DEFENSE

5 (Failure to State a Cause of Action)

6 That the Complaint and each and every cause of action purported to be set forth therein, fails  
7 to allege facts sufficient to state a claim against Defendants upon which relief can be granted.

##### 8 SECOND AFFIRMATIVE DEFENSE

9 (Failure to Mitigate Damages)

10 The answering Defendants allege that Plaintiff has failed and refused to take reasonable steps  
11 to remedy, cure or mitigate their damages as alleged in the Complaint, and are therefore now barred  
12 from any recovery in the present action as a result of and to the extent of such failure and refusal.

##### 13 FOURTH AFFIRMATIVE DEFENSE

14 (Negligence of Third Parties)

15 The incident involved herein and any resulting injuries or damages, if any, were caused or  
16 contributed by acts and/or omissions of third parties over whom Defendants have no control.

##### 17 SEVENTH AFFIRMATIVE DEFENSE

18 In the event these answering Defendants are found to be liable in any way for the injuries  
19 claimed by Plaintiff, these answering Defendants are only severally liable as Plaintiff was in whole or  
20 in part responsible for their own injuries and Plaintiffs alleged injuries were caused in whole or part by  
21 the actions of third parties outside of these answering Defendants' control.

#### 22 V. EXHIBITS

- 23
- 24 1. Complaint;
  - 25 2. Defendant's Answer to Complaint;
  - 26 3. Plaintiff's Property Damage Photographs;
  - 27 4. Plaintiff's Vehicle Property Damage Estimate;
  - 28 5. Defendant's Property Damage Photographs;

6. Defendant's Property Damage Estimate;
7. Medical Records and Billing from Mountain View Hospital;
8. Medical Records and Billing from Fremont Emergency Services;
9. Medical Records and Billing from University Urgent Care;
10. Medical Records and Billing from Las Vegas Accident Care;
11. Medical Records and Billing from Dr. Dipti Shah, MD;
12. Medical Records and Billing from Desert Radiologists;
13. Plaintiff's Total Medical Expenses
14. Expert Medical Records Review and Report, by Dr. David J. Oliveri

#### VI. WITNESSES

1. JA CYNTA McCLENDON  
C/o Cram Valdez Brigman & Nelson  
8831 W. Sahara Avenue  
Las Vegas, Nevada 89117

JA CYNTA McCLENDON is expected to testify regarding the facts and circumstances surrounding the accident of May 15, 2012, her resulting injuries, medical treatment and damages.

2. DIANE COLLINS  
C/o Barski Drake Browne  
10191 Park Run Drive, Suite 110  
Las Vegas, Nevada 89145

DIANE COLLINS is expected to testify regarding the facts and circumstances surrounding the accident of May 15, 2012, her resulting injuries, medical treatment and damages.

///

1 WITNESSES APPEARING THROUGH DEPOSITION TESTIMONY, ONLY:

- 2 3. Laura Jagget, D.C.  
3 Las Vegas Accident Care  
4 2551 N. Rampart Blvd. # 163  
5 Las Vegas, NV 89128  
6  
7 4. David J. Oliveri, M.D.  
8 851 S. Rampart Boulevard, Suite 115  
9 Las Vegas, NV 89145  
10

11  
12 **VII. STIPULATIONS**

13 The parties have stipulated to specific issues as indicated in the Stipulation and Order, filed  
14 August 18, 2014.

15 Defendant has stipulated to the elements of Duty and Breach.

16 **VIII. ANTICIPATED ISSUES OF LAW**

17 This is a simple damages case. Liability is not contested. It is not anticipated that any  
18 extraordinary legal issue would be presented to the Court. Defendant reserves the right to move for  
19 dismissal if Plaintiffs' case in chief fails to meet the burden of proof.

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26 ///



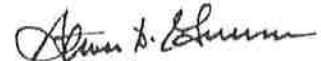
CRAM VALDEZ BRIGMAN & NELSON  
8831 W. SAHARA AVENUE  
LAS VEGAS, NEVADA 89117  
Tel: (702) 255-0790 Fax: (702) 255-2159

IX. ESTIMATED TIME FOR TRIAL

One (1) day.

ADAM E. BRIGMAN, ESQ.  
State Bar No. 14926  
CRAM VALDEZ BRIGMAN & NELSON  
8831 West Sahara Avenue  
Las Vegas, NV 89117

BYRON F. BROWNE, ESQ.  
State Bar No. 9769  
BARSKI DRAKE BROWNE  
10191 Park Run Drive, Suite 110  
Las Vegas, Nevada 89145



CLERK OF THE COURT

1 **ORDR**  
2 **PATRICK N. CHAPIN, ESQ.**  
3 Nevada Bar No. 004946  
4 Patrick N. Chapin, Ltd.  
5 129 Cassia Way  
6 Henderson, Nevada 89014  
7 (702) 433-7295  
8 Judge Pro Tempore

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 JA CYNTA McCLENDON, )  
12 )  
13 Plaintiff, )  
14 )  
15 v. )  
16 )  
17 DIANE COLLINS, )  
18 )  
19 Defendants. )  
20 )

Case No. A-13-680935-C  
Dept. No. XXX  
STP No. 13-1744

**ORDER**  
**(Re: Experts)**

21 **TO: ADAM E. BRIGMAN, ESQ., CRAM VALDEZ BRIGMAN & NELSON,**  
22 **Attorney for Plaintiff; and**

23 **TO: BYRON F.L. BROWN BARSKI DRAKE BROWN, Attorney for Defendants.**

24 This matter came on for discussion on August 14, 2014. The Court finds as follows:

25 **IT IS HEREBY ORDERED** that all deposits paid by Plaintiff to Dr. Appel must be  
26 returned to Plaintiff's counsel;

27 **IT IS HEREBY ORDERED** that Dr. Oliveri's disclosed report can remain in the case  
28 as proposed evidence, however, his report must not make any reference, rebuttal or otherwise, to  
Dr. Appel or his opinions that were disclosed prior to his being de-designated as a testifying  
expert witness for the defense;

**IT IS HEREBY ORDERED** that any costs that may be incurred by Dr. Oliveri in  
revising his report(s) will be paid by defendant not to exceed \$350.00.

///

///

**PATRICK N. CHAPIN, LTD.**

129 Cassia Way, Henderson, NV 89014

Telephone: (702) 433-7295 Facsimile: (702) 403-1919

**PATRICK N. CHAPIN, LTD.**  
129 Cassia Way, Henderson, NV 89014  
Telephone: (702) 433-7295 Facsimile: (702) 403-1919

1 IT IS SO ORDERED.

2 DATED this 21<sup>st</sup> day of August, 2014.

3 PATRICK N. CHAPIN, LTD.

4 


5 PATRICK N. CHAPIN, ESQ.  
6 Nevada Bar No. 004946  
7 129 Cassia Way  
8 Henderson, Nevada 89014  
9 Judge Pro Tempore

10  
11  
12  
13 CERTIFICATE OF SERVICE

14 I hereby certify that on the 21<sup>st</sup> day of August, 2014, I served a copy of the foregoing  
15 **ORDER (Re: Experts)** by electronic service via the Odyssey File and Serve system within the  
16 Eighth Judicial District Court addressed to the following:

17 Adam E. Brigman, Esq.  
18 Cram Valdez Brigman & Nelson  
19 8831 West Sahara Avenue  
20 Las Vegas, NV 89117  
21 abrigman@cvbnlaw.com  
22 Attorney for Plaintiff

23 Byron F.L. Browne, Esq.  
24 Barks Drake Brown  
25 10191 Park Run Drive #110  
26 Las Vegas, NV 89145  
27 bbrowne@bdbattorneys.com  
28 Attorney for Defendant

  
An Employee of Patrick N. Chapin, Esq.  
Judge Pro Tempore



CLERK OF THE COURT

1 **ORDR**  
2 **PATRICK N. CHAPIN, ESQ.**  
3 Nevada Bar No. 004946  
4 Patrick N. Chapin, Ltd.  
5 129 Cassia Way  
6 Henderson, Nevada 89014  
7 (702) 433-7295  
8 Judge Pro Tempore

6 **DISTRICT COURT**  
7  
8 **CLARK COUNTY, NEVADA**

9 JA CYNTA McCLENDON,	)	Case No. A-13-680935-C
	)	Dept. No. XXX
10 Plaintiff,	)	STP No. 13-1744
	)	
11 v.	)	
	)	
12 DIANE COLLINS,	)	<b><u>ORDERS</u></b>
	)	<b>RE: MOTIONS FOR</b>
13 Defendants.	)	<b>SUMMARY JUDGMENT</b>
	)	<b>AND MOTIONS IN LIMINE</b>

15 TO: ADAM E. BRIGMAN, ESQ., CRAM VALDEZ BRIGMAN & NELSON,  
16 Attorney for Plaintiff; and

17 TO: BYRON F.L. BROWN BARSKI DRAKE BROWN, Attorney for Defendants.

18 This matter came on for hearing during the pretrial conference in the offices of the Court  
19 on August 20, 2014. Both Plaintiff and Defendant were represented by their attorneys of record  
20 herein. The hearing consisted of two Motions for Summary Judgment filed by the Plaintiff and  
21 numerous Plaintiff's Motions in Limine. The Court having reviewed Plaintiff's Motions for  
22 Summary Judgment as well as In Limine, and after hearing extensive oral argument by both  
23 counsel on behalf of their respective clients, and considering all the arguments presented, the  
24 Court finds as follows:

25 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Summary Judgment as to the  
26 Defendant's duty and breach during the operation of her motor vehicle on the date of the incident  
27 is hereby **GRANTED** and stipulated to by both counsel;

28 ///

**PATRICK N. CHAPIN, LTD.**

129 Cassia Way, Henderson, NV 89014

Telephone: (702) 433-7295 Facsimile: (702) 403-1919

1           **IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment as to the  
2 reasonableness of billing for Plaintiff's medical treatment as it pertains to the damages she  
3 alleges in this lawsuit is **DENIED**;

4           **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine as it pertains to  
5 forbidding any mention at trial regarding the absence of evidence of pre-accident medical records  
6 as it pertains to Plaintiff is **GRANTED**;

7           **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine as it pertains to  
8 forbidding hypothetical questions to any lay witnesses or jurors during the voir dire process is  
9 **GRANTED**;

10          **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine requesting no evidence  
11 be introduced or elicited regarding when Plaintiff retained an attorney in this lawsuit is  
12 **DENIED**;

13          **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding any  
14 testimony or argument that implies Plaintiff's lawsuit is attorney-driven, causing a medical  
15 billing increase is **GRANTED**;

16          **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding evidence of  
17 medical billing collateral source is **GRANTED**;

18          **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding any  
19 evidence of medical liens is **DENIED**;

20          **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding any  
21 testimony or questioning on whether or not the subject accident of this lawsuit was unavoidable  
22 is **GRANTED**;

23          **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding testimony or  
24 evidence that Plaintiff may be asking the jury to award her more money than she expects is  
25 **GRANTED**;

26          **IT IS FURTHER ORDERED** that Plaintiff's Motion in Limine that there be no  
27 argument on the issue of Plaintiff's doctors reducing or potentially reducing their medical bills as  
28 it pertains to Plaintiff in this case is **DENIED** to the extent that said argument can only be made

1 if in fact a doctor that treated Plaintiff in this instant case is testifying, either live or by  
2 deposition, without objection, that they did or will reduce the medical bills as it only pertains to  
3 their treatment of Plaintiff for injuries she allegedly suffered in the accident that is the subject of  
4 this lawsuit;

5 **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding arguments  
6 or questions regarding whether or not Plaintiff failed to possess a Nevada driver's license at the  
7 time of the accident is **GRANTED**;

8 **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding any and all  
9 arguments that the dynamics of the crash are insufficient to cause the harm alleged by Plaintiff is  
10 **DENIED**;

11 **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding any and all  
12 argument that the accident did not cause Plaintiff's property damages is **DENIED**;

13 **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding any  
14 argument or questioning on whether or not the Plaintiff malingered is **GRANTED**;

15 **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding any  
16 argument or questioning on the issue of Plaintiff pursuing this matter as a secondary gain motive  
17 is **GRANTED**;

18 **IT IS FURTHER ORDERED** that expert witness Dr. Oliveri's invoices for any expert  
19 services he may have provided in this case be omitted in its entirety if at all possible, or in the  
20 alternative redacted, as such invoices are not to be admitted into evidence and considered by the  
21 trier of fact;

22 **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding Dr. Oliveri  
23 to discuss or testify to any issue that involves property damage photos, damage estimates, or  
24 biomechanical issues is **DENIED**;

25 **IT IS FURTHER ORDERED** that Plaintiff's Motion In Limine forbidding any and all  
26 argument whether or not Dr. Jaget reduced her billing invoices in prior cases is **GRANTED**; and

27 ///

28 ///

1 IT IS FURTHER ORDERED that Plaintiff's Motion In Limine forbidding any and all  
2 argument or testimony regarding the reasons why Dr. Jaget is no longer treating personal injury  
3 patients is DENIED.

4 IT IS SO ORDERED.

5 DATED this 21<sup>st</sup> day of August, 2014.

6 PATRICK N. CHAPIN, LTD.

7 

8 PATRICK N. CHAPIN, ESQ.

9 Nevada Bar No. 004946

10 129 Cassia Way

11 Henderson, Nevada 89014

12 Judge Pro Tempore

13 CERTIFICATE OF SERVICE

14 I hereby certify that on the 21<sup>st</sup> day of August, 2014, I served a copy of the foregoing  
15 ORDER (Re: Pretrial Issues) by electronic service via the Odyssey File and Serve system  
16 within the Eighth Judicial District Court addressed to the following:

17 Adam E. Brigman, Esq.  
18 Cram Valdez Brigman & Nelson  
19 8831 West Sahara Avenue  
20 Las Vegas, NV 89117  
21 abrigman@cvbnlaw.com  
22 Attorney for Plaintiff

23 Byron F.L. Browne, Esq.  
24 Barks Drake Brown  
25 10191 Park Run Drive #110  
26 Las Vegas, NV 89145  
27 bbrowne@bdbattorneys.com  
28 Attorney for Defendant



An Employee of Patrick N. Chapin, Esq.  
Judge Pro Tempore



CLERK OF THE COURT

1 VER

2

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4

5

6

7

DISTRICT COURT  
CLARK COUNTY, NEVADA

8

9 JACYNTA McCLENDON,

10

Plaintiff,

Case No.: A-13-680935

-vs-

11

12 DIANE COLLINS, et al.,

12

13

Defendants.

14

15

VERDICT FORM

16

We, the jury in the above entitled action, find for the Defendant, DIANE COLLINS, and  
17 against the Plaintiff, JACYNTA McCLENDON.

18

19

DATED this 22 day of August, 2014.

20

21

22

By:

  
FOREPERSON

23

24

25

26



DISTRICT COURT  
CLARK COUNTY, NEVADA

Case No. A-13-680935-C  
Dept. No. XXX  
STP No. 13-1744

TRIAL EXHIBITS

DATED this 25<sup>th</sup> day of August, 2014.

PATRICK N. CHAPIN, LTD.

PATRICK N. CHAPIN, ESQ.  
Nevada Bar No. 004946  
129 Cassia Way  
Henderson, Nevada 89014  
Judge Pro Tempore

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CERTIFICATE OF SERVICE

I hereby certify that on the 25<sup>th</sup> day of August, 2014, I served a copy of the foregoing  
**TRIAL EXHIBITS** by electronic service via the Odyssey File and Serve system within the  
Eighth Judicial District Court addressed to the following:

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Cram Valdez Brigman & Nelson  
8831 West Sahara Avenue  
Las Vegas, NV 89117  
abrigman@cvbnlaw.com  
Attorney for Plaintiff

Byron F.L. Browne, Esq.  
Barks Drake Brown  
10191 Park Run Drive #110  
Las Vegas, NV 89145  
bbrowne@bdbattorneys.com  
Attorney for Defendant



An Employee of Patrick N. Chapin, Esq.  
Judge Pro Tempore

**JACYNTA McCLENDON v. DIANE COLLINS, et al.**  
**Case Number : A-13-68035**

**JOINT EXHIBIT NOTEBOOK**

<i><b>TAB</b></i>	<i><b>DOCUMENT</b></i>	<i><b>DATE</b></i>
1	Photographs Plaintiff's Vehicle – 2000 Toyota Corolla	
2	Photographs Defendant's Vehicle – 2010 Toyota Camry	
3	Plaintiff's Property Damage Estimate	05/18/14
4	Defendant's Property Damage Estimate	05/18/14
5	Plaintiff's Medical Records – Fremont Emergency Services	05/15/12
6	Plaintiff's Medical Records – Mountain View Hospital	05/15/12
7	Plaintiff's Medical Records – Las Vegas Accident Care	05/22/12 – 10/18/12
8	Plaintiff's Medical Records – Radar Medical Group/ University Urgent Care	05/30/12 – 10/25/12
9	Plaintiff's Medical Records – Desert Radiologists	07/25/12
10	Plaintiff's Expert Report – Dr. David Oliveri	08/14/14 07/21/14
11	Plaintiff's Medical Summary	

# **EXHIBIT 10**

# **EXHIBIT 10**

DAVID J. OLIVERI, M.D.

DIPLOMATE, AMERICAN BOARD OF PHYSICAL MEDICINE AND REHABILITATION  
DIPLOMATE, AMERICAN BOARD OF ELECTRODIAGNOSTIC MEDICINE

851 S. RAMPART BOULEVARD • SUITE 115 • LAS VEGAS, NV 89145  
(702) 778-9300 • FACSIMILE (702) 778-9301

### INDEPENDENT MEDICAL RECORD REVIEW

**PLAINTIFF** : Ja Cynta McClendon

**DATE** : 07/21/14

**D.O.L.** : 05/15/12

05/15/12            **Date of Loss.**

05/15/12            **Mountain View Hospital Emergency Department.** Date of birth 12/05/88. Chief complaint: Motor vehicle collision. Location of injuries: Head and neck. The injury occurred today three hours ago. Patient was driving a vehicle and was wearing a lap and shoulder harness. Impact was on the rear of the vehicle. The accident involved two vehicles and a low impact velocity and resulted in mild damage to the patient's vehicle. Patient was ambulatory at the scene. Physical exam: Occiput: Moderate tenderness. Neck: Moderate muscle spasm in the posterior neck. Mild pain in the neck upon movement. Back: Moderate soft tissue tenderness in the right lower and left lower thoracic area and right upper and left upper lumbar area. Clinical impression: Vehicle - vehicle accident - driver. Paresthesia. Cervical strain. (There are prescriptions for ibuprofen, Percocet and Valium. The workup consisted of x-rays of the thoracic and lumbar spine as well as a CT scan of the cervical spine.)

05/15/12            **X-ray Reports. Thoracic Spine. Normal. Lumbosacral Spine.** No evidence of acute trauma. There is spondylolysis at L4 without spondylolisthesis.

05/15/12            **CT Scan Cervical Spine without contrast.** There is no evidence of acute trauma to the cervical spine.

05/18/12            **University Urgent Care.** (This handwritten note on a template form indicates a complaint of neck, back, left side arm, knee pain. The past medical history is listed as eczema, allergies and asthma. The assessment appears to indicate acute traumatic cervical, thoracic and lumbar sprain/strain.)

Ja Cynta McClendon

07/21/14

Page 2

05/22/12            **Laura Jaget, D.C. Las Vegas Accident Care.** Initial report. Ms. McClendon was the driver of a vehicle that was hit from behind while at a complete stop. At first she was very scared and unaware of any pain. Shortly afterward she felt pain in her neck and upper back right. The next day Ms. McClendon felt pain in her low back when moving. She is complaining of headaches. More recently she is noticing mid back pain. She has pain when bending for too long or sitting up and is having difficulty sleeping. She presented to our office for examination and consultation. Patient's complaint: Since the accident Ms. McClendon continues to complain of headaches, neck pain and stiffness, dizziness, mid back tightness, low back pain, left arm pain with numbness and tingling, pins-and-needles sensation into her left pinky finger, left knee pain, and difficulty sleeping. Diagnosis: Whiplash associated disorder, posttraumatic headache syndrome, cervical sprain/strain, thoracic sprain/strain, lumbar sprain/strain, muscle spasms, injury to the knee, sprain/strain of the ribs. It is my opinion within a reasonable degree of medical certainty that Ms. McClendon's injuries are due to the accident on 05/15/12. (Chiropractic treatment is recommended.)

05/23/12-10/18/12            **Chiropractic treatment notes.** Thirty notes reviewed. (There is a gap from 06/05/12 to 07/03/12 where there is no treatment.)

05/30/12            **Dipti Shah, M.D.** Chief complaint: Neck pain radiating into the left arm associated with tingling. Upper back pain. Mid back pain. Ms. McClendon is a 23-year-old right-handed female who was involved in a motor vehicle accident on May 15, 2012. She was the restrained driver of a Toyota Corolla. She was exiting the freeway on Lake Mead Drive about to merge onto the oncoming traffic. Suddenly she was rear-ended by a Toyota Camry. She was jerked from front to back. Since the accident she reports neck pain radiating to the left arm associated with tingling, upper back pain, and mid back pain. Impression: Status post motor vehicle accident. Acute traumatic cervical strain. Acute traumatic cervical muscle spasm. Acute traumatic cervical radiculopathy.

07/03/12            **Dr. Jaget.** Progress report. Ms. McClendon was responding favorably to the treatment plan. After a month hiatus she is returning to complete her treatment. She will continue with treatment at three times a week for the next

Ja Cynta McClendon

07/21/14

Page 3

four weeks until the next reexamination.

07/25/12           **MRI Lumbar Spine. Desert Radiologists.** Normal alignment. No fracture or spondylolisthesis. Bulging annuli at L4-5 and L5-S1 with mild narrowing of the bilateral neural foramina.

07/25/12           **MRI Cervical Spine. Desert Radiologists.** Normal alignment. No fracture or spondylolisthesis. No significant spinal canal or neural foraminal narrowing at all levels.

08/01/12           **Edwin Favis/Dr. Shah.** She reports that she is feeling slightly better since her last appointment. She complains of mid back and low back pain but states that his (sic) neck is better. The patient is requesting a refill of her medication. The patient continues to receive therapy three times per week. The patient reports that she had MRI done. Physical exam: The cervical exam reveals improved bilateral paraspinal and trapezius muscle tenderness and spasm. The thoracic exam reveals bilateral paraspinal muscle tenderness and muscle spasm. The lumbar exam reveals bilateral paraspinal muscle tenderness and muscle spasm.

08/15/12           **Dr. Jaget.** Progress report. Ms. McClendon is responding favorably to the treatment plan. She will continue with treatment at two times a week for the next four weeks until the next reexamination.

08/30/12           **Edwin Favis/Dr. Shah.** She reports that she's feeling slightly better since her last appointment. She complains of intermittent neck and low back pain. The patient continues to receive therapy two times per week. The results of her MRI are pending.

08/30/12           **Dr. Jaget.** (U.S. Department of Labor Family and Medical Leave Act paperwork completed. This indicates that she is suffering from neck pain, mid back pain, lower back pain and headaches due to the MVA on 05/15/12. It indicates that she may need to leave work early or return late from lunch in order to make her appointments.

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09/27/12      **Edwin Favis/Dr. Shah.** She reports that she's feeling slightly better since her last appointment. She complains of intermittent neck and low back pain. The patient is requesting a refill of her medication. The patient continues to receive therapy once per week.

10/18/12      **Dr. Jaget.** Final report. She is being released from active care at this time. It may be necessary for her to receive chiropractic care should she experience an exacerbation of the symptoms in the left posterior rib area.

Color vehicle photographs are reviewed. They show damage to the rear of the McClendon vehicle.

There is a damage estimate for the McClendon vehicle from Eugene's Auto Body that totals \$2,605.83.

**MEDICAL BILLING REVIEW**

<b>PROVIDER</b>	<b>DATE OF SERVICE: FROM</b>	<b>DATE OF SERVICE: TO</b>	<b>CHARGES</b>
MountainView Hospital	05/15/12	05/16/12	\$ 7,626.00
University Urgent Care	05/18/12	05/18/12	450.00
Fremont Emergency Services	05/15/12	05/15/12	619.00
Las Vegas Accident Chiropractic	05/22/12	10/18/12	4,540.00
Radar Medical Group (Dipti Shah, M.D.)	05/30/12	05/30/12	475.00
Radar Medical Group (Dr. Shah and prescription medication)	08/01/12	08/01/12	325.00



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PROVIDER	DATE OF SERVICE: FROM	DATE OF SERVICE: TO	CHARGES
EZ Business Services (MRI scans)	07/25/12	07/25/12	2,864.00
Radar Medical Group (Dr. Shah)	08/30/12	08/30/12	225.00
Radar Medical Group (Dr. Shah)	09/27/12	09/27/12	227.00

**DEPOSITION REVIEW**

12/12/13

**Ja Cynta McClendon.** Fifty-five pages.

The following areas of deposition testimony are noted:

Page 12: Prior to April of 2013 she was employed at Diamond Resorts International in customer service from December 2009 until April 2013.

Page 24: She testifies that at the time of the impact her left arm contacted the vehicle and her left knee hit the door.

Page 29: She testifies that she experienced pain a few hours later. The pain was her neck, the left side of the neck, left arm, left leg, mid to lower back. The pain level was a 7.

Page 46/47: She is asked if she remembers the pain levels of any of the areas when she was discharged. She states they were pretty much resolved. She states she had pain in her back every once in a while and it was more of an ache. There are follow-up questions about the individual body parts and it was the mid to low back in which she was experiencing some pain. It was not constant. She describes it as once every two weeks.

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Page 51: She describes that in June to July of 2012 she went home for a month because her father had throat cancer.

Page 52: She indicates that while home with her father she did not have treatment. She had another gap in care from September 27 to the second week of October because of her father then she was back in Wisconsin.

Page 53: She denies experiencing any back pain prior to the accident.

### CONCLUSIONS/OPINIONS

#### **IDENTIFYING DATA:**

According to the information reviewed, Ms. McClendon has a date of birth of 12/05/88. She would have therefore been a 23-year-old female at the time of the 05/15/12 subject accident.

#### **PROPOSED MECHANISM OF INJURY:**

On 05/15/12 Ms. McClendon was the driver of a vehicle that was at a stop and rear-ended by another vehicle. There was approximately \$2,600 of damage to the rear of her vehicle according to the reviewed damage estimate. She testified on page 24 of her deposition that her left arm hit the inside of the vehicle and her left knee hit the door following the impact.

#### **COMPLAINTS/DIAGNOSES:**

Ms. McClendon testified on page 29 of her deposition that within two or three hours of the accident she developed pain. She was seen that same night at MountainView Hospital with complaints of neck pain and findings on examination in the occiput and in the back. She was diagnosed with paresthesia and cervical strain. She was subsequently seen by urgent care and the chiropractor with diffuse spinal symptoms and some extremity symptomatology as well.

#### **PREEXISTING CONDITIONS/INJURIES:**

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None.

**POSTINJURY CONDITIONS/INJURIES:**

None.

**MEDICAL CAUSATION:**

Comments regarding causation are referenced to the proposed mechanism of injury as well as the medical records and other information that has been carefully reviewed by me and summarized by me above. A number of factors have been taken into account with respect to the causation issue. These factors are as follows:

1. Ms. McClendon had no preexisting conditions or injuries that would impact issues of medical causation based on review of records and deposition.
2. There are no subsequent injuries or accidents which would impact issues of medical causation.
3. On 05/15/12, Ms. McClendon was involved in the subject accident. She was the driver of a vehicle that was rear-ended. There was some damage to the rear of her vehicle. She testifies that her left arm and left knee impacted the inside of the vehicle following the impact. She also testifies that shortly after the accident she developed symptoms. She presented to MountainView Hospital with a chief complaint of neck pain; however, there are also documented findings on examination in the occiput and the thoracic and lumbar regions that necessitated a further diagnostic workup that included x-rays and CT scanning. In addition, although not clearly delineated in the reviewed records, the clinical impression includes a diagnosis of paresthesia.
4. Ms. McClendon presented to the chiropractor shortly thereafter with continued symptoms. The chiropractor treated Ms. McClendon for a total of 30 visits over the next number of weeks with ultimate resolution of symptoms. However, there is documentation in the chiropractic records of one gap in care of four weeks in June 2012.

There is no explanation specifically as to why that gap occurred in the medical records. However, Ms. McClendon explains that gap in care on pages 51 and 52 of her deposition in that she had to return home, out of state, because her father had throat cancer. That explanation appears reasonable to explain a gap in care for approximately four weeks. The type of injuries sustained to Ms. McClendon would not necessarily require uninterrupted care for the duration of her treatment. Additionally, a gap of four weeks would not result in a specific detriment to her overall outcome or necessarily result in a prolongation in her treatment. The final outcome in her treatment was essentially a resolution of her symptomatology.

5. Ms. McClendon treated with the chiropractor between mid May and mid July, minus the four-week gap in care, and continued to have ongoing cervical and lumbar symptomatology documented. There was then a recommendation for diagnostic testing in the form of cervical and lumbar MRI scanning. Those cervical and lumbar MRI scans were performed on 07/25/12 and were negative or nonlocalizing.
6. My review of the chiropractic treatment records indicate a progressive improvement in Ms. McClendon's condition and by 08/30/12 there is documentation that her symptomatology was intermittent in her cervical and lumbar spine. She was eventually discharged from care. Per her deposition testimony, as noted above, she has had essentially resolution in her symptoms. The only residual symptom is an intermittent ache every two weeks in her lower back based on the deposition testimony on page 47.

Taking all of the above factors into account, it is my conclusion to a reasonable degree of medical probability that Ms. McClendon sustained the following injuries resulting from the 05/15/12 subject accident:

1. Cervical spine pain representing either soft tissue or facet origin.
2. Thoracic spine pain representing either soft tissue or facet origin.
3. Lumbar spine pain representing either soft tissue or facet origin.
4. Left upper extremity contusion.
5. Left knee contusion.

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#### **APPROPRIATENESS OF CARE/BILLING:**

Comments regarding appropriateness of care are referenced to the comments above regarding medical causation. It is my conclusion that the medical care provided to Ms. McClendon following the 05/15/12 subject accident has been reasonable, medically necessary and directly and causally related to the subject accident. Additionally, I would state that individuals with musculoskeletal pain complaints that are soft tissue or facet origin can benefit from a skilled chiropractor or physical therapist to decrease their symptomatology, improve their quality of life and overall decrease the duration of symptomatology following a traumatically-induced injury. Additionally, as outlined above, the gap in treatment because Ms. McClendon left out of state to visit her father with throat cancer does not negatively impact my opinions with respect to her necessity for treatment in this regard.

I have reviewed the medical billing associated with the medical care provided to Ms. McClendon. I have analyzed this medical billing with respect to my experience reviewing medical bills as well as comparing this medical billing to database references. It is my conclusion that the billing is within the usual and customary range for the medical community for the services provided to Ms. McClendon in reference to the 05/15/12 subject accident. The medical billing is directly and causally related to the 05/15/12 subject accident in my opinion.

#### **WORK CAPACITY/DISABILITY:**

Based on her deposition testimony, it appears that Ms. McClendon worked in customer service at the time of this subject accident. It appears from the FMLA paperwork completed by Dr. Jaget that she may have had some missed work because of the injuries sustained or the treatment that was necessary for the injuries sustained. I would need some additional information to further analyze this component.

#### **PROGNOSIS/FUTURE MEDICAL CARE:**

Based on her deposition testimony, it would appear that Ms. McClendon has had a

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favorable response to the treatment provided. She has had resolution of all symptoms with the exception of some occasional lower back symptomatology. I would not expect her to require formal medical care ongoing. Her prognosis would be considered good for stability as it relates to the subject accident.

Respectfully submitted,



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David J. Oliveri, M.D.

DJO:cak

DD: 07/21/14

DT: 07/24/14