

1 CAMELIA SGARLATO
2 26757 KINGWOOD RD.
3 MURRIETA, CA 92563
4 PHONE: (858) 229-5973
5 EMAIL: cameliasga@yahoo.com

6 **SUPERIOR COURT OF CALIFORNIA**
7 **COUNTY OF SAN DIEGO**

8 CAMELIA SGARLATO,
9 Plaintiff,

10 vs.

11 REGENTS OF THE UNIVERSITY OF
12 CALIFORNIA, A PUBLIC ENTITY; DR.
13 DAVID J. DALSTROM MD., AN
14 INDIVIDUAL, AND DOES 1-10 INCLUSIVE,
15 Defendant

Case No.: 37-2021-00004036-CU-MM-CTL

DECLARATION OF CAMELIA
SGARLATO IN SUPPORT OF MOTION TO
COMPEL FURTHER RESPONSES
WITHOUT OBJECTIONS TO REQUEST
FOR ADMISSIONS SET NO. [2] AND
REQUEST FOR ORDER AWARDING
MONETARY SANCTIONS, ISSUE
SANCTIONS AND EVIDENCE
SANCTIONS AGAINST DEFENDANTS
AND DEFENSE COUNSEL

16 *Filed concurrently with Notice of Motion and Motion to*
17 *Compel Further Responses, Without Objections to*
18 *Request for Admissions Set No [2] and Request for*
19 *Order Awarding Monetary Sanctions, Issue Sanctions,*
20 *Evidence Sanctions and an order staying further*
21 *proceedings by Defendants until an order for discovery*
22 *is obeyed pursuant to CCP § 2023.010 (d)(e)(f)(i)., CCP*
23 *2033.290, et seq., and CCP 2023.030 (b)(c)(d)(2)*

[California Code of Civil Procedure (“CCP”) §
2033.290, § 2030.290(b)]

Date: October 7, 2022

Time: 10:30 a.m.

Dept.: C-68

Judge: Honorable Richard S. Whitney

Reservation Number: 2509214

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**DECLARATION OF CAMELIA SGARLATO IN SUPPORT OF MOTION TO COMPEL FURTHER
RESPONSES WITHOUT OBJECTIONS TO REQUEST FOR ADMISSIONS SET NO. [2] AND REQUEST
FOR ORDER AWARDING MONETARY SANCTIONS, ISSUE SANCTIONS AND EVIDENCE
SANCTIONS AGAINST DEFENDANTS AND DEFENSE COUNSEL**

1 I, CAMELIA SGARLATO, declare as follows:

2 1. This declaration is made in support of Plaintiff CAMELIA SGARLATO'S motion to
3 compel Defendants Regents of the University of California and Dr. David J. Dalstrom MD. to
4 provide further verified responses, without objections, to Plaintiff's Request for Admissions, Set
5 No. [2], and for the imposition of monetary sanctions, issue sanctions, evidence sanctions and an
6 order staying further proceedings by Defendants until an order for discovery is obeyed pursuant
7 to CCP § 2023.010 (d)(e)(f)(i), CCP 2033.290, et seq., and CCP 2023.030 (b)(c)(d)(2) against
8 Defendants and their attorneys of record. The following facts are within my personal knowledge
9 and, if called as a witness herein, I can and will competently testify thereto.
10

11
12 2. On January 18, 2022, I propounded Plaintiff's Request for Admissions Set No. [2]. A
13 true and correct copy is attached hereto as Exhibit "A".

14 3. On February 22, 2022, Defense counsel requested a one-week extension until March 1,
15 2022. A true and correct copy is attached hereto as Exhibit "B".

16 4. On February 22, 2022, I answered that I was happy to provide Defendant a week
17 extension. A true and correct copy is attached hereto as Exhibit "C".

18 5. On March 1, 2022, Defendants served responses which, as to admissions No. 20, and
19 No. 26, failed to provide adequate, substantive responses and/or provided responses, which
20 contained denials and meritless objections. A true and correct copy is attached hereto as Exhibit
21 "D".
22

23 6. On March 9, 2022, I sent a Meet and Confer Letter to Defense Counsel, outlining the
24 deficiencies in Defendants' responses, unilaterally allowing seven (7) additional days to provide
25 further verified substantive responses. A true and correct copy is attached hereto as Exhibit "E".
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**DECLARATION OF CAMELIA SGARLATO IN SUPPORT OF MOTION TO COMPEL FURTHER
RESPONSES WITHOUT OBJECTIONS TO REQUEST FOR ADMISSIONS SET NO. [2] AND REQUEST
FOR ORDER AWARDING MONETARY SANCTIONS, ISSUE SANCTIONS AND EVIDENCE
SANCTIONS AGAINST DEFENDANTS AND DEFENSE COUNSEL**

1 7. On March 16, 2022, Defense Counsel requested four (4) additional days to respond by
2 Monday, the following week. A true and correct copy is attached hereto as Exhibit "F".

3 8. On March 16, 2022, I agreed to offer a four-day extension, until March 21, 2022. A
4 true and correct copy is attached hereto as Exhibit "G".

5 9. On March 21, 2022, I received Defendants' Reply to Plaintiff's Meet and Confer
6 Letter dated March 9, 2022. Defendants failed to provide adequate, substantive responses and/or
7 provided responses, which contained denials and meritless objections to Plaintiff's Request for
8 Admissions. A true and correct copy is attached hereto as Exhibit "H".

9 10. On March 28, 2022, I sent a Meet and Confer Letter to Defense Counsel outlining the
10 deficiencies in Defendant's responses, unilaterally allowing three (3) additional days to provide
11 further verified substantive responses. A true and correct copy is attached hereto as Exhibit "I".

12 11. I did not hear from Defense Counsel in response to the Meet and Confer Letter dated
13 March 28, 2022.

14 12. It is now April 19, 2022, and Defendants' Responses to Plaintiff's Request for
15 Admissions Set [2], remain deficient.

16 13. As a result of Defendants' willful refusal to serve full and complete verified
17 responses to Admission Nos. 20 & 26, Plaintiff is unable to proceed with meaningful discovery,
18 proceed with depositions, or effectively prosecute this action and prepare for trial.

19 14. As a result of Defendants' willful refusal to provide further answers to Plaintiff's
20 proper discovery, which further responses are necessary in order to proceed with discovery and
21 effectively prepare for trial, I have expended several hours in pursuit of this matter, researching,
22 drafting and editing the instant motion. Therefore, I ask the Court to award monetary sanctions,
23 issue sanctions, evidence sanctions and an order staying further proceedings by Defendants until
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**DECLARATION OF CAMELIA SGARLATO IN SUPPORT OF MOTION TO COMPEL FURTHER
RESPONSES WITHOUT OBJECTIONS TO REQUEST FOR ADMISSIONS SET NO. [2] AND REQUEST
FOR ORDER AWARDING MONETARY SANCTIONS, ISSUE SANCTIONS AND EVIDENCE
SANCTIONS AGAINST DEFENDANTS AND DEFENSE COUNSEL**

1 an order for discovery is obeyed pursuant to CCP § 2023.010 (d)(e)(f)(i), CCP 2033.290, et seq.,
2 and CCP 2023.030 (b)(c)(d)(2) against Defendants and their attorneys of record.

3
4 15. In addition, the filing fee for this motion is \$ 60.00. Therefore, I ask that the Court
5 award sanctions in the amount of \$ 74.75, including the Provider Service Fee for \$ 12.95 and the
6 Payment Service Fee for \$ 1.80.

7
8 16. On March 1, 2022, Defendants served by email their responses to Plaintiff's
9 propounded discovery.

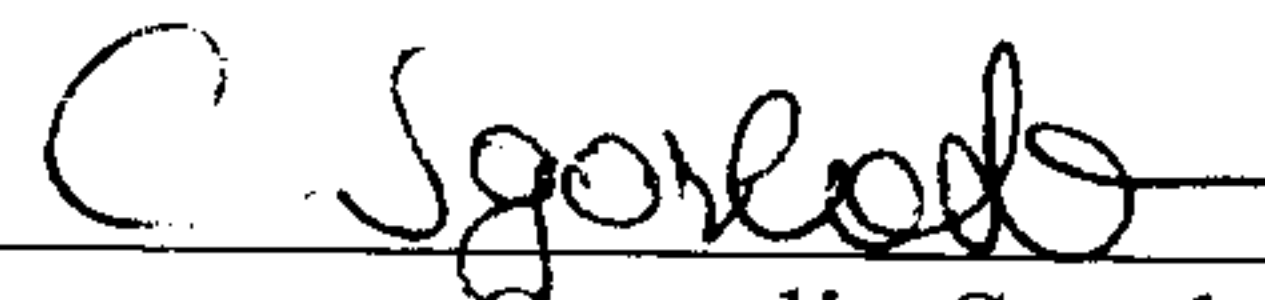
10
11 17. On April 15, 2022, I filed Plaintiff's Notice of Motion and Motion to Compel Further
12 Responses to Request for Admissions Set No. 2, Separate Statement, Declaration of Camelia
13 Sgarlato in Support of Compelling Further Responses to Request for Admissions Set. No. 2,
14 along with Exhibits A-I, and Proposed Order. The Declaration was rejected on the ground that
15 the Exhibits were not individually bookmarked. The Exhibits were bookmarked, but the e-filing
16 was selected not text searchable.

17 18. On April 19, 2022, I filled again Plaintiff's Declaration along with Exhibits A-I.

18
19 19. As shown by the proof of service attached to Defendant's verified responses and the
20 proof of service of this Noticed Motion, this Motion is timely made as moving party has noticed
21 the motion within forty-five days of the service of the response, plus two additional court days,
22 per C.C.P. § 1010.6(4)(B).

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

25 Dated: April 19, 2022

26 

27 Camelia Sgarlato
28 Plaintiff in Propria Persona

**DECLARATION OF CAMELIA SGARLATO IN SUPPORT OF MOTION TO COMPEL FURTHER
RESPONSES WITHOUT OBJECTIONS TO REQUEST FOR ADMISSIONS SET NO. [2] AND REQUEST
FOR ORDER AWARDING MONETARY SANCTIONS, ISSUE SANCTIONS AND EVIDENCE
SANCTIONS AGAINST DEFENDANTS AND DEFENSE COUNSEL**

EXHIBIT A

1 Camelia Sgarlato
2 26757 Kingwood Rd.
3 Murrieta, Ca 92563
4 Phone: (858) 229-5973
5 Email: cameliasga@yahoo.com

6 **SUPERIOR COURT OF CALIFORNIA**

7 **COUNTY OF SAN DIEGO**

8 CAMELIA SGARLATO,

9 Plaintiff,

10 vs.

11 REGENTS OF THE UNIVERSITY OF
12 CALIFORNIA, A PUBLIC ENTITY; AND
13 DR. DAVID J. DALSTROM MD., AN
14 INDIVIDUAL, AND DOES 1-10 INCLUSIVE,

15 Defendant

Case No.: 37-2021-00004036-CU-MM-CTL

PLAINTIFF CAMELIA SGARLATO'S
REQUEST FOR ADMISSIONS (SET TWO)

16 Judge: Hon Richard S. Whitney
17 Dept.: C -68

18 Complaint Filed: 01/27/2021
19 Trial Date: None Set

20 PROPOUNDING PARTY: Plaintiff, CAMELIA SGARLATO

21 RESPONDING PARTY: Defendant, THE REGENTS and DAVID J. DALSTROM, M.D.

22 SET NUMBER: TWO

23 **TO DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

24
25
26 Plaintiff CAMELIA SGARLATO ("PLAINTIFF") requests that Defendant REGENTS
27 OF THE UNIVERSITY OF CALIFORNIA and DAVID J. DALSTROM MD.

28 ("DEFENDANT") answer fully the following set of Request for Admissions, in writing and

PLAINTIFF CAMELIA SGARLATO'S REQUEST FOR ADMISSIONS (SET TWO)

1 under oath, pursuant to California Code of Civil Procedure Section 2033.010, and that said
2 answers be signed, verified, and served within thirty (30) days after service is made upon you.

3 Please be cautioned that if you deny any matters upon which admissions are sought and plaintiff
4 is able to prove the truth thereof, California Code of Civil Procedure Section 2033.010 permits
5 plaintiff to apply to the Court for an order that defendant pay to Plaintiff the reasonable expenses
6 incurred in making such proof.
7

8 **DEFINITIONS**

9
10 A. "DEFENDANT," "YOU" and "YOUR" shall mean Defendant THE REGENTS and DAVID
11 J. DALSTROM MD.

12 B. "PLAINTIFF" shall mean Plaintiff CAMELIA SGARLATO.

13 C. "SUBJECT INCIDENT" means and refers to the incident on January 14, 2019, described in
14 PLAINTIFF's Complaint upon which this suit is founded.
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18 **REQUEST FOR ADMISSION NO. 15:**

19 Admit that Plaintiff was injured as a result of this INCIDENT.

20 **REQUEST FOR ADMISSION NO. 16:**

21 Admit that YOU have no facts to support YOUR contention that Plaintiff is not being
22 truthful about the injuries Plaintiff sustained in this INCIDENT.
23

24 **REQUEST FOR ADMISSION NO. 17:**

25 Admit that YOU do not dispute liability for the injuries sustained by Plaintiff as a result
26 of the INCIDENT.
27
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1 **REQUEST FOR ADMISSION NO. 18:**

2 Admit that UC San Diego Health, Koman Family Outpatient Pavilion was medically
3 negligent in the care and treatment of Plaintiff, as a result of this INCIDENT.
4

5 **REQUEST FOR ADMISSION NO. 19:**

6 Admit that on January 14, 2019, you failed to obtain consent for left foot flatfoot
7 reconstructive surgery.

8 **REQUEST FOR ADMISSION NO. 20:**

9 Admit that on January 14, 2019, you failed to obtain informed consent for left foot
10 flatfoot reconstructive surgery in conjunction with subtalar fusion, FDL tendon transfer, cotton
11 osteotomy, spring ligament repair, partial excision of bone from talus, partial excision of bone
12 from navicular, gastrocnemius resection, talonavicular joint cheilectomy and bone graft.
13

14 **REQUEST FOR ADMISSION NO. 21:**

15 Admit that on January 14, 2019, you violated the law when you failed to obtain consent
16 for surgery.
17

18 **REQUEST FOR ADMISSION NO. 22:**

19 Admit that on January 14, 2019, you caused permanent injury to Plaintiff when you failed
20 to obtain informed consent.
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22 **REQUEST FOR ADMISSION NO. 23:**

23 Admit that on January 14, 2019, due to your negligence in failing to obtain informed
24 consent, the INCIDENT would not have occurred.
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1 **REQUEST FOR ADMISSION NO. 24:**

2 Admit that as a result of your negligence in causing the INCIDENT Plaintiff suffered
3 permanent injuries to the following body parts: left heel, left subtalar joint, left short-leg
4 syndrome and right knee meniscal tear.
5

6 **REQUEST FOR ADMISSION NO. 25:**

7 Admit that the Investigation of Patient's grievance dated 11/25/20 and 12/11/20 refers to
8 the events that actually occurred on January 14, 2019.
9

10 **REQUEST FOR ADMISSION NO. 26:**

11 Admit that the Investigation of Patient's Grievance dated 11/25/20 and 12/11/20 was
12 created by the Experience Specialist.

13 **REQUEST FOR ADMISSION NO. 27:**

14 Admit that the Investigation of Patient's Grievance dated 11/25/20 and 12/11/20 was not
15 created by the Senior Counsel – Litigation.
16

17 **REQUEST FOR ADMISSION NO. 28:**

18 Admit that on January 14, 2019, you used an allograft with the subtalar fusion.

19 **REQUEST FOR ADMISSION NO. 29:**

20 Admit that on January 14, 2019, you used a synthetic graft with the subtalar fusion.
21

22 **REQUEST FOR ADMISSION NO. 30:**

23 Admit that on January 14, 2019, you used an autograft with the subtalar fusion.

24 **REQUEST FOR ADMISSION NO. 31:**

25 Admit that Todd Walker M.D. performed surgery on Camelia Sgarlato, on January 14,
26 2019.
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1 **REQUEST FOR ADMISSION NO. 32:**

2 Admit that Todd Walker M.D. is not Board Certified in Orthopedic Surgery.

3 **REQUEST FOR ADMISSION NO. 33:**

4 Admit that on January 14, 2019, you did not inform Plaintiff that you performed a
5 subtalar fusion.
6

7 **REQUEST FOR ADMISSION NO. 34:**

8 Admit that on January 14, 2019, you performed the wrong surgical procedure on Plaintiff
9 as a result of your negligence in causing the INCIDENT.
10

11 **REQUEST FOR ADMISSION NO. 35:**

12 Admit that on January 14, 2019, you did not correct Plaintiff's left heel deformity.
13

14 Dated: January 18, 2022

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17 _____
18 Camelia Sgarlato
19 Plaintiff in Propria Persona
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EXHIBIT B

Sgarlato v/s Regents of the University of California and David J. Dalstrom MD.2
Yahoo/Inbox

•

Ann Buerster <abuerster@pbllplaw.com>

To:camelia scarlota

Cc:Taryn Perez

Tue, Feb 22 at 3:12 PM

Good Afternoon,

I am reaching out to obtain a 1-week extension, as it relates to our clients' discovery responses, which are due to you today.

If you are in agreement, these will be now due March 1st.

Thank you for your professional courtesy.

Ann Buerster, Legal Assistant to:

Thomas M. Peabody, Esq., and Taryn A. Perez, Esq.

Peabody & Buccini LLP

527 Encinitas Blvd, Suite 100, Encinitas, CA 92024

abuerster@pbllplaw.com

(760) 652-3150 | Facsimile (760) 652-3160 |

EXHIBIT C

camelia scarlota <cameliasga@yahoo.com>

To: Ann Buerster

Cc: Taryn Perez

Tue, Feb 22 at 4:55 PM

Good Afternoon Ms. Buerster,

I am happy to give your client a week extension.

We can move the discovery responses that were due today, to March 1st, 2022.

Sincerely,

Camelia Sgarlato

Show original message

EXHIBIT D

1 **PEABODY & BUCCINI LLP**
2 **THOMAS M. PEABODY, ESQ. (SBN: 178237)**
3 **TARYN A. PEREZ, ESQ. (SBN: 320669)**
4 **527 Encinitas Blvd., Suite 100**
5 **Encinitas, CA 92024**
6 **Telephone No. (760) 652-3150 / Facsimile No. (760) 652-3160**

7 **Attorneys for Defendants,**
8 **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, and**
9 **DAVID J. DALSTROM, M.D.**

*Governmental Entities and Employees of
Governmental Entity; No Filing Fee Required
Pursuant to Gov. Code § 6103*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

12 **CAMELIA SGARLATO,**

13 **Plaintiff,**

14 **vs.**

15 **REGENTS OF THE UNIVERSITY OF**
16 **CALIFORNIA, A PUBLIC ENTITY; DR.**
17 **DAVID J. DALSTROM MD., AN**
18 **INDIVIDUAL, AND DOES 1-10**
19 **INCLUSIVE,**

20 **Defendants.**

CASE NO.:37-2021-00004036-CU-MM-CTL

**DEFENDANTS' RESPONSES TO
PLAINTIFF, CAMELIA SGARLATO'S
REQUEST FOR ADMISSIONS [SET TWO]**

Judge: Richard S. Whitney
Dept.: C-68

Complaint Filed: 01/27/2021
Trial Date: None Set

21 **PROPOUNDING PARTY: Plaintiff, CAMELIA SGARLATO**

22 **RESPONDING PARTY: Defendants, THE REGENTS OF THE UNIVERSITY OF**
23 **CALIFORNIA AND DAVID J. DALSTROM, M.D.**

24 **SET NUMBER: TWO (15-35)**

25 **Defendants THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, and DAVID J.**
26 **DALSTROM, M.D. make the following answers and objections to the request for admissions**
27 **propounded by Plaintiff herein.**

28 **These answers and objections are made solely for the purpose of this action. Each answer**
is subject to all objections as to competence, relevance, materiality, propriety, admissibility and
all other objections and grounds that would require the exclusion of any statement herein if any
interrogatory were asked of, or if any statement contained herein were made by a witness present

1 and testifying in court, all of which objections and grounds are expressly reserved and may be
2 interposed at the time of trial.

3 While these responses are based upon diligent exploration and investigation by Defendants
4 and Defendants' counsel, they reflect the current state of Defendants' knowledge regarding the
5 matters about which inquiry is made. Defendants have only begun the process of conducting
6 discovery, formal and informal in this action, and has not concluded such discovery. Accordingly,
7 Defendants have not been able to ascertain all relevant facts herein, and these answers are not
8 intended to be final and conclusive. The information contained herein remains preliminary and, in
9 making these responses, Defendants reserve the right to amend, supplement, delete from, alter,
10 modify or otherwise change any answer herein as further discovery may make appropriate and
11 when Defendants have ascertained all relative facts.

12 The following answers are based on the information presently available to Defendants and
13 no incidental or implied admissions are intended herein. The fact that Defendants have answered
14 all or part of any interrogatory should not be taken as an admission that Defendants accept or
15 admits the existence of any fact set forth or assumed by such interrogatory, or that such answer
16 constitutes admissible evidence. The fact that Defendants have answered all or part of any
17 interrogatory is not intended to be and shall not be construed to be a waiver by Defendants of all
18 or any part of any objection which Defendants have made to any interrogatory.

19 Discovery will continue as long as permitted by statute or stipulation by the parties, and
20 the investigation of Defendants' attorneys and agents will continue to and through the trial of this
21 action. Defendants specifically reserve the right at the time of trial to introduce any evidence from
22 any source which may hereafter be discovered in testimony from any witness whose identity may
23 hereafter be discovered.

24 If any information has unintentionally been omitted from these responses, Defendants
25 reserve the right to apply for relief so as to permit the insertion of the omitted data from these
26 responses.

27 Defendants rely upon well-established California authority to the effect that discovery
28 cannot unilaterally be denominated continued in nature and serves notice that Defendants will not

1 voluntarily provide further responses to this request if additional information is acquired by
2 Defendants after these responses are served. (See Smith v. Superior Court, 189 Cal.App.2d 6, 11
3 [1961]).

4 These introductory comments shall apply to each and every response given herein and shall
5 be incorporated by reference as though fully set forth in all of the responses appearing on the
6 following pages.

7 **I.**

8 **GENERAL OBJECTIONS**

9 Defendants object to the form of Plaintiff's request for admissions on the following
10 grounds:

11 (a) Defendants object to the disclosure of any information privileged by the attorney-client
12 privilege, the joint defense counsel privilege, the work product doctrine or any other privilege;

13 (b) Defendants object to the disclosure of any information which is not relevant to the
14 subject matter of this litigation and not likely to lead to the discovery of admissible evidence; and

15 (c) Defendants object to the disclosure of any information which is readily available to
16 Plaintiff on the ground that such disclosure would result in undue burden, annoyance and
17 oppression.

18 **II.**

19 **REQUEST FOR ADMISSIONS RESPONSES**

20 **REQUEST FOR ADMISSION NO. 15:**

21 Admit that Plaintiff was injured as a result of this INCIDENT.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

23 Deny.

24 **REQUEST FOR ADMISSION NO. 16:**

25 Admit that YOU have no facts to support YOUR contention that Plaintiff is not being
26 truthful about the injuries Plaintiff sustained in the INCIDENT.

27 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

28 Objection. This request is vague, ambiguous, compound, and unintelligible. Without

1 waiving these objections, Responding Party denies this.

2 **REQUEST FOR ADMISSION NO. 17:**

3 Admit that YOU do not dispute liability for the injuries sustained by Plaintiff as a result of
4 the INCIDENT.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

6 Deny.

7 **REQUEST FOR ADMISSION NO. 18:**

8 Admit that UC San Diego Health, Koman Family Outpatient Pavilion was medically
9 negligent in the care and treatment of Plaintiff, as a result of this INCIDENT.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

11 Deny.

12 **REQUEST FOR ADMISSION NO. 19:**

13 Admit that on January 14, 2019, you failed to obtain consent for left foot flatfoot
14 reconstructive surgery.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

16 Deny.

17 **REQUEST FOR ADMISSION NO. 20:**

18 Admit that on January 14, 2019, you failed to obtain informed consent for left foot flatfoot
19 reconstruct surgery in conjunction with subtalar fusion, FDL tendon transfer, cotton osteotomy,
20 spring ligament repair, partial excision of bone from talus, partial excision of bone from navicular,
21 gastrocnemius resection, talonavicular joint cheilectomy and bone graft.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

23 Deny.

24 **REQUEST FOR ADMISSION NO. 21:**

25 Admit that on January 14, 2019, you violated the law when you failed to obtain consent for
26 surgery.

27 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

28 Deny.

1 **REQUEST FOR ADMISSION NO. 22:**

2 Admit that on January 14, 2019, you caused permanent injury to Plaintiff when you failed
3 to obtain informed consent.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

5 Deny.

6 **REQUEST FOR ADMISSION NO. 23:**

7 Admit that on January 14, 2019, due to your negligence in failing to obtain informed
8 consent, the INCIDENT would not have occurred.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

10 Deny.

11 **REQUEST FOR ADMISSION NO. 24:**

12 Admit that as a result of your negligence in causing the INCIDENT Plaintiff suffered
13 permanent injuries to the following body parts: Left heel, left subtalar joint, left short-leg syndrome
14 and right knee meniscal tear.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

16 Deny.

17 **REQUEST FOR ADMISSION NO. 25:**

18 Admit that the Investigation of Patient's grievance dated 11/25/20 and 12/11/20 refers to
19 the events that actually occurred on January 14, 2019.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

21 Deny.

22 **REQUEST FOR ADMISSION NO. 26:**

23 Admit that the Investigation of Patient's grievance dated 11/25/20 and 12/11/20 was
24 created by the Experience Specialist.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

26 Objection. This Request is unintelligible as phrased. Responding Party is unable to admit
27 or deny.

28 ///

1 **REQUEST FOR ADMISSION NO. 27:**

2 Admit that the Investigation of Patient's grievance dated 11/25/20 and 12/11/20 was not
3 created by the Senior Counsel- Litigation.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

5 Deny.

6 **REQUEST FOR ADMISSION NO. 28:**

7 Admit that on January 14, 2019, you used an allograft with the subtalar fusion.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

9 Deny.

10 **REQUEST FOR ADMISSION NO. 29:**

11 Admit that on January 14, 2019, you used a synthetic graft with the subtalar fusion.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

13 Admit.

14 **REQUEST FOR ADMISSION NO. 30:**

15 Admit that on January 14, 2019, you used an autograft with the subtalar fusion.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

17 Deny.

18 **REQUEST FOR ADMISSION NO. 31:**

19 Admit that Todd Walker, M.D., performed surgery on Camelia Sgarlato, on January 14,
20 2019.

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 31:**

22 Deny.

23 **REQUEST FOR ADMISSION NO. 32:**

24 Admit that Todd Walker M.D. is not Board Certified in Orthopedic Surgery.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 32:**

26 Admit.

27 **REQUEST FOR ADMISSION NO. 33:**

28 Admit that on January 14, 2019, you did not inform Plaintiff that you performed a subtalar

1 fusion.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 33:**

3 Deny.

4 **REQUEST FOR ADMISSION NO. 34:**

5 Admit that on January 14, 2019, you performed the wrong surgical procedure on Plaintiff
6 as a result of your negligence in causing the INCIDENT.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 34:**

8 Deny.

9 **REQUEST FOR ADMISSION NO. 35:**

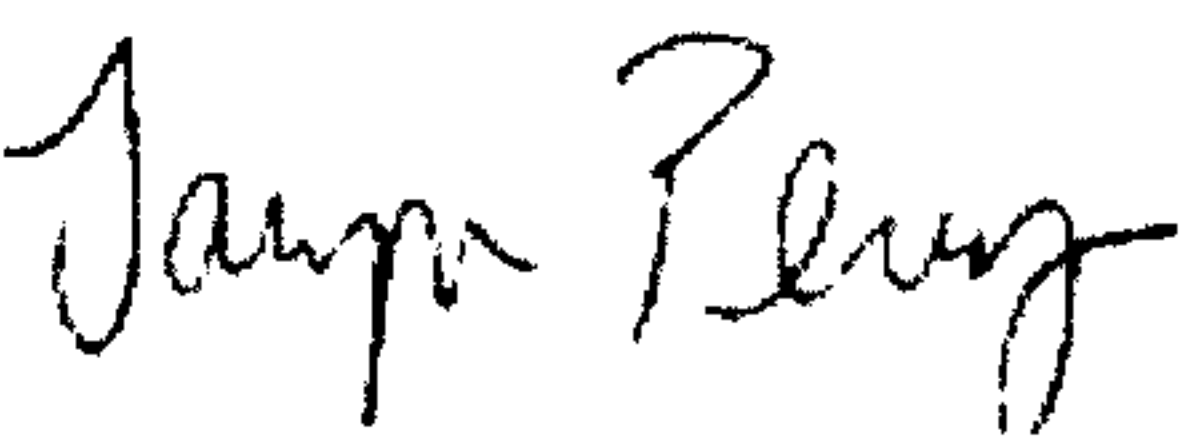
10 Admit that on January 14, 2019, you did not correct Plaintiff's left heel deformity.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 35:**

12 Deny.

13 DATED: March 1, 2022

PEABODY & BUCCINI LLP

14
15 By: 

16 THOMAS M. PEABODY, ESQ.
17 TARYN A. PEREZ, ESQ.
18 Attorneys for Defendants,
19 THE REGENTS and DAVID J.
20 DALSTROM, M.D.

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VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I have read the foregoing **DEFENDANT, DAVID J. DALSTROM, M.D.'S RESPONSES TO PLAINTIFF, CAMELIA SGARLATO'S REQUEST FOR ADMISSIONS [SET TWO]** and know its contents. I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on _____, 2022, at _____, California.

DAVID J. DALSTROM, M.D.

SIGNED VERIFICATION TO FOLLOW

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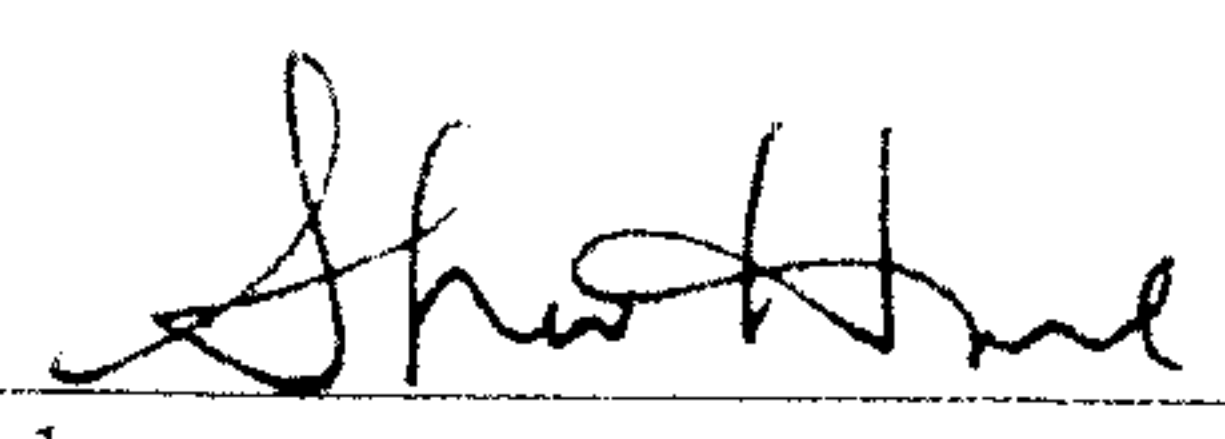
VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I have read the foregoing **DEFENDANT, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S RESPONSES TO PLAINTIFF, CAMELIA SGARLATO'S REQUEST FOR ADMISSIONS [SET TWO]** and know its contents. I am the Assistant Director of Risk Management for UCSD Medical Center, a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on March 1st, 2022, at San Diego, California.



Sheri Hamel
Assistant Director of Risk Management

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VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I have read the foregoing **DEFENDANT, DAVID J. DALSTROM, M.D.'S**
RESPONSES TO PLAINTIFF, CAMELIA SGARLATO'S REQUEST FOR
ADMISSIONS [SET TWO] and know its contents. I am a party to this action. The matters stated
in the foregoing document are true of my own knowledge except as to those matters which are
stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on 3/23, 2022, at La Jolla, California.



DAVID J. DALSTROM, M.D.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 527 Encinitas Blvd., Suite 100 Encinitas, CA 92024. On **March 1, 2022**, I served a true and correct copy of the following document **Defendants' Responses to Plaintiff's Request for Admissions (Set Two)**, on the list of interested parties below:

Camelia Sgarlato
26757 Kingwood Rd.
Murrieta, CA 92563
Email to: cameliasga@yahoo.com
Plaintiff

By United States Mail (CCP §§1013a, et seq.): I enclosed said document(s) in a sealed envelope or package to each addressee. I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, with postage fully prepaid.

By Overnight Delivery/Express Mail (CCP §§1013(c)(d), et seq.): I enclosed said document(s) in a sealed envelope or package provided by an overnight delivery carrier to each addressee. I placed the envelope or package, delivery fees paid for, for collection and overnight delivery at an office or at a regularly utilized drop box maintained by the express service carrier.

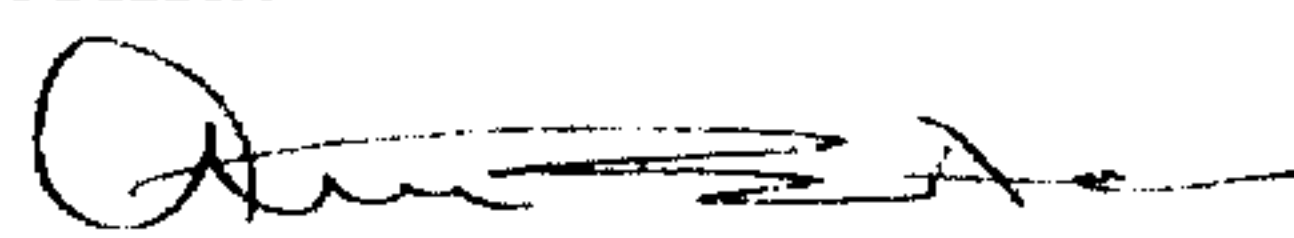
By Fax Transmission (CRC 2.306): Based on a written agreement of the parties to accept service by fax transmission, I faxed said document(s) to each addressee's fax number. The facsimile machine that I utilized, (760) 652-3160, complied with California Rules of Court, Rule 2.301(3), and no error was reported by the machine. Pursuant to Rule 2.306(h)(4), I caused the machine to print a record of the transmission, a copy of which is attached to the original of this proof of service.

By Messenger Service: I enclosed said document(s) in a sealed envelope or package to each addressee. I provided them to a professional messenger service for service. An original proof of service by messenger will be filed pursuant to California *Rules of Court*, Rule 3.1300(c).

Electronic Mail. I caused the document to be sent to the person(s) at the email addresses below, pursuant to California *Rules of Court*, Rule 2.251. I did not receive an electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on March 1, 2022, at Encinitas, California.



ANN BUERSTER

EXHIBIT E

March 9, 2022

Camelia Sgarlato
26757 Kingwood Rd.
Murrieta, Ca 92563
Telephone: (858) 229-5973
Email: cameliasga@yahoo.com

Peabody & Buccini LLP
Thomas M. Peabody, ESQ.
Taryn A. Perez, ESQ.
527 Encinitas Blvd., Suite 100
Encinitas, Ca 92024
Telephone No. (760) 652-3150

In reference Sgarlato v. The Regents and David J. Dalstrom, MD.
Case No.: 37-2021-00004036-CU-MM-CTL

Meet and Confer Letter

Dear Ms. Perez,

On January 18, 2022, I propounded Plaintiff's Special Interrogatories (Set Two), and Plaintiff's Request for Admissions (Set two).

On February 22, 2022, you requested one-week extension, to which I agreed. The discovery due date was moved to March 1, 2022.

On March 1, 2022, I received Defendant's responses to Plaintiff's Special Interrogatories (Set Two) and Plaintiff's Request for Admissions (Set Two). Thank you for taking time to respond.

However, the responses to discovery provided by Defendants failed to answer the Special Interrogatories (Set Two) and Request for Admissions (Set Two), and many of the answers were inadequate. Considering these shortcomings, I am writing this letter to outline these deficiencies and request supplemental answers to Special Interrogatories (Set Two) and Request for Admissions (Set Two).

Special Interrogatories (Set Two)

The following responses to Special Interrogatories are evasive and incomplete.

Special Interrogatories Nos: 40, 46, 47, 48, 49, 50, 51, 53, 54, 55, 59, 61, 65, 66, 67, 68-178, 179, 180.

If a party to whom interrogatories have been directed fails to serve a timely response, that party waives any right to exercise the option to produce writings under C.C.P. § 2030.230.

Furthermore, that party waives any objections to the interrogatories, including one based upon privilege or on the protection for work product under C.C.P. § 2018.010 et seq. (C.C.P. § 2030.290.) Under C.C.P. § 2030.290, a party propounding the interrogatories may move for an order compelling response to the interrogatories and seek sanctions.

Please amend your responses and identify the documents in support of Defendant's responses to the following special interrogatories.

Special Interrogatory No. 40:

The question is asking Defendant to "Identify all individual employees of the UC San Diego Health Koman Family Outpatient Pavilion, including their names, positions, employment status, current addresses, and telephone number, that provided any TREATMENT to Camelia Sgarlato on January 14, 2019." Defendants' response is inadequate. Please amend your response and provide the information requested in the interrogatory.

Special Interrogatory No. 46:

The question is asking Defendant to "State the names and titles of all employees of the UC San Diego Health Koman Family Outpatient Pavilion who participated or supervised in the medical care given to Camelia Sgarlato during her surgery at the UC San Diego Health, Koman Family Outpatient Pavilion, on January 14, 2019." Defendant's response is inadequate. Please amend your response and provide the information requested I the interrogatory.

Special Interrogatory No. 47:

The question is asking Defendant to "State whether or not the Defendant David J. Dalstrom, M.D. ever examined Plaintiff's left heel prior to the start of the surgery." Defendant responded, "the operative note prepared by Dr. Dalstrom indicates that the heel was assessed during the surgical procedure." Can you please indicate where it appears in the Operative Report that Dr. Dalstrom assessed Plaintiff's left heel?

Special Interrogatory No. 48:

The question is asking Defendant “If the answer to Specially Prepared Interrogatory No. 47 is in the affirmative, detail with particularity what any such examination(s) revealed.” Defendant responded “Dr. Dalstrom does not have a specific recollection of what his examination revealed however Plaintiff’s medical records indicate the abnormal status of the subtalar joint was documented.” The question is asking about Plaintiff’s left heel not Plaintiff’s subtalar joint. Please amend your response and describe what the examination of Plaintiff’s left heel revealed?

Special Interrogatory No. 49:

State whether or not the Defendant David J. Dalstrom, M.D. ever examined Plaintiff’s left heel at any time during the course of the surgery. Defendant responded “yes”. Please amend your response and indicate where it appears in the Operative Report that Dr. Dalstrom examined Plaintiff’s left heel during the course of surgery?

Special Interrogatory No. 50:

The question is asking Defendant “If the answer to Specially Prepared Interrogatory No. 49 is in the affirmative, detail with particularity what any such examination(s) revealed.” Defendant responded that Plaintiff’s left heel was continuously assessed during the course of surgery.” Please amend your response and indicate what the examination of Plaintiff’s left heel revealed.

Special Interrogatory No. 51:

The question is asking Defendant to “Describe the treatment, if any, provided by you to Camelia Sgarlato, on January 14, 2019.” Defendant responded, “Left flexor digitorum tendon transfer for correction of flatfoot; left subtalar fusion; left repair spring ligament; left cotton osteotomy; left partial excision of bone from talus; left partial excision of bone from navicular.” However, you did not mention the gastrocnemius resection, talonavicular joint cheilectomy and bone graft. Please amend your response.

Special Interrogatory No. 53:

The question is asking Defendant to state, whether the Defendant David J. Dalstrom, M.D. became aware, prior to the surgery being undertaken on the morning of January 14, 2019, at UC San Diego Health, Koman Family Outpatient Pavilion, that the Resident Ted Walker M.D. assisting with the surgery intended to perform a subtalar fusion in conjunction with partial excision of bone from talus, partial excision of bone from navicular, gastrocnemius resection, talonavicular joint cheilectomy and bone graft on the Plaintiff.” Defendant responded that Dr. Dalstrom does not have a specific recollection of Dr. Walker’s specific involvement in Plaintiff’s surgery. Your answer was evasive. Please amend your response and state with particularity what was Dr. Walker’s specific involvement in Plaintiff’s surgery.

Special Interrogatory No. 54:

The question is asking Defendant to “State if the answer to Specially Prepared Interrogatory No. 53 is in the affirmative state whether or not the Defendant David J. Dalstrom, M.D. ever

instructed the Resident Ted Walker M.D. not to perform the above Surgical Procedures without obtaining an informed consent from Plaintiff.” Defendant did not respond to this question. Please amend your response.

Special Interrogatory No. 55:

The question is asking Defendant “If the answer to Special Interrogatory No. 54 is in the affirmative state whether the Defendant David J. Dalstrom, M.D ever ordered the Resident Ted Walker M.D. to obtain an informed consent from Plaintiff on January 14, 2019.” Defendant did not answer this question. Please amend your response.

Special Interrogatory No. 59:

The question is asking Defendant, “If the answer to Special Interrogatory No. 58 is in the affirmative state whether the Defendant David J. Dalstrom, M.D. ever advised or discussed with Plaintiff on January 14, 2019, that he did not perform the heel osteotomy.” Defendant responded that Dr. Dalstrom does not have a specific recollection of advising or discussing with Plaintiff on January 14, 2019, that he did not perform a heel osteotomy. Defendant’s response is evasive. Dr. Dalstrom has a specific recollection about Plaintiff’s surgery which is reflected in an earlier response, where he stated that he addressed the left heel deformity by performing a subtalar fusion. However, he does not have a specific recollection about advising or discussing with Plaintiff on January 14, 2019, that he did not perform a heel osteotomy. Please amend your response.

Special Interrogatory No. 61:

The question is asking Defendant, “If the answer to Special Interrogatory No. 59 is in the affirmative state whether the Defendant David J. Dalstrom, M.D. ever advised or discussed with Plaintiff on January 14, 2019, that he permanently fused her heel bone to the talus bone.” Defendant responded that Plaintiff’s medical records reflect that Dr. Dalstrom discussed the surgical plan with Plaintiff many times prior to January 14, 2019. Defendant’s response is evasive. Please amend your response and state with particularity what medical records indicate that Dr. Dalstrom discussed with Plaintiff the surgical plan prior January 14, 2019.

Special Interrogatory No. 65:

The question is asking Defendant, “Did YOU instruct Resident Ted Walker M.D. (for purposes of this and every other request “RESIDENT” shall refer to the person who assisted David J. Dalstrom M.D. on January 14, 2019) to correct Plaintiff’s left heel deformity.” Defendant responded that Dr. Dalstrom does not have a specific recollection of Dr. Walker’s specific involvement in Plaintiff’s surgery. The response is evasive. Please amend your response and state with particularity what was Dr. Walker’s specific involvement in Plaintiff’s surgery.

Special Interrogatory No. 66:

The question is asking Defendant, “If the answer to Special Interrogatory No. 65 is in the affirmative state whether the “RESIDENT” Ted Walker M.D. corrected Plaintiff’s left heel deformity on January 14, 2019.” Defendant responded that Dr. Dalstrom does not have a specific

recollection of Dr. Walker's specific involvement in Plaintiff's surgery. The response is evasive. Please amend your response and state with particularity what was Dr. Walker's specific involvement in Plaintiff's surgery.

Special Interrogatory No. 67:

The question is asking Defendant, "If the answer to Special Interrogatory No. 66 is in the negative state whether Defendant David J. Dalstrom M.D took any action to address Plaintiff's left heel deformity on January 14, 2019." Defendant responded that Dr. Dalstrom addressed Plaintiff's left heel deformity by performing a subtalar fusion on January 14, 2019. Defendant's response is evasive. Please amend your response and state with particularity where in the operative report the doctor indicated that he addressed patient's left heel deformity.

Special Interrogatory No. 179:

The question is asking Defendant to "Identify every action of David J. Dalstrom MD on January 14, 2019, that you believe was in violation of an informed consent policy." Defendant stated that responding party does not believe Dr. Dalstrom violated any consent policy. Your response is evasive. Please amend your response and state with particularity why responding party does not believe that Dr Dalstrom violated any consent policy.

Special Interrogatory No. 180:

The question is asking to "Identify any policy relative to the question 179." Defendant responded: Consent for Anesthesia, Surgery, Special Diagnostic, or Therapeutic Procedures. Your response is incomplete. Please amend your response and provide a copy of Consent Policy for Anesthesia, Surgery, Special Diagnostic, or Therapeutic Procedures.

Special Interrogatories Nos.: 68-178

There's no Affirmative Defense for Defendants' action for lack of evidence. Defendants' action has no merit for they have no evidentiary documents. Defendants had more than a year to obtain the necessary evidence to support their affirmative defenses.

Plaintiff is entitled to seek a motion to compel further responses based on the California Code of Civil Procedure. Specifically, Code of Civil Procedure § 2030.210 provides that there are only three valid responses to interrogatories: 1) provide the information sought; 2) produce responsive writings; or 3) state an objection. "Each answer ...shall be as complete and straightforward as the information reasonably available to the responding party permits." (CCP § 2030.220(a).) Further, "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." (CCP § 2030.220(b)). See Fuss v. Supreme Court (1969) 273 Cal.App.2d 807, 816 (A response must "represent the interrogated Party's present best and complete answer.") Answers

must be signed under oath by the responding party, and objections must be signed by the party's attorney of record. (CCP § 2030.220, 2030.250.)

In addition, Code of Civil Procedure § 2030.300 states that the propounding party may compel further responses when “(1) An answer to a particular interrogatory is evasive or incomplete... or (3) An objection to an interrogatory is without merit or too general.” A meet and confer declaration must accompany the motion, and must be noticed “within 45 days of service of the verified response, *or any supplemental verified response...*” (CCP § 2030.300(c) (emphasis added).)

Request for Admissions (Set Two)

Section 2033.290 provides:

(a) On receipt of a response to requests for admissions, the party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply:

- (1) An answer to a particular request is evasive or incomplete.
- (2) An objection to a particular request is without merit or too general.

As set forth Defendant's answers to Request for Admissions (Set Two) were inadequate and Defendant should identify the documents in support of Defendant's responses.

A party must use information *reasonably available* to it to respond to a request for admission. Information held by a party's attorney or expert is “readily obtainable” by the party. (*Chodos v. Superior Court* (1963) 215 Cal.App.2d 318, 321.) If the responding party failed to investigate the matters that it was asked to admit - that is, failed to use information that could readily obtain - then the Court can reasonably conclude that the responding party did not have a good reason to deny the request for admission. (*Smith v. Circle P Ranch Co.* (1978) 87 Cal.App.3d 267, 275).

“In evaluating whether a ‘good reason’ exists for denying a request to admit, ‘a court may properly consider whether at the time the denial was made the party making the denial held a *reasonably entertained good faith belief that the party would prevail on the issue at trial.*’ [Citation.]” (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1276.)

A “reasonable basis” requires something more than the denying party's subjective mental state; the courts require evidence establishing that the denying party had a reasonable basis for its denial at the time the denial was made. (*Wimberly, supra*, 56 Cal. App. 4th at 636-39; *Brooks, supra*, 179 Cal.App.3d at 512-13.) The fact that the matters in the requests were “hotly contested” at trial, does not provide the responding party with a reasonable basis for denial. (*Brooks, supra*, 179 Cal.App.3d at 511.)

Wimberly v. Derby Cycle Corp., supra, illustrates how the courts apply Code. Civ. Proc. § 2033.420 (formerly C.C.P. § 2033, subdivision (o)). *Wimberly* involved an allegedly defective product.

The **defendant** in *Wimberly* **denied requests for admissions** seeking to establish the product was defective and that the defect caused injury to the plaintiff. (*Wimberly, supra*, 56 Cal.App.4th

at 635-36.) The **defendant** in *Wimberly* argued that it had a reasonable basis for belief that it would prevail at trial, because it anticipated introducing expert testimony through deposition testimony, rather than through live testimony. (*Id.* at 638.) The Court of Appeal refused to accept this excuse, holding that it did not provide reasonable grounds for **denying the requested admissions**.

In *Brooks v. American Broadcasting Co.*, *supra*, 179 Cal.App.3d at 509-11, the Court of Appeal explained the meaning of the language “other good reasons” for **denying requests for admissions** contained in the predecessor statute to Section 2033(o). The court analyzed the following factors, in addition to the issue of a reasonable belief that the party would prevail on the issues at trial (discussed above), to determine whether there are good reasons for **denying requests for admissions**:

1. Whether at the time of denial of the **request**, the party either knew or should have known that the **requested** matter was of substantial importance;
2. Whether, due to later developments, the responding party should have realized its earlier denial was erroneous, and took steps to correct it; and
3. The degree to which the responding party made a good faith attempt to resolve the matters outside of court, e.g., by offering stipulations as to some portion of the **request**. (*Brooks, supra, 179 Cal.App.3d at 509-11*; Weil & Brown, *Civil Procedure Before Trial* § 8:1411.)

As set forth, Defendants’ responses to Request for Admissions (Set Two) are erroneous, and Defendants should identify the documents in support of their denials.

Request for Admission No. 19:

Defendant denied the Request for Admission No. 19. The request is asking Defendant to “Admit that on January 14, 2019, you failed to obtain consent for left foot flatfoot reconstructive surgery.” Please amend your response and provide the evidence to support your contention.

Request for Admission No. 20:

Defendant denied the Request for Admission No. 20. The request is asking Defendant to “Admit that on January 14, 2019, you failed to obtain informed consent for left foot flatfoot reconstructive surgery in conjunction with subtalar fusion, FDL tendon transfer, cotton osteotomy, spring ligament repair, partial excision of bone from talus, partial excision of bone from navicular, gastrocnemius resection, talonavicular joint cheilectomy and bone graft. Please amend your response and provide the evidence to support your contention.

Request for Admission No. 21:

Defendant denied the Request for Admission No. 21. The request is asking Defendant to “Admit that on January 14, 2019, you violated the law when you failed to obtain consent for surgery”. Please amend your response and provide the evidence to support your contention.

Request for Admission No. 22:

Defendant denied the Request for Admission No. 22. The request is asking that Defendant “Admit that on January 14, 2019, you caused permanent injury to Plaintiff when you failed to obtain informed consent.” Please amend your response and provide the evidence to support your contention.

Request for Admission No. 23:

Defendant denied the Request for Admission No. 23. The request is asking Defendant to “Admit that on January 14, 2019, due to your negligence in failing to obtain informed consent, the INCIDENT would not have occurred.” Please amend your response and provide the evidence to support your contention.

Request for Admission No. 24:

Defendant denied the Request for Admission No. 24. The request is asking Defendant to Admit that as a result of your negligence in causing the INCIDENT Plaintiff suffered permanent injuries to the following body parts: left heel, left subtalar joint, left short-leg syndrome and right knee meniscal tear.” Please amend your response and provide the evidence to support your contention.

Request for Admission No. 25:

Defendant denied the Request for Admission No. 25. The request is asking Defendant to “Admit that the Investigation of Patient’s grievance dated 11/25/20 and 12/11/20 refers to the events that actually occurred on January 14, 2019.” Please amend your response and provide the evidence to support your contention.

Request for Admission No. 26:

Defendant did not answer the Request for Admission No. 26. Defendant stated “The request is unintelligible as phrased. The responding party is unable to admit or deny.” However, the request is asking Defendant to “Admit that the Investigation of Patient’s Grievance dated 11/25/20 and 12/11/20 was created by the Experience Specialist.” Please amend your response and provide the evidence to support your contention.

Request for Admission No. 27:

Defendant denied the Request for Admission No. 27. The request is asking to” Admit the Investigation of Patient’s Grievance dated 11/25/20 and 12/11/20 was not created by the Senior Counsel – Litigation.” Please amend your response and provide the evidence to support your contention.

Request for Admission No. 29:

Defendant admitted to the use of synthetic graft. The request is asking Defendant to “Admit that on January 14, 2019, you used a synthetic graft with the subtalar fusion.” However, Defendant

did not identify what kind of synthetic type of graft was used with the subtalar fusion. Please amend your response and provide the evidence to support your contention.

Request for Admission No.31:

Defendant denied the Request for Admission No. 31. The request is asking Defendant to “Admit that Todd Walker M.D. performed surgery on Camelia Sgarlato, on January 14, 2019.” Please amend your response and provide the evidence to support your contention.

Request for Admission No. 33:

Defendant denied the Request for Admission No. 33. The request is asking Defendant to “Admit that on January 14, 2019, you did not inform Plaintiff that you performed a subtalar fusion.” Please amend your response and provide the evidence to support your contention.

Request for Admission No. 34:

Defendant denied the Request for Admission No. 34. The request is asking Defendant to “Admit that on January 14, 2019, you performed the wrong surgical procedure on Plaintiff as a result of your negligence in causing the INCIDENT.” Please amend your response and provide the evidence to support your contention.

Request for Admission No. 35:

Defendant denied the Request for Admission No. 35. The request is asking Defendant to “Admit that on January 14, 2019, you did not correct Plaintiff’s left heel deformity.” Please supplement your response and provide the evidence to support your contention.

ARGUMENT

C.C.P. section 2033.010 allows any party to propound Request for Admissions that admit the truth of specified matters of fact relate to a matter that is in controversy between the parties.

Pursuant to C.C.P. § 2033.220(c), a party responding to **requests for admissions** has a good faith obligation to investigate all sources reasonably available to that party to formulate **responses** to the requests. California law specifically provides that information known to a party's attorney or expert witnesses is deemed “obtainable” by a party and that it is improper to object to a **request for admission** where the information is available through the party's attorneys and/or expert witnesses. *See Chodos v. Superior Court (Lowe)*, 215 Cal. App. 2d 318, 322 (1963).

Thus, even if the information is not within Defendants’ personal knowledge, if their agents or attorneys have information which would permit a reasonable **response**, then she must either admit or deny the **Request**, or that portion of the **Request** which she is able to admit or deny, utilizing all information available. C.C.P. § 2033.220(b)(1) specifically mandates that a defendant is required to “admit so much of the matter involved in the **request** as is true, either as expressed in the **request** itself or as reasonably and clearly qualified by the responding party”. Alternatively, a party may “deny so much of the matter involved in the **request** as is untrue”. However, denials of all or any portion of a **request** must be unequivocal. *See American*

Federation of State, County and Municipal Employees v. Metropolitan Water Dist. of Southern California, 126 Cal. App. 4th 247, 268 (2005).

C.C.P. § 2033.220(a) requires that a responding party's answers be "as complete and straightforward as the information reasonably available to the responding party permits". If a party's attorney and/or expert witnesses has information which would allow the party to admit or deny all or a portion of the **request**, the party must either admit or deny the **request** in accordance with the Code. The fact that a party has not conducted a reasonable inquiry in order to admit or deny a **Request** may serve as a basis for challenging a **response** and also for costs-of-proof sanctions, especially where there is no "good reason" for the failure to admit. See *Asea, Inc. v. Southern Pac. Transp. Co.*, 669 F. 2d 1242, 1245-46 (9th Cir. 1981); *Smith v. Circle P Ranch Co., Inc.*, 87 Cal. App. 3d 267, 276 (1978).

Subdivision (o) of Code of Civil Procedure section 2033 states in relevant part, ****299** "If a party fails to admit the ... truth of any matter when requested to do so under this section, and if the party requesting that admission thereafter proves ... the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees." The trial court must order fees unless it finds that one of the four listed grounds for denial apply. (*Ibid.*)

22" "The primary purpose of requests for admissions is to set at rest triable issues so that they will not have to be tried; they are aimed at expediting trial. [Citation.] The basis for imposing sanctions ... is directly related to that ***267** purpose. Unlike other discovery sanctions, an award of expenses ... is not a penalty. Instead, it is designed to reimburse reasonable expenses incurred by a party in proving the truth of a requested admission ... [citations] such that trial would have been expedited or shortened if the request had been admitted." [Citations.]" (*Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 865, 112 Cal.Rptr.2d 239.)

Please amend your responses by March 16, 2022, otherwise I will file a Motion.

I appreciate your cooperation and Support.

Sincerely,



Camelia Sgarlato

EXHIBIT F

Taryn Perez <tperez@pbllplaw.com>

To: camelia scarlota

Cc: Ann Buerster

Wed, Mar 16 at 2:54 PM

Dear Ms. Sgarlato,

I received this correspondence from you last week however I have not had a chance to review it as I have been very busy with other matters. I will try to review and respond appropriately by Monday. Let me know if this is agreeable to you.

Thank you,



Taryn A. Perez, Esq.
Peabody & Buccini LLP

(760) 652-3150 | Facsimile (760) 652-3160 | tperez@pbllplaw.com

www.pbllplaw.com

527 Encinitas Blvd, Suite 100, Encinitas, CA 92024

EXHIBIT G

camelia scarlota

Taryn Perez

Good Afternoon Ms. Perez,

I agree to offer you an extension until Monday, March 21, 2022.

Sincerely,

Camelia Sgarlato

EXHIBIT H

PEABODY & BUCCINI LLP

ATTORNEYS AT LAW
527 ENCINITAS BLVD., SUITE 100
ENCINITAS, CA 92024
TELEPHONE (760) 652-3150
FAX (760) 652-3160
www.pblplaw.com

March 21, 2022

Sent via E-Mail to: cameliasga@yahoo.com

Camelia Sgarlato
26757 Kingwood Rd.
Murrieta, CA 92563

Re: SGARLATO v. THE REGENTS/DAVID J. DALSTROM, M.D.
Our Clients: The Regents of the University of California; and David J. Dalstrom, M.D.
Case No.: 37-2021-00004036-CU-MM-CTL

Dear Ms. Sgarlato:

Please allow this correspondence to serve as Defendants' response to your correspondence dated March 9, 2022.

Special Interrogatories

No. 40: Identify all individual employees of the UC San Diego Health Koman Family Outpatient Pavilion, including their names, positions, employment status, current addresses, and telephone number, that provided any TREATMENT to Camelia Sgarlato on January 14, 2019.

Pursuant to California Code of Civil Procedure section 2030.230, if the answer to an interrogatory would necessitate the preparation or making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this provision and to specify the writings from which the answer may be derived or ascertained. This specification must be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained. The responding party must then afford to the propounding party a reasonable opportunity to examine, audit, or inspect these documents and to make copies, compilations, abstracts, or summaries of them. The answer to this interrogatory would necessitate the making of a compilation/summary of the medical records and the burden of preparing said compilation/summary would be substantially the same for you. Defendants have included where the answer to interrogatory may be derived, i.e., your medical records and have produced your medical records to you.

No. 46: State the names and titles of all employees of the UC San Diego Health Koman Family Outpatient Pavilion who participated or supervised in the medical care given to Camelia Sgarlato during her surgery at the UC San Diego Health, Koman Family Outpatient Pavilion, on January 14, 2019.

Again, pursuant to California Code of Civil Procedure section 2030.230, this interrogatory requires a compilation / summary. The answer to this interrogatory is contained within your medical records which were previously produced.

No. 47: State whether or not the Defendant David J. Dalstrom, M.D. ever examined Plaintiff's left heel prior to the start of the surgery.

Your correspondence requests that Defendants indicate where it appears in the operative report that Dr. Dalstrom assessed Plaintiff's heel. Your interrogatory does not request this information. Defendants answered the interrogatory posed.

No. 48: If the answer to Specially Prepared Interrogatory No. 47 is in the affirmative, detail with particularity what any such examination(s) revealed.

Defendants' response stated that Dr. Dalstrom examined Plaintiff's heel many times prior to the surgery, however Dr. Dalstrom does not have a specific recollection of what his examination revealed. Pursuant to California Code of Civil Procedure section 2030.220(a) and (b), each answer in the response to interrogatories must be as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it must be answered to the extent possible. Dr. Dalstrom does not have a specific recollection of the information requested in the interrogatory. He has provided the information reasonably available at this time, which is his recollection and your medical records.

No. 49: State whether or not the Defendant David J. Dalstrom, M.D. ever examined Plaintiff's left heel at any time during the course of the surgery.

Your correspondence requests that Defendants indicate where it appears in the operative report that Dr. Dalstrom assessed Plaintiff's heel. Your interrogatory does not request this information. Defendants answered the interrogatory posed.

No. 50: If the answer to Specially Prepared Interrogatory No. 49 is in the affirmative, detail with particularity what any such examination(s) revealed.

Defendants' response to this interrogatory states that this information is equally available to you via your medical records, specifically the operative report. Where information is sought by interrogatory is equally available to the propounded of the interrogatory, the burden and expense of any research which may be required should be borne by the party seeking the information. (*Pantazalas v. Superior Court of Los Angeles County* (1969) 272 Cal.App.2d 499).

No. 51: Describe the treatment, if any, provided by you to Camelia Sgarlato, on January 14, 2019.

Defendants responded that Dr. Dalstrom performed the following procedures on January 14, 2019: left flexor digitorum longus tendon transfer for correction of flatfoot; left subtalar fusion; left repair spring ligament; left cotton osteotomy; left partial excision of bone from talus; left partial excision of bone from navicular. Your correspondence states that this response did not mention the gastrocnemius resection, talonavicular joint cheilectomy and bone graft. The bone graft is placed as part of the subtalar fusion and a cheilectomy is another term for partial excision of the bone. As to the gastrocnemius recession, the operative report does not list it as a procedure. If the same was done, it is Dr. Dalstrom custom and practice to list it was a procedure on the operative report.

No 53: State whether the Defendant David J. Dalstrom, M.D. became aware, prior to the surgery being undertaken on the morning of January 14, 2019, at UC San Diego Health, Koman Family Outpatient Pavilion, that the Resident Ted Walker M.D. assisting with the surgery intended to perform a subtalar fusion in conjunction with partial excision of bone from talus, partial excision of bone from navicular, gastrocnemius resection, talonavicular joint cheilectomy and bone graft on the Plaintiff.

Defendant Dr. Dalstrom responded that he does not have specific recollection of what Dr. Walker's specific involvement in Plaintiff's surgery was. Pursuant to California Code of Civil Procedure section 2030.220(a) and (b), each answer in the response to interrogatories must be as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it must be answered to the extent possible. Dr. Dalstrom does not have a specific recollection of the information requested in the interrogatory.

No 54: If the answer to Specially Prepared Interrogatory No. 53 is in the affirmative state whether or not the Defendant David J. Dalstrom, M.D ever instructed the Resident Ted Walker M.D. not to perform the above Surgical Procedures without obtaining an informed consent from Plaintiff.

As Dr. Dalstrom's response to Interrogatory No. 53 was that he does not have a specific recollection of what Dr. Walker's involvement was related to your surgery, he cannot answer No. 54.

No. 55: If the answer to Special Interrogatory No. 54 is in the affirmative state whether the Defendant David J. Dalstrom, M.D ever ordered the Resident Ted Walker M.D. to obtain an informed consent from Plaintiff on January 14, 2019.

As Dr. Dalstrom's response to Interrogatory No. 53 was that he does not have a specific recollection of what Dr. Walker's involvement was related to your surgery, he cannot answer No. 55.

No. 59: If the answer to Special Interrogatory No. 58 is in the affirmative state whether the Defendant David J. Dalstrom, M.D. ever advised or discussed with Plaintiff on January 14, 2019, that he did not perform the heel osteotomy.

Dr. Dalstrom's response indicated that he does not have a specific recollection of advising or discussing with Plaintiff on January 14, 2019, that he did not perform a heel osteotomy. Your correspondence indicates that as Dr. Dalstrom recalls certain parts of the surgery, he assumingly recalls information about conversations or lack of after the surgery. This assumption is unfounded. Pursuant to California Code of Civil Procedure section 2030.220(a) and (b), each answer in the response to interrogatories must be as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it must be answered to the extent possible. Dr. Dalstrom does not have a specific recollection of the information requested in the interrogatory.

No. 61: If the answer to Special Interrogatory No. 59 is in the affirmative state whether the Defendant David J. Dalstrom, M.D. ever advised or discussed with Plaintiff on January 14, 2019, that he permanently fused her heel bone to the talus bone.

Your correspondence requests that Defendants amend their responses to include with particularity what medical records indicate that Dr. Dalstrom discussed with Plaintiff the surgical plan prior to January 14, 2019. Your interrogatory does not request this information. Defendants answered the interrogatory posed.

No. 65: Did YOU instruct Resident Ted Walker M.D. (for purposes of this and every other request "RESIDENT" shall refer to the person who assisted David J. Dalstrom M.D. on January 14, 2019) to correct Plaintiff's left heel deformity.

Defendant Dr. Dalstrom responded that he does not have specific recollection of what Dr. Walker's specific involvement in Plaintiff's surgery was. Pursuant to California Code of Civil Procedure section 2030.220(a) and (b), each answer in the response to interrogatories must be as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it must be answered to the extent possible. Dr. Dalstrom does not have a specific recollection of the information requested in the interrogatory.

No. 66: If the answer to Special Interrogatory No. 65 is in the affirmative state whether the "RESIDENT" Ted Walker M.D. corrected Plaintiff's left heel deformity on January 14, 2019.

Defendant Dr. Dalstrom responded that he does not have specific recollection of what Dr. Walker's specific involvement in Plaintiff's surgery was. Pursuant to California Code of Civil Procedure section 2030.220(a) and (b), each answer in the response to interrogatories must be as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it must be answered to the extent possible. Dr. Dalstrom does not have a specific recollection of the information requested in the interrogatory.

No. 67: If the answer to Special Interrogatory No. 66 is in the negative state whether Defendant David J. Dalstrom M.D took any action to address Plaintiff's left heel deformity on January 14, 2019.

Dr. Dalstrom's response indicates that he addressed your left heel deformity by performing a subtalar fusion on January 14, 2019. Your correspondence requests that Defendants amend their responses to include with particularity where in the operative report the doctor indicated that he addressed your left heel deformity. Your interrogatory does not request this information. Defendants answered the interrogatory posed.

No. 179: Identify every action of David J. Dalstrom on January 14, 2019, that you believe was in violation of an informed consent policy.

Dr. Dalstrom's response was that he does not believe he violated the informed consent policy. Therefore, no actions were identified in his response. Your correspondence requests that Defendants state with particularity why responding party does not believe that Dr. Dalstrom violated any consent policy. Your interrogatory does not request this information. Defendants answered the interrogatory posed.

No. 180: Identify any policy relative to the question 179.

Defendants identified the policy as "Consent for Anesthesia, Surgery, Special Diagnostic or Therapeutic Procedures." Your correspondence asks Defendants to provide a copy of said procedure. Your interrogatory does not request this information, nor did you serve Defendants with a Request for Production of Documents for the procedure in question. Defendants answered the interrogatory posed.

Nos. 68-178: Interrogatories 68-175 regard the Affirmative Defenses raised by Defendants. Interrogatories 176-178 do not.

As to Interrogatories 68-175 regarding the Affirmative Defenses raised by Defendants, Defendant's response indicated that they are still in the process of determining whether or a not a basis

Ms. Camelia Sgarlato
Re: SGARLATO v. THE REGENTS/DAVID J. DALSTROM, M.D.
March 15, 2022
Page 5

exists for each, and every affirmative defense pled. As you know, your deposition was recently completed which elicited new information. This new information needs to be analyzed. If after said analysis, Defendants any affirmative defenses need to be withdrawn, Defendants will do so.

Requests for Admission

No. 19 – 27, 31-35: Defendants denied the aforementioned requests. Your correspondence requests that Defendants provide the evidence to support their denials. Defendants are not obligated to do so pursuant to California Code of Civil Procedure section 2033.220(a), which states that absent an objection, the response must contain one of the following: an admission, a denial or a statement claiming inability to admit or deny. Defendants have complied with the California Code of Civil Procedure.

No. 26: Admit that the Investigation of Patient's grievance dated 11/25/20 and 12/11/20 was created by the Experience Specialist.

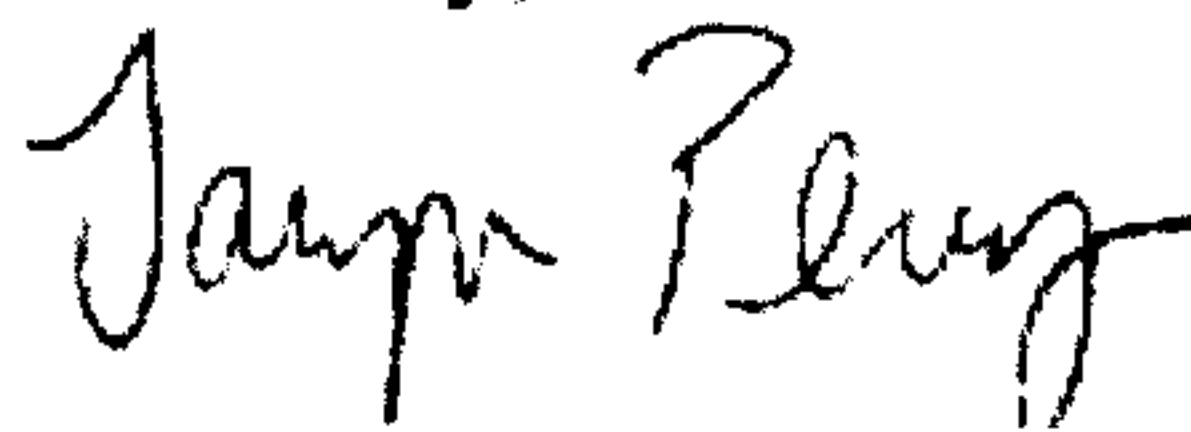
Defendants do not understand this Request. On information and belief, there was only one grievance regarding the January 2019 surgery which is not dated on the dates indicated in the Request.

No. 29: Admit that on January 14, 2019, you used a synthetic graft with the subtalar fusion.

Defendant admitted that a synthetic graft was used. Your correspondence indicates that Defendants did not identify what kind of synthetic type of graft was used with the subtalar fusion and asks that the response be amended, and evidence be provided. Defendants are not obligated to identify what kind of synthetic type of graft was used with the subtalar fusion pursuant to California Code of Civil Procedure section 2033.220(a), which states that absent an objection, the response must contain one of the following: an admission, a denial or a statement claiming inability to admit or deny. Defendants have complied with the California Code of Civil Procedure.

If you wish to speak further about this case, please do not hesitate to contact the undersigned.

Sincerely,



TARYN A. PEREZ, ESQ.

TAP:ab

EXHIBIT I

March 28, 2022

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In reference Sgarlato v. The Regents and David J. Dalstrom, MD.
Case No.: 37-2021-00004036-CU-MM-CTL

Meet and Confer Letter

Dear Ms. Perez,

On March 21, 2022, I received your reply to Plaintiff's Meet and Confer Letter dated March 9, 2022. Thank you for your time and consideration.

I will take the opportunity to address Defendants' objections to Plaintiff's Special Interrogatories (Set Two), and Plaintiff's Request for Admissions (Set Two).

Below is a summary of Plaintiff's responses to Defendant's Meet and Confer Letter dated March 21, 2022:

Special Interrogatories

No.: 40 *"Identify all individual employees of the UC San Diego Health Koman Family Outpatient Pavilion, including their names, positions, employment status, current addresses, and telephone number, that provided any TREATMENT to Camelia Sgarlato on January 14, 2019."*

Defendants loosely claim they have responded to Plaintiffs Special Interrogatories (Set Two) in compliance with all discovery rules. Defendants' claim is false. Defendants have *not* complied with the appropriate format for responses as set forth

under California Code of Civil Procedure §2030, in responding to Special Interrogatories 40, 46, 47, 48, 49, 50, 51, 53, 54, 59, 61, 65, 66, 67, 179, 180 and Affirmative Defenses 68-175.

Defendants stated that their responses comply with the applicable statute, which entails that “The answer to this interrogatory would necessitate the making of a compilation/summary of the medical records and the burden of preparing said compilation/summary would be substantially the same for you. Defendants have included where the answer to interrogatory may be derived, i.e., your medical records and have produced your medical records to you.”

Special Interrogatory responses must be “as straight forward as the information reasonably available to [the responding party] permits.” Defendants, however, failed to read the rest of the statutory provision, which states “If the responding party does not have the personal knowledge sufficient to respond fully to an interrogatory, the party must so state but must make a reasonable and good faith effort to obtain the information by inquiry to other persons or organizations.” California Code of Civil Procedure §2030(f)(1). Defendants’ responses to Special Interrogatories fail to comply with this requirement.

No.: 46 “*State the names and titles of all employees of the UC San Diego Health Koman Family Outpatient Pavilion who participated or supervised in the medical care given to Camelia Sgarlato during her surgery at the UC San Diego Health, Koman Family Outpatient Pavilion, on January 14, 2019.*”

Defendants stated that “Pursuant to California Code of Civil Procedure section 2030.230, this interrogatory requires a compilation/summary. The answer to this interrogatory is contained within your medical records which were previously produced.”

The Court of Appeal noted that “[t]he scope of discovery is very broad, and it includes the right to obtain the identity and location of persons having knowledge of any discoverable matter,” *Id.* at 1249 (citing *Tien v. Superior Court* (2006) 139 Cal.App.4th 528, 535 and CCP § 2017.010) (internal ellipses omitted) “Central to the discovery process is the identification of potential witnesses.” *Id.* “Indeed, our discovery system is founded on the understanding that parties use discovery to obtain names and contact information for possible witnesses as the starting point for further investigations.” *Id.* at 1250. Expounding on the pre-disclosure notice, the Court of Appeal observed as follows:

To the extent that the privacy invasion appears significant here, we believe that this is an artifact of the number of individuals involved. Consider a hypothetical in which a plaintiff propounds the same form interrogatory used here to a corner grocery store with 10 employees. Counsel for that grocery store takes the same course that Wild Oats did, choosing to list all 10 employees that worked with plaintiff in response to the interrogatory. Plaintiff then seeks the addresses and telephone numbers of the 10 employees as requested in the interrogatory, and the grocery store refuses to disclose their contact information, citing privacy. We cannot imagine that any trial court would have

entered a protective order requiring the plaintiff to use a third-party administrator to send letters to those 10 employees informing them that they would have to consent in writing before counsel for the plaintiff could contact them. We cannot imagine a trial court entering a protective order at all under those circumstances, absent a finding of discovery abuse. Nothing is analytically different here-only the number of witnesses is changed.

CCP § 2030.220(a) requires Defendants to answer each interrogatory “as complete and straightforward as the information reasonably available to [Defendant] permits.” “If an interrogatory cannot be answered completely, it shall be answered to the extent possible.” CCP § 2030.220(b) Moreover, “[i]f the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organization, except where the information is equally available to the propounding party.” CCP § 2030.220(c).

To exercise the option under CCP § 2030.230, Defendant must describe the records from which the compilation or summary can be made with sufficient particularity and provide Plaintiff a reasonable opportunity to inspect and copy the records. CCP § 2030.230; *Fuss v. Superior Court* (1969) 273 Cal.App.2d 807, 815-817. Defendant has done neither.

Please provide the documents from which the requested information can be determined, as required by CCP § 2030.230. (*Id.*)

No.: 47 “*State whether or not the Defendant David J. Dalstrom, M.D. ever examined Plaintiff’s left heel prior to the start of the surgery.*”

Your correspondence requests that Defendants indicate where it appears in the operative report that Dr. Dalstrom assessed Plaintiff’s left heel. Your interrogatory does not request this information. Defendants answered the interrogatory posed.

Defendants answered that Dr. Dalstrom assessed Plaintiff’s left heel, however Dr. Dalstrom cannot answer the following question which is:

No.: 48 “*If the answer to Specially Prepared Interrogatory No. 47 is in the affirmative, detail with particularity what any such examination(s) revealed.*”

Defendants stated that Dr. Dalstrom examined Plaintiff’s left heel many times prior to the surgery, however Dr. Dalstrom does not have a specific recollection of what his examination revealed. Pursuant to California Code of Civil Procedure section 2030.220 (a) and (b) each answer in the response to interrogatories must be as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it must be answered to the extent possible. Dr. Dalstrom does not have a specific recollection of the information requested in the interrogatory. He has provided information reasonably available at this time which is his recollection and your medical records.

“Parties, like witnesses, are required to state the truth, the whole truth, and nothing but the truth in answering written interrogatories.” *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783. “If a person cannot furnish details, he should set forth the efforts made to secure the information. He cannot plead ignorance to information which can be obtained from sources under his control.” *Deyo*, 84 Cal.App.3d at 782. A party must disclose nonprivileged facts known to his or lawyer, even if the party has no personal knowledge of such facts. Interrogatories directed to a corporation or other entity require it to disclose information known to all persons in its employ, not merely the particular officer or agent designated to verify the responses. *Gordon v. Superior Court* (1984) 161 Cal.App.3d 157, 167-168. Defendants’ refusal to answer this interrogatory cannot be condoned.

No.: 50 “*If the answer to Specially Prepared Interrogatory No. 49 is in the affirmative, detail with particularity what any such examination(s) revealed.*”

Defendants’ response to this interrogatory stated that “This information is equally available to you via your medical records, specifically the operative report. When information is sought by interrogatory is equally available to the propounded of the interrogatory, the burden and expense of any research which may be required should be borne by the party seeking information. (*Pantalazas v. Superior Court of Los Angeles County* (1969) 272 Cal. App. 2d 499).”

However, in *Pantzalaz*, the plaintiff was a party seeking insurance death benefits under a group insurance policy issued to her late husband by his employer, the Regents of the University of California. She propounded special interrogatories on her late husband's insurer, defendant Pacific Indemnity, seeking specific insurance information. *Id.* at 502. Pacific Indemnity responded by referring her to The University of California for a definitive answer to the interrogatories since the “acceptance of written applications for coverage under this policy by employees of the University of California, and the issuance and delivery of Certificates to such employee-insureds is a matter handled by the University of California.” *Ibid.* In reversing the trial court's denial of her motion to compel further responses to interrogatories, the court held:

Since the University of California is the agent of the Pacific Indemnity Company, the information sought by the petitioners is available to the real party in interest through its agent... While it may impose a burden on the insurer to do the necessary research to obtain the requested information as to whether an individual certificate was issued to Mr. Pantzalas, it is a burden which is inherent in the way the real party in interest has elected to do business. (emphasis added) *Id.* at 504.

As the court stated in *Castaline v. City of Los Angeles*, 47 Cal.App.3d 580, 588, footnote 7 (1975):

“While a corporation or public agency may select the person who answers interrogatories in its behalf, it has a corresponding duty to obtain information from *all sources under its control-information which may not be personally known to the answering agent.*” (emphasis added)

Regents has a duty to obtain information from all sources under its control, including information which may not be personally known to the answering party but is in the possession of the party's agent. Pantzalaz v. Superior Court, 272 Cal.App.2d 499 (1969).

“A party cannot plead ignorance to information which can be obtained from sources under his control.” Deyo v. Kilbourne, 84 Cal.App.3d 771, 782. “Regents should be compelled to respond.

No.: 51 “*Describe the treatment, if any, provided by you to Camelia Sgarlato, on January 14, 2019.*”

Defendants responded that” Dr. Dalstrom performed the following procedures on January 14, 2019: left flexor digitorum longus tendon transfer for correction of flat foot; left subtalar fusion; left repair spring ligament; left cotton osteotomy; left partial excision of bone from talus; left partial excision of bone from navicular. Your correspondence states that this response did not mention gastrocnemius recession, talonavicular joint cheilectomy and bone graft. The bone graft is placed as part of the subtalar fusion and a cheilectomy is another term for partial excision of the bone. As to the gastrocnemius resection, the operative report does not list it as a procedure. If the same was done, it is Dr. Dalstrom custom and practice to list it was a procedure on the operative report.”

The gastrocnemius resection was listed as a procedure on the preoperative exam and Dr. Dalstrom needs to clarify whether or not he performed the gastrocnemius resection procedure, on January 14, 2019.

Regarding the bone graft, when a physician wishes to use a medical device in the form of bone graft as part of the surgical procedure, he or she must inform the patient of the nature of the surgery and the expected health risks and benefits associated with such medical device use and obtain patient’s Informed Consent to such use.

Under the Food, Drug and Cosmetic Act, the U.S. Food and Drug Administration recognizes three classes of medical devices, based on the level of control necessary to assure safety and effectiveness.

Class I devices include elastic bandages, examination gloves, and hand-held surgical instruments.

Class II devices include acupuncture needles, powered wheelchairs, infusion pumps, air purifiers, surgical drapes, stereo toxic navigation systems, and surgical robots. Class III devices are usually those that support and sustain human life, are of substantial

importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury and require premarket approval. Examples of class III devices approved by the FDA include implantable pacemakers, pulse generators, HIV diagnostic tests, automated external defibrillators, endosseous implants, and - Augment Bone Graft – the first and only class III FDA approved alternative to autograft bone for fusion of the ankle and hindfoot.

Defendants responded that “The bone graft is placed as part of the subtalar fusion” however, Dr. Dalstrom had a duty to inform Plaintiff that he was going to implant a medical device to make sure that Plaintiff was informed whether or not the medical device was approved by the FDA.

To this day, Plaintiff does not have any knowledge to what kind of medical device Dr. Dalstrom implanted in her body during the subtalar fusion procedure.

Defendants’ refusal to answer this interrogatory cannot be condoned.

No.: 53 “*State whether the Defendant David J. Dalstrom, M.D. became aware, prior to the surgery being undertaken on the morning of January 14, 2019, at UC San Diego Health, Koman Family Outpatient Pavilion, that the Resident Ted Walker M.D. assisting with the surgery intended to perform a subtalar fusion in conjunction with partial excision of bone from talus, partial excision of bone from navicular, gastrocnemius resection, talonavicular joint cheilectomy and bone graft on the Plaintiff.*”

Defendant Dr. Dalstrom responded that he does not have a specific recollection of what Dr. Ted Walker’s specific involvement in Plaintiff’s surgery was. Pursuant to Code of Civil Procedure, section 2030.220(a) and (b), each answer in the response interrogatories must be as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it must be answered to the extent possible. Dr. Dalstrom does not have a specific recollection of the information requested in the interrogatory.

Code of Civil Procedure section 2030.220(c) specifically provides that:

(c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.

When responding to interrogatories, the Discovery Act requires a party to make a reasonable and good faith effort to obtain the information before responding to the interrogatories. *Regency Health Services, Inc v. Superior Court* (1998) 64 Cal.App.4th 1496. A party cannot plead ignorance to information, which can be obtained from sources under his control. *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782. This includes a party’s lawyer *Smith v. Superior Court (Alfred)* (1961) 189 Cal.App.2d 6, agents or employees, *Gordon v. Superior Court* (1984) 161 Cal.App.3d 151, 167-168, and family members, *Jones v. Superior Court* (1981) 119 Cal.App.3d 534, 552. See Weil and Brown, Cal. Prac. Guide: Civil Procedure Before Trial (TRG 2018) ¶8: 1051-1060.

No.: 54 “*If the answer to Specially Prepared Interrogatory No. 53 is in the affirmative state whether or not the Defendant David J. Dalstrom, M.D ever instructed the Resident Ted Walker M.D. not to perform the above Surgical Procedures without obtaining an informed consent from Plaintiff.*”

As Dr. Dalstrom’s response to Interrogatory No. 53 was that he does not have a specific recollection of what Dr. Walker’s involvement was related to your surgery, he cannot answer No. 54.

Code of Civil Procedure section 2030.220(c) specifically provides that:

(c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.

CCP § 2030.290(a) provides, in relevant part, the following:

If a party to whom interrogatories are directed fails to serve a timely response...[t]he party to whom the interrogatories are directed waives...any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010).

Belated objections to interrogatories are not valid unless the defaulting party demonstrates good cause to grant relief from such default, and the burden is on the defaulting party to seek and justify relief. *Mannino v. Superior Court*, (1983) 142 Cal. App. 3d 776, 778; see CCP § 2030.290(a)-(2).

No.: 55 “*If the answer to Special Interrogatory No. 54 is in the affirmative state whether the Defendant David J. Dalstrom, M.D ever ordered the Resident Ted Walker M.D. to obtain an informed consent from Plaintiff on January 14, 2019.*”

As Dr. Dalstrom’s response to Interrogatory No. 53 was that he does not have a specific recollection of what Dr. Walker’s involvement was related to your surgery, he cannot answer No. 55.

CCP § 2030.290(a) provides, in relevant part, the following:

If a party to whom interrogatories are directed fails to serve a timely response...[t]he party to whom the interrogatories are directed waives...any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010).

Belated objections to interrogatories are not valid unless the defaulting party demonstrates good cause to grant relief from such default, and the burden is on the

defaulting party to seek and justify relief. *Mannino v. Superior Court*, (1983) 142 Cal. App. 3d 776, 778; see CCP § 2030.290(a)-(2).

No.: 59 *“If the answer to Special Interrogatory 58 is in the affirmative, state whether the Defendant David J. Dalstrom, M.D. ever advised or discussed with Plaintiff on January 14, 2019, that he did not perform the heel osteotomy.”*

Dr. Dalstrom’s response indicated that he does not have a specific recollection of advising or discussing with Plaintiff on January 14, 2019, that he did not perform a heel osteotomy. Your correspondence indicates that as Dr. Dalstrom recalls certain parts of the surgery, he assumingly recalls information about conversations or lack after the surgery. This assumption is unfounded. Pursuant to California Code of Civil Procedure section 2030.220(a) and (b), each answer in the response to interrogatories must be as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it must be answered to the extent possible. Dr. Dalstrom does not have a specific recollection of the information requested in the interrogatory.

Code of Civil Procedure section 2030.220(c) specifically provides that:

(c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.

No.: 61 *“If the answer to Special Interrogatory No. 59 is in the affirmative state whether the Defendant David J. Dalstrom, M.D. ever advised or discussed with Plaintiff on January 14, 2019, that he permanently fused her heel bone to the talus bone.”*

Your correspondence requests that Defendants amend their responses to include with particularity what medical records indicate that Dr. Dalstrom discussed with Plaintiff the surgical plan prior to January 14, 2019. Your interrogatory does not request this information. Defendants answered the interrogatory posed. Defendants responded that Plaintiff’s medical records reflect that Dr. Dalstrom discussed the surgical plan with Plaintiff many times prior to January 14, 2019.

Defendants Should Provide Further Responses to Special Interrogatory No. 61 Which Identify Specific Documents Rather than Defendants’ Entire Document Production

“The party to whom interrogatories have been propounded shall respond in writing ... by ... (1) An answer containing the information sought to be discovered. (2) An exercise of the party's option to produce writings.” (Code Civ. Proc, § 2030.210, subd. (a).) “Each answer in response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits.” (Code Civ. Proc, § 2030.220, subd. (a).) A party who elects to exercise its option to produce writings must refer to section 2030.230 in its written response and “specify the writing from which the

answer may be derived or ascertained. This specification shall be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained.” (Code Civ. Proc. § 2030.230)

No.: 65 “*Did YOU instruct Resident Ted Walker M.D. (for purposes of this and every other request “RESIDENT” shall refer to the person who assisted David J. Dalstrom M.D. on January 14, 2019) to correct Plaintiff’s left heel deformity.*”

Defendant Dr. Dalstrom responded that he does not have a specific recollection of what Dr. Ted Walker’s specific involvement in Plaintiff’s surgery was. Pursuant to Code of Civil Procedure, section 2030.220(a) and (b), each answer in the response interrogatories must be as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it must be answered to the extent possible. Dr. Dalstrom does not have a specific recollection of the information requested in the interrogatory.

Code of Civil Procedure section 2030.220(c) specifically provides that:

(c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.

When responding to interrogatories, the Discovery Act requires a party to make a reasonable and good faith effort to obtain the information before responding to the interrogatories. *Regency Health Services, Inc v. Superior Court* (1998) 64 Cal.App.4th 1496. A party cannot plead ignorance to information, which can be obtained from sources under his control. *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782. This includes a party’s lawyer *Smith v. Superior Court (Alfred)* (1961) 189 Cal.App.2d 6, agents or employees, *Gordon v. Superior Court* (1984) 161 Cal.App.3d 151, 167-168, and family members, *Jones v. Superior Court* (1981) 119 Cal.App.3d 534, 552. See Weil and Brown, Cal. Prac. Guide: Civil Procedure Before Trial (TRG 2018) ¶8: 1051-1060.

No.: 66 “*If the answer to Special Interrogatory No. 65 is in the affirmative state whether the “RESIDENT” Ted Walker M.D. corrected Plaintiff’s left heel deformity on January 14, 2019.*”

Defendant Dr. Dalstrom responded that he does not have a specific recollection of what Dr. Ted Walker’s specific involvement in Plaintiff’s surgery was. Pursuant to Code of Civil Procedure, section 2030.220(a) and (b), each answer in the response interrogatories must be as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it must be answered to the extent possible. Dr. Dalstrom does not have a specific recollection of the information requested in the interrogatory.

The policy that the discovery act should be liberally construed is discussed at length in *Greyhound v. Superior Court*. On the subject of information available to Defendant based on its own records or on reasonable inquiry, see *Chodos v. Superior Court*

construing CCP §2033.220(c). By denying its ability to respond to matters on which it clearly has primary knowledge, Defendant abuses the discovery process.

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No.: 67 “*If the answer to Special Interrogatory No. 66 is in the negative state whether Defendant David J. Dalstrom M.D took any action to address Plaintiff's left heel deformity on January 14, 2019.*”

Dr. Dalstrom's response indicates that he addressed your left heel deformity by performing a subtalar fusion on January 14, 2019. Your correspondence requests that Defendants amend their responses to include with particularity where in the operative report the doctor indicated that he addressed your left heel deformity. Your interrogatory does not request this information. Defendants answered the interrogatory posed.

“The party to whom interrogatories have been propounded shall respond in writing ... by ... (1) An answer containing the information sought to be discovered. (2) An exercise of the party's option to produce writings.” (Code Civ. Proc, § 2030.210, subd. (a).) “Each answer in response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits.” (Code Civ. Proc, § 2030.220, subd. (a).) A party who elects to exercise its option to produce writings must refer to section 2030.230 in its written response and “specify the writing from which the answer may be derived or ascertained. This specification shall be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained.” (Code Civ. Proc, § 2030.230)

No.: 179 to “*Identify every action of David J. Dalstrom MD on January 14, 2019, that you believe was in violation of an informed consent policy.*”

Dr. Dalstrom’s response was that he does not believe he violated the informed consent policy. Therefore, no actions were identified in his response. Your correspondence requests that Defendants state with particularity why responding party does not believe Dr. Dalstrom violated any consent policy. Your interrogatory does not request this information. Defendants answered the interrogatory posed.

Defendants have not provided the Consent Policy with their document production in response to Plaintiff’s Request for Production of Documents (Set One), which stated:

Request for Production No. 16 “*All documents, including, but not limited to, all of your policies, rules, regulations, procedures, protocols, guidelines, standards, training manuals, instructions, pamphlets and/or any other written material with regard to the diagnosis and treatment of the condition for which you operated on the Plaintiff to include any operative protocols.*”

Defendants responded: “Objection. This request is overbroad, vague and ambiguous and harassing. It is impermissibly compound. Responding Party is unable to answer this request as written.”

Defendants improperly rely upon a myriad of boilerplate and meritless objections.

CCP § 2017.010 provides the following:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action., if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim of defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document electronically stored information, tangible thing, or land or other property.

No.: 180 “*Identify any policy relative to the question 179.*”

Defendants identified the policy as “Consent for Anesthesia, Surgery, Special Diagnostic or Therapeutic Procedures.” Your correspondence asks Defendants to provide a copy of said procedure. Your interrogatory does not request this information, nor did you serve Defendants with a request for Production of Documents for the procedure in question. Defendants answered the interrogatory posed.

However, Plaintiff requested the information long time ago, along with Plaintiff’s Request for Production of Documents (Set One), which stated:

Request for Production No. 16 *“All documents, including, but not limited to, all of your policies, rules, regulations, procedures, protocols, guidelines, standards, training manuals, instructions, pamphlets and/or any other written material with regard to the diagnosis and treatment of the condition for which you operated on the Plaintiff to include any operative protocols.”*

Defendants responded: “Objection. This request is overbroad, vague and ambiguous and harassing. It is impermissibly compound. Responding Party is unable to answer this request as written.”

Defendants improperly rely upon a myriad of boilerplate and meritless objections.

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Interrogatories Nos.: 68-175:

As to the Affirmative Defenses raised by Defendants, Defendant’s response indicated that they are still in the process of determining whether or not a basis exists, and every affirmative defense pled. As you know, your deposition was recently completed which elicited new information. This new information needs to be analyzed. If after said analysis, Defendants any affirmative defenses need to be withdrawn, Defendants will do so.

For the Defendant to present ambiguous evidence would be confusing to the jury. For the Defendant to present no evidence at all in response to discovery requests, and then present responsive evidence at trial, would be prejudicial to Plaintiff’s case. Therefore, Plaintiff will move that Defendants be precluded from raising at trial facts that it claims now not to have. And, since Plaintiff is left with no method of determining these facts other than good-faith estimation by Plaintiff’s counsel, Plaintiff will also move that Defendants be prevented from presenting at trial any evidence contravening such estimations by Plaintiff’s counsel.

Requests for Admissions Nos.: 19-27, 31-35:

Defendants denied the aforementioned requests. Your correspondence requests that Defendants provide the evidence to support their denials. Defendants are not obligated to do so pursuant to

California Code of Civil Procedure section 2033.220(a), which states that absent an objection, the response must contain one of the following: an admission, a denial or a statement claiming inability to admit or deny. Defendants have complied with the California Code of Civil Procedure.

Even without such abuses the trial court enjoys ‘broad authority of the judge over the admission and exclusion of evidence ... Its purpose is to avoid the unfairness caused by the presentation of prejudicial or objectionable evidence to the jury ...’ Peat, Marwick, Mitchell & Co. v. Superior Court (1988) 200 Cal.App.3d 272, 288.


Discovery sanctions can be imposed to encourage compliance with discovery rules. (see Fairfield v. Superior Court (1966) 246 Cal.App.2d 113, 119) Punishing the party which is abusing the discovery rules is only a secondary *purpose*. Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 796. Courts can impose monetary sanctions (see CCP §2023.030(a)), deem facts admitted, or prohibit a party from using specified evidence. “The court’s inherent power to curb abuses and promote fair process extends to the preclusion of evidence. Defendants’ obfuscation and delay while Plaintiff has complied with the California discovery rules has resulted in an improper balance of discovery between the parties which defies the notions of due process, equity, and the search for truth that are the underpinnings of California’s discovery rules and applicable case law. Through its words and actions, Defendants have made it abundantly clear that it does not intend to provide complete responses unless required by this Court to do so. Accordingly, Plaintiff has no choice but to seek this Court’s intervention.

Due to the nature of **Defendants’** responses, which seek to obfuscate facts central to determination of potential damages and causes of action, Plaintiff will move that **Defendants** be prohibited from presenting **evidence** contravening Plaintiff’s good faith estimates of dates central to the Causes of Action, and that **Defendants** be prohibited from presenting **evidence** contravening Plaintiff’s good faith estimates of numbers central to the determination of damages.

If you wish to amend your objections, I will be happy to provide you a three-days extension. If I don’t hear from you by Friday, April 1, 2022, I will schedule a Motion with the Court, and I will notify you the date and time of the Motion.

Thank you for your courtesy in this matter.

Sincerely,


Camelia Sgarlato