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**FILED**  
COURT OF APPEALS  
DIVISION ONE

JUL 20 2016

NO. 73650-7-I

IN THE COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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SURAJ PINTO

*Appellant,*

v.

GREGORY VAUGHN AND "JANE DOE" VAUGHN; PAOLA LEONE AND  
"JANE DOE" LEONE; LEONE & VAUGHN, DDS, PS, DBA LEONE &  
VAUGHN ORTHODONTICS; L. DOUGLAS TRIMBLE AND "JANE DOE"  
TRIMBLE,

*Respondents.*

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On Appeal from King County Superior Court

King County Superior Court No. 14-2-23326-4

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**APPELLANT'S REPLY BRIEF**

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**I. APPELLANT'S REPLY ARGUMENTS**

- A. CONTRARY TO THE FACTUAL AVERMENTS CONTAINED IN RESPONDENT, LEON & VAUGHN'S RESPONSE TO APPELLANT'S BRIEF, APPELLANT'S EXPERT, NICHOLAS PANOMITROS, DDS CLEARLY DELINEATED HIS EXPERTISE AND QUALIFICATIONS IN OTHODONTICS IN HIS SWORN DECLARATION. ACCORDINGLY, HIS DETAILED DECLARATION ON LEONE & VAUGHN'S BREACH OF THE STANDARD OF CARE SHOULD HAVE SURVIVED RESPONDENT, LEONE & VAUGHN'S MOTION FOR SUMMARY JUDGMENT.

Respondent, Leone & Vaughn's Response to Appellant's Brief, places a disproportionate reliance on form over substance. According to Respondents Leone & Vaughn, they put forth that the legal arguments contained in Appellant's Brief are merely a recitation of the arguments made to the trial court. What they fail to see is that on appeal Appellant cannot raise new arguments, even though Respondents, Leone & Vaughn attempt to interject new arguments not presented below. Simply put, Respondent Leone & Vaughn are correct in stating that Appellant is not putting forth any new arguments; to do so would be improper on appeal.

Aside from Respondent Leone & Vaughn's critique on formatting, the arguments made in response to the evidence contained on the record is fairly anemic in addressing the very simple question that is before this Court on appeal and that is whether the qualifications and declaration of Dr. Nicholas Panomitros should have survived a Motion for Summary Judgment. Their argument that Dr. Panomitros has no experience in orthodontics omits significant facts that makes their argument lack merit and which provides clear grounds for reversal of the trial court's ruling. Specifically, Dr. Panomitros curriculum vitae, attached to Appellant's Response to

Respondent, Leone & Vaughn's Motion for Summary Judgment stated the following in part:

I have been practicing orthodontics since 1991, and for more than a 15 years 80% of my dental practice was orthodontics. I have the training and knowledge to practice orthodontics after taking extensive course work to learn how to do so, am a member of the Academy of Gp Orthodontics, and have given lectures on standard of care and informed consent to dentist, pediatric dentists, orthodontists. I am also a member of the American Orthodontic Society and I have been an expert in over 20 dental cases including other orthodontic cases out of my state.

*See*, CP 114 and *see*, **Appendix A** attached hereto and within is a true and complete copy of the Declaration of Expert Witness for Plaintiff, Nicholas E. Panomitros, DDS.

Appellant's expert had provided clarity on his extensive experience in orthodontics, that orthodontics is a subspecialty of a DDS license and that the standard he has commented on is a national standard, *not a state standard of care*. That being said, Dr. Panomitros sits on a regional board that oversees admission to practice dentistry in the State of Washington, therefore making him qualified to comment on the standard of care. It should be noted, that Defendants had not provided any expert contradicting the findings of Dr. Panomitros.

Respondents on page 16 of their Brief state that, after filing their MSJ, the burden shifted to Pinto to produce expert testimony to support his claims and the he "failed" to do this. But this is clearly untrue. And what is more troubling is that Respondents just keep parroting, again and again, that Dr. Panomitros is just a "general dentist." How is it that 80% of his dental practice was orthodontics but that

he is just a general dentist? How is it that he is a member of the American Orthodontist Society who gives lectures on the subject? Do the Respondents imagine that just any old dentist can show up and start lecturing and pontificating on orthodontics and that the American Orthodontist Society are all such fools that they believe him? The Respondents presumably also suspect that the Academy of Gp Orthodontics also do not know or understand anything, letting Dr. Panomitros in to sit in their chambers, just because he wants to. The fact is, the Respondents are putting forth nonsense on stilts, creating confusion with their sophistry, when it is obvious that Dr. Panomitros is a learned man, has been an expert in 20 cases, including orthodontic matters. Everywhere he is listened to. Everywhere he is esteemed. Everywhere he is honored. But the trial court summarily refused to lend him an ear! This was not only an abuse of discretion on the part of the trial court, but is borders on sheer insolence. A man such as Dr. Panomitros would not be so flippant as to speak about things and matters that he knows nothing about. And no amount of legalistic maneuvering on the part of Respondents can change this very elementary fact.

Dr. Panometros is indeed so exceptionally qualified that the trial court's decision amounts to an outrage! This is an orthodontics case. The man has practiced in this area for decades. Decades! He is familiar with the standard in Washington in that he is a *dental examiner* and all the examining testing agencies he belongs to administer the examinations in this state. Do Respondents imagine that testing

agencies let mere general dentists go around examining students? Do Respondents imagine that some country doctor can come in from the sticks and the testing agencies let them walk right in? Sure, come right on in, examine all the students, it's not your field, but so what? That's what the agencies must say, if we are to accept the trial court and Respondent's view of things. The fact is, Dr. Panomitros's opinion on standard of care, informed consent and causation were *improperly* disregarded by the trial court. Dr. Panometro's Expert Report causally connected Mr. Pintos injuries to the deficiencies of all the defendants. He has stated on the record that the acts and failures to act, "probably" or "more likely than not" caused the subsequent injury. *O'Donoghue v. Riggs*, 73 Wash.2d 814, 824, 440 P.2d 823 (1968). He did this in a highly detailed way, and not just by making conclusory statements. Consequently, his report was sufficient to establish the causation element of Mr. Pinto's claim.

The fact is, it is true that a general dentist or doctor cannot go making pronouncements on areas that require a greater degree of expertise than mere general knowledge allows. But Respondents are taking this worthy principle to a point of absurdity. It is as if an eye doctor were being forbidden to testify just because he is not a specialist in on the left half of the cornea. Such an approach lacks basic prudence and ordinary common sense.

It is interesting that Respondent's chose *Davies v. Holy Family Hospital*, 144 Wn. App. 483 (2008) to support their position. In that case, the court states that

“While Dr. Patten's declaration states that he is "familiar" with the appropriate measures to be taken by "hospital staff, including nursing staff" in response to symptoms of internal bleeding, he does not state that he had knowledge of the relevant standards of care for those specific health care providers — nurses, physical and respiratory therapists, registered dietitians, and other non-physician employees.” So, basically, Respondents pick a case where a doctor tried to testify about the standard for nurses, to support their position that Dr. Panomitros cannot testify about his own field. Such an argument defeats itself because the situation in the present case is entirely different.

What is even more interesting is that in Respondents Response briefing at page 29 Respondents admit that this whole discussion is about if Dr. Panomitros should have said “more,” or put what he said in a better way. However, in summary judgment, the sufficiency of the evidence is not to be looked at. For instance, Respondents state that: “Dr. Panomitros’s opinion appears to be that Drs. Vaughn and Leon should have consulted with Dr. Trimble more – *yet he did not explain this thoroughly.*” But he did explain it, correct? Just not “thoroughly.” Or, “Nor did he explain in a linear fashion...” Again, Respondents seem object more with Dr. Panomitros’s style of thinking, and explaining things, than to the fact that a damaging opinion was given regarding Respondent’s care. But this does make Dr. Panomitros’s opinion unworthy to be considered. Really, if the style and literary coherence of scientists and medical persons were all-important, we might all be set

back many centuries. The point is that this issue should have went to the sufficiency of the evidence at trial. It ought not to have been summarily decided.

Respondent's further state that Dr. Panomitros never testified to causation. However, Dr. Panomitros testified that:

- “By this time Pinto suffered from a 2.0 mm under bite. It is clear and convincing, that Leone and Vaughn jumped the gun and started treating Pinto without informing him and they hadn't diagnosed the case correctly. This below standard of care treatment was the proximate cause of Pinto's current pain and suffering.
- The below standard of care treatment that Pinto received from Leone and Vaughn caused this and he may suffer further complications. Pinto suffers from lower nerve damage and loss of feeling on the lower lip and jaw areas. The below standard care treatment Pinto received from Leone and Vaughn Pinto also causes him to suffer from left pelvic bone pain, the area where an autogenous bone graft was harvested.”
- Pinto never gave his informed consent and this uncoordinated care without informed consent is what led up to this compromised treatment, which is below the standard of care. Here, we even notice that the decision for primary surgical evaluation was late and well into the treatment....”

- The below standard of care treatment that Pinto received from Leone and Vaughn caused this and he may suffer further complications. Pinto suffers from lower nerve damage and loss of feeling on the lower lip and jaw areas. The below standard of care treatment Pinto received from Leone and Vaughn also caused him to suffer from left pelvic bone pain, the area where an autogenous bone graft was harvested.

Respondent's Response further states that Dr. Panomitros's expert report "lumped" the actions of Drs. Vaughn, Leone and Trimble. In case Respondents had not noticed, the parts of the body are interrelated with one another. Appellant had a number of physicians he received treatment from. He received orthodontic work from Leone & Vaughn in a significant time span between the two surgeries he received from Dr. Trimble. As such, of course these issues are going to touch upon each other and be part of the total picture. The human body cannot be broken up like a legal brief, as much as Respondents would have it, so that everything can be explained in perfectly separate categories. This does not mean that Dr. Panomitros somehow "lumped" everyone together, all for one and one for all.

- B. APPELLANT TIMELY DISCLOSED ITS EXPERT TO RESPONDENTS, LEONE & VAUGHN. RESPONDENT'S LEGAL COUNSEL FOR LEONE & VAUGHN TELLINGLY DID NOT DISCLOSE TO THIS COURT THAT WHEN SHE SUBSTITUTED IN AS COUNSEL IT HAD REQUESTED A CONTINUANCE AND THE CR 26 I CONFERENCE WAS CONDUCTED AFTER DISCOVERY CUT-OFF.

Contrary to the averments contained in Respondent's counsel Motion to Strike, Appellant timely disclosed and designated Nicholas Panomitros, DDS, MA, JD, LLM as an expert witness. *See, Appendix B* which is a true and correct copy of the additional Disclosure of Witnesses was propounded on Defendants' counsel on June 15, 2015. This designation and disclosure of Nicholas Panomitros was in compliance with the trial court's August 21, 2014 Case Scheduling Order. *See, CP 2.*

Addressing Respondent's April 21, 2015 discovery request for identification of an expert, Appellant complied by providing identification of an expert witness on June 15, 2015. Despite being privy to this information, Respondents waited nearly 3 months and past the discovery cut-off date, (September 4, 2015) to conduct a CR 26 (i) for alleged shortfall in Appellant's identification and designation of witness Nicholas Panomitros as a witness. Since the inception of this case, Respondent did not request a single deposition other than Appellant, Mr. Suraj, although they admittedly disclose to the Court in defense counsel, Lisa Lackland's declaration in support of their Motion for Continuance:

“Plaintiff has identified over 20 witnesses and approximately 40 health care providers in multiple states. Plaintiff has to date provided over 850 pages of documents, exclusive of medical records that defendants are obtaining.”

*See, CP 85 and CP 86* the August 10, 2015 Declaration of Lisa Lackland

The relevance of the forgoing statement cannot be discounted from the fact that as Respondent’s counsel for Leone & Vaughn, Ms. Lackland, indicates in her motion that they (Respondent) “did see a copy of the disclosure” Moreover, Ms. Lackland also indicates in her declaration that she was assigned this case from her law firm in July of 2015. Upon appearing on Respondent’s behalf, as a professional courtesy to Ms. Lackland, Appellant’s counsel stated he would be agreeable to extending the August 14, 2015 discovery cut-off date permitted by King County Local Rule 4 to August 31, 2015. Additionally, Appellant’s counsel stipulated to both of Respondent, Leone & Vaughn’s Motions for an Order of Continuance; however, the trial court denied both motions. In the interim, Respondent’s legal counsel for Leone & Vaughn failed to make any requests for the deposition of Dr. Panomitros. It should be noted that Appellant had not receive the September 8, 2015 expert report until a Response was required for one in relation to Respondent, Leone & Vaughn’s Motion for Summary Judgment. Consequently, the timely disclosure of Dr. Panomitros in the Additional Disclosure of Witnesses was based on the fact that he was a possible expert witness in the case; Plaintiff had not received a report wherein we could provide specifically in detail on what Dr. Panomitros would testify

to. In short, Respondents, Leone & Vaughn's shortfall in conducting discovery or scheduling a discovery conference after the discovery cut-off had occurred is disingenuous in relation to what Respondents, Leone & Vaughn contend are discovery violations. Nicholas Panomitros was timely identified as an expert in accordance with August 21, 2015 Scheduling Order.

In terms of the other witnesses, Dr. Grossman's report and Dr. Rockwell's declaration are both sworn statements contained on the record and propounded to Respondents in conjunction with Appellant's Response to Respondent's Motion for Summary Judgment. Furthermore, it is important to note that if there was any actual failure by Appellant to disclose any piece of evidence during the course of discovery CR 26 states the following:

(i) Motions; Conference of Counsel Required. The court will not entertain any ***motion or objection with respect to rules 26 through 37 unless counsel have conferred*** with respect to the motion or objection.

*See*, CR 26 (i)

A CR 26 (i) discovery conference request was not performed until after the discovery cut-off date, specifically, Friday afternoon, September 4, 2015. Appellant and Respondent conducted a CR 26 (i) conference in accordance with Washington State Civil Rule 26 (i). At that conference, Respondent's counsel for Leone & Vaughn requested that Plaintiff's counsel produce the expert report of Dr. Panomitros. During that telephonic conversation, it did not appear to Respondent's

counsel for Leone & Vaughn was even aware that Appellant had disclosed Dr. Panomitros as an expert witness.

C. PURSUANT TO KCLR 7, RESPONDENTS, LEONE & VAUGHN'S NOTICE OF MOTION TO STRIKE WAS UNTIMELY SERVED ON APPELLANT'S COUNSEL'S AND SHOULD NOT HAVE BEEN CONSIDERED BY THE COURT.

The starting premise of Respondents, Leone & Vaughn's Motion for an Order Striking Appellant's Experts that was filed with the trial court is that Appellant was allegedly not timely in his disclosures of experts in compliance with Washington State Civil Rules of Procedure ("CR") nor the King County Local Rule of Procedure ("KCLR"). That being said, if strict construction is given deference, then pursuant to CR 5 and KCLR 7, Respondent, Leone & Vaughn's motion was not been timely noted on the trial court's calendar and should not have been be considered. Under CR 5, "service by electronic means is complete on transmission when made prior to 5:00 PM on a judicial day." *See, CR 5 (7); emphasis added.* In the instant case, service of Defendant's Motion to Strike was made at 5:01PM; therefore, the date of service pass 5:00PM falls on the next judicial day which would be Thursday, September 10, 2015. *See, CP 94C.*

In light of the foregoing, Defendants motion would be considered untimely. The basis for such untimeliness is predicated on KCLR 4 (a) which reads as follows:

**Filing and Scheduling of Motion.** The moving party shall serve and file all motion documents no later than six court days before the date the party wishes the motion to be considered. A motion must be scheduled by a party for hearing on a judicial day. For cases assigned

to a judge, *if the motion is set for oral argument on a non-judicial day, the moving party must reschedule it with the judge's staff; for motions without oral argument, the assigned judge will consider the motion on the next judicial day.*

*See, KCLR (4); emphasis added.*

Plaintiff did in fact timely disclose Dr. Panomitros as a witness both in June 2015 and in Plaintiff's September 14, 2015 Exchange of Witnesses and Exhibits for Trial.

- D. SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED TO RESPONDENT DR. TRIMBLE BECAUSE THE DECLARATIONS AND EVIDENCE FILED AND SERVED IN CONJUNCTION WITH APPELLANTS MOTION, AS WELL AS THE EVIDENCE CONTAINED ON THE COURT RECORD CREATE A "REASONABLE INFERENCE" THAT THERE WAS A BREACH IN THE STANDARD OF CARE AND DR. TRIMBLE'S 2011 SURGERY ON MR. PINTO CAUSED MR. PINTO TO SUSTAIN INJURY.

First, there were numerous issues of material fact that exists by looking at the statements made Appellant in his Interrogatory Responses Which Defendant Trimble *included* with its Motion for Summary Judgment, *See, CP 84*. Moreover, medical records from Leon & Vaughn further indicate that Appellant made complaints of discomfort following his 2011 surgery by Defendant Trimble. *See, Leon and Vaughn medical records attached as C to Appellants Response to Dr. Trembles MSJ*. Attached herein is a true and correct copy of the medical records as **Exhibit C** which is attached to **CP 94**. Although Respondent Trimble suggested that

only expert testimony qualifies in overcoming a summary judgment medical malpractice case, our Washington State Supreme Courts disagrees. In *Miller v. Jacoby*, 145 Wn.2d 65, 33 P.3d 68 (2001) the Washington State Supreme Court held that expert testimony is not required when medical facts are observable by a layperson's senses and describable without medical training. *Id.* at 72- 73; emphasis added.

In this case, Appellant Mr. Pinto made numerous documented contentions *immediately following* the surgery on how he did not feel right after the surgery Respondent Trimble performed. Moreover, while this surgery would expect to resolve sleep apnea; he was diagnosed with severe sleep apnea in 2014. *See*, **CP 57** which is the Sleep Apnea Medical Report. Mr. Pinto also contended that these doctors repeatedly represented that the surgery would resolve his breathing issues. *See*, CP 60 and *See*, **Appendix D** attached hereto and within is a true and correct copy of the Declaration of Suraj Pinto. In total, this evidence, in addition to the Declarations of Jay Grossman, DDS and James Rockwell, M.D. all created a reasonable inference that the surgery performed on a more probable than not basis contributed to Mr. Pinto's existing ailments, as well as the lack of informed consent.

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- E. THE DECLARATION OF JAY GROSSMAN, DDS CREATED A GENUINE ISSUE OF MATERIAL FACT WHEREIN IN THE LIGHT MOST FAVORABLE TO THE NON-MOVING PARTY A REASONABLE INFERENCE SHOULD HAVE BEEN MADE ON THE BREACH OF THE STANDARD OF CARE, INFORMED CONSENT, CAUSATION AND DAMAGES.

Appellant filed in conjunction with his Response to Dr. Trimble's MSJ the Declaration of Jay Grossman, DDS. *See*, **CP 64** and attached herein is a true and correct copy of the Declaration of Jay Grossman attached as **Appendix E**. Dr. Grossman is a practicing Dentist licensed in the State of California and the State of Nevada. Although Dr. Grossman is not a doctor licensed in the State of Washington, an out-of-state practitioner of medicine may testify as an expert in a malpractice action against a defendant who is a practitioner of the same school of medicine if the practitioner has knowledge of the medical problem at issue and the standard of care required in the particular situation is a national one, not one that varies with geographic location. *See*, *Elber v. Larson*, 142 Wn. App. 243, 247, 173 P.3d 990 (2007). As highlighted above, Respondent Trimble received his education in Canada and received national certification from ABOMS, which is the certifying board for the specialty of oral and maxillofacial surgery in the United States, not Washington.

Although Dr. Grossman is not a maxillofacial surgeon, this does not matter in the realm of medical malpractice claims as the relevant field of expertise is not necessarily determined by the specific practice specialty, but rather by the familiarity with the treatment or disease. *See*, *Morton v. McFall*, 128 Wn. App. 245, 253, 115 P.3d 1023 (2005) (internist qualified to testify against pulmonologist as to standard

of care). “[t]here is no general rule that prohibits ... a specialist in one area from testifying about another area”); *Eng v. Klein*, 127 Wn. App. 171, 172, 110 P.3d 844 (2005) (infectious disease expert qualified to testify against neurosurgeon regarding diagnosis of meningitis; diagnostic methods the same; “[i]t is the scope of a witness’s knowledge and not artificial classification by professional title that governs the threshold question of admissibility of expert medical testimony in a malpractice case”); *Seybold v. Neu*, 105 Wn. App. 666, 677-80, 19 P.3d 1068 (2001) (plastic surgeon qualified to testify against orthopedic surgeon regarding cutaneous malignancies and bone grafting, where plastic surgeon also trained and experienced with the disease and treatment); *White v. Kent Med. Ctr.*, 61 Wn. App. 163, 173-74, 810 P.2d 4 (1991) (physician is qualified as an expert where familiarity demonstrated with the procedure or medical problem at issue, even if not a specialist with respect to same; ENT physician qualified to testify as to standard of care for general practitioner); *Miller v. Peterson*, 42 Wn. App. 822, 830, 714 P.2d 695 (1986) (orthopedic surgeon qualified to testify about podiatrist’s standard of care so long as both used the same methods of treatment). Where the methods of treatment are or should be the same as the defendant, the expert is qualified to testify. *Eng v. Klein*, 127 Wn. App. 171, 176, 110 P.3d 844 (2005); *Miller v. Peterson*, 42 Wn. App. 822, 830, 714 P.2d 695 (1986).

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In light of the foregoing, Dr. Grossman's declaration was competent medical testimony sufficient to overcome Respondent's Motion for Summary Judgment as it was not conclusory, his opinion was based on the medical/dental records in Mr. Pinto's case and it created a "reasonable inference" that Mr. Pintos' claims had merit. In terms of his professional opinion as a doctor of dental medicine, he wrote:

- "Dr. Trimble performed a second surgery, which in my opinion was unnecessary, due to the fact that simple Wilkodontics would have solved his minor problem of midline aberration." See, Medical Report attached to Declaration of Jay Grossman, DDS; *emphasis added*.
- "In addition, despite the fact Mr. Pinto had mild sleep apnea prior to his treatment with the named dentists, his condition worsened significantly postsurgical treatment. Mr. Pinto cannot be blamed for losing confidence in his providers due to the lack of consent and failure to follow his instructions, and it is reasonable that he did not return for further treatment. In conclusion, the concerted efforts of Dr. Trimble, Dr. Leone and Dr. Vaughn significantly contributed to Mr. Pinto's demise, and *their actions failed to meet the requisite standard of care of orthodontists and surgeons collaborating to resolve Mr. Pinto's chief complaint*, which was quite simply, adjusting his midline."

*See, Appendix F* attached here in as a true and correct copy of the Medical Report attached to Declaration of Jay Grossman, DDS; *emphasis added*.

An unnecessary surgery and the failure to address Mr. Pinto's chief complaint all created the inference that there was a breach in the standard of care. Consequently, Respondent Trimble's Motion for Summary Judgment should be denied.

F. THE DECLARATION OF JASON ROCKWELL, MD CREATED A GENUINE ISSUE OF MATERIAL FACT WHEREIN THE LIGHT MOST FAVORABLE TO THE NON-MOVING PARTY A REASONABLE INFERENCE SHOULD HAVE MAY BE MADE ON CAUSATION AND DAMAGES.

Dr. Rockwell is a Washington State Licensed Otolaryngology (an ENT doctor) with more than 30 years' experience working and studying patients with sleep apnea. Based on his declaration he reviewed the medical records of Mr. Suraj Pinto from 2008 to 2014. The medical and dental records that included x-rays, charts, photos, consult records, reports and notes regarding Mr. Pinto's dental work at Leon & Vaughn Orthodontist and oral surgery with Dr. Douglas L. Trimble. Other documents reviewed include orthognathic surgery operative reports by Dr. Trimble, maxillary LeForte one osteotomy and mandibular bilateral sagittal osteotomy.

Again, while not a maxillofacial surgeon; he was qualified within Washington State to provide competent testimony related to the facts on this matter. See, *Eng v. Klein* , 127 Wn. App. 171 , 172, 110 P.3d 844 (2005) ("It is the scope of a witness's knowledge and not artificial classification by professional title that governs the threshold question of admissibility of expert medical testimony in a malpractice case."). In consideration of his expertise, he undoubtedly created genuine issues of material fact when he stated, in part, the following:

- [t]he surgery performed on Mr. Suraj Pinto on a more probable than not basis narrowed his airway resulting in

Mr. Pinto's sleeping disorder and the alleged damages he is suffering. *See*, **CP 65** and attached here in as **Exhibit G** is a true and correct copy of the Declaration of Jason Rockwell, M.D. FAC Page 2, Lines 1-3.

## **II. CONCLUSION**

Based on foregoing, Appellant respectfully request that the Court reverse the trial Court's Order granting Summary Judgment and denying Appellant's Motion for Reconsideration and also reverse the trial court's order Striking Respondent's Expert Witness and remand this matter for further proceedings.

*Respectfully submitted this 20<sup>th</sup> day of July 2016.*

/s/ Edward C. Chung  
Edward C. Chung, WSBA 34292  
Attorney for Appellant, Suraj Pinto

**CERTIFICATE OF SERVICE**

I, ANYA SEREBRYKOV, declare under penalty of perjury under the laws of the State of Washington that I am a legal resident of the United States, I am over the age of eighteen years old, and I am not a party to this matter. I further declare that I am a Paralegal with the law firm of CHUNG, MALHAS & MANTEL, PLLC, with an address of 1511 Third Avenue, Suite 1088, Seattle, Washington 98101; and on this 20<sup>th</sup> day of July, 2016, I caused a copy of the foregoing document, designated as Appellants' Reply Brief, as follows:

Washington State Court of Appeals Division One One Union Square 600 University Street Seattle, Washington 98101-1176	X	Legal Messenger Hand Delivered Electronic Mail Facsimile First Class Mail
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<b>Forsberg &amp; Umlauf, P.S.</b> 901 Fifth Avenue, Suite 1400 Seattle, Washington 98164-1039 <i>Psheldon@forsberg-umlauf.com</i> <i>Esado@forsberg-umlauf.com</i>	X	Legal Messenger Hand Delivered Electronic Mail Facsimile First Class Mail
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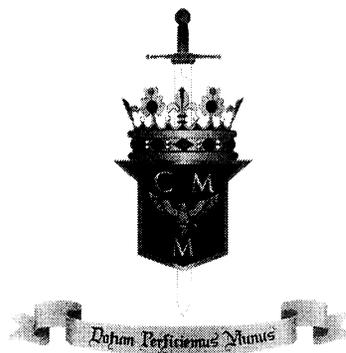
Dated this 20<sup>th</sup> day of July 2016.

*/s/ Anya Serebryakov*  
Anya Serebryakov, Paralegal for  
CHUNG, MALHAS & MANTEL, PLLC

In the Superior Court of the State of Washington in and for King County  
Suraj Pinto v Gregory Vaughn and "Jane Doe" Vaughn; Paola Leone and "Jane Doe" Leone; Leone & Vaughn, DDS, PS, DBA Leone  
& Vaughn Orthodontics; L. Douglas Trimble and "Jane Doe" Trimble.  
Case No. 14-2-23326-4

# APPENDIX A

Declaration of Nicholas E. Panomitros, DDS



CHUNG, MALHAS, & MANTEL, PLLC.

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**IN THE SUPERIOR COURT OF WASHINGTON STATE  
IN AND FOR THE COUNTY OF KING**

**SURAJ PINTO,**

**Case No. 14-2-23326-4 SEA**

**Plaintiff,**

**v.**

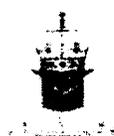
**DECLARATION OF EXPERT WITNESS FOR  
PLAINTIFF NICHOLAS E. PANOMITROS,  
DDS**

**GREGORY VAUGHN AND "JANE DOE"  
VAUGHN; PAOLA LEONE AND "JOHN DOE"  
LEONE; LEONE & VAUGHN, DDS, DOUGLAS  
TRIMBLE AND "JANE DOE" TRIMBLE.**

**Defendants.**

I, Nicholas Elias Panomitros, DDS declare as follows:

1. I am an expert witness in the above captioned matter. I am over the age of 18, I am competent to make this declaration, and I make this declaration based on my own personal knowledge.
2. I am a licensed general dentist in the state of Illinois. I received my D.D.S. degree from the University of Illinois, College of Dentistry in 1989. From August 2007, through August 2012 I was an Assistant Clinical Professor at the University of Illinois College of Dentistry Department of Restorative Dentistry. I was also on staff at Illinois Masonic Hospital Dental Department 1996-2000 in the general practice residency program. I also was an Assistant Professor at Kennedy King College Dental Hygiene Program 2011-2014. I am currently an Assistant Clinical Professor in the



1 Department of Surgery, Maxillofacial Surgery and General Practice Residency Program, Loyola  
2 Medical School, Chicago.

- 3
- 4 3. I am a dental examiner for the Northeast Regional Boards (NERB), Central Regional Boards, Central  
5 Regional Dental Testing Service (CRDTS), Southern Regional Testing Agency (SRTA), and  
6 Western Regional Boards in the United States (WREB); all five dental clinical testing agencies of the  
7 United States. All of these examining testing agencies administer the State of Washington's  
8 examinations for procurement of a dental license. I am an expert qualified in the above noted areas of  
9 inquiry by my 26 years of full time practice diagnosing and clinically treating patients with general  
10 dental pathologies.
- 11
- 12 4. I understand that there is a question of my qualifications to opine on this orthodontic case. I have  
13 been practicing orthodontics since 1991, and for more than a 15 years 80% of my dental practice was  
14 orthodontics. I have the training and knowledge to practice orthodontics after taking extensive course  
15 work to learn how to do so, am a member of the Academy of Gp Orthodontics, and have given  
16 lectures on standard of care and informed consent to dentist, pediatric dentists, orthodontists. I am  
17 also a member of the American Orthodontic Society and I have been an expert in over 20 dental  
18 cases including other orthodontic cases out of my state.
- 19
- 20
- 21 5. It should be understood that orthodontics is a subspecialty within the specialty of dentistry. In all  
22 states of the United States, as well as Canada, a general dental license allows the dentist to practice in  
23 all of the subspecialties which are: endodontics, prosthodontics, periodontics, oral surgery, pediatric  
24 dentistry, and orthodontics. It should be noted that if it were the case otherwise, then a general dentist  
25 would not be able to practice dentistry because most of the subspecialty treatments are rendered by  
26 the general dentist, and in orthodontics it is safe to say the more than 50% of orthodontic procedures  
27 are performed by general dentists.
- 28
- 29
- 30 6. There is only one standard of care for all these subspecialty areas, and that is what a careful and  
prudent dentist would do in the same or similar situation. Furthermore, the standard of care is a  
national one. The defendants in this matter also have training from schools that are not in the



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State of Washington. They breached the standard of care and were the proximate cause of Mr. Pinto's problems that he now has. Also, the examining bodies that administer the State of Washington licensure examination are made up of dental examiners from various states around the United States; and the exams which are administered for license procurement and approved by the Washington license dental board of examiners is the same exam that is accepted within the majority of states within the United States

7. All of my opinions in this case are based upon my training, education, experience, and knowledge of the relevant literature, studies, standards, protocols, policies, and procedures, as well as my review of the pleadings, discovery, medical and dental records, depositions, and other records in this case. Specifically, I considered the facts and data set forth in the records in reaching my opinions in this case, and may use the records as exhibits to support my opinions at trial and ask that this court understand that I am highly qualified to opine as an expert in this case.

*I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that I signed this declaration on this 28 day of September 2015 in Chicago, IL*

By   
Nicholas E. Panomitros, DDS  
812 West Van Buren Street, Suite No. 1F  
Chicago, Illinois, 60607-3535  
[nicholaspanomitrosdds@dmail.com](mailto:nicholaspanomitrosdds@dmail.com)  
(773) 447-4161



In the Superior Court of the State of Washington in and for King County  
Suraj Pinto v Gregory Vaughn and "Jane Doe" Vaughn; Paola Leone and "Jane Doe" Leone; Leone & Vaughn, DDS, PS, DBA Leone  
& Vaughn Orthodontics; L. Douglas Trimble and "Jane Doe" Trimble.  
Case No. 14-2-23326-4

## **APPENDIX B**

Disclosure of Possible Primary Witnesses



CHUNG, MALHAS, & MANTEL, PLLC.

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**IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

**SURAJ PINTO,**  
Plaintiff,

v.

**GREGORY VAUGHN and "Jane Doe"  
VAUGHN; PAOLA LEONE and "Jane Doe"  
LEONE; LEONE & VAUGHN, DDS, P.S., dba  
Leone & Vaughn Orthodontics; L. DOUGLAS  
TRIMBLE and "Jane Doe" TRIMBLE,**

Defendants.

Case No. 14-2-23326-4 SEA

**DISCLOSURE OF POSSIBLE PRIMARY  
WITNESSES**

**TO: Counsels for Defendants**

COMES NOW, the Plaintiff Suraj Pinto, by and through his attorneys of record, Edward C. Chung, and submits his disclosure of possible primary witnesses likely to have discoverable information pursuant to KCLCR 26(b). The Plaintiff reserves the right to identify additional lay witnesses who have knowledge of the facts surrounding this matter. Mr. Pinto also reserves the right to identify additional lay and expert witnesses that may testify regarding matter.



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I. LAY WITNESSES

1. **Suraj Pinto**  
c/o Chung, Malhas & Mantel, PLLC  
1511 Third Avenue, Suite 1088  
Seattle, Washington 98101  
(206) 264-8999

*Type of Testimony for Trial:* Mr. Pinto is the Plaintiff in this matter and can testify to his personal knowledge of the negligent medical care by the Defendant's, and any and all additional facts relating to the above-captioned action.

2. **Juliana Pinto**  
1297 Shenandoah Drive  
Hemet, California 98545  
Phone (951) 233-4522

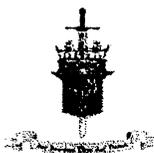
*Type of Testimony for Trial:* Ms. Pinto is expected to testify to her personal knowledge regarding Mr. Pinto's health and the orthodontic treatment advice he was given. She also has knowledge of Mr. Pinto's work and professional related activities as well as his sleep and health matters before and after the surgery.

3. **Gregory Vaughn**  
Forsberg & Umlauf, PS  
901 Fifth Avenue, Suite 1400  
Seattle, WA 98164-1039  
(206) 689-8500

*Type of Testimony for Trial:* Mr. Vaughn is the Defendant in this matter and can testify to his personal knowledge of any and all facts relating to the above-captioned action.

4. **Paola Leone**  
Forsberg & Umlauf, PS  
901 Fifth Avenue, Suite 1400  
Seattle, WA 98164-1039  
(206) 689-8500

*Type of Testimony for Trial:* Ms. Leone is the Defendant in this matter and can testify to her personal knowledge of any and all facts relating to the above-captioned action.



1  
2 **5. Douglas L. Trimble**  
3 Forsberg & Umlauf, PS  
4 901 Fifth Avenue, Suite 1400  
5 Seattle, WA 98164-1039  
6 (206) 689-8500

7 *Type of Testimony for Trial:* Mr. Trimble is the Defendant in this matter and can testify to his  
8 personal knowledge of any and all facts relating to the above-captioned action.

9  
10 **II. EXPERT WITNESSES**

11 **6. Dr. Gerard Carvalho (ENT Specialist)**  
12 118 N Santa Fe Street  
13 Hemet, California 92543  
14 (951) 925-8811

15 *Type of Testimony for Trial:* Dr. Gerard examined Mr. Pinto's airway and nasal structure and is  
16 expected to testify to Mr. Pinto's nasal bones being moved and their results.

17 **7. Dr. Thomas Knipe (ENT specialist)**  
18 1231 116th ne 915  
19 Bellevue, Washington 98004  
20 (425) 454-3938

21 *Type of Testimony for Trial:* Dr. Thomas can testify to his analysis of Mr. Pinto's CT scan and  
22 connection to his deviated septum.

23 **8. Dr. Craig Murakami (ENT Specialist)**  
24 1100 9th Avenue  
25 Seattle, Washington 98101  
26 2066241144

27 *Type of Testimony for Trial:* He can testify his findings of Mr. Pinto's deviated septum, external nasal  
28 valve collapse and turbine hypertrophy.

29 **9. Dr. Dennis-Duke Yamashita (Oral Maxillofacial Surgeon)**  
30 3521 West Beverly  
31 Montebello, California 90640  
32 (323) 728 - 9129

*Type of Testimony for Trial:* Dr. Yamashita is expected to testify to his review of Mr. Pinto's  
medical records and Hyperplasia



1  
2 **10. Dr. Alan Herford (Oral Maxillofacial Surgeon)**

3 4235 Everwalk Parkway  
4 Riverside, California 92505  
5 951-977-9344

6 *Type of Testimony for Trial:* Dr. Herford is expected to testify that the position of Mr. Pinto's lower  
7 jaw has been moved too far right.

8 **11. Dr. Bryan Bell**

9 1849 NW Kearney, Suite 300  
10 Portland, Oregon 97209  
11 (503) 224-1371

12 *Type of Testimony for Trial:* Dr. Bryan is expected to testify to his analysis of Mr. Pintos's position  
13 of his lower jaw and the shortening of his facial profile.

14 **III. FACT WITNESSES**

15 **12. Katie Brown**

16 1225 50th Street NE  
17 Auburn, Washington 98002  
18 (253) 249-5883

19 *Type of Testimony for Trial:* Ms. Brown discharged Mr. Pinto from the hospital to see Dr. Trimble and  
20 is expected to testify to her personal knowledge of the X-rays that were taken at Dr. Trimble's office  
21 and any and all additional facts during Mr. Pinto's appointment.

22 **13. Dr. Mathias**

23 391 N San Jacinto Ave  
24 Hemet, California 92543  
25 (951) 929-6003

26 *Type of Testimony for Trial:* Dr. Mathias is aware of Mr. Pinto's medical condition. He has stated that  
27 with this treatment my entire airway has been affected from nose to throat. Has stated that I am headed  
28 for a heart attack, diabetes, and other illnesses.

29 **14. Dr. Poonam Lu**

30 702 Porter Avenue  
31 Stockton, California 95207  
32 (209) 956-6116

*Type of Testimony for Trial:* Dr. Lu is a doctor who advised Mr. Pinto not to have his teeth extracted.  
She told Mr. Pinto that the extraction of teeth can cause a reduction of breathing capacity and may also  
change the side profile shape.



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**15. Courtney**  
1370 116th Avenue NE, Suite 101  
Bellevue, Washington 98004  
(425) 453-6975

*Type of Testimony for Trial:* Ms. Courtney is an Assistant at Dr. Trimble's office. She has personal knowledge of the x-rays taken at Dr. Trimble's office and is expected to testify to her personal knowledge of Mr. Pinto appointment and review of the x-rays.

**16. Jennifer**  
1370 116th Avenue NE, Suite 101  
Bellevue, Washington 98004  
(425) 453-6975

*Type of Testimony for Trial:* Jennifer was a nurse at Dr. Trimble's office who is expected to testify to her personal knowledge of the procedures and events that took place for surgery

**17. Dr. Thomas Maring**  
509 Olive Way #750  
Seattle, Washington 98101  
(206) 343-7500

*Type of Testimony for Trial:* Dr. Maring is the Assistant Surgeon during Mr. Pinto's surgery and is expected to testify to his personal knowledge of the procedures taken and facts before and after the procedure.

**18. Chanthavy**  
945 Elliott Ave W, Suite 100  
Seattle, Washington 98119  
(206) 285-5000

*Type of Testimony for Trial:* Ms. Chanthvy is an Assistant at Leon & Vaughn who scheduled Mr. Pinto's appointment. She is expected to testify to her personal knowledge of the conversations and concerns Mr. Pinto relayed to her before setting any appointment.



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**19. Rattana**  
945 Elliott Ave W, Suite 100  
Seattle, Washington 98119  
(206) 285-5000

*Type of Testimony for Trial:* Ms. Rattana is an Assistant at Leon & Vaughn. She is expected to testify to her personal knowledge of Mr. Pintos visits to the office as well as the concerns Mr. Pinto relayed to her for the doctors to know.

*Respectfully submitted this 4th day of May, 2015*

/s/ Edward C. Chung  
Edward C. Chung WSBA No. 34292  
*Attorney for the Plaintiff*



**CERTIFICATE OF SERVICE**

I, Angela McClurg, declare under penalty of perjury under the laws of the State of Washington that I am a Paralegal with the law firm of Chung, Malhas & Mantel, PLLC with an address of 1511 Third Avenue, Suite 1088, Seattle Washington 98101; and I caused copies of Plaintiff's Disclosure of Possible Primary Witnesses as follows:

**Forsberg & Umlauf, PS**  
901 Fifth Avenue, Suite 1400  
Seattle, WA 98164-1039  
(206) 689-8500  
ebarmby@forsberg-umlauf.com  
psheldon@forsberg-umlauf.com  
esado@forsberg-umlauf.com

- Legal Messenger
- Hand Delivered
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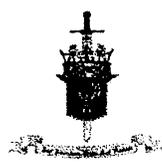
*Dated this 4<sup>th</sup> day of May, 2015.*

/s/ Angela McClurg  
Angela McClurg



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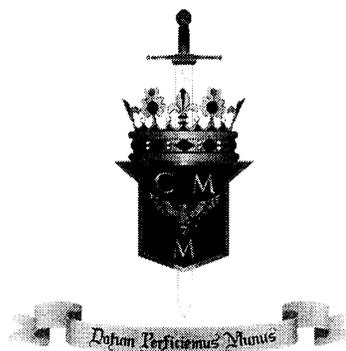
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In the Superior Court of the State of Washington in and for King County  
Suraj Pinto v Gregory Vaughn and "Jane Doe" Vaughn; Paola Leone and "Jane Doe" Leone; Leone & Vaughn, DDS, PS, DBA Leone  
& Vaughn Orthodontics; L. Douglas Trimble and "Jane Doe" Trimble.  
Case No. 14-2-23326-4

# APPENDIX C

Medical Records



CHUNG, MALHAS, & MANTEL, PLLC.  
In the Superior Court of the State of Washington in and for King County

## Suraj Pinto

<b>Address:</b> 15127 NE 24th St. #560 Redmond, WA 98052	<b>Patient ID:</b> 31004 Medical	<b>Model Box:</b> <b>Date/Time:</b> <b>Appt Type:</b>
<b>Birthdate:</b> 3/23/73 <b>Age:</b> 40 yrs, 6 mos <b>Responsible:</b>	<b>Dentist:</b> Ron Bryant Thomas Junge DDS <b>Phone Numbers:</b> Home-(951)233-4522 Work-(425)704-9715	

Diagnosis										Treatment										
The overjet is negative by {-2} mm Code 599R																				
Date	E	AST	DR	COH	L	B	XRA	AWU	AWL	EL	A	PROC	SW	TX	Notes	WKS	Next	Notes	Next	
08/19/11	V	CY	V	GG	No	No		17x25 SS	17x25 SS	none	419	PT		Place Surgical Hooks on AW between U1's and L1's, Ganglie U7-7 and L7-7.						
08/26/11	C	LK			No	No								Dr. Trimble called to let us know that pt's surgery went well						
09/20/11	C	PL			No	No								surgery completed is on 4 weeks post op.						
10/12/11	C	TRF			No	No								Pt had to discuss his concerns RE his SX with Dr. Trimble. Pt states that all his jaw SX may have been done wrong, and he's still feeling towards Dr. Trimble. He's most concerned by just addressing the problem but not preventing it from becoming a bigger problem. Pt had a good appointment with Dr. Trimble yesterday and he relayed his concern about a patient possibly being situated to not relay Suraj's concerns to Dr. Trimble and those concerns were not addressed. Pt is generally happy. Dr. Ande next call to evaluate pt's surgery was done correctly. Dr. Ande said Dr. Trimble did a good job in making the alignment the midline was going to be off. Instead, Pt states he feels the bite is created extra bit and that the teeth are not in a good bite. Dr. Ande also says will discuss his concerns with Dr. Trimble at the pt's appointment with us tomorrow and work like he did to see Dr. Trimble ASAP. Pt also had the surgical questions answered directly. Pt still is very swollen. Pt will be able to cool down his lips to down to one week. Pt said that his what was shown in the hospital. Dr. Ande said that some of the swelling possibly can contribute to being able to have a full range of motion. Dr. Trimble advised pt to discontinue elastic wear. Dr. Ande will talk to Dr. Trimble as to why. Dr. Ande states that the motion movements as walk as elastic wear can have and align teeth. Pt is OPEN TO SURGERY again if that is necessary, he just wants the best result possible. All questions answered. RTG tomorrow 602						
10/13/11	V	rc	V/L	GG	No	No		17x25 SS	17x25 SS		602	pt		AW (1-2) did not remove any gang tie or surgical hooks. pt is not concern about bite or anything else, Pt is very unhappy about Midline, pt feels like his midline is shifted						

PINTO 000025

**Suraj Pinto**

**Address:** 15127 NE 24th St. #560  
Redmond, WA 98052  
**Patient ID:** 31004  
**Medical**  
**Model Box:**  
**Date/Time:**  
**Appt Type:**  
**Birthdate:** 3/23/73  
**Age:** 40 yrs, 6 mos  
**Responsible**  
**Dentist:** Ron Bryant Thomas Junge DDS  
**Phone Numbers:** Home-(951)233-4522  
Work-(425)704-9715

**Diagnosis** **Treatment**

The overjet is negative by {-2} mm  
Code 5998  
Date E AST DR COH L B XRA AWU AWL EL A PROC SW TX Notes WKS Next Notes Next

My concerns that I mentioned in Oct 2011 still remain.  
None of my concerns have been answered.  
My letter dated Dec 7th has not been replied to.

I keep hearing from your staff and now you, just continue orthodontic treatment. How about answering my concerns first.  
I did speak with Laura a few days after the Jan 30th email and I've said the same.  
I have spoken to Tracy in December, Joan in Oct & Nov, Chanthavy & Khadra in Oct at time of taking impressions. I have told them the same, I won't schedule until I get the answers to my concerns.

I am following the treatment plan that you prescribed and guaranteed, over-ruling me (and as you know there is more).  
I have mentioned my concerns to Dr. Leone and you, and you both examined me.  
I did not have any of these issues before and they are not minor issues.  
Just continuing orthodontics without any of my concerns being answered is not acceptable to me.

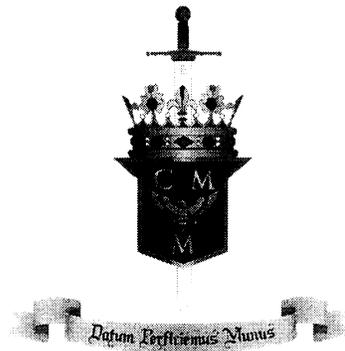
I have been to other doctors.  
I am taking their opinions & advice.  
I would not like to give a partial update. I have mentioned my concerns.  
I will give an complete update with supporting documentation at the earliest when I have it.

Sincerely,  
Suraj Pinto

Suraj Pinto v Gregory Vaughn and “Jane Doe” Vaughn; Paola Leone and “Jane Doe” Leone; Leone & Vaughn, DDS, PS, DBA Leone & Vaughn Orthodontics; L. Douglas Trimble and “Jane Doe” Trimble.  
Case No. 14-2-23326-4

# APPENDIX D

Declaration of Suraj Pinto



CHUNG, MALHAS, & MANTEL, PLLC.

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**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY**

**SURAJ PINTO,**

**Plaintiff,**

**v.**

**GREGORY VAUGHN and "JANE DOE"  
VAUGHN; PAOLA LEONE and "JOHN  
DOE" LEONE; LEONE & VAUGHN,  
DDS, DOUGLAS TRIMBLE and "JANE  
DOE" TRIMBLE,,**

**Defendants.**

**No. 14-2-23326-4 SEA**

**DECLARATION OF SURAJ PINTO**

**I, SURAJ PINTO, declare as follows:**

My orthodontist work began with Dr. Alice Sun, D.D.S, who set a dental plan to correct my teeth with simple orthodontic work to my upper palette requiring no invasive procedures, or surgery. This was ideal for me since I was never looking for perfect results, but rather dental work to correct the minor overcrowding of my top teeth.



1           When I was living in Van Nuys California, I saw Dr. Sun for all of my orthodontic work. I had  
2 crowding of my upper teeth, but my lower teeth were relatively straight and had no major issues. I began  
3 orthodontic work with Dr. Sun in 2006. She expanded my upper palette and created space for my upper  
4 teeth. Things were progressing smoothly and in July 2007, Dr. Sun put braces on me. In July 2008, my teeth  
5 were in place, all of my facial midlines were symmetrical and all I had to do was finish my orthodontic  
6 follow-ups. I was happy with the way I looked and the results that Dr. Sun had accomplished.  
7

8  
9           It wasn't until I moved and transferred to Leon & Vaughn, D.D.S., orthodontists that my basic  
10 orthodontic treatment turned into major dental surgery, with the removal of bone, cutting of my jaw, and  
11 results that caused me to have permanent facial and profile deformities, breathing issues, sleep apnea, bad  
12 bite, horrible esthetic outcome and TMJ issues.  
13

14  
15           I moved to Washington State for my career in 2008 and had to find a new orthodontist to  
16 finish my dental work. When I came to Leon & Vaughn I told them where Dr. Sun had left off and that I  
17 only needed follow-up orthodontic work to finish Dr. Sun's dental plan. After I explained to Dr. Vaughn  
18 what I wanted out of my dental plan, I signed a contract on September 18, 2008 agreeing to proceed with  
19 my orthodontic work through him. My dental chart notes upon signing never mentioned any other dental  
20 concerns including maxillary hypoplasia (small upper jaw), mandibular hypoplasia (small lower jaw),  
21 negative overjet (under bite), no crowding of teeth or any jaw discrepancy. In fact, on arrival to Dr. Leon  
22 and Vaughn's office my x-rays showed that my teeth were nearly finished and only my upper teeth needed  
23 to be slightly pushed forward so my upper teeth would lay over my bottom teeth nicely, *see, Exhibit A,*  
24 attached hereto and incorporate by reference.  
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1           During September 2008 I agreed to do five-teeth wilkodontics on my upper teeth only. I was told  
2 my edge-to-edge teeth could be resolved with a simple wilkodontics procedure for five-teeth. The goal was  
3 to poke holes in my gums to move my upper front teeth forward a bit. I was not happy about this procedure  
4 as it involved poking holes in gums to stimulate quick bone growth. Dr. Vaughn assured me this was an  
5 easy and non-invasive way to move my teeth. During this time, Dr. Vaughn was performing orthodontic  
6 work and began pulling my upper teeth back with bands. I assumed this was the standard procedure prior to  
7 my wilkodontics treatment.  
8

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10           My last procedure before wilkodontics was done, I received a voice mail from Leon & Vaughn's  
11 office asking me to do jaw surgery or full mouth wilkodontics. This came as a surprise to me since I  
12 believed my dental treatment was nearing an end. I called the front desk back and I declined both jaw  
13 surgery and full mouth wilkodontics and asked what the reasons were for this change. The office  
14 receptionists just told me I would have to meet with the doctor to address my concerns. Interestingly, I later  
15 discovered by looking in my chart notes that it was documented that I had a retrognathic condition called  
16 overjet, also known as an under-bite. This is significant because I came to Leon & Vaughn to slightly move  
17 my top teeth forward, not have my teeth recline.  
18

19           When I spoke to Dr. Vaughn on my next appointment, he told me about about the orthognathic  
20 procedure that would provide me with fantastic results while avoiding the term jaw or surgery the entire  
21 consult. I refused to have my lower mouth affected and I declined a full mouth wilkodontics. Dr. Vaughn  
22 kept selling the idea that orthgnathic surgery was a miracle procedure and my best option. He described it as  
23 a mid-level outpatient procedure, similar to wilkodontics but with far better results. He also stated that this  
24 procedure had the same recovery time, same out of pocket expenses and no risks or side effects involved.  
25

26           In fact, Dr. Vaughn never mentioned orthognathic surgery was the same thing as jaw surgery which  
27 is something I would never do and already declined to him and his Dental Assistants prior to our visit.  
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1 Based on Dr. Vaughn's misguided description of the procedure and guaranteed results, I followed the  
2 treatment plan. At their request, I was asked to sign a financial contract. There was no change in informed  
3 consent however. I was referred to Dr. Trimble for this orthognathic procedure where Dr. Leon, Dr. Vaughn  
4 and Dr. Trimble all worked together to finish my dental work.  
5

6 I have always been a healthy man and routinely follow up with medical professionals for normal  
7 evaluations. Never have I been diagnosed or had issues with sleep apnea or any other disorder until I began  
8 pre-surgery dental work with Dr. Leon, Dr. Vaughn and Dr. Trimble. Now I currently have stage 4  
9 mallenpatty and considered to have very bad sleep apnea.  
10  
11

12 On Sept 3, 2009 Dr. Trimble extracted my four pre-molars (bi-cuspids) at the request of Dr. Leone  
13 and Dr. Vaughn. After these extractions and orthodontic work started, I began feeling symptoms including  
14 tingling of my hands and feet, but had no idea what to connect them to. Later I began having chest pains,  
15 high pulse rates, shortness of breath and restless nights sleep. My symptoms caused me to see a doctor to  
16 diagnose my condition.  
17  
18

19 I was desperate to find out what was going on with me because it began to affect my ability to  
20 work. The doctor I consulted suspected sleep apnea but never made an official diagnoses. On February  
21 2011, I was ready for the orthognathic procedure and referred to Dr. Trimble. In April 2011, Trimble asked  
22 me my condition so I explained my symptoms and visit to the sleep doctor. Dr. Trimble referred me to Bel-  
23 Red Sleep Diagnostic Center for a sleep study where I was diagnosed to have sleep apnea. *see, Exhibit B,*  
24 attached hereto and incorporate by reference.  
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27 I found it surprising that this condition was not mentioned to me when the orthodontic work was  
28 done since Leon & Vaughn advertise on their website as sleep apnea experts.  
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After my visit to Bel Red had confirmed my sleep apnea condition, I began using a CPAP machine  
designed to send pressurized air to keep my airway open so I can breathe. This however caused me severe



1 discomfort and eventually led me to go to the ER. When I mentioned my condition to Leon & Vaughn they  
2 conveniently referred me to orthognathic surgery again. Dr. Vaughn explained that orthognathic surgery  
3 would solve all my dental problems including this newly diagnosed condition of sleep apnea.  
4

5 Based on Dr. Vaughn's statement to me that orthognathic surgery would resolve everything,  
6 including my disorder of sleep apnea, I believed this was my only option. My surgery was scheduled for  
7 August 24, 2011 and sometime early August I made all my payments. On August 16, 2011 I was verbally  
8 told that any nasal congestion or nerve damage were all temporary and not permanent, however that was not  
9 the case. I was also never made aware that a bone graft would be needed or that my jaws would be cut.  
10 Instead, the information that I was given was this procedure would produce miracle results. At this point my  
11 sleep apnea was affecting my daily life and I just wanted it resolved.  
12

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15 After surgery I mentioned all of my concerns to Dr. Trimble who told me I am a victim of Leon &  
16 Vaughn. He did not elaborate on why. Even worse, the results that Leon & Vaughn promised never  
17 happened. In fact, post-surgery from Dr. Trimble my condition is worse than before surgery to the point I  
18 saw two more sleep study clinics and doctors, *see, Exhibit C*, attached hereto and incorporate by reference.  
19

20 My treatment plan began as simple orthodontic work that was nearly complete to full on jaw  
21 surgery, bone grafting, and skeletal manipulation. I now not only have a sever condition of sleep apnea as a  
22 result of my airway being obstructed, I will never again have the same profile or look the same since my  
23 entire jaw has been moved and my life span may have been decreased due to this life changing diagnosis of  
24 sleep apnea. Furthermore, I have to deal with the life-long side effects, and possible future complications of  
25 this surgery.  
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*I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that I signed this declaration on this 1st day of June, 2015 in the state of Washington.*



\_\_\_\_\_  
Suraj Pinto



In the Superior Court of the State of Washington in and for King County  
Suraj Pinto v Gregory Vaughn and "Jane Doe" Vaughn; Paola Leone and "Jane Doe" Leone; Leone & Vaughn, DDS, PS, DBA Leone  
& Vaughn Orthodontics; L. Douglas Trimble and "Jane Doe" Trimble.  
Case No. 14-2-23326-4

# APPENDIX E

Declaration of Jay Grossman



CHUNG, MALHAS, & MANTEL, PLLC.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

SURAJ PINTO,

Plaintiff,

Case No. 14-2-23326-4 SEA

v.

GREGORY VAUGHN and "Jane Doe"  
VAUGHN; PAOLA LEONE and "Jane Doe"  
LEONE; LEONE & VAUGHN, DDS, P.S., dba  
Leone & Vaughn Orthodontics; L. DOUGLAS  
TRIMBLE and "Jane Doe" TRIMBLE,

Defendants.

DECLARATION OF  
JAY S. GROSSMAN, DDS

I, Jay S. Grossman, DDS and declare as follows:

I Jay S. Grossman, DDS and a licensed Dentist in the State of California and the Nevada and have reviewed dental records related to the above captioned matter. Based on my review, I have prepared a dental report that provides that on a more probable than not basis Leon & Vaughn, DDS P.S. contributed to the cause of Mr. Suraj Pinto's injuries. Attached hercto as **Exhibit A** and incorporated herein by reference is a true and correct copy of the dental report I prepared for Mr. Pinto.

*I declare under penalty of perjury under the laws of the state of Washington that foregoing is true and correct and that I signed this declaration on this 27 day of May 2015 in Brentwood, California.*

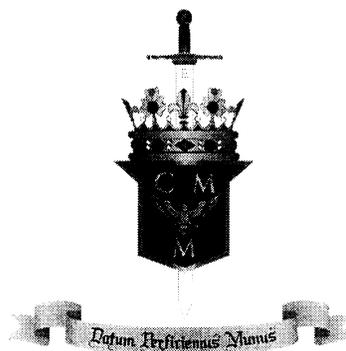
  
\_\_\_\_\_  
Jay Grossman, DDS



In the Superior Court of the State of Washington in and for King County  
Suraj Pinto v Gregory Vaughn and “Jane Doe” Vaughn; Paola Leone and “Jane Doe” Leone; Leone & Vaughn, DDS, PS, DBA Leone  
& Vaughn Orthodontics; L. Douglas Trimble and “Jane Doe” Trimble.  
Case No. 14-2-23326-4

# APPENDIX F

Medical Report of Jay Grossman



CHUNG, MALHAS, & MANTEL, PLLC.

In the Superior Court of the State of Washington in and for King County  
*Suraj Pinto v. Gregory Vaughn, Paola Leone & Douglas L. Trimble*  
Case No. 14-2-23326-4 SEA:

# EXHIBIT A

Dental Review & Report by Dr. Jay Grossman



CHUNG, MALHAS, & MANTEL, PLLC.

To Whom It May Concern:

Re: Suraj Pinto

DOL 8/24/11 – Dr. L.D. Trimble did the surgery

I was asked to review records on Mr. Suraj Pinto and offer an opinion as to the possibility of mal-practice.

The Plaintiff's chief complaints are:

- No informed consent regarding the 2-jaw surgery
- Sleep apnea post surgery
- Midline significantly off
- Inability to work (lost wages) due to sleep apnea

The following records were reviewed:

#### **File Folders**

1. Leone and Vaughn (Defendants) chart records
2. Bryant & Junge, Dentist, 2008-2011
3. Grinzberg, Primary Physician, 2010-May 2011
4. Stanley Chen – Pre-Surgery Sleep Study, April 2011-June 2014
5. Audia – O.S., October 2011-April 2012
6. Dudetsky MD, November 2011-December 2011
7. Thomas Knipe, ENT, December 2011-January 2012
8. Dr. Herford, Oral Maxillofacial Surgeon, 2012

9. Susan Park, General Dentist, February 2012-December 2012
10. Katan Tiwari, Cardiologist, March 2012
11. Delmer Henninger – Post-Surgery Sleep Study, March 2012
12. Gerard Carvalho, ENT, March 2012-May 2012
13. Dr. Mathias Internal Medicine, Lab/Blood Tests, March 2012-May 2012
14. Craig Murakami, ENT, April 2012
15. Yamashita Oral Maxillofacial Surgeon, April 2012-September 2012
16. Dr. Mobilia, General Dentist, 6 Color 8x11 Photos, September 2012
17. Dr. Susan Roche, Oral Pain Management, January 2013
18. Dr. Peter, General Dentist, May 2013
19. Lyndon Low Orthodontist
20. Trimble X-Rays
21. Photos
22. Dr. Trimble, Pinto's Med Recs & X-Rays
23. PA Ceph X-Rays
  - 4 Ceph's, 10.17.11 x2
  - 12.06.12 x2
  - CD, CT Scan, 12.02.11
  - CD, Pre Op, 04.04.11
  - CD, CT Scan 2013

## Review of Records

1. Leone and Vaughn (Defendants) chart records
  - a. 9/9/08 first visit, edge to edge bite,
  - b. 9/18/08 signed contract, photos pano ceph
  - c. 10/29/08 pt starts ortho tx, discussed  
Wilkodontics on the UPPER only
  - d. 1/12/09 "pt wants to look good but not necessary  
to be perfect"
  - e. 1/15/09 pt does not want to do jaw surgery
  - f. 1/20/09 pt would like midline moved to the left
    - i. midline was very close to center PRE op, yet  
it was moved to the right
  - g. 7/9/09 pt approved for orthognathic surgery
  - h. 10/12/11 pt here to discuss his concerns, feels as  
if his jaw surgery may have been done wrong
  - i. pt states that Dr. Trimble did tell him that in order  
to align chin the midline was going to be off ½  
tooth, yet plaintiff claims this was NOT disclosed  
to him although it is in the notes
  - j. 9 color photos dated 9/9/08 (full wires on)
  - k. 9 color photos dated 9/18/08 (wired removed)
  - l. ceph 2008 x 2
  - m.pano 2008
  - n. progress pano 2010
  - o. pre-surgery pano 2011
2. Bryant & Junge, Prosthodontics, 2008-2011
  - a. 9/19/08 – first visit, referred from Leone & Vaughn
  - b. 2/15/12 phone call with orthodontist, who state  
that he has not been in for treatment since August

2011 and Dr Leone is concerned that the patient has not appointed after jaw surgery when critical post surgical adjustments should have taking place.

3. Grinzberg, Primary Physician, 2010-May 2011

a. Advanced Family Medicine PLLC

b. Ltr dated August 16, 2011 – “Mr. Pinto has a diagnosis of obstructive sleep apnea and one of the objectives of surgery is to improve/cure is OSA”

i. This is a letter written by Dr. Trimble (the oral surgeon who performed the surgery) and not primary physician Dr. Grinberg.

4. Stanley Chen – Pre-Surgery Sleep Study

a. Report dated April 27, 2011, diagnosed with obstructive sleep apnea that has substantially improved with the CPAP – signed by Dr Rodney Johnson of Bel-Red Sleep Diagnostic Center

5. Audia – O.S

a. 10/17/11 first pre-op visis

b. 4/18/12 “I still have sleep apnea”, states that the midline is “on” center, pt still has mal occlusion and will need ortho post healing from orthognathic surgery

i. the PA Ceph taken on 10/17/2011, shows chin to the right of his skeletal midline. Post surgery he was specifically shown by Dr. Trimble how to put bands on his teeth

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**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY**

**SURAJ PINTO,**

**Plaintiff,**

**v.**

**GREGORY VAUGHN and "JANE DOE"  
VAUGHN; PAOLA LEONE and "JOHN  
DOE" LEONE; LEONE & VAUGHN, DDS,  
DOUGLAS TRIMBLE and "JANE DOE"  
TRIMBLE,,**

**Defendants.**

**No. 14-2-23326-4 SEA**

**DECLARATION OF JAMES C.  
ROCKWELL, MD, FACS**

FILED BY ANTHONY PINTO  
STATE OF WASHINGTON  
2015 JUL 20 PM 4:35

**I, DR. JAMES C. ROCKWELL, declare as follows;**

I am a Washington State licensed Otolaryngology (ear, nose and throat) doctor with more than 30 years experience working and studying patients with sleep apnea. I reviewed the medical records of Mr. Suraj Pinto from 2008 to 2014. The medical and dental records included x-rays, charts, photos, consult records, reports and notes regarding Mr. Pinto's dental work at Leon & Vaughn Orthodontist and oral surgery with Dr. Douglas L. Trimbl. Other documents reviewed include orthognathic surgery operative reports by Dr. Trimble, maxillary LeForte one osteotomy and mandibular bilateral sagittal osteotomy.

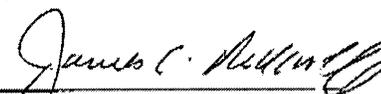


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Based on the records reviewed, there is evidence that the surgery performed on Mr. Suraj Pinto on a more probable than not basis narrowed his airway resulting in Mr. Pinto's sleeping disorder and the alleged damages he is suffering. In my experience, one of the key contributors to patients with sleep disorders and snoring problems are a result from the relative narrowing of the oral cavity/oropharynx, which is why it is called Obstructive Sleep Apnea. After reviewing Mr. Pinto's medical and dental records on a more probable than not basis the retrognathic and orthognathic procedures narrowed Mr. Pinto's airway and affected the alignment in his nasal cavity. Any obstructions in these pathways creates a greater likelihood that a person can develop sleeping and breathing disorders. With respect to Mr. Pinto's orthognathic surgery, it is my opinion that this is not a minor procedure at all but in fact are fairly invasive procedure requiring general anesthesia with surgical fractures of the maxilla and mandible and require post-operative care.

After reviewing Mr. Pinto's medical and dental records in correlation with Mr. Pinto's continued symptoms, it is my medical opinion that the oral surgery performed on Mr. Pinto narrowed his oral cavity and oropharynx causing his progression of sleep apnea symptoms.

*I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that I signed this declaration on this 28<sup>th</sup> day of May, 2015 in the state of Washington.*

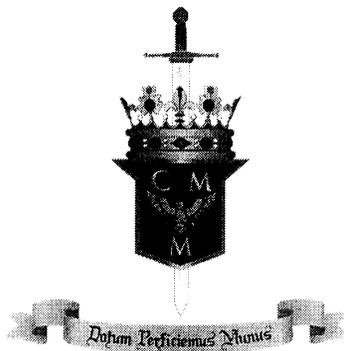
  
James C. Rockwell, MD, FACS



In the Superior Court of the State of Washington in and for King County  
Suraj Pinto v Gregory Vaughn and "Jane Doe" Vaughn; Paola Leone and "Jane Doe" Leone; Leone & Vaughn, DDS, PS, DBA Leone  
& Vaughn Orthodontics; L. Douglas Trimble and "Jane Doe" Trimble.  
Case No. 14-2-23326-4

## APPENDIX G

Declaration of Jason Rockwell, M.D.



CHUNG, MALHAS, & MANTEL, PLLC.  
In the Superior Court of the State of Washington in and for King County