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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KIRSTEN MACY-HALBERT,  
  
Plaintiff,  
  
vs.  
  
HYUNG RYUL SHIN, Individual; and DOES  
1-10, Inclusive,  
  
Defendants.

CASE NO. BC469602  
[Assigned to Hon. Samantha P. Jessner, Dept. 93]  
  
(Complaint Filed: 9/15/11)

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION *IN LIMINE*  
NO. 4 TO EXCLUDE  
TRACTOGRAPHY; DECLARATION  
OF MOLLY M. MCKIBBEN AND  
EXHIBITS**

[Filed concurrently with Plaintiff's  
Objections to Evidence Offered by  
Defendant In Support of Defendant's  
Motion *In Limine* No. 4; [Proposed] Order  
on Plaintiff's Objections to Evidence  
Offered by Defendant In Support of  
Defendant's Motion *In Limine* No. 4;  
Declaration of Monte S. Buchsbaum and  
Exhibits]

**FSC: September 3, 2013  
Trial: September 10, 2013**

1 TO THE HONORABLE COURT AND ALL PARTIES:

2 Plaintiff hereby submits the following opposition to Defendant's Motion *in Limine* No. 4.

3 This Opposition is based on the following:

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1. Tractography based on diffuse tensor imaging (DTI) in 3 Tesla magnetic resonance imaging (3T MRI) is scientifically valid, generally accepted in the scientific/medical community, and is used by researchers and clinicians through the United States.

2. The tractography in the 3T MRI is not an attempt to "demonstrate" the existence of Plaintiff's brain injury; rather, as explained below, it is confirmatory of that diagnosis as made by many others, including Defendant's own retained neurologist.

3. There are numerous peer reviewed articles supporting the use of tractography based on DTI to diagnose and treat traumatic brain injuries.

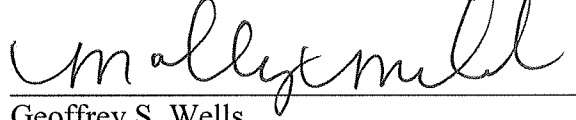
4. Courts throughout the country have admitted evidence of DTI at trial in many cases. Defendant has not cited a single case wherein tractography based on DTI was excluded from trial from anywhere in the country, let alone in California.

5. Defendant provides no actual evidence supporting their argument that tractography based on DTI is unreliable. Defendant rests his Motion on the declarations of his retained neurologist and neuroradiologist, neither of whom is an expert in 3T MRI, tractography, or diffuse tensor imaging. These declarations are not evidence and should be stricken from the record as lacking foundation.

1 This Opposition is made and based on the accompanying Memorandum of Points and  
2 Authorities, the Declaration of Molly M. McKibben and attached Exhibits, on all records and  
3 pleadings on file with this Court, any evidence of which the Court may take judicial notice prior to  
4 or at the hearing of this matter, and any other oral and documentary evidence as may be presented  
5 at the hearing of Defendant's Motion.  
6

7 DATED: August 19, 2013

GREENE BROILLET & WHEELER, LLP



8  
9 Geoffrey S. Wells  
10 Molly M. McKibben  
11 Attorneys for Plaintiff  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 On September 2, 2011, Plaintiff Kirsten Macy-Halbert was walking with a friend, lawfully  
4 attempting to cross Rokeby Avenue at its intersection with Rowena Street within the pedestrian  
5 crosswalk when she was hit by a Mercedes E350 driven by Defendant Hyung Ryul Shin, who was  
6 driving northbound on Rowena Street attempting to make a left turn onto Rokeby Avenue. The  
7 impact from Defendant's vehicle caused Plaintiff to sustain severe and permanent injury,  
8 including a traumatic brain injury.

9 After she was struck by Defendant, Plaintiff saw several doctors, including a neurologist,  
10 neuropsychologist, and neuroradiologist. Plaintiff underwent various tests, including  
11 neuropsychological testing and a 3 Tesla magnetic resonance scan ("3T MRI"). This 3T MRI  
12 contains tractography modeled on diffusion tensor imaging ("DTI") of Plaintiff's brain. The  
13 tractography of the 3T MRI performed on Plaintiff demonstrates thinning of the white matter in  
14 her brain, which is consistent with a traumatic brain injury. Plaintiff's diagnosis of traumatic brain  
15 injury has been confirmed not only by all of Plaintiff's treating doctors and expert witnesses, but  
16 also by Defendant's own designated neurologist.

17 Defendant has brought the instant motion *in limine* to exclude testimony referring to the  
18 tractography results from the 3T MRI performed on Plaintiff's brain. As explained further below,  
19 tractography based on DTI is scientifically valid, and is used by researchers and clinicians through  
20 the United States. The tractography in the 3T MRI is not an attempt to "demonstrate" the  
21 existence of Plaintiff's injury; rather, as explained below, it is confirmatory of that diagnosis as  
22 made by many others. There are numerous peer reviewed articles supporting the use of  
23 tractography based on DTI to diagnose and treat traumatic brain injuries.

24 Defendant cannot cite a single case wherein tractography has been excluded from trial.  
25 Moreover, the only evidence Defendant cites in support of his motion are declarations of his two  
26 retained experts, one of which is not a radiology expert, and neither of which is an expert in 3T  
27 MRIs. *See Plaintiff's Objections to Evidence Offered By Defendant In Support of Motion in*  
28 *Limine No. 4.*

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Because the tractography in the 3T MRI done of Plaintiff's brain and Plaintiff's experts' utilization of that study is sufficiently reliable and relevant, Defendant's motion must be denied.

**II. PLAINTIFF'S MEDICAL RECORDS AMPLY DEMONSTRATE THAT SHE HAS SUSTAINED A TRAUMATIC BRAIN INJURY FROM THE SEPTEMBER 2, 2011 INCIDENT.**

After being struck by Defendant's vehicle, Plaintiff was treated by multiple doctors. Plaintiff was seen by Dr. Hyman Gross, M.D., a neurologist, soon after the incident. Dr. Gross met with Plaintiff and her husband, and reviewed Plaintiff's emergency room and radiological studies records post-incident. Dr. Gross ordered a 3T MRI of Plaintiff's brain. *See* Deposition of Dr. Hyman Gross at 7:6-9:3, attached as Exhibit 1. The 3T MRI results were "abnormal" and demonstrated "dropout of fibers in the...body of the corpus collosum." *Id.* Dr. Gross diagnosed Plaintiff with a traumatic brain injury. *Id.* at 7:6-9:3.

Plaintiff was also seen by neuropsychologist Dr. Jeffrey Schaeffer., M.D., Ph.D. Dr. Schaeffer examined Plaintiff's medical history, including records from Dr. Hamid Mir, the orthopedist she saw immediately after the incident. Dr. Mir's diagnoses included high energy auto-versus-pedestrian accident, headaches, and a post-concussional disorder, which Dr. Schaeffer testified is synonymous with a mild traumatic brain injury. *See* Deposition of Dr. Jeffrey Schaeffer at 12:18-14:4, attached as Exhibit 2. Dr. Schaeffer diagnosed Plaintiff with a grade two level mild traumatic brain injury. *Id.* at 60:24-61:8.

Plaintiff's medical records, including the 3T MRI, were reviewed by Dr. Monte S. Buchsbaum, M.D. Dr. Buchsbaum also performed a PET Scan on Plaintiff. Dr. Buchsbaum is an expert in brain imaging and neuroscience who has been actively involved in diffusion tensor imaging since 1998. *See* Declaration of Dr. Monte S. Buchsbaum, M.D., at ¶ 2. After reviewing the 3T MRI, Dr. Buchsbaum concluded that the "DTI was found to show a slight drop off in the corticospinal tract in the corona radiata in the posterior frontal and parietal region. There are slightly diminished FA numbers in the corpus callosum. These borderline low-level FA numbers are consistent with some drop off in the density of the fiber tracts seen on the tractography images of the posterior frontal area. The values of 0.39 in the front portion of the corpus callosum (genu)

1 are low, and lower than many published values including those from my laboratory. This,  
2 combined with Kirsten Macy-Halbert's medical history, clinical signs, and symptoms, provide a  
3 scientific basis to conclude to a reasonable degree of medical probability that the damage shown  
4 on the DTI is axonal disruption caused by the September 2, 2011 incident." *Id.* at ¶¶ 9-10.

5 Defendant's retained neurologist Dr. Cynthia Chabay examined Plaintiff and reviewed her  
6 medical records. Dr. Chabay agrees that Plaintiff has sustained a traumatic brain injury. *See*  
7 Deposition of Dr. Cynthia Chabay at 11:17-12:12, 13:17-22, attached as Exhibit 3.

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9 **III. TRACTOGRAPHY BASED ON DIFFUSION TENSOR IMAGING HELPS**  
10 **CLINICIANS DIAGNOSE TRAUMATIC BRAIN INJURIES.**

11 The tools that are used to evaluate whether someone has a traumatic brain injury and how  
12 severe it is include clinical examination, brain scans, medical history, psychiatric history, and  
13 neuropsychological testing. *See* Declaration of Dr. Monte S. Buchsbaum, M.D., at ¶ 3.  
14 Tractography based on DTI alone cannot diagnose brain injury. *Id.* at ¶ 4. Rather, DTI can locate  
15 abnormalities that can suggest or be consistent with a particular etiology, but in and of itself, DTI  
16 is not diagnostic. *Id.* By locating white matter damage in the brain consistent with a traumatic  
17 brain injury, DTI findings provide a tool upon which a clinician may support a diagnosis of a  
18 traumatic brain injury. *Id.* As a large majority of mild traumatic brain injury is not detectable on  
19 computed tomography (CT) scans or standard magnetic resonance (MR) scans, a major drive  
20 behind the development of DTI software was to detect white matter abnormalities. *Id.* at ¶ 5.

21 DTI is a sequence of a magnetic resonance examination that examines the microstructure  
22 of the white matter (axons) of the brain. *Id.* at ¶ 6. Tractography is a 3D modeling technique used  
23 to model neural tracts using data collected by DTI. *Id.* DTI works by measuring the distribution  
24 of water through portions of the brain. *Id.* at ¶ 6(a). DTI is based upon the known physics of the  
25 flow of water. *Id.* at ¶ 6(b). In an open and unobstructed space, water molecules will diffuse  
26 equally in all directions in a manner called an isotropic distribution. *Id.* If, however, there are  
27 barriers to flow (such as those found in the white matter of the brain), water will move unequally  
28 in all directions, called anisotropic distribution. *Id.* The axons are parallel fibers connecting nerve

1 cells in many areas of the brain. *Id.* Water in between the axons tends to diffuse in a single  
2 direction. *Id.* Water distribution in healthy, intact white matter tends to be anisotropic, that is in a  
3 single direction. *Id.* at ¶ 6(c). But as white matter is damaged, torn, or the outer membranes are  
4 broken down, water tends to diffuse in a more isotropic distribution. *Id.*

5 DTI divides the brain into thousands of voxels. *Id.* at ¶ 6(d). Voxels are like pixels of a  
6 digital camera, except they are three dimensional. *Id.* DTI measures the direction of water  
7 diffusion through each voxel in the brain and provides a score between 0 and 1. *Id.* The score is  
8 referred to as FA (fractional anisotropy). *Id.* A lower score means that the distribution is more  
9 isotropic (equal in all directions), and a higher score means the distribution is more anisotropic  
10 (close to a straight line). *Id.* If a DTI score is low, the patient is significantly more likely to have  
11 a traumatic brain injury. *Id.* A typical brain injury involves diffuse axonal injury which is the  
12 result of shear-strain deformation of the brain tissue with the disruption of axonal membranes and  
13 cytoskeletal network. *Id.* at ¶ 6(e). This axonal shearing in the white matter, which causes  
14 isotropic distribution of water through each voxel in the brain, leads to a disruption in brain  
15 function. *Id.* DTI may detect microskeletal injury implicated in diffuse axonal injuries linked to  
16 persistent symptoms in patients following mild traumatic brain injuries. *Id.*

17  
18 **IV. TRACTOGRAPHY BASED ON DIFFUSION TENSOR IMAGING IS**  
19 **SCIENTIFICALLY VALID, AND IS GENERALLY ACCEPTED AND USED BY**  
20 **THE SCIENTIFIC COMMUNITY.**

21 **1. Tractography Based on Diffusion Tensor Imaging Is A Generally Accepted**  
22 **Scientific Technique And Has Been Admitted By Courts All Over the Country.**

23 Tractography based on DTI has gained general acceptance in the identification and  
24 treatment of mild traumatic brain injuries. *See* Declaration of Dr. Monte S. Buchsbaum at ¶ 8.  
25 DTI is an FDA-approved technique, is reimbursable by insurance companies, and is in clinical use  
26 through the United States. *Id.* at 7. There are papers which support the use of DTI to diagnose  
27 traumatic brain injury in individual subjects. *Id.* at 8.

28 This is hardly the first case where a plaintiff sought to introduce DTI findings in a brain  
injury case and where DTI was found to be reliable and generally accepted by the

1 scientific/medical community. It is important to note that Defendant has not cited a single case  
2 wherein tractography based on DTI was excluded from trial from anywhere in the country, let  
3 alone in California. In *Lamasa v. Bachman*, 869 N.Y. S.3d 17 (App. Div. 2008), the Supreme  
4 Court, Appellate Division considered whether a trial court properly admitted evidence of a mild  
5 traumatic brain injury that had been obtained through DTI. 2008 N.Y. App. Div. LEXIS 8686;  
6 2008 NY Slip Op 9162, attached as Exhibit 4. The trial court had held that DTI evidence was  
7 properly admitted because it could not be characterized as novel science and that the defendant's  
8 concerns went to the weight of the evidence, not its admissibility. The court reasoned that  
9 "plaintiff's experts, relying on objective medical tests, testified to brain damage and other injuries  
10 that they attributed to trauma, and the conflicting medical evidence and opinions of defendant's  
11 experts concerning the permanence and significance of plaintiff's injuries simply raised issues of  
12 fact for the jury." In denying defendant's motion for relief, the lower court explained that:

13 DTI is an imaging technique used to study the random motion of hydrogen atoms  
14 within water molecules in biological tissue (e.g., brain white matter) and spatially  
15 map this diffusion of water molecules, *in vivo*. DTI provides anatomical  
16 information about tissue structure and composition. Changes in these tissue  
properties can often be correlated with processes that occur, among other causes,  
as a result of disease and trauma.

17 *Lamasa v. Bachman*, 8 Misc. 3d 1001(A) at \*\*3 (2005), FN3; 2005 N.Y. Misc. LEXIS 1164; 2005  
18 NY Slip Op 50882(U), attached as Exhibit 5. The lower court further held that, as to the issues  
19 of causation and the precise physical injuries the plaintiff suffered as a result of the collision, "the  
20 parties had numerous expert witnesses testifying and considering the conflicting testimony of the  
21 parties' respective expert witnesses, the jury was not required to accept one expert's position over  
22 that of another, but was entitled to accept or reject either expert's position in whole or in part." *Id.*  
23 at \*\*8. On appeal, the Appellate Division affirmed the trial court's admission of the challenged  
24 expert testimony.

25 There have been many other cases where courts have found that DTI has been sufficiently  
26 tested, peer reviewed, lacks a high error rate, and is generally accepted in the scientific  
27 community. See *Booth v. Kit*, 81 Fed. R. Evid. Serv. (Callaghan) 1, 2009 U.S. Dist. LEXIS  
28 125754; *LeBoeuf v. B & K Contractors, Inc.* 10 So. 3d 897 (Ct. App. La. 2009), 2009 La. App.



1 Unpub. LEXIS 324; *Whilden v. Kline*, District Court, Jefferson County, Colorado Case No.  
2 08CV4210 (May 10, 2010), collectively attached as Exhibit 6. Simply put, tractography based on  
3 DTI is generally accepted by the medical/scientific community, and has been admitted at trial by  
4 courts throughout the country.

5  
6 **2. Defendant Proffers No Actual Evidence For His Argument That Tractography**  
7 **Based on Diffusion Tensor Imaging Is Unreliable.**

8 Defendant provides absolutely no actual evidence supporting his conclusory statements  
9 that tractography is unreliable. Defendant proffers no articles disproving the general acceptance of  
10 tractography in the medical community. He provides no studies that indicate that tractography  
11 based on DTI is not generally accepted. Instead, Defendant relies only upon the declarations of  
12 his retained neurologist, Dr. Cynthia Chabay, and retained neuroradiologist, Dr. Stephen L.G.  
13 Rothman. Dr. Chabay is a neurologist and is not trained in radiology, let alone 3T MRIs. *See*  
14 Declaration of Dr. Cynthia Chabay at ¶ 1; *see also* Plaintiff's Objections to Evidence Offered By  
15 Defendant In Support of Motion in Limine No. 4, Objection No. 4. Dr. Chabay only states that  
16 she agrees with Dr. Rothman. *See* Declaration of Dr. Cynthia Chabay at ¶ 4; *see also* Plaintiff's  
17 Objections to Evidence Offered By Defendant In Support of Motion in Limine No. 4, Objection  
18 No. 4. Dr. Chabay admitted in her deposition that she is not an expert in 3T MRI. *See* Exhibit 4,  
19 Deposition of Cynthia Chabay at 14:23-15:19.

20 Dr. Rothman admitted under oath that he is not an expert in 3T MRI. *See* Deposition of  
21 Dr. Stephen L.G. Rothman, M.D., at 10:7-24, attached as Exhibit 7; *see also* Plaintiff's Objections  
22 to Evidence Offered By Defendant In Support of Motion in Limine No. 4, Objection Nos. 1-3. Dr.  
23 Rothman admitted under oath that he is not an expert in diffuse tensor imaging. *See* Exhibit 7,  
24 Deposition of Dr. Stephen L.G. Rothman, M.D., at 10:7-24; *see also* Plaintiff's Objections to  
25 Evidence Offered By Defendant In Support of Motion in Limine No. 4, Objection Nos. 1-3. Dr.  
26 Rothman admitted under oath that he is not an expert in tractography. *See* Exhibit 7, Deposition  
27 of Dr. Stephen L.G. Rothman, M.D., at 10:7-24; *see also* Plaintiff's Objections to Evidence  
28 Offered By Defendant In Support of Motion in Limine No. 4, Objection Nos. 1-3. Dr. Rothman

1 admitted that he doesn't "do tractography as part of my clinical practice" and he "cannot tell" if  
2 the 3T MRI take of Plaintiff's brain "are or are not correct." See Exhibit 7, Deposition of Dr.  
3 Stephen L.G. Rothman, M.D., at 9:4-18. Dr. Rothman has authored no publications related to 3T  
4 MRI or tractography. See Exhibit 7, Deposition of Dr. Stephen L.G. Rothman, M.D., at 26: 7-9.  
5 Dr. Rothman admitted it has been at least a year since he reviewed literature related to  
6 tractography and DTI. See Exhibit 7, Deposition of Dr. Stephen L.G. Rothman, M.D., at 31:2-9.  
7 These declarations are not evidence and the information contained therein simply improper expert  
8 opinion that should be struck from the record. See Plaintiff's Objections to Evidence Offered By  
9 Defendant In Support of Motion in Limine No. 4.

10 Moreover, neither Dr. Rothman nor Dr. Chabay state that tractography is not generally  
11 accepted within the scientific community – Dr. Chabay does not even address the issue in her  
12 declaration, and Dr. Rothman simply states that "the pictures from tracts *have not been adequately*  
13 *defined* in the medical/scientific community." See Declaration of Dr. Rothman at ¶ 7 (emphasis  
14 added). This is clearly a statement based on Dr. Rothman's own baseless opinion and not based  
15 on any evidence – and it is an opinion of a doctor who is **not** an expert in 3T MRI. See Plaintiff's  
16 Objections to Evidence Offered By Defendant In Support of Motion in Limine No. 4.

17 Defendant is seeking to have evidence of tractography excluded from trial for the simple  
18 reason that it hurts his case. A large majority of mild traumatic brain injuries are not detectable on  
19 CT scans or standard MRIs; Defendant is seeking to exclude a scan which has the ability to detect  
20 such an injury. Defendant is asking this Court to disregard the overwhelming consensus of the  
21 medical community and preclude evidence of DTI because it is a tool used for diagnosis as  
22 opposed to a biomarker capable of exclusive diagnosis. Plaintiff's experts are using DTI as one of  
23 many tools to diagnose traumatic brain injury. This is exactly how the overwhelming majority of  
24 medical diagnoses are made: by taking all the information together and drawing a conclusion. The  
25 tractography based on DTI done on Plaintiff's brain cannot, by itself, determine that Plaintiff has a  
26 brain injury caused by Defendant running her over with his car. However, Plaintiff's records  
27 show no prior brain injury symptoms, her neuropsychological test results indicate a traumatic  
28 brain injury, she has experienced a drop in performance at both her jobs, and she has ongoing

1 symptoms indicative of a traumatic brain injury and abnormalities detected by DTI in the same  
2 areas. It is when all of this evidence is viewed together that four doctors – including Defendant’s  
3 own neurologist – diagnosed Plaintiff with a mild traumatic brain injury. Thus, Defendant’s  
4 argument that the tractography based on DTI cannot by itself relate the brain damage found in  
5 Plaintiff to the incident with Defendant is irrelevant because the tractography is not being used by  
6 itself to do so. As such, Defendant’s Motion should be denied.

7

8 **V. TESTIMONY REGARDING THE TRACTOGRAPHY IN PLAINTIFF’S 3T MRI**  
9 **IS HIGHLY RELEVANT EVIDENCE THAT MUST BE ADMITTED.**

10 Defendant pithily cites case law regarding the admissibility of irrelevant evidence and its  
11 danger of confusing and misleading the jury, and then provides absolutely no argument as to why  
12 evidence of tractography based on DTI done of Plaintiff’s brain would confuse or mislead the jury  
13 in this case. In fact, the opposite is true. Testimony regarding the tractography by Plaintiff’s  
14 experts will aid the jury in understanding Plaintiff’s injury. As explained above, the tractography  
15 based on DTI taken of Plaintiff’s brain is one piece of the puzzle that Plaintiff’s doctors (and  
16 Defendant’s own neurologist) have relied upon in diagnosing her with a traumatic brain injury.  
17 Moreover, any objection Defendant has to the tractography goes to the weight of the evidence, and  
18 not its admissibility. *See People v. Cooper* (1991) 53 Cal. 3d 771, 814 (“Once the court acts  
19 within its discretion and finds the witness qualified, as it did in this case, the weight to be given  
20 the testimony is for the jury to decide.”). Evidence of tractography is highly relevant to  
21 demonstrate that Plaintiff has sustained a traumatic brain injury, and Defendant has provided no  
22 evidence or even argument that evidence of tractography will confuse or mislead the jury. As  
23 such, Defendant’s Motion should be denied.

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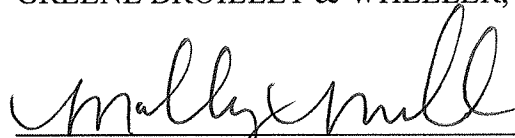
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**VI. CONCLUSION**

For the foregoing reasons, Defendant's Motion should be denied in its entirety.

DATED: August 19, 2013

GREENE BROILLET & WHEELER, LLP



Geoffrey S. Wells  
Molly M. McKibben  
Attorneys for Plaintiff

GREENE BROILLET & WHEELER, LLP  
P.O. BOX 2131  
SANTA MONICA, CA 90407-2131

1 DECLARATION OF MOLLY M. McKIBBEN

2  
3 I, MOLLY M. McKIBBEN, declare and say that:

4 I am an attorney at law licensed to practice before all of the courts of the State of  
5 California, and am a member of the law firm of Greene Broillet & Wheeler, LLP, attorneys of  
6 record for Plaintiff Kirsten Macy-Halbert. As such, I have personal knowledge of the facts  
7 surrounding the present action and all facts herein stated. If called as a witness, I could testify  
8 competently to the following:

9 1. This declaration is made in support of Plaintiffs' Opposition to Defendant's Motion  
10 in Limine No. 4.

11 2. Attached hereto as Exhibit "1" is a true and correct copy of the pertinent portions of  
12 the deposition of Dr. Hyman Gross, M.D.

13 3. Attached hereto as Exhibit "2" is a true and correct copy of the pertinent portions of  
14 the deposition of Dr. Jeffrey Schaeffer, M.D., Ph.D.

15 4. Attached hereto as Exhibit "3" is a true and correct copy of the pertinent portions of  
16 the deposition of Dr. Cynthia Chabay.

17 5. Attached hereto as Exhibit "4" is a true and correct copy of the case of *Lamasa v.*  
18 *Bachman*, 869 N.Y. S.3d 17 (App. Div. 2008); 2008 N.Y. App. Div. LEXIS 8686; 2008 NY Slip  
19 Op 9162.

20 6. Attached hereto as Exhibit "5" is a true and correct copy of the case of *Lamasa v.*  
21 *Bachman*, 8 Misc. 3d 1001(A) at \*\*3 (2005), FN3; 2005 N.Y. Misc. LEXIS 1164; 2005 NY Slip  
22 Op 50882(U).

23 7. Attached hereto as Exhibit "6" are true and correct copies of the following cases:  
24 *Booth v. Kit*, 81 Fed. R. Evid. Serv. (Callaghan) 1, 2009 U.S. Dist. LEXIS 125754; *LeBoeuf v. B &*  
25 *K Contractors, Inc.* 10 So. 3d 897 (Ct. App. La. 2009), 2009 La. App. Unpub. LEXIS 324;  
26 *Whilden v. Kline*, District Court, Jefferson County, Colorado Case No. 08CV4210 (May 10,  
27 2010).

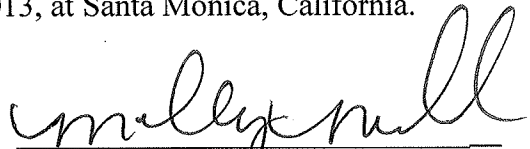
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8. Attached hereto as Exhibit "7" is a true and correct copy of the pertinent portions of the transcript of the deposition of Dr. Stephen L.G. Rothman, M.D.

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

Executed this 19 day of August, 2013, at Santa Monica, California.

  
MOLLY M. MCKIBBEN  
Declarant

GREENE BROILLET & WHEELER, LLP  
P.O. BOX 2131  
SANTA MONICA, CA 90407-2131

Hyman Gross

✓  
P

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

**CERTIFIED  
ORIGINAL**

KRISTEN MACY-HALBERT,  
Plaintiff,

vs.

Case No.

HYUNG RYUL SHIN, INDIVIDUAL;  
and DOES 1-10, INCLUSIVE,

BC 469602

Defendants.

---

DEPOSITION OF HYMAN GROSS, M.D.

WEDNESDAY, FEBRUARY 6, 2013

1:08 P.M.

2021 SANTA MONICA BOULEVARD, SUITE 320E

SANTA MONICA, CALIFORNIA

REPORTED BY:

Susan B. Sautman

CSR No. 4770

Hyman Gross

1           A. I interviewed the husband. I summarized  
2 that interview in the report.

3           Q. So that's included in the four to five  
4 hours?

5           A. Yes.

6           Q. In the -- in your report you recommended --  
7 you made some recommendations and among them were I  
8 think it was a 3-T kind of test.

9           A. Yes.

10          Q. Forgive me. I don't have the full  
11 designation of it. What is the full designation?

12          A. Three tesla magnetic resonance imaging scan  
13 of the brain with diffusion tensor imaging.

14          Q. In lay terms, what does that mean?

15          A. It's a high resolution brain scan using  
16 magnetic resonance that enables you to see fine  
17 structural detail of the brain.

18          Q. Has that been done?

19          A. Yes.

20          Q. When was that done?

21          A. Yesterday.

22          Q. Do you have the results yet?

23          A. Yes.

24          Q. What are the results?

25          A. It's abnormal. It shows dropout of fibers