IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

JEFFERY SHARP,	*	
	*	
Plaintiff,	*	
	*	CIVIL ACTION FILE NO. 22A03196
v.	*	
	*	
MARLON WILLIAMS,	*	
	*	
Defendant.	*	

CONSOLIDATED PRETRIAL ORDER

The following constitutes the Proposed Consolidated Pretrial Order entered in the above-styled action:

1. The name, address and phone number of the attorneys who will conduct the trial are as follows:

Attorney for Plaintiff:
Dennis E. Sawan
Nick Schnyder Law Firm LLC
Georgia Bar Number 621661
351 Atlanta Street SE
Marietta, GA 30060
404-602-3425

Attorney for Defendant:
Darryl Haynes
Lynn Leonard and Associates
Georgia Bar Number 340580
2400 Century Parkway Suite 200
Atlanta, GA 30345
404-728-5400

By Defendant: Defendant reserves the right to substitute counsel of record to try this case. Such substitution will not delay the trial of this case.

2. The estimated time required for trial is 3-4 days.

3. There are no motions or other matters pending for consideration by the Court except as follows:

By Plaintiff:

Plaintiff filed a motion for sanctions related to spoliation of the dash cam footage by an agent of the Defendant and his persistent discovery abuses.

Plaintiff also intends to file a motion for exception to O.C.G.A. §24-4-411 due to the spoliation issues presented.

Plaintiff moves in limine as follows:

1. UNRELATED CLAIMS. Any reference or suggestion that Plaintiff has had unrelated, prior or subsequent claims, suits or settlements or the amounts thereof. See O.C.G.A. §24-4-401 and 24-4-402, et al.; *Goforth v. Wigley*, 178 Ga. App. 558, 559-60 (1986).

2. UNRELATED ACCIDENTS AND INJURIES. Any reference or suggestion that Plaintiff has been involved in any other accidents or suffered any injuries, diseases, conditions, or illness, or the effects thereof, which are wholly disassociated and unrelated to the injuries at issue in this case, or, that, do not relate to or serve as a "sole cause" defense to Plaintiff's injury claims in this lawsuit, for which Defendant cannot medically relate to Plaintiff's injuries for which compensatory damages are claimed in this case. See O.C.G.A. §24-4-401 and 24-4-402, et al.; *Goforth v. Wigley*, 1788 Ga. App. 558, 559-60 (1986); *United Motor Freight Terminal Company Inc. v. Hixon*, 76 Ga. App. 653, 655 (1948); *Barnes v. Cornett*, 134 Ga. App. 120, 122 (1975). Further, no mention should be made about any unrelated claims or lawsuits.

3. PAYMENT OF JUDGMENT. Any indication, of any kind, that Defendant will personally have to pay any verdict or judgment entered in this case, especially since Defendant is insured against liability. See O.C.G.A. §24-4-401; *Adams v. Camp Harmony Association*, 190 Ga. App. 506, 508 (1989); *Denton v. Conway Express, Inc.*, 261 Ga. 41 (1991); *Northwestern University v. Crisp*, 211 Ga. 636, 641 (1955); *Brunswick & Western Railroad Co. v. Wiggins*, 113 Ga. 149 (3) (1884); *Bennett v. Haley*, 132 Ga. App. 512, 525 (1974). *See also*, *Georgia State Bar Rules*, DR 7-102(A)(3), (4) and (5); DR 7-106(C) (1); Rule 4-102(d) Standard 45 and O.C.G.A. §9-10-185.

4. MONEY WILL NOT UNDO DAMAGE. Any reference or suggestion to the effect that "money won't undo the injury and damage the Plaintiff may have sustained," because such a suggestion is an improper appeal for jury sympathy toward Defendant and invites the jury to disregard its duty to apply the legal measure of damages which the evidence shows have been caused by Defendant's misconduct and instead to base a verdict on improper considerations. See O.C.G.A. §24-4-401; *Gielow v. Strickland*, 185 Ga. App. 85, 86 (1987) (jury cannot be urged to use some other measure of damages than that prescribed by law); *Central of Georgia Railway v. Swindle*, 260 Ga. 685, 687 (1990) (trial should not be invaded by improper considerations); *Adams v. Camp Harmony Association*, 190 Ga. App. 506, 508 (1989) (effect of verdict an improper consideration).

5. NO MENTION OF COLLATERAL SOURCE. No mention of collateral source payments and/or benefits. Any reference or suggestion that Plaintiff has received, or will receive, benefits of any kind or character from a collateral source, including but not limited to any mention of health insurance, workers compensation coverage and/or medical funding (associated with treatment Plaintiff received) should not be made in the presence of the jury. See *Denton v. Conway Express, Inc.*, 261 Ga. 41 (1991);

Georgia Power v. Flagan, *Bennett v. Haley*, 132 Ga. App. 512, 525 (1974); *Warren v. Ballard*, 266 Ga. 408(2); *Worthy v. Kendall*, 222 Ga. App. 324 (1996).

6. FAILURE TO CALL EQUALLY AVAILABLE WITNESSES. Any reference or suggestion that Plaintiff has not called to testify any witness equally available to both parties in this case. See O.C.G.A. § 24-14-22; *Bank of Emmanuel v. Smith*, 32 Ga. App. 606 (1924); *Bradford v. Parrish*, 111 Ga. App. 167 (1965).

7. ACCIDENT CHARGE. Any reference or suggestion by the defense that Plaintiff's injuries are merely the result of an "accident." *Tolbert v. Duckworth*, and *Shelton v. Smith*, 262 Ga. 622, (November 23, 1992). The Georgia Supreme Court has eliminated the jury instruction describing an accident as a defense in a civil case and repudiated the use of the accident instruction in all civil cases as unnecessary, misleading, and confusing.

8. OTHER INJURIES: Plaintiff moves that the Court exclude any claim, argument, or other statement that any prior or subsequent claims and injuries of Plaintiff are related to the injuries now at issue, unless such contention is first established by testimony of someone having sufficient and appropriate medical training, and supported by medical records. Such argument cannot be made without first providing medical proof as to such causation. Neither a lay witness nor a lawyer without any medical training can offer such an unsupported opinion. See *Eberhart v. Morris Brown College*, 181 Ga. App. 516, at 518 & 519 (1987); *Thomason v. Willingham*, 118 Ga. App. 821, 165 S.E. 2d 865 (1968). Plaintiff moves that any such argument or statement of counsel be excluded unless and until such causation is established at trial through testimony of a qualified medical expert. Without medical support, such argument would permit defense counsel to improperly insinuate injury without testimony or evidence to support such a contention.

9. ARGUMENTS UNSUPPORTED BY MEDICAL EVIDENCE: Plaintiff moves that the Court exclude any reference, argument, or other statement that any prior or subsequent injuries, problems or conditions not related to her injuries at issue in this case. Defendant's counsel should not reference or suggest that any problems Plaintiff may have suffered in the past are in any way related to her present injuries, unless such statement is first established by testimony of someone having sufficient and appropriate medical training, and such statements are supported by medical records. Once again, such an unsupported statement cannot be made without sufficient proof. See *Eberhart v. Morris Brown College*, 181 Ga. App. 516, at 518 & 519 (1987); *Thomason v. Willingham*, 118 Ga. App. 821, 165 S.E. 2d 865 (1968). Any testimony, argument or questioning as to these matters should also be barred unless and until medical proof is first presented.

10. DISCUSSION OF ATTORNEY RETENTION: Plaintiff moves that the Court exclude any reference, argument, or other statement regarding when counsel was hired or the purpose of obtaining counsel. The date on which the Plaintiff retained counsel is privileged pursuant to O.C.G.A. § 24-9-21, which protects against the disclosure of communications between attorney and client. In addition, when and how the Plaintiff hired her attorney is irrelevant, for such fact does not tend to prove or disprove any issue of material fact and would only serve to mislead the jury and confuse the issues. Such matters are completely irrelevant to the issues in this case and are unduly prejudicial. O.C.G.A. § 24-9-24; O.C.G.A. § 24-2-1; *Kilpatrick v. Foster*, 185 Ga. App. 453, 364 S.E. 2d 588 (1987). Courts have consistently held that when and how a Plaintiff hired their attorney is wholly irrelevant and

immaterial. See *Carlye v Lai*, 783 S.W.2d 925 (Mo. App 1989) (The right to seek the advice of counsel risks reversal when attempting to discredit a litigant cross-examining him about the time and circumstances of his having consulted an attorney to discuss his legal rights.); *Travis vs. Vandergriff*, 384 S.W.2d 936 (Tex. App.- Waco, 1964) (The question as to when she first thought about filing this lawsuit and "so then you hired a lawyer" was wholly immaterial and irrelevant as to the cause of the injury, as to liability, and as to the amount of damages.); *Martinez vs. Williams*, 312 S.W.2d 742, 752 (Tex. App.- Houston, 1958) (defendant's contention that the time and circumstances under which Plaintiff engaged counsel might have had a material bearing upon the issues in the case with respect to whether the Plaintiff was "claims minded" and thus prone to magnify or "build up" a minor accident into a major claim was improper to show in evidence that a personal injury litigant is "claims minded" in an effort to attack his credibility). *See also* OCGA §24-9-27(c).

11. NO ARGUMENT THAT LARGE VERDICT HARMS THE PUBLIC: Comments, arguments, or inquires implying that insurance premiums will increase, or cancellation of coverage will occur for members of the public, the Defendant, or the jurors, as a result of a verdict in favor of Plaintiff should not be made to the jury. This includes any argument that higher prices would result from the award of a substantial verdict, either at Defendants' business or any other commercial enterprise. Defendant is not permitted to argue that any verdict will be passed on to the public in any matter whatsoever or that the jury would be adversely affected by same. O.C.G.A. §24-4-401, et seq.

12. COMPARATIVE OR CONTRIBUTORY NEGLIGENCE BURDEN: Comments, arguments, or inquiries implying that Plaintiff must disprove any claim that she was contributorily or comparatively negligent should not be made to the jury unless and until Defendant has first met their burden of proof on said issues. O.C.G.A. §24-14-1. "While comparative negligence is available as an affirmative defense in Georgia…the burden of proving it remains with the party relying upon it and not upon the party making the original negligence claim to disprove [the defense]." *Glenridge Unit Owners Ass'n Inc. v. Felton*, 183 Ga. App. 858, 861 (1987). Similarly, in order for the defendant to avail itself of the affirmative defense of contributory negligence, it is incumbent upon defendant to prove the defense by preponderance of evidence. *McCrackin v. McKinney*, 52 Ga. App. 519, 520 (1936).

13. ALTERNATIVE CAUSATION: Comments, arguments, or inquiries implying that Plaintiff has a duty to disprove any contention that her injuries were caused by an accident, incident, or event other than the subject incident. Pursuant to O.C.G.A. §24-14-1, the burden of proof generally lies upon the party who is asserting or affirming a fact, and to the existence of whose case of defense the proof of such fact is essential. If a negative or negative affirmation is essential to a party's case or defense, the proof of such negation or affirmation lies on the party so affirming it. In *Moresi v. Evans*, 257 Ga. App. 670 (2002), the Georgia Court of Appeals ruled that the trial court properly instructed the jury that "a party asserting a fact essential to that party's case or defense bears the burden of proof as to that fact." *Moresi*, 257 Ga. App. At 677. In reaching this holding, the Court noted that "the jury was adequately informed that the defendants bore the burden of proving any alternative theories of causation that they presented, while the Plaintiffs were required to prove that [the defendant's] negligence caused [the Plaintiff's] injuries in order to recover on their negligence claim." *Id.*

14. ANY EVIDENCE OF PAYMENTS MADE TO BILLS BY OUTSIDE SOURCES: Comments, arguments, or evidence being admitted regarding the payment of Plaintiff's bills by any source including charitable reductions or write-offs. O.C.G.A. § 51-12-1(b) plainly forbids such introduction

into evidence as collateral source. *Amalgamated Transit Union Local 1324 v. Roberts*, 263 Ga. 405, 434 S.E.2d 450 (1993). *Olariu v. Marrero*, 549 S.E.2d 121 (Ga. 2001) A write-off is a collateral source. This includes any reference or suggestion that Plaintiff has received, has been entitled to receive, will receive, or will become entitled to receive, benefits of any kind or character from a collateral source, including, but not limited to, the following: (A) Benefits from collateral insurance coverage; (B) Services furnished without charge; (C) Compensation for time not actually worked; (D) Social Security or pensions; (E) Workers' compensation benefits; (F) Medicaid or Medicare. See, *Denton v. Conway Express, Inc.*, 261 Ga. 41, 45-46 (1991) ; *Georgia Power Co. v. Flagan*, 261 Ga . 41, 45-46 (1991); *Bennett v. Haley*, 132 Ga. App. 512, 525 (1974); see also, *Warren v. Ballard*, 266 Ga. 408, 410, 467 S.E.2d 891, 893-894 (1996); *Worthy v. Kendall*, 222 Ga. App. 324, 325-325, 474 S.E .2d 627, 629 (1996).

15. REFERENCE TO LOTTERY OR GAMBLING: Because arguments comparing Plaintiff's lawsuits to playing the lottery have become more prevalent in recent years, the Plaintiff files this motion to prevent such an improper and flagrantly prejudicial suggestion to the jury. While there has not been a case directly on point which has reached the Georgia Court of Appeals, the South Dakota Supreme Court has considered the premise issue. In *Schoon v. Looby*, 2003 S.D. 123, 670 N.W. 2d 885 (2003), a Plaintiff in a medical malpractice case appealed from a defense verdict and the denial of a motion for a new trial. The basis for the appeal was improper comments made by defense counsel during final argument. Those comments included referring to the lawsuit as the Plaintiff's quest for "Lotto or Powerball or whatever they call it, let's really roll the dice big." *Schoon*, 670 S.W. 2d at 890. The South Dakota Supreme Court reversed the trial court's denial of the motion for a new trial.

In rendering its opinion, the court wrote:

> Defense counsel's accusation that Plaintiff was trying to hit the lottery by her lawsuit demeaned not only the Plaintiff but also the judicial system itself…. The comments denigrated the fairness, integrity and public perception of the judicial system. Counsel's reference to playing lotto or powerball, or rolling the dice, were only meant to inflame the jury, and were beyond the bounds of proper final argument. These comments would not have gone unheeded by the jury. The judge and jury rely on the lawyers to present their arguments to help the jury sort out the evidence and understand how the law applies to the facts. Interposing remarks such as we see here add nothing to that objective, and can only be meant to persuade the jury to decide the case based on passion and prejudice. *Id.* at 891 (emphasis added).

Because of the prejudicial and inflammatory nature of such an argument, any suggestion that Plaintiff' interest is in such things as "hitting it big," gambling, or playing the lottery- rather than in compensation for actual injury sustained –should be precluded as demeaning not only to the Plaintiff, but to the judicial system itself.

16. AMERICAN TORT SYSTEM: The Plaintiff moves the Court to prohibit any reference or suggestion or the introduction of any evidence by the Defense counsel directly or indirectly attacking the American Court System, Plaintiff's attorneys, or recent tort reform campaigns. Neither the American tort system nor Plaintiff' attorneys in general are on trial in this case. The trial of this case should not be an opportunity for Defense counsel to voice opinion regarding tort reform. The injuries sustained by Plaintiff as a result of the Defendant's negligence are the issues in this case and the

Defense should not be permitted to sidestep these issues and utilize politicized statements in lieu of legal argument. The debate surrounding tort reform is irrelevant to this case and would serve only to inflame and prejudice the jury. These references would poison this case with anti-lawsuit and anti-lawyer bias, which has been highlighted in recent corporate, media campaign and emotional propaganda. This subject applies to trial only and not voir dire.

17. FINANCIAL CONSEQUENCES ON DEFENDANT: Any reference or suggestion that Defendant is uninsured as to Plaintiff's claims, including, but not limited to, any reference as to Defendant as a little person, or small or struggling, or any other such reference which would tend to convey to the jury the impression that Defendant is a party of modest means who cannot afford to pay a substantial judgment should be excluded. See, O.C.G.A. §24-4-401; *Georgia Power Company v. Flagan*, 261 Ga. 41, 45-46 (1991); Denton v. Conway Express, Inc., 261 Ga. 41,45-46 (1991); *Adams v. Camp Harmony Association*, 190 Ga. App. 506, 508 (1989); *Northwestern University v. Crisp*, 211 Ga. 636,641 (1955); *Brunswick & Western Railroad Co. v. Wiggins*, 113 Ga. 842,850 (1901); *Higgins v. The Paulding Railroad*, 73 Ga. 149 (3) (1885); *Bennett v. Haley*, 132 Ga. App. 512, 525 (1974); see also, Georgia State Bar Rules, DR 7-102(A)(3), (4) and (5); DR 7-106(C) (1); Rule 4-102(d) Standard 45 and O.C.G.A § 9-10-185.

18. PLAINTIFF'S USE OF AWARD: Any reference or suggestion as to what Plaintiff will or might do with any award of damages Plaintiff might receive should be excluded as irrelevant and potentially inflammatory. See, O.C.G.A. §24-4-401 and §24-4-404; *Gusky v. Candler General Hospital*, 192 Ga. App. 521, 524 (3) (1989); see also, *Hall v. Chicago & Northwestern Railway Co.*, 125 N.E.2d 77, 86 (III. 1955).

19. DEFENDANT IS SORRY: Any reference or suggestion that Defendant is sorry or regrets the occurrence in question should be excluded, because such a suggestion is an improper appeal for jury sympathy toward Defendant, and invites the jury to disregard its duty to apply the legal measure of damages by awarding such damages as the evidence shows have been caused by such defendant's misconduct and base a verdict on improper considerations. See, O.C.G.A. §24-4-401; *Central of Georgia Railway v. Swindle*, 260 Ga. 685, 687 (1990) (trial should not be invaded by improper considerations); *Adams v. Camp Harmony Association*, 190 Ga. App. 506, 508 (1989) (effect of verdict an improper consideration); and, *Gielow v. Strickland*, 185 Ga. App. 85, 86 (1987) (jury cannot be urged to use some other measure of damages than that prescribed by law).

20. STEP INTO THE SHOES OF DEFENDANT: Members of the jury should not be instructed or given the suggestion to imagine themselves in the place, or shoes, or stead of Defendant. *Doe v. Moss*, 120 Ga. App. 762, 767 (1969).

21. DEFENDANT'S GOOD CHARACTER: The Defendant may attempt to introduce testimony regarding his general good character. O.C.G.A. § 24-4-402 states, "The general character of the parties and especially their conduct in other transactions are irrelevant matters . . ." As such, this Court should limit testimony from the Defendant's witnesses stating that he has a good character. See e.g., *Housing Authority of Atlanta v. Green*, 169 Ga. App. 211, 212, 312 S.E.2d 196, 197 (1983) (excluding testimony regarding a party's good reputation as improper character evidence in a civil case).

22. REFERENCE TO DOCUMENTS NOT IN PRETRIAL ORDER: Should Defendant wish to introduce into evidence any document, writing, photograph or motion picture or video tape or the like, not previously addressed by the pre-trial order, that the same be tendered to the Court and opposing counsel, outside the presence of the jury, and shown or exhibited to determine its relevance and suitability for introduction into evidence prior to and before informing the jury as to its existence or its tender into evidence by Defendant.

23. NO SUDDEN EMERGENCY DEFENSE VIABLE: Plaintiff anticipates Defendant may claim a sudden emergency defense. "An emergency is a sudden peril caused by circumstances in which the defendant did not participate, and which offered him a choice of conduct without time for thought so that negligence in his choice might be attributable not to lack of care but to lack of time to assess the situation." Considering the facts of this case it is not applicable. All peril was created by Defendant's own negligent actions and testimony does not support that any meaningful choice existed but for limited time. All emergent circumstances were created by Defendant's negligent decisions and therefore no charge is appropriate. *Butger v. Enviro-tech Enviro Services Inc.*, 626 GA App. 754 2003.

24. ANY INTRODUCTION OF EVIDENCE IN VIOLATION OF O.C.G.A. §§ 24-8-803(6) and 24-9-902(11). Defendant to date has not provided any notice of intention to introduce medical records or evidence pursuant to the above statutes. In addition, Plaintiff has not been provided copies of these documents in discovery. Additional documents such at this have the potential of being immensely prejudicial, as they will likely contain an immense amount of hearsay, as well as information not yet evaluated in accordance with the standard set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* standard. 43 F.3d 1311 (9th Cir. 1995). Defendant has not sufficiently complied with the above statutes and therefore this information must be excluded.

25. ANY INTRODUCTION OF EVIDENCE REGARDING, OR ANY REFERENCE TO, ATTORNEY REFERRAL TO HEALTH CARE PROVIDERS: Whether or not Plaintiff's attorneys, past or present, referred Plaintiff to any health care provider is irrelevant, and should be excluded. *Stephens v. Castano-Castano*, 2018 Ga. App. LEXIS 307.

26. CRIMINAL CHARGES OR CONVICTIONS. In Georgia, the rule is that a witness may be impeached by proof of a conviction of any crime involving moral turpitude. The use of the term moral turpitude has been restricted to the gravest offenses, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind. *Lewis vs. State*, 243 Ga. 443, 444 (1979). A witness may only be impeached by the properly authenticated copy of his conviction, not by his admission in a deposition or a testimony that he entered a plea of guilty. *Business Resources, Inc. vs. General Amusements, Inc.,* 186 Ga. App. 185 (1988). Defendant may not utilize any criminal convictions not meeting the above requirements.

27. EXPERT OPINIONS UNSUPPORTED BY CREDIBLE EXPERT TESTIMONY: Plaintiff moves that the Court exclude any reference, argument, or other statement by a layman regarding that which is within the province of an expert. For example, Plaintiff expects the Defendant himself to try to offer expert opinions about accident reconstruction, physical forces and/or speeds involved in this collision – without the requisite qualifications to do so under the holding in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 43 F.3d 1311 (9th Cir. 1995). Moreover, such opinions lack any foundation or

academic basis. Such an unsupported statement cannot be made without sufficient proof. See *Eberhart v. Morris Brown College*, 181 Ga. App. 516, at 518 & 519 (1987); *Thomason v. Willingham*, 118 Ga. App. 821, 165 S.E. 2d 865 (1968). Any testimony, argument or questioning as to these matters should also be barred unless and until proof is first presented.

28. PLAINTIFF WAS "SPEEDING": It is anticipated that the Defendant intends to testify that he believed the Defendant was "speeding," despite the fact that he testified that it "would be impossible" for him to know how fast the Plaintiff was traveling and the Plaintiff was not cited for speeding. *Deposition of Marlon Williams; Page 70; Lines 1-5*. The probative value of this testimony is trifling, while the potential for unfair prejudice or juror confusion is significant. Thus, it ought to be excluded.

By Defendant:

4. The jury will be qualified as to relationship with the following:

By Plaintiff: The parties and counsel for Defendant. Additionally, the Plaintiff contends that policyholders of State Farm mutual insurance company have a financial stake in the outcome of this case and should be questioned during the general voir dire as to their relationship with State Farm Insurance, as well as any parties and witnesses to this suit.

By Defendant: Plaintiff Jeffrey Sharp; Dennis Sawan and any other attorneys from the law firm of Nick Schnyder Law Firm, LLC

5. (a) All discovery has been completed, except as otherwise noted, and the Court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial. Further, the parties shall have the right to take the discovery deposition(s) of any opposing expert(s) who will testify at trial. Each party shall notify the opposing party of his/her intent to introduce live expert testimony at trial within a reasonable time prior to trial, so that the opposing party will have ample time to secure the discovery deposition of that expert and to retain his/her own

rebuttal expert(s). In addition, the parties reserve the right to file motions to compel non-parties to produce documents which were requested pursuant to O.C.G.A. §9-11-34.

Additionally, a **fourth** letter pursuant to rule 6.4 was sent to Defendant on May 1st, 2024. Insofar as Defendant refuses to produce the information that has been requested since as far back as February, a **third** motion to compel may be required.

Plaintiff intends to depose the final fact Witness, Eric Johnson. Plaintiff also reserves the right to re-depose the Defendant in light of the belated disclosure of the transcript of Mr. Johnson that was in his possession.

By Defendant: The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

In an effort to resolve any disputes and avoid the need for judicial intervention, counsel for Defendant expects to respond to the Rule 6.4 letter sent by Plaintiff's requesting certain information. Defendant reserves the right to object, or file a motion for protective order in response to a notice to re-depose Defendant Williams because the allegedly "belated" disclosure of his recorded statement was done in response to the Court' Order.

(b) The names of the parties as shown in the caption to this Order are correct and complete and there is no question by any party as to the misjoinder or non-joinder of any parties.

6. The following is the **Plaintiff's** brief and succinct outline of the case and contentions:

This matter involves a near fatal motor vehicle collision that took place on or about April 12th, 2022, on Mountain Industrial Boulevard and Stone Mountain Freeway in Dekalb County. The Plaintiff maintains that he had a green light to proceed straight through the intersection. This is corroborated by two witnesses, Jeffrey Robinson and Artis Ceasar, who were traveling behind the Plaintiff just prior to the collision. The Defendant, on the other hand, is adamant that he had a green turn arrow and that the Plaintiff ran a red light – despite no evidence to that effect. As a result of the

collision, the Plaintiff's vehicle flipped 2-3 times and Plaintiff was severely injured - resulting in permanent scarring, injuries to his knee and back and cognitive deficits, among others. The Defendant was cited for failure to yield, but he went to Court while the Plaintiff was recovering and unable to attend and was able to get it dismissed. He then, remarkably, tried to get the Plaintiff cited instead, but was unable to because – in his words – the officer was "lazy". Throughout the course of this case, the Defendant has persistently acted in bad faith, has been stubbornly litigious, advanced defenses that are entirely unsupported by the facts and/or has caused the plaintiff unnecessary trouble and expense by failing to accept any responsibility despite clear evidence to the contrary.

The following is the **Defendant** brief and succinct outline of the case and contentions:

This suit arises out of a two-car accident that happened on April 12, 2022 on Mountain Industrial Blvd. in Tucker, Dekalb County**,** Ga. Per the accident report, as Defendant was turning left at the intersection while traveling north on Mountain Industrial Blvd., his truck collided with Plaintiff's vehicle, which was traveling south on Mountain Industrial Blvd. well over the posted speed limit.

Defendant contends that:

(1) He was not negligent;
(2) Any injuries or damages incurred by the Plaintiff were caused solely, proximately and directly by the negligence of the Plaintiff;
(3) Plaintiff, by the exercise of ordinary care, could have avoided the consequences of the negligence, which is alleged against this Defendant.
(4) The negligence of the Plaintiff was equal to or greater than the alleged negligence of the Defendant.

With regard to the issue of damages, Defendant further contends that the Plaintiff was not injured seriously or permanently.

8. The issues for determination by the jury are as follows

(a) Negligence;
(b) Causation;
(c) Contributory/Comparative Negligence;
(d) Amount of reasonable/necessary medical expenses Plaintiff is entitled to recover:

(e) Amount of general damages Plaintiff is entitled to recover:
(f) Whether Plaintiff is entitled to recover punitive damages; and
(g) Whether Plaintiff is entitled to recover attorney's fees and costs damages under O.C.G.A.§§13-6-11 and 9-15-14.

9. Specifications of negligence for the **Plaintiff** including applicable code sections are as follows: O.C.G.A. §40-6-254; O.C.G.A. §40-6-241; O.C.G.A. §51-1-2; O.C.G.A. §40-6-71.

Specifications of negligence for the **Defendant** including applicable code sections are as follows: Statutes related to definition of ordinary negligence, comparative negligence, avoidance of consequences in Title 51 of O.C.G.A.; O.C.G.A.§40-6-180 (General Speeding Rules)

10. If the case is based on a contract, either oral or written, the terms of the contract are as follow: Not applicable.

11. The types of damages and the applicable measure of those damages are stated as follows:

By Plaintiff:

Plaintiff's past medical bills and expected future medical expenses of approximately **$92,751.38** and lost wages and other expenses in the amount of **$8,400.98**; Plaintiff's past, present and future pain and suffering/damage to quality of life.

By Defendant:

Medical expenses, the measure of which is the reasonable value thereof, Lost wages, the measure of which is the value thereof, Pain and suffering, the measure of which is the enlightened conscience of impartial jurors.

12. If the case involves divorce, each party shall present to the court at the pre-trial conference the affidavits required by Rule 24.2. **Not applicable.**

13. The following facts are stipulated: **None at this time.**

14. The following is a list of all documentary and physical evidence that may be tendered at the trial by the parties. Unless noted, the parties have stipulated as to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

(a) By the Plaintiff:

(1) Plaintiff's itemized bills and certified medical records bills from treating medical providers with regard to the wreck in question, including but not limited to the following:

a) American Medical Response
b) Grady EMS
c) Grady Hospital
d) Lithonia Chiropractic
e) Wellstar

(2) Any documents produced by the parties in discovery, including all exhibits attached to or discussed in the depositions of any party or witness;
(3) Photographs of collision area, vehicles, injuries and/or pre-accident condition, as well as demonstrative exhibits created by various experts for the Plaintiff.
(4) Any documents identified by the parties in either the Pre-Trial Order or any amendment or supplement thereto;
(5) Any and all pleadings and discovery in the case, including Defendant's Answer/Counter Claim to Plaintiff's Complaint, Defendant's Responses to Plaintiffs' Requests for Admissions, Requests for Production of Documents, and Interrogatories;
(6) Any documents to be used for rebuttal or impeachment purposes;
(7) Summary of Specials which match discovery or this Pre-Trial Order;
(8) All exhibits attached to or discussed in the depositions of any party or witness, including other documents as presented during conference with counsel for the parties;
(9) All Exhibits listed by Defendant;
(10) Certified Disposition of Defendant's citation;
(11) 1949 Annuity Morality Table and/or the Social Security Administration Period Life Table, 2011;
(12) Police investigation videos and pictures including but not limited to dash and chest cameras;
(13) Police Report of Subject Collision; and
(14) Recorded phone call with Eric Robinson; and
(15) 6.4 Letters sent to Defendant during the course of litigation.

~~Plaintiff respectfully reserves the right to amend their document list upon five (5) days' notice to opposing counsel and in a sufficiently timely manner so as to not delay the trial of the case.~~ Plaintiff does not stipulate to the authenticity of the documents listed by any of the other parties in this lawsuit, and further reserves all objections regarding authenticity, relevancy, or other admissibility as to any other parties' documents. Plaintiff reserves the right to raise any and all objections to each other parties' documentary and physical evidence upon the same being properly tendered into evidence.

Defendant's counsel is hereby notified pursuant to O.C.G.A. §24-8-803(6) and §24-9-902(11) of the undersigned's intent to tender the documents identified in Paragraph 14 at trial. Plaintiff reserves the right to introduce documentary evidence in rebuttal. In addition, Plaintiff reserves the right to object to any documentary evidence of Defendant and insists on a proper foundation being laid. Finally, Plaintiff reserves the right to amend this order should the interest of justice so require.

(b) By the Defendant:

(1) Motor Vehicle Accident Report;
(2) Photographs of the involved vehicles;
(3) Property damage estimates, repair bills, and related documents;
(4) Any pleading of record in any case in which Plaintiff was a party;
(5) Any document listed by Plaintiff;
(6) Any document produced or identified in discovery;
(7) Any documents necessary for impeachment;
(8) Plaintiff's discovery responses in this case;
(9) Plaintiff's x-rays, MRI's, CT scans, and other diagnostic tests and results thereof;
(10) Photographs of the accident scene, if any;
(11) Any and all records regarding the subject motor vehicle accident, or any other motor vehicle accident in which Plaintiff was involved, in the possession of any insurance carrier;
(12) Medical narratives pursuant to O.C.G.A. § 24-3-18, if any;
(13) Any statement or deposition by Plaintiff, Defendant or a third-party witness;
(14) Exhibits to any depositions taken in this case;
(15) Records from the following entities:

Advanced Imaging Centers
Dominguez Chiropractic Auto Injury Center

Metro Ambulance Services, Inc.
Grady EMS
Shelton Sports and Spine, LLC
WellStar Kennestone Hospital
Lithonia Chiropractic
Grady Hospital

You are hereby notified pursuant to O.C.G.A. §§ 24-8-803(6) and 24-9-902(11) of the Undersigned's intent to use the documents identified in this Paragraph, or any portions thereof, at trial and of your opportunity to review these records.

Defendant reserves the right to introduce documentary evidence in rebuttal. In addition, Defendant reserves the right to object to any documentary evidence of Plaintiff and insists on a proper foundation provides being laid. Finally, Defendant reserves the right to amend this order should the interest of justice so require.

15. Special authorities relied upon by the **Plaintiff** relating to peculiar evidentiary or other legal questions are as follows: Award of attorney's fees and costs for failure to accept Plaintiff's Offer of Judgment pursuant to §9-11-68; Award of damages under O.C.G.A. §13-6-11 and/or O.C.G.A. §9-15-14. Exception to O.C.G.A. §24-4-411 due to the spoliation issues presented.

Plaintiff reserves the right to timely supplement this response.

16. Special authorities relied upon by the Defendant relating to peculiar evidentiary or other legal questions are as follows: None, other than those which may be set forth in any Motions In Limine Defendant may file, or to support evidentiary issues, if they arise during trial.

17. All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18. The testimony of the following person(s) may be introduced by depositions.

Plaintiff:

1) Witness Jeffrey Robinson; and
2) Witness Artis Ceasar; and
3) Witness Eric Johnson
4) Defendant;
5) Plaintiff reserves the right to depose and present any witness produced, listed, or identified during discovery by Plaintiff;
6) In addition, the Plaintiff may submit medical narratives in accordance with Georgia law.

Defendant

Any medical provider listed by Plaintiff or Defendant below in paragraph 19, including biomechanical expert Evan McConnell and a billing expert to be named within a reasonable time of trial.

Any objections to the depositions, or questions or arguments in the depositions, shall be called to the attention of the Court prior to trial. Objections to medical narratives should be made within fifteen (15) days of the notice to introduce the same.

19. The following are lists of witnesses

(a) Plaintiff <u>will</u> have present at trial:
1) Plaintiff Jeffrey Sharpe
2) Plaintiff's Mother Moriah Sharpe

(b) Plaintiff <u>may</u> have present at trial.
1) Defendant;
2) Witness Jeffrey Robinson
3) Witness Artis Ceasar
4) Witness Eric Johnson
5) Officer;
6) Any of Plaintiff's treatment providers;
7) Any other parties listed on the subject police report.
8) Accident Reconstructionist Tom Langley
9) Traffic Expert Herman Hill

Plaintiff reserves the right to call witnesses for rebuttal of Defendant's witnesses. ~~Plaintiff shall be permitted to supplement this list upon reasonable notice to opposing counsel at least five days prior to trial or at a time so as not to delay the trial of the case.~~

Opposing counsel may rely on representation by the other party that he or she will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his or her testimony by other means.

Defendant will have present at trial: None.

Defendant may have present at trial:

(1) Defendant;
(2) Plaintiff;
(3) Eric Johnson:
(4) Biomechanical expert Evan McConnell;
(5) Billing expert to be named within a reasonable time of trial;
(6) Any medical providers as noted in paragraph 14 above;
(7) The responding police officer;
(8) Impeachment or rebuttal witnesses; and
(9) Any witness listed by Plaintiff.

20. The form of all possible verdicts to be considered by the jury is as follows:

Plaintiff: 1. _____ We the jury find in favor of Plaintiff and award damages in the amount of $_____.

2. _____We the jury find in favor of Defendant.

Defendant: A general verdict form.

21. (a) The possibilities of settling the case are uncertain.
(b) The parties do want the case reported.
(c) The cost of takedown will be shared.
(d) Other matters. All parties have demanded a jury of twelve (12) persons. Defense counsel has another case pending in DeKalb State Court, which is specially set for trial the week of June 11, 2024.
(e) None.

Respectfully submitted May 3, 2024.

NICK SCHNYDER LAW FIRM, LLC

Dennis E. Sawan, Esq.
Georgia Bar No. 621661
Attorney for Plaintiff

/s/ Darryl Haynes

Darryl Haynes
Georgia Bar Number: 340580
Attorney for Defendant

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

JEFFERY SHARP,	*	
	*	
Plaintiff,	*	
	*	CIVIL ACTION FILE NO. 22A03196
v.	*	
	*	
MARLON WILLIAMS,	*	
	*	
Defendant.	*	

It is hereby ordered that the foregoing, including the attachments thereto, constitutes the PRE-TRIAL ORDER in the above case and supersedes the pleadings which may not be further amended except by order of the Court to prevent manifest injustice.

This 17th day of April, 2024.

Hon. Ana María Martinez
Judge, State Court of Dekalb County