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Attorneys for Irving Torremoro; Keolis Transit Services, LLC

Electronically Filed
Oct 08 2021 11:29 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

Irving Torremoro; Keolis Transit
Services, LLC,

Petitioner,

vs.

The Eighth Judicial District Court and
the Honorable Erika Ballou, Judge,

Respondents

and

Lamont Compton,

Real Party in Interest

Supreme Ct. No.:

Dist. Ct. Case No.: A-18-777320-C

**Appendix to Irving Torremoro &
Keolis Transit Services, LLC's Petition
for Writ of Mandamus**

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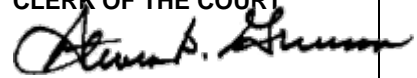
1 **Certificate of Service**

2 Per 25(c), I certify that I am an employee of Wilson Elser Moskowitz
3 Edelman & Dicker LLP, and that on October 8, 2021, **Appendix to Irving**
4 **Torremoro & Keolis Transit Services, LLC's Petition for Writ of Mandamus**
5 was served via electronic means by operation of the Court's electronic filing
6 system to:

7 Stephen G. Clough, Esq. 8 Maier Gutierrez & Associates 8 8816 Spanish Ridge Avenue 9 Las Vegas, Nevada 89148 9 Attorneys for Lamont Compton	Judge Erika Ballou Eighth Judicial District Court Department 24 200 Lewis Ave. Las Vegas, Nevada 89155
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10 BY: /s/ Michael P. Lowry
11 An Employee of





COMJD

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

STEPHEN G. CLOUGH, ESQ.

Nevada Bar No. 10549

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Attorneys for Plaintiff Lamont Compton

DISTRICT COURT

CLARK COUNTY, NEVADA

LAMONT COMPTON, an individual,

Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC; a foreign
limited liability company; UNKNOWN
DRIVER, an individual; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-18-777320-C
Dept. No.: Department 23

COMPLAINT

DEMAND FOR JURY TRIAL

Arbitration Exemption:

1. Damages in Excess of \$50,000

Plaintiff LAMONT COMPTON, by and through his attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby demands a trial by jury and complains and alleges against defendants as follows:

GENERAL ALLEGATIONS

1. Plaintiff LAMONT COMPTON ("Plaintiff") is, and at all times pertinent hereto was, a resident of Clark County, Nevada.

2. Upon information and belief, defendant KEOLIS TRANSIT SERVICES, LLC is, and at all times pertinent hereto was, a foreign limited liability company licensed to do business in Clark County, Nevada.

3. Upon information and belief, defendant UNKNOWN DRIVER is, and at all times

1 pertinent hereto was, a resident of Clark County, Nevada.

2 4. Upon information and belief, defendant UNKNOWN DRIVER is, and at all times
3 pertinent hereto was an employee and/or agent of defendant KEOLIS TRANSIT SERVICES, LLC.

4 5. Upon information and belief, defendant KEOLIS TRANSIT SERVICES, LLC is
5 responsible for the actions of all employees, agents, ostensible agents, and/or representative of
6 defendant KEOLIS TRANSIT SERVICES, LLC, including UNKNOWN DRIVER.

7 6. The true names and capacities, whether individual, corporate, associate, partnership or
8 otherwise, of the defendants herein designated as DOES I through X and ROE CORPORATIONS I
9 through X, inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious
10 names. Plaintiff will seek leave of the Court to insert the true names and capacities of such defendants
11 when the same have been ascertained and will further seek leave to join said defendants in these
12 proceedings.

13 7. Plaintiff was, at all times mentioned herein, the operator of a 2017 Lexus IS 200t.

14 8. Defendant UNKNOWN DRIVER was, at all times mentioned herein, the operator of
15 a bus, owned by defendant KEOLIS TRANSIT SERVICES, LLC.

16 9. On or about November 4, 2017, in Clark County, Nevada, Plaintiff was turning on to
17 the on-ramp in order to enter the freeway.

18 10. Defendant UNKNOWN DRIVER was approaching the same on-ramp from the
19 opposite direction.

20 11. Defendant UNKNOWN DRIVER failed to use due care on the roadway and attempted
21 to enter the freeway at the same time as Plaintiff without yielding to Plaintiff, which caused an
22 automobile collision that injured Plaintiff.

23 12. As a direct and proximate result of the negligence of defendants, and each of them,
24 Plaintiff sustained personal injuries, all or some of which conditions may be permanent and disabling,
25 and all to Plaintiff's damage in a sum in excess of \$15,000.00.

26 13. As a direct and proximate result of the negligence of defendants, and each of them,
27 Plaintiff received medical and other treatment for the aforementioned injuries, and that said services,
28 care, and treatment is continuing and shall continue in the future, all to the damage of Plaintiff.

14. As a direct and proximate result of the negligence of defendants, and each of them, Plaintiff has been required to, and has limited occupational and recreational activities, which have caused and shall continue to cause Plaintiff loss of earning capacity, lost wages, physical impairment, mental anguish, and loss of enjoyment of life, in a presently unascertainable amount.

15. As a direct and proximate result of the aforementioned negligence of defendants, and each of them, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

FIRST CLAIM FOR RELIEF

(NEGLIGENCE)

16. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs of the complaint as though fully set forth herein, and incorporate the same herein by reference.

17. Defendants, and each of them, owed a duty of care to Plaintiff to operate a vehicle in a reasonable and safe manner.

18. Defendants, and each of them, breached that duty of care by striking Plaintiff's vehicle on the roadway.

19. The acts of defendants, and each of them, as described herein, violated the traffic laws of Clark County and the state of Nevada, which also constitutes negligence per se, and Plaintiff has been damaged as a direct and proximate result thereof in an amount in excess of \$15,000.00.

20. As a direct and proximate result of the negligence of defendants, and each of them, Plaintiff sustained personal injuries, all or some of which conditions may be permanent and disabling, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

21. As a direct and proximate result of the negligence of defendants, and each of them, Plaintiff received medical and other treatment for the aforementioned injuries, and that said services, care, and treatment is continuing and shall continue in the future, all to the damage of Plaintiff.

22. As a direct and proximate result of the negligence of defendants, and each of them, Plaintiff has been required to, and has limited occupational and recreational activities, which have caused and shall continue to cause Plaintiff loss of earning capacity, lost wages, physical impairment, mental anguish, and loss of enjoyment of life, in a presently unascertainable amount.

23. As a direct and proximate result of the aforementioned negligence of defendants, and each of them, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

SECOND CAUSE OF ACTION

(RESPONDENT SUPERIOR)

24. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs of the complaint as though fully set forth herein, and incorporate the same herein by reference.

25. Plaintiff herein alleges that defendant UNKNOWN DRIVER was an employee and/or agent and/or representative of defendant KEOLIS TRANSIT SERVICES, LLC and was within the course and scope of his employment with defendant KEOLIS TRANSIT SERVICES, LLC wherein defendant KEOLIS TRANSIT SERVICES, LLC benefited financially due to the services/actions/conduct of defendant UNKNOWN DRIVER.

26. At said times and places, defendant UNKNOWN DRIVER conducted himself in a negligent manner resulting in injuries to Plaintiff. Alternatively, defendant UNKNOWN DRIVER's conduct fell below the standard of care resulting in injuries to Plaintiff.

27. Defendant UNKNOWN DRIVER was an employee and/or agent and/or representative of defendant KEOLIS TRANSIT SERVICES, LLC. Defendant KEOLIS TRANSIT SERVICES, LLC is responsible for defendant KNOWN DRIVER's conduct and/or actions and/or inactions.

28. As a direct and proximate result of the negligence of defendants, and each of them, Plaintiff sustained personal injuries, all or some of which conditions may be permanent and disabling, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

29. As a direct and proximate result of the negligence of defendants, and each of them, Plaintiff received medical and other treatment for the aforementioned injuries, and that said services, care, and treatment is continuing and shall continue in the future, all to the damage of Plaintiff.

30. As a direct and proximate result of the negligence of defendants, and each of them, Plaintiff has been required to, and has limited occupational and recreational activities, which have caused and shall continue to cause Plaintiff loss of earning capacity, lost wages, physical impairment, mental anguish, and loss of enjoyment of life, in a presently unascertainable amount.

31. As a direct and proximate result of the aforementioned negligence of defendants, and each of them, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

THIRD CAUSE OF ACTION

(NEGLIGENT HIRING, TRAINING AND/OR SUPERVISION)

32. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs of the complaint as though fully set forth herein, and incorporate the same herein by reference.

33. Plaintiff alleges that defendant KEOLIS TRANSIT SERVICES, LLC either did directly or indirectly hire defendant UNKNOWN DRIVER to be an employee and/or agent and/or their representative in Las Vegas, Nevada.

34. That at said time and place of the subject of this lawsuit as laid out in this Complaint, defendant UNKNOWN DRIVER failed to use due care on the roadway and caused an automobile collision that injured Plaintiff.

35. The acts and/or conduct and/or inactions by defendant UNKNOWN DRIVER reveal that defendant KEOLIS TRANSIT SERVICES, LLC should not have hired defendant UNKNOWN DRIVER because of his incompetence, ineptitude, lack of skill, lack of training, and/or dangerous propensities, or that defendant KEOLIS TRANSIT SERVICES, LLC did not properly train, monitor and/or supervise defendant UNKNOWN DRIVER.

36. As a direct and proximate result of defendant KEOLIS TRANSIT SERVICES, LLC's actions, Plaintiff sustained personal injuries, all or some of which conditions may be permanent and disabling, and all to Plaintiff's damage in a sum in excess of \$15,000.00.

37. As a direct and proximate result of defendant KEOLIS TRANSIT SERVICES, LLC's actions, Plaintiff received medical and other treatment for the aforementioned injuries, and said services, care, and treatment is continuing and shall continue in the future, all to the damage of Plaintiff.

38. As a direct and proximate result of defendant KEOLIS TRANSIT SERVICES, LLC's actions, Plaintiff sustained injuries and has limited occupational and recreational activities, which have caused and shall continue to cause Plaintiff loss of earning capacity, lost wages, physical

1 impairment, mental anguish, and loss of enjoyment of life, in an amount in excess of \$15,000.00.

2 39. As a direct and proximate result of defendant KEOLIS TRANSIT SERVICES, LLC's
3 actions, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and
4 costs to bring this action.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against defendants, and each of them, as follows:

7 1. For a judgment in favor of Plaintiff and against defendants, and each of them, on the
8 complaint and all claims for relief asserted therein;

9 2. For an award of general and special damages in an amount in excess of \$15,000.00, to
10 be proven at trial;

11 3. For an award of reasonable attorney's fees and costs incurred in this action; and

12 4. For such other and further relief as the Court may deem proper.

13 DATED this 6th day of July, 2018.

14 Respectfully submitted,

15 **MAIER GUTIERREZ & ASSOCIATES**

16 /s/ Stephen G. Clough

17 JOSEPH A. GUTIERREZ, ESQ.

18 Nevada Bar No. 9046

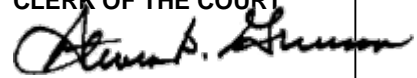
19 STEPHEN G. CLOUGH, ESQ.

Nevada Bar No. 10549

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Attorneys for Plaintiff Lamont Compton



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Las Vegas, Nevada 89101-6014
Tel: 702.727.1400/Fax: 702.727.1401
Attorneys for Keolis Transit Services, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

LAMONT COMPTON, an individual,

Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC, a
foreign limited liability company; UNKNOWN
DRIVER, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No: A-18-777320-C

Dept. No: 23

**Notice of Entry of Order re Stipulation and
Order Extending Discovery Deadlines and
Continuing Trial Date**

PLEASE TAKE NOTICE that a Stipulation and Order Extending Discovery Deadlines
and Continuing Trial Date was entered by the Court on November 6, 2019. A true and correct copy
is attached hereto as Exhibit A.

DATED this 6th day of November, 2019. WILSON ELSEER MOSKOWITZ

EDELMAN & DICKER LLP

/s/ Robert L. Thompson

MICHAEL P. LOWRY, ESQ.

Nevada Bar No. 10666

ROBERT THOMPSON, ESQ.

Nevada Bar No. 9920

300 South Fourth Street, 11th Floor

Las Vegas, Nevada 89101-6014

Attorneys for Keolis Transit Services, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WILSON ELSEER MOSKOWITZ
3 EDELMAN & DICKER LLP, and that on this 6th day of November, 2019, I served a true and correct
4 copy of **Notice of Entry of Order re Stipulation and Order Extending Discovery Deadlines and**
5 **Continuing Trial Date** as follows:
6

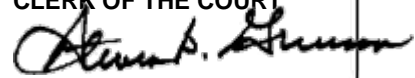
- 7 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
8 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
9 ☒ via electronic means by operation of the Court's electronic filing system, upon each
10 party in this case who is registered as an electronic case filing user with the Clerk; and
11 pursuant to Rule 9 of the N.E.F.C.R.

12 Joseph A. Gutierrez, Esq.
13 Stephen G. Clough, Esq.
14 MAIER GUTIERREZ & ASSOCIATES
15 8816 Spanish Ridge Avenue
16 Las Vegas, Nevada 89148
17 jag@mgalaw.com
18 sgc@mgalaw.com

19 */s/ Cynthia Kelley*
20 _____
21 An Employee of
22 WILSON, ELSEER, MOSKOWITZ, EDELMAN & DICKER LLP
23 EDELMAN & DICKER LLP
24
25
26
27
28

Exhibit A

Exhibit A



MICHAEL P. LOWRY, ESQ.
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Attorneys for Keolis Transit Services, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

LAMONT COMPTON, an individual,
Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC, a
foreign limited liability company; UNKNOWN
DRIVER, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,
Defendants.

Case No: A-18-777320-C
Dept. No: 23

**Stipulation and Order Extending Discovery
Deadlines and Continuing Trial Date**

IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their undersigned counsel of record, that the current discovery deadlines and trial dates in this matter be extended so that the parties may complete remaining necessary discovery as set forth herein.

Pursuant to EDCR 2.35(b) the parties provide the following in support of this Stipulation and Order.

1. Discovery Completed to Date.

The parties have exchanged their respective NRCP 16.1 disclosures of witnesses and documents and provided supplements thereto.

Defendant Keolis has served Plaintiff with Interrogatories and Requests for Production to which Plaintiff has responded.

1 Plaintiff has served Defendant Keolis with Interrogatories, Requests for Admission and
2 Requests for Production, to which Defendant has responded.

3 On July 15, 2019, Defendant Keolis took the deposition of Plaintiff.

4 **Discovery That Remains To Be Completed.**

5 The parties have yet to make initial expert disclosures or conduct expert discovery.

6 **2. Reasons to Extend the Discovery Deadlines.**

7 Plaintiff has an extensive medical history which has resulted in a large volume of treatment
8 and billing records from numerous providers.

9 On September 23, 2019, Defendant's expert advised Defendant he will be out of the country
10 for the upcoming weeks and would be unable to review the large volume of treatment and billing
11 records by the expert disclosure deadline.

12 Based on the foregoing, the parties propose that initial expert disclosures, and associated
13 discovery deadlines be continued an additional sixty (60) days to allow time for Defendant Keolis
14 to make initial expert disclosures.

15 The parties seek a revised discovery schedule as set forth below.



16 **3. Proposed Schedule for Completing Discovery.**


	<u>Current Date</u>	<u>Proposed Date</u>
17 Last day to add parties/amend pleadings	10/09/2019	12/09/2019
18 Initial expert disclosures	10/09/2019	12/09/2019
19 Rebuttal expert disclosures	11/08/2019	01/08/2020
20 Close of discovery	01/07/2020	03/07/2020
21 Deadline to file dispositive motions	02/06/2020	04/06/2020
22 TRIAL	04/20/2020	TBD by court

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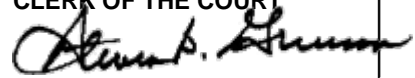
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<p>MAIER GUTIERREZ & ASSOCIATES</p>  <hr/> <p>JOSEPH A. GUTIERREZ, ESQ. STEPHEN G. CLOUGH, ESQ. 8816 Spanish Ridge Avenue Las Vegas, Nevada 89148 Attorneys for Plaintiff</p>	<p>WILSON ELDER MOSKOWITZ EDELMAN & DICKER LLP</p>  <hr/> <p>MICHAEL P. LOWRY, ESQ. Nevada Bar No. 10666 ROBERT THOMPSON, ESQ. Nevada Bar No. 9920 300 South Fourth Street, 11th Floor Las Vegas, Nevada 89101-6014 Attorneys for Keolis Transit Services, LLC</p>
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DISTRICT JUDGE

JUDGE STEFANY A. MILEY



MILM
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Nevada Bar No. 9046
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Attorneys for Plaintiff Lamont Compton

DISTRICT COURT
CLARK COUNTY, NEVADA

LAMONT COMPTON, an individual,

Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC; a foreign
limited liability company; IRVING
TORREMORO, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-18-777320-C
Dept. No.: XXIII

**PLAINTIFFS' MOTION IN LIMINE
NO. 11 TO EXCLUDE ANY
TESTIMONY RELATED TO ANY
PRIOR OR PENDING LITIGATION
AGAINST DR. GROSS**

Plaintiff, LAMONT COMPTON ("Plaintiff"), by and through his attorneys, the law firm
MAIER GUTIERREZ & ASSOCIATES, hereby files this motion in limine to PLAINTIFFS' MOTION IN
LIMINE NO. 11 TO EXCLUDE ANY TESTIMONY RELATED TO ANY PRIOR OR PENDING
LITIGATION AGAINST DR. GROSS.

///

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///

///

///

1 This motion is made and based upon the following Memorandum of Points and Authorities,
2 the affidavits and exhibits attached hereto, the papers and pleadings on file in this matter, and any oral
3 argument this Court may allow at the hearing on this matter.

4 DATED this 6th day of March, 2020.

5 Respectfully submitted,

6 **MAIER GUTIERREZ & ASSOCIATES**

7 /s/ Stephen G. Clough

8 JOSEPH A. GUTIERREZ, ESQ.

9 Nevada Bar No. 9046

10 STEPHEN G. CLOUGH, ESQ.

11 Nevada Bar No. 10549

12 8816 Spanish Ridge Avenue

13 Las Vegas, Nevada 89148

14 *Attorneys for Plaintiff Lamont Compton*

1 **AFFIDAVIT OF COUNSEL PURSUANT TO EDCR 2.47**

2 STATE OF NEVADA)
3) ss.
4 COUNTY OF CLARK)

5 STEPHEN G. CLOUGH, ESQ., being duly sworn, deposes and says that:

6 1. I am an attorney with the law firm of MAIER GUTIERREZ & ASSOCIATES, attorneys for
7 plaintiff. I am knowledgeable of the facts contained herein and am competent to testify thereto.

8 2. On February 19, 2020 at 1:30 p.m. declarant discussed multiple evidentiary motions in
9 and attempt to come to a stipulation regarding the issues with defense counsel, Mr. Michael Lowry.

10 3. I attempted to comply with EDCR 2.47 in good faith. During the EDCR 2.47
11 conference with Defendants' counsel, we were unable to resolve the issues contained in the instant
12 motion, therefore requiring the filing of the instant motion.

13 4. Defense counsel stated the litigation against Dr. Gross is relevant to his credibility and
14 bias.

15 5. This affidavit is made in good faith and not for purposes of delay.

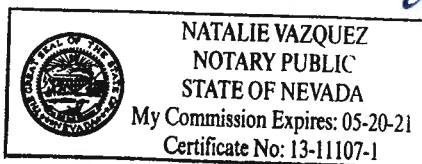
16 FURTHER AFFIANT SAYETH NAUGHT

17 DATED this 6th day of March, 2020.

18 
19 _____
20 STEPHEN G. CLOUGH, ESQ.

21 SUBSCRIBED and SWORN to before
22 me this 6th day of March, 2020.

23 
24 _____
25 NOTARY PUBLIC



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On November 4, 2017, Defendant Irving Torremoro (“Irving”) was the operator of a bus
4 owned by Defendant Keolis Transit Services, LLC (“Keolis”, collectively “Defendants”). Irving,
5 while driving the Keolis bus, was approaching the same on-ramp as Lamont, but from the opposite
6 direction. As Lamont was turning on to the on-ramp in order to enter the freeway, Irving, while still
7 driving the Keolis bus, failed to use due care on the roadway and attempted to turn at the same time
8 as Irving. Irving failed to yield to Lamont causing the automobile collision that injured Lamont and
9 caused Lamont to seek medical care.

10 **II. RELIEF REQUESTED**

11 Plaintiff disclosed Jeffrey D. Gross, M.D. as an expert physician in this case on December 28,
12 2018. Dr. Gross is a licensed neurosurgeon in Nevada as well as California, and his testimony will
13 include, but is not limited to, the nature and causes of Plaintiff’s injuries, the necessity of the past
14 medical treatment rendered, and any future medical treatment/cost that will be required. Dr. Gross’
15 curriculum vitae, testimony list, fee schedule, initial report, rebuttal report and supplement reports
16 have all been previously disclosed in accordance with NRCP 26(a)(2).

17 Through this motion, Plaintiff seeks to exclude all references to pending California litigation
18 against Dr. Gross not only because it is irrelevant, but to allow such evidence would be unfairly
19 prejudicial because it is referencing an unrelated complaint, filed against a non-party, for which there
20 has been no final determination as to the allegations contained therein

21 **III. LEGAL ARGUMENT**

22 *A. THE UNRELATED CIVIL ACTION AGAINST DR. GROSS IS IRRELEVANT AND SHOULD BE*
23 *PRECLUDED*

24 The court has discretion to permit the introduction of relevant evidence. Evidence is relevant
25 if it has any tendency to make a fact more or less probable than it would be without the evidence.
26 NRS 48.015. Evidence that is not relevant is not admissible. NRS 48.025. However, even relevant
27 evidence may be excluded “if its probative value is substantially outweighed by the danger of one or
28 more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay,

1 wasting time, or needlessly presenting cumulative evidence.” NRS 48.035; *see also*, *United States v.*
2 *Hinkson*, 585 F.3d 1247, 1283 (9th Cir. 2009). Moreover, the determination of whether evidence is
3 relevant and, by implication, whether it is admissible, lies within the sound discretion of the trial
4 judge. *Bates v. Soto*, No. CV 15-3326 SJO (AFM), 2015 WL 9451089, at *10 (C.D. Cal. Nov. 16,
5 2015).

6 Simply because a civil action has been initiated against Dr. Gross does not relate it to the
7 subject matter of the instant case. Nor does it make any fact that is of consequence in the instant case,
8 more or less probable. Civil complaints, by their nature, are merely unproven allegations which have
9 no foundation, and allegations of wrongdoing are almost always inadmissible. Even though there are
10 specific rules providing for admissibility of *convictions* or admissions of liability in very particular
11 situations, mere allegations have zero probative value, and thus are almost always irrelevant.

12 The pending allegations against Dr. Gross, as a named third-party defendant in a civil action
13 in California, are entirely irrelevant to the instant case. The mere existence of a filed lawsuit does not
14 prove that the allegations in the lawsuit have any merit. Since neither the parties nor the jury in the
15 instant case can make any reasonable guess as to whether the allegations in a California lawsuit have
16 any merit, the mere existence of that lawsuit cannot establish any issue of fact material to this case,
17 and thus are irrelevant. Therefore, any reference to such a lawsuit should be excluded from this trial.

18 *B. EVEN IF THE UNRELATED CIVIL ACTION WAS RELEVANT, ADMITTING EVIDENCE OF A*
19 *PENDING CIVIL ACTION IS UNFAIRLY PREJUDICIAL*

20 Even if this court determines that the evidence of a pending civil action is relevant, the
21 evidence is not admissible if its probative value is substantially outweighed by the danger of unfair
22 prejudice and misleading the jury. NRS 48.035. Here, allowing Defendant to make references to the
23 existence of an ongoing lawsuit naming Dr. Gross, would undoubtedly result in unfair prejudice to
24 Plaintiff. A lay jury would be unable to objectively assess Dr. Gross’s credibility as an expert or as a
25 physician if Defendants imply that he is being accused of some vague wrongdoing or tortious act. As
26 mentioned above, the relevance of the pending lawsuit has no bearing on Dr. Gross’s credibility or
27 knowledge in this case, but no admonishment would be able to preserve the neutrality of the jury.
28 Therefore, not only is the pending lawsuit against Dr. Gross entirely irrelevant to this case, the risk of

1 undue prejudice and confusion to the jury is too large to allow this testimony into evidence.

2 Ruling on this exact issue with Dr. Gross in a case in Clark County, Nevada, in 2016, the
3 district court ordered on a Motion in Limine that a witness was “precluded from testifying about any
4 pending litigation against Dr. Gross.” See Order Granting Plaintiff’s Motions in Limine Nos. 1
5 through 9, et al., attached as **Exhibit “1”**. The facts, context, and analysis of the district court is the
6 same as it is in the instant matter, therefore Plaintiff should be afforded the same outcome.

7 **C. DR. GROSS’ PENDING FEDERAL INDICTMENT FOR FRAUD IS UNRELATED TO THE**
8 **INSTANT MATTER AS IT DOES NOT AFFECT HIS CREDIBILITY AS PLAINTIFF’S TREATING**
9 **PHYSICIAN**

10 Dr. Gross’ unproven federal indictment has absolutely no relevance to his character in the
11 instant matter. “When the purpose of cross-examination is to expose bias, a trial court is not accorded
12 the usual breadth of discretion in determining whether to entertain the questioning.” *Jones v. State*,
13 108 Nev. 651, 659, 837 P.2d 1349, 1354 (1992). In this scenario, “[c]ounsel must be permitted to
14 elicit any facts which might color a witness's testimony. *Id.*

15 Specific conduct of a witness, for the purpose of attacking or supporting the witness’s
16 credibility, other than a criminal conviction, may not be proved by extrinsic evidence. NRS 50.085(3).
17 Similarly, “[i]mpeachment by use of extrinsic evidence is prohibited when collateral to the
18 proceedings.” *Lobato v. State*, 120 Nev. 512, 518, 96 P.3d 765, 770 (2004). While it is true that some
19 issues are always permitted under the “collateral fact” rule, these exceptions only deal with the
20 competency of a witness, the ability of a witness to understand the oath, prior convictions, and motives
21 that might skew a witness’ ability to testify truthfully. *Id.* at 518-19.

22 Here, as Defendant as stated, Dr. Gross is federally indicted for allegedly not disclosing the
23 fact he is receiving kickbacks from a hospital. This is not a formal conviction but an unproven claim
24 made by in his case that has not been heard on the merits yet.

25 The federal indictment has no relation to the instant case because there is no claim or allegation
26 that Dr. Gross is receiving kickbacks in this case for offering his service as a medical professional.
27 The distinct widens further when considering that Dr. Gross is federally indicted for the allegation of
28 *not closing a pertinent fact* rather than being untruthful. Defendant argues that Dr. Gross is biased or
not credible due to his federal indictment. However, that goes against the entire notion of being

1 “innocent until proven guilty.” The unrelated federal case proves nothing because the case does not
2 deal with his expertise in the area he is providing his opinion in the instant case and has not been
3 decided on the merits.

4 Dr. Gross is a properly disclosed and properly retained expert, his personal career is not on
5 trial in the instant case. Defendant should not be allowed to color the jury’s perception of Plaintiff’s
6 expert based on an unrelated case that has no bearing on Dr. Gross’ competency or credibility.

7 **D. INQUIRIES INTO DR. GROSS’ FEDERAL INDICTMENT IS EXTREMELY PREJUDICIAL**

8 Inquiries into Dr. Gross’s federal indictment is extreme prejudicial and not at all relevant
9 because Defendant is not claiming Dr. Gross forged his assessment of Plaintiff in this case. NRS
10 48.035 stated that “evidence is not admissible if its probative value is substantially outweighed by the
11 danger of unfair prejudice, of confusion of the issues or of misleading the jury.” Prejudice, as defined
12 by the U.S. Supreme Court, is a state of mind “more frequently founded in passion than reason,” and
13 it “may exist with or without cause.” *Rosales-Lopez v. United States*, 451 U.S. 182, 197, 101 S. Ct.
14 1629, 1639, 68 L. Ed. 2d 22 (1981).

15 Here, Plaintiff does not imply that jury is incapable of thinking logically. Rather, Defendant
16 is attempting to use Dr. Gross’ unrelated indictment to discredit his findings in this case. Defendant
17 claims that Dr. Gross’ credibility is at issue because Defendant believe Dr. Gross’ findings are
18 unreasonable. However, Dr. Gross’s federal indictment is irrelevant when taken in conjunction with
19 the reasonableness of his finding because one involves personal integrity while the other involves
20 professional knowledge. On the other hand, if this line of inquiry is allowed in trial, Defendant will
21 color the jury’s perception of Dr. Gross to that untrustworthy individual in every aspect of life.
22 Therefore, because Dr. Gross’ federal indictment is highly prejudicial and not at all relevant, this
23 Court should grant Plaintiff’s motion.

24 **E. PAST DISTRICT COURT ORDER IS HELPFUL IN GUIDING THE DECISION IN THE INSTANT**
25 **MOTION**

26 This Court should rule on this motion similarly to the Court’s ruling on previous similar
27 motions. It is the most established principle of any court in the United State to follow the doctrine of
28 *stare decisis*. *Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008). Absent compelling
reason for so doing, the court should uphold a previous decision in similar subsequent cases. *Id.* See
Ex. 1. If one expert and/or attorney in a personal injury case was prohibited from mentioning the

1 pending litigation of Dr. Gross in *Bajrami v. Kurtz*, it is only reasonable for all subsequent cases to
2 follow except where there is a change in circumstances. Therefore, this Court should follow past
3 rulings on this issue and grant Plaintiff's motion.

4 **F. CONCLUSION**

5 Based on the foregoing, Plaintiff respectfully requests this Court GRANT this motion in limine
6 to exclude any evidence regarding the pending litigation in California against Dr. Jeffrey Gross, as it
7 is both irrelevant and unfairly prejudicial.

8 DATED this 6th day of March, 2020.

9 Respectfully submitted,

10 **MAIER GUTIERREZ & ASSOCIATES**

11 /s/ Stephen G. Clough _____

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13 Nevada Bar No. 9046

14 STEPHEN G. CLOUGH, ESQ.

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16 8816 Spanish Ridge Avenue

17 Las Vegas, Nevada 89148

18 *Attorneys for Plaintiff Lamont Compton*

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EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

ORDR

JOSEPH A. GUTIERREZ, ESQ.
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*Attorneys for Plaintiffs Tahir Bajrami
and Huiyon Neilan*

DISTRICT COURT

CLARK COUNTY, NEVADA

TAHIR BAJRAMI, an individual; HUIYON
NEILAN, an individual.

Plaintiff,

vs.

DUSTIN JAMES KURTZ, an individual;
FLETCHER JONES IMPORTS, a Nevada
entity; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-14-700646-C
Dept. No.: XXIV

**ORDER GRANTING PLAINTIFF'S
MOTIONS IN LIMINE NOS. 1 THROUGH
9 AND PLAINTIFF'S MOTION FOR
JUDICIAL NOTICE OF LIFE
EXPECTANCY TABLE**

Hearing Date: April 7, 2016

Hearing Time: 9:00 a.m.

This matter came on for hearing before the Court on April 7, 2016, at 9:00 a.m., on plaintiffs Tahir Bajrami and Huiyon Neilan (collectively "Plaintiffs") Motion to Strike Defendant Dustin James Kurtz's Answer and Motions in Limine Nos. 1 through 9 for the following pretrial motions: (i) Plaintiffs' Motion in Limine No. 1 to Limit the Testimony of Dr. Schifini; (ii) Plaintiffs' Motion in Limine No. 2 to Exclude Any Argument That This Case is "Attorney-Driven" or "Medical Buildup;" (iii) Plaintiffs' Motion in Limine No. 3 to Preclude Defendants From Raising a "Minor Impact" or "Low Impact" Defense; (iv) Plaintiffs' Motion in Limine No. 4 to Allow Voir Dire Questioning Regarding Employment With or Financial Interest in Any Insurance Company; (v)

Plaintiffs' Motion in Limine No. 5 to Exclude Any Testimony Regarding the Force of the Collision Not Being Sufficient to Cause Plaintiffs' Injuries; (vi) Plaintiffs' Motion in Limine No. 6 to Exclude Reference to the Absence of Medical Records Prior to the Accident; (vii) Plaintiffs' Motion in Limine No. 7 to Exclude Any Reference to Plaintiffs' Malingering or Secondary Gain Motivations; (viii) Plaintiffs' Motion in Limine No. 8 to Exclude References to Collateral Sources of Payment; (ix) Plaintiffs' Motion in Limine No. 9 to Exclude References to When or Why Plaintiffs Obtained Counsel; and Plaintiffs' Motion for Judicial Notice of the Life Expectancy Table.

Plaintiffs were represented by Joseph A. Gutierrez, Esq., of the law firm MAIER GUTIERREZ AYON. Defendants Dustin James Kurtz and Fletcher Jones Imports were represented by Janet C. Pancoast, Esq., of the law firm CISNEROS & MARIAS.

The Court, having reviewed and considered the pleadings and papers on file herein, having considered the argument of counsel present at the hearing, and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion in Limine No. 1 to Limit the Testimony of Dr. Joseph Schifini is **GRANTED** and hereby finds as follows:

1. Dr. Schifini, as an anesthesiologist, is not qualified to rebut the opinions of Dr. Jeffrey Gross, who is a neurosurgeon;
2. Dr. Schifini cannot testify as to whether Plaintiffs need surgery, however, he can testify about the amount of medical treatment he believes is related to the July 14, 2012 accident within the scope of his expertise;
3. Dr. Schifini is precluded from testifying about any pending litigation against Dr. Gross;
4. Defendants' experts cannot testify as to any of Plaintiffs' prior medical treatment unless they testify to a reasonable degree of medical probability that any prior treatment is a cause of Plaintiffs' symptoms from the July 14, 2012 accident.

5. Dr. Schifini is cautioned to refrain from any testimony that is gratuitous or editorializes an adversarial view, as stated on pages 7-8 of his July 13, 2015 expert reports.

6. Dr. Schifini cannot compare treatment between Plaintiffs and/or infer collusion as stated on page 8 of his July 14, 2015 report of plaintiff Huiyon Neilan.

7. Dr. Schifini cannot testify as to the state of mind of Plaintiffs and/or their treating physicians, as stated on page 8 of his July 14, 2015 report of plaintiff Huiyon Neilan.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion in Limine No. 2 to Exclude Any Argument That This Case is "Attorney-Driven" or "Medical Buildup", for good cause shown, as unopposed, and pursuant to a prior stipulation between the parties, is **GRANTED**;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion in Limine No. 3 to Preclude Defendants From Raising a "Minor Impact" or "Low Impact" Defense, for good cause shown, as unopposed, and pursuant to a prior stipulation between the parties, is **GRANTED**;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion in Limine No. 4 to Allow Voir Dire Questioning Regarding Employment With or Financial Interest in Any Insurance Company is **GRANTED**;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion in Limine No. 5 to Exclude Any Testimony Regarding the Force of the Collision Not Being Sufficient to Cause Plaintiffs' Injuries, for good cause shown, as unopposed, and pursuant to a prior stipulation between the parties, is **GRANTED**;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion in Limine No. 6 to Exclude Reference to the Absence of Medical Records Prior to the Accident is **GRANTED** and hereby finds as follows:

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2
3 1. Defendants are precluded from referencing Plaintiffs' car accidents or prior medical
4 treatment unless their experts can testify to a reasonable degree of medical probability
5 that any prior treatment is a cause of Plaintiffs' symptoms from the July 14, 2012
6 accident.

7 2. Defendants and their experts are precluded from referencing gaps in Plaintiffs' medical
8 treatment or missing medical records prior to and after the subject collision.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion in
10 Limine No. 7 to Exclude Any Reference to Plaintiffs' Malingering or Secondary Gain Motivations
11 is **GRANTED** and hereby finds as follows:

12 1. Defendants' experts are not psychologists or psychiatrists, therefore they are not
13 qualified to render opinions on malingering or secondary gain.

14 2. Defendants and their experts are precluded from arguing or testifying that Plaintiffs are
15 malingers, magnifying symptoms, or manifesting secondary gain motives.

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion in
17 Limine No. 8 to Exclude References to Collateral Sources of Payment is **GRANTED** and hereby
18 finds as follows:

19 1. Although evidence of medical liens may be relevant as to bias; any testimony about
20 medical liens is outweighed by the danger of unfair prejudice and/or confusion of the
21 issues.

22 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion in
23 Limine No. 9 to Exclude References to When or Why Plaintiffs Obtained Counsel, for good cause
24 shown, as unopposed, and pursuant to a prior stipulation between the parties, is **GRANTED**;

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for
26 Judicial Notice of the Life Expectancy Table, for good cause shown, as unopposed, and pursuant to
27 a prior stipulation between the parties, is **GRANTED**;
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the hearing on Plaintiffs' Motion to Strike Defendant Dustin James Kurtz's Answer is continued to May 12, 2016 at 9:00 a.m. Defendants' opposition brief is due on April 18, 2016, and Plaintiffs' reply brief is due on April 25, 2016.

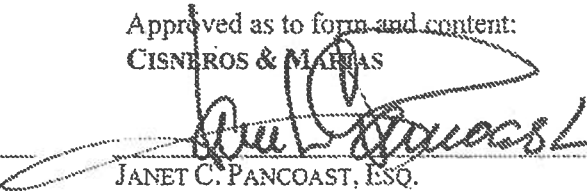
DATED this 21 day of April, 2016.


DISTRICT COURT JUDGE

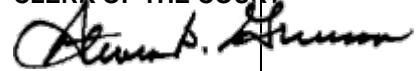
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Attorneys for Keolis Transit Services, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

LAMONT COMPTON, an individual,

Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC, a foreign
limited liability company; UNKNOWN DRIVER, an
individual; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-18-777320-C

Dept. No.: 23

**Keolis Transit Services, LLC's
Opposition to Motion in Limine 11**

Dr. Gross is the subject of pending litigation. That narrow fact is irrelevant. However evidence of Dr. Gross' actions that has come to light through that litigation is independently admissible. While Keolis might not be able to discuss the fact that Dr. Gross has been criminally indicted, Keolis can discuss the otherwise admissible evidence that litigation has generated.

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1 Dated this 24th day of March, 2020



4 /s/ Michael P. Lowry
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6 Nevada Bar No. 10666
7 ROBERT L. THOMPSON, ESQ.
8 Nevada Bar No. 9920
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Attorneys for Keolis Transit Services, LLC

9 **Memorandum of Points & Authorities**

10 **I. Dr. Gross' own words are admissible against him.**

11 Plaintiff has a problem. He wants Dr. Gross to testify for him at trial, but does not want
12 Dr. Gross to bring his baggage. A published federal decision summarizes the type of baggage
13 that Dr. Gross has.

14 Defendant is alleged to have received kickbacks in exchange for referrals of
15 patients needing spinal surgeries and other (usually invasive) procedures. The
16 Indictment alleges Defendant is associated with kickbacks totaling \$622,936. The
17 payments were allegedly disguised as payments pursuant to bogus contracts
18 entered into for the purposes of disguising and concealing the kickback payments.
The charges against Defendant involve kickbacks related to surgeries billed to
personal injury attorneys rather than insurers, as Defendant performed surgeries
contingent on a recovery through personal injury cases.¹

19 As part of its investigation, the government obtained a recorded conversations between
20 Dr. Gross and his co-conspirators. In one of those, he discussed giving false testimony during
21 depositions. The government's motion to admit that evidence was granted. "Defendant's
22 professed willingness to provide false testimony in unrelated expert depositions regarding the
23 kickback payments is probative as to his understanding that the payments made to him were
24 unlawful."² Dr. Gross also discussed his profit motive for handling these cases. He prefers "the
25 'orgy' of personal injury lien recovery to the 'anal sex without lubricant' of workers'
26

27 _____
28 ¹ *United States v. Gross*, 370 F. Supp. 3d 1139, 1143 (C.D. Cal. 2019).

² Exhibit 1 at 14:12-15.

1 compensation billing and eventual payment.”³ Dr. Gross’ opposition did not deny he spoke these
2 words, only that they were inadmissible against him.

3 **a. Dr. Gross’s actions are not collateral to this case.**

4 “Impeachment by use of extrinsic evidence is prohibited when collateral to the
5 proceedings. Collateral facts are by nature outside the controversy, or are not directly connected
6 with the principal matter or issue in dispute.”⁴ There are limits to this exclusion. For instance,
7 extrinsic evidence relevant to a witness’s perception, memory, communication, ability to
8 understand the oath to testify truthfully, felony convictions, and reputation evidence are not
9 collateral.⁵ Similarly, “extrinsic evidence relevant to prove a witness’s motive to testify in a
10 certain way, *i.e.*, bias, interest, corruption or prejudice, is never collateral to the controversy and
11 not subject to the limitations contained in NRS 50.085(3).”⁶

12 Dr. Gross himself has aptly described his motives to testify in certain ways and his
13 willingness to do so even if under oath. Simply put, his actions corrupted the medical system for
14 his own benefit. He put his own profits above his medical judgment and patient’s well-being.
15 Further, in this case Dr. Gross is expressly projecting the cost of Plaintiff’s future medical care.
16 Lying about the costs of certain treatments and getting a kickback for it is what got him in
17 criminally charged. Coincidentally, Dr. Gross has provided his services to Plaintiff in this case
18 on a lien with his lawyers, just as in his criminal matter.⁷

19 This evidence is material to Dr. Gross’ credibility and admissible for cross-examination
20 purposes.

21 **b. If collateral, Dr. Gross’ actions go to truthfulness.**

22 Even if a collateral issue, Dr. Gross’ actions are still admissible against him. “However,
23 use of specific instances of conduct-*i.e.*, an untruthful act not resulting in a conviction-and use of
24 prior inconsistent statements, raise issues under the so-called collateral-fact rule when coupled
25

26 ³ *Id.* at 15:10-12.

27 ⁴ *Lobato v. State*, 120 Nev. 512, 518, 96 P.3d 765, 770 (2004).

28 ⁵ *Id.*

⁶ *Id.* at 519, 96 P.3d at 770.

⁷ Exhibit 2.

1 with a specific contradiction.”⁸ For instance, in a murder trial a witness testified that she loved
2 being pregnant. The defense then sought to impeach that statement by questioning her about a
3 prior abortion. “Impeachment on a collateral matter is not allowed.”⁹ The district court was
4 correct to bar the questioning because “whether or not Stach once had an abortion is collateral to
5 the issue of who killed Damian.”¹⁰

6 Applied here, Dr. Gross himself stated his willingness to lie under oath in deposition if
7 needed. That unquestionably relates to his propensity for truthfulness.

8 **c. The evidence is not unfairly prejudicial.**

9 NRS 50.085(3) states extrinsic evidence “if relevant to truthfulness, be inquired into on
10 cross-examination of the witness ..., subject to the general limitations upon relevant evidence
11 and the limitations upon interrogation....” Presumably Plaintiff will argue the probative value of
12 Dr. Gross’ own statements is unfairly prejudicial. The mere fact that the evidence may be
13 adverse to Plaintiff is insufficient to exclude it. “[U]nfair prejudice’ ... is not to be equated with
14 testimony simply adverse to the opposing party. Virtually all evidence is prejudicial or it isn’t
15 material. The prejudice must be ‘unfair.’”¹¹

16 Applied here, Plaintiff intends to present Dr. Gross to testify at least 1) as to the
17 reasonableness of the medical billing in this case; and 2) the cost of the future care Dr. Gross
18 recommends. Dr. Gross’ preference for the orgy of profits from personal injury cases and his
19 own willingness to lie about the costs of medical treatment is highly probative as to the weight a
20 jury should give his testimony on the same topic. The evidence is prejudicial to Dr. Gross, but
21 not unfairly so especially when his own words are being used against him.

22 Plaintiff notes one prior district court granted a motion in 2016 concerning some other
23 litigation involving Dr. Gross. District judges are not bound by their own orders in a prior case,
24 let alone the orders of another judge in another case. Regardless, that order was filed in 2016,
25
26

27 ⁸ *Id.*

⁹ *Collman v. State*, 116 Nev. 687, 703, 7 P.3d 426, 436 (2000).

¹⁰ *Id.*

¹¹ *Dollar v. Long Mfg., N. C., Inc.*, 561 F.2d 613, 618 (5th Cir. 1977).

1 before Dr. Gross was indicted and before his statements admitting a willingness to lie were
2 revealed.

3 **II. If Dr. Gross testifies, his own words may be used against him.**

4 Keolis does not object to excluding the narrow fact that Dr. Gross has been criminally
5 charged. However, excluding the fact of the charge does not exclude the otherwise admissible
6 evidence disclosed in that case concerning Dr. Gross' willingness to lie for money and to protect
7 his personal injury orgy. Dr. Gross cannot escape his own words.

8 Dated this 24th day of March, 2020



11 /s/ Michael P. Lowry
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13 Nevada Bar No. 10666
14 ROBERT L. THOMPSON, ESQ.
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18 Attorneys for Keolis Transit Services, LLC
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, I certify that I am an employee of Wilson Elser Moskowitz Edelman
3 & Dicker LLP, and that on March 24, 2020, I served **Keolis Transit Services, LLC's Opposition**
4 **to Motion in Limine 11** as follows:

- 5 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
6 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- 7 ☒ via electronic means by operation of the Court's electronic filing system, upon
8 each party in this case who is registered as an electronic case filing user with the
9 Clerk;

10 Stephen G. Clough, Esq.
11 MAIER GUTIERREZ & ASSOCIATES
12 8816 Spanish Ridge Avenue
13 Las Vegas, Nevada 89148
14 Attorneys for Lamont Compton

15 BY: /s/ Michael Lowry
16 An Employee of



Exhibit 1

Exhibit 1

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11 Plaintiff,

12
13 v.

14 JEFFREY DAVID GROSS
15 Defendant.

Case No. 8:18-CR-00014 JLS

**ORDER GRANTING IN PART
MOTION TO CONTINUE (DOC. 93)**

**ORDER GRANTING IN PART
GOVERNMENT MOTION IN
LIMINE NO. 1 (DOC. 75)**

**ORDER GRANTING IN PART AND
RESERVING RULING IN PART AS
TO GOVERNMENT MOTION IN
LIMINE NO. 2 (DOC. 76)**

**ORDER GRANTING
GOVERNMENT MOTION IN
LIMINE NO. 3 (DOC. 77)**

1 This matter is before the Court on three Motions in Limine filed by the
2 Government and on Defendant's Motion to Continue Trial. These matters are fully
3 briefed and were heard on November 15, 2019. The Court permitted Defendant to file
4 supplemental materials related to a showing of diligence. Those materials were filed
5 *in camera* by Defendant on November 22, 2019, and include Defendant's Further
6 Submission in Support of Motion to Continue Trial, and the Large, Indeglia,
7 Mermelstein and Arendsen Declarations. The Court has reviewed these materials.

8 As set forth herein, the Court GRANTS IN PART Defendant's Motion to
9 Continue, GRANTS IN PART the Government's Motion in Limine No. 1, GRANTS
10 IN PART and reserves ruling in part as to the Government's Motion in Limine No. 2,
11 and GRANTS the Government's Motion in Limine No. 3.

12 **I. Background**

13 Defendant is a neurosurgeon who was indicted as part of the Drobot/Pacific
14 Hospital kickback conspiracy/fraud scheme. (*See generally* Doc. 1, Indictment.) The
15 scheme alleged in the Indictment, Defendant's alleged role in it, and the charges
16 against Defendant are known to the Court and the parties, and they are summarized in
17 the Court's Order Denying Defendant's Motion to Dismiss. *See United States v.*
18 *Gross*, 370 F.Supp.3d 1139, 1143 (C.D. Cal. 2019).

19 **II. Defendant's Motion for Continuance**

20 Defendant moves to continue the trial, currently set for February 25, 2020. He
21 does so based on the volume of discovery, mostly electronically stored information
22 ("ESI"), produced by the Government. As has been the Government's practice in a
23 number of cases related to the present one, the Government has produced its entire
24 file. In total, the parties estimate that over 6 million pages of documents and 1,600
25 audio recordings have been produced to Defendant. (*See* Doc. 96; Opp. at 3-4.) The
26 vast majority (over 80%) of the documents and the audio recordings were produced to
27
28

1 Defendant no later than November 23, 2018, over one year ago. (*Id.* at 6.) A
 2 comparatively small amount of discovery was produced in hard copy.¹

3 In determining whether to grant Defendant's Motion to Continue, the Court
 4 must consider four factors: (1) the defendant's "diligence in his efforts to ready his
 5 defense prior to the [trial] date"; (2) the usefulness of the continuance; (3) the extent
 6 to which granting the continuance inconveniences the court, the government, and its
 7 witnesses; and (4) prejudice to the defendant as a result of the failure to grant a
 8 continuance. *United States v. Flynt*, 756 F.2d 1352, 1358-59 (9th Cir.), *amended*, 764
 9 F.2d 675 (9th Cir. 1985). The weight attributed to any one factor may vary. *Id.*
 10 (citation omitted). "[T]he focus of [the] prejudice inquiry is the 'extent to which the
 11 aggrieved party's right to present his defense [may be] affected.'" *United States v.*
 12 *Kloehn*, 620 F.3d 1122, 1128 (9th Cir. 2010) (internal quotation marks and citation
 13 omitted).

14 The Court considers each factor.

15 **A. Diligence**

16 The defense team contends they have been diligently preparing for trial, but
 17 they have been hampered by the volume of data (most of which is irrelevant to the
 18 case against Defendant) and the many errors in data formatting. (Mot. at 6.) Below,
 19 the Court discusses these two considerations before turning to Defendant's
 20 supplemental filing.

21 **1. Volume of Discovery**

22 In this case, the Government has, by any standard, produced a massive amount
 23 of discovery. Therefore, any discussion of diligence must begin with the underlying
 24 premise, evident to all parties and to the Court, that a review of the discovery
 25

26 ¹ In August 2018, the Government advised defense counsel that it would make available in hard
 27 copy 27 boxes of IRS documents related to William Parker, and approximately 100 boxes of FBI
 28 documents related Paul Randall. (*See* Doc. 96, Opp. at Ex. E.) Without further identifying them, the
 defense states the Government has made available 200 boxes of hard copy documents. (*See* Doc.
 100, Reply at 12.) In its supplemental materials, the defense states that it manually reviewed 200
 boxes of documents. (Indeglia Decl. ¶ 9.)

1 produced does not require counsel to manually review 6 million pages of documents.
2 To be sure, “unaided by technology,” counsel simply cannot review multiple
3 “gigabytes or . . . terabytes of data.” Sean Broderick et al., Fed. Judicial Ctr.,
4 *Criminal e-Discovery: A Pocket Guide for Judges* 14 (2015) (hereinafter “*Criminal e-*
5 *Discovery*”). Therefore, a variety of electronic searches are generally used both to
6 identify relevant documents and to identify irrelevant and duplicate documents, which
7 can then be culled from the data to be reviewed. (*See* Doc. 100, Reply at 4 (referring
8 to “a variety of search strategies, including word searches, document searches, date
9 searches, sender/recipient searches, concept searches, predictive coding searches, and
10 negative searches”); Large Decl. ¶ 3 (stating that the declarant is experienced in
11 “processing incoming productions and searching for relevant documents and culling
12 nonresponsive documents”), *id.* ¶ 22 (stating that the declarant “remov[ed] swaths of
13 non-relevant files by conducting searches that would return non-pertinent documents
14 so that they could be culled”).)

15 The Government’s “open file” production of ESI is not unusual. Many courts
16 have considered open file productions or policies in the context of the prosecutor’s
17 duty to produce exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963).
18 Two Circuits have upheld an “open file” production in the face of challenge by the
19 accused that such a voluminous production without specific identification of
20 exculpatory evidence by the prosecution violates *Brady*. For instance, the Fifth
21 Circuit, considering a production that far exceeded the present one, concluded that the
22 government’s duty to disclose generally does not include a “duty to direct a defendant
23 to exculpatory evidence within a larger mass of disclosed evidence.” *United States v.*
24 *Skilling*, 554 F.3d 529, 576 (5th Cir. 2009) (considering “the government’s open file,
25 which consisted of several hundred million pages of documents”), *rev’d in part on*
26 *other grounds by Skilling v. United States*, 561 U.S. 358 (2010). The Sixth Circuit
27 held similarly. *See United States v. Warshak*, 631 F.3d 266, 297-98 (6th Cir. 2010)
28 (rejecting argument that “the government shrugged off its obligations under *Brady* by

1 simply handing over millions of pages of evidence and forcing the defense to find any
2 exculpatory information contained therein”).

3 Both *Skilling* and *Warshak* were quick to point out that the prosecution’s mere
4 production of an open file consisting of millions of pages does not necessarily *always*
5 meet its *Brady* obligations. In *Skilling*, the Court noted that the prosecution may not,
6 consistent with *Brady*, simply “drop . . . million[s of] pages on [a defendant’s]
7 doorstep.” *Skilling*, 554 F.3d at 577. In *Skilling*, the court viewed favorably the facts
8 that the open file production was “electronic and searchable,” was accompanied by
9 indices, and was accompanied by a “hot documents” file that identified documents the
10 prosecution viewed as particularly relevant to the defense. *Id.* The *Skilling* court also
11 discussed a number of actions in which the prosecution may not engage: Consistent
12 with *Brady*, the prosecution may not deliberately conceal exculpatory material in the
13 voluminous material, it may not “pad” its file with pointless information to increase
14 the defendant’s burden of reviewing the production, and it may not otherwise act in
15 bad faith in carrying out its duties. *Id.* The *Warshak* court applied *Skilling* and also
16 examined whether the government’s open file production raised any of these concerns.
17 *Warshak*, 631 F.3d at 297-98; *see also United States v. Rubin/Chambers, Dunhill Ins.*
18 *Servs.*, 825 F. Supp. 2d 451, 455 (S.D.N.Y. 2011) (“The cases in this area tend to
19 draw the same distinction: Absent prosecutorial misconduct—bad faith or deliberate
20 efforts to knowingly hide *Brady* material—the Government’s, use of ‘open file’
21 disclosures, even when the material disclosed is voluminous, does not run afoul of
22 *Brady*.”).

23 Here, there is no suggestion that the Government has engaged in any of the
24 types of activities that might taint its admittedly voluminous production. Moreover,
25 the Government’s production was accompanied by indices identifying the documents
26 by Bates-ranges (*see* Opp. Exs. A & F-H) and describing the audio recordings (*see*
27 Opp. Exs. A & K-L.) Moreover, in June 2018, the Government produced two binders
28 of material to Defendant, thus gathering and identifying its “key documents [expected

1 to] make up the core of the government’s case-in-chief at trial, including contracts,
 2 email messages, spreadsheets, highlights of covert recordings, summaries of
 3 payments, and key cooperating witness statements regarding defendant.” (Opp. at 4.)
 4 On this record, there is nothing intrinsically unsettling about the voluminous
 5 production by the Government.

6 Thus, in terms of the volume of the evidence, the key considerations are:
 7 (1) the production consists almost exclusively of ESI, the vast majority of which—
 8 over 80% of the document production and all of the covert recordings in the
 9 investigatory file— was produced more than one year ago; (2) the ESI production has
 10 been supplemented by indices; and (3) the Government produced (seventeen months
 11 ago) its “key documents” regarding its case-in-chief.

12 **2. Technical Issues**

13 Defendant also points to technical problems with the ESI produced by the
 14 Government. ESI productions will almost always require some processing by the
 15 recipient before the data can be analyzed: “ESI generally takes one of two possible
 16 forms: preprocessed (raw) or postprocessed. Some raw ESI is not ready to be
 17 reviewed electronically; it must be processed into a digital file that can be loaded into
 18 document-review software.” *Criminal e-Discovery* at 12 (footnote omitted). The
 19 need for raw data to be “processed”² is not unusual, but it “is expensive and time-
 20 consuming.” *Id.* at 8. Although the quality of ESI productions may vary, “[e]ven if
 21 the discovery is produced in an optimal way, defense counsel may still need expert
 22 assistance, such as litigation support personnel, paralegals, or database vendors, to
 23 convert e-discovery into a format they can use . . . and to decide what processing,
 24 software, and expertise is needed to assess the ESI.” *Id.* at 12 (footnote omitted).

25 As of the date of the hearing on this Motion, defense counsel had previously
 26 contacted the Government to attempt to resolve technical difficulties with the ESI

27
 28 ² “The term ‘processing’ usually involves formatting ESI so that the native file can be placed into a review platform where it can be viewed, culled, organized, searched, and analyzed.” *Id.* at 8 n.20.

1 production *only twice* since receiving the first production over seventeen months
 2 earlier. (*See* Opp. at 15; Large Decl. ¶¶ 16-17, 20-21 & 27-29.) Both times, the
 3 defense encountered difficulties because the hard drive lacked sufficient free space to
 4 operate efficiently. This difficulty occurred because the Government included space-
 5 hogging encryption software along with the ESI. However, the parties have since
 6 made arrangements that obviates the need to include the encryption software on the
 7 drive. (*See* Opp. at 5 n.3, *cf.* Large Decl. ¶¶ 16-17 & 27 (referring to “overstuffed”
 8 hard drives).) Thus, in each instance where the defense alerted the Government to
 9 technical difficulties, those difficulties were resolved cooperatively and with the
 10 Government’s assistance.

11 To the extent the defense has encountered other technical difficulties that it has
 12 not addressed with the Government,³ it cannot be heard to complain. The
 13 Supplemental Large Declaration (provided *in camera*) outlines “the steps [he] would
 14 immediately take in order to get the defense team on track for trial.” (Supp’l Large
 15 Decl. ¶ 37.) Thereafter, he provides a three-and-one-half-page list of those steps. (*Id.*
 16 ¶¶ 37(a)-(h).) This list merely underscores the existing lack of diligence in addressing
 17 the claimed technical deficiencies of the Government’s production.⁴ Moreover,
 18 although the requirement that the Government act in good faith means that it cannot
 19 take steps to make its ESI production more unwieldy, to the extent that the
 20 Government produces ESI from third parties in the same format it was received,⁵ its
 21 duty of production is discharged.

22 **3. Defendant’s Supplemental Materials**

23 At the hearing on this matter, the Court authorized Defendant to file, *in camera*,
 24 supplemental materials related to a showing of diligence. Those materials were filed
 25 on November 22, 2019, and the Court has reviewed them. To be sure, counsel have

26 ³ (*See, e.g.*, Reply at 3-4 (identifying ten categories of ESI produced by the Government that the
 27 defense contends are “not searchable”).)

28 ⁴ Beyond the general parameters expressed in this Order, the Court expresses no opinion regarding
 the appropriateness of counsel’s list of steps.

⁵ (*See* Opp. at 15 (“The government has the same production as defendant.”).)

1 spent hundreds of hours preparing a defense, but it is unclear how much of that time
2 has been spent related to review of the Government's production.

3 By far the most time working on the Government's ESI production has been by
4 William F. Large, who reports he has expended 436.9 hours.⁶ Although Attorney
5 Large is not counsel of record in this case, he serves as a specialized expert in ESI
6 management. His time in this case has been devoted exclusively to dealing with the
7 Government's production, but it still appears that comparatively little time has been
8 spent on actual review of the documents. (*See* Supp'l Large Decl. ¶ 34, (noting that
9 249.9 hours of 436.9 hours has been spent "processing, repairing and conducting
10 quality control procedures" regarding the Government's ESI or preparing the ESI for
11 searching rather than actual review of the ESI, while another 140 hours has been spent
12 "sampling, culling, reviewing and [searching]" the ESI).) Counsel of record Mark
13 Mermelstein and Mona Samir Amer have "spent a combined total of over 1,100
14 hours" on the defense, but no more than approximately ten per cent of that time has
15 been spent reviewing discovery. (*See* Mermelstein Decl. ¶ 3.) Counsel of record
16 Hamilton Arendsen, who has not maintained detailed billing records, states that he has
17 "spent hundreds of hours working on this case," but his description of that work
18 includes only the briefest of passing references to any review of discovery. (*See*
19 Arendsen Decl. ¶ 4 (including the phrase "reviewing and analyzing discovery and
20 conferring with co-counsel and other team members regarding problems with
21 searching discovery and related issues" with seven other phrases describing how he
22 has spent an estimated "hundreds of hours working on this case").)

23 To some extent, the fact that relatively little time has been spent reviewing the
24 discovery could be explained by a desire to first process the data into its most usable
25 form before analyzing it. However, that raises the same question as to why the
26 defense has only twice over the course of seventeen months sought the Government's
27

28 ⁶ The Court finds that the information summarized in this paragraph does not require *in camera* treatment.

1 assistance in resolving technical issues. On this point, criticism of the quality of the
2 Government's ESI does not in itself demonstrate diligence—it merely underscores the
3 need for diligence. In sum, while the defense has made a showing that document
4 review in this case is an enormous task, it has not shown diligence in undertaking that
5 task to date.

6 Therefore, the Court finds the defense has not shown diligence in preparing for
7 trial in this matter.

8 **B. Usefulness**

9 The defense has likewise done little to show that a continuance would serve its
10 purported purpose. Defendant contends that “[a] trial continuance in this case, if
11 granted, would serve an essential and not just useful purpose—allowing Dr. Gross and
12 his counsel to attempt a thorough review of the Government's voluminous discovery.”
13 (Mot. at 6.) The Supplemental Large Declaration states best how the defense could
14 put to use additional time. (*See* Supp'l Large Decl. ¶ 37(a)-(h).) However, because
15 this proposal was raised in an untimely manner, and set forth in an *in camera* filing,
16 the Government has had no opportunity to respond to this portion of the Declaration.
17 Moreover, this proposal does not set forth information that needed to be presented to
18 the Court *in camera*; in fact, it is the very type of information that may have been
19 helpful if discussed with the Government a year ago. Therefore, the Court does not
20 consider it. As it stands, the majority of the Government's production was completed
21 a year ago, and Defendant has failed to show that the trial continuance it seeks would
22 serve a useful purpose.

23 **C. Inconvenience to Others**

24 Defendant is incorrect in stating that there is little inconvenience to others. (*See*
25 Reply at 10 (“Third, the inconvenience to the Court and the parties is minimal. The
26 current trial date is several months away, allowing the Court ample time to fill its
27 calendar with other matters and giving the Government ample time to organize its
28 witnesses.”).) The Court has many cases set for trial in upcoming months, and those

1 trial dates are set well in advance. It cannot easily move another trial to February, nor
2 can it readily bump other trials set for later dates to make room for Defendant's case.
3 Nonetheless, the Court does not give significant weight to this factor; if the other
4 factors warrant it, inconvenience to the Court's calendar would not prevent a
5 continuance.

6 **D. Prejudice**

7 Any discussion of prejudice must begin with the fact that there is still
8 approximately three months before trial. It should also begin with the
9 acknowledgement that whether Defendant will be prejudiced by the denial of a
10 continuance is the most important factor to consider. *See Flynt*, 756 F.2d at 1359
11 (“[I]n order to obtain a reversal, appellant must show at a minimum that he has
12 suffered prejudice as a result of the denial of his request.”).

13 Defendant contends he will suffer prejudice in the form of “the inability to
14 review the evidence the Government has produced to Dr. Gross in satisfaction of its
15 discovery obligations.” (Mot. at 7.) The prejudice argument is unpersuasive in light
16 of Defendant's general lack of diligence in analyzing the production and, in particular,
17 his failure to attempt to address the alleged data errors. Thus, Defendant has not
18 shown any likelihood of prejudice as a result of the denial of a continuance.

19 **E. Ruling on Motion to Continue**

20 Thus, a weighing of the *Flynt* factors do not warrant a trial continuance.
21 Therefore, the Court DENIES the Motion to Continue Trial to September 8, 2020.

22 Nevertheless, the Court finds reason to grant a shorter continuance. The Court
23 has reviewed the *in camera* filing by the Government, and the Court notes, based
24 thereon, that the Government anticipates producing additional documents. Moreover,
25 the Court has taken into account the point raised by the defense in its *in camera* filing.
26 (See Def.'s Further Submission at 3:9-4:4 & 4:19-5:6 (*in camera*); Supp'l
27 Mermelstein Decl. ¶¶ 10-11 (*in camera*).) Combined, these facts suggest to the Court
28 that a continuance of a shorter duration than that sought by the defense is appropriate.

1 Therefore, the Court CONTINUES the trial in this matter to June 9, 2020, at 9:00
2 a.m.⁷

3 **III. Government's Motion in Limine No. 1**

4 In its first Motion in Limine, the Government moves to admit excerpts of seven
5 covert audio recordings of conversations that included Defendant Gross. Draft
6 transcripts of the audio recordings were attached. (Mot. Exs. A-O.) Defendant
7 opposes on three grounds: First, the recordings are of poor quality and therefore
8 unreliable and inadmissible; second, the recordings are impermissible Rule 404(b)
9 "other acts" evidence; and finally, the recordings are excludable under Rule 403 as
10 unfairly prejudicial. (Doc. 82, Opp. at 2.) Defendant also argues that he should be
11 permitted to offer additional portions of the recordings to provide context to those
12 portions offered by the Government. (*Id.* at 3.)

13 **A. Quality of Transcripts**

14 Although the draft transcripts of the covert recordings are less than optimal, the
15 Court has reviewed the updated version, consisting of the audio recordings themselves
16 with a rolling transcript on video. These were provided by the Government with the
17 Reply. The Court finds these recordings are of good quality. There are, on occasion,
18 overlapping conversations and unintelligible phrases, but the vast majority of the
19 communications are easily heard and understood. Therefore, the quality of the
20 recordings is not an impediment to their admission.

21 **B. Rule 404(b) Evidence**

22 Defendant next challenges the statements as impermissible "other acts"
23 evidence. Federal Rule of Evidence 404(b)(1) makes inadmissible evidence of
24 "crime[s], wrong[s], or other act[s]" to prove a person's character where such
25 evidence is offered to prove that, "on a particular occasion[, that] the person acted in
26 accordance with [his] character." *Id.* However, such "other acts" evidence is

27
28 ⁷ The Court does not believe a continuance of this length is warranted, but as noted above, the Court's current trial calendar does not permit a continuance to an earlier date.

1 admissible to prove “motive, opportunity, intent, preparation, plan, knowledge,
2 identity, the absence of mistake, or the lack of accident.” Fed. R. Evid. 404(b)(2).
3 Ninth Circuit case law applies a specific test regarding the admissibility of “other
4 acts” evidence. To establish that “other acts” are being offered for a permissible
5 purpose under Rule 404(b), “it is the government’s responsibility to show that the
6 evidence (1) proves a material element of the offense for which the defendant is now
7 charged, (2) if admitted to prove intent, is similar to the offense charged, (3) is based
8 on sufficient evidence, and (4) is not too remote in time.” *United States v. Ramirez-*
9 *Robles*, 386 F.3d 1234, 1242 (9th Cir. 2004).

10 Defendant identifies three categories of statements: 1) that Dr. Gross sought to
11 perform surgeries at other hospitals in exchange for some type of improper
12 remuneration; 2) that Dr. Gross sought or was paid alleged kickbacks for prescribing
13 medical creams and referring patients for epidural injections; and 3) that Dr. Gross
14 professed a willingness to provide false testimony in depositions with regarding the
15 nature of hospital fees. (Opp. at 8-9.)

16 All three categories are probative of Defendant’s intent. As to the first two,
17 evidence that Defendant was involved or sought to be involved in similar kickback
18 schemes—whether the kickback scheme involved surgical referrals to other hospitals,
19 referrals for injections to any facility, or for writing prescriptions for a particular
20 medicine—is probative on the issue of whether he had the requisite intent as to the
21 charged scheme. *See United States v. Ricard*, 922 F.3d 639, 653-54 (5th Cir. 2019)
22 (finding no abuse of discretion in admitting evidence of similar, uncharged kickback
23 scheme because evidence regarding the similar scheme was probative as to
24 defendant’s intent regarding the charged kickback scheme). The third category also
25 implicates Defendant’s intent, as his professed willingness to provide false testimony
26 in unrelated expert depositions regarding the kickback payments tends to show that he
27 understood that those payments were unlawful. (*See* Mot. at 8 n.5 (referencing
28

1 Defendant's attempt at maintaining "plausible deniability" regarding the nature of the
2 kickback payments).)

3 In applying the four-factor test described in *Flynt*, the first factor is met because
4 the evidence tends to prove a material point. The second factor is also met because
5 the first two categories of evidence are similar to the offense charged, and because the
6 third category of evidence is not only similar, it directly implicates a planned cover-up
7 of the offense charged. As to the third factor, the evidence is reliable, as it consists of
8 Defendant's own statements. The fourth factor is met because the evidence is from
9 the time period of the conspiracy charged in the Indictment.

10 Therefore, the Court concludes that the categories of evidence to which
11 Defendant objects are permissible under Federal Rule of Evidence 404(b)(2).

12 **C. Rule 403 Balancing**

13 Generally, Defendant challenges all the recordings (except for Defendant's
14 specific statements regarding his contractual arrangements with Pacific Hospital) as
15 inadmissible under Federal Rule of Evidence 403. (*See Opp.* at 11.) Rule 403
16 provides:

17 The court may exclude relevant evidence if its
18 probative value is substantially outweighed by a danger of
19 one or more of the following: unfair prejudice, confusing the
20 issues, misleading the jury, undue delay, wasting time, or
21 needlessly presenting cumulative evidence.

22 Fed. R. Evid. 403.

23 Defendant challenges four categories of evidence. First, Defendant challenges
24 the admissibility of recordings about payment arrangement with other medical
25 facilities, which the Government calls "Kickback Negotiation Evidence." (*Opp.* at 13-
26 14; *see generally* Doc. 89, Reply at 4-11.) Second, Defendant challenges recordings
27 regarding improper payments for referrals of patients who needed medical creams or
28 epidural injections. (*Opp.* at 13-14.) Third, Defendant challenges recordings in which

1 he discussed giving false testimony during depositions. (Opp. at 14.) Finally,
2 Defendant challenges the admissibility of the recording of a particularly crude sexual
3 analogy he makes to explain why he prefers payment arrangements involving personal
4 injury liens rather than workers' compensation billing. (Opp. at 13.)

5 The first three recordings do not require exclusion under Rule 403. The starting
6 point of the Rule 403 analysis is the probative value of the evidence sought to be
7 excluded. The Kickback Negotiation Evidence is probative on the issue of whether
8 Defendant had the requisite intent as to the charged scheme. (*See* Reply at 9 ("Indeed,
9 the recordings provide contemporaneous evidence of defendant's mental state at the
10 time of the charged offenses, and is [sic] therefore tremendously probative of key
11 issues at trial.").) The same is true as to the referrals for injections or for writing
12 prescriptions for a particular medicine. Moreover, Defendant's professed willingness
13 to provide false testimony in unrelated expert depositions regarding the kickback
14 payments is probative as to his understanding that the payments made to him were
15 unlawful. Thus, these recordings are directly relevant to a material issue; indeed, the
16 statements are particularly probative because they are statements made by Defendant
17 regarding his state of mind, his knowledge, and/or his intent during the relevant time
18 period.

19 If the starting point of the Rule 403 analysis is the probative value of the
20 evidence sought to be excluded, the mid-point of that analysis is the nature of the
21 balancing test that Rule 403 sets up. Rule 403's balancing test favors admission by
22 requiring that the probative value of the evidence be "substantially outweighed" by the
23 Rule 403 counterbalancing considerations: "unfair prejudice, confusing the issues,
24 misleading the jury, undue delay, wasting time, or needlessly presenting cumulative
25 evidence." The final part of the analysis is to apply this test.

26 Here, there is a danger of unfair prejudice in admitting evidence of the other
27 kickback schemes. The jury may be tempted to convict Defendant based on his
28 actions that are not charged in this case. Moreover, there is a danger that the jury may

1 be confused regarding what crimes are charged in this case. This evidence, as well as
2 Defendant's statements regarding false testimony, could lead the jury to conclude
3 "that the defendant is a bad man deserving of punishment." (Opp. at 14 (internal
4 quotation marks and citation omitted).) However, these are the types of risk that can
5 be ameliorated by proper jury instructions. Moreover, because Defendant's intent,
6 knowledge, and understanding are central to the charged offenses, the fact that much
7 trial time may be devoted to that issue does not make the presentation of this evidence
8 (or evidence presented by Defendant in response thereto) a waste of time. Therefore,
9 the first three recordings do not require exclusion under Rule 403.

10 The final recording requires exclusion. The recording in which Defendant
11 likens the "orgy" of personal injury lien recovery to the "anal sex without lubricant"
12 of workers' compensation billing and eventual payment is not probative of any
13 material issue. Instead, the recording establishes Defendant's desire to focus his
14 practice on personal injury cases rather than workers' compensation cases and the
15 reason behind this desire: Because personal injury cases are much more financially
16 lucrative; that is, personal injury cases are an "orgy" of profit. The trouble with this
17 analogy, apt as it may be, is that it is sexual in nature, it is unnecessarily crude, and it
18 would likely be highly offensive to some (if not all) of the jurors if admitted; thus, it is
19 highly inflammatory. Given its lack of probative value,⁸ this evidence presents a
20 wholly unnecessary distraction that carries with it a danger of unfair prejudice.
21 Accordingly, the Government may not offer those portions of Exhibit C which include
22 this reference.

23
24
25 ⁸ There is a possibility, however, that the probative nature of this evidence could increase if
26 Defendant puts at issue the reason for Defendant's focus on personal injury cases instead of workers'
27 compensation cases. (See Mot. at 17-18.) For instance, in Defendant's Opposition to the
28 Government's Motion in Limine No. 2, he describes how he made referrals to personal-injury
patients based on whether the hospital "accepted lien cases." (Doc. 83, Opp. to MIL No. 2 at 2.)
Under such circumstances, Defendant's profit-based preference for personal injury cases becomes
more relevant, and the Rule 403 balance may shift in a manner that causes the Court to reconsider its
initial ruling at trial.

D. Rule of Completeness

Finally, Defendant notes that he would seek to introduce other portions of certain recordings pursuant to Federal Rule of Evidence 106. (Opp. at 16-17.) Rule 106, the rule of completeness, provides:

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.

Fed. R. Evid. 106. Defendant’s request lacks specificity, and therefore is not properly before the Court.

Moreover, Defendant misunderstands the scope of Rule 106. He may not offer other portions of recordings to show that he had no intent to financially harm or physically harm his patients. (*See* Opp. at 17.) Such recordings are admissible only if the part of the recording identified by Defendant “in fairness ought to be considered at the same time” as the portion offered by the Government. Fed. R. Evid. 106. The issue of Defendant’s intent (or lack of intent) that his patients “suffer some detriment” such as “financial harm, physical harm, or some other negative consequence” is not an issue material to the charges against Defendant. (Opp. at 17; *see infra* section IV.) The rule of completeness is therefore unlikely to implicate such portions of the recordings.

Issues regarding hearsay will be resolved at trial, if necessary. (*Compare* Opp. at 17-18 (contending that Defendant’s statements offered to prove his then-existing state of mind would be admissible under Rule 803) *with* Reply at 12 (deferring response to Defendant’s argument in the absence of identification of portions of recordings to be offered by Defendant).)

The Court GRANTS IN PART AND DENIES IN PART the Government’s Motion in Limine No. 1. With the exception of that portion of Exhibit C described

1 above, the Government may offer as evidence at trial the recordings that are the
2 subject of its Motion in Limine No. 1.

3 **IV. Government's Motion in Limine No. 2**

4 The Government moves to preclude evidence or argument that Defendant did
5 not intend to harm his patients medically or financially, and that he instead intended
6 only to help his patients obtain medically necessary and financially appropriate
7 medical care. (Mot. at 1-2.) Specifically, the Government moves to preclude five
8 categories of evidence:

9 (1) defendant did not intend to harm his patients, medically or
10 financially; (2) defendant did not cause actual patient harm, medically or
11 financially; (3) defendant intended to help his patients, medically and
12 financially; (4) defendant performed medically-necessary spinal surgeries
13 and/or provided high quality surgeries; and (5) patients received surgeries
14 at a reasonable or discounted cost.

15 (*Id.* at 2.) Defendant opposes, arguing that the evidence is relevant to his intent to
16 defraud.

17 As the Court has already held, the intent element of honest services fraud does
18 not require any intent to cause tangible harm and may instead be met by proof that
19 Defendant referred his patient to Pacific Hospital, received a kickback pursuant to the
20 charged conspiracy in exchange for that referral, and failed to disclose that kickback
21 to the referred patient. *Gross*, 370 F. Supp. 3d at 1146-49 (recognizing the “intangible
22 rights” theory of fraud in private-sector honest services fraud). Thus, certain evidence
23 that the Government calls the “Good Doctor” evidence and the “Patient Harm”
24 evidence (*see* Doc. 91, Reply at 1-2) are not relevant to the issue of intent.

25 Importantly, however, the Government concedes that Defendant may offer
26 evidence relating to “(a) why he referred patients to Pacific Hospital; (b) whether he
27 understood that his financial arrangements with Pacific Hospital and affiliates were
28 intended to influence his referral of patients (i.e., constituted a kickback or bribe);

1 [and] (c) the materiality or importance of the financial arrangements to his patients.”
2 (*See* Reply 2.) Moreover, the Government concedes that because it intends to offer
3 evidence that Defendant referred patients to Pacific Hospital in furtherance of a
4 scheme to defraud, Defendant may then offer evidence that these referrals were made,
5 not in furtherance of the scheme to defraud, but for other reasons. (Reply at 7-8 n.4.)

6 With these parameters in mind, the Court GRANTS IN PART the
7 Government’s Motion in Limine No. 2, and ORDERS that Defendant may not
8 introduce evidence or argue that (1) he did not intend to harm his patients, medically
9 or financially; and (2) that he did not cause actual patient harm, medically or
10 financially. Categories (3)-(5) may be admissible, not as to Defendant’s intent, but to
11 counter the Government’s evidence that Defendant referred patients to Pacific
12 Hospital in furtherance of the scheme to defraud. (*See* Reply at 7-8 n.4.) Therefore,
13 the Court reserves ruling on Motion in Limine No. 2 as to evidence and argument
14 (3) related to defendant’s intent to help his patients, medically and financially;
15 (4) regarding the medical necessity and/or quality of the surgeries performed as a
16 result of the referrals; and (5) whether the referred patients received surgeries at a
17 reasonable or discounted cost.

18 **V. Government’s Motion in Limine No. 3**

19 In its third Motion in Limine, the Government moves to admit testimony from
20 cooperating medical professionals who entered into sham contracts that took the form
21 of “a medical office sublease, an option agreement, and an Outsourced Collection
22 Agreement.” (Mot. at 1.) In proving its case against Defendant, the Government
23 intends to offer evidence that Defendant entered into sham contracts that took similar
24 forms. (*See id.* at 3-4 (describing evidence regarding an office sublease, option
25 agreement and collection agreement).) The Government expects that Pacific Hospital
26 executives will testify that these contracts were used to disguise kickbacks made to
27 medical providers, including Defendant. (*Id.* at 5 & 10 (identifying Chief Financial
28 Officer James Canedo as a witness).) Therefore, the Government moves to admit the

1 testimony of three doctors that they entered into similar contracts with Pacific
2 Hospital as a way to conceal kickback payments. (*Id.* at 5-8 (identifying Dr. Jacob
3 Tauber (who would testify as to an office sublease), Dr. Philip Sobol (who would
4 testify as to an option contract), and Dr. Alan Ivar (who would testify as to a
5 collection agreement).) The Government contends that the cooperating doctors’
6 testimony is relevant to providing background to the charged conspiracy, to proving
7 elements of the charged conspiracy, to corroborate the expected testimony of former
8 Pacific Hospital CFO Canedo, and to establish that the contracts relating to Gross
9 were not legitimate contacts. (*Id.* at 8-12.)

10 Defendant contends the proffered testimony is not relevant because whether the
11 cooperating doctors entered into sham contracts with Pacific Hospital has no bearing
12 upon whether Defendant’s contracts were legitimate. (Doc. 84, Opp. at 2-3.)
13 Defendant focuses on the fact that the cooperating doctors cannot offer testimony
14 regarding his intent in entering into his contracts with Pacific Hospital. (Opp. at 3-4.)
15 Relatedly, Defendant argues that the Government has charged “a rimless hub-and-
16 spoke conspiracy”; that is, Defendant argues that he and the cooperating doctors are
17 actually charged with several separate conspiracies rather than a single overarching
18 conspiracy. (Opp. at 1 & 5-7.) Even if relevant, Defendant contends the probative
19 value of such evidence is substantially outweighed by considerations set forth in
20 Federal Rule of Evidence 403: unfair prejudice, confusion of the issues, waste of
21 time, and misleading to the jury. (Opp. at 7-9.)

22 **A. Relevance**

23 Fundamentally, Defendant’s arguments regarding relevance understate the
24 broad scope of the conspiracy charged in of Count One of the Indictment. (*See* Doc.
25 1, Indictment at 1-29.) The Indictment alleges a broad conspiracy that implicates
26 Defendant and many other medical providers. (*See* Indictment ¶¶ 23, 24(a)-(c), (h)-(i)
27 & (k).) Specifically, the Indictment against Defendant Gross describes the manner
28 and means of the conspiracy: Defendants charged in related cases, together with

1 unindicted conspirators and Pacific Hospital, paid “kickbacks to defendant GROSS
2 and other surgeons . . . in exchange for patient-related referrals . . . for spinal surgeries
3 . . . that would be billed to health care benefit programs or subject to personal injury
4 claims and/or liens.” (*Id.* ¶ 24(a).) The Indictment also charges that “[i]nfluenced by
5 the promise of kickbacks, Pacific Hospital Kickback Recipients, including defendant
6 GROSS, would cause patients . . . to have Kickback Tainted Surgeries at Pacific
7 Hospital and Affiliated Entities.” (*Id.* ¶ 24(b).) More pointedly, here, the means and
8 manner of the conspiracy also includes allegations that “[t]o conceal and disguise the
9 kickback payments . . . Pacific Hospital . . . would enter into arrangements with
10 Pacific Kickback Recipients, including defendant GROSS.” (*Id.* ¶ 24(h).) “[T]hese
11 arrangements would be reduced to written contracts, including, . . . lease and rental
12 agreements, option agreements, [and] collection agreements.” (*Id.*) “The written
13 contracts would not specify that one purpose for the agreements would be to [induce
14 referrals, or that] the compensation would be paid, entirely or in part . . . to cause
15 Pacific Kickback Recipients to refer Kickback Tainted Surgeries . . . to Pacific
16 Hospital.” (*Id.* ¶ 24(i).) Given the breadth of the conspiracy charge, the sham
17 contracts entered into by the cooperating doctors are highly relevant to the conspiracy
18 charge against Defendant Gross.

19 The Government represents that Pacific Hospital executives and the cooperating
20 doctors will testify regarding the existence of a kickback scheme and the manner in
21 which it was carried out. It is expected that both the executives and the doctors will
22 testify that they entered into written agreements that were meant to disguise the
23 kickbacks as legitimate payments. These written agreements are similar to those into
24 which Defendant entered with Pacific Hospital.

25 “Evidence is relevant if . . . it has any tendency to make a fact more or less
26 probable than it would be without the evidence; and . . . the fact is of consequence in
27 determining the action.” Fed. R. Evid. 401(a)-(b). Certainly evidence that Pacific
28 Hospital used written agreements to disguise kickback payments is relevant under this

1 definition. The form these written agreements took are likewise relevant, especially if
 2 they are similar to those into which Defendant entered. Defendant appears to concede
 3 the relevancy of these two points, at least to the extent it is introduced through the
 4 executives rather than the cooperating doctors.⁹ But the testimony of the cooperating
 5 doctors as to the true purpose of these agreements is also relevant. As described, it
 6 corroborates the executives' testimony, and such testimony is relevant under Rule
 7 401. *United States v. Hankey*, 203 F.3d 1160, 1171 (9th Cir. 2000) ("Evidence
 8 helpful in evaluating the credibility of a witness is of consequence to the
 9 determination of the action.").

10 Defendant relatedly contends that the broad conspiracy charged should be
 11 treated instead as multiple, narrower conspiracies because the charged conspiracy is "a
 12 rimless hub-and-spoke conspiracy." At the hearing, Defendant relied on two cases not
 13 cited in their Opposition: *Kotteakos v. United States*, 328 U.S. 750, 755 (1946) and
 14 *United States v. Wassner*, 141 F.R.D. 399 (S.D.N.Y. 1992). Neither of these cases
 15 deal with the relevance or admissibility of co-conspirator testimony.

16 In *Kotteakos*, the Supreme Court reversed the convictions of certain defendants
 17 because the district court failed to instruct the jury regarding multiple conspiracies.
 18 The Court discussed how, in a joint trial, to be convicted of a single conspiracy rather
 19 than multiple conspiracies, the defendants must share something in common that
 20 connects them other than the hub of the wheel of which they are all spokes. *Id.*
 21 Rather than just a single, central conspirator (the hub of the wheel) connecting all co-
 22 conspirators, something else must join the co-conspirators at the outside (or rim) of
 23 the wheel. *Id.* Otherwise, in a joint trial, the trial court must instruct regarding
 24 multiple conspiracies. *Id.* at 769-70. In *Kotteakos*, the only connection between
 25 supposed conspirators was that they obtained loans through fraudulent means that
 26 passed through a common broker. *Id.* at 754-55. The *Kotteakos* Court found this

27 ⁹ (See Opp. at 5 ("[I]f the Government wishes to introduce evidence of PHLB's agreements with
 28 other doctors, it can do so through the testimony of . . . executives who negotiated those agreements
 with those doctors . . .").)

1 connection insufficient to sustain the convictions of multiple defendant-borrowers
2 tried jointly on a single conspiracy. *Id.* at 755, 777. The Court remanded with the
3 caution that:

4 Here, . . . extraordinary precaution is required, not only that instructions
5 shall not mislead, but that they shall scrupulously safeguard each
6 defendant individually, as far as possible, from loss of identity in the
7 mass. Indeed, the instructions often become [a defendant's] principal
8 protection against unwarranted imputation of guilt from others' conduct.
9 *Id.* at 776-77.

10 The court in *Wassner* applied *Kotteakos*. 141 F.R.D. at 405. In *Wassner*, the
11 defendants were charged with a conspiracy that involved two previously convicted co-
12 conspirators. *Id.* at 400. These co-conspirators perpetrated a broad scheme whereby
13 they would generate false invoices that assisted many other individuals in committing
14 tax fraud by artificially inflating the expenses of their businesses. *Id.* at 400-01. The
15 defendants were charged with purchasing such false invoices. *Id.* at 404. The co-
16 conspirators refused to testify against the defendant, and the government therefore
17 sought to introduce evidence regarding the co-conspirators' similar actions with other
18 individuals. *Id.* at 404. The court noted the similarities between *Kotteakos* and the
19 case before it, referring to the hub-and-spoke nature of the charged scheme before
20 noting that the government's proffered evidence would be "proof of [only] the *other*
21 spokes in the wheel." *Id.* at 405. Therefore, the court declined to decide relevance
22 and instead held that such evidence, even if otherwise admissible, would be excluded
23 pursuant to Federal Rule of Evidence 403, presumably as unfairly prejudicial. *See id.*
24 at 405.

25 Neither of these cases are on point. The issue of separate conspiracies in
26 *Kotteakos* arose only because the defendants were jointly tried, which is not the case
27 here, and the issue arose only at the close of trial, not before or during the trial in
28 connection with an evidentiary ruling. And *Wassner* presented a unique situation

1 where testimony was unavailable due to the co-conspirators' refusal to testify, causing
2 the government to attempt to prove its case by relying exclusively on evidence of
3 other "spokes" from the same "hub," which was clearly highly prejudicial, suggesting
4 guilt-by-association, and therefore excludable under Rule 403. These cases do not
5 convince the Court that the cooperating doctors' testimony should be excluded as
6 irrelevant in this case.

7 Thus, as argued by the Government, the cooperating doctors' testimony is
8 relevant to providing background to the charged conspiracy, to proving elements of
9 the charged conspiracy, to corroborate the expected testimony of former Pacific
10 Hospital CFO Canedo, and to establish that the contracts relating to Gross were not
11 legitimate contacts.

12 **B. Rule 403 Balancing**

13 Defendant's Rule 403 challenge is also unpersuasive. Under Rule 403,

14 The court may exclude relevant evidence if its probative value is
15 substantially outweighed by a danger of one or more of the following:
16 unfair prejudice, confusing the issues, misleading the jury, undue delay,
17 wasting time, or needlessly presenting cumulative evidence.

18 Fed. R. Evid. 403. The proffered testimony is highly relevant, and the balancing test
19 requires that the Rule 403 issues "substantially outweigh[]" its probative value. Most
20 applicable here is the danger of unfair prejudice, which in this context is the danger
21 that a jury will find "guilt by association." (*See Opp.* at 8.) Relatedly, there is the
22 consideration that a jury could be confused by the cooperating doctors' conduct versus
23 Defendant's conduct. (*See id.* at 8.) None of these considerations substantially
24 outweigh the probative value of the cooperating doctors' testimony. This is not a case
25 where the Government seeks to rely solely on the guilt of others to prove its case
26 against Defendant, thus differentiating this case from *Wassner*, where exclusion under
27 Rule 403 was granted. Proper instructions to the jury will guard against unfair
28 prejudice and confusion of the issues.

1 The Court GRANTS the Government's Motion in Limine No. 3, and ORDERS
2 that the Government may present testimony from Dr. Jacob Tauber regarding his
3 medical office sublease, from Dr. Philip Sobol regarding his option agreement, and
4 from Dr. Alan Ivar regarding his Outsourced Collection Agreement.

5 **VI. Conclusion**

6 As set forth herein, the Court GRANTS IN PART Defendant's Motion to
7 Continue. The trial is CONTINUED to June 9, 2020 at 9:00 a.m., and the pretrial
8 status conference is CONTINUED to June 8, 2020 at 10:00 a.m. Defendant is
9 ORDERED to appear.

10 The Court GRANTS IN PART the Government's Motion in Limine No. 1. The
11 Government may offer as evidence at trial the recordings that are the subject of its
12 Motion in Limine No. 1 except that portion of Exhibit C described above. The
13 Motion is DENIED as to that portion of Exhibit C.

14 As set forth above, the Court GRANTS IN PART and reserves ruling in part as
15 to the Government's Motion in Limine No. 2.

16 The Court GRANTS the Government's Motion in Limine No. 3.

17 **IT IS SO ORDERED.**

18 **DATED:** December 20, 2019

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21 The Hon. Josephine L. Staton
22 United States District Judge
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Exhibit 2

Exhibit 2

J.D. Gross Medical Corporation dba SPINE, and Medical Strategy Management

LIEN FOR MEDICAL SERVICES

This Lien Agreement (the "Agreement") is entered into and effective as of the 23 of July, 2018 by and among SPINE and affiliates, a California & Nevada medical practice ("Provider");

Lamont Compton ("Patient-Client"); and Maier Gutierrez & Associates ("Attorney"). Provider, Patient-Client, and Attorney may each be referred to individually as a "Party" or collectively as the "Parties."

NOW, THEREFORE, the Parties recognize and acknowledge the good and valuable consideration set forth herein, and agree that they are each bound by the terms and conditions set forth below:

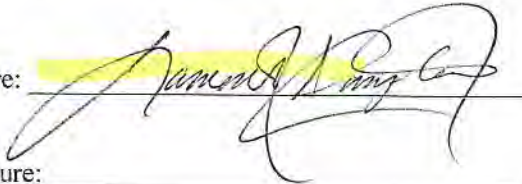
1. Patient-Client hereby expressly authorizes Provider to provide Attorney, at reasonable intervals upon Attorney's request with complete reports of Patient-Client's medical conditions, care, and cost of treatment. Provider agrees to promptly furnish these reports.
2. In order to assure that Provider will be paid for medical services rendered and to secure its interest in any judgment or settlement award, Attorney and Patient-Client expressly authorize the placement of a lien on all Proceeds (the "Medical Lien") in an amount equal to (a) the total amount invoiced by Provider for medical services rendered to Patient-Client as of date on which the Proceeds are received by Attorney or Patient-Client (the "Receipt Date").

"Proceeds" shall be defined the amount awarded to Patient-Client as a result of any judgment, settlement, insurance (including, but not limited to, "MED-PAY" advances), or any other payment made to Patient-Client in any personal injury matter ("Claim").

3. Attorney and Patient-Client agree that the Medical Lien shall attach on the Proceeds immediately upon receipt by Attorney or Patient-Client of any full or partial payment (the "Receipt Date"). Patient-Client hereby authorizes and directs Attorney to honor the Medical Lien.
4. Patient-Client understands that this Agreement is made solely for Provider's additional protection and in consideration for Provider granting Patient-Client an extended grace period to pay for medical services rendered. Patient-Client and Attorney acknowledge and agree that this Medical Lien in no way relieves Patient-Client of any obligation to pay Provider for medical services rendered. For the avoidance of doubt, Patient-Client shall be financially responsible for all medical services rendered and invoiced by Provider at its usual and customary rates to Attorney or Patient-Client, regardless of the outcome of any legal proceeding arising from the Claim and even if no complaint is ever filed on such Claim.
5. To the extent permitted under applicable law, Attorney and Patient-Client expressly agree that the rights and obligations set forth herein shall survive the defendant in any litigation, or any other party to this Agreement and survive and supersede any interpleader proceedings initiated by Attorney, Patient-Client, or any third party to this Agreement.
6. This Agreement is governed by, interpreted and construed by the laws of CA in which the services have been rendered, without regard to conflict of laws principles. This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which together shall constitute one and the same instrument.

In witness of these mutual obligations and responsibilities, this Agreement is entered into as of Effective Date set forth above.

Patient Signature: _____



Date: _____

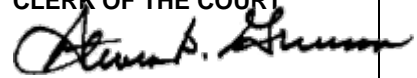
7-23-18

Attorney Signature: _____

Date: _____

1661 W. Horizon Ridge Pkwy, Suite 280 • Henderson, NV 89012
Tel: 844.477.7463 | Fax: 949.242.2575

App0060



RPLY

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Attorneys for Plaintiff Lamont Compton

DISTRICT COURT

CLARK COUNTY, NEVADA

LAMONT COMPTON, an individual,

Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC; a foreign
limited liability company; IRVING
TORREMORO, an individual; DOES I through
X; and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-18-777320-C

Dept. No.: XXIII

**PLAINTIFF'S REPLY IN SUPPORT OF
MOTION IN LIMINE NO. 11 TO
EXCLUDE ANY TESTIMONY RELATED
TO ANY PRIOR OR PENDING
LITIGATION AGAINST DR. GROSS**

Plaintiff LAMONT COMPTON ("Plaintiff"), by and through his attorneys, the law firm
MAIER GUTIERREZ & ASSOCIATES, hereby files this reply in support of motion in limine no. 11 to
exclude any testimony related to any prior or pending litigation against Dr. Gross.

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This reply is made and based upon the following Memorandum of Points and Authorities, the affidavits and exhibits attached hereto, the papers and pleadings on file in this matter, and any oral argument this Court may allow at the hearing on this matter.

DATED this 21st day of July, 2020.

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Stephen G. Clough

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

STEPHEN G. CLOUGH, ESQ.

Nevada Bar No. 10549

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Attorneys for Plaintiff Lamont Compton

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On November 4, 2017, Defendant Irving Torremoro (“Irving”) was the operator of a bus
4 owned by Defendant Keolis Transit Services, LLC (“Keolis”, collectively “Defendants”). Irving,
5 while driving the Keolis bus, was approaching the same on-ramp as Lamont, but from the opposite
6 direction. As Lamont was turning on to the on-ramp in order to enter the freeway, Irving, while still
7 driving the Keolis bus, failed to use due care on the roadway and attempted to turn at the same time
8 as Irving. Irving failed to yield to Lamont causing the automobile collision that injured Lamont and
9 caused Lamont to seek medical care.

10 **II. LEGAL ARGUMENT**

11 **a. DR. GROSS’ PENDING FEDERAL INDICTMENT FOR FRAUD IS UNRELATED TO THE**
12 **INSTANT MATTER AS IT DOES NOT AFFECT HIS CREDIBILITY AS PLAINTIFF’S**
13 **TREATING PHYSICIAN**

14 Dr. Gross’ unproven federal indictment has absolutely no relevance to his character in the
15 instant matter. “When the purpose of cross-examination is to expose bias, a trial court is not accorded
16 the usual breadth of discretion in determining whether to entertain the questioning.” *Jones v. State*,
17 108 Nev. 651, 659, 837 P.2d 1349, 1354 (1992). In this scenario, “[c]ounsel must be permitted to
18 elicit any facts which might color a witness's testimony. *Id.*

19 Specific conduct of a witness, for the purpose of attacking or supporting the witness’s
20 credibility, other than a criminal conviction, may not be proved by extrinsic evidence. NRS 50.085(3).
21 Similarly, “[i]mpeachment by use of extrinsic evidence is prohibited when collateral to the
22 proceedings.” *Lobato v. State*, 120 Nev. 512, 518, 96 P.3d 765, 770 (2004). While it is true that some
23 issues are always permitted under the “collateral fact” rule, these exceptions only deal with the
24 competency of a witness, the ability of a witness to understand the oath, prior convictions, and motives
25 that might skew a witness’ ability to testify truthfully. *Id.* at 518-19.

26 Here, as Defendant as stated, Dr. Gross is federally indicted for allegedly not disclosing the
27 fact he is receiving kickbacks from a hospital. This is not a formal conviction but an unproven claim
28 made by in his case that has not been heard on the merits yet.

1 The federal indictment has no relation to the instant case because there is no claim or allegation
2 that Dr. Gross is receiving kickbacks in this case for offering his service as a medical professional.
3 The distinct widens further when considering that Dr. Gross is federally indicted for the allegation of
4 *not closing a pertinent fact* rather than being untruthful. Defendant argues that Dr. Gross is biased or
5 not credible due to his federal indictment. However, that goes against the entire notion of being
6 “innocent until proven guilty.” The unrelated federal case proves nothing because the case does not
7 deal with his expertise in the area he is providing his opinion in the instant case and has not been
8 decided on the merits.

9 Dr. Gross is a properly disclosed and properly retained expert, his personal career is not on
10 trial in the instant case. Defendant should not be allowed to color the jury’s perception of Plaintiff’s
11 expert based on an unrelated case that has no bearing on Dr. Gross’ competency or credibility.

12 **b. INQUIRIES INTO DR. GROSS’ FEDERAL INDICTMENT IS EXTREMELY PREJUDICIAL**

13 Inquiries into Dr. Gross’s federal indictment is extreme prejudicial and not at all relevant
14 because Defendant is not claiming Dr. Gross forged his assessment of Plaintiff in this case. NRS
15 48.035 stated that “evidence is not admissible if its probative value is substantially outweighed by the
16 danger of unfair prejudice, of confusion of the issues or of misleading the jury.” Prejudice, as defined
17 by the U.S. Supreme Court, is a state of mind “more frequently founded in passion than reason,” and
18 it “may exist with or without cause.” *Rosales-Lopez v. United States*, 451 U.S. 182, 197, 101 S. Ct.
19 1629, 1639, 68 L. Ed. 2d 22 (1981).

20 Here, Plaintiff does not imply that jury is incapable of thinking logically. Rather, Defendant
21 is attempting to use Dr. Gross’ unrelated indictment to discredit his findings in this case. Defendant
22 claims that Dr. Gross’ credibility is at issue because Defendant believe Dr. Gross’ findings are
23 unreasonable. However, Dr. Gross’s federal indictment is irrelevant when taken in conjunction with
24 the reasonableness of his finding because one involves personal integrity while the other involves
25 professional knowledge. On the other hand, if this line of inquiry is allowed in trial, Defendant will
26 color the jury’s perception of Dr. Gross to that untrustworthy individual in every aspect of life.
27 Therefore, because Dr. Gross’ federal indictment is highly prejudicial and not at all relevant, this
28 Court should grant Plaintiff’s motion.

1 **c. PAST DISTRICT COURT ORDER IS HELPFUL IN GUIDING THE DECISION IN THE**
2 **INSTANT MOTION**

3 This Court should rule on this motion similarly to the Court's ruling on previous similar
4 motions. It is the most established principle of any court in the United State to follow the doctrine of
5 *stare decisis*. *Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008). Absent compelling
6 reason for so doing, the court should uphold a previous decision in similar subsequent cases. *Id.*

7 As stated in Ex. 1 of Plaintiff's motion, Dr. Schifini was prohibited from testifying about any
8 pending litigation against Dr. Gross. Similarly, the Court's decision on Dr. Gross's pending litigation
9 is reaffirmed in a later case in 2019. *See* Order on Plaintiff Jeanette Miranda's Pre-Trial Motions,
10 attached as Ex. 1 to the original motion. If one expert in a personal injury case was prohibited from
11 mentioning the pending litigation of Dr. Gross in *Bajrami v. Kurtz*, it is only reasonable for all
12 subsequent cases to follow except where there is a change in circumstances. Therefore, this Court
13 should follow past rulings on this issue and grant Plaintiff's motion.

14 **d. DR. GROSS' LEWD ANALOGY IS HIGHLY INFLAMMATORY AND NOT RELEVANT**

15 Dr. Gross' statements within the context of his federal indictment is highly inflammatory and
16 Defendant should not be permitted to introduce it into evidence. As this court is well aware, Dr.
17 Gross's statement in a prior case alludes his practice to an inappropriate and sexual conduct.
18 Additionally, Dr. Gross's statement is not definitive proof that Dr. Gross is willing to lie for money
19 and to protect his practice. This is still only an allegation and Dr. Gross' statements are not conclusive
20 proof of any alleged malfeasance. Due to the controversial and offensive nature of Dr. Gross's
21 statement and the fact that his statement does not go directly to his credibility or bias, this Court should
22 grant Plaintiff's motion to exclude prior testimony by Dr. Gross.

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1 **III. CONCLUSION**

2 Based on the foregoing reasons, Plaintiff respectfully request that this court grant the instant
3 motion in limine in its entirety.

4 DATED this 21st day of July, 2020.

5 Respectfully submitted,

6 **MAIER GUTIERREZ & ASSOCIATES**

7 /s/ Stephen G. Clough

8 JOSEPH A. GUTIERREZ, ESQ.

9 Nevada Bar No. 9046

STEPHEN G. CLOUGH, ESQ.

10 Nevada Bar No. 10549

8816 Spanish Ridge Avenue

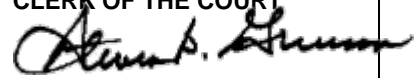
11 Las Vegas, Nevada 89148

Attorneys for Plaintiff Lamont Compton

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An Employee of MAIER GUTIERREZ & ASSOCIATES



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sgc@mgalaw.com

Attorneys for Plaintiff Lamont Compton

DISTRICT COURT
CLARK COUNTY, NEVADA

LAMONT COMPTON, an individual,
Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC; a foreign
limited liability company; IRVING
TORREMORO, an individual; DOES I through
X; and ROE CORPORATIONS I through X,
inclusive,
Defendants.

Case No.: A-18-777320-C
Dept. No.: XXIII

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

YOU AND EACH OF YOU will please take notice that an **ORDER ON PLAINTIFF'S**

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1 **PRE-TRIAL MOTIONS** was hereby entered on the 5th day of August, 2020. A copy of which is
2 attached hereto.

3 DATED this 5th day of August, 2020.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Stephen G. Clough

7 JOSEPH A. GUTIERREZ, ESQ.

8 Nevada Bar No. 9046

9 STEPHEN G. CLOUGH, ESQ.

10 Nevada Bar No. 10549

11 8816 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiff Lamont Compton*

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF ORDER** was electronically filed on the 5th day of August, 2020, and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

Michael P. Lowry, Esq.
WILSON ELSEr MOSKOWITZ EDELMAN & DICKER LLP
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Las Vegas, Nevada 89101
*Attorneys for Defendants Keolis Transit Services, LLC
and Irving Torremoro*

/s/ Natalie Vazquez
An Employee of MAIER GUTIERREZ & ASSOCIATES

ORDR

JOSEPH A. GUTIERREZ, ESQ.
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sgc@mgalaw.com

Attorneys for Plaintiff Lamont Compton

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAMONT COMPTON, an individual,

Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC; a foreign
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TORREMORO, an individual; DOES I through
X; and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-18-777320-C
Dept. No.: XXIII

**ORDER ON PLAINTIFF'S PRE-TRIAL
MOTIONS**

This matter came on for hearing before the district court on July 28, 2020, at 10:00 a.m., on the following motions filed by plaintiff Lamont Compton ("Mr. Compton" or "Plaintiff"): (1) Plaintiff's MIL No. 1 to allow voir dire questioning about employment with or a financial interest in any insurance company; (2) Plaintiff's MIL No. 2 to preclude any arguments, testimony, or references to Plaintiff's counsel working with Plaintiff's treating physicians; (3) Plaintiff's MIL No. 3 to preclude any arguments, testimony, or references to medical liens; (4) Plaintiff's MIL No. 4 to exclude argument that plaintiff had symptomatic conditions prior to collision; (5) Plaintiff's MIL No. 5 to preclude hypothetical conditions not based in evidence; (6) Plaintiff's MIL No. 6 to exclude plaintiff's

1 prior unrelated accidents, injuries, or medical conditions and to strike reference to subsequent motor
2 vehicle accident; (7) Plaintiff's MIL No. 7 to exclude the testimony of Dr. Christopher Chen, Ph.D.,
3 P.E.; (8) Plaintiff's MIL No. 8 to limit the testimony of Jeff Wang, M.D. to his area of specialty and
4 those opinions in his report and exclude testimony regarding alleged injuries after to the subject
5 collision; (9) Plaintiff's MIL No. 9 to limit the testimony of David Fish, M.D. to his area of specialty
6 and those opinions in his report; (10) Plaintiff's MIL No. 10 to allow testimony and evidence of Dr.
7 Wang's prior credibility admonitions in legal proceedings; (11) Plaintiff's MIL No. 11 to exclude any
8 testimony related to any prior or pending litigation against Dr. Gross; (12) Plaintiff's MIL No. 12 to
9 exclude untimely disclosed documents and witnesses by defendant; (13) Plaintiff's MIL No. 13 to
10 exclude unrelated medical treatment and conditions; (14) Motion to allow parties to present a jury
11 questionnaire prior to voir dire; and (15) Motion for spoliation of evidence based on losing video of
12 crash.

13 Stephen G. Clough, Esq. appeared on behalf of Mr. Compton. Michael P. Lowry, Esq.,
14 appeared on behalf of defendants, Keolis Transit Services, LLC ("Keolis"), and Irving Torremoro
15 ("Mr. Torremoro") (collectively "Defendants").

16 The district court, having heard the representations of those present at the hearing, and for
17 good cause appearing, makes the following rulings:

- 18 1. Plaintiff's MIL No. 1 to allow voir dire questioning about employment with or a
19 financial interest in any insurance company is hereby GRANTED. The parties are
20 limited to general questions to the jury venire. If additional questioning is required,
21 the court may determine the questioning to be outside the presence of the remaining
22 jury panel;
- 23 2. Plaintiff's MIL No. 2 to preclude any arguments, testimony, or references to Plaintiff's
24 counsel working with Plaintiff's treating physicians is hereby GRANTED. Neither
25 party may raise this issue before the jury regarding counsel or their firm working with
26 either side's experts or treating physicians;
- 27 3. Plaintiff's MIL No. 3 to preclude any arguments, testimony, or references to medical
28 liens is hereby DENIED. The parties may question the witnesses regarding liens and

1 the language of the liens;

2 4. Plaintiff's MIL No. 4 to exclude argument that plaintiff had symptomatic conditions
3 prior to collision is hereby GRANTED in part and DENIED in part. The motion is
4 DENIED in that the parties may not raise the issues regarding symptomatic conditions
5 which did not involve the injuries to the same body parts as are involved in this matter,
6 and GRANTED in that the parties may raise the issues regarding symptomatic
7 conditions which did involve the injuries to the same body parts as are involved in this
8 matter;

9 5. Plaintiff's MIL No. 5 to preclude hypothetical conditions not based in evidence is
10 hereby GRANTED. The parties may only ask hypothetical questions to experts and
11 treating physicians which involve facts and issues involved in this matter;

12 6. Plaintiff's MIL No. 6 to exclude plaintiff's prior unrelated accidents, injuries, or
13 medical conditions and to strike reference to subsequent motor vehicle accident is
14 hereby GRANTED in part and DENIED in part. The motion is DENIED in that the
15 parties may not raise the issues regarding the prior accidents, injuries or medical
16 conditions which did not involve the injuries to the same body parts as are involved in
17 this matter, and GRANTED in that the parties may raise the issues regarding prior
18 accidents, injuries or medical conditions which did involve the injuries to the same
19 body parts as are involved in this matter;

20 7. Plaintiff's MIL No. 7 to exclude the testimony of Dr. Christopher Chen, Ph.D., P.E. is
21 hereby under advisement;

22 8. Plaintiff's MIL No. 8 to limit the testimony of Jeff Wang, M.D. to his area of specialty
23 and those opinions in his report and exclude testimony regarding alleged injuries after
24 to the subject collision is hereby GRANTED in part and DENIED in part. The motion
25 is DENIED in that the questioning of Dr. Wang may not raise the issues regarding the
26 prior accidents, injuries, medical conditions or symptomatic conditions which did not
27 involve the injuries to the same body parts as are involved in this matter, and
28 GRANTED in that the questioning of Dr. Wang may raise the issues regarding the

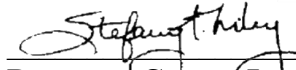
prior accidents, injuries, medical conditions or symptomatic conditions which did involve the injuries to the same body parts as are involved in this matter;

9. Plaintiff's MIL No. 9 to limit the testimony of David Fish, M.D. to his area of specialty and those opinions in his report is hereby GRANTED in part and DENIED in part. The motion is DENIED in that the questioning of Dr. Fish may not raise the issues regarding the prior accidents, injuries, medical conditions or symptomatic conditions which did not involve the injuries to the same body parts as are involved in this matter, and GRANTED in that the questioning of Dr. Fish may raise the issues regarding the prior accidents, injuries, medical conditions or symptomatic conditions which did involve the injuries to the same body parts as are involved in this matter;
10. Plaintiff's MIL No. 10 to allow testimony and evidence of Dr. Wang's prior credibility admonitions in legal proceedings is hereby under advisement;
11. Plaintiff's MIL No. 11 to exclude any testimony related to any prior or pending litigation against Dr. Gross is hereby GRANTED, as the court concludes the evidence Defendants' present is more prejudicial than probative.;
12. Plaintiff's MIL No. 12 to exclude untimely disclosed documents and witnesses by defendant is hereby GRANTED. The parties may not introduce any evidence which has not been properly disclosed pursuant to NRCP 16.1 in this matter;
13. Plaintiff's MIL No. 13 to exclude unrelated medical treatment and conditions is hereby GRANTED in part and DENIED in part. The motion is DENIED in that the parties may not raise issues regarding medical treatment and conditions which did not involve the injuries to the same body parts as are involved in this matter, and GRANTED in that the parties may raise issues regarding medical treatment and conditions which did involve the injuries to the same body parts as are involved in this matter;
14. Motion to allow parties to present a jury questionnaire prior to voir dire is hereby GRANTED. The parties are to meet to create upon a mutually agreeable jury questionnaire. If the parties are unable to agree upon a jury questionnaire, the parties may raise the remaining issues to the court;

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15. Motion for spoliation of evidence based on losing video of crash is hereby DENIED
as the court does not conclude that additional video existed and was then lost
IT IS SO ORDERED.

DATED this ____ day of _____, 2020.
Dated this 5th day of August, 2020


DISTRICT COURT JUDGE

DATED this 31st day of July, 2020.
A88 4B9 B733 EDFF
DATED this 31st day of July, 2020.
Stefany Miley
District Court Judge

Respectfully submitted,
Approved as to form and content:
MAIER GUTIERREZ & ASSOCIATES WILSON ELSE

<u>/s/ Stephen G. Clough</u> JOSEPH A. GUTIERREZ, ESQ. Nevada Bar No. 9046 STEPHEN G. CLOUGH, ESQ. Nevada Bar No. 10549 8816 Spanish Ridge Avenue Las Vegas, Nevada 89148 <i>Attorneys for Plaintiff Lamont Compton</i>	<u>/s/ Michael P. Lowry</u> MICHAEL P. LOWRY, ESQ. Nevada Bar No. 10666 ROBERT L. THOMPSON, ESQ. Nevada Bar No. 9920 6689 Las Vegas Boulevard South, Suite 200 Las Vegas, Nevada 89119 <i>Attorneys for Defendants Keolis Transit Services, LLC and Irving Torremoro</i>
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Lamont Compton, Plaintiff(s)

CASE NO: A-18-777320-C

7 vs.

DEPT. NO. Department 23

8 Keolis Transit Services LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/5/2020

15 MGA Docketing

docket@mgalaw.com

16 Michael Lowry

michael.lowry@wilsonelser.com

17 Efile LasVegas

efilelasvegas@wilsonelser.com

18 Kait Chavez

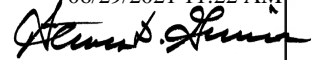
kait.chavez@wilsonelser.com

19 Agnes Wong

agnes.wong@wilsonelser.com

20 Robert Thompson

robert.thompson@wilsonelser.com


CLERK OF THE COURT

MOT
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
STEPHEN G. CLOUGH, ESQ.
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sgc@mgalaw.com
Attorneys for Plaintiff Lamont Compton

DISTRICT COURT
CLARK COUNTY, NEVADA

LAMONT COMPTON, an individual,

Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC; a foreign
limited liability company; IRVING
TORREMORO, an individual; DOES I through
X; and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-18-777320-C
Dept. No.: XXIV

**MOTION TO SUBSTITUTE PLAINTIFF'S
EXPERT AND TREATING PHYSICIAN
WITNESS JEFFREY GROSS, M.D., ON AN
EX PARTE ORDER SHORTENING TIME**

[HEARING REQUESTED]

Plaintiff Lamont Compton hereby files this motion to substitute plaintiff's expert and treating physician witness Jeffrey Gross, M.D., on an *ex parte* order shortening time. This motion is made and based on the following memorandum of points and authorities, the affidavit of Joseph A. Gutierrez, Esq., filed with this motion, the exhibits attached hereto, and any oral argument entertained at the hearing on the motion.

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1 motion hearing and trial will be required for the parties to be prepared for this substitution.

2 8. This affidavit is made in good faith and not for purposes of delay.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT.

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SUBSCRIBED and SWORN to before me
this 29 day of June, 2021.

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Donna L. Zamora
Notary Public for Said County and State

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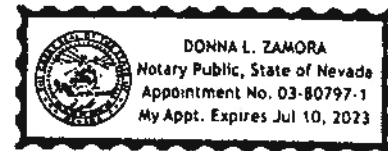
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Joseph A. Gutierrez
JOSEPH A. GUTIERREZ, ESQ.



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Dated this 29th day of June, 2021

Enzo Balbo

FD8 7E5 C173 9ACD
Erika Ballou
District Court Judge

/s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
STEPHEN G. CLOUGH, ESQ.
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8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Plaintiff Lamont Compton

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff moves to substitute plaintiff's treating and designated medical expert, Dr. Jeffery
4 Gross, with Dr. Raimundo Leon.

5 Dr. Gross pled guilty to conspiracy in the Central District of California for which he was
6 recently sentenced to 15 months in prison on May 21, 2021. *See* plea agreement attached as **Exhibit**
7 **1**; *see also* judgment and probation/commitment order, attached as **Exhibit 2**. In short, Dr. Gross pled
8 guilty to conspiracy to commit honest services mail and wire fraud with other health care professionals
9 for receiving "kickbacks" in various circumstances which centered on Pacific Hospital in Long Beach,
10 California. *See id.*

11 Plaintiff only learned of Dr. Gross' guilty plea on or about April 21, 2021, when it became
12 public knowledge, and similarly only learned of his sentence on May 24, 2021, after reading a news
13 article about the prison sentence. *See* affidavit of plaintiff's counsel, *supra*. Plaintiff and his counsel
14 had no knowledge of the status of the criminal case as it was under seal until in or about April 2021.
15 *See* criminal docket, attached as **Exhibit 3**. However, none of these circumstances affect plaintiff,
16 nor are any of the facts of the criminal charges in any way associated with plaintiff's treatment or Dr.
17 Gross' opinions in this case.

18 Although Dr. Gross' guilty plea and the underlying facts have absolutely no bearing on, or
19 relationship to, this matter whatsoever, plaintiff will be prejudiced if he is unable to substitute Dr.
20 Gross as his medical expert. Dr. Gross was plaintiff's treating physician and was designated as a
21 retained medical expert. *See* plaintiff's initial 16.1 disclosure, attached as **Exhibit 4**; *see also*
22 plaintiff's designation of expert witnesses, attached as **Exhibit 5**.

23 Dr. Gross prepared a life care plan for plaintiff and was going to be the only medical expert
24 witness for plaintiff to testify at trial about the need and cost for plaintiff's future medical care related
25 to his prior injuries in this case. As such, Dr. Gross is an integral part of the presentation of plaintiff's
26 medical treatment and to establish the need and cost for his future medical care at the time of trial.

27 Plaintiff will be severely prejudiced if defendants are permitted to introduce evidence of Dr.
28 Gross' misconduct and criminal guilty plea at trial. As Dr. Gross was convicted of a crime of

1 dishonesty, this evidence may wind up being be admissible. *See, e.g.*, NRS 50.095. Informing the
2 jury that Dr. Gross is a convicted felon harms his credibility and makes him appear dishonest, even
3 though his conviction is completely unrelated to this matter. This is highly prejudicial to plaintiff's
4 case. Moreover, as this matter is set on the September 7, 2021 trial stack, Dr. Gross' availability to
5 testify based on his surrender date will be in serious question.

6 A substitution of Dr. Leon will help ease this prejudice for plaintiff. Dr. Leon is a board
7 certified physical medicine and rehabilitation physician and he focuses on treatment for patients with
8 musculoskeletal, neuromuscular, and spine injuries or disorders, life care planning, and forensic
9 evaluation and record reviews. As such, he will be able to provide opinions similar to Dr. Gross'
10 opinions regarding causation, life care planning, past care and treatment, future care and treatment,
11 and defendants' expert reports.

12 Dr. Leon will not exceed the scope of Dr. Gross' opinions, such that he will not comment upon
13 other body parts, will not provide substantially new or unrelated testimony or opinions, and will not
14 increase plaintiff's damages. Plaintiff will make Dr. Leon available for a deposition and he will be
15 available at trial for cross-examination about his opinions and plaintiff's treatment.

16 Replacing Dr. Gross with Dr. Leon is permissible under both NRCP 37(c)(1)'s "substantially
17 justified or harmless" standard, and NRCP 16(b)(4)'s "good cause" standard. *See e.g. In re Northrop*
18 *Grumman Corp. ERISA Litig.*, No. CV 06-06213-AB (JCX), 2016 U.S. Dist. LEXIS 185126, at *5-6
19 (C.D. Cal. Apr. 7, 2016). Although plaintiff makes this motion after the deadlines to disclose treating
20 physician witnesses and experts have already passed, NRCP 16(b)(4) allows the Court to modify the
21 discovery scheduling order for "good cause." Similarly, even if a party does not timely supplement
22 their NRCP 16.1 disclosures pursuant to NRCP 26(e), NRCP 37(c)(1) allows for late supplementation
23 when it is "substantially justified or is harmless." Under either theory, substitution of Dr. Gross is
24 proper, necessary for plaintiff to support his case, and upholds Nevada's long standing and deep-
25 rooted policy preference to decide cases on the merits. *See, e.g., Huckabay Props. v. NC Auto Parts,*
26 *Ltd. Liab. Co.*, 130 Nev. 196, 204 (2014).

27 Here, there is "good cause" to allow plaintiff to substitute Dr. Leon for Dr. Gross because Dr.
28 Gross is now a convicted felon, and his credibility has been harmed, at no fault of plaintiff. Dr. Gross

1 will also likely be unavailable for trial as he will be incarcerated for 15 months. Similarly, this
2 substitution is “substantially justified” because plaintiff was unaware, until very recently, that Dr.
3 Gross pled guilty to conspiracy and was sentenced to 15 months in prison. Had plaintiff or his counsel
4 known that Dr. Gross would plead guilty or be sentenced, plaintiff would not have retained or
5 designated Dr. Gross as a witness in this case. *See* affidavit of plaintiff’s counsel, *supra*.

6 Not only will Dr. Gross likely be unavailable for trial, but allowing testimony from an expert
7 that pled guilty to a crime of dishonesty will irreparably prejudice plaintiff even though Dr. Gross’
8 misconduct was completely unrelated to plaintiff and his medical treatment. Similarly, this
9 substitution is “harmless” because Dr. Leon will not exceed the scope of Dr. Gross’ opinions.

10 Moreover, the defense will have the opportunity to depose Dr. Leon to ensure that any
11 outstanding questions are answered in advance of trial. As such, defendants will not be surprised or
12 ambushed at trial with any new opinions. In fact, substituting Dr. Leon will also be beneficial for
13 defendants as they will be able to cross-examine him at trial, as opposed to merely submitting Dr.
14 Gross’ opinions and treatment without any opportunity for defendants to question it. As such,
15 substitution of Dr. Leon for Dr. Gross is permissible and will assist the jury in reaching the merits of
16 this matter.

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

18 This matter stems from the significant injuries sustained by plaintiff as a result of a motor
19 vehicle collision that occurred on November 4, 2017. After the collision, plaintiff treated with Dr.
20 Gross, who is a neurosurgeon focusing his practice on neck and back issues, as well as brain and head
21 injuries.

22 Plaintiff first presented to Dr. Gross on July 23, 2018, with complaints to his neck, back, left
23 scapular and deltoid into left forearm and into his left hand with numbness and buzzing, along with
24 anxiety, cognitive and vision issues, vertigo, memory complaints, headaches, and trouble sleeping.
25 *See* medical record dated July 23, 2018, attached as **Exhibit 6**.

26 On February 15, 2019, Dr. Gross provided a medical life care plan for plaintiff that indicates
27 plaintiff will require additional physical therapy, medications, medical appointments, and cervical and
28 lumbar facet rhizotomies to control his pain. *See* life care plan, attached as **Exhibit 7**.

1 Defendants did not depose Dr. Gross in this case. Discovery is now closed and this matter is
2 currently set for trial to begin on a five week trial stack starting on September 7, 2021.

3 Plaintiff now moves to substitute plaintiff's expert and treating physician witness Jeffrey
4 Gross, M.D., based on the recent events surrounding the unsealing of the plea deal and sentencing.

5 **III. LEGAL AUTHORITY**

6 Courts typically employ one or both of the following approaches in instances where a party
7 moves to substitute an expert. A California Court explained:

8 District courts in the Ninth Circuit generally have approached
9 motions to substitute experts after the deadline in one of two ways.
10 Either they construe the motion as a motion to amend the court's
11 scheduling order under Rule 16(b) of the Federal Rules of Civil
12 Procedure or they construe the motion as an untimely designation
13 under Rule 26(a) of the Federal Rules of Civil Procedure and
14 determine whether to sanction the untimely disclosure under Rule
15 37(c) of the Federal Rules of Civil Procedure. *Compare Fidelity
Nat'l Finc., Inc. v. Nat'l Union Fire Ins. Co.*, 308 F.R.D 649, 652
(S.D. Cal. 2015) and *Park v. CAS Enterprises, Inc.*, No. 08-cv-
00385, 2009 U.S. Dist. LEXIS 108160, 2009 WL 4057888, at *2-3
(S.D. Cal. Nov. 18, 2009) with *Nijjar v. Gen. Star Indem. Co.*, No.
12-cv-08148, 2014 U.S. Dist. LEXIS 8722, 2014 WL 271630, at *2
(C.D. Cal. Jan. 2014).

16 *In re Northrop Grumman Corp. ERISA Litig.*, No. CV 06-06213-AB (JCx), 2016 U.S. Dist. LEXIS
17 185126, at *5-6 (C.D. Cal. Apr. 7, 2016).

18 Plaintiff should be permitted to replace Dr. Gross with Dr. Leon pursuant to NRCP 37(c)(1)'s
19 "substantially justified" or "harmless" standard. Similarly, plaintiff should be permitted to substitute
20 Dr. Gross under NRCP 16(b)(4)'s "good cause" standard.

21 First, NRCP 37(c)(1) provides, in pertinent part, "If a party fails to provide information or
22 identify a witness as required by Rule 16.1(a)(1) ... or 26(e), the party is not allowed to use that
23 information or witness to supply evidence on a motion, at a hearing, or at a trial, **unless the failure**
24 **was substantially justified or is harmless.**" *Id.* (emphasis added).

25 Here, replacing Dr. Gross at this stage of the matter is substantially justified and is completely
26 harmless to defendants. This substitution is substantially justified because plaintiff just recently
27 learned that Dr. Gross pled guilty and was sentenced to prison, and that Dr. Gross will likely be
28 unavailable for trial.

1 More importantly, substitution is substantially justified because it will be highly prejudicial to
2 plaintiff's case if Dr. Gross, a convicted felon, is required to testify. Such a conviction paints Dr.
3 Gross in a dishonest and untrustworthy light, and thereby prejudices plaintiff's case even though the
4 issues surrounding Dr. Gross are wholly irrelevant to plaintiff's injuries and treatment. Moreover, the
5 substitution is harmless because Dr. Leon's testimony will not exceed the scope of Dr. Gross' opinions
6 and testimony, and plaintiff's future cost estimates will not increase. In addition, if trial is continued,
7 defendants will have time to depose Dr. Leon and obtain rebuttal expert opinions. As such, defendants
8 will not be ambushed by any new or changed opinions at trial. Moreover, it will be beneficial to both
9 plaintiff and defendants if Dr. Gross is substituted because defendants will have the opportunity to
10 cross-examine Dr. Leon at trial. Further, substituting experts eliminates prejudice to plaintiff before
11 the jury regarding the unrelated misconduct of Dr. Gross.

12 Second, NRCP 16(B)(4) provides that "A schedul[ing order] may be modified by the court for
13 good cause." *Id.* "Discovery matters are within the district court's sound discretion," and the Supreme
14 Court "will not disturb a district court's ruling regarding discovery unless the court has clearly abused
15 its discretion." *Club Vista Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 224, 228 (2012).

16 Here, good cause exists to modify the scheduling order and allow plaintiff to designate Dr.
17 Leon as his medical expert. In addition to the reasons set forth above, such highly prejudicial
18 testimony from Dr. Gross would only serve to unfairly and irreparably harm plaintiff's case. Even
19 though Dr. Gross' conviction has no relation to plaintiff's case, the defendants will likely try to
20 introduce this information solely to prejudice plaintiff's recovery even though it is completely
21 irrelevant. A jury will be unable to ignore this bias when making their determinations at trial, which
22 is unduly prejudicial to plaintiff and impedes the notion that a jury should be fair and impartial.
23 Accordingly, substitution should be permitted under either NRCP 37 or NRCP 16.

24 **IV. LEGAL ARGUMENT**

25 Various case law has addressed similar circumstances. However, as discussed above, courts
26 across the country and even courts in the Ninth Circuit, employ different approaches to substituting
27 experts. Most courts employ the jurisdiction's applicable civil rule of procedure 16 and/or 37, as
28 plaintiff has done here. As such, plaintiff provides the following instructive cases with regard to

1 substituting Dr. Leon for Dr. Gross.

2 In *Lincoln Nat'l Life Ins. Co. v. Transamerica Fin. Life Ins. Co.*, the expert was convicted of
3 embezzlement and sentenced to 15 months in prison, similar to Dr. Gross here. *Lincoln Nat'l Life Ins.*
4 *Co. v. Transamerica Fin. Life Ins. Co.*, No. 1:04-CV-396, 2010 U.S. Dist. LEXIS 103744, at *1 (N.D.
5 Ind. Sep. 30, 2010). Although not a Nevada case, *Lincoln* is helpful and instructive in deciding this
6 matter. In that case, the court ordered the parties to reach an agreement about substituting a new
7 expert but the parties were unable to agree. *Id.* at *5. The court relied upon FRCP 16(b)'s good cause
8 standard to determine that substitution of the original expert was proper after the deadline to disclose
9 experts. *Id.* The court explained that good cause means "despite that party's diligence, the time table
10 could not reasonably have been met." *Id.* at *6. The Court found that good cause existed because the
11 expert would be incarcerated and unavailable for trial. *Id.* at *8. This is precisely the good cause that
12 exists here.

13 The court allowed substitution of the experts but provided specific guidelines in doing so. *Id.*
14 at *10. Specifically, the court explained that the new expert may not "escape from the concessions or
15 admissions of the previous expert" but must confine their testimony "to the subject matter and theories
16 already espoused by the former expert." *Id.* at *6. However, the court clarified that the substituted
17 expert is not "required to simply adopt the prior expert's conclusions verbatim," but "should have the
18 opportunity to express his opinions in his own language after reviewing the evidence" and performing
19 his or her own tests if necessary. *Id.* at *8. The court also ordered that the replacement expert must
20 also use the same damages calculation based on the factors set forth by the original expert. *Id.* at *10-
21 11. The court also required that the new expert have a similar area of expertise. *Id.*

22 The *Lincoln* guidance is useful here. Such a ruling will ensure fairness to each party and allow
23 the jury to reach the merits of this matter without either side suffering severe prejudice. Dr. Leon
24 would express his own independent opinions after reviewing the evidence, but will confine the scope
25 of his opinions to the same scope for which Dr. Gross was originally retained. Dr. Leon will ensure
26 that his opinions and testimony are confined to the subject matter and theories previously provided by
27 Dr. Gross, and will not provide any opinions that are outside the scope of Dr. Gross' opinions.
28 Moreover, Dr. Leon can substitute for Dr. Gross, because he can opine on largely the same areas of

1 expertise as Dr. Gross. Dr. Leon is a board certified physical medicine and rehabilitation physician
2 and he focuses on treatment for patients with musculoskeletal, neuromuscular, and spine injuries or
3 disorders. Dr. Leon treats patients with musculoskeletal, neuromuscular, and spine injuries or
4 disorders; conducts life care planning; and performs forensic evaluation and record reviews. As such,
5 he will be able to testify to the same scope of Dr. Gross' opinions regarding causation, defendants'
6 expert reports, plaintiff's past and future treatment, and plaintiff's life care plan. Moreover, similar
7 to *Lincoln*, Dr. Leon will use the same damages calculation methodology and will not increase
8 plaintiff's future damages.

9 Next, in *Stone Brewing Co., LLC v. MillerCoors LLC*, the court explained that courts use
10 Rule 16(b)'s "good cause" standard when a party moves to designate a new expert after the deadline
11 has passed. *See* No. 3:18-cv-00331-BEN-LL, 2021 U.S. Dist. LEXIS 66859, at *3-4 (S.D. Cal. Apr.
12 5, 2021). The court in *Stone Brewing* explained that the inquiry "primarily considers the diligence
13 of the party seeking the amendment" and that **"the focus of the inquiry is upon the moving party's**
14 **reasons for seeking the modification."** *Id.* (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
15 604, 609 (9th Cir. 1992) (emphasis added)). In *Stone Brewing*, the moving party indicated that their
16 originally designated expert was unable to testify due to COVID-19 concerns. *Id.* at *3. However,
17 the moving party made clear that the new expert's testimony would be based on the original expert's
18 opinions. *Id.* The court reasoned that the moving party was diligent and had good cause to request
19 substitution because their belief that their expert would be available to testify at trial was based upon
20 the party's knowledge at that time as COVID was an ever-changing situation. *Id.* at *5. Similarly,
21 the court reasoned that there was no prejudice to the non-moving party because the new expert's
22 testimony was rooted in the original expert's opinions, the new expert can be cross examined at trial,
23 and the new expert's supplemental opinions were based on new evidence. *Id.* at *7. The court also
24 allowed the non-moving party to depose the new expert and provide any necessary discovery at the
25 moving party's expense to ease any prejudice that the non-moving party may suffer. *Id.* at *7-8.

26 The *Stone Brewing* guidance is also useful here. Plaintiff is diligently moving to substitute
27 Dr. Leon for Dr. Gross. Plaintiff and his counsel were unaware that Dr. Gross had pled guilty and
28 been sentenced until just recently. Similar to the moving party in *Stone Brewing*, at the time of

1 designation, and throughout this matter, plaintiff was not aware that Dr. Gross was going to be
2 convicted or pled guilty to a crime of dishonesty, nor that he was facing jail time and would likely be
3 unavailable for trial. Plaintiff's counsel was unaware of what was happening in Dr. Gross' criminal
4 case as it was under seal. Once plaintiff learned that Dr. Gross pled guilty and that Dr. Gross was
5 sentenced to 15 months in prison, plaintiff's counsel conferred with defense counsel on how to address
6 this issue in light of the pending trial date, and both sides agreed to continue trial so this issue could
7 be resolved by the Court. As such, plaintiff has timely moved for substitution.

8 Moreover, as the *Stone Brewing* court found, the defendants will not be prejudiced by
9 substitution because Dr. Leon's testimony will be based upon Dr. Gross' treatment and opinions, and
10 Dr. Leon can be cross-examined at trial. Moreover, any supplemental opinions will stem from the
11 scope of Dr. Gross' opinions as a retained medical expert in this case. However, should the Court
12 find that any prejudice might exist, plaintiff requests that, similar to the *Stone Brewing* court, this
13 prejudice be cured by allowing a deposition of Dr. Leon and subsequent discovery requested by
14 defendants related to this substitution be permitted.

15 Finally, in *Rebel Communs., LLC v. Virgin Valley Water Dist.*, the court allowed substitution
16 of an expert where the original expert became unavailable. See No. 2:10-CV-0513-LRH-GWF, 2015
17 U.S. Dist. LEXIS 123197, at *2 (D. Nev. Sep. 12, 2015). Although not perfectly aligned with the
18 facts of this matter, *Rebel* is a Nevada case.

19 In *Rebel*, the moving party timely disclosed its expert. *Id.* However, after disclosing the
20 expert, the expert left his firm and became unavailable for trial. *Id.* at *6. The moving party informed
21 the other parties that it intended to substitute the expert with another expert from the same firm who
22 would testify from the same report as the original expert, but never formally disclosed the new expert.
23 *Id.* at *3. The court granted the moving party's motion to substitute their expert so long as he was
24 properly disclosed because the other parties were already aware of the opinions he would testify to.
25 *Id.* at *5. The court further reasoned that the timeliness of disclosing the new expert was inapplicable
26 because the moving party had disclosed the original expert in a timely fashion. *Id.* at *6. The court
27 cited to *Green v. City and County of San Francisco*, No. 10-cv-2649, 2015 U.S. Dist. LEXIS 46102,
28 2015 WL 1738025, at *4 (N.D. Cal. Apr. 8, 2015) and *Nat'l R.R. Passenger Cory. v. ExpressTrak*,

1 LLC, No. 02-1773, 2006 U.S. Dist. LEXIS 67642, 2006 WL 2711533, at *4 (D.D.C. Sept. 21, 2006),
2 for the proposition that the moving party was timely because they had originally timely complied with
3 the scheduling order and disclosure requirements and substitution was necessary. *Id.*

4 Similar to *Rebel*, plaintiff intends to replace Dr. Gross with Dr. Leon who will present
5 testimony and opinions that align with the scope of Dr. Gross' opinions. Additionally, plaintiff intends
6 to properly disclose Dr. Leon and provide any necessary discovery to defendants along with an
7 opportunity to for deposition and rebuttal opinions. Finally, because plaintiff timely disclosed Dr.
8 Gross and the new expert will provide similar opinions that defendants are already aware of, plaintiff's
9 substitution of Dr. Leon would similarly be timely. As such, substitution is proper.

10 **V. CONCLUSION**

11 For the foregoing reasons, plaintiff requests that the Court grant plaintiff's motion to substitute
12 plaintiff's expert and treating physician witness. Dr. Leon will provide opinions that align with the
13 scope of Dr. Gross' opinions and will not exceed the scope of his opinions. Defendants will also have
14 an opportunity to depose and cross-examine Dr. Leon. As such, defendants will not suffer any
15 prejudice from this substitution. On the other hand, if substitution is not permitted, plaintiff will be
16 significantly prejudiced, as he would be required to use a convicted felon to present his medical
17 testimony at trial, or if Dr. Gross is unavailable, would not have any expert medical witness for trial.
18 Dr. Gross' conviction and/or unavailability is through no fault of plaintiff and he should not be
19 prejudiced due to these unforeseen circumstances. Upon learning of Dr. Gross' conviction and
20 sentence, plaintiff promptly moved for substitution. Accordingly, plaintiff respectfully requests that
21 his motion be granted.

22 DATED this 29th day of June, 2021.

23 **MAIER GUTIERREZ & ASSOCIATES**

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/s/ Natalie Vazquez
An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT 1

EXHIBIT 1

1 TRACY L. WILKISON
Attorney for the United States,
2 Acting Under Authority
Conferred by 28 U.S.C. § 515
3 BRANDON D. FOX
Assistant United States Attorney
4 Chief, Criminal Division
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9 Attorneys for Plaintiff
UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

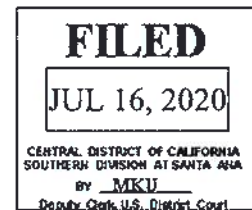
15 JEFFREY DAVID GROSS,

16 Defendant.
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No. SA CR 18-014-JLS

UNDER SEAL FILING

(UNDER SEAL)



UNDER SEAL

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Attorneys for Plaintiff
10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 JEFFREY DAVID GROSS,

17 Defendant.

No. SA CR 18-014-JLS

PLEA AGREEMENT FOR DEFENDANT
JEFFREY DAVID GROSS

[FILED UNDER SEAL]

18
19 1. This constitutes the plea agreement between defendant
20 Jeffrey David Gross ("defendant") and the United States Attorney's
21 Office for the Central District of California ("the USAO") in the
22 above-captioned case. This agreement is limited to the USAO and
23 cannot bind any other federal, state, local, or foreign prosecuting,
24 enforcement, administrative, or regulatory authorities.

25 DEFENDANT'S OBLIGATIONS

26 2. Defendant agrees to:

27 a. At the earliest opportunity requested by the USAO and
28 provided by the Court, appear and plead guilty to count one of the

1 indictment in United States v. Jeffrey David Gross, No. SA CR 18-014-
2 JLS, which charges defendant with conspiracy in violation of 18
3 U.S.C. § 371.

4 b. Not contest facts agreed to in this agreement.

5 c. Abide by all agreements regarding sentencing contained
6 in this agreement.

7 d. Appear for all court appearances, surrender as ordered
8 for service of sentence, obey all conditions of any bond, and obey
9 any other ongoing court order in this matter.

10 e. Not commit any crime; however, offenses that would be
11 excluded for sentencing purposes under United States Sentencing
12 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
13 within the scope of this agreement.

14 f. Be truthful at all times with the United States
15 Probation and Pretrial Services Office and the Court.

16 g. Pay the applicable special assessment at or before the
17 time of sentencing unless defendant has demonstrated a lack of
18 ability to pay such assessments.

19 3. Defendant further agrees:

20 a. To the entry, as part of defendant's guilty plea, of a
21 personal money judgment of forfeiture against defendant in the amount
22 of \$622,936.00, which sum defendant admits defendant obtained,
23 received and possessed as a result of one or more violations of 18
24 U.S.C. § 371, and which judgment defendant agrees can be enforced
25 against assets owned by defendant. The parties agree that certain
26 payment(s) made by the defendant in satisfaction of any restitution
27 order and/or fine entered by the Court will decrease the amount owed
28 on the money judgment by the amount paid in satisfaction of the

1 restitution order and/or fine. Specifically, only restitution and/or
2 fine payments made within 24 months of sentencing shall result in a
3 decrease of the amount owed on the money judgment. The parties
4 further agree to a payment schedule on the money judgment, to be
5 memorialized in the money judgment, that requires a monthly payment
6 of \$5,000 toward the outstanding balance of the money judgment for a
7 period of 36 months (the "payment period"), with the remaining
8 balance due in full thereafter. During the payment period, the
9 government agrees to forego seeking the forfeiture of substitute
10 assets to satisfy the money judgment unless defendant fails to make
11 two or more consecutive payments required by the payment schedule.

12 b. Defendant knowingly and voluntarily waives (i) the
13 requirements of Federal Rules of Criminal Procedure 32.2 and 43(a)
14 regarding notice of the imposition of the money judgment of
15 forfeiture in the charging instrument, announcement of the money
16 judgment of forfeiture at sentencing, and incorporation of the
17 forfeiture in the judgment; (ii) all constitutional and statutory
18 challenges in any manner (including by direct appeal, habeas corpus,
19 or any other means) to any forfeiture carried out in accordance with
20 this agreement on any grounds; and (iii) all constitutional, legal
21 and equitable defenses to the money judgment of forfeiture in any
22 proceeding on any grounds including, without limitation, that the
23 amount of the money judgment of forfeiture constitutes an excessive
24 fine or punishment. Defendant also acknowledges and understands that
25 the money judgment of forfeiture is part of the sentence that may be
26 imposed in this case and waives any failure by the Court to advise
27 defendant of this, pursuant to Rule 11(b)(1)(J), at the time
28 defendant's guilty plea is accepted.

1 c. That satisfaction of the money judgment of forfeiture
2 shall not be counted toward satisfaction of any special assessment,
3 fine, remaining amounts owed on any restitution order, or any other
4 penalty the Court may impose, nor shall the satisfaction of the money
5 judgment of forfeiture be counted toward satisfaction of any taxes,
6 penalties, or interest owed to the Internal Revenue Service ("IRS").
7 However, if the Money Laundering and Asset Recovery Section ("MLARS")
8 of the Department of Justice grants any petition for remission
9 submitted by a victim of defendant's illegal activities as set forth
10 in the operative information, then the USAO will not object to
11 defendant receiving a credit towards payment of restitution in the
12 amount actually paid to the victim pursuant to MLARS' grant of the
13 petition for remission.

14 4. Defendant further agrees to cooperate fully with the USAO,
15 the Federal Bureau of Investigation, the California Department of
16 Insurance, and, as directed by the USAO, any other federal, state,
17 local, or foreign prosecuting, enforcement, administrative, or
18 regulatory authority. This cooperation requires defendant to:

19 a. Respond truthfully and completely to all questions
20 that may be put to defendant, whether in interviews, before a grand
21 jury, or at any trial or other court proceeding.

22 b. Attend all meetings, grand jury sessions, trials or
23 other proceedings at which defendant's presence is requested by the
24 USAO or compelled by subpoena or court order.

25 c. Produce voluntarily all documents, records, or other
26 tangible evidence relating to matters about which the USAO, or its
27 designee, inquires.

1 d. If requested to do so by the USAO, act in an
2 undercover capacity to the best of defendant's ability in connection
3 with criminal investigations by federal, state, local, or foreign law
4 enforcement authorities, in accordance with the express instructions
5 of those law enforcement authorities. Defendant agrees not to act in
6 an undercover capacity, tape record any conversations, or gather any
7 evidence except after a request by the USAO and in accordance with
8 express instructions of federal, state, local, or foreign law
9 enforcement authorities.

10 5. For purposes of this agreement: (1) "Cooperation
11 Information" shall mean any statements made, or documents, records,
12 tangible evidence, or other information provided, by defendant
13 pursuant to defendant's cooperation under this agreement; and
14 (2) "Plea Information" shall mean any statements made by defendant,
15 under oath, at the guilty plea hearing and the agreed to factual
16 basis statement in this agreement.

17 THE USAO'S OBLIGATIONS

18 6. The USAO agrees to:

- 19 a. Not contest facts agreed to in this agreement.
20 b. Abide by all agreements regarding sentencing contained
21 in this agreement.
22 c. At the time of sentencing, move to dismiss the
23 remaining counts of the indictment as against defendant. Defendant
24 agrees, however, that at the time of sentencing the Court may
25 consider any dismissed charges in determining the applicable
26 Sentencing Guidelines range, the propriety and extent of any
27 departure from that range, and the sentence to be imposed.
28

1 d. At the time of sentencing, provided that defendant
2 demonstrates an acceptance of responsibility for the offense up to
3 and including the time of sentencing, recommend a two-level reduction
4 in the applicable Sentencing Guidelines offense level, pursuant to
5 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an
6 additional one-level reduction if available under that section.

7 e. Recommend that defendant be sentenced to a term of
8 imprisonment no higher than the low end of the applicable Sentencing
9 Guidelines range, provided that the offense level used by the Court
10 to determine that range is 21 or higher and provided that the Court
11 does not depart downward in offense level or criminal history
12 category. For purposes of this agreement, the low end of the
13 Sentencing Guidelines range is that defined by the Sentencing Table
14 in U.S.S.G. Chapter 5, Part A, without regard to reductions in the
15 term of imprisonment that may be permissible through the substitution
16 of community confinement or home detention as a result of the offense
17 level falling within Zone B or Zone C of the Sentencing Table.

18 7. The USAO further agrees:

19 a. Not to offer as evidence in its case-in-chief in the
20 above-captioned case or any other criminal prosecution that may be
21 brought against defendant by the USAO, or in connection with any
22 sentencing proceeding in any criminal case that may be brought
23 against defendant by the USAO, any Cooperation Information.
24 Defendant agrees, however, that the USAO may use both Cooperation
25 Information and Plea Information: (1) to obtain and pursue leads to
26 other evidence, which evidence may be used for any purpose, including
27 any criminal prosecution of defendant; (2) to cross-examine defendant
28 should defendant testify, or to rebut any evidence offered, or

1 argument or representation made, by defendant, defendant's counsel,
2 or a witness called by defendant in any trial, sentencing hearing, or
3 other court proceeding; and (3) in any criminal prosecution of
4 defendant for false statement, obstruction of justice, or perjury.

5 b. Not to use Cooperation Information against defendant
6 at sentencing for the purpose of determining the applicable guideline
7 range, including the appropriateness of an upward departure, or the
8 sentence to be imposed, and to recommend to the Court that
9 Cooperation Information not be used in determining the applicable
10 guideline range or the sentence to be imposed. Defendant
11 understands, however, that Cooperation Information will be disclosed
12 to the United States Probation and Pretrial Services Office and the
13 Court, and that the Court may use Cooperation Information for the
14 purposes set forth in U.S.S.G § 1B1.8(b) and for determining the
15 sentence to be imposed.

16 c. In connection with defendant's sentencing, to bring to
17 the Court's attention the nature and extent of defendant's
18 cooperation.

19 d. If the USAO determines, in its exclusive judgment,
20 that defendant has both complied with defendant's obligations under
21 paragraphs 2 and 3 above and provided substantial assistance to law
22 enforcement in the prosecution or investigation of another
23 ("substantial assistance"), to move the Court pursuant to U.S.S.G.
24 § 5K1.1 to fix an offense level and corresponding guideline range
25 below that otherwise dictated by the sentencing guidelines, and to
26 recommend a term of imprisonment within this reduced range.

27 DEFENDANT'S UNDERSTANDINGS REGARDING COOPERATION

28 8. Defendant understands the following:

1 a. Any knowingly false or misleading statement by
2 defendant will subject defendant to prosecution for false statement,
3 obstruction of justice, and perjury and will constitute a breach by
4 defendant of this agreement.

5 b. Nothing in this agreement requires the USAO or any
6 other prosecuting, enforcement, administrative, or regulatory
7 authority to accept any cooperation or assistance that defendant may
8 offer, or to use it in any particular way.

9 c. Defendant cannot withdraw defendant's guilty plea if
10 the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1 for a
11 reduced guideline range or if the USAO makes such a motion and the
12 Court does not grant it or if the Court grants such a USAO motion but
13 elects to sentence above the reduced range.

14 d. At this time the USAO makes no agreement or
15 representation as to whether any cooperation that defendant has
16 provided or intends to provide constitutes or will constitute
17 substantial assistance. The decision whether defendant has provided
18 substantial assistance will rest solely within the exclusive judgment
19 of the USAO.

20 e. The USAO's determination whether defendant has
21 provided substantial assistance will not depend in any way on whether
22 the government prevails at any trial or court hearing in which
23 defendant testifies or in which the government otherwise presents
24 information resulting from defendant's cooperation.

25 NATURE OF THE OFFENSE

26 9. Defendant understands that for defendant to be guilty of
27 the crime charged in count one of the indictment, that is,
28 conspiracy, in violation of Title 18, United States Code, Section

1 371, the following must be true: (1) between in or about February
2 2008 and in or about May 2013, there was an agreement between two or
3 more persons to commit violations of Title 18, United States Code,
4 Sections 1341, 1343, and 1346 (Honest Services Mail and Wire Fraud);
5 (2) the defendant became a member of the conspiracy knowing of at
6 least one of its objects and intending to help accomplish it; and (3)
7 one of the members of the conspiracy performed at least one overt act
8 for the purpose of carrying out the conspiracy.

9 10. Defendant understands that Honest Services Mail and Wire
10 Fraud, in violation of Title 18, United States Code, Sections 1341
11 and 1346, and 1343 and 1346, the objects of the conspiracy, has the
12 following elements: (1) the defendant devised or participated in a
13 scheme or plan to deprive a patient of his or her right to honest
14 services; (2) the scheme or plan included payments of bribes or
15 kickbacks to a medical professional in exchange for medical services
16 or items; (3) the defendant owed a fiduciary duty to his patients;
17 (4) the defendant acted with the intent to defraud by depriving the
18 patients of their right of honest services of the medical
19 professional; (5) the defendant's act was material, that is, it had a
20 natural tendency to influence, or was capable of influencing, a
21 patient's acts; and (6) the defendant used, or caused someone to use,
22 the mails and/or an interstate wire communication to carry out or
23 attempt to carry out the scheme or plan.

24 PENALTIES AND RESTITUTION

25 11. Defendant understands that the statutory maximum sentence
26 that the Court can impose for a violation of Title 18, United States
27 Code, Section 371, as charged in count one of the indictment, is:
28 five years' imprisonment, a three-year period of supervised release;

1 a fine of \$250,000 or twice the gross gain or gross loss resulting
2 from the offense, whichever is greater; and a mandatory special
3 assessment of \$100.

4 12. Defendant understands that, if ordered by the Court,
5 defendant will be required to pay full restitution to victims of the
6 offense to which defendant is pleading guilty. Defendant agrees
7 that, in return for the USAO's compliance with its obligations under
8 this agreement, the Court may order restitution to persons other than
9 the victims of the offense to which defendant is pleading guilty and
10 in amounts greater than those alleged in the count to which defendant
11 is pleading guilty. In particular, defendant agrees that the Court
12 may order restitution to any victim of any of the following for any
13 losses suffered by that victim as a result: (a) any relevant conduct,
14 as defined in U.S.S.G. § 1B1.3, in connection with the offenses to
15 which defendant is pleading guilty; and (b) any counts dismissed
16 pursuant to this agreement as well as all relevant conduct, as
17 defined in U.S.S.G. § 1B1.3, in connection with those counts. The
18 parties have no agreement as to the proper amount of restitution.

19 13. Defendant understands that supervised release is a period
20 of time following imprisonment during which defendant will be subject
21 to various restrictions and requirements. Defendant understands that
22 if defendant violates one or more of the conditions of any supervised
23 release imposed, defendant may be returned to prison for all or part
24 of the term of supervised release authorized by statute for the
25 offense that resulted in the term of supervised release, which could
26 result in defendant serving a total term of imprisonment greater than
27 the statutory maximum stated above.

1 14. Defendant understands that, by pleading guilty, defendant
2 may be giving up valuable government benefits and valuable civic
3 rights, such as the right to vote, the right to possess a firearm,
4 the right to hold office, and the right to serve on a jury.
5 Defendant understands that he is pleading guilty to a felony and that
6 it is a federal crime for a convicted felon to possess a firearm or
7 ammunition. Defendant understands that the conviction in this case
8 may also subject defendant to various other collateral consequences,
9 including but not limited to revocation of probation, parole, or
10 supervised release in another case and suspension or revocation of a
11 professional license. Defendant understands that unanticipated
12 collateral consequences will not serve as grounds to withdraw
13 defendant's guilty plea.

14 15. Defendant understands that, if defendant is not a United
15 States citizen, the felony conviction in this case may subject
16 defendant to: removal, also known as deportation, which may, under
17 some circumstances, be mandatory; denial of citizenship; and denial
18 of admission to the United States in the future. The Court cannot,
19 and defendant's attorney also may not be able to, advise defendant
20 fully regarding the immigration consequences of the felony conviction
21 in this case. Defendant understands that unexpected immigration
22 consequences will not serve as grounds to withdraw defendant's guilty
23 plea.

24 FACTUAL BASIS

25 16. Defendant admits that defendant is, in fact, guilty of the
26 offense to which defendant is agreeing to plead guilty. Defendant
27 and the USAO agree to the statement of facts provided below and agree
28 that this statement of facts is sufficient to support a plea of

1 guilty to the charge described in this agreement and to establish the
2 Sentencing Guidelines factors set forth in paragraph 18 below but is
3 not meant to be a complete recitation of all facts relevant to the
4 underlying criminal conduct or all facts known to either party that
5 relate to that conduct.

6 Defendant was a licensed neurosurgeon who operated Oasis Medical
7 Providers, Inc. ("Oasis"), a medical practice based in Laguna Niguel,
8 California, in Orange County, within the Central District of
9 California. As a physician and neurosurgeon, defendant owed a
10 fiduciary duty to his patients to provide conflict-free medical
11 advice and advice concerning the location of a patient's surgery.
12 During all times relevant to this plea agreement, Pacific Hospital of
13 Long Beach ("Pacific Hospital") was a hospital owned and/or operated
14 by Michael D. Drobot ("Drobot"). From 2008 to 2013, defendant agreed
15 with Drobot and others to participate and did, in fact, participate
16 in a scheme to defraud patients of their right to honest services by
17 accepting bribes and kickbacks paid to induce him to refer patients
18 to Pacific Hospital for spinal surgeries and other medical services.

19 In or around February 2008, defendant entered into an agreement
20 with Drobot to sublease Oasis's medical office space to a company
21 affiliated with Pacific Hospital, Pacific Specialty Physician
22 Management, Inc. ("PSPM"), in return for monthly payments to Oasis in
23 the amount of \$15,000. Defendant knew and understood that one
24 purpose of the sublease agreement, and the payments made thereunder,
25 was to induce defendant to bring certain spinal surgery patients to
26 Pacific Hospital. The sublease agreement did not indicate that one
27 of its purposes was to induce and compensate defendant for his
28 surgical referrals, and defendant did not disclose that information

1 to these patients. PSPM paid Oasis \$145,000 under the sublease
2 agreement.

3 In or around November 2008, defendant entered into an option
4 contract with PSPM whereby PSPM paid \$15,000 per month to Oasis for
5 the option to purchase the accounts receivable and all other tangible
6 assets of Oasis. Defendant knew and understood that one purpose of
7 the option contract, and the payments made thereunder, was to induce
8 defendant to bring certain spinal surgery patients to Pacific
9 Hospital. The option contract did not indicate that one of its
10 purposes was to induce and compensate defendant for his surgical
11 referrals, and defendant did not disclose that information to these
12 patients. PSPM paid Oasis \$105,000 under the option agreement.

13 In or around April 2009, defendant entered into an outsourced
14 collections agreement with Pacific Hospital that called for defendant
15 to assist with collections on some of the spinal surgery cases that
16 he performed at the hospital in exchange for fifteen percent of any
17 amounts collected by Pacific Hospital related to those surgeries.
18 The outsourced collections agreement, as later amended, called for
19 defendant to be paid ten percent of the collected amount on other
20 outpatient surgeries. If defendant used International Implant ("I2")
21 hardware during spinal surgeries, he was advanced an upfront amount
22 of \$5,000 regardless of subsequent collections. I2 was a hardware
23 distribution company formed by Drobot. Defendant knew and understood
24 that one purpose of the outsourced collections agreement, and the
25 payments made thereunder, was to induce defendant to bring certain
26 spinal surgery patients to Pacific Hospital. The outsourced
27 collections agreement did not indicate that one of its purposes was
28 to induce and compensate defendant for his surgical referrals, and

1 defendant did not disclose that information to these patients.

2 Pacific Hospital paid Oasis \$372,936 under the outsourced collection
3 agreement.

4 Between April 2008 and May 2013, Drobot paid a total of \$622,936
5 to defendant pursuant to the sublease agreement, option contract, and
6 outsourced collections agreement. During that same period, defendant
7 referred dozens of patients to Pacific Hospital for spinal surgeries
8 based in part on payments made to him under those agreements.

9 Defendant understood that the \$622,936 paid to him by Drobot
10 constituted bribes and kickbacks to induce him to refer his patients
11 to Pacific Hospital. By receiving these payments, defendant
12 knowingly deprived his patients of their right to his honest
13 services. These payments were material to defendant's patients
14 because they were capable of influencing patients' medical decisions,
15 including the location of any surgery that was recommended. Had
16 defendant's patients known of these payments, they may have explored
17 other options related to their medical care.

18 In furtherance of the scheme, defendant and his co-conspirators
19 transmitted items using the mail and interstate wire communications.
20 For example, on March 14, 2013, Pacific Hospital mailed a claim for
21 reimbursement to a personal injury attorney in San Diego, California,
22 seeking \$122,047.10 for the hospital-billing component of medical
23 care provided to patient D.A., based on a cervical spinal fusion
24 surgery defendant performed at Pacific Hospital on February 21, 2013
25 pursuant to the outsourced collections agreement.

26 These stipulated facts are not meant to indicate that defendant
27 provided any patients with substandard medical or surgical care or
28

1 that any treatment he recommended, prescribed, and/or delivered was
2 not medically necessary.

3 SENTENCING FACTORS

4 17. Defendant understands that in determining defendant's
5 sentence the Court is required to calculate the applicable Sentencing
6 Guidelines range and to consider that range, possible departures
7 under the Sentencing Guidelines, and the other sentencing factors set
8 forth in 18 U.S.C. § 3553(a). Defendant understands that the
9 Sentencing Guidelines are advisory only, that defendant cannot have
10 any expectation of receiving a sentence within the calculated
11 Sentencing Guidelines range, and that after considering the
12 Sentencing Guidelines and the other § 3553(a) factors, the Court will
13 be free to exercise its discretion to impose any sentence it finds
14 appropriate up to the maximum set by statute for the crime of
15 conviction.

16 18. Defendant and the USAO agree to the following applicable
17 Sentencing Guidelines factors:

18	Base Offense Level:	6	[U.S.S.G. § 2B1.1(a)(2)]
19	Loss over \$550,000:	+14	[U.S.S.G. § 2B1.1(b)(1)(H)]
20	Sophisticated Means:	+2	[U.S.S.G. § 2B1.1(b)(10)]
21	Abuse of Trust	+2	[U.S.S.G. § 3B1.3]
22	Acceptance of Responsibility:	<u>-3</u>	[U.S.S.G. § 3E1.1]
23	Total Offense Level:	21	

24 The USAO will agree to a two-level downward adjustment for acceptance
25 of responsibility (and, if applicable, move for an additional one-
26 level downward adjustment under U.S.S.G. § 3E1.1(b)) only if the
27 conditions set forth in paragraph 6(d) are met and if defendant has
28 not committed, and refrains from committing, acts constituting

1 obstruction of justice within the meaning of U.S.S.G. § 3C1.1, as
2 discussed below. Subject to paragraph 31 below, defendant and the
3 USAO agree not to seek, argue, or suggest in any way, either orally
4 or in writing, that any other specific offense characteristics,
5 adjustments, or departures relating to the offense level be imposed.
6 Defendant agrees, however, that if, after signing this agreement but
7 prior to sentencing, defendant were to commit an act, or the USAO
8 were to discover a previously undiscovered act committed by defendant
9 prior to signing this agreement, which act, in the judgment of the
10 USAO, constituted obstruction of justice within the meaning of
11 U.S.S.G. § 3C1.1, the USAO would be free to seek the enhancement set
12 forth in that section and to argue that defendant is not entitled to
13 a downward adjustment for acceptance of responsibility under U.S.S.G.
14 § 3E1.1.

15 19. Defendant understands that there is no agreement as to
16 defendant's criminal history or criminal history category.

17 20. The USAO (as limited by paragraph 6(e)) and defendant
18 reserve the right to argue for a sentence outside the sentencing
19 range established by the Sentencing Guidelines based on the factors
20 set forth in 18 U.S.C. § 3553(a)(1), (a)(2), (a)(3), (a)(6), and
21 (a)(7).

22 WAIVER OF CONSTITUTIONAL RIGHTS

23 21. Defendant understands that by pleading guilty, defendant
24 gives up the following rights:

- 25 a. The right to persist in a plea of not guilty.
26 b. The right to a speedy and public trial by jury.
27 c. The right to be represented by counsel -- and if
28 necessary have the Court appoint counsel -- at trial. Defendant

1 understands, however, that, defendant retains the right to be
2 represented by counsel -- and if necessary have the Court appoint
3 counsel -- at every other stage of the proceeding.

4 d. The right to be presumed innocent and to have the
5 burden of proof placed on the government to prove defendant guilty
6 beyond a reasonable doubt.

7 e. The right to confront and cross-examine witnesses
8 against defendant.

9 f. The right to testify and to present evidence in
10 opposition to the charges, including the right to compel the
11 attendance of witnesses to testify.

12 g. The right not to be compelled to testify, and, if
13 defendant chose not to testify or present evidence, to have that
14 choice not be used against defendant.

15 h. Any and all rights to pursue any affirmative defenses,
16 Fourth Amendment or Fifth Amendment claims, and other pretrial
17 motions that have been filed or could be filed.

18 WAIVER OF APPEAL OF CONVICTION

19 22. Defendant understands that, with the exception of an appeal
20 based on a claim that defendant's guilty plea was involuntary, by
21 pleading guilty defendant is waiving and giving up any right to
22 appeal defendant's conviction on the offense to which defendant is
23 pleading guilty. Defendant understands that this waiver includes,
24 but is not limited to, arguments that the statute or object of the
25 conspiracy to which defendant is pleading guilty is unconstitutional,
26 and any and all claims that the statement of facts provided herein is
27 insufficient to support defendant's plea of guilty.

1 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

2 23. Defendant agrees that, provided the Court imposes a total
3 term of imprisonment on all counts of conviction of no more than 46
4 months, defendant gives up the right to appeal all of the following:
5 (a) the procedures and calculations used to determine and impose any
6 portion of the sentence; (b) the term of imprisonment imposed by the
7 Court; (c) the fine imposed by the Court, provided it is within the
8 statutory maximum; (d) to the extent permitted by law, the
9 constitutionality or legality of defendant's sentence, provided it is
10 within the statutory maximum; (e) the amount and terms of any
11 restitution order; (f) the term of probation or supervised release
12 imposed by the Court, provided it is within the statutory maximum;
13 and (g) any of the following conditions of probation or supervised
14 release imposed by the Court: the conditions set forth in General
15 Order 20-04 of this Court; the drug testing conditions mandated by 18
16 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use
17 conditions authorized by 18 U.S.C. § 3563(b)(7).

18 24. The USAO agrees that, provided (a) all portions of the
19 sentence are at or below the statutory maximum specified above and
20 (b) the Court imposes a term of imprisonment of no less than 37
21 months, the USAO gives up its right to appeal any portion of the
22 sentence.

23 RESULT OF WITHDRAWAL OF GUILTY PLEA

24 25. Defendant agrees that if, after entering a guilty plea
25 pursuant to this agreement, defendant seeks to withdraw and succeeds
26 in withdrawing defendant's guilty plea on any basis other than a
27 claim and finding that entry into this plea agreement was
28 involuntary, then (a) the USAO will be relieved of all of its

1 obligations under this agreement, including in particular its
2 obligations regarding the use of Cooperation Information; (b) in any
3 investigation, criminal prosecution, or civil, administrative, or
4 regulatory action, defendant agrees that any Cooperation Information
5 and any evidence derived from any Cooperation Information shall be
6 admissible against defendant, and defendant will not assert, and
7 hereby waives and gives up, any claim under the United States
8 Constitution, any statute, or any federal rule, that any Cooperation
9 Information or any evidence derived from any Cooperation Information
10 should be suppressed or is inadmissible; and (c) should the USAO
11 choose to pursue any charge that was either dismissed or not filed as
12 a result of this agreement, then (i) any applicable statute of
13 limitations will be tolled between the date of defendant's signing of
14 this agreement and the filing commencing any such action; and
15 (ii) defendant waives and gives up all defenses based on the statute
16 of limitations, any claim of pre-indictment delay, or any speedy
17 trial claim with respect to any such action, except to the extent
18 that such defenses existed as of the date of defendant's signing this
19 agreement.

20 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

21 26. Defendant agrees that if the count of conviction is
22 vacated, reversed, or set aside, both the USAO and defendant will be
23 released from all their obligations under this agreement.

24 EFFECTIVE DATE OF AGREEMENT

25 27. This agreement is effective upon signature and execution of
26 all required certifications by defendant, defendant's counsel, and an
27 Assistant United States Attorney.

BREACH OF AGREEMENT

28. Defendant agrees that if defendant, at any time after the signature of this agreement and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney, knowingly violates or fails to perform any of defendant's obligations under this agreement ("a breach"), the USAO may declare this agreement breached. For example, if defendant knowingly, in an interview, before a grand jury, or at trial, falsely accuses another person of criminal conduct or falsely minimizes defendant's own role, or the role of another, in criminal conduct, defendant will have breached this agreement. All of defendant's obligations are material, a single breach of this agreement is sufficient for the USAO to declare a breach, and defendant shall not be deemed to have cured a breach without the express agreement of the USAO in writing. If the USAO declares this agreement breached, and the Court finds such a breach to have occurred, then:

a. If defendant has previously entered a guilty plea pursuant to this agreement, defendant will not be able to withdraw the guilty plea.

b. The USAO will be relieved of all its obligations under this agreement; in particular, the USAO: (i) will no longer be bound by any agreements concerning sentencing and will be free to seek any sentence up to the statutory maximum for the crime to which defendant has pleaded guilty; (ii) will no longer be bound by any agreements regarding criminal prosecution, and will be free to criminally prosecute defendant for any crime, including charges that the USAO would otherwise have been obligated to dismiss pursuant to this agreement; and (iii) will no longer be bound by any agreement

1 regarding the use of Cooperation Information and will be free to use
2 any Cooperation Information in any way in any investigation, criminal
3 prosecution, or civil, administrative, or regulatory action.

4 c. The USAO will be free to criminally prosecute
5 defendant for false statement, obstruction of justice, and perjury
6 based on any knowingly false or misleading statement by defendant.

7 d. In any investigation, criminal prosecution, or civil,
8 administrative, or regulatory action: (i) defendant will not assert,
9 and hereby waives and gives up, any claim that any Cooperation
10 Information was obtained in violation of the Fifth Amendment
11 privilege against compelled self-incrimination; and (ii) defendant
12 agrees that any Cooperation Information and any Plea Information, as
13 well as any evidence derived from any Cooperation Information or any
14 Plea Information, shall be admissible against defendant, and
15 defendant will not assert, and hereby waives and gives up, any claim
16 under the United States Constitution, any statute, Rule 410 of the
17 Federal Rules of Evidence, Rule 11(f) of the Federal Rules of
18 Criminal Procedure, or any other federal rule, that any Cooperation
19 Information, any Plea Information, or any evidence derived from any
20 Cooperation Information or any Plea Information should be suppressed
21 or is inadmissible.

22 29. Following the Court's finding of a knowing breach of this
23 agreement by defendant, should the USAO choose to pursue any charge
24 that was either dismissed or not filed as a result of this agreement,
25 then:

26 a. Defendant agrees that any applicable statute of
27 limitations is tolled between the date of defendant's signing of this
28 agreement and the filing commencing any such action.

1 b. Defendant waives and gives up all defenses based on
2 the statute of limitations, any claim of pre-indictment delay, or any
3 speedy trial claim with respect to any such action, except to the
4 extent that such defenses existed as of the date of defendant's
5 signing this agreement.

6 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

7 OFFICE NOT PARTIES

8 30. Defendant understands that the Court and the United States
9 Probation and Pretrial Services Office are not parties to this
10 agreement and need not accept any of the USAO's sentencing
11 recommendations or the parties' agreements to facts or sentencing
12 factors.

13 31. Defendant understands that both defendant and the USAO are
14 free to: (a) supplement the facts by supplying relevant information
15 to the United States Probation and Pretrial Services Office and the
16 Court, (b) correct any and all factual misstatements relating to the
17 Court's Sentencing Guidelines calculations and determination of
18 sentence, and (c) argue on appeal and collateral review that the
19 Court's Sentencing Guidelines calculations and the sentence it
20 chooses to impose are not error, although each party agrees to
21 maintain its view that the calculations in paragraph 18 are
22 consistent with the facts of this case. While this paragraph permits
23 both the USAO and defendant to submit full and complete factual
24 information to the United States Probation and Pretrial Services
25 Office and the Court, even if that factual information may be viewed
26 as inconsistent with the facts agreed to in this agreement, this
27 paragraph does not affect defendant's and the USAO's obligations not
28 to contest the facts agreed to in this agreement.

1 32. Defendant understands that even if the Court ignores any
2 sentencing recommendation, finds facts or reaches conclusions
3 different from those agreed to, and/or imposes any sentence up to the
4 maximum established by statute, defendant cannot, for that reason,
5 withdraw defendant's guilty plea, and defendant will remain bound to
6 fulfill all defendant's obligations under this agreement. Defendant
7 understands that no one -- not the prosecutor, defendant's attorney,
8 or the Court -- can make a binding prediction or promise regarding
9 the sentence defendant will receive, except that it will be within
10 the statutory maximum.

11 NO ADDITIONAL AGREEMENTS

12 33. Defendant understands that, except as set forth herein,
13 there are no promises, understandings, or agreements between the USAO
14 and defendant or defendant's attorney, and that no additional
15 promise, understanding, or agreement may be entered into unless in a
16 writing signed by all parties or on the record in court.

17 //

18 //

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

34. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

NICOLA T. HANNA
United States Attorney

July 13, 2020

SCOTT D. TENLEY
Assistant United States Attorney

Date

JEFFREY DAVID GROSS
Defendant

Date

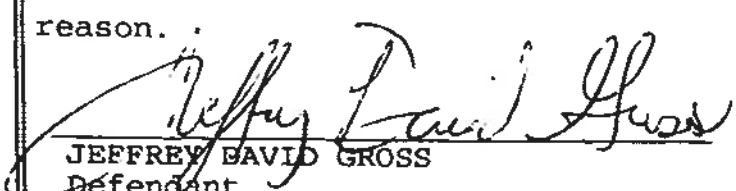
MARK MERMELSTEIN
Attorney for Defendant JEFFREY
DAVID GROSS

Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those


1 contained in this agreement. No one has threatened or forced me in
2 any way to enter into this agreement. I am satisfied with the
3 representation of my attorney in this matter, and I am pleading
4 guilty because I am guilty of the charge and wish to take advantage
5 of the promises set forth in this agreement, and not for any other
6 reason.

7 
8 JEFFREY DAVID GROSS
9 Defendant

July 12, 2020
Date

10 CERTIFICATION OF DEFENDANT'S ATTORNEY

11 I am JEFFREY DAVID GROSS's attorney. I have carefully and
12 thoroughly discussed every part of this agreement with my client.
13 Further, I have fully advised my client of his rights, of possible
14 pretrial motions that might be filed, of possible defenses that might
15 be asserted either prior to or at trial, of the sentencing factors
16 set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines
17 provisions, and of the consequences of entering into this agreement.
18 To my knowledge: no promises, inducements, or representations of any
19 kind have been made to my client other than those contained in this
20 agreement; no one has threatened or forced my client in any way to
21 enter into this agreement; my client's decision to enter into this
22 agreement is an informed and voluntary one; and the factual basis set
23 forth in this agreement is sufficient to support my client's entry of
24 a guilty plea pursuant to this agreement.

25 
26 MARK MERMELSTEIN
27 Attorney for Defendant JEFFREY
28 DAVID GROSS

July 12, 2020
Date

CERTIFICATE OF SERVICE

I, Leticia N. Zambrano, declare:

That I am a citizen of the United States and a resident of or employed in Orange County, California; that my business address is the Office of United States Attorney, 411 West Fourth St., Suite 8000, Santa Ana, CA 92701; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by email described in this Certificate was made; that on July 14, 2020, I email:

GOVERNMENT'S EX PARTE APPLICATION FOR ORDER SEALING DOCUMENT; DECLARATION OF SCOTT D. TENLEY, [PROPOSED] ORDER SEALING DOCUMENT

PLEA AGREEMENT

Service was:

- | | |
|--|---|
| <input type="checkbox"/> Placed in a closed envelope for collection and inter-office delivery, addressed as follows: | <input type="checkbox"/> Placed in a sealed envelope for collection and mailing via United States mail, addressed as follows: |
| <input type="checkbox"/> By hand delivery, addressed as follows: | <input type="checkbox"/> By Email, as follows: |
| <input type="checkbox"/> By messenger, as follows: | <input checked="" type="checkbox"/> By EMAIL, as follows: |

Mark Mermelstein
Orrick Herrington and Sutcliffe LLP

Email: mmermelstein@orrick.com

At their last known address, at which place there is a delivery service by United States mail.

This Certificate is executed on July 14, 2020, at Santa Ana, California. I certify under penalty of perjury that the foregoing is true and correct.

Leticia N. Zambrano

Leticia N. Zambrano
Legal Assistant

EXHIBIT 2

EXHIBIT 2

**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. SACR 18-00014-JLSDefendant Jeffrey David GrossSocial Security No. 1 0 1 1akas: None

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
MAY	21	2021

COUNSELHamilton Arendsen (Rtd); Mark Mermelstein (Rtd)

(Name of Counsel)

PLEA
☒ **GUILTY**, and the court being satisfied that there is a factual basis for the plea. ☐ **NOLO** ☐ **NOT**
CONTENDERE **GUILTY**
FINDINGThere being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:

Conspiracy in violation of 18 U.S.C. § 371 as charged in Count 1 of the Indictment.

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of **15 MONTHS**:

It is ordered that the defendant shall pay to the United States a special assessment of \$100, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Pursuant to Guideline §5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

The Court has entered a money judgment of forfeiture against the defendant, which is hereby incorporated by reference into this judgment and is final.

It is ordered that the defendant shall pay restitution pursuant to 18 U.S.C. § 3663A. Pursuant to 18 U.S.C. § 3664(d)(5), a final determination of victim losses will be ordered at the deferred restitution hearing after such information becomes available. An amended judgment will be entered after such determination. **The Court sets a Restitution Hearing on Thursday, July 15, 2021 at 1:00 p.m.** The parties shall file simultaneous briefs regarding restitution no later than July 1, 2021. Briefs shall not exceed 25 pages.

The Court recommends that the Bureau of Prisons conduct a mental health evaluation of the defendant and provide all necessary treatment.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Jeffrey David Gross, is hereby committed on Count 1 of the 14-Count Indictment to the custody of the Bureau of Prisons for a term of **15 MONTHS**.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years under the following terms and conditions:

USA vs. Jeffrey David Gross

Docket No.: SACR 18-00014-JLS

1. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and Second Amended General Order 20-04;
2. During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment;
3. The defendant shall cooperate in the collection of a DNA sample from the defendant;
4. The defendant shall participate in mental health treatment, which may include evaluation and counseling, until discharged from the program by the treatment provider, with the approval of the Probation Officer;
5. As directed by the Probation Officer, the defendant shall pay all or part of the costs of the Court-ordered treatment to the aftercare contractors during the period of community supervision. The defendant shall provide payment and proof of payment as directed by the Probation Officer. If the defendant has no ability to pay, no payment shall be required;
6. The defendant shall report this conviction to the Medical Board of California, and to any other state in which the defendant has been licensed as a physician, and thereafter comply with any orders, including any employment or business restrictions. Further, the defendant shall show proof to the Probation Officer of compliance with this order; and
7. As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns and a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income, expenses, and liabilities of the defendant.

The drug testing condition mandated by statute is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.

The Court authorizes the Probation Office to disclose the Presentence Report and any previous mental health evaluations or reports to the mental health treatment provider. The treatment provider may provide information, excluding the Presentence Report, to State or local social service agencies for the purpose of the client's rehabilitation.

It is further ordered that the defendant surrender herself to the institution designated by the Bureau of Prisons on or before 12 noon on **August 16, 2021**. In the absence of such designation, the defendant shall report on or before the same date and time to the United States Marshal located at United States Court House, 411 W. Fourth Street, Santa Ana, CA 92701.

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//

//

//

USA vs. Jeffrey David Gross

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The Court strongly recommends that the defendant be housed at FCI Lompoc in Southern California to facilitate visitation with family, friends, and loved ones.

On government's motion, all remaining counts dismissed.

Bond is exonerated upon surrender.

The Court advised the defendant of his right to appeal.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

May 24, 2021

Date



U. S. District Judge Josephine L. Staton

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

May 24, 2021

Filed Date

By M. Kunig

Deputy Clerk

USA vs. Jeffrey David Gross

Docket No.: SACR 18-00014-JLS

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. As directed by the probation officer, the defendant must notify specific persons and organizations of specific risks posed by the defendant to those persons and organizations and must permit the probation officer to confirm the defendant's compliance with such requirement and to make such notifications;
15. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

USA vs. Jeffrey David Gross

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☒ The defendant must also comply with the following special conditions (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
 - Non-federal victims (individual and corporate),
 - Providers of compensation to non-federal victims,
 - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

When supervision begins, and at any time thereafter upon request of the Probation Officer, the defendant must produce to the Probation and Pretrial Services Office records of all bank or investments accounts to which the defendant has access, including any business or trust accounts. Thereafter, for the term of supervision, the defendant must notify and receive approval of the Probation Office in advance of opening a new account or modifying or closing an existing one, including adding or deleting signatories; changing the account number or name, address, or other identifying information affiliated with the account; or any other modification. If the Probation Office approves the new account, modification or closing, the defendant must give the Probation Officer all related account records within 10 days of opening, modifying or closing the account. The defendant must not direct or ask anyone else to open or maintain any account on the defendant's behalf.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

USA vs. Jeffrey David Gross

Docket No.: SACR 18-00014-JLS

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____
Defendant noted on appeal on _____
Defendant released on _____
Mandate issued on _____
Defendant's appeal determined on _____
Defendant delivered on _____ to _____
at _____
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____
Deputy Marshal

Date

USA vs. Jeffrey David Gross

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CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____

Filed Date

Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant

Date

U. S. Probation Officer/Designated Witness

Date

EXHIBIT 3

EXHIBIT 3

[Query](#) [Reports](#) [Utilities](#) [Help](#) [Log Out](#)

W/SO,CLOSED,PASPRT,RELATED-G

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (Southern Division - Santa Ana)
CRIMINAL DOCKET FOR CASE #: 8:18-cr-00014-JLS-1**

Case title: USA v. Gross

Date Filed: 01/23/2018

Other court case number: SACR14-00034 JLS

Date Terminated: 05/24/2021

Assigned to: Judge Josephine L. Staton

Defendant (1)**Jeffrey David Gross***TERMINATED: 05/24/2021*represented by **Hamilton E Arendsen**

Arendsen Cane Molnar LLP

550 West C Street Suite 1150

San Diego, CA 92101

619-535-3910

Fax: 619-535-3920

Email: harendsen@arendsenlaw.com

LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Designation: Retained***Mark Mermelstein**

Orrick Herrington and Sutcliffe LLP

777 South Figueroa Street Suite 3200

Los Angeles, CA 90017-5855

213-629-2020

Fax: 213-612-2499

Email: mmermelstein@orrick.com

LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Designation: Retained***Mona Samir Amer**

Orrick Herrington and Sutcliffe LLP

777 South Figueroa Street Suite 3200

Los Angeles, CA 90017

213-629-2020

Email: mamer@orrick.com

ATTORNEY TO BE NOTICED**Pending Counts**

18:371: Conspiracy

(1)

Disposition

Defendant is committed on Count 1 of the
14-Count Indictment to the custody of the
Bureau of Prisons for 15 Months.

Supervised release for 3 years under the terms and conditions of US Probation and Pretrial Services Office and Second Amended General Order 20-04. Special assessment of 100. All fines are waived

Highest Offense Level (Opening)

Felony

Terminated Counts

18:1341, 1346: Mail Fraud Involving Deprivation of Honest Services; 18:2(b): Aiding and Abetting and Causing an Act to be Done
(2-6)

18:1343, 1346: Wire Fraud Involving Deprivation of Honest Services ; 18:2(b): Aiding and Abetting and Causing an Act to be Done
(7-9)

18:1952(a)(3): Use of an Interstate Facility in Aid of Unlawful Activity; 18:2: Aiding and Abetting and Causing an Act to be Done
(10-14)

Disposition

On government motion, all remaining counts dismissed

On government motion, all remaining counts dismissed

On government motion, all remaining counts dismissed

Highest Offense Level (Terminated)

Felony

Complaints

None

Disposition**Plaintiff**

USA

represented by **Ashwin J. Ram**

AUSA - Office of US Attorney
Major Frauds Section
312 North Spring Street Suite 1100
Los Angeles, CA 90012
213-894-2875
Fax: 213-894-6269
Email: USACAC.Criminal@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Jonathan Galatzan

AUSA - US Attorneys Office
Asset Forfeiture Section

312 North Spring Street 14th Floor
 Los Angeles, CA 90012
 213-894-2727
 Fax: 213-894-0142
 Email: jonathan.galatzan@usdoj.gov
ATTORNEY TO BE NOTICED

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Date Filed	#	Docket Text
01/23/2018	<u>1</u>	INDICTMENT filed as to Jeffrey David Gross (1) count(s) 1, 2-6, 7-9, 10-14. (dg) (Entered: 01/25/2018)
01/23/2018	<u>2</u>	CASE SUMMARY filed by AUSA Ashwin Janakiram as to Defendant Jeffrey David Gross; defendants Year of Birth: 1949 (dg) (Entered: 01/25/2018)
01/23/2018	<u>4</u>	NOTICE OF REQUEST FOR DETENTION filed by Plaintiff USA as to Defendant Jeffrey David Gross (dg) (Entered: 01/25/2018)
01/23/2018	<u>5</u>	NOTICE of Related Case(s) filed by Plaintiff USA as to Defendant Jeffrey David Gross Related Case(s): SACR14-00034 JLS (dg) (Entered: 01/25/2018)
01/23/2018	<u>6</u>	EX PARTE APPLICATION to Seal Case Filed by Plaintiff USA as to Defendant Jeffrey David Gross. (dg) (Entered: 01/25/2018)
01/23/2018	<u>7</u>	ORDER by Magistrate Judge Paul L. Abrams: granting <u>6</u> EX PARTE APPLICATION to Seal Case as to Jeffrey David Gross (1) (dg) (Entered: 01/25/2018)
01/23/2018	<u>8</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Jeffrey David Gross. This criminal action, being filed on 1/23/18, was pending in the U. S. Attorneys Office before the date on which Judge Andre Birotte Jr began receiving criminal matters; it was not pending in the U. S. Attorneys Office before the date on which Judge Michael W. Fitzgerald began receiving criminal matters (dg) (Entered: 01/25/2018)
01/23/2018	<u>9</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Jeffrey David Gross Re

		Magistrate Judges Jacqueline Chooljian, Patrick J. Walsh, Sheri Pym, Michael Wilner, Jean Rosenbluth, Alka Sagar, Douglas McCormick, Rozella Oliver, Gail Standish, Steve Kim, John Early and Shashi H. Kewalramani. (dg) (Entered: 01/25/2018)
05/18/2018	<u>10</u>	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 16-05 Related Case filed. Related Case No: SACR14-00034 JLS. Case, as to Defendant Jeffrey David Gross, transferred from Judge Cormac J. Carney to Judge Josephine L. Staton for all further proceedings. The case number will now reflect the initials of the transferee Judge SACR18-00014 JLS. Signed by Judge Josephine L. Staton. (lwag) (Entered: 05/18/2018)
05/18/2018	<u>11</u>	[NOTICE OF CLERICAL ERROR ISSUED ON 5/21/18, SEE DOCKET ENTRY #13] REQUEST for Order Unsealing Indictment and Recalling Arrest Warrant; Declaration of AUSA Scott D Tenley Filed by Plaintiff USA as to Defendant Jeffrey David Gross. (mt) Modified on 5/21/2018 (lwag). (Entered: 05/21/2018)
05/18/2018	<u>12</u>	ORDER by Magistrate Judge Karen E. Scott as to Jeffrey David Gross: Granting REQUEST Unsealing Indictment and Recalling Arrest Warrant <u>11</u> . (mt) (Entered: 05/21/2018)
05/18/2018	<u>14</u>	REQUEST for Order Unsealing Indictment and Recalling Arrest Warrant; Declaration of AUSA Scott D Tenley Filed by Plaintiff USA as to Defendant Jeffrey David Gross. (lwag) (Entered: 05/21/2018)
05/21/2018	<u>13</u>	NOTICE OF CLERICAL ERROR: Due to clerical error, the original attachment is missing pages. The corrected version will be re-docketed after this Notice. (lwag) (Entered: 05/21/2018)
05/23/2018	<u>15</u>	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA Scott D Tenley on behalf of Plaintiff USA. Filed by Plaintiff USA. (Attorney Scott D Tenley added to party USA(pty:pla))(Tenley, Scott) (Entered: 05/23/2018)
06/06/2018	<u>17</u>	Summons Returned Executed on 6/4/2018 as to Jeffrey David Gross (mt) (Entered: 06/06/2018)
06/07/2018	<u>18</u>	Notice of Appearance or Withdrawal of Counsel: for attorney Joseph Timothy McNally counsel for Plaintiff USA. Adding Joseph T. McNally as counsel of record for United States of America for the reason indicated in the G-123 Notice. Filed by Plaintiff Joseph T. McNally. (Attorney Joseph Timothy McNally added to party USA(pty:pla))(McNally, Joseph) (Entered: 06/07/2018)
06/13/2018	<u>19</u>	STIPULATION for Order Protective Order filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order Protective Order)(Tenley, Scott) (Entered: 06/13/2018)
06/13/2018	<u>21</u>	MINUTES OF POST-INDICTMENT ARRAIGNMENT: held before Magistrate Judge Douglas F. McCormick as to Defendant Jeffrey David Gross (1) Counts 1,2-6,7-9,10-14. Defendant arraigned. Attorneys: Mark Mermelstein, Hamilton E Arendsen for Jeffrey David Gross, Retained, present. Defendant's first appearance. Court orders bail set for Jeffrey David Gross (1) \$50,000 Unsecured Appearance Bond. See attached copy of the bond. Court orders defendant to report to the US Marshal's Office forthwith for processing. Defendant entered not guilty plea to all counts as charged. Case assigned to Judge Josephine L. Staton. Jury Trial set for 8/7/2018 09:00 AM before Judge Josephine L. Staton. Status Conference set for 7/27/2018 11:30 AM before Judge Josephine L. Staton. Defendant and counsel are ordered to appear. Counsel are referred to the assigned judge's trial/discovery order located on the Court's website, Judges' Procedures and Schedules. Trial estimate: 8 days. Court Smart: CS 6/13/18. (mt) (Entered: 06/15/2018)
06/13/2018	<u>22</u>	STATEMENT OF CONSTITUTIONAL RIGHTS filed by Defendant Jeffrey David

		Gross (mt) (Entered: 06/15/2018)
06/13/2018	<u>23</u>	DESIGNATION AND APPEARANCE OF COUNSEL; filed by Hamilton E Arendsen appearing for Jeffrey David Gross (mt) (Entered: 06/15/2018)
06/13/2018	<u>24</u>	DESIGNATION AND APPEARANCE OF COUNSEL; filed by Mark Mermelstein appearing for Jeffrey David Gross (mt) (Entered: 06/15/2018)
06/13/2018	<u>27</u>	DECLARATION RE: PASSPORT AND OTHER TRAVEL DOCUMENTS filed by Defendant Jeffrey David Gross, declaring that I have been issued a passport or other travel document(s), but they are not currently in my possession. I will surrender any passport or other travel document(s) issued to me, to the U.S. Pretrial Services Agency by the deadline imposed. I will not apply for a passport or other travel document during the pendency of this case. RE: Bond and Conditions (CR-1) <u>26</u> . (mt) (Entered: 06/18/2018)
06/13/2018	<u>28</u>	PASSPORT RECEIPT from U. S. Pretrial Services as to Defendant Jeffrey David Gross. USA passport was received on 6/13/2018. Re: Bond and Conditions (CR-1) <u>26</u> . (mt) (Entered: 06/18/2018)
06/14/2018	<u>26</u>	BOND AND CONDITIONS OF RELEASE filed as to Defendant Jeffrey David Gross conditions of release: \$50,000 Unsecured Appearance Bond approved by Magistrate Judge Douglas F. McCormick. (mt) (Entered: 06/18/2018)
06/15/2018	<u>20</u>	PROTECTIVE ORDER by Judge Josephine L. Staton as to Defendant Jeffrey David Gross, re Stipulation for Protective Order <u>19</u> . (mt) (Entered: 06/15/2018)
06/18/2018	<u>25</u>	ORDER RE CRIMINAL PROCEEDINGS for cases assigned to Judge Josephine L. Staton (tg) (Entered: 06/18/2018)
07/13/2018	<u>29</u>	STIPULATION to Continue Trial Date from August 7, 2018 to January 22, 2019 filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act)(Tenley, Scott) (Entered: 07/13/2018)
07/19/2018	<u>30</u>	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Josephine L. Staton as to Defendant Jeffrey David Gross. FOR GOOD CAUSE SHOWN: The Trial in this matter is continued to January 22, 2019 at 9:00 a.m. The Status Conference is continued to January 11, 2019 at 11:30 a.m. (es) (Entered: 07/19/2018)
09/28/2018	<u>31</u>	NOTICE OF MOTION AND MOTION to Dismiss Counts 2-8 and 10-14 of <i>Indictment; Points & Authorities; Declaration of Mermelstein ISO</i> Filed by Defendant Jeffrey David Gross. Motion set for hearing on 10/26/2018 at 09:00 AM before Judge Josephine L. Staton. (Attachments: # <u>1</u> Exhibit A to Mermelstein Declaration, # <u>2</u> Exhibit B to Mermelstein Declaration, # <u>3</u> Exhibit C to Mermelstein Declaration, # <u>4</u> Exhibit D to Mermelstein Declaration) (Attorney Mona Samir Amer added to party Jeffrey David Gross(pty:dft)) (Amer, Mona) (Entered: 09/28/2018)
09/28/2018	<u>32</u>	[PROPOSED] ORDER GRANTING DEFENDANT JEFFREY D. GROSS MOTION TO DISMISS COUNTS 2-8 AND 10-14 OF INDICTMENT re NOTICE OF MOTION AND MOTION to Dismiss Counts 2-8 and 10-14 of <i>Indictment; Points & Authorities; Declaration of Mermelstein ISO</i> <u>31</u> (Amer, Mona) (Entered: 09/28/2018)
09/28/2018	<u>33</u>	REQUEST FOR JUDICIAL NOTICE filed RE: NOTICE OF MOTION AND MOTION to Dismiss Counts 2-8 and 10-14 of <i>Indictment; Points & Authorities; Declaration of Mermelstein ISO</i> <u>31</u> by Defendant Jeffrey David Gross. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5)(Amer, Mona) (Entered: 09/28/2018)
10/01/2018	<u>34</u>	NOTICE of Errata filed by Defendant Jeffrey David Gross RE: NOTICE OF MOTION

		AND MOTION to Dismiss Counts 2-8 and 10-14 of <i>Indictment; Points & Authorities; Declaration of Mermelstein ISO 31</i> . (Amer, Mona) (Entered: 10/01/2018)
10/04/2018	<u>35</u>	APPLICATION for Extension of Time to File Response/Reply Filed by Plaintiff USA as to Defendant Jeffrey David Gross. (Attachments: # <u>1</u> Proposed Order) (McNally, Joseph) (Entered: 10/04/2018)
10/05/2018	<u>36</u>	ORDER GRANTING UNOPPOSED EXTENSION OF TIME TO FILE OPPOSITION BRIEF <u>35</u> by Judge Josephine L. Staton. The COURT ORDERS that the Government shall have until October 8, 2018 to file its Opposition to Defendant's Motion to Dismiss Counts 2-8 and 10-14 of the Indictment. Defendant shall file any reply by October 15, 2018. (es) (Entered: 10/05/2018)
10/08/2018	<u>37</u>	NOTICE of Manual Filing of Sealed Documents filed by Plaintiff USA as to Defendant Jeffrey David Gross (Tenley, Scott) (Entered: 10/08/2018)
10/08/2018	<u>38</u>	MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION to Dismiss Counts 2-8 and 10-14 of <i>Indictment; Points & Authorities; Declaration of Mermelstein ISO 31</i> filed by Plaintiff USA as to Defendant Jeffrey David Gross. (Tenley, Scott) (Entered: 10/08/2018)
10/09/2018	<u>39</u>	STIPULATION to Continue Trial Date from January 22, 2019 to June 11, 2019 filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act)(Tenley, Scott) (Entered: 10/09/2018)
10/11/2018	<u>40</u>	RESPONSE IN OPPOSITION to Notice of Manual Filing (G-92) <u>37</u> , filed by Defendant Jeffrey David Gross (Amer, Mona) (Entered: 10/11/2018)
10/15/2018	<u>41</u>	RESPONSE to Response in Opposition (non-motion)(non-R&R) <u>40</u> ,filed by Plaintiff USA as to Defendant Jeffrey David Gross <i>IN SUPPORT OF EX PARTE APPLICATION FOR ORDER SEALING DOCUMENTS AND FOR IN CAMERA REVIEW</i> (Tenley, Scott) (Entered: 10/15/2018)
10/15/2018	<u>42</u>	NOTICE of Manual Filing of Documents filed under seal in State Compensation Insurance Fund v. Drobot et al., SA CV 13-00956-AG as Document 980. filed by Defendant Jeffrey David Gross (Amer, Mona) (Entered: 10/15/2018)
10/15/2018	<u>43</u>	APPLICATION for Leave to File Documents filed under seal in State Compensation Insurance Fund v. Drobot et al., SA CV 13-00956-AG as Document 980. Filed by Defendant Jeffrey David Gross. (Attachments: # <u>1</u> Proposed Order GRANTING DEFENDANT JEFFREY D. GROSS APPLICATION TO FILE DOCUMENT UNDER SEAL) (Amer, Mona) (Entered: 10/15/2018)
10/15/2018	<u>44</u>	REPLY IN SUPPORT OF MOTION TO DISMISS COUNTS 2-8 AND 10-14 OF INDICTMENT AND REQUEST FOR EVIDENTIARY HEARING NOTICE OF MOTION AND MOTION to Dismiss Counts 2-8 and 10-14 of <i>Indictment; Points & Authorities; Declaration of Mermelstein ISO 31</i> filed by Defendant JEFFREY DAVID GROSS. (Attachments: # <u>1</u> REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF REPLY IN SUPPORT OF MOTION TO DISMISS COUNTS 2-8 AND 10-14 OF INDICTMENT, # <u>2</u> Exhibit A to RJN, # <u>3</u> Exhibit B to RJN, # <u>4</u> Exhibit C to RJN, # <u>5</u> Exhibit D to RJN, # <u>6</u> Exhibit E to RJN)(Amer, Mona) (Entered: 10/15/2018)
10/17/2018	<u>45</u>	ORDER GRANTING DEFENDANT JEFFREY D. GROSS' APPLICATION TO FILE DOCUMENT UNDER SEAL IN SUPPORT OF REPLY IN SUPPORT OF MOTION TO DISMISS COUNTS 2-8 AND 10-14 OF INDICTMENT <u>43</u> by Judge Josephine L. Staton. (es) (Entered: 10/17/2018)
10/17/2018	<u>46</u>	SEALED DOCUMENT - EXHIBIT IN SUPPORT OF REPLY IN SUPPORT OF

		MOTION TO DISMISS (es) (Entered: 10/17/2018)
10/18/2018	47	PROOF OF SERVICE of CONFORMED SEALED EXHIBIT IN SUPPORT OF REPLY IN SUPPORT OF MOTION TO DISMISS FILED UNDER SEAL, served on October 18, 2018, by Defendant Jeffrey David Gross re Exhibit 46 , Order on Motion for Leave to File Document 45 , (Amer, Mona) (Entered: 10/18/2018)
10/22/2018	48	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Josephine L. Staton as to Defendant Jeffrey David Gross. FOR GOOD CAUSE SHOWN: The trial in this matter is continued from January 22, 2019 at 9:00 a.m. to June 11, 2019 at 9:00 a.m. The status conference hearing is continued to May 31, 2019 at 11:30 a.m. See order for further details. (es) (Entered: 10/22/2018)
10/22/2018	49	TEXT ONLY ENTRY (IN CHAMBERS) ORDER CONTINUING HEARING ON MOTION: In light of the parties' Stipulation 39 , the Court CONTINUES the hearing on Defendant's Motion to Dismiss Counts 2-8 and 10-14 of Indictment 31 to April 19, 2019 at 11:30 a.m. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (tg) TEXT ONLY ENTRY (Entered: 10/22/2018)
12/07/2018	51	SEALED DOCUMENT GOVERNMENT'S EX PARTE APPLICATION FOR ORDER SEALING DOCUMENTS AND FOR IN CAMERA REVIEW; DECLARATION (es) (Entered: 12/10/2018)
12/07/2018	52	SEALED ORDER ORDER SEALING DOCUMENT, AUTHORIZING IN CAMERA REVIEW, AND AUTHORIZING PUBLIC FILING OF A REDACTED OPPOSITION BRIEF (es) (Entered: 12/10/2018)
12/07/2018	53	SEALED DOCUMENT UNDER SEAL FILING (es) (Entered: 12/10/2018)
12/17/2018	55	EX PARTE APPLICATION to Modify Conditions of Release Filed by Defendant Jeffrey David Gross. (Attachments: # 1 Proof of Service) (Arendsen, Hamilton) (Entered: 12/17/2018)
12/17/2018	56	Amended EX PARTE APPLICATION to Modify Conditions of Release Filed by Defendant Jeffrey David Gross. (Attachments: # 1 Proof of Service) (Arendsen, Hamilton) (Entered: 12/17/2018)
12/18/2018	57	PROOF OF SERVICE of Amended Ex Parte Application for Order Modifying Conditions of Pretrial Release, served on December 18, 2018, by Defendant Jeffrey David Gross re Amended EX PARTE APPLICATION to Modify Conditions of Release 56 , on Pretrial Services (Arendsen, Hamilton) (Entered: 12/18/2018)
12/21/2018	58	ORDER GRANTING Ex Parte Application by Defendant Jeffrey Gross for order Modifying his terms of Pretrial Release to Allow Travel to Mexico from 12/29/2018 to 1/5/2019 (Doc. 56) by Judge Josephine L. Staton. The conditions of pretrial release for Defendant Jeffrey Gross are hereby modified to allow him to travel to Mexico from 12/29/2018 to 1/5/2019. (SEE DOCUMENT FOR FURTHER INFORMATION). (jp) (Entered: 12/21/2018)
02/01/2019	59	STIPULATION for Order Setting Briefing and Hearing Schedule filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # 1 Proposed Order Setting Briefing and Hearing Schedule)(Tenley, Scott) (Entered: 02/01/2019)
02/01/2019	60	NOTICE of Errata filed by Plaintiff USA as to Defendant Jeffrey David Gross RE: Stipulation for Order 59 . (Tenley, Scott) (Entered: 02/01/2019)
02/04/2019	61	NOTICE OF MOTION AND MOTION to Dismiss Case Filed by Defendant Jeffrey David Gross. Motion set for hearing on 3/22/2019 at 11:30 AM before Judge Josephine

		L. Staton. (Attachments: # <u>1</u> Proposed Order) (Mermelstein, Mark) (Entered: 02/04/2019)
02/14/2019	<u>62</u>	ORDER SETTING BRIEFING AND HEARING SCHEDULE by Judge Josephine L. Staton as to Defendant Jeffrey David Gross, re Stipulation for Order <u>59</u> . (Responses due by 2/25/2019, Replies due by 3/11/2019. Motion hearings advanced to 3/22/2019 at 10:30 AM before Judge Josephine L. Staton.) (mrgo) (Entered: 02/14/2019)
02/15/2019	<u>63</u>	STIPULATION to Continue Trial Date from June 11, 2019 to October 1, 2019 filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act)(Tenley, Scott) (Entered: 02/15/2019)
02/20/2019	<u>64</u>	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Josephine L. Staton as to Defendant Jeffrey David Gross, re Stipulation to Continue Trial Date <u>63</u> . THEREFORE, FOR GOOD CAUSE SHOWN: The Trial in this matter is continued to 6/11/2019 at 9:00 AM., to 10/1/2019 at 9:00 AM. The Status Conference in this matter is continued from 9/20/2019 at 8:30 AM. (jp) (Entered: 02/20/2019)
02/25/2019	<u>65</u>	OPPOSITION to NOTICE OF MOTION AND MOTION to Dismiss Case <u>61</u> filed by Plaintiff USA as to Defendant Jeffrey David Gross. (Tenley, Scott) (Entered: 02/25/2019)
03/11/2019	<u>66</u>	REPLY in support of NOTICE OF MOTION AND MOTION to Dismiss Case <u>61</u> filed by Defendant Jeffrey D. Gross. (Mermelstein, Mark) (Entered: 03/11/2019)
03/11/2019	<u>67</u>	EX PARTE APPLICATION to Modify Conditions of Release Filed by Defendant Jeffrey David Gross. (Attachments: # <u>1</u> Proof of Service) (Arendsen, Hamilton) (Entered: 03/11/2019)
03/14/2019	<u>68</u>	ORDER GRANTING Ex Parte Application by Defendant Jeffrey Gross for Order Modifying his Term of Pretrial RElease to Allow Travel to Mexico from 4/12/2019 to 4/21/2019 (Docket Entry <u>67</u>) by Judge Josephine L. Staton: The conditions of pretrial release for Defendant Jeffrey Gross are hereby modified to allow him to travel to Mexico from 4/12/2019 to 4/21/2019. Defendant is directed to check in with United States Pretrial Services by telephone within 48 hours of his departure to Mexico and within 48 hours of his return to the United States. See document for further information. (jp) (Entered: 03/14/2019)
03/22/2019	<u>69</u>	MINUTES OF Hearing Re Defendant's Motion to Dismiss Counts 2-8 and 10-14 of Indictment <u>31</u> ; Defendant's Motion to Dismiss Indictment <u>61</u> before Judge Josephine L. Staton as to Defendant Jeffrey David Gross. Hearing held. Oral arguments heard. Matters taken under submission by the Court. Court Reporter: Deborah Parker. (jp) (Entered: 03/22/2019)
03/27/2019	<u>70</u>	ORDER DENYING Defendant's Motion to Dismiss Counts 2-8 and 10-14 of the Indictment 9Doc. <u>31</u> ; ORDER DENYING Request to Cross-Examine Agent habben; ORDER DENYING Defendant's Motion to Dismiss Indictment (Doc. <u>61</u>) by Judge Josephine L. Staton. (SEE DOCUMENT FOR FURTHER INFORMATION). (jp) (Entered: 03/28/2019)
04/03/2019	<u>71</u>	TRANSCRIPT ORDER as to Defendant Jeffrey David Gross DCN number: R19A0757 for Court Reporter. Order for: Criminal Non Appeal.(Tenley, Scott) (Entered: 04/03/2019)
04/03/2019	<u>72</u>	TRANSCRIPT ORDER as to Defendant Jeffrey David Gross for Court Reporter. Order for: Criminal Non Appeal. Court will contact Laura Evans at levans@orrick.com with further instructions regarding this order. Transcript preparation will not begin until

		payment has been satisfied with the court reporter.(Mermelstein, Mark) (Entered: 04/03/2019)
04/23/2019	73	TRANSCRIPT filed as to Defendant Jeffrey David Gross for proceedings held on 03/22/2019, 11:28 a.m. Court Reporter: Deborah D. Parker, CSR 10342, phone number transcripts@ddparker.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through DEBORAHDPARKER.COM or PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 5/14/2019. Redacted Transcript Deadline set for 5/24/2019. Release of Transcript Restriction set for 7/22/2019.(Parker, Deborah) (Main Document 73 replaced on 4/24/2019) (rrp). (Entered: 04/23/2019)
04/23/2019	74	NOTICE OF FILING TRANSCRIPT filed as to Defendant Jeffrey David Gross for proceedings 03/22/2019, 11:28 a.m. re Transcript 73 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (Parker, Deborah) TEXT ONLY ENTRY (Entered: 04/23/2019)
05/03/2019	75	NOTICE OF MOTION AND First MOTION in Limine to Admit Covertly Recorded Statements of Defendant Jeffrey David Gross Filed by Plaintiff USA as to Defendant Jeffrey David Gross Motion set for hearing on 9/20/2019 at 08:30 AM before Judge Josephine L. Staton. (Attachments: # 1 Declaration of Scott D. Tenley, # 2 Exhibit A through Exhibit O, # 3 Proposed Order Granting Government's Motion in Limine No. 1) (Tenley, Scott) (Entered: 05/03/2019)
05/13/2019	76	NOTICE OF MOTION AND Second MOTION in Limine to Preclude Testimony, Evidence, or Argument Regarding Lack of Intent to Harm Patients and Related Evidence Filed by Plaintiff USA as to Defendant Jeffrey David Gross Motion set for hearing on 9/20/2019 at 08:30 AM before Judge Josephine L. Staton. (Attachments: # 1 Proposed Order Granting Government's Motion in Limine No. 2)(Tenley, Scott) (Entered: 05/13/2019)
05/13/2019	77	NOTICE OF MOTION AND Third MOTION in Limine to Admit Cooperating Witness Testimony Regarding Sham Contracts with Drobot-Related Entities Filed by Plaintiff USA as to Defendant Jeffrey David Gross Motion set for hearing on 9/20/2019 at 08:30 AM before Judge Josephine L. Staton. (Attachments: # 1 Declaration of Scott D. Tenley, Exhibits 1-6, # 2 Proposed Order Granting Government Motion in Limine No. 3)(Tenley, Scott) (Entered: 05/13/2019)
05/21/2019	78	PASSPORT RECEIPT from U. S. Pretrial Services as to Defendant Jeffrey David Gross. USA passport was received on 5/21/2019. (iv) (Entered: 05/28/2019)
05/30/2019	79	STIPULATION to Continue Trial Date from October 1, 2019 to February 25, 2020 filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # 1 Proposed Order Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act)(Tenley, Scott) (Entered: 05/30/2019)
06/05/2019	80	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Josephine L. Staton as to Defendant Jeffrey David Gross re Stipulation to Continue Trial Dates 79 . THEREFORE, FOR GOOD CAUSE SHOWN: The trial in this matter is continued from 10/1/2019 at 9:00 AM.,to 2/25/2020 at 9:00 AM. The status conference hearing is continued to 2/7/2020 at 8:30 AM. (jp) (Entered: 06/06/2019)
07/11/2019	81	CORRECTED ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Josephine L. Staton as to Defendant Jeffrey David Gross re Stipulation to Continue Trial

		Dates 79. THEREFORE, FOR GOOD CAUSE SHOWN: The trial in this matter is continued from 10/1/2019 at 9:00 AM., to 2/25/2020 at 9:00 AM. The status conference hearing is continued to 2/7/2020 at 8:30 AM. (jp) (Entered: 07/11/2019)
07/12/2019	<u>82</u>	OPPOSITION to First MOTION in Limine to Admit Covertly Recorded Statements of Defendant Jeffrey David Gross <u>75</u> filed by Defendant Jeffrey D. Gross. (Mermelstein, Mark) (Entered: 07/12/2019)
07/12/2019	<u>83</u>	OPPOSITION to Second MOTION in Limine to Preclude Testimony, Evidence, or Argument Regarding Lack of Intent to Harm Patients and Related Evidence <u>76</u> filed by Defendant Jeffrey D. Gross. (Mermelstein, Mark) (Entered: 07/12/2019)
07/12/2019	<u>84</u>	OPPOSITION to Third MOTION in Limine to Admit Cooperating Witness Testimony Regarding Sham Contracts with Drobot-Related Entities <u>77</u> filed by Defendant Jeffrey D. Gross. (Mermelstein, Mark) (Entered: 07/12/2019)
07/22/2019	<u>85</u>	STIPULATION to Continue Motion Hearing from August 23, 2019 to September 13, 2019 Re: Third MOTION in Limine to Admit Cooperating Witness Testimony Regarding Sham Contracts with Drobot-Related Entities <u>77</u> , Second MOTION in Limine to Preclude Testimony, Evidence, or Argument Regarding Lack of Intent to Harm Patients and Related Evidence <u>76</u> , First MOTION in Limine to Admit Covertly Recorded Statements of Defendant Jeffrey David Gross <u>75</u> filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order Continuing Hearing on Government's Motions In Limine Nos. 1, 2, and 3 to September 13, 2019)(Tenley, Scott) (Entered: 07/22/2019)
07/23/2019	<u>86</u>	ORDER CONTINUING HEARING ON GOVERNMENT'S MOTIONS IN LIMINE <u>85</u> by Judge Josephine L. Staton as follows: (1) The hearing date on the Government's first three Motions in Limine <u>75</u> , <u>76</u> , <u>77</u> , currently scheduled for 8/23/2019, is hereby continued to 11/15/2019 at 8:30 AM. (2) The motion hearing date of 8/23/2019, is vacated. (jp) (Entered: 07/23/2019)
07/31/2019	<u>87</u>	STIPULATION to Continue Reply Brief Deadline from August 2, 2019 to August 9, 2019 filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order Continuing Deadline for Government's Reply Briefs in Support of Motions in Limine)(Tenley, Scott) (Entered: 07/31/2019)
08/02/2019	<u>88</u>	ORDER AMENDING BRIEFING SCHEDULE REGARDING GOVERNMENT'S MOTIONS IN LIMINE <u>87</u> by Judge Josephine L. Staton that the government may file its reply briefs on or before 8/9/2019. (jp) (Entered: 08/02/2019)
08/07/2019	<u>89</u>	REPLY in support of First MOTION in Limine to Admit Covertly Recorded Statements of Defendant Jeffrey David Gross <u>75</u> filed by Plaintiff USA as to Defendant Jeffrey David Gross. (Attachments: # <u>1</u> Declaration of Scott D. Tenley)(Tenley, Scott) (Entered: 08/07/2019)
08/07/2019	<u>90</u>	NOTICE of Manual Filing of Compact disc containing exhibits to Declaration of Scott D. Tenley filed by Plaintiff USA as to Defendant Jeffrey David Gross (Tenley, Scott) (Entered: 08/07/2019)
08/08/2019	<u>91</u>	REPLY In Support of Second MOTION in Limine to Preclude Testimony, Evidence, or Argument Regarding Lack of Intent to Harm Patients and Related Evidence <u>76</u> filed by Plaintiff USA as to Defendant Gross. (Janakiram, Ashwin) (Entered: 08/08/2019)
08/09/2019	<u>92</u>	REPLY in support of motion Third MOTION in Limine to Admit Cooperating Witness Testimony Regarding Sham Contracts with Drobot-Related Entities <u>77</u> filed by Plaintiff USA as to Defendant Jeffrey Gross. (McNally, Joseph) (Entered: 08/09/2019)
10/25/2019	<u>93</u>	NOTICE OF MOTION AND MOTION to Continue Trial Date from February 25, 2020

		to September 8, 2020. Filed by Defendant Jeffrey David Gross. Motion set for hearing on 11/22/2019 at 11:30 AM before Judge Josephine L. Staton. (Attachments: # 1 Declaration of Mark Mermelstein, # 2 Declaration of William F. Large, # 3 Proposed Order) (Mermelstein, Mark) (Entered: 10/25/2019)
10/25/2019	94	EX PARTE APPLICATION to Shorten Time for Hearing, re: NOTICE OF MOTION AND MOTION to Continue Trial Date from February 25, 2020 to September 8, 2020. 93 to November 15, 2019 Filed by Defendant Jeffrey David Gross. (Attachments: # 1 Declaration of Mark Mermelstein, # 2 Proposed Order) (Mermelstein, Mark) (Entered: 10/25/2019)
10/30/2019	95	ORDER GRANTING Unopposed Ex Parte Application for Order Shortening Time for Hearing on Motion to Continue Trial 94 by Judge Josephine L. Staton that (1) The Ex Parte Application is granted; (2) The hearing on the MOTION to Continue Trial 93 shall be held on 11/15/2019 at 08:30 AM. and (3) Any opposition to the Motion must be filed on or before 11/1/2019. Any reply in support of the Motion must be filed on or before 11/8/2019. (jp) (Entered: 10/30/2019)
11/01/2019	96	OPPOSITION to NOTICE OF MOTION AND MOTION to Continue Trial Date from February 25, 2020 to September 8, 2020. 93 filed by Plaintiff USA as to Defendant Gross. (Attachments: # 1 Exhibit A-M)(McNally, Joseph) (Entered: 11/01/2019)
11/01/2019	97	NOTICE of Manual Filing of Thumb Drive Containing Exhibit B To Government Opposition filed by Plaintiff USA as to Defendant Jeffrey David Gross (Tenley, Scott) (Entered: 11/01/2019)
11/05/2019	98	SEALED - GOVERNMENT'S EX PARTE APPLICATION for Order Sealing Documents; Declaration of Scott D Tenley. (UNDER SEAL). (jp) (Entered: 11/07/2019)
11/05/2019	99	SEALED - ORDER SEALING DOCUMENT by Judge Josephine L. Staton. (jp) (Entered: 11/07/2019)
11/05/2019	101	SEALED DOCUMENT - THUMB DRIVE CONTAINING EXHIBIT B TO GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION to Continue Trial 93 . (Attachments: # 1 Part 2, # 2 Part 3, # 3 Part 4, # 4 Part 5, # 5 Part 6). (jp) (Additional attachment(s) added on 11/12/2019: # 6 PART 2 OF 4, # 7 PART 3 OF 4, # 8 PART 4 OF 4) (jp). (Entered: 11/12/2019)
11/08/2019	100	REPLY in support NOTICE OF MOTION AND MOTION to Continue Trial Date from February 25, 2020 to September 8, 2020. 93 filed by Defendant Jeffrey D. Gross. (Attachments: # 1 Declaration)(Amer, Mona) (Entered: 11/08/2019)
11/14/2019	102	NOTICE of Manual Filing of UNDER SEAL DOCUMENT filed by Plaintiff USA as to Defendant Jeffrey David Gross (McNally, Joseph) (Entered: 11/14/2019)
11/15/2019	107	MINUTES OF Hearing Re Defendant's Motion to Continue Trial Date 93 ; Government's Motion in Limine No. 1 To Admit Recorded Statements of Defendant Jeffrey David Gross 75 ; Government's Motion in Limine No. 2 To Preclude Testimony, Evidence, or Argument Regarding Lack of Intent to Harm His Patients and Related Evidence 76 ; Government's Motion in Limine No. 3 To Admit Cooperating Witness Testimony Regarding Sham Contracts with Drobot-Related Entities 77 before Judge Josephine L. Staton: Hearing held. All matters taken under submission by the Court. Counsel for defendant shall file declaration regarding document production, In Camera, no later than 11/22/2019. The Government shall re-submit Exhibit K to Motion in Limine No. 1. Court orders Counsel to hold early jury instruction conference. Trial estimate is eight days. Court Reporter: Deborah Parker. (jp) (Entered: 11/20/2019)
11/18/2019	103	NOTICE of Manual Filing of Compact disc containing CORRECTED Exhibit K-R to

		Tenley Reply Declaration (CR 89-1, 90) filed by Plaintiff USA as to Defendant Jeffrey David Gross (Tenley, Scott) (Entered: 11/18/2019)
11/22/2019	<u>108</u>	NOTICE of Manual Filing of Defendant Jeffrey D. Gross's Further Submission in Support of Motion to Continue Trial Date: Declarations of William F. Large, Marc A. Indeglia, Mark Mermelstein and Hamilton E. Arendsen in Further Support of Motion to Continue Trial filed by Defendant Jeffrey David Gross (Mermelstein, Mark) (Entered: 11/22/2019)
12/16/2019	<u>109</u>	NOTICE OF MOTION AND MOTION in Limine to Preclude Use of Prejudicial Terms at Trial Filed by Defendant Jeffrey David Gross Motion set for hearing on 2/7/2020 at 08:30 AM before Judge Josephine L. Staton.(Amer, Mona) (Entered: 12/16/2019)
12/16/2019	<u>110</u>	NOTICE OF MOTION AND MOTION in Limine to Exclude Evidence or Argument re Implant Hardware Costs Filed by Defendant Jeffrey David Gross Motion set for hearing on 2/7/2020 at 08:30 AM before Judge Josephine L. Staton.(Amer, Mona) (Entered: 12/16/2019)
12/16/2019	<u>111</u>	NOTICE OF MOTION AND MOTION in Limine to Exclude Evidence or Argument re Allegedly Wrongful Conduct not Involving Dr. Gross Filed by Defendant Jeffrey David Gross Motion set for hearing on 2/7/2020 at 08:30 AM before Judge Josephine L. Staton. (Amer, Mona) (Entered: 12/16/2019)
12/16/2019	<u>112</u>	DECLARATION of Mark Mermelstein re MOTION in Limine to Exclude Evidence or Argument re Implant Hardware Costs <u>110</u> , MOTION in Limine to Preclude Use of Prejudicial Terms at Trial <u>109</u> , MOTION in Limine to Exclude Evidence or Argument re Allegedly Wrongful Conduct not Involving Dr. Gross <u>111</u> filed by Defendant Jeffrey D. Gross. (Amer, Mona) (Entered: 12/16/2019)
12/17/2019	<u>113</u>	NOTICE OF LODGING filed by Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order re MIL 1)(Mermelstein, Mark) (Entered: 12/17/2019)
12/17/2019	<u>114</u>	NOTICE OF LODGING filed by Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order re MIL 2)(Mermelstein, Mark) (Entered: 12/17/2019)
12/17/2019	<u>115</u>	NOTICE OF LODGING filed by Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order re MIL 3)(Mermelstein, Mark) (Entered: 12/17/2019)
12/20/2019	<u>116</u>	ORDER by Judge Josephine L. Staton that the Court GRANTS IN PART Defendant's Motion to Continue <u>93</u> . The trial is CONTINUED to 6/9/2020 at 9:00 AM., and the pretrial status conference is CONTINUED to 6/8/2020 at 10:00 a.m. Defendant is ORDERED to appear. The Court GRANTS IN PART the Government's Motion in Limine No. 1 <u>75</u> . The Government may offer as evidence at trial the recordings that are the subject of its Motion in Limine No. 1 except that portion of Exhibit C described above. The Motion is DENIED as to that portion of Exhibit C. As set forth above, the Court GRANTS IN PART and reserves ruling in part as to the Government's Motion in Limine No. 2 <u>76</u> . The Court GRANTS the Government's Motion in Limine No. 3 <u>77</u> . (jp) (Entered: 12/20/2019)
01/09/2020	<u>117</u>	NOTICE OF MOTION AND MOTION to Continue Trial Date from June 9, 2020 to Another date slightly earlier or later. Filed by Defendant Jeffrey David Gross. Motion set for hearing on 2/7/2020 at 11:30 AM before Judge Josephine L. Staton. (Attachments: # <u>1</u> Declaration of Mark Mermelstein, # <u>2</u> Proposed Order) (Mermelstein, Mark) (Entered: 01/09/2020)
01/09/2020	<u>118</u>	EX PARTE APPLICATION to Shorten Time for Hearing, re: NOTICE OF MOTION AND MOTION to Continue Trial Date from June 9, 2020 to Another date slightly earlier or later. <u>117</u> [Unopposed] Filed by Defendant Jeffrey David Gross. (Attachments: # <u>1</u>

		Declaration of Mark Mermelstein, # 2 Proposed Order) (Mermelstein, Mark) (Entered: 01/09/2020)
01/10/2020	119	OPPOSITION to NOTICE OF MOTION AND MOTION to Continue Trial Date from June 9, 2020 to Another date slightly earlier or later. 117 filed by Plaintiff USA as to Defendant Gross. (McNally, Joseph) (Entered: 01/10/2020)
01/13/2020	120	OPPOSITION to MOTION in Limine to Exclude Evidence or Argument re Implant Hardware Costs 110 , MOTION in Limine to Preclude Use of Prejudicial Terms at Trial 109 , MOTION in Limine to Exclude Evidence or Argument re Allegedly Wrongful Conduct not Involving Dr. Gross 111 filed by Plaintiff USA as to Defendant Jeffrey David Gross. (Tenley, Scott) (Entered: 01/13/2020)
01/14/2020	121	ORDER Re Unopposed Ex Parte Application for Order Shortening Time for Hearing on Motion to Reschedule Trial Date 118 by Judge Josephine L. Staton. (SEE ORDER FOR SPECIFICS). (jp) (Entered: 01/14/2020)
01/15/2020	122	Supplemental OPPOSITION to NOTICE OF MOTION AND MOTION to Continue Trial Date from June 9, 2020 to Another date slightly earlier or later. 117 filed by Plaintiff USA as to Defendant Jeffrey David Gross. (Tenley, Scott) (Entered: 01/15/2020)
01/16/2020	123	REPLY in support of NOTICE OF MOTION AND MOTION to Continue Trial Date from June 9, 2020 to Another date slightly earlier or later. 117 filed by Defendant Jeffrey Gross. (Mermelstein, Mark) (Entered: 01/16/2020)
01/22/2020	124	ORDER Re Motion to Reschedule Trial (Doc. 117) by Judge Josephine L. Staton: The Court advises the parties that it is inclined to reschedule the trial to avoid prepaid vacations of counsel to the extent feasible within the bounds of reason and the Court's availability. Therefore, the Court directs counsel to meet and confer and provide alternative trial dates. The parties shall file a joint status report within five days of the entry of this Order setting forth their proposal(s). Counsel may consult with the Clerk regarding available dates. (jp) (Entered: 01/22/2020)
01/24/2020	125	REPLY in support of MOTION in Limine to Exclude Evidence or Argument re Implant Hardware Costs 110 , MOTION in Limine to Preclude Use of Prejudicial Terms at Trial 109 , MOTION in Limine to Exclude Evidence or Argument re Allegedly Wrongful Conduct not Involving Dr. Gross 111 filed by Defendant Jeffrey D. Gross. (Amer, Mona) (Entered: 01/24/2020)
01/27/2020	126	STATUS REPORT filed by Plaintiff USA as to Defendant Jeffrey David Gross, re Order on Motion to Continue,, 124 . (Tenley, Scott) (Entered: 01/27/2020)
02/07/2020	127	MINUTES OF Hearing re Defendant's Motion in Limine No. 1, To Preclude Use of Prejudicial Terms At Trial 109 ; Defendant's Motion in Limine No. 2, To Exclude Evidence or Argument Re Implant Hardware Costs 110 ; Defendant's Motion in Limine No. 3, To Exclude Evidence or Argument Re Allegedly Wrongful Conduct Not Involving Dr. Gross 111 ; Defendant's Motion to Reschedule Trial Date 117 before Judge Josephine L. Staton as to Defendant Jeffrey David Gross: Hearing held. Pursuant to stipulation, Jury Trial is set for 6/24/2020 at 9:00 AM. Status Conference set for 5/15/2020 at 11:30 AM. Counsel shall file a Status Report/Stipulation addressing a twelve day time-qualified jury, no later than 2/14/2020. Court Reporter: Deborah Parker. (jp) (Entered: 02/07/2020)
02/11/2020	128	MINUTES (IN CHAMBERS) ORDER RE MOTIONS IN LIMINE (DOCS. 109 , 110 , 111) by Judge Josephine L. Staton: The Court DENIES Defendant's Motions in Limine No. 1 and No. 2, and the Court DENIES AS MOOT Motion in Limine No. 3., as to Jeffrey David Gross (1). (SEE DOCUMENT FOR FURTHER INFORMATION). (jp) (Entered: 02/11/2020)

02/14/2020	<u>129</u>	STATUS REPORT filed by Defendant Jeffrey David Gross <i>RE TIME QUALIFIED JURY</i> (Mermelstein, Mark) (Entered: 02/14/2020)
02/24/2020	<u>130</u>	STIPULATION to Continue Trial Date from February 25, 2020 to June 24, 2020 filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act)(Tenley, Scott) (Entered: 02/24/2020)
02/26/2020	<u>131</u>	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Josephine L. Staton as to Defendant Jeffrey David Gross re Stipulation to Continue Trial Date <u>130</u> . THEREFORE, FOR GOOD CAUSE SHOWN: The Trial in this matter is continued from 2/25/2020 at 9:00 AM., to 6/24/2020 at 9:00 AM. The Status Conference hearing is continued to 5/15/2020 at 11:30 AM. (jp) (Entered: 02/27/2020)
03/27/2020	<u>132</u>	NOTICE OF MOTION AND MOTION to Dismiss Case <i>Indictment and for Production of Charge to Grand Jury</i> Filed by Defendant Jeffrey David Gross. Motion set for hearing on 5/15/2020 at 11:30 AM before Judge Josephine L. Staton. (Mermelstein, Mark) (Entered: 03/27/2020)
04/17/2020	<u>133</u>	NOTICE OF MOTION AND Fourth MOTION in Limine to Exclude Expert Testimony Filed by Defendant Jeffrey David Gross Motion set for hearing on 5/15/2020 at 11:30 AM before Judge Josephine L. Staton. (Attachments: # <u>1</u> Declaration of Mark Mermelstein, # <u>2</u> Exhibit A to Mermelstein Declaration, # <u>3</u> Proposed Order) (Mermelstein, Mark) (Entered: 04/17/2020)
04/17/2020	<u>134</u>	OPPOSITION to NOTICE OF MOTION AND MOTION to Dismiss Case <i>Indictment and for Production of Charge to Grand Jury</i> <u>132</u> filed by Plaintiff USA as to Defendant Jeffrey David Gross. (Tenley, Scott) (Entered: 04/17/2020)
04/24/2020	<u>135</u>	OPPOSITION to Fourth MOTION in Limine to Exclude Expert Testimony <u>133</u> filed by Plaintiff USA as to Defendant Jeffrey Gross. (McNally, Joseph) (Entered: 04/24/2020)
04/27/2020	<u>136</u>	REPLY in support of NOTICE OF MOTION AND MOTION to Dismiss Case <i>Indictment and for Production of Charge to Grand Jury</i> <u>132</u> filed by Defendant Jeffrey D. Gross. (Attachments: # <u>1</u> Declaration of Mark Mermelstein, # <u>2</u> Exhibit A) (Mermelstein, Mark) (Entered: 04/27/2020)
04/30/2020	<u>137</u>	STIPULATION to Continue Trial Date from June 24, 2020 to October 20, 2020 filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act)(Tenley, Scott) (Entered: 04/30/2020)
05/01/2020	<u>138</u>	REPLY in Support of Fourth MOTION in Limine to Exclude Expert Testimony <u>133</u> filed by Defendant Jeffrey David Gross. (Mermelstein, Mark) (Entered: 05/01/2020)
05/05/2020	<u>139</u>	ORDER CONTINUING TRIAL DATE,STATUS CONFERENCE DATE AND HEARING DATE ON PENDING MOTIONS, AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Josephine L. Staton as to Defendant Jeffrey David Gross re Stipulation to Continue Trial Date <u>137</u> . THEREFORE, FOR GOOD CAUSE SHOWN: The Trial in this matter is continued from 6/24/2020 at 9:00 AM., to 10/20/2020 at 9:00 AM. The Status Conference hearing is continued to 9/25/2020 at 11:30 AM., and the hearing on the pending motions (Doc. <u>132</u> , <u>133</u>) is continued to the date and time of the status conference. (SEE DOCUMENT FOR FURTHER INFORMATION). (jp) (Entered: 05/05/2020)
05/25/2020	<u>140</u>	NOTICE OF MOTION AND MOTION to Compel Rule 16 Discovery Filed by Plaintiff

		USA as to Defendant Jeffrey David Gross. Motion set for hearing on 6/29/2020 at 11:30 AM before Judge Josephine L. Staton. (Attachments: # 1 Declaration of Scott D. Tenley and Exhibits 1-14, # 2 Proposed Order Granting Motion to Compel Rule 16 Discovery). (Tenley, Scott) Modified on 5/26/2020 (jp). (Entered: 05/25/2020)
06/02/2020	141	STIPULATION for Order for Supplemental Protective Order filed by Defendant Jeffrey David Gross (Attachments: # 1 Proposed Order Supplemental Protective Order) (Mermelstein, Mark) (Entered: 06/02/2020)
06/05/2020	142	STIPULATION for Order Regarding Discovery filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # 1 Proposed Order Regarding Discovery)(Tenley, Scott) (Entered: 06/05/2020)
06/09/2020	143	SUPPLEMENTAL PROTECTIVE ORDER by Judge Josephine L. Staton as to Defendant Jeffrey David Gross re Stipulation for Supplemental Protective Order 141 . (See document for further information). (jp) (Entered: 06/09/2020)
06/11/2020	144	ORDER Regarding Discovery; ORDER DENYING Motion to Compel (Doc. 140) AS MOOT; ORDER Vacating Hearing by Judge Josephine L. Staton. (See document for further information). (jp) (Entered: 06/11/2020)
07/14/2020	145	NOTICE of Manual Filing of Sealed Document filed by Plaintiff USA as to Defendant Jeffrey David Gross (Tenley, Scott) (Entered: 07/14/2020)
07/16/2020	146	SEALED - DOCUMENT. (UNDER SEAL). (jp) Modified on 7/17/2020 (mku). (Entered: 07/16/2020)
07/16/2020	147	SEALED - ORDER SEALING DOCUMENT by Judge Josephine L. Staton. (jp) (Entered: 07/16/2020)
07/16/2020	148	PLEA AGREEMENT for Defendant Jeffrey David Gross filed by Plaintiff USA. (jp) Modified on 3/25/2021 (jp). (UNSEALED PER CRD REQUEST). (Entered: 07/16/2020)
07/16/2020	149	MINUTES (IN CHAMBERS) Order Scheduling Hearing by Judge Josephine L. Staton: The Court hereby sets a Change of Plea for 8/7/2020 at 9:30 AM. (jp) Modified on 7/17/2020 (mku). Modified on 3/25/2021 (jp). (UNSEALED PER CRD REQUEST). (Entered: 07/16/2020)
08/07/2020	150	MINUTES OF Change of Plea Hearing held before Judge Josephine L. Staton as to Defendant Jeffrey David Gross. Defendant sworn. Court questions defendant regarding the plea. The Defendant Jeffrey David Gross (1) pleads GUILTY to Count 1 of the Indictment. The plea is accepted. The Court ORDERS the preparation of a Presentence Report. Sentencing set for 3/19/2021 at 09:30 AM. The Jury Trial and Status Conference as well as the hearings on Defendant's Motion to Dismiss Indictment and For Production of Charge to Grand Jury 132 and Defendant's Motion in Limine No. 4 To Exclude Expert Testimony 133 are ordered VACATED. Court Reporter: Deborah Parker.. (jp). Modified on 8/7/2020 (mku). Modified on 3/25/2021 (jp). (UNSEALED PER CRD REQUEST). (Entered: 08/07/2020)
08/17/2020	151	STIPULATION for Modification of Conditions of Release filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # 1 Proposed Order Modifying Conditions of Pretrial Release)(Tenley, Scott) (Entered: 08/17/2020)
08/24/2020	152	ORDER MODIFYING CONDITIONS OF PRETRIAL RELEASE 151 by Judge Josephine L. Staton that the conditions of release as to defendant Jeffrey David Gross are modified as follows: Travel is restricted to the continental United States unless prior permission is granted by the Supervising Agency to travel to a specific location. Court permission is required for international travel. (jp) (Entered: 08/24/2020)

11/10/2020	<u>153</u>	NOTICE of Manual Filing of GOVERNMENTS EXPARTE NOTIFICATION TO THE COURT REGARDING CIVIL PROCEEDINGS THAT MAY BE IMPACTED BY THE COURTS SEALING ORDER AND PROPOSED ORDER filed by Plaintiff USA as to Defendant Jeffrey David Gross (McNally, Joseph) (Entered: 11/10/2020)
11/11/2020	<u>154</u>	NOTICE of Under Seal Filing filed by Defendant Jeffrey David Gross (Attachments: # <u>1</u> Application to File Document Under Seal, # <u>2</u> Proposed Order)(Mermelstein, Mark) (Entered: 11/11/2020)
11/12/2020	<u>155</u>	*DOCUMENT SEALED PER COURT ORDER DATED 11/24/2020* NOTICE of Manual Filing by Plaintiff USA as to Defendant Jeffrey David Gross (McNally, Joseph) Modified on 11/24/2020 (mku). (Entered: 11/12/2020)
11/17/2020	<u>157</u>	SEALED - GOVERNMENT'S EX PARTE APPLICATION FOR ORDER SEALING DOCUMENTS; Declaration Of Scott D. Tenley (bm) (Entered: 11/18/2020)
11/17/2020	<u>158</u>	SEALED - ORDER SEALING DOCUMENTS (bm) (Entered: 11/18/2020)
11/17/2020	<u>159</u>	SEALED - GOVERNMENT'S EX PARTE NOTIFICATION TO THE COURT REGARDING ONGOING CIVIL PROCEEDINGS THAT MAY BE IMPACTED BY THE COURTS SEALING ORDER (bm) (Entered: 11/18/2020)
11/17/2020	<u>161</u>	ORDER GRANTING Defendant Jeffrey D Gross' Application to File Document Under Seal by Judge Josephine L. Staton. See document for further information. (jp) (Entered: 11/18/2020)
11/17/2020	<u>163</u>	SEALED - DEFENDANT JEFFREY D. GROSS'S NOTICE OF NON-OPPOSITION TO GOVERNMENT'S EX PARTE APPLICATION (bm) (Entered: 11/20/2020)
11/18/2020	<u>156</u>	PROOF OF SERVICE of Under Seal Filing and Order Granting Same, served on 11/18/2020, by Defendant Jeffrey David Gross re Notice of Under Seal Filing <u>154</u> , (Mermelstein, Mark) (Entered: 11/18/2020)
11/20/2020	<u>162</u>	STIPULATION to Amend/Correct <i>Briefing Schedule</i> filed by Plaintiff USA as to Defendant Jeffrey David Gross (Attachments: # <u>1</u> Proposed Order)(McNally, Joseph) (Entered: 11/20/2020)
11/23/2020	<u>164</u>	APPLICATION for Order for to Seal Docket Entry Filed by Plaintiff USA as to Defendant Jeffrey David Gross. (Attachments: # <u>1</u> Proposed Order) (McNally, Joseph) (Entered: 11/23/2020)
11/24/2020	<u>165</u>	ORDER GRANTING Application to Seal Docket Entry <u>164</u> by Judge Josephine L. Staton: The government's application to seal the amended notice of manual filing (CR 155) is granted and the document shall remain under seal pending further order of the Court. (jp) (Entered: 11/24/2020)
11/24/2020	<u>166</u>	ORDER GRANTING Stipulation to Amend Briefing Schedule <u>162</u> by Judge Josephine L. Staton as to Defendant Jeffrey David Gross, With respect to the November 14, 2020 order: (1) defendant's submission shall be filed by November 24, 2020 and (2) any further submissions by the parties shall be filed by December 1, 2020. (jp) (Entered: 11/24/2020)
11/24/2020	<u>167</u>	NOTICE of Re: Status of Civil Cases filed by Defendant Jeffrey David Gross (Mermelstein, Mark) (Entered: 11/24/2020)
12/01/2020	<u>168</u>	NOTICE of Manual Filing of Under Seal Application and Order to Seal Document and Under Seal Document filed by Plaintiff USA as to Defendant Jeffrey David Gross (McNally, Joseph) (Entered: 12/01/2020)
12/01/2020	<u>169</u>	NOTICE of Manual Filing of Submission re: Governments Ex Parte Notification filed by Defendant Jeffrey David Gross (Attachments: # <u>1</u> Application to File Under Seal, # <u>2</u>

		Proposed Order)(Mermelstein, Mark) (Entered: 12/01/2020)
12/04/2020	170	ORDER GRANTING DEFENDANT JEFFREY D. GROSS' APPLICATION TO FILE DOCUMENT UNDER by Judge Josephine L. Staton as to Defendant Jeffrey David Gross, re: Notice of Manual Filing (G-92) 169 : This Court, having considered the Application for Leave to File Under Seal filed by Defendant Jeffrey David Gross, hereby GRANTS the application and ORDERS that Dr. Gross has leave to file an unredacted version of the following document under seal: Submission re: Government's Ex Parte Notification (bm) (Entered: 12/04/2020)
12/04/2020	171	SEALED - PROTECTIVE ORDER (bm) (Entered: 12/07/2020)
12/04/2020	172	SEALED DOCUMENT - DEFENDANT JEFFREY D. GROSS'S SUBMISSION RE: CONTINUED SEALING (bm) (Entered: 12/07/2020)
12/04/2020	173	SEALED DOCUMENT - UNDER SEAL DOCUMENT (bm) (Entered: 12/07/2020)
12/04/2020	174	SEALED - ORDER SEALING DOCUMENTS (bm) (Entered: 12/07/2020)
12/04/2020	175	SEALED DOCUMENT - UNDER SEAL DOCUMENT (bm) (Entered: 12/07/2020)
12/04/2020	176	SEALED - ORDER SEALING DOCUMENTS (bm) (Entered: 12/07/2020)
12/07/2020	177	PROOF OF SERVICE of Defendant Jeffrey D. Grosss Submission re Continued Sealing, served on 12/07/2020, by Defendant Jeffrey David Gross re Sealed Document 172 , Miscellaneous Order 171 , (Mermelstein, Mark) (Entered: 12/07/2020)
01/14/2021	178	NOTICE of Manual Filing of Under Seal Documents filed by Plaintiff USA as to Defendant Jeffrey David Gross (Tenley, Scott) (Entered: 01/14/2021)
01/15/2021	179	SEALED - GOVERNMENT'S EX PARTE APPLICATION for order Sealing Documents; Declaration of Scott D Tenley. (jp) (Entered: 01/17/2021)
01/15/2021	180	SEALED - ORDER SEALING DOCUMENTS. (UNDER SEAL). (jp) (Entered: 01/17/2021)
01/15/2021	181	SEALED DOCUMENT - UNDER SEAL DOCUMENT (bm) (Entered: 01/19/2021)
01/15/2021	182	SEALED DOCUMENT - UNDER SEAL DOCUMENT (bm) (Entered: 01/19/2021)
02/16/2021	185	NOTICE of Manual Filing of Under Seal Document, Government's Ex Parte Application For Order Sealing Document; Declaration Of Scott D. Tenley, Proposed Order Sealing Document, Proposed Order #2 filed by Plaintiff USA as to Defendant Jeffrey David Gross (Tenley, Scott) (Entered: 02/16/2021)
02/22/2021	186	SEALED - GOVERNMENT'S EX PARTE APPLICATION FOR ORDER SEALING DOCUMENT; Declaration Of Scott D. Tenley (bm) (Entered: 02/22/2021)
02/22/2021	187	SEALED - ORDER SEALING DOCUMENT (bm) (Entered: 02/22/2021)
02/22/2021	188	SEALED DOCUMENT - UNDER SEAL DOCUMENT (bm) (Entered: 02/22/2021)
02/22/2021	189	SEALED - ORDER (bm) (Entered: 02/22/2021)
04/26/2021	190	APPLICATION for Order for Money Judgment Filed by Plaintiff USA as to Defendant Jeffrey David Gross. (Attachments: # 1 Proposed Order) (Attorney Jonathan Galatzan added to party USA(pty:pla)) (Galatzan, Jonathan) (Entered: 04/26/2021)
04/29/2021	191	MONEY JUDGMENT OF FORFEITURE AGAINST DEFENDANT JEFFREY DAVID GROSS 190 by Judge Josephine L. Staton as to Jeffrey David Gross. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant shall forfeit to the United States the sum of \$622,936.00, pursuant to 18 U.S.C. § 981 and 28 U.S.C. § 2461(c).

		Defendant shall be liable for the entire amount of the judgment pursuant to the terms of the Plea Agreement and Application for Entry of Money Judgment. IT IS FURTHER ORDERED that pursuant to Rule 32.2(b)(3), this Money Judgment of Forfeiture shall become final as to the Defendant at the time of sentencing, and shall be made part of the sentence and included in the judgment and commitment order. See order for details. (lom) (Entered: 04/29/2021)
05/07/2021	192	NOTICE of Manual Filing of UNDER SEAL FILING filed by Plaintiff USA as to Defendant Jeffrey David Gross (Tenley, Scott) (Entered: 05/07/2021)
05/07/2021	193	NOTICE of Manual Filing of UNDER SEAL FILING filed by Defendant Jeffrey David Gross (Mermelstein, Mark) (Entered: 05/07/2021)
05/07/2021	194	SEALED - GOVERNMENT'S EX PARTE APPLICATION FOR ORDER SEALING DOCUMENTS; Declaration Of Scott D. Tenley (bm) (Entered: 05/10/2021)
05/07/2021	195	SEALED - ORDER SEALING DOCUMENTS (bm) (Entered: 05/10/2021)
05/07/2021	196	SEALED DOCUMENT - UNDER SEAL FILING (bm) (Entered: 05/10/2021)
05/12/2021	197	SEALED - DEFENDANT JEFFREY D. GROSS' EX PARTE APPLICATION TO FILE DOCUMENTS UNDER SEAL (bm) (Entered: 05/12/2021)
05/12/2021	198	SEALED - DECLARATION OF MARK MERMELSTEIN IN SUPPORT OF EX PARTE APPLICATION TO SEAL (bm) (Entered: 05/12/2021)
05/12/2021	199	SEALED - ORDER GRANTING DEFENDANT JEFFREY D. GROSS'S APPLICATION TO FILE DOCUMENTS UNDER SEAL (bm) (Entered: 05/12/2021)
05/12/2021	200	SEALED - DEFENDANT JEFFREY D. GROSS' SENTENCING MEMORANDUM (Attachments: # 1 Part 2)(bm) (Entered: 05/12/2021)
05/13/2021	201	PROOF OF SERVICE of Under Seal Filing, served on 5/12/2021, by Defendant Jeffrey David Gross re EX PARTE APPLICATION for Order for 197 , Declaration (Motion related) 198 , Sentencing Memorandum 200 , Order on Motion for Order 199 , (Mermelstein, Mark) (Entered: 05/13/2021)
05/13/2021	202	NOTICE of Restitution Claims filed by Plaintiff USA as to Defendant Jeffrey David Gross (Tenley, Scott) (Entered: 05/13/2021)
05/14/2021	203	NOTICE of Manual Filing of UNDER SEAL FILING filed by Plaintiff USA as to Defendant Jeffrey David Gross (Tenley, Scott) (Entered: 05/14/2021)
05/17/2021	206	SEALED - GOVERNMENT'S EX PARTE APPLICATION FOR ORDER SEALING DOCUMENTS; DECLARATION OF SCOTT D. TENLEY (bm) (Entered: 05/17/2021)
05/17/2021	207	SEALED - ORDER SEALING DOCUMENTS (bm) (Entered: 05/17/2021)
05/17/2021	208	SEALED DOCUMENT - UNDER SEAL FILING (Attachments: # 1 Part 2)(bm) (Entered: 05/17/2021)
05/19/2021	209	RESPONSE to Notice (Other) 202 , filed by Defendant Jeffrey David Gross (Mermelstein, Mark) (Entered: 05/19/2021)
05/19/2021	210	NOTICE of Manual Filing of Under Seal Documents filed by Defendant Jeffrey David Gross (Mermelstein, Mark) (Entered: 05/19/2021)
05/19/2021	211	SEALED - DEFENDANT JEFFREY D. GROSS' EX PARTE APPLICATION TO FILE DOCUMENTS UNDER SEAL (bm) (Entered: 05/19/2021)
05/19/2021	212	SEALED - ORDER GRANTING DEFENDANT JEFFREY D. GROSS'S

		APPLICATION TO FILE DOCUMENTS UNDER SEAL (bm) (Entered: 05/19/2021)
05/19/2021	213	SEALED - FURTHERSUBMISSION IN SUPPORT OF DR. GROSS'S SENTENCING BRIEF (bm) (Entered: 05/19/2021)
05/19/2021	214	PROOF OF SERVICE of Under Seal Documents, served on 5/19/2021, by Defendant Jeffrey David Gross re Supplement (non-motion) 213 , Order on Motion for Order 212 , EX PARTE APPLICATION for Order for 211 , (Mermelstein, Mark) (Entered: 05/19/2021)
05/21/2021	215	NOTICE of Victim Impact Statement and Restitution Claim filed by Plaintiff USA as to Defendant Jeffrey David Gross - <i>Redacted Version</i> (Tenley, Scott) (Entered: 05/21/2021)
05/21/2021	216	MINUTES OF SENTENCING before Judge Josephine L. Staton as to Defendant Jeffrey David Gross. Sentencing hearing held. See separate Judgment and Commitment Order. The Court sets a Restitution Hearing on 7/15/2021 at 1:00 PM. The parties shall file simultaneous briefs regarding restitution no later than 7/1/2021. Briefs shall not exceed 25pages. Court Reporter: Deborah Parker. (jp) (Entered: 05/24/2021)
05/24/2021	217	JUDGMENT AND COMMITMENT by Judge Josephine L. Staton as to Defendant Jeffrey David Gross (1), Count(s) 1, Defendant is committed on Count 1 of the 14-Count Indictment to the custody of the Bureau of Prisons for 15 Months. Supervised release for 3 years under the terms and conditions of US Probation and Pretrial Services Office and Second Amended General Order 20-04. Special assessment of \$100. All fines are waived. On government's motion, all remaining counts dismissed Bond exonerated upon surrender. Defendant advised of right of appeal. Defendant to surrender not later than 8/16/2021. (See document for further information). (jp) (Entered: 05/24/2021)

PACER Service Center			
Transaction Receipt			
06/01/2021 10:16:58			
PACER Login:	elg00001	Client Code:	
Description:	Docket Report	Search Criteria:	8:18-cr-00014-JLS End date: 6/1/2021
Billable Pages:	17	Cost:	1.70

EXHIBIT 4

EXHIBIT 4

1 **ECC**
JOSEPH A. GUTIERREZ, ESQ.
2 Nevada Bar No. 9046
STEPHEN G. CLOUGH, ESQ.
3 Nevada Bar No. 10549
MAIER GUTIERREZ & ASSOCIATES
4 8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
5 Telephone: 702.629.7900
Facsimile: 702.629.7925
6 E-mail: jag@mgalaw.com
sgc@mgalaw.com
7
8 *Attorneys for Plaintiff Lamont Compton*

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

12 LAMONT COMPTON, an individual,
13
14 Plaintiff,

15 vs.

16 KEOLIS TRANSIT SERVICES, LLC; a foreign
limited liability company; UNKNOWN
17 DRIVER, an individual; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,
18 Defendants.

Case No.: A-18-777320-C
Dept. No.: XXIII

**PLAINTIFF'S INITIAL EARLY CASE
CONFERENCE LIST OF WITNESSES
AND DOCUMENTS**

19
20 Plaintiff LAMONT COMPTON ("Plaintiff"), by and through his attorneys of record, the law
21 firm MAIER GUTIERREZ & ASSOCIATES, hereby submits this initial Early Case Conference List of
22 Witnesses and Documents, as follows:

23 **I. LIST OF WITNESSES**

- 24 1. Lamont Compton
c/o Joseph A. Gutierrez, Esq.
Stephen G. Clough, Esq.
25 MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
26 Las Vegas, Nevada 89148
(702) 629-7900

27 Plaintiff is expected to testify as to his knowledge of the facts and circumstances surrounding
28

1 the incident the occurred on November 4, 2017 and his injuries therefrom, and other matters pertinent
2 thereto.

- 3 2. Unknown driver
4 c/o Michael P. Lowry, Esq.
5 WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP
6 300 South Fourth Street, 11th Floor
7 Las Vegas, Nevada 89101
8 (702) 727-1400

9 Defendant is expected to testify to his knowledge of the facts and circumstances surrounding
10 the incident that occurred on November 4, 2017, and other matters pertinent thereto.

- 11 3. NRCP 30(b)(6) witness and/or designee of Keolis Transit Services, LLC
12 c/o Michael P. Lowry, Esq.
13 WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP
14 300 South Fourth Street, 11th Floor
15 Las Vegas, Nevada 89101
16 (702) 727-1400

17 The NRCP 30(b)(6) witness and/or designee of Keolis Transit Services, LLC is expected to
18 testify to their knowledge of the facts and circumstances surrounding the incident that occurred on
19 November 4, 2017, and other matters pertinent thereto.

- 20 4. Person(s) Most Knowledgeable
21 Shadow Emergency Physicians
22 P.O. Box 13917
23 Philadelphia, PA 19101
24 (800) 355-2470

25 The Person(s) Most Knowledgeable at Shadow Emergency Physicians are expected to testify
26 as to their knowledge of the injuries sustained by Plaintiff and treatment thereof.

- 27 5. Person(s) Most Knowledgeable
28 Desert Radiologists
P.O. Box 3057
Indianapolis, IN 46206
(888) 727-1074

The Person(s) Most Knowledgeable at Desert Radiologists are expected to testify as to their
knowledge of the injuries sustained by Plaintiff and treatment thereof.

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1 6. Sammy Shon, M.D.
2 Person(s) Most Knowledgeable
3 Valley Hospital Medical Center
4 620 Shadow Lane
5 Las Vegas, Nevada 23297
6 (866) 823-4250

7 Dr. Shon and/or the Person(s) Most Knowledgeable at Valley Hospital Medical Center are
8 expected to testify as to their knowledge of the injuries sustained by Plaintiff and treatment thereof.

9 7. Joshua Johnson, D.C.
10 Person(s) Most Knowledgeable
11 Neck and Back Clinics
12 8678 Spring Mountain Road, Suite 130
13 Las Vegas, Nevada 89117
14 (702) 644-3333

15 Dr. Johnson and/or the Person(s) Most Knowledgeable at Neck and Back Clinics are expected
16 to testify as to their knowledge of the injuries sustained by Plaintiff and treatment thereof.

17 8. Jorg Rosler, M.D.
18 Andrew Hall, M.D.
19 Person(s) Most Knowledgeable
20 Interventional Pain & Spine Institute
21 851 S. Rampart Boulevard, Suite 100
22 Las Vegas, Nevada 89145
23 (702) 357-8004

24 Dr. Rosler, Dr. Hall, and/or the Person(s) Most Knowledgeable at Interventional Pain & Spine
25 Institute are expected to testify as to their knowledge of the injuries sustained by Plaintiff and
26 treatment thereof.

27 9. Joseph Kavanagh, M.D.
28 Person(s) Most Knowledgeable
29 SimonMed Imaging
30 6301 S. Mountain Vista Street, Suite 103
31 Henderson, Nevada 89014
32 (702) 433-7216

33 Dr. Kavanagh and/or the Person(s) Most Knowledgeable at SimonMed Imaging are expected
34 to testify as to their knowledge of the injuries sustained by Plaintiff and treatment thereof.

35 10. Person(s) Most Knowledgeable
36 Las Vegas Pharmacy
37 2600 W. Sahara Avenue, #120
38 Las Vegas, Nevada 89102
39 (702) 220-3906

40 The Person(s) Most Knowledgeable at Las Vegas Pharmacy are expected to testify as to their

1 knowledge of the injuries sustained by Plaintiff and treatment thereof.

2 11. David Webb, M.D.
3 Person(s) Most Knowledgeable
4 Galleria Surgery Center, Inc.
5 715 Mall Ring Circle, Suite 100-B
6 Henderson, Nevada 89014
7 (702) 985-2118

8 Dr. Webb and/or the Person(s) Most Knowledgeable at Galleria Surgery Center, Inc. are
9 expected to testify as to their knowledge of the injuries sustained by Plaintiff and treatment thereof.

10 12. Andrew Cash, M.D.
11 Person(s) Most Knowledgeable
12 Desert Institute of Spine Care
13 9339 W. Sunset Road
14 Las Vegas, Nevada 89148
15 (702) 630-3472

16 Dr. Cash and/or the Person(s) Most Knowledgeable at Desert Institute of Spine Care are
17 expected to testify as to their knowledge of the injuries sustained by Plaintiff and treatment thereof.

18 13. Person(s) Most Knowledgeable
19 American Toxicology
20 3340 Sunrise Avenue, Suite 105
21 Las Vegas, Nevada 89101
22 (702) 452-4999

23 The Person(s) Most Knowledgeable at American Toxicology are expected to testify as to their
24 knowledge of the injuries sustained by Plaintiff and treatment thereof.

25 14. Jeffrey D. Gross, M.D.
26 Person(s) Most Knowledgeable
27 SPINE
28 1661 W. Horizon Ridge Parkway, Suite 280
Henderson, Nevada 89012
(844) 477-7463

Dr. Gross and/or the Person(s) Most Knowledgeable at SPINE are expected to testify as to
their knowledge of the injuries sustained by Plaintiff and treatment thereof.

15. Enrico Fazzini, D.O., Ph.D.
Person(s) Most Knowledgeable
291 North Pecos Road
Henderson, Nevada 89074
(702) 570-7600

Mr. Fazzini and/or the Person(s) Most Knowledgeable are expected to testify as to their
knowledge of the injuries sustained by Plaintiff and treatment thereof.

1 16. Eric Biesbroeck, M.D.
2 Person(s) Most Knowledgeable
3 Pueblo Medical Imaging
4 2628 W. Charleston Boulevard, Suite B
5 Las Vegas, Nevada 89102
6 (702) 228-0031

7 Dr. Biesbroeck and/or the Person(s) Most Knowledgeable at Pueblo Medical Imaging are
8 expected to testify as to their knowledge of the injuries sustained by Plaintiff and treatment thereof.

9 17. Andrew Hall, M.D.
10 Person(s) Most Knowledgeable
11 Surgical Arts Center
12 9499 W. Charleston Boulevard, Suite 250
13 Las Vegas, Nevada 89117
14 (702) 933-3600

15 Dr. Hall and/or the Person(s) Most Knowledgeable at Surgical Arts Center are expected to
16 testify as to their knowledge of the injuries sustained by Plaintiff and treatment thereof.

17 Plaintiff's treating physicians and healthcare providers may testify and give their opinions as
18 non-retained medical experts regarding the treatment of Plaintiff. Their testimony and opinions may
19 consist of the nature of Plaintiff's injuries, causation of Plaintiff's injuries and the necessity of the
20 medical treatment rendered, the necessity of future treatment to be rendered, the causation of the
21 necessity for past and future medical treatment, and/or their opinion as to the past and future
22 restrictions of activities, including work activities, causally related to the subject collision. Their
23 testimony may also include authenticity of medical records, the cost of past medical care, future
24 medical care, and whether those medical costs are usual and customary for this community. Their
25 testimony may also address any referrals made by said provider to other providers and the results of
26 same. Their testimony may also include opinions as to whether Plaintiff has a diminished work life
27 expectancy as a result of the subject accident. Further, they may also offer testimony in rebuttal to
28 similarly-qualified providers designated as experts by the Defendants. It is also anticipated that
29 Plaintiff's treating physicians will offer opinion testimony regarding their medical care and treatment
30 of Plaintiff and address criticisms by experts designated by the defense.

31 Plaintiff identifies and incorporates into his list of witnesses, any and all witnesses identified
32 by Defendants and/or all other parties to this action.

33 Plaintiff identifies and incorporates into his list of witnesses any and all witnesses needed for

1 rebuttal and/or impeachment.

2 Plaintiff identifies and incorporates into his list of witnesses each and every witness whose
3 identity is discovered through the course of discovery in this case.

4 Plaintiff identifies and incorporates into his list of witnesses any and all experts who have not
5 yet been retained to testify, and will supplement this list of witnesses accordingly.

6 Plaintiff reserves the right to supplement his list of witnesses with any additional persons who
7 become known as discovery continues.

8 **II. LIST OF DOCUMENTS**

9 **MEDICAL/BILLING RECORDS**

10 1. Billing records from Shadow Emergency Physicians for dates of service 11/4/17; *See*
11 Bates Stamped Nos. COMPTON00001.

12 2. Billing records from Desert Radiologists for date of service 11/4/17; *See* Bates
13 Stamped Nos. COMPTON00002.

14 3. Medical and billing records from Valley Hospital Medical Center for date of service
15 11/4/17; *See* Bates Stamped Nos. COMPTON00003-COMPTON00092.

16 4. Medical and billing records from Neck and Back Clinics for dates of service 11/21/17
17 through 9/7/18; *See* Bates Stamped Nos. COMPTON00093-COMPTON00153.

18 5. Medical and billing records from Interventional Pain and Spine Institute for dates of
19 service 11/28/17 through 9/28/18; *See* Bates Stamped Nos. COMPTON00154-COMPTON00207.

20 6. Medical and billing records from SimonMed Imaging for date of service 1/11/18; *See*
21 Bates Stamped Nos. COMPTON00208-COMPTON00218.

22 7. Billing records from Las Vegas Pharmacy, Inc. for date of service 1/17/18; *See* Bates
23 Stamped Nos. COMPTON00219-COMPTON00220.

24 8. Medical and billing records from Galleria Surgery Center, Inc. for date of service
25 2/6/18; *See* Bates Stamped Nos. COMPTON00221-COMPTON00223.

26 9. Medical and billing records from Desert Institute of Spine Care for dates of service
27 3/6/18 and 5/22/18; *See* Bates Stamped Nos. COMPTON00224-COMPTON00231.

28 10. Medical and billing records from American Toxicology for dates of service 3/6/18 and

5/22/18; *See* Bates Stamped Nos. COMPTON00232-COMPTON00242.

11. Billing records from SPINE for date of service 7/23/18 and medical records for dates of service 7/23/18 and 8/22/18; *See* Bates Stamped Nos. COMPTON00243-COMPTON00309.

12. Medical and billing records from Enrico Fazzini, D.O., Ph.D. for date of service 8/17/18; *See* Bates Stamped Nos. COMPTON00310-COMPTON00318.

13. Medical and billing records from Pueblo Medical for date of service 8/27/18; *See* Bates Stamped Nos. COMPTON00319-COMPTON00324.

14. Medical and billing records from Surgical Arts Center for date of service 8/30/18; *See* Bates Stamped Nos. COMPTON00325-COMPTON00327.

DIAGNOSTIC IMAGING STUDIES PERTAINING TO PLAINTIFF

The following diagnostic imaging studies/films are or will be in the possession of Plaintiff and once in the possession of Plaintiff can be made available for inspection and/or copying at Defendants expense, and are being described and identified pursuant to NRCP 16.1 (a) (1) (B) and 26 (e) (1):

Provider	Service Date	Type of Film
SimonMed Imaging	1/11/18	MRI of cervical spine
SimonMed Imaging	1/11/18	MRI of lumbar spine

Plaintiff reserves the right to submit as an exhibit any document or tangible items disclosed by the Defendant or any other party in this action, including any documents or tangible items obtained from any third party. Plaintiff further reserves the right to amend and/or supplement this list of documents or tangible items as discovery proceeds. By disclosing documents, Plaintiff does not waive the right to object to or move to exclude documents, or any portions thereto, on any basis.

In addition, neither inclusion of any documents or tangible items within this disclosure nor acceptance of documents provided by any other party hereto in a disclosures shall be deemed as a waiver by Plaintiff of any evidentiary rights Plaintiff may have with respect to those documents and/or tangible items, including, but not limited to, objections related to authenticity, materiality, relevance, foundation, hearsay, or any other rights as may be permitted pursuant to the Nevada Rules of Evidence.

III. COMPUTATION OF DAMAGES

Plaintiff hereby offers the following computation of damages pursuant to NRCP 16.1(a)(1)(C).

This list is not designed to be all-inclusive. Discovery is continuing; therefore, Plaintiff reserves the right to supplement this list.

SPECIAL DAMAGES

I. Medical Expenses:

1.	Shadow Emergency Physicians	\$1,957.00
2.	Desert Radiologists	\$259.03
3.	Valley Hospital Medical Center	\$7,894.00
4.	Neck and Back Clinics	\$7,935.60
5.	Interventional Pain and Spine Institute	\$50,825.00
6.	SimonMed Imaging	\$3,077.04
7.	Las Vegas Pharmacy	\$654.36
8.	Galleria Surgery Center, Inc.	\$5,500.00
9.	Desert Institute of Spine Care	\$3,113.00
10.	American Toxicology	\$1,500.00
11.	SPINE	\$2,365.00
12.	Enrico Fazzini, D.O.	\$4,562.00
13.	Pueblo Medical Imaging	\$5,200.00
14.	Surgical Arts Center	\$15,963.32
	TOTAL:	\$110,805.35

II. Lost Wages: To be determined.

III. Lost Future Earning Capacity: To be determined.

IV. Future Medical Treatment: To be determined.

V. Loss of Household Services: To be determined.

VI. Vocational Rehabilitation: To be determined.

GENERAL DAMAGES

I. Mental Anguish: To be determined by a trier of fact.

II. Loss of Enjoyment of Life: To be determined by a trier of fact.

INTEREST

To be calculated at the statutory rate.

IV. DEMONSTRATIVE EXHIBITS

Plaintiff may offer at trial certain exhibits for demonstrative purposes including, but not

1 limited to, the following:

- 2 1. Diagrams, drawings, pictures, photos, film, video, DVD and CD ROM of various parts
- 3 of the human body, diagnostic tests and surgical procedures;
- 4 2. Computer simulation, finite element analysis and similar forms of computer
- 5 visualization;
- 6 3. Computer graphics of subject incident and/or the surgical procedures;
- 7 4. Story boards and computer digitized power point images;
- 8 5. Blow-ups/transparencies/digitized images of medical records, medical bills,
- 9 photographs and other exhibits;
- 10 6. Diagrams/story boards/computer re-enactment of the subject incident and/or the
- 11 surgical procedures;
- 12 7. Diagrams of various parts of the human body related to Plaintiff's injuries;
- 13 8. Photographs of various parts of the human body related to Plaintiff's injuries;
- 14 9. Models of the human body related to Plaintiff's injuries;
- 15 Any demonstrative exhibit list by any party.

16 DATED this 28th day of December, 2018.

17 **MAIER GUTIERREZ & ASSOCIATES**

18
19 /s/ Stephen G. Clough

20 JOSEPH A. GUTIERREZ, ESQ.

21 Nevada Bar No. 9046

22 STEPHEN G. CLOUGH, ESQ.

23 Nevada Bar No. 10549

24 8816 Spanish Ridge Avenue

25 Las Vegas, Nevada 89148

26 *Attorneys for Plaintiff Lamont Compton*

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Michael P. Lowry, Esq.
WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP
300 South Fourth Street, 11th Floor
Las Vegas, Nevada 89101
Attorneys for Defendant Keolis Transit Services, LLC

An employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT 5

EXHIBIT 5

EWD
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
STEPHEN G. CLOUGH, ESQ.
Nevada Bar No. 10549
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: 702.629.7900
Facsimile: 702.629.7925
E-mail: jag@mgalaw.com
sgc@mgalaw.com

Attorneys for Plaintiff Lamont Compton

DISTRICT COURT
CLARK COUNTY, NEVADA

LAMONT COMPTON, an individual,

Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC; a foreign
limited liability company; IRVING
TORREMORO, an individual; DOES I through
X; and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-18-777320-C
Dept. No.: XXIII

**PLAINTIFF'S DISCLOSURE OF EXPERT
WITNESSES**

Plaintiff LAMONT COMPTON ("Plaintiff"), by and through his attorneys, the law firm
MAIER GUTIERREZ & ASSOCIATES, hereby designates the following expert witnesses pursuant to
NRCP 16.1(a)(2)(B), who have been retained for purposes of this litigation, and who may also be
called as an expert witness to give testimony at the time of the trial in this matter.

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1 above-named injuries sustained in the accident.

2 Additionally, Dr. Gross may also offer testimony in rebuttal to similarly-qualified providers
3 designated as experts by Defendant. It is also anticipated that Dr. Gross will offer testimony regarding
4 the medical care, life care plan, and treatment of Plaintiff and address any criticisms by experts
5 designated by the opposing party. A copy of Dr. Gross' qualifications and publications, which are set
6 forth in his CV, testimony list, fee schedule, and future life care plan dated February 15, 2019, are
7 attached hereto as **Exhibit 1**.

8 2. Jorg Rosler, M.D.
9 Andrew Hall, M.D.
INTERVENTIONAL PAIN & SPINE INSTITUTE
851 S. Rampart Boulevard, Suite 100
Las Vegas, Nevada 89145

10 Dr. Rosler and Dr. Hall are from Interventional Pain & Spine Institute and are experts in the
11 field of pain management. Both are Plaintiff's expert treating physicians and are expected, but not
12 limited to, testify regarding the care and treatment of Plaintiff. Their testimony may consist of the
13 nature and cause of Plaintiff's injuries, the necessity of past and future medical treatment, as well as
14 their opinion as to past and future restrictions of activities, including work activities, causally related
15 to the subject incident. Their testimony may also corroborate the authenticity of medical records, the
16 cost of past and future medical care, the reasonableness and necessity of incurring such past and future
17 costs, and whether those medical costs are usual and customary for this community. Their testimony
18 may also address any referrals he made to other providers and the results of same. Their testimony
19 may also include opinions as to whether Plaintiff has a diminished work life expectancy as a result of
20 the injuries sustained in the subject incident.

21 Dr. Rosler and Dr. Hall treated Plaintiff for injuries sustained from the subject accident to his
22 neck, back, and left upper extremity numbness. The treatment consisted of evaluations, medication,
23 and surgery. Dr. Rosler and Dr. Hall will opine that this treatment was reasonable and necessary to
24 relieve pain and discomfort from injuries caused by the subject incident. Both will also opine that
25 Plaintiff's diagnosis is cervical sprain/strain with mechanical neck pain, left upper extremity
26 radiculopathy, lumbar sprain/strain, with mechanical lower back pain, and cervicogenic headaches
27 (see medical records for comprehensive diagnosis). The prognosis according to Dr. Rosler is
28 continuation of conservative treatment modalities, implement medication management, and RTC after
imaging review (see medical records for comprehensive prognosis). Dr. Rosler and Dr. Hall will

1 further opine that this treatment was reasonable and necessary due to the above-named injuries
2 sustained in the accident.

3 Additionally, Dr. Rosler and Dr. Hall may also offer testimony in rebuttal to similarly-
4 qualified providers designated as experts by Defendant. It is also anticipated that Dr. Rosler and Dr.
5 Hall will offer testimony regarding the medical care and treatment of Plaintiff and address any
6 criticisms by experts designated by the opposing party. A copy of Dr. Rosler's and Dr. Hall's
7 qualifications and publications, which are set forth in their CV's, testimony lists and fee schedule are
8 attached hereto as **Exhibit 2**.

9 3. Enrico Fazzini, D.O., Ph.D.
291 North Pecos Road
Henderson, Nevada 89074

10 Dr. Fazzini from is an expert in the field of neurology/neuropsychology. Dr. Fazzini is
11 Plaintiff's expert treating physician and is expected, but not limited to, testify regarding the care and
12 treatment of Plaintiff. His testimony may consist of the nature and cause of Plaintiff's injuries, the
13 necessity of past and future medical treatment, as well as his opinion as to past and future restrictions
14 of activities, including work activities, causally related to the subject incident. Dr. Fazzini's testimony
15 may also corroborate the authenticity of medical records, the cost of past and future medical care, the
16 reasonableness and necessity of incurring such past and future costs, and whether those medical costs
17 are usual and customary for this community. His testimony may also address any referrals he made
18 to other providers and the results of same. His testimony may also include opinions as to whether
19 Plaintiff has a diminished work life expectancy as a result of the injuries sustained in the subject
20 incident.

21 Dr. Fazzini treated Plaintiff for injuries sustained from the subject accident to his head, neck,
22 headaches, memory, attention, concentration problems dizziness with balance impairment, left arm
23 pain with numbness and tingling into left hand, left shoulder weakness, and left knee pain. The
24 treatment consisted of EMG/NCV testing performed on Plaintiff's upper extremities revealing
25 denervation present in the muscles supplied by the C6-C7 nerve roots. Dr. Fazzini will opine that
26 this treatment was reasonable and necessary to relieve pain and discomfort from injuries caused by
27 the subject incident. Dr. Fazzini will also opine that Plaintiff's diagnosis is postconcussive balance
28 impairment and headaches; cognitive deficits following traumatic brain injury; cervical, thoracic, and
lumbar myofascial pain syndrome; cervical spine central disk herniations with radiculopathy; lumbar

1 spine central disk protrusion; sprain of left shoulder and left knee (see medical records for
2 comprehensive diagnosis). The recommendations according to Dr. Fazzini is a MRI scan of brain
3 using brain trauma protocol; continue pain management with Dr. Rosler; continue surgical assessment
4 and consultation if the patient does not improve with interventional pain management in terms of the
5 cervical spine; and refrain from excessive physical activity and stress (see medical records for
6 comprehensive prognosis). Dr. Fazzini will further opine that this treatment was reasonable and
7 necessary due to the above-named injuries sustained in the accident.

8 Additionally, Dr. Fazzini may also offer testimony in rebuttal to similarly-qualified providers
9 designated as experts by Defendant. It is also anticipated that Dr. Fazzini will offer testimony
10 regarding the medical care and treatment of Plaintiff and address any criticisms by experts designated
11 by the opposing party. A copy of Dr. Fazzini's qualifications and publications, which are set forth in
12 his CV, testimony list and fee schedule are attached hereto as **Exhibit 3**.

12 4. Andrew Cash, M.D.
13 DESERT INSTITUTE OF SPINE CARE
14 9339 W. Sunset Road
15 Las Vegas, Nevada 89148

16 Dr. Cash from Desert Institute of Spine Care is an expert in the field of spinal and orthopaedic
17 surgery. Dr. Cash is Plaintiff's expert treating physician and is expected, but not limited to, testify
18 regarding the care and treatment of Plaintiff. His testimony may consist of the nature and cause of
19 Plaintiff's injuries, the necessity of past and future medical treatment, as well as his opinion as to past
20 and future restrictions of activities, including work activities, causally related to the subject incident.
21 Dr. Cash's testimony may also corroborate the authenticity of medical records, the cost of past and
22 future medical care, the reasonableness and necessity of incurring such past and future costs, and
23 whether those medical costs are usual and customary for this community. His testimony may also
24 address any referrals he made to other providers and the results of same. His testimony may also
25 include opinions as to whether Plaintiff has a diminished work life expectancy as a result of the injuries
26 sustained in the subject incident.

27 Dr. Cash treated Plaintiff for injuries sustained from the subject accident to his neck, head, and
28 back. The treatment consisted of physical examinations, review of imaging, and discussing different
treatment options that could be provided for such pathological findings with Plaintiff. Dr. Cash will
opine that this treatment was reasonable and necessary to relieve pain and discomfort from injuries
caused by the subject incident. Dr. Cash will also opine that Plaintiff's diagnosis is intervertebral disc

1 disorders with radiculopathy, lumbar region; face syndrome; mid-cervical disc disorder; radiculopathy
2 cervical region; encounter for therapeutic drug level monitoring (see medical records for
3 comprehensive diagnosis). The prognosis according to Dr. Cash is diminished without recommended
4 treatment and Plaintiff may experience future exacerbations as there is structural compromise to the
5 spine and will require future treatment (see medical records for comprehensive prognosis). Dr. Cash
6 will further opine that this treatment was reasonable and necessary due to the above-named injuries
7 sustained in the accident.

8 Additionally, Dr. Cash may also offer testimony in rebuttal to similarly-qualified providers
9 designated as experts by Defendant. It is also anticipated that Dr. Cash will offer testimony regarding
10 the medical care and treatment of Plaintiff and address any criticisms by experts designated by the
11 opposing party. A copy of Dr. Cash's qualifications and publications, which are set forth in his CV,
12 testimony list and fee schedule are attached hereto as **Exhibit 4**.

13 Plaintiff's treating physicians and healthcare providers may testify and give their opinions as
14 non-retained medical experts regarding the treatment of Plaintiff. Their testimony and opinions may
15 consist of the nature of Plaintiff's injuries, causation of Plaintiff's injuries and the necessity of the
16 medical treatment rendered, the necessity of future treatment to be rendered, the causation of the
17 necessity for past and future medical treatment, and/or their opinion as to the past and future
18 restrictions of activities, including work activities, causally related to the subject incident. Their
19 testimony may also include authenticity of medical records, the cost of past medical care, future
20 medical care, and whether those medical costs are usual and customary for this community. Their
21 testimony may also address any referrals made by said provider to other providers and the results of
22 same. Their testimony may also include opinions as to whether the Plaintiff has a diminished work
23 life expectancy as a result of the subject collision. Further, they may also offer testimony in rebuttal
24 to similarly-qualified providers designated as experts by the Defendants. It is also anticipated that
25 Plaintiff's treating physicians will offer opinion testimony regarding their medical care and treatment
26 of Plaintiff and address criticisms by experts designated by the defense.

27 Plaintiff reserves the right to call at the time of trial any other expert witnesses designated by
28 any other party to this action.

Plaintiff reserves the right to call expert witnesses not included in this list as permitted by

1 NRCP 16.1 and will advise opposing counsel if and when a determination is made to call such further
2 witnesses.

3 Plaintiff reserves the right to add, delete, supplement, and/or modify this list pursuant to NRCP
4 16.1 as it becomes necessary and as a result of future discovery or as needed due to designation by
5 other parties.

6 DATED this 9th day of October, 2019.

7 **MAIER GUTIERREZ & ASSOCIATES**

8
9 /s/ Joseph A. Gutierrez

10 JOSEPH A. GUTIERREZ, ESQ.

11 Nevada Bar No. 9046

12 STEPHEN G. CLOUGH, ESQ.

13 Nevada Bar No. 10549

14 8816 Spanish Ridge Avenue

15 Las Vegas, Nevada 89148

16 *Attorneys for Plaintiff Lamont Compton*
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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, a copy of the **PLAINTIFF'S DISCLOSURE OF EXPERT WITNESSES** was electronically served on the 9th day of October, 2019, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List, as follows:

Michael P. Lowry, Esq.
WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP
300 South Fourth Street, 11th Floor
Las Vegas, Nevada 89101
*Attorneys for Defendants Irving Torremoro and
Keolis Transit Services, LLC*

/s/ Natalie Vazquez
An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT 6

EXHIBIT 6

SPINE

J E F F R E Y D . G R O S S , M . D .
S P I N E F E L L O W S H I P N E U R O S U R G E O N

1661 W. Horizon Ridge Pkwy. Suite 280 • Henderson, NV 89012
tel: 844.47.SPINE {844.477.7463} • fax: 702.946.7510

August 12, 2018

PATIENT NAME:

COMPTON, LAMONT

DATE OF BIRTH:

DATE OF INJURY:

DATE OF EXAMINATION:

11/04/17

07/23/18

NEUROSURGICAL CONSULTATION

To Whom It May Concern:

I saw Mr. Lamont Compton for neurosurgical consultation concerning a motor vehicle collision related injury on the above-referenced date.

Mr. Compton is a ■-year-old, ambidextrous male.

HISTORY OF INJURY:

He reports that he was driving a Lexus IS220 sedan with his seatbelt on. He was completely stopped at a red light in the right lane. A double length bus in the lane to his left unexpectedly hit his mirror and dragged his car with him. He reflexively jumped right. He reports that the bus hit his vehicle twice. His air bags did not deploy. His head hit the door frame. His neck was pulled by the seatbelt. He felt significant neck pain (aggravated – see below), and lower back pain (aggravated – see below). Police came and made a report. He was evaluated by paramedics. Later, he had someone come drive him in his vehicle to Valley Hospital. The car was later repaired. He showed me photos on his phone.

At the hospital, he complained of neck and lower back pain. He was given medications. He was released with instructions. He saw Dr. Johnson (chiropractor), who he had seen before (see below). He was having cognitive issues, vertigo, and aggravated memory complaints (see below). He saw Dr. Rosler, who he had seen before (see below). He was also complaining of headaches, and trouble sleeping. Left arm symptoms were also aggravated.

Dr. Webb provided a neck injection, without benefit. He then saw Dr. Cash on the recommendation of Dr. Rosler. Facet injections were recommended. He tried cervical facet injections. He had significant reduction in his neck pain and headaches and a little bit in his left arm. This lasted two weeks. He had significant reduction in lower back pain for about two weeks after lumbar facet joint injections. He had a second cervical facet joint injection earlier this month. He had a similar positive response, and it last two weeks. He is scheduled to have a confirmatory lumbar facet block. He is open to having the rhizotomy for the neck and is awaiting his second lumbar injection prior to discussing rhizotomy for such.

CURRENT COMPLAINTS:

He reports that his neck is the worst area. He has constant neck pain posterior in the lower neck. Pain radiates to the posterior muscles to the occiput, which appears to be the source of his headaches. He has episodic vertigo. Moving his neck can set off the vertigo. He denies right arm symptoms. He reports left upper scapular and deltoid and forearm and dorsal forearm (less often in the forearm and distally) and into the hand with a numbness and buzzing feeling. The thumb is often involved and can twitch. His neck symptoms keep him from travelling as much as he used to. He has to be cautious and is limited with playing with his kids. His sleep is interrupted.

He reports lower back pain along the mid to lower lumbar spine. The pain is constant, but worse with prolonged sitting and/or travelling. He denies lower extremity symptoms except his left foot falls asleep. He cannot walk or run for long distances. The knees feel weak.

He reports continued memory issues, vision, and irritability. Reduced sleep also contributes to such.

He has some anxiety from the injury. He has issues with seeing busses. He tries to avoid driving.

PREVIOUS INJURIES:

He denies childhood injuries. He denies broken bones. He denies sport injuries. He had viral meningitis and made a full recovery. He denies military injuries. He denies work injuries, but he did have one of two inguinal hernias related to fighting wild fires. The other hernia was from weight lifting. In 2015, those were repaired, and he healed well.

He reports three prior accidents. The first was in 2012, without injury (bumper scrape). A second accident occurred on 08/09/15. He could not move his left leg and suffered neck and lower back injuries. He had a traumatic brain injury from hitting the side door. He was treated at Spring Valley Hospital for a few days. He denies prior concussions. This trauma was filmed by a witness. MRIs were done. He required physical therapy and chiropractic care. He required pain management care from Dr. Rosler.

While leaving Dr. Johnson's office on 09/17/15, he was in a third accident, and had worsening of his neck, lower back, and brain injury.

He tried a neck injection, which was "great" for two days for his neck pain and left arm pain. A repeat injection was also short-lived. He saw Dr. Kabins. Electrodiagnostics were ordered. Surgery was recommended (C5-7) but Lamont was fearful of paralysis.

Lamont reports that he was able to curtail the medications but was not seeking active care. He was using over-the-counter medications, like Motrin. He obtained an occasional massage. He did have some residual upper and lower back pain. There was mainly neck pain. He had left arm symptoms. There were residual memory issues.

Aside from 2015-2016, he had not sought chiropractic before.

He denies prior issues with his neck or lower back aside from self-limited exercise related soreness.

SUBSEQUENT INJURIES:

He denies subsequent injuries.

PAST MEDICAL HISTORY:

None reported by the patient.

PAST SURGICAL HISTORY:

Past surgical history includes double-bilateral hernia repair (inguinal) from weightlifting and firefighting.

MEDICATIONS:

Medications include Motrin, Zanaflex, Flexeril, Tylenol, naproxen, tramadol, gabapentin -- had stopped for 1 to 1-1/2 years from prior injuries, restarted due to present injury.

ALLERGIES:

No known drug allergies.

FAMILY HISTORY:

None reported by the patient.

SOCIAL HISTORY:

The patient does not drink or smoke. He works as a producer -- limited work. He served in the USN for three years. He is married, has three kids, 23, 2, and 3.

REVIEW OF SYSTEMS (OTHER THAN THE GIVEN HISTORY):

The following list of other items was supplied to the patient for review with me:

EXHIBIT 7

EXHIBIT 7

SPINE

J E F F R E Y D . G R O S S , M . D .
S P I N E F E L L O W S H I P N E U R O S U R G E O N

1661 W. Horizon Ridge Pkwy. Suite 280 • Henderson, NV 89012
tel: 844.47.SPINE {844.477.7463} • fax: 702.946.7510

February 15, 2019

PATIENT NAME:

COMPTON, LAMONT

DATE OF BIRTH:

[REDACTED]

DATE OF INJURY:

11/04/17

NEUROSURGICAL SUPPLEMENTAL REPORT: MEDICAL LIFE CARE PLAN

To Whom It May Concern:

I have prepared the future medical life care plan based upon my current knowledge of Mr. Compton:

FUTURE MEDICAL LIFE CARE PLAN:

Life Expectancy

Life expectancy is based on the records of mortality, furnished through the studies provided by the National Vital Statistics Reports, which is updated through the Centers for Disease Control and Prevention (CDC) website. These reports project life expectancy based on demographic status that includes current age, gender, and race. In reviewing the table, the life

expectancy for Mr. Compton is 34.2 years, which is based on a 45-year-old male, as defined by the National Vital Statistics Reports.¹

Conclusions

The goal of this life care plan is to establish the costs to care for Mr. Compton, related to his medical needs, as a result of the trauma on November 4, 2017. It will be edited or modified if new information or findings are presented.

The dollar amounts included in this life care plan are based on "real" dollars (2019), which are obtained through interviews with suppliers, facilities, vendors, and healthcare providers. Local prices are used unless local vendors are unable to supply the data. If non-local vendors are used, shipping expense is included with the cost.

¹ National Vital Statistics Reports (Vol. 67, No. 7, November 13, 2018)

I. Therapies ²						
Item	Start	Stop	Unit Cost	Frequency	Annual Cost	Cost Over Life Expectancy
Physical therapy (flare ups) ³	2019	2053	238.27	See Below	6,433.29	220,018.52
					6,433.29	220,018.52
Bursts of physical therapy for flare-up is recommended at three times a year on average, with a frequency of three times a week for three weeks each time to provide the patient with motion and function optimization for expected flare-ups.						

² Based upon the average of charges incurred with Neck and Back Clinic from 11/21/17 to 9/7/18 (\$7863 for 33 visits- not including medical records copying fee). 99214, 99211, 97010, 97014, A4556, 97110, 98941, 99213.

³ Suri P, Suanders KW, Von Korff M: Prevalance and Characteristics of Flare-ups of Chronic non-specific back pain in primary care: A telephone survey. *Clin J Pain* 28(7):573-80, 2012.

Delitto A, et. al.: Clinical pratcice guidelines linked to the international classification of functioning, disability, and health from the orthopaedic section of the American physical therapy association. *Journ Ortho Sports Phys Therapy* 42 (4):A1-57, 2012.

II. Pain Management						
Item	Start	Stop	Unit Cost	Frequency	Annual Cost	Cost Over Life Expectancy
Cervical RFTC ⁴	2019	2053	25,038.32	See Below	50,076.64	1,702,605.76
Lumbar RFTC ⁵	2019	2053	22,563.32	See Below	45,126.64	1,534,305.76
					95,203.28	3,236,911.52
<p>Pain management with repeat and serial combined cervical and lumbar facet rhizotomies is recommended, twice per year on average. Such may be used to delay surgical interventions. (They can be combined, in which the facility cost may be less, but such would be a departure from his current receipt of care.) Cost includes surgeon and facility charges. (Total 68 cervical and 68 lumbar)</p>						

⁴ Based upon charges incurred with Surgical Arts Center for bilateral C5-7 MB RFTC DOS: 8/30/18 and sample billing for Interventional Pain and Spine Institute for bilateral C5-7 RFTC. 64633x2, 64634x2, 64634-51x2, 99070.

⁵ Based upon charges incurred with Dr. Hall and Surgical Arts Center for bilateral L3-5 MB RFTC DOS: 1/31/19. 64635 x2, 64636 x4, 99070.

III. Physician Appointments						
Item	Start	Stop	Unit Cost	Frequency	Annual Cost	Cost Over Life Expectancy
Pain management specialist ⁶	2019	2053	390.00	See below	3,101.75	106,080.00
Ophthalmological care ⁷	2019	2053	468.09	Once	13.69	468.09
Psychological Evaluation	2019	2053	733.99 ⁸	Once	21.46	733.99
Psychological counseling	2019	2053	192.09 ⁹	12 visits	67.40	2,305.08
					3,204.30	109,587.16
<p>He will need pain management visits prior to and after each of his cervical/lumbar RFTC procedures. (Total 272 visits, unless combined which would be 136 visits) Calculation above is for separate procedures, as he is currently receiving.</p> <p>Ophthalmological evaluation/testing is recommended.</p> <p>Psychological evaluation is recommended along with 12 treatment visits for coping skills.</p>						

⁶ Based upon charges incurred with Interventional Pain and Spine Institute for 99213.

⁷ Medical fees 2019, 75th percentile for 99205 with geographic adjustment factor (1.011).

⁸ Medical fees 2019, 75th percentile for 96130 and 90791 with GAF (1.011).

⁹ Medical fees 2019, 75th percentile for 90837 with GAF (1.011).

V. Medications ¹⁰						
Item	Start	Stop	Unit Cost	Frequency	Annual Cost	Cost Over Life Expectancy
Zanaflex 2mg	2019	2053	29.84/30 tablets for one month supply	As needed	358.08	12,246.34
Gabapentin 300mg	2019	2053	23.75/30 tablets for one month supply.	As needed	285.00	9,747.00
					643.08	21,993.34
<p>The above is his current medication regimen related to the present injury as prescribed by Dr. Hall.</p> <p>Medications will be modified accordingly by the pain management specialist.</p>						

¹⁰ Cost is based upon the average of three local pharmacies.

COST SUMMARY		
Table	Category	Life Expectancy Cost
I	Therapies	\$220,018.52
II	Pain Management	\$3,236,911.52
III	Physician Appointments	\$109,587.16
IV	Medications	\$21,993.34
Grand Total		\$3,588,510.54

My opinions herein are also provided to a reasonable degree of medical probability.

Sincerely,



JEFFREY D. GROSS, M.D.

Spine Fellowship Trained Neurosurgeon
Diplomate, American Board of Neurological Surgery

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Lamont Compton, Plaintiff(s)

CASE NO: A-18-777320-C

7 vs.

DEPT. NO. Department 24

8 Keolis Transit Services LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Motion was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 6/29/2021

15 MGA Docketing

docket@mgalaw.com

16 Michael Lowry

michael.lowry@wilsonelser.com

17 Efile LasVegas

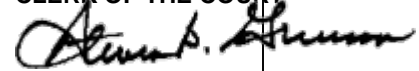
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18 Kait Chavez

kait.chavez@wilsonelser.com

19 Amanda Hill

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MICHAEL P. LOWRY, ESQ.

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Attorneys for Irving Torremoro; Keolis Transit Services, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

Lamont Compton, an individual,

Plaintiff,

vs.

Keolis Transit Services, LLC, LLC, a foreign limited liability company; Irving Torremoro, an individual; Does I through X; and Roe Corporations I through X, inclusive,

Defendants.

Case No.: A-18-777320-C

Dept. No.: 24

**Defendants' Opposition to Motion to
Substitute Jeffrey Gross**

Plaintiff knew Dr. Gross had been indicted, but decided to take a risk that those charges would either be dismissed, still be pending when this case was tried, or would not result in a conviction. Knowing that risk, Plaintiff still chose a litigation strategy that designated Dr. Gross as a retained expert. The risk did not work out as Plaintiff hoped and Plaintiff now asks the court to bail him out, just two months before trial. Plaintiff knew the risk, took the risk, and should not be allowed to escape the consequences of that risk.

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1 Dated this 9th day of July, 2021.



4 /s/ Michael P. Lowry
5 MICHAEL P. LOWRY, ESQ.
6 Nevada Bar No. 10666
7 6689 Las Vegas Blvd. South, Suite 200
8 Las Vegas, Nevada 89119
9 Attorneys for Irving Torremoro; Keolis Transit
10 Services, LLC

11 **Memorandum of Points & Authorities**

12 **I. Dr. Gross' federal indictment was public knowledge.**

13 A timeline of events helps put this motion into context.

- 14
- 15 • **November 3, 2017:** The side-swipe motor vehicle accident at issue occurs.
 - 16 • **January 23, 2018:** An indictment is filed, under seal, against Dr. Gross in the United
17 States District Court for the Central District of California.¹
 - 18 • **May 18, 2018:** The federal court enters an order unsealing the indictment.²
 - 19 • **June 14, 2018:** The United States Attorney for the Central District of California issues a
20 press release publicizing the indictment.³
 - 21 • **July 6, 2018:** Lawsuit is filed.
 - 22 • **July 23, 2018:** Dr. Gross agrees to treat Plaintiff on a lien basis.⁴
 - 23 • **August 12, 2018:** Dr. Gross writes a neurosurgical consultation report.⁵
 - 24 • **February 15, 2019:** Dr. Gross projects the cost of future medical care.⁶
 - 25 • **March 27, 2019:** Dr. Gross writes supplemental report. That same day the Central
26 District of California publishes an order describing the charges against Dr. Gross.

27 ¹ Exhibit 3 to Motion at 3.

28 ² *Id.* at 4.

³ Exhibit A.

⁴ Exhibit B.

⁵ Exhibit 6 to Motion.

⁶ Exhibit 7.

1 Defendant is alleged to have received kickbacks in exchange for referrals of
2 patients needing spinal surgeries and other (usually invasive) procedures. The
3 Indictment alleges Defendant is associated with kickbacks totaling \$622,936. The
4 payments were allegedly disguised as payments pursuant to bogus contracts
5 entered into for the purposes of disguising and concealing the kickback payments.
6 **The charges against Defendant involve kickbacks related to surgeries billed to
7 personal injury attorneys rather than insurers, as Defendant performed surgeries
8 contingent on a recovery through personal injury cases.**⁷

- 9 • **October 9, 2019:** Plaintiff designates Dr. Gross as a retained medical expert in this case.⁸
- 10 • **November 6, 2019:** Parties stipulate to extend discovery.⁹ Initial expert disclosures are
11 due December 9, 2019. Discovery will close on March 7, 2020.
- 12 • **March 6, 2020:** Plaintiff files his motion in limine 11 expressly asking the court to
13 exclude evidence of Dr. Gross' pending federal indictment. The motion notes "Dr. Gross
14 is federally indicted for allegedly not disclosing the fact he is receiving kickbacks from a
15 hospital. This is not a formal conviction but an unproven claim made by in [sic] his case
16 that has not been heard on the merits yet."¹⁰
- 17 • **March 7, 2020:** Discovery closes.
- 18 • **March 24, 2020:** Defendants oppose motion in limine 11. They agree that the fact Dr.
19 Gross was indicted is inadmissible. However, they argue the evidence obtained about Dr.
20 Gross and his billing practices in that case is independently relevant and admissible.
- 21 • **July 16, 2020:** Dr. Gross' plea agreement is filed in the federal case.¹¹ Although labeled
22 as sealed, the seal was later lifted.
- 23 • **July 21, 2020:** Plaintiff replies concerning motion in limine 11, asserting further
24 arguments about how the federal indictment is not admissible.
- 25 • **August 5, 2020:** Judge Miley enters an order granting motion in limine 11, concluding
26 "the evidence Defendants present is more prejudicial than probative."¹²

27 ⁷ *United States v. Gross*, 370 F. Supp. 3d 1139, 1143 (C.D. Cal. 2019).

28 ⁸ Exhibit 5 to Motion.

⁹ Order filed November 6, 2019.

¹⁰ Motion at 6:21-23 (emphasis in original).

¹¹ Exhibit 1 to Motion.

¹² Order at 4:13-15.

- **May 21, 2021:** The United States Attorney for the Central District of California issues a press release publicizing Dr. Gross' conviction.¹³
- **August 31, 2021:** Scheduled date for calendar call in this case.
- **September 7, 2021:** First day of the trial stack for this case. As of this opposition, the case is 3rd in line for trial.

II. Plaintiff made a strategic choice to hire Dr. Gross.

Plaintiff asserts he “and his counsel had no knowledge of the status of the criminal case as it was under seal until in or about April, 2021.”¹⁴ Plaintiff then asserts he learned of the guilty plea on April 21, 2021 and the sentencing on May 24, 2021.¹⁵ Counsel’s affidavit asserts “[h]ad I known that Dr. Gross would plead guilty or be sentenced, I would not have retained or designated Dr. Gross as a witness in this case.”¹⁶

Plaintiff’s argument is carefully drafted. He implicitly concedes he was aware of the criminal case. The indictment was a matter of public record, unsealed on May 21, 2018 and publicized by prosecutors on June 14, 2018. Plaintiff was plainly aware of the pending charges against Dr. Gross because Plaintiff moved to exclude them in his motion in limine 11. Instead, Plaintiff argues only that he did not know Dr. Gross would plead guilty or be sentenced to prison. Yet that is a well known and obvious risk for anyone who has been criminally charged.

a. Plaintiff has not presented excusable neglect or good cause.

There is no provision in Nevada’s Rules of Civil Procedure that allows a party to substitute expert witnesses. What Plaintiff is effectively asking the court to do is re-open discovery so that he can designate a new initial expert.

i. There is no excusable neglect for Plaintiff’s late motion.

EDCR 2.35(a) governs motions to extend discovery deadlines. Motions must be “be filed no later than 21 days before the discovery cut-off date or any extension thereof. A request made

¹³ Exhibit C.

¹⁴ Motion at 5:13-14.

¹⁵ Motion at 5:11-13.

¹⁶ Affidavit at ¶ 4.

1 beyond the period specified above shall not be granted unless the moving party, attorney or other
2 person demonstrates that the failure to act was the result of excusable neglect.” Applied here,
3 Plaintiff wants to re-open discovery. Discovery closed on March 7, 2020. He filed this motion
4 on June 29, 2021. As the motion was filed after more than 15 months after discovery closed,
5 Plaintiff must show the motion’s timing was the result of excusable neglect.

6 The timing of Plaintiff’s motion is the result of a strategy, not neglect. Dr. Gross’
7 indictment was a matter of public record as of May 21, 2018 and publicized by prosecutors on
8 June 14, 2018. Plaintiff’s motion is carefully drafted to avoid saying he did not know of the
9 indictment, instead arguing only he did not know Dr. Gross would plead guilty. Plaintiff chose
10 to designate him as a retained expert, chose to have him project future medical costs, and chose
11 to stick with him despite an indictment on kickback charges for medical billing practices.
12 Plaintiff knew the risk of hiring Dr. Gross but accepted that risk. Plaintiff filed this motion only
13 after he learned the risk did not work out in his favor. That is a strategy, not neglect, and is not a
14 basis to re-open discovery just two months before trial. As no excusable neglect is present, the
15 motion should simply be denied.

16 This result is consistent with the result from *Clark v. Gold Coast*. There the district court
17 excluded the plaintiff’s liability expert, resulting in summary judgment. The plaintiff then
18 moved to re-open discovery and asserted excusable neglect was present because she could not
19 have anticipated her expert witness would be excluded and she needed time to get a new one.
20 The district court denied the motion and the Supreme Court agreed. “The concept of ‘excusable
21 neglect’ does not apply to a party losing a fully briefed and argued motion; instead, the concept
22 applies to instances where some external factor beyond a party’s control affects the party’s
23 ability to act or respond as otherwise required.”¹⁷

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27
28 ¹⁷ 62603, 2014 Nev. Unpub. LEXIS 1238, 2014 WL 3784262 (2014).

1 **ii. There is no good cause to re-open discovery.**

2 If Plaintiff's request is considered on its merits, it must be "supported by a showing of
3 good cause for the extension...."¹⁸ The good cause requirement primarily considers the
4 diligence of the party seeking the amendment.¹⁹ The extension may be granted if the deadline
5 "cannot be met despite the diligence of the party seeking the extension. Carelessness is not
6 compatible with a finding of diligence."²⁰ "Although the existence or degree of prejudice to the
7 party opposing the modification might supply additional reasons to deny a motion, the focus of
8 the inquiry is upon the moving party's reasons for seeking modification."²¹

9 Diligence is not at issue. Plaintiff diligently worked to designate Dr. Gross as an initial
10 expert. Instead, the court's analysis focuses on the moving party's reasons for the extension. As
11 discussed above, Plaintiff's reason for the extension is that his litigation strategy to hire Dr.
12 Gross as an expert witness has backfired. Plaintiff knew of this risk at least three years ago, but
13 accepted that risk. Plaintiff should be stuck with the results.

14 **b. Plaintiff's proposed designation of Dr. Leon is untimely.**

15 Plaintiff's motion could alternatively be viewed as a request to deem a new designation
16 of Dr. Leon timely. As to expert witnesses, "[a] party must make these disclosures at the times
17 and in the sequence that the court orders."²² "If a party fails to provide information or identify a
18 witness ..., the party is not allowed to use that information or witness to supply evidence on a
19 motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless."²³
20 Federal courts interpreting their equivalent have ruled Rule 37(c)(1) gives teeth to discovery
21 disclosure obligations.²⁴ The Advisory Committee Notes to the 1980 Amendment to Rule 37
22 stated it is an "automatic," "self-executing sanction." When considering whether to excuse a
23

24 ¹⁸ EDCR 2.35(a).

25 ¹⁹ *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992).

26 ²⁰ *Carrillo v. Las Vegas Metro. Police Dep't*, 2013 U.S. Dist. LEXIS 114781, 2013 WL 4432395
(D. Nev. August 14, 2013).

27 ²¹ *Johnson*, 975 F.2d at 610.

28 ²² NRCP 16.1(a)(2)(E)(i).

²³ NRCP 37(C)(1).

²⁴ *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001).

1 party's non-compliance, "the burden is on the party facing sanctions to prove harmlessness."²⁵
2 Applied here, it is Plaintiff's burden to demonstrate harmlessness.

3 Plaintiff wants to designate a late expert witness. In *Hansen v. Universal Health Servs.,*
4 *Inc.* the plaintiff designated additional experts long after discovery closed. The district court
5 excluded them from trial and that decision was affirmed on appeal. "[I]t appears that either the
6 defendants would have been prejudiced or the trial date would have had to be continued once
7 again to allow discovery if the new experts were to testify."²⁶ *Staccato v. Valley Hosp.* also
8 addressed excluding several proposed expert witnesses who were named after the discovery
9 deadline. "[W]e perceive no abuse of discretion in the district court's decision to exclude any
10 untimely designated witnesses, and we decline to disturb that decision on appeal."²⁷

11 While *Hansen* and *Staccato* did not concern substituting experts, the analysis should
12 apply here and lead to the same result. Again, Plaintiff knew there was a risk that Dr. Gross
13 could pled guilty or be convicted after a trial on the charges he faced. Plaintiff accepted that risk
14 but it did not work out in his favor. An unsuccessful litigation strategy is not substantial
15 justification to re-open discovery when trial is just two months away.

16 Further, Plaintiff has not met his burden to demonstrate harmlessness. Discovery closed
17 long ago. Plaintiff's motions in limine were heard and decided. The parties are preparing for
18 trial. Part of the defense strategy was a contingency that Dr. Gross *would* be convicted because
19 that would affect the case value. Allowing Plaintiff to reshuffle the deck now, after deciding he
20 dealt himself a losing hand, would materially and adversely affect Defendants' own strategy.

21 Plaintiff also has not demonstrated harmlessness because he has provided no information
22 about his proposed substitute expert. Plaintiff promises much of Dr. Leon's opinions, but
23 provides nothing from Dr. Leon binding himself to those promises. Plaintiff does not provide a
24 CV or fee schedule so Defendants can compare Dr. Leon's qualifications and expenses to Dr.

25 *Id.*

26 *Hansen v. Universal Health Services of Nevada, Inc.*, 115 Nev. 24, 28-29, 974 P.2d 1158,
1160-61 (1999).

27 *Staccato v. Valley Hosp.*, 123 Nev. 526, 529 n.2, 170 P.3d 503, 505 (2007).

1 Gross'. Nor does Plaintiff provide a report from Dr. Leon that can be compared to Dr. Gross' for
2 scope and content. It is Plaintiff's burden to demonstrate harmlessness and he has not met it.

3 **c. The local federal court denied a similar motion.**

4 This topic has come up before in the local federal court too. In *Groves v. City of Reno*
5 the plaintiff designated as an expert witness a lawyer who had been suspended from practice,
6 twice, while the case was pending.²⁸ Discovery closed and 11 months later Plaintiff asked to
7 substitute replace that expert with someone else.

8 *Groves* approached the analysis much like Nevada's state courts. *Groves* noted the
9 timing and sequence of expert disclosure is governed by the discovery scheduling order and Rule
10 37(c) bars a party from using information at trial that was not timely or appropriately disclosed
11 "unless the failure was substantially justified or is harmless." As the deadlines to disclose
12 experts had expired long ago, *Groves* considered whether the motion to substitute was
13 substantially justified or harmless. The moving party has the burden to demonstrate justification
14 or harmlessness. Further, in the Ninth Circuit, "when an expert is not timely disclosed, there is a
15 *presumption* the opposing party is harmed."²⁹

16 *Groves* concluded the substitution was not harmless, "as demonstrated in the additional
17 discovery expense the Defendant would incur, a possible alteration of Defendant's strategies, and
18 the disruption in the court's calendar."

19 **d. Plaintiff's cases did not allow substitution due to a failed strategy.**

20 Plaintiff cites a variety of cases to support his position, but none allowed substitution
21 where the need for it arose because of an unsuccessful litigation strategy. For instance, the
22 requested substitution from *In re Northrop Grumman Corp. ERISA Litig.* arose because the
23 Plaintiff's expert died.³⁰

24
25
26 ²⁸ No. 3:13-cv-00537, 2015 U.S. Dist. LEXIS 79246 (D. Nev. June 18, 2015).

27 ²⁹ Emphasis in original.

28 ³⁰ No. CV 06-06213, 2016 U.S. Dist. LEXIS 185126, 2016 WL 6826171 (C.D. Cal. Apr. 7, 2016) ("Here, it is undisputed that Plaintiffs could not have named Witz as their expert by the January 5, 2011 deadline because Kampner did not die until September 2011.").

1 In *Lincoln Nat'l Life Ins. Co. v. Transamerica Fin. Life Ins. Co.*, the defendant's expert
2 was convicted of embezzlement after being designated as an expert witness and being deposed.
3 However, the defendant "only learned of Mr. Van Elsen's legal troubles and eventual
4 incarceration on June 24, 2010."³¹ The problem was brought the court's attention at a status
5 check a month later and a substitute expert was permitted.

6 *Lincoln Nat'l's* facts contrast starkly with the facts here. Dr. Gross' indictment was a
7 matter of public record and publicized by prosecutors. Plaintiff even filed a motion in limine to
8 exclude reference to the indictment 15 months *before* a conviction occurred. Clearly Plaintiff
9 was aware of the indictment and took a calculated risk, unlike the defendant in *Lincoln* who
10 learned of the risk only after the expert was convicted and sentencing occurred.

11 In *Stone Brewing Co., LLC v. MillerCoors LLC* Stone asked to substitute one of its
12 experts because the expert "was uncomfortable testifying in-person given the COVID-19
13 pandemic, and that he was also unwilling to meet with counsel in-person to prepare for trial."³²
14 Stone even confirmed the new expert "endorsed and accepted all of [the former expert's]
15 opinions...." Given the ongoing COVID-19 pandemic, the court granted the substitution. This
16 conclusion has no relevance to whether Plaintiff should be allowed to escape the result of his
17 choice to use Dr. Gross despite knowledge of the pending indictment.

18 *Rebel Communs., LLC v. Virgin Valley Water Dist.* is also inapplicable. There the
19 plaintiff designated an expert witness and the defense asked to depose him. "After attempting to
20 contact Radtke, Rebel learned that Radtke was no longer employed by Spectrum, and that
21 another employee ... had been assigned to the matter."³³ The plaintiff then moved to substitute,
22 which was allowed. The circumstances that led to the substitution were beyond the plaintiff's
23 control, whereas here Plaintiff *knew* about Dr. Gross' pending indictment and decided to accept
24 that risk.

25
26
27 ³¹ No. 1:04-cv-396, 2010 U.S. Dist. LEXIS 103744 (N.D. Ind. Sep. 30, 2010).

³² No. 3:18-cv-331, 2021 U.S. Dist. LEXIS 66859, 2021 WL 1263836 (S.D. Cal. Apr. 5, 2021).

³³ No. 2:10-cv-513, 2015 U.S. Dist. LEXIS 123197, 2015 WL 5430297 (D. Nev. Sep. 12, 2015).

1 **III. Plaintiff rolled the dice and is stuck with Dr. Gross.**

2 Plaintiff freely chose his litigation strategy. He was aware of the risk of hiring Dr. Gross
3 and accepted that risk. The risk did not work out as Plaintiff hoped, but that is not justification to
4 re-open discovery and continue trial. Plaintiff's motion should be denied.

5 Dated this 9th day of July, 2021.



7
8 /s/ Michael P. Lowry
9 MICHAEL P. LOWRY, ESQ.
10 Nevada Bar No. 10666
11 6689 Las Vegas Blvd. South, Suite 200
12 Las Vegas, Nevada 89119
13 Attorneys for Irving Torremoro; Keolis Transit
14 Services, LLC

15 **CERTIFICATE OF SERVICE**

16 Pursuant to NRCP 5, I certify that I am an employee of Wilson Elser Moskowitz Edelman
17 & Dicker LLP, and that on July 9, 2021, I served **Defendants' Opposition to Motion to Substitute**
18 **Jeffrey Gross** as follows:

- 19 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
20 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- 21 ☒ via electronic means by operation of the Court's electronic filing system, upon
22 each party in this case who is registered as an electronic case filing user with the
23 Clerk;

24
25 Stephen G. Clough, Esq.
26 MAIER GUTIERREZ & ASSOCIATES
27 8816 Spanish Ridge Avenue
28 Las Vegas, Nevada 89148
Attorneys for Lamont Compton

BY: /s/ Amanda Hill
An Employee of



Exhibit A

Exhibit A



THE UNITED STATES ATTORNEY'S OFFICE
CENTRAL DISTRICT *of* CALIFORNIA

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Department of Justice

U.S. Attorney's Office

Central District of California

FOR IMMEDIATE RELEASE

Thursday, June 14, 2018

Additional Doctors Charged in Massive Kickback Scheme Related to Spinal Surgeries at Long Beach Hospital Owned by Michael Drobot

SANTA ANA, California – Three additional doctors have been charged in three new cases for their roles in a 15-year-long health care fraud scheme that involved more than \$40 million in illegal kickbacks paid to doctors and other medical professionals in exchange for referring thousands of patients who received spinal surgeries. As a result of the kickback scheme, more than \$580 million in fraudulent bills were submitted, mostly to California's worker compensation system.

David Hobart Payne, 60, an orthopedic surgeon who lives in Irvine, is scheduled to be arraigned later today in United States District Court on charges of conspiracy, honest services fraud, and using an interstate facility to aid in unlawful activity. A five-count superseding indictment returned by a federal grand jury on April 25 alleges that Payne was bribed approximately \$450,000 to steer more than \$10 million in kickback-tainted surgeries to Pacific Hospital of Long Beach.

Jeffrey David Gross, 52, an orthopedic surgeon who resides in Dana Point and Las Vegas, Nevada, appeared in federal court on Wednesday and pleaded not guilty to charges contained in a 14-count indictment returned earlier this year by a federal grand jury. Gross, who faces charges of conspiracy, honest services mail fraud and honest services wire fraud, was ordered to stand trial on August 7. The indictment alleges that Gross made at least \$622,000 in exchange for performing and/or referring more than \$19 million in kickback-tainted surgeries to Pacific Hospital.

In the third indictment being announced today, Lokesh Tantuwaya, 51, who maintains residences in Rancho Santa Fe and Rock Springs, Wyoming, was charged in February by a federal grand jury. The 13-count indictment charges Tantuwaya with conspiracy, honest services fraud, and using an interstate facility to aid in unlawful activity. Tantuwaya, who pleaded not guilty

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in April, has been ordered to stand trial on November 6. The indictment alleges that Tantuwaya received approximately \$3.2 million in kickbacks for referring and/or performing \$38 million in surgeries to Pacific Hospital.

The kickback scheme centered on Pacific Hospital of Long Beach, which specialized in surgeries, especially spinal and orthopedic procedures. The owner of Pacific Hospital, Michael D. Drobot, conspired with doctors, chiropractors and marketers to pay kickbacks in return for the referral of thousands of patients to Pacific Hospital for spinal surgeries and other medical services paid for primarily through the California workers' compensation system. During its final five years, the scheme resulted in the submission of over \$500 million in fraudulent medical bills. To date, nine defendants have been convicted for participating in the kickback scheme.

If they were to be convicted of the charges in the indictments announced today, Payne, Gross and Tantuwaya would face potential sentences of decades in federal prison.

An indictment contains allegations that a defendant has committed a crime. Every defendant is presumed to be innocent until and unless proven guilty in court.

The investigation into the spinal surgery kickback scheme is being conducted by the Federal Bureau of Investigation; IRS Criminal Investigation; the California Department of Insurance; and the United States Postal Service, Office of Inspector General.

This case is being prosecuted by Assistant United States Attorneys Joseph T. McNally and Scott D. Tenley of the Santa Ana Branch Office, and Assistant United States Attorney Ashwin Janakiram of the Major Frauds Section.

Component(s):

USAO - California, Central

Contact:

Thom

Mrozek Spokesperson/Public Affairs Officer United States Attorney's Office
Central District of California (Los Angeles) 213-894-6947

Press Release Number:

18-098

Updated June 14, 2018

Exhibit B

Exhibit B

J.D. Gross Medical Corporation dba SPINE, and Medical Strategy Management

LIEN FOR MEDICAL SERVICES

This Lien Agreement (the "Agreement") is entered into and effective as of the 23 of July, 2018 by and among SPINE and affiliates, a California & Nevada medical practice ("Provider");

Lamont Compton ("Patient-Client"); and Maier Gutierrez & Associates ("Attorney"). Provider, Patient-Client, and Attorney may each be referred to individually as a "Party" or collectively as the "Parties."

NOW, THEREFORE, the Parties recognize and acknowledge the good and valuable consideration set forth herein, and agree that they are each bound by the terms and conditions set forth below:

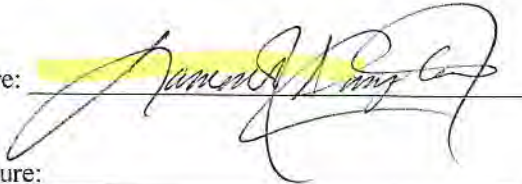
1. Patient-Client hereby expressly authorizes Provider to provide Attorney, at reasonable intervals upon Attorney's request with complete reports of Patient-Client's medical conditions, care, and cost of treatment. Provider agrees to promptly furnish these reports.
2. In order to assure that Provider will be paid for medical services rendered and to secure its interest in any judgment or settlement award, Attorney and Patient-Client expressly authorize the placement of a lien on all Proceeds (the "Medical Lien") in an amount equal to (a) the total amount invoiced by Provider for medical services rendered to Patient-Client as of date on which the Proceeds are received by Attorney or Patient-Client (the "Receipt Date").

"Proceeds" shall be defined the amount awarded to Patient-Client as a result of any judgment, settlement, insurance (including, but not limited to, "MED-PAY" advances), or any other payment made to Patient-Client in any personal injury matter ("Claim").

3. Attorney and Patient-Client agree that the Medical Lien shall attach on the Proceeds immediately upon receipt by Attorney or Patient-Client of any full or partial payment (the "Receipt Date"). Patient-Client hereby authorizes and directs Attorney to honor the Medical Lien.
4. Patient-Client understands that this Agreement is made solely for Provider's additional protection and in consideration for Provider granting Patient-Client an extended grace period to pay for medical services rendered. Patient-Client and Attorney acknowledge and agree that this Medical Lien in no way relieves Patient-Client of any obligation to pay Provider for medical services rendered. For the avoidance of doubt, Patient-Client shall be financially responsible for all medical services rendered and invoiced by Provider at its usual and customary rates to Attorney or Patient-Client, regardless of the outcome of any legal proceeding arising from the Claim and even if no complaint is ever filed on such Claim.
5. To the extent permitted under applicable law, Attorney and Patient-Client expressly agree that the rights and obligations set forth herein shall survive the defendant in any litigation, or any other party to this Agreement and survive and supersede any interpleader proceedings initiated by Attorney, Patient-Client, or any third party to this Agreement.
6. This Agreement is governed by, interpreted and construed by the laws of CA in which the services have been rendered, without regard to conflict of laws principles. This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which together shall constitute one and the same instrument.

In witness of these mutual obligations and responsibilities, this Agreement is entered into as of Effective Date set forth above.

Patient Signature: _____



Date: _____

7-23-18

Attorney Signature: _____

Date: _____

1661 W. Horizon Ridge Pkwy, Suite 280 • Henderson, NV 89012
Tel: 844.477.7463 | Fax: 949.242.2575

Exhibit C

Exhibit C



THE UNITED STATES ATTORNEY'S OFFICE
CENTRAL DISTRICT *of* CALIFORNIA

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Department of Justice

U.S. Attorney's Office

Central District of California

FOR IMMEDIATE RELEASE

Friday, May 21, 2021

Surgeon Sentenced to 15 Months in Prison for Accepting Illicit Payments in Exchange for Referring Patients for Spinal Surgeries

SANTA ANA, California – An orthopedic surgeon was sentenced today to 15 months in federal prison for accepting nearly \$623,000 in bribes and kickbacks in exchange for referring his patients to receive spinal surgeries at a corrupt Long Beach hospital.

Dr. Jeffrey David Gross, 55, who resides in Dana Point and Las Vegas, was sentenced by United States District Judge Josephine L. Staton, who also ordered him to forfeit \$622,936. Gross pleaded guilty in August 2020 to one felony count of conspiracy to commit honest services mail and wire fraud.

The kickback scheme centered on Pacific Hospital in Long Beach, which specialized in surgeries, especially spinal and orthopedic procedures. The owner of Pacific Hospital, [Michael D. Drobot](#), conspired with doctors, chiropractors and marketers to pay kickbacks in return for the referral of thousands of patients to Pacific Hospital for spinal surgeries and other medical services paid for primarily through the California workers' compensation system.

During its final five years, the scheme resulted in the submission of more than \$500 million in fraudulent medical bills. To date, 15 defendants have been convicted for participating in the kickback scheme.

From 2008 to 2013, Gross, a licensed neurosurgeon who operated Oasis Medical Providers Inc. in Laguna Niguel, agreed with Drobot to participate in a scheme to defraud patients of their right to honest services by accepting bribes and kickbacks that were paid to induce Gross to refer patients to Pacific Hospital for spinal surgeries and other medical services.

In February 2008, Gross agreed with Drobot to sublease Oasis's medical office space to a Pacific Hospital-affiliated company, Pacific Specialty Physician Management Inc. (PSPM), in

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return for monthly payments of \$15,000. In November 2008, Gross entered into an option contract with PSPM in which Oasis was paid \$15,000 per month to purchase the accounts receivable and all other tangible assets of Oasis.

For both the sublease and option agreements, Gross knew and understood that one purpose of the agreements was to induce him to bring certain spinal surgery patients to Pacific Hospital, though that information wasn't specified on the lease agreement, nor did Gross disclose that information to his patients.

PSPM paid Oasis \$145,000 under the sublease agreement and \$105,000 under the option agreement.

In April 2009, Gross entered into an outsourced collections agreement with Pacific Hospital that called for him to assist with collections on some of the spinal surgery cases that he performed at that hospital in exchange for 15 percent of any amounts the hospital collected in relation to those surgeries. This agreement, later amended, called for Gross to be paid 10 percent of the collected amount on other outpatient surgeries. During surgeries, if Gross used hardware from International Implants (I2), a Drobot-formed hardware distribution company, he was advanced \$5,000 regardless of subsequent collections. Once again, Gross did not disclose this information to his patients. Pacific Hospital paid Oasis \$372,936 under this agreement.

In total, between April 2008 and May 2013, Drobot paid Gross \$622,936 pursuant to these agreements. During the same period, Gross referred dozens of patients to Pacific Hospital for spinal surgeries based in part on payments made to him under those agreements.

The FBI, IRS Criminal Investigation, California Department of Insurance, and the United States Postal Service Office of Inspector General investigated this matter.

Assistant United States Attorneys Joseph T. McNally of the Violent and Organized Crime Section and Scott D. Tenley of the Santa Ana Branch Office prosecuted this case.

Topic(s):

Health Care Fraud

Component(s):

USAO - California, Central

Contact:

Ciaran

McEvoy Public Information Officer United States Attorney's Office Central

District of California (Los Angeles) ciaran.mcevoy@usdoj.gov (213)

894-4465

Press Release Number:

21-097

Updated May 21, 2021

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Case Number: A-18-777320-C

1 Las Vegas, Nevada, Tuesday, July 13, 2021

2 *****

3 [Hearing began at 11:31 a.m.]

4 THE COURT: Page Number 8, Lamont Compton versus
5 Keolis Transit Services, LLC, Case Number A-18-777320-C. Who do I
6 have?

7 MR. CLOUGH: Good Morning, Your Honor. Stephen Clough
8 on behalf of the plaintiff.

9 THE COURT: Thank you, Mr. Clough.

10 MR. LOWRY: Michael Lowry on behalf of the defendant.

11 THE COURT: Thank you, Mr. Lowry.

12 So this was on for the motion to substitute the expert. I am
13 inclined to grant that motion to substitute Dr. expert, or Dr. Gross. I think
14 that the substitution is substantially justified. I understand that the
15 opposition is permanent. They knew that Dr. Gross was going to be
16 criminally indicted but I still think that it's justified.

17 So go ahead, Mr. Lowry.

18 MR. LOWRY: Well, my question before I start rattling on, if I
19 know more about why you believe it is substantially justified, that might
20 help focus my argument and let the hearing resolve a little bit more
21 quickly.

22 THE COURT: I mean, they've got to have an expert, and the
23 fact that theirs is unavailable, I think that it's substantially justified to get
24 another expert.

25 MR. LOWRY: Understood. Other than that, Judge, this is a

1 litigation strategy, and they think the litigation strategy that was
2 ultimately unsuccessful, all of the justification that needs to be in the
3 case law is all then because of factors that were beyond the parties'
4 control.

5 This was clearly within plaintiff's control. They don't control
6 whether he's in jail or not, but they control whether they chose to get
7 him. They took a risk, didn't work, and that's the risk that they run.

8 So the justification whether he is in jail or he's not in jail
9 doesn't recuse the litigation strategy that the plaintiff chose. So it goes
10 back further than that. It goes way back to 2018. It goes back to at least
11 the summer of last year when we litigated the motion about whether the
12 evidence in the indictment comes in. The plaintiff chose at risk.

13 The fact that Dr. Gross lost in that risk and plaintiff lost that
14 risk, and now Dr. Gross is going to be in jail, does not alleviate or
15 substantially justify changing everything now. And if that's not
16 persuasive, Judge, I don't have much more to add to it, but that's how
17 we do this.

18 THE COURT: Thank you, Mr. Lowry.

19 Mr. Clough.

20 MR. CLOUGH: Yes, Your Honor, thank you. Stephen Clough
21 on behalf of the plaintiff.

22 All we basically had back in 2018, as Mr. Lowry referenced,
23 was the random indictment, innocent until proven guilty. Everything was
24 sealed. We didn't know anything until April of 2021 when he allegedly –
25 when Dr. Gross allegedly entered into some agreement to plead guilty to

1 something, and then he's sentenced.

2 He's now sentenced to 15 months, and he's going to be
3 unavailable for trial. There's no way plaintiff could have known that all of
4 these sequences of events were going to happen from 2018 until now.

5 And it's not a litigation strategy to hire an expert. It's a
6 litigation strategy to hire an expert that is qualified in the area which we
7 need an expert for. Picking Dr. Gross is just happened to be who we've
8 chosen for this. He was a treating physician and we moved him over to
9 an expert for the expert disclosures. It was a logical choice, not a
10 litigation strategy.

11 It also wasn't a risk. The risk is basically, he's going to be
12 found guilty even though he's innocent until proven guilty. He wasn't
13 found guilty, he pled and is now going to be unavailable for trial.

14 Plaintiff will have no experts testify to anything about his Delife
15 airplane or any future treatment whatsoever if the Court doesn't grant
16 this motion.

17 He's just simply unavailable, Your Honor, and I'll rest on that.
18 Thank you so much.

19 MR. LOWRY: There's a material misstatement in that.
20 Plaintiff – we've just heard that plaintiff said "We didn't know anything
21 about this indictment until this conviction came down in April, 2021."

22 That's patently false. The plaintiff in this motion filed a motion
23 in limine 11 back on March 6th of 2020. They knew about it then. It was
24 them who brought up the indictment to exclude it from trial. They were
25 patently aware of it.

1 Furthermore, this is not like he was a random treating
2 physician. This is at least the second or third motion that this firm has
3 had to file to get Dr. Gross off their cases. This isn't like it just happened
4 to come together. It was a litigation strategy in this case and multiple
5 other ones. And now that Dr. Gross has been convicted, now they've
6 got to bail out their client. And that's not how this works.

7 If you have a client – if you have an expert who suddenly
8 came together, if Dr. Gross had truly come to them in April and said,
9 oops, I've been convicted, I plead guilty to this, then that's a different
10 circumstance, and maybe we should stipulate to amend or allow a
11 substitution at that point. But it is not what happened.

12 You have years of knowledge, years of knowledge. And
13 plaintiff, those strategies. The strategy did not pan out. You don't
14 continue a trial and reopen discovery because your litigation strategy
15 didn't work out.

16 That's what happened in Clark v. Gold Coast. Unpublished
17 Supreme Court Orders are not binding but it is persuasive, and that's
18 where we're at.

19 THE COURT: So I'm still inclined to allow them to substitute
20 another expert in place of Dr. Gross.

21 Here's the issue. I mean, if it was a sealed indictment, then
22 they didn't have any knowledge of what was in it or anything like that,
23 and so they don't know. And if he's, you know, as he stated, as Mr.
24 Clough stated many times, you are innocent until you're proven guilty,
25 and so they didn't have the knowledge until April of 2021.

1 So I disagree fundamentally with what you're saying, Mr.
2 Lowry. Mr. Clough, would you prepare an Order, run it by Mr. Lowry,
3 and then submit it.

4 MR. CLOUGH: Yes, Your Honor. Thank you so much.

5 MR. LOWRY: Judge, before we hang up, I have a
6 housekeeping issue as a result of granting this motion. I cannot imagine
7 any scenario where we could possibly go to trial on September 7th.
8 That's the stack that we're assigned to.

9 So would it make sense to continue this case, at least get it off
10 the stack and clear the calendar call, and then when we do the order
11 we'll have to do a stipulation of some type that new discovery deadlines
12 or something to that effect.

13 THE COURT: Mr. Clough, what do you think?

14 MR. CLOUGH: I actually agree with everything Mr. Lowry just
15 said about this particular issue about trial. We're going to need time to
16 disclose Dr. Leon's report. Defense might want to take his deposition.
17 I'm not sure, and I don't believe there's any way we could be ready for
18 trial in September.

19 THE COURT: So I am currently setting trials out in
20 September of 2022 because we've reopened some slots because of the
21 backlog, but I had previously been doing 2023, so is September, 2022,
22 something that you guys can work out then?

23 MR. CLOUGH: Your Honor, Stephen Clough on behalf of the
24 plaintiffs. September, 2022, works for my firm.

25 MR. LOWRY: Doesn't sound like we have much choice given

1 the backlog. So if we do that, yeah, we can – if you want to assign us to
2 a new stack, we can include that in the order, and then hopefully work
3 out some discovery dates and put them in there, and just wrap it up in
4 one order instead of two or three.

5 THE COURT: So we can put the new trial date in this order.
6 If you guys have new discovery dates that are agreed upon, you can put
7 them in the order as well. If not, do you want to set a status check on
8 these discovery dates, or do you want to just inform me if we need
9 something.

10 MR. CLOUGH: Your Honor, Stephen Clough on behalf of the
11 plaintiff. Our firm and Mr. Lowry's firm get along very well. I'm sure we
12 can figure out some sort of discovery plan and not have to bother the
13 Court with it.

14 MR. LOWRY: I agree with Mr. Clough.

15 THE COURT: Okay. So, yeah, if you've got a discovery plan,
16 put it in the order as well, Mr. Clough, but we will have the September
17 trial date 2022, and we will vacate the September, 2021, trial date.

18 MR. LOWRY: What is the 2022 date, and we'll put that in the
19 order.

20 THE CLERK: Calendar call, August 30th, 2022, at 9:00 a.m.
21 Jury Trial, September 6th, 2022, at 1:00 p.m.

22 THE COURT: Thank you.

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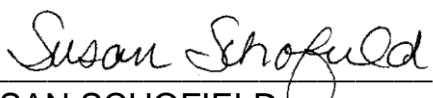
MR. LOWRY: Thank you, Judge.

MR. CLOUGH: Thank you, Your Honor.

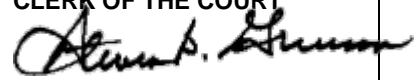
[Hearing concluded at 11:41 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



SUSAN SCHOFIELD
Court Recorder/Transcriber



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JOSEPH A. GUTIERREZ, ESQ.
2 Nevada Bar No. 9046
STEPHEN G. CLOUGH, ESQ.
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7 *Attorneys for Plaintiff Lamont Compton*

8
9
10
11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 LAMONT COMPTON, an individual,
14
15 Plaintiff,

16 vs.

17 KEOLIS TRANSIT SERVICES, LLC; a foreign
limited liability company; IRVING
18 TORREMORO, an individual; DOES I through
X; and ROE CORPORATIONS I through X,
19 inclusive,
20 Defendants.

Case No.: A-18-777320-C
Dept. No.: XXIV

NOTICE OF ENTRY OF ORDER

21 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

22 YOU AND EACH OF YOU will please take notice that an **ORDER GRANTING**
23 **PLAINTIFF'S MOTION TO SUBSTITUTE PLAINTIFF'S EXPERT AND TREATING**

24 ///

25 ///

26 ///

27 ///

1 **PHYSICIAN WITNESS JEFFREY GROSS, M.D.** was hereby entered on the 16th day of July,
2 2021. A copy of which is attached hereto.

3 DATED this 19th day of July, 2021.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Stephen G. Clough

7 JOSEPH A. GUTIERREZ, ESQ.

8 Nevada Bar No. 9046

9 STEPHEN G. CLOUGH, ESQ.

10 Nevada Bar No. 10549

11 8816 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiff Lamont Compton*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF ORDER**
3 was electronically filed on the 19th day of July, 2021, and served through the Notice of Electronic
4 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
5 Service List as follows:

6 Michael P. Lowry, Esq.
7 WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP
8 300 South Fourth Street, 11th Floor
9 Las Vegas, Nevada 89101
10 *Attorneys for Defendants Keolis Transit Services, LLC*
11 *and Irving Torremoro*

12 /s/ Natalie Vazquez

13 An Employee of MAIER GUTIERREZ & ASSOCIATES
14
15
16
17
18
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ORDR

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sgc@mgalaw.com

Attorneys for Plaintiff Lamont Compton

DISTRICT COURT
CLARK COUNTY, NEVADA

LAMONT COMPTON, an individual,

Plaintiff,

vs.

KEOLIS TRANSIT SERVICES, LLC; a foreign
limited liability company; IRVING
TORREMORO, an individual; DOES I through
X; and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-18-777320-C
Dept. No.: XXIV

**ORDER GRANTING PLAINTIFF'S
MOTION TO SUBSTITUTE PLAINTIFF'S
EXPERT AND TREATING PHYSICIAN
WITNESS JEFFREY GROSS, M.D.,**

This matter came before the Court on July 13, 2021, at 9:00 a.m., on Plaintiff's motion to substitute Plaintiff's expert and treating physician witness Jeffrey Gross, M.D., on an *ex parte* order shortening time. Plaintiff was represented by Stephen G. Clough, Esq. Defendants were represented by Michael P. Lowry, Esq.

The Court, having reviewed the pleadings and papers on file herein relative to the motion to substitute, having heard the arguments of counsel present at the hearing, and for good cause appearing, hereby finds the motion should be granted as follows: (1) the request to substitute Dr. Jeffrey Gross is substantially justified; (2) the harm to Plaintiff is outweighed by any harm to Defendants; (3)

1 Plaintiff had no knowledge of the status of the criminal case as it was under seal until in or about April
2 2021; (4) discovery shall be reopened for the limited purpose of replacing Dr. Gross only; and (5) no
3 other discovery is permitted.

4 Accordingly:

5 IT IS HEREBY ORDERED that Plaintiff's motion to substitute Plaintiff's expert and treating
6 physician witness Jeffrey Gross, M.D., is GRANTED.

Dated this 16th day of July, 2021

7 

8
9 **CEB 095 F457 6365**
Erika Ballou
10 **District Court Judge**

11 Respectfully submitted,

12 **MAIER GUTIERREZ & ASSOCIATES**

13 /s/ Stephen G. Clough

14 JOSEPH A. GUTIERREZ, ESQ.
15 Nevada Bar No. 9046
16 STEPHEN G. CLOUGH, ESQ.
17 Nevada Bar No. 10549
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Las Vegas, Nevada 89148
Attorneys for Plaintiff

Approved as to form and content:

**WILSON ELSER MOSKOWITZ EDELMAN &
DICKER**

/s/ Michael P. Lowry

MICHAEL P. LOWRY, ESQ.
Nevada Bar No. 10666
6689 Las Vegas Blvd. South, Suite 200
Las Vegas, Nevada 89119
Attorneys for Defendants

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Lamont Compton, Plaintiff(s) CASE NO: A-18-777320-C
7 vs. DEPT. NO. Department 24
8 Keolis Transit Services LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/16/2021

15 MGA Docketing	docket@mgalaw.com
16 Michael Lowry	michael.lowry@wilsonelser.com
17 Efile LasVegas	efilelasvegas@wilsonelser.com
18 Kait Chavez	kait.chavez@wilsonelser.com
19 Amanda Hill	amanda.hill@wilsonelser.com

ORDER

JOSEPH A. GUTIERREZ, ESQ.
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JULIA M. CHUMBLER, ESQ.
Nevada Bar No. 15025
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Attorneys for Plaintiff Nancy Notthoff

DISTRICT COURT

CLARK COUNTY, NEVADA

NANCY NOTTHOFF, an individual,

Plaintiff,

vs.

NEVADA RESTAURANT SERVICES, INC.,
dba Dotty's, a Nevada corporation; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

Case No.: A-18-783192-C
Dept. No.: XI

**ORDER GRANTING MOTION TO
SUBSTITUTE PLAINTIFF'S EXPERT
AND TREATING PHYSICIAN WITNESS
JEFFREY GROSS, M.D., ON AN *EX*
PARTE ORDER SHORTENING TIME**

This matter came before the Court on June 10, 2021, at 9:00 a.m., on plaintiff's motion to substitute plaintiff's expert and treating physician witness Jeffrey Gross, M.D., on an *ex parte* order shortening time. Plaintiff was represented by Jason R. Maier, Esq. Defendant was represented by Cheryl H. Wilson, Esq.

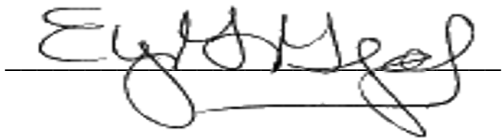
The Court, having reviewed the pleadings and papers on file herein relative to the motion to substitute, having heard the arguments of counsel present at the hearing, and for good cause appearing, hereby finds the motion should be granted as follows: (1) discovery shall be reopened for the limited purpose of replacing Dr. Gross only; (2) no other discovery is permitted; and (3) the issues surrounding Dr. Gross' plea and/or conviction are only admissible at trial if Dr. Gross actually testifies

1 at trial. A scheduling order pertaining to the substitute initial and rebuttal expert disclosures will be
2 separately issued by the Court.

3 Accordingly:

4 IT IS HEREBY ORDERED that plaintiff's motion to substitute plaintiff's expert and treating
5 physician witness Jeffrey Gross, M.D., is GRANTED.

6
7 **Dated this 15th day of June, 2021**

8 
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10 **67B 5B4 4A9F F809**
11 **Elizabeth Gonzalez**
12 **District Court Judge**

13 Respectfully submitted,

14 **MAIER GUTIERREZ & ASSOCIATES**

15 */s/ Joseph A. Gutierrez*

16 _____
16 JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
17 JULIA M. CHUMBLER, ESQ.
Nevada Bar No. 15025
18 8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
19 *Attorneys for Plaintiff Nancy Notthoff*

Approved as to form and content:

TYSON & MENDES LLP

/s/ Cheryl H. Wilson

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Nevada Bar No. 7086
CHERYL H. WILSON, ESQ.
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*Attorneys for Defendant Nevada Restaurant
Services, Inc. dba Dotty's*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4		
5		
6	Nancy Notthoff, Plaintiff(s)	CASE NO: A-18-783192-C
7	vs.	DEPT. NO. Department 11
8	Nevada Restaurant Services Inc,	
9	Defendant(s)	

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 6/15/2021

15 MGA Docketing	docket@mgalaw.com
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18 Scarlett Fisher	sfisher@tysonmendes.com
19 Cheryl Wilson	cwilson@tysonmendes.com
20 Tyson & Mendes	tysonmendesLV@outlook.com

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Negligence - Auto

COURT MINUTES

June 21, 2021

A-17-749640-C Robert Whitstone, Plaintiff(s)
vs.
Helen Elizalde, Defendant(s)

June 21, 2021 09:00 AM Plaintiff's Motion to Substitute Plaintiff's Expert and Treating
Physician Witness Jeffrey Gross, M.D. and to Continue Trial on
OST

HEARD BY: Krall, Nadia

COURTROOM: RJC Courtroom 03C

COURT CLERK: Jackson, Carolyn

RECORDER: Kirkpatrick, Jessica

REPORTER:

PARTIES PRESENT:

Christopher Allen Elsee

Attorney for Defendant

George M. Ranalli

Attorney for Defendant

Michael A. Kristof

Attorney for Plaintiff

Paul D. Powell

Attorney for Plaintiff

Thomas W, Stewart

Attorney for Plaintiff

JOURNAL ENTRIES

Court stated its inclination. Mr. Powell advised that he did not have an issue with the substitution of Dr. Garber; however, he was unsure about the logistics of whether Dr. Garber would provide Dr. Gross' opinions in their totality. Mr. Ranalli objected to allowing Dr. Garber to adopt the opinions of Dr. Gross. Further, Mr. Ranalli argued that Dr. Gross was under federal felony indictment for the past three (3) years and Plaintiff had time to substitute another expert for Dr. Gross. Additional arguments by Mr. Ranalli of the prejudice caused to Defendant and requested a continuance to depose Dr. Garber and Ms. Elizalde. Colloquy regarding scheduling issues related to depositions of Dr. Garber and Defendant, jury selection, witnesses and trial.

COURT stated it FINDS, Dr. Garber was a rebuttal expert designated in 2018 and will be allowed to adopt Dr. Gross' opinions; he will not be allowed to deviate from Dr. Gross' opinions. Further, Court stated the Defendant will be allowed to depose Dr. Garber and take a preservation deposition of the Defendant and ORDERED, Motion GRANTED; Plaintiff will be allowed to substitute Dr. Garber for Dr. Gross; Trial dates STAND. COURT FURTHER ORDERED, jury instructions and verdict forms are to be submitted by end of day tomorrow. Mr. Powell to prepare and submit the Order.

ORDER

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

JULIA M. CHUMBLER, ESQ.

Nevada Bar No. 15025

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E-mail: jag@mgalaw.com
jmc@mgalaw.com

Attorneys for Plaintiff Marlene Dufresne

DISTRICT COURT

CLARK COUNTY, NEVADA

MARLENE DUFRESNE, an individual,

Plaintiff,

vs.

DENISE THOMAS, an individual; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

Case No.: A-18-777627-C

Dept. No.: V

**ORDER GRANTING MOTION TO
SUBSTITUTE PLAINTIFF'S EXPERT
AND TREATING PHYSICIAN WITNESS
JEFFREY GROSS, M.D., ON AN EX
PARTE ORDER SHORTENING TIME**

This matter came before the Court on July 1, 2021, at 9:30 a.m., on Plaintiff's motion to substitute Plaintiff's expert and treating physician witness Jeffrey Gross, M.D., on an *ex parte* order shortening time. Plaintiff was represented by Julia M. Chumbler, Esq. Defendant was represented by Scott L. Rogers, Esq.

The Court, having reviewed the pleadings and papers on file herein relative to the motion, having heard the arguments of counsel present at the hearing and for good cause appearing, GRANTS Plaintiff's motion and hereby finds the following:

1. The standards set forth in NRCP 37(c)(1) and NRCP 16(b)(4) are applicable and have been met by Plaintiff. NRCP 16(b)(4) allows the Court to modify a discovery scheduling order for good cause. Here, good cause exists. Dr. Gross's actions were not associated with this case yet have

1 or will negatively affect Plaintiff, as Dr. Gross was convicted, and will be unavailable testify. If Dr.
2 Gross is able to testify, it will be prejudicial to Plaintiff if evidence regarding his conviction is admitted
3 at trial, as the doctor was convicted of a crime of dishonesty. If Plaintiff is not able to utilize an expert,
4 her case will be greatly prejudiced. NRCP 37(c)(1) allows for late supplements when it is substantially
5 justified in the request to substitute the expert witness. Plaintiff learned of the guilty plea in late April
6 2021 and the sentencing in May 2021. The request is also harmless overall as Dr. Ray Leon will
7 replace the testimony of Dr. Gross within the same scope, and Defendant shall be given the
8 opportunity to depose and cross-examine Dr. Leon.

9 2. Under EDCR 2.35(a), Plaintiff showed good cause for the extension under the *Nutton*
10 factors:

11 a. First, an explanation for the untimeliness was provided, as Plaintiff recently
12 learned of the conviction and sentencing.

13 b. Second, the importance of the requested action provided, as an expert is vital
14 for Plaintiff's case to be heard on the merits.

15 c. Third, Defendant may incur additional litigation costs due to the new expert,
16 but those costs are not deemed to be case ending prejudice that overrides the importance of deciding
17 a case on its merits. Plaintiff requires a replacement expert for the case to be heard on the merits.

18 d. Fourth, the trial is set of October 2021, which gives some time, but not enough.
19 Even with the courts beginning trials again, it is still possible that the case would be continued
20 regardless, so this is not an overall factor.

21 e. Fifth, Plaintiff was diligent in attempting to comply with the deadline, as has
22 been discussed herein.

23 Therefore, good cause has been met for the extension.

24 3. A showing of excusable neglect is also necessary since the motion was filed after the
25 discovery deadline expired. Plaintiff meets that standard as well. Plaintiff did not cause Dr. Gross'
26 situation and only recently became aware of the conviction and sentencing.

27 4. A future motion in limine will have to determine the issue of whether Dr. Gross'
28 conviction at trial will be admissible at trial, and such issue is not addressed herein.

- 1 5. The following are the parameters and dates for reopening discovery:
- 2 a. Discovery shall be reopened for the limited purpose of replacing Dr. Gross only
- 3 and no other discovery is permitted;
- 4 b. Plaintiff shall disclose her substituted expert, Dr. Ray Leon, and his expert
- 5 report, within forty-five (45) days by August 16, 2021;
- 6 c. Defendant shall then have thirty (30) days to disclose a rebuttal report by
- 7 September 15, 2021;
- 8 d. Defendant shall then have thirty (30) days until October 15, 2021, to depose
- 9 Dr. Leon. Plaintiff shall be responsible for payment of Dr. Leon's deposition fee for a maximum cost
- 10 of two (2) hours for Defendant's deposition of Dr. Leon.

11 Accordingly:

12 IT IS HEREBY ORDERED that plaintiff's motion to substitute plaintiff's expert and treating

13 physician witness Jeffrey Gross, M.D. is GRANTED, as stated herein.

Dated this 22nd day of July, 2021

14 

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16

17 Respectfully submitted,

18 **MAIER GUTIERREZ & ASSOCIATES**

19 */s/ Julia M. Chumbler*

20 _____
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Nevada Bar No. 9046
21 JULIA M. CHUMBLER, ESQ.
Nevada Bar No. 15025
22 8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
23 *Attorneys for Plaintiff Marlene Dufresne*

E99 9D1 F56B 26D7
Approved by **Veronica M. Barisich**,
District Court Judge
MESSNER REEVES LLP

/s/ Scott L. Rogers

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Nevada Bar No. 13379
RENEE M. FINCH, ESQ.
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SCOTT L. ROGERS, ESQ.
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Attorneys for Defendant

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Marlene Dufresne, Plaintiff(s) CASE NO: A-18-777627-C
7 vs. DEPT. NO. Department 5
8 Denise Thomas, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/22/2021

15 Renee Finch	rfinch@messner.com
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18 Nuria Forsyth	nforsyth@messner.com
19 Scott Rogers	srogers@messner.com
20 Jackie Olivo	jolivo@messner.com

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-And-

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Nevada Bar No. 9046

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

ANGEL Y. PALACIOS-GARCIA, an
individual; and ELIANY RODRIGUEZ, an
individual,

Plaintiffs,

vs.

CYNTHIA BRACKETT, an individual;
CENTRAL TELEPHONE COMPANY, a
foreign corporation; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-19-797658-C

Dept. No.: XIX

**ORDER GRANTING PLAINTIFFS'
MOTION TO SUBSTITTUTE
PLAINTIFFS' EXPERT AND
TREATING PHYSICIAN WITNESS
DR. GROSS WITH DR. OLIVERI
AND DR. DUNN ON ORDER
SHORTENING TIME**

///



1 **ORDER GRANTING PLAINTIFFS' MOTION TO SUBSTITTUTE**
2 **PLAINTIFFS' EXPERT AND TREATING PHYSICIAN WITNESS DR. GROSS**
3 **WITH DR. OLIVERI AND DR. DUNN ON ORDER SHORTENING TIME**

4 Plaintiffs' Motion to Substitute Plaintiffs' Expert and Treating Physician Witness
5 Dr. Gross with Dr. Oliveri and Dr. Dunn on Order Shortening Time having come on for
6 hearing on the 15th day of June, 2021, before the Honorable Crystal Eller, with Dennis
7 M Prince of the Prince Law Group appearing on behalf of Plaintiffs, and John W. Kirk
8 of Ranalli, Zaniel, Fowler & Moran appearing on behalf of Defendants. The Court
9 having reviewed the pleadings and papers filed herein, having heard oral argument and
10 being duly advised, in the premises,

11 **IT IS HEREBY ORDERED** that Plaintiffs' Motion to Substitute Plaintiffs'
12 Expert and Treating Physician Witness Dr. Gross with Dr. Oliveri and Dr. Dunn on
13 Order Shortening Time is **GRANTED**;

14 **IT IS FURTHER ORDERED** that Defendants' request for Plaintiffs to be
15 sanctioned is **DENIED**;

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IT IS FURTHER ORDERED that Plaintiffs are responsible for the Defendants' reasonable deposition fees and legal fees for the time spent to prepare and take the depositions of Dr. Oliveri and Dr. Dunn, as well as, the reasonable costs of any rebuttal expert review and response to Dr. Oliveri's and/or Dr. Dunn's reports to the extent that such rebuttals were already done with Dr. Gross. However, if the rebuttal experts go beyond the work already performed with regard to Dr. Gross and do additional work, Plaintiff is not responsible for those fees and costs.

IT IS SO ORDERED.

DATED this ____ day of July, 2021.

DISTRICT COURT JUDGE

Respectfully Submitted,

PRINCE LAW GROUP

/s/ Dennis M. Prince

DENNIS M. PRINCE
Nevada Bar No. 5092
ANGELA M. LEE
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Las Vegas, NV 89135
Attorneys for Plaintiffs

Approved as to Form and Content:

**RANALLI ZANIEL FOWLER
& MORAN**

GEORGE M. RANALLI
Nevada Bar No. 5748
JOHN W. KIRK
Nevada Bar No. 4654
2400 W. Horizon Ridge Parkway
Henderson, NV 89052
Attorneys for Defendants



IT IS FURTHER ORDERED that Plaintiffs are responsible for the Defendants' reasonable deposition fees and legal fees for the time spent to prepare and take the depositions of Dr. Oliveri and Dr. Dunn, as well as, the reasonable costs of any rebuttal expert review and response to Dr. Oliveri's and/or Dr. Dunn's reports to the extent that such rebuttals were already done with Dr. Gross. However, if the rebuttal experts go beyond the work already performed with regard to Dr. Gross and do additional work, Plaintiff is not responsible for those fees and costs.

IT IS SO ORDERED.

DATED this ____ day of June, 2021.

Dated this 22nd day of July, 2021



DISTRICT COURT JUDGE
18B 205 F217 FCAA
Crystal Eller
District Court Judge

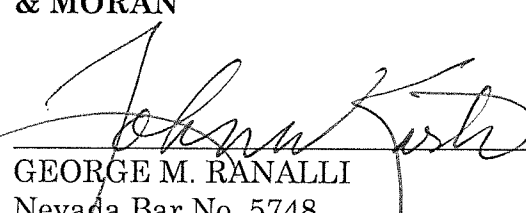
Approved as to Form and Content:

Respectfully Submitted,

PRINCE LAW GROUP

**RANALLI ZANIEL FOWLER
& MORAN**

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Attorneys for Plaintiffs



GEORGE M. RANALLI
Nevada Bar No. 5748
JOHN W. KIRK
Nevada Bar No. 4654
2400 W. Horizon Ridge Parkway
Henderson, NV 89052
Attorneys for Defendants

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Angel Palacios-Garcia,
7 Plaintiff(s)

CASE NO: A-19-797658-C

8 vs.

DEPT. NO. Department 19

9 Cynthia Brackett, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/22/2021

15 MGA Docketing docket@mgalaw.com

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17 George Ranalli Ranalliservice@ranallilawyers.com

18 Corrine Murphy cmurphy@thedplg.com

19 Angela Lee alee@thedplg.com

20 Claudia Corral ccorral@thedplg.com

21
22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 7/23/2021

26 Joseph Gutierrez Maier Gutierrez & Associates
27 Attn: Joseph A. Gutierrez
28 8816 Spanish Ridge Avenue
Las Vegas, NV, 89148

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

August 10, 2021

A-17-751692-C Latasha Padilla, Plaintiff(s)
vs.
Kenneth Shoals, Defendant(s)

**August 10, 2021 9:00 AM Motion to Substitute Plaintiffs Expert and Treating
Physician Witness Jeffrey Gross MD on an Order
Shortening Time**

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15B

COURT CLERK: April Watkins

REPORTER: Bill Nelson

PARTIES

PRESENT: Saldanha, Ryan S. Attorney for Deft.
Stewart, Thomas W, Attorney for Pltf.

JOURNAL ENTRIES

- Following arguments by counsel, Court stated findings and ORDERED, motion GRANTED. The Court will also grant relief to Deft. as well. There are hard costs in terms of rebuttal expert and additional discovery not completed. Costs will be awarded under NRCP 37 and rebuttal expert will be allowed. Mr. Stewart inquired as to what costs the Court is allowing. Court stated they are inclusive of rebuttal expert and Pltf. has some responsibility they have to bear here. Mr. Stewart to prepare order, Mr. Saldana to review and submit within 14 days.

ORDR

DENNIS M. PRINCE, ESQ.

Nevada Bar No. 5092

KEVIN T. STRONG, ESQ.

Nevada Bar No. 12107

PRINCE LAW GROUP

10801 West Charleston Blvd., Suite 560

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JASON R. MAIER, ESQ.

Nevada Bar No. 8557

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

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Nevada Bar No. 13822

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Attorneys for Plaintiff Marc Kevin Brown

DISTRICT COURT

CLARK COUNTY, NEVADA

MARC KEVIN BROWN, an individual,

Plaintiff,

vs.

KENNETH DONALD PAUL, JR, an individual;
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a foreign corporation;
DOES I through X; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

Case No.: A-18-778885-C

Dept. No.: XIV

**ORDER GRANTING MOTION TO
SUBSTITUTE PLAINTIFF'S EXPERT
AND TREATING PHYSICIAN WITNESS
JEFFREY GROSS, M.D.**

This matter came on for a hearing before the Court on August 24, 2021, at 10:00 a.m., on plaintiff's motion to substitute plaintiff's expert and treating physician witness Jeffrey Gross, M.D. Dennis M. Prince, Esq., and Jason R. Maier, Esq., appeared on behalf of plaintiff Marc Kevin Brown.

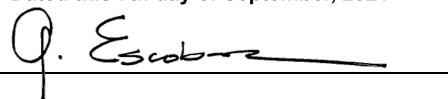
1 John W. Kirk, Esq., and Erin L. Plunkett, Esq., appeared on behalf of defendant Kenneth Donald Paul.
2 Kristopher T. Zeppenfeld, Esq., appeared on behalf of defendant State Farm. The Court, having
3 reviewed the papers and pleadings on file herein, having heard the arguments of counsel, and for good
4 cause appearing, hereby orders as follows:

5 IT IS HEREBY ORDERED that plaintiff's motion to substitute is GRANTED;

6 IT IS FURTHER ORDERED that the Court will allow substitution with Dr. Oliveri so long as
7 plaintiff's life care plan is not greater than the original life care plan prepared by Dr. Gross; and

8 IT IS FURTHER ORDERED that plaintiff shall incur any duplicative costs related to the
9 substitution of experts.

10 Dated this 7th day of September, 2021

11 
12

13 E58 10B 5C5B DF1B

14 Adriana Escobar

15 District Court Judge

16 Respectfully submitted,

Approved of as to form and content,

17 DATED this 7th day of September, 2021.

DATED this 7th day of September, 2021.

18 MAIER GUTIERREZ & ASSOCIATES

KRAVITZ, SCHNITZER & JOHNSON, CHTD.

19 /s/ Jason R. Maier

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25 /s/ Kristopher T. Zeppenfeld

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27 Nevada Bar No. 12144

28 8985 S. Eastern Avenue, Suite 200

Las Vegas, Nevada 89123

Attorneys for Defendant State Farm Mutual
Automobile Insurance Company

DATED this 7th day of September, 2021.

RANALLI ZANIEL FOWLER & MORAN, LLC

29 /s/ Erin L. Plunkett

30 ERIN L. PLUNKETT, ESQ.

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Paul, Jr.

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **Marc Brown, Plaintiff(s)**

CASE NO: A-18-778885-C

7 **vs.**

DEPT. NO. Department 14

8 **Kenneth Paul, Jr., Defendant(s)**

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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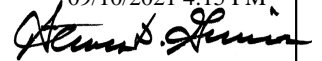
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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARTIN MCCABE, an individual,

Plaintiff,

vs.

IBOLYA SOLTESZ, an individual; DOES I
through X; and ROE CORPORATIONS I through
X, inclusive,

Defendant.

CASE NO. A-16-747437-C
DEPT. NO. 21

Date of Hearing: September 1, 2021

Time of Hearing: 1:30 p.m.

**ORDER GRANTING PLAINTIFF MARTIN MCCABE'S MOTION TO SUBSTITUTE
PLAINTIFF'S EXPERT AND TREATING PHYSICIAN WITNESS JEFFREY GROSS,
M.D.**

Martin McCabe's Motion to Motion To Substitute Plaintiff's Expert And Treating
Physician Witness Jeffrey Gross, M.D., and Defendant's Motion In Limine To Admit
Evidence Of The Felony Conviction Of Plaintiff's Expert Jeffrey D. Gross, M.D. for
truthfulness and purposes of impeachment, having come on regularly for hearing on
September 1, 2021 in Department 21, the Honorable Tara Clark Newberry presiding,
the Plaintiff being represented by Stephen Clough, Esq., and Defendant Ibolya Soltesz
being represented by Eban M. Milmeister, Esq., and the Court having considered all the
pleadings, and good cause appearing therefore,

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Martin McCabe's
2 Motion To Substitute Plaintiff's Expert And Treating Physician Witness Jeffrey Gross,
3 M.D is hereby GRANTED, subject to the following conditions:

4 1. The parties shall split the cost for Defendant to depose Plaintiff's new expert,
5 Dr. Raimundo Leon.

6 2. Dr. Leon shall not exceed the scope of Dr. Gross's opinions, such that he will
7 not comment upon other body parts, will not provide substantially new or unrelated
8 testimony or opinions, and will not increase Plaintiff's damages. The scope of Dr. Leon's
9 opinions shall be confined to the same scope for which Dr. Gross was originally
10 retained.

11 3. Discovery shall be reopened for the limited purpose of Dr. Leon providing an
12 expert report and for Defendant to have an opportunity for a rebuttal report to Dr. Leon's
13 forthcoming report. Defendant shall have an opportunity to depose Dr. Leon and
14 Plaintiff shall have the opportunity to depose Defendant's rebuttal expert.

15 4. Discovery shall now close on January 17, 2022. The court recognizes that
16 expert depositions can be difficult to schedule during the upcoming holiday season. The
17 court also takes into account it may be difficult for counsel to obtain a rebuttal report
18 during the upcoming holiday season. Should counsel encounter delays with scheduling
19 Dr. Leon's deposition, or obtaining additional discovery deemed necessary by counsel,
20 the court will entertain another extension of discovery and continuance of the trial, which
21 is currently set for April 18, 2022. The status check on trial readiness on February 16,
22 2022 shall remain on calendar.

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant's
24 Motion In Limine To Admit Evidence Of The Felony Conviction Of Plaintiff's Expert
25 Jeffrey D. Gross, M.D. shall be taken off calendar and ^{not} heard or decided at this time.
26 Instead, the parties remain free to conduct additional discovery as set forth in this order
27 and then re-file her motion concerning Dr. Gross after discovery deemed necessary has
28 been completed.

ORDER GRANTING PLAINTIFF MARTIN
MCCABE'S MOTION TO SUBSTITUTE
PLAINTIFF'S EXPERT AND TREATING
PHYSICIAN WITNESS JEFFREY
GROSS, M.D.

A-16-747437-C
McCabe v. Soltesz

DATED this _____ day of September, 2021

Dated this 10th day of September, 2021



978 955 E8B9 41C0
Tara Clark Newberry
District Court Judge

Submitted by:

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

/s/ *Eban M. Milmeister*

By: _____

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Attorneys for Defendant

Approved as to form and content:

MAIER GUTIERREZ & ASSOCIATES

/s/ *Stephen Clough*

By: _____

Joseph A. Gutierrez, Esq.
Stephen G. Clough, Esq.
8816 Spanish Ridge Avenue
Las Vegas, NV 89148
Attorneys for Plaintiff

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Martin McCabe, Plaintiff(s)

CASE NO: A-16-747437-C

7 vs.

DEPT. NO. Department 21

8 Ibolya Soltesz, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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12 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
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Kara Farris	khf@thorndal.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

September 23, 2021

A-19-799403-C	Kimberly Diemert, Plaintiff(s)
	vs.
	Ryan Herron, Defendant(s)

September 23, 2021 3:00 AM Minute Order

HEARD BY: Wiese, Jerry A.

COURTROOM: Chambers

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The above-referenced matter is scheduled for a hearing on 9/29/21 with regard to Plaintiff's Motion to Substitute Plaintiff s Expert and Treating Physician Witness Jeffrey Gross, MD. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this minute order issues.

This is a personal injury action for alleged injuries suffered by Plaintiff Kimberly Diemert as a result of a motor vehicle accident with Defendant Ryan Patrick Herron, which occurred on April 16, 2019. Plaintiff filed a complaint in this matter on July 30, 2019 and Defendant filed his Answer on September 10, 2019.

Plaintiff s counsel states that on or about April 21, 2021, he learned that Dr. Gross, plaintiff's treating physician and retained medical expert witness, pled guilty to conspiracy to commit honest services mail and wire fraud in California. Dr. Gross' conviction was originally sealed from the public and was not unsealed and made public until about April 2021. On May 20, 2021, the Court informed Counsel via the Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial/Calendar Call that the trial was set to begin on March 14, 2022.

On May 21, 2021, Dr. Gross was sentenced to 15 months in prison. Counsel learned of Dr. Gross s prison sentence on May 24, 2021, which was coincidentally the day discovery closed.

PRINT DATE: 09/23/2021

Page 1 of 4

Minutes Date: September 23, 2021

Counsel states that on August 3, 2021, his office submitted the present motion and [proposed] order shortening time. After a procedural run-around by the Court, the motion was refiled on August 25, 2021. Defendant Ryan Patrick Herron filed an Opposition on September 9, 2021.

Plaintiff Kimberly Diemert moves to substitute her designated rebuttal expert, Dr. Jeffery Gross, with a new neurosurgical expert, or, alternatively, to allow her treating physician and designated rebuttal expert, Dr. Jason Garber, to adopt Gross's rebuttal expert report and opinions. Although his guilty plea and the underlying facts have absolutely no bearing on, or relationship to, this matter whatsoever, Plaintiff will be greatly prejudiced if she is unable to substitute Dr. Gross.

Plaintiff argues that Dr. Gross was Plaintiff's designated initial expert witness who provided a neurosurgical second opinion consultation and opined on Plaintiff's injuries as well as the cost of Plaintiff's future medical treatment. Plaintiff will be severely prejudiced if Defendant is permitted to introduce evidence of Dr. Gross's misconduct and criminal guilty plea at trial. As Dr. Gross was convicted of a felony crime of dishonesty, this evidence may be admissible, pursuant to NRS 50.095. Replacing Dr. Gross with Dr. Garber is permissible under both NRCP 37(c)(1)'s "substantially justified or harmless" standard, and NRCP 16(b)(4)'s "good cause" standard. See, e.g., *In re Northrop Grumman Corp. ERISA Litig.*, 2016 WL 6826171, at *2 (C.D. Cal. Apr. 7, 2016).

Plaintiff argues that the substitution of Dr. Gross is substantially justified in that Plaintiff's counsel learned of the sentence only weeks before trial; and the substitution will be harmless because the new expert will opine on the same subject matter and Defense counsel will be given an opportunity to depose the new expert if necessary. Further, good cause exists to substitute Dr. Gross and continue trial because the substitution and continuance will allow this case to be heard on its merits, which is the Court's strong preference. See, e.g., *Huckabay Props. v. NC Auto Parts*, 130 Nev. 196, 198, 322 P.3d 429, 430 (2014) (courts maintain a "[s]ound policy preference for deciding cases on the merits.>").

Plaintiff cites to an unpublished, Northern District of Indiana case to support her argument that good cause to substituting an expert because the expert would be incarcerated and unavailable at trial. *Lincoln Nat'l Life Ins. Co. v. Transamerica Fin. Life Ins. Co.*, 2010 WL 3892860 at *5 (N.D. Ind. Sep. 30, 2010). Additionally, Plaintiff cites to an unpublished, Southern District of California case, *Stone Brewing Co., LLC v. Miller Coors LLC*, 2021 WL 1263836 (S.D. Cal. Apr. 5, 2021). In *Stone Brewing*, the court explained that courts use Rule 16(b)'s "good cause" standard when a party moves to designate a new expert after the deadline has passed. *Stone Brewing Co., LLC v. MillerCoors LLC*, 2021 WL 1263836, at *4 (S.D. Cal. Apr. 5, 2021). Plaintiff argues that she is diligently moving to substitute a new neurosurgical expert for Dr. Gross. Once Plaintiff learned that Dr. Gross pled guilty in late April 2021 and after learning that Dr. Gross was sentenced to 15 months in prison on May 21, 2021, Plaintiff promptly requested substitution from this Court.

In Opposition, Defendant states that at the pretrial conference on July 7, 2021, Plaintiff's counsel, Paul Powell, Esq., represented that his client was scheduled for an, allegedly, accident related spinal surgery in early August 2021. The Court took that into consideration and continued the trial date to January 3, 2022 on a five (5) week stack. Further, Defendant notes that Dr. Gross was not identified until April 14, 2021, when he was identified as a rebuttal expert wherein he provides a

"Neurosurgical Second Opinion." Treating neurosurgeon, Jason Garber, M.D., issued the initial surgical opinion and practically every medical opinion stated in his report is cumulative to the opinions of Dr. Oliveri and Dr. Garber. He was identified as a rebuttal expert to Dr. Forage, but his report goes well beyond rebuttal.

Additionally, Defendant notes that on June 14, 2018, the Central District of California Department of Justice reported that Dr. Gross had been indicted by the federal government in a "massive kickback scheme related to spinal surgeries." Therefore the indictment was not "secret" and it has been public knowledge for years that Dr. Gross was under indictment for misconduct related to his surgical practice. Defendant argues that Plaintiff's counsel clearly knew this at the time they retained Dr. Gross as a rebuttal expert in April 2021. Under these circumstances, Plaintiff should not get any relief - they should have to rely on the comprehensive slate of experts they already identified. They would not be entitled to cumulative expert testimony in any event, and that is really all that Dr. Gross' report actually amounts to in this case. If Dr. Gross is withdrawn as an expert, no doctor or new expert should be allowed to refer to or utilize his opinions. That would just add another cumulative layer to Plaintiff's presentation in this case.

Defendant argues that all Plaintiff would possibly be entitled to, is a new rebuttal expert to rebut Dr. Forage's opinions. The defense is greatly concerned about the possibility of 'trial by ambush,' whether intended or not. To date, defense counsel states he has not received any additional records or bills related to the August 2021 surgery and has no supplemental expert reports. Further, once counsel obtains new records from the surgery, defense experts will need to review them. Given the potential need to re-depose Plaintiff on her post-surgical condition or require a supplemental IME depending on her claims, and with COVID concerns, the impending holiday season, and extremely short time frames, Defendant will not be able to prepare appropriately for trial in January 2022. Irrespective of whether the Court allows Plaintiff time to identify a different rebuttal expert to rebut Dr. Forage, Defendant argues that trial will probably need to be continued and a new discovery plan to deal with this new information be set forth.

Finally, Based on the foregoing, Defendant asks that Plaintiff's Motion to Substitute Plaintiff's Expert and Treating Physician Witness Jeffrey Gross, M.D. be denied, that our January 3, 2022 trial be continued and that discovery be reopened, to a limited extent, to address these new matters.

In Reply, Plaintiff states that Defendant's Opposition is baseless. Further, because Plaintiff underwent total disc replacement at C4-C5, C5-C6, and C6-C7 on August 5, 2021, Plaintiff agrees that trial should be continued and discovery be reopened.

This Court finds and concludes that there is good cause to substitute Dr. Gross with a different expert, and consequently, the Plaintiff's Motion has merit. It would not be fair to allow the Plaintiff to retain a new expert now, with new never-before-stated opinions. It would also be unreasonable to expect that a different expert would have the exact same opinions as Dr. Gross. Consequently, the Court will allow the Plaintiff to retain a new expert, or use Dr. Garber to replace Dr. Gross, as long as the opinions of such experts do not go "beyond" what Dr. Gross's opinions were. Defense counsel will be given the opportunity to depose and do additional discovery if necessary relating to this substitution. The Court takes no position at this time, and makes no ruling regarding

the Defendant's argument that Dr. Gross' opinions are "cumulative." Such argument needs to be raised in a separate pleading, if the substituted expert offers what Defendant believes to be cumulative and objectionable opinions.

Both parties have agreed that a continuance of the Trial date and Discovery Deadline will be necessary. Consequently, an Amended Scheduling Order will issue, the 1/3/22 Trial date will be vacated, and a new Trial Order will issue.

Based upon the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that the Plaintiff's Motion to Substitute Plaintiff's Expert and Treating Physician Jeffrey Gross, M.D., is hereby GRANTED, to the extent set forth above.

The Trial date of 1/3/22, PreTrial Conference Date of 12/6/21, and Calendar Call date of 12/27/21, are hereby VACATED. A new Scheduling Order and a new Trial Order will issue.

The Court requests that Plaintiff's counsel prepare an Order consistent with the foregoing, have it approved as to form and content by opposing counsel, and submit it to the Court for signature within 10 days.

Because this matter has been decided on the pleadings, the hearing scheduled for 9/29/21 will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear.

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 09-23-21./ /lk

Heather S. Hume
CLERK OF THE COURT



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Services, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

Howard Basch, individually,

Plaintiff,

vs.

Symeon Reyes Bibiano, individually; Brightview
Landscape Services, Inc., a domestic corporation;
Does I-X, and Roe Corporations, Inc.,

Defendants.

Case No.: A-20-809164-C
Dept. No.: 29

Order re 2 Motions

On August 19, 2021 the court heard two motions. One was Defendants' motion to continue trial, the other was Plaintiff's motion to substitute one of his retained expert witnesses. Tom Stewart attended the hearing for Plaintiff, Michael Lowry attended for Defendants.

Both motions are granted. The court is not inclined to punish Plaintiff for Dr. Gross' conviction, so good cause to allow the substitution is present. This in turn supports Defendants' motion to continue trial. Trial is continued to the dates previously stated at the hearing.

THE PAUL POWELL LAW FIRM <i>/s/ Tom Stewart</i> TOM W. STEWART Nevada Bar No. 14280 Attorneys for Howard Basch	WILSON ELSEY MOSKOWITZ EDELMAN & DICKER LLP <i>/s/ Michael Lowry</i> MICHAEL P. LOWRY Nevada Bar No. 10666 Attorneys for Symeon Reyes Bibiano and Brightview Landscape Services, Inc. It is so ordered. <i>[Signature]</i> DISTRICT JUDGE
--	--

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Howard Basch, Plaintiff(s)

CASE NO: A-20-809164-C

7 vs.

DEPT. NO. Department 29

8 Symeon Bibiano, Defendant(s)

9
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