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CASE # \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

Laura Fettig,

Petitioner,

v.

Hilton Worldwide Inc., et al.  
aka Hilton Garden Inns Mgt., LLC

Respondent.

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**PETITION APPENDIX**

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Laura Fettig  
In *Propria Persona*  
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**ORIGINAL**

6

APPENDIX A

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

**COURT OF APPEAL - SECOND DIST.**

DIVISION EIGHT

**FILED**

May 04, 2022

DANIEL P. POTTER, Clerk

5-1-22 Deputy Clerk

LAURA FETTIG,

B307348

Plaintiff and Appellant,

v.

Los Angeles County  
Super. Ct. No. BC596162

HILTON GARDEN INNS  
MANAGEMENT, LLC, et al.,

Defendants and Respondents.

APPEAL from orders of the Superior Court of Los Angeles  
County, Armen Tamzarian, Judge. Affirmed.

Mortimer Law Firm, Thomas F. Mortimer, Jr.; Orland Law  
Group and James J. Orland for Plaintiff and Appellant.

Harmeyer Law Group, Jeff G. Harmeyer and Timothy B.  
Pickett for Defendants and Respondents.

“Duress by a third person” is the legal label for this contract case. Laura Fettig is trying to escape a settlement she put on the record. She claims her trial lawyer forced her to take the deal. But *duress by a third person* cannot void a contract when the other contracting party did not know about the duress and relied in good faith. Fettig settled with defendants who were unaware of the alleged duress. Fettig’s accusation against her lawyer does not enable her to rescind a contract with others innocent of the charge. We affirm.

Fettig alleged a Hilton hotel shuttle bus hit her in 2014. She sued Hilton and the bus driver for a range of injuries. (We refer to the defendants as “Hilton.”) Hilton, on the other hand, maintained its bus never hit Fettig; rather Fettig, angry the driver cut her off, thumped her fist on his bus and faked her maladies.

The case went to trial in February 2020. Fettig rested and, after a lunch recess, the trial lawyers announced a settlement: Hilton would pay \$85,000 for Fettig’s release.

On the record, the trial court asked Fettig if she agreed. Fettig equivocated. The trial court explained Fettig had to reach a definite decision about whether to accept the deal. The back-and-forth continued for 10 pages of transcript, including two recesses for Fettig to confer with her lawyer, Jared Gross.

After the second recess, Fettig said she did not need more time. The court asked if she was sure and said, “Would you like [to] wait overnight to think about it? Not a problem.” Fettig replied, “No, I don’t need overnight, your Honor.” Fettig acquiesced in the \$85,000 settlement. The court excused the jury.

Months later, lawyers other than Gross brought a motion to set aside the settlement. They asserted Gross failed to prepare Fettig's case for trial. The motion accused Gross of subjecting Fettig to duress to accept the settlement. Fettig declared, "Mr. Gross point blank threatened me at the counsel table by saying 'the defense will take your house for costs and I will not remain on the case any further.' Mr. Gross further told me that if I did not settle the case 'he would not be coming back to trial tomorrow.'"

Fettig's motion contended Gross's duress meant the court should rescind the settlement agreement under Civil Code section 1689, which authorizes rescission for duress, and under Code of Civil Procedure section 473, which provides for relief in cases of mistake, inadvertence, surprise, or excusable neglect.

The trial court denied Fettig's motion on June 25, 2020. It found that, when she had agreed to the settlement in open court, Fettig had been neither physically nor mentally incapacitated. The order explained: "During her conversation with the court, Fettig had a relatively calm and composed demeanor, though she clearly had mixed feelings about the settlement and was disappointed she was not receiving more money pursuant to the deal. At times, Fettig spoke with an American accent, in contrast to her accent while testifying in front of the jury. She made eye contact with the court and answered the court's questions coherently. Without hesitation she told the court she was 'capable' of entering into the settlement."

The court found no support for Fettig's claim that a brain injury impaired her capacity to agree. The court ruled Fettig had the capacity to settle her case.

The court held Fettig's allegations about Gross's duress did not support rescission. It cited the Restatement Second of Contracts, as well as *Chan v. Lund* (2010) 188 Cal.App.4th 1159, 1174 (*Chan*). "There is no evidence or even an allegation that [Hilton] or [its] counsel connived with Gross to place Fettig under duress or knew about Gross's alleged threats. . . . [G]iven the relatively weak evidence presented by Fettig on liability, causation, and damages, [Hilton's] offer was reasonable and certainly made in good faith. In the court's view, [Hilton's] offer was generous."

The court also rejected section 473 of the Code of Civil Procedure as a proper basis for relief. It stated it was making "no findings regarding Gross's alleged malpractice. If indeed Gross failed to meet the standard of care for a lawyer, Fettig's remedy is not setting aside the settlement."

Fettig then moved for reconsideration. On August 18, 2020, the court refused to reconsider, in part because Fettig offered no explanation for failing to include her new submissions with her original motion: none of her supposedly "new" facts actually were new. They were merely tardy.

Fettig filed a notice of appeal on August 21, 2020.

We independently review legal questions and defer to factual findings when substantial evidence supports them. (See *Chan, supra*, 188 Cal.App.4th at pp. 1166, 1168–1169.)

The court rightly refused to rescind the contract. It properly applied governing contract law, including the Restatement Second of Contracts.

With our emphasis, the Restatement Second of Contracts provides as follows:

“If a party’s manifestation of assent is induced by one who is not a party to the transaction, the contract is voidable by the victim *unless the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction.*” (Rest.2d Contracts, § 175.)

California follows this provision. (See *Chan, supra*, 188 Cal.App.4th at p. 1174, fn. 18.) Indeed, the Restatement based one of its pertinent illustrations on the California Supreme Court’s decision in *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 205–207. (Rest.2d Contracts, § 175, reporter’s notes to com. e, illus. 11, p. 481.)

Fettig ignores the Restatement rule. So too does she refuse to grapple with the case the trial court cited as its chief precedent: *Chan*. By avoiding mention of *Chan*, Fettig effectively concedes its controlling force.

The trial court was right: Fettig had no grounds for rescinding a contract with parties that had not known about the supposed duress by third person Gross. Hilton materially relied on the settlement: midtrial, it surrendered the possibility of a defense verdict. Throughout the process, Hilton was blameless.

The trial court correctly rejected Fettig’s reliance on section 473 of the Code of Civil Procedure. Fettig sought to use this provision as an end run around the Restatement rule. She cites no case favoring her effort to dress her argument about contractual duress in this camouflage. The trial court rightly refused to put the form of the argument over the substance of the carefully considered Restatement rule, which controls here.

Fettig argues the trial court should have used its “considerable and broad discretion in equity” to rescind her settlement agreement. We review one of the reasons this

argument fails: the trial court did weigh the equities and found the \$85,000 settlement was “generous” to Fettig. The settlement was equitable.

The trial court based its conclusion about equity on first-hand familiarity with the matter. The court found Fettig’s trial theory was enough to get to the jury but was “wafer thin.” “Fettig’s case had serious problems with respect to liability, causation, and damages. Even if Gross had subpoenaed additional witnesses, it is far from clear that Fettig would have achieved a better result than an \$85,000 recovery had the case been tried to verdict. . . . [A]n \$85,000 settlement is not an inequitable result under the facts and circumstances of this case.”

We defer to this evaluation, which was no abuse of discretion. Weaknesses plagued Fettig’s case. The transcript reveals her account of the accident was unclear. Hilton’s cross-examination inflicted further damage. Fettig had little lost income; she was on disability at the time. She offered no medical bills. Fettig claimed the incident caused her to suffer “foreign accent syndrome”: two months afterwards, she began speaking in a foreign accent. Fettig said she had been born and raised in the U.S., but she spoke to the jury in some sort of European accent. When the jury was not there, Fettig’s accent changed.

The trial court’s exercise of discretion was sound.

The court properly denied Fettig’s motion for reconsideration. Such a motion requires new facts, circumstances, or law that, despite reasonable diligence, could not have accompanied the original motion. (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 839.) Fettig did not show diligence. She

offered a raft of factual material, none of which was recent. Fettig's tardy presentation abused the reconsideration process.

Fettig suggests the trial court was biased against her. She cites no legal authority to support her bias claim and has forfeited this issue. (See *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

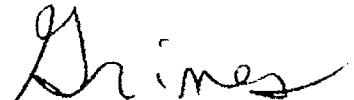
#### DISPOSITION

We affirm the court's orders and award costs to the respondents.



WILEY, J.

We concur:



GRIMES

GRIMES, Acting P. J.



HARUTUNIAN

HARUTUNIAN, J.\*

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\* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

## APPENDIX B

Court of Appeal, Second Appellate District, Division Eight - No. B307348

Jorge Navarrete Cle.

S275007

Deputy

**IN THE SUPREME COURT OF CALIFORNIA****En Banc**

LAURA FETTIG, Plaintiff and Appellant,

v.

HILTON GARDEN INNS MANAGEMENT, LLC, et al., Defendants and Respondents.

The petition for review is denied.

CANTIL-SAKAUYE*Chief Justice*

## APPENDIX C

FILED  
Superior Court of California  
County of Los Angeles

25-2020

Sheri R. Carter, Executive Officer C.  
By *Carter 41*  
Clerk's Hq

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9  
10 FOR THE COUNTY OF LOS ANGELES

11 Laura Fettig, ) Case No. BC596162  
12 Plaintiff, )  
13 v. ) ORDER REGARDING DEFENDANTS'  
14 Hilton Garden Inns Management LLC ) MOTION TO ENFORCE SETTLEMENT  
15 erroneously sued as Hilton Worldwide, ) AND PLAINTIFF'S MOTION TO SET  
16 Inc.) and Madison Brown. ) ASIDE SETTLEMENT  
17 Defendants. )  
18 )  
19 )

20 Defendants Hilton Gardens Inns Management, LLC (Hilton) and Madison Brown  
21 move to enforce a settlement with plaintiff Laura Fettig. Fettig moves to set aside the  
22 settlement. For the reasons stated herein, the court finds the settlement is enforceable  
23 and directs defendants to prepare a proposed judgment.

24 BACKGROUND FACTS

25 This personal injury action arises from an incident that occurred on February 8,  
26 2014. Fettig was a pedestrian. Brown was driving a bus in the course and scope of his  
27 employment with Hilton. Fettig alleges that while she was walking in a crosswalk she  
28 saw the bus coming in the opposite direction. According to Fettig, her next memory is

10a

1       waking up on the ground after losing consciousness. She never saw the bus turn. She  
2       does not remember a collision.

3       Defendants dispute Fettig's version of the accident. They claim that while Brown  
4       was turning the bus around a corner he heard a "thump." He stopped the bus and saw  
5       Fettig standing and screaming at him. Brown never saw Fettig unconscious. According  
6       to Brown, Fettig lied on the ground and waited for an ambulance to take her to the  
7       emergency room.

8       Fettig alleges that defendants' negligence proximately caused her to sustain  
9       numerous injuries, including traumatic brain injury (TBI), spinal injuries, pulmonary  
10       problems, vision problems, dental injuries, and neuropsychological injuries. She further  
11       claims that about two months after the accident she began speaking with a foreign  
12       accent. According to plaintiff, as a result of her TBI, she suffers from Foreign Accent  
13       Syndrome (FAS).

14       Defendants deny Fettig sustained any brain injuries from the accident and  
15       contend that the emergency room records indicate she was not rendered unconscious on  
16       the day of the incident. They further argue sub rosa video shows Fettig does not have  
17       serious back or neck problems and contend that any injuries she does have are mostly  
18       attributable to accidents she had before and after the incident in question or are  
19       degenerative in nature, unrelated to acute trauma.

20       On February 5, 2020, the case was assigned to this department for a 15-day jury  
21       trial. Fettig had 11 individuals on her witness list. The trial, however, only lasted 4  
22       days. Fettig called herself, Brown, and her previous boyfriend Mitchell Rice before  
23       resting. She did not call any physicians or expert witnesses of any kind. No medical  
24       bills or records were admitted into evidence. Although Fettig testified that she was born  
25       and raised in the United States, she spoke with some sort of foreign accent, seemingly  
26       European in origin. Fettig enthusiastically described her alleged FAS. The court  
27  
28

1 observed Fettig smiling, her voice cheerfully rising, and her upbeat body language and  
2 gestures during this testimony.<sup>1</sup>

3 After Fettig rested, defendants moved for nonsuit. The court denied the motion  
4 but noted that it was inclined to preclude the submission of certain claims to the jury.  
5 For example, the court pointed out that Fettig failed to present any expert testimony on  
6 her alleged FAS. The court indicated that because the cause of Fettig's alleged FAS was  
7 beyond the common experience of the jury, it would consider precluding plaintiff from  
8 arguing for an award of damages related to FAS. (See *Stephen v. Ford Motor Co.*  
9 (2005) 134 Cal.App.4th 1363, 1373 ["where, as here, the complexity of the causation is  
10 beyond common experience, expert testimony is required to establish causation"].) At  
11 the court's urging, the parties agreed to begin settlement negotiations.

12 During a meeting between Fettig, Gross, and defendants' counsel, Gross did not  
13 speak except to introduce the parties. Fettig did almost all of the talking. In a composed  
14 and unemotional manner, Fettig discussed the incident, her alleged injuries, and her  
15 feelings toward defendants. She also talked about the value of the case and cogently  
16 argued defendants should increase the settlement amount. After speaking to Hilton,  
17 defendants' counsel increased their offer to \$85,000. Fettig responded by requesting  
18 "free nights at Hilton" in addition to a payment. Hilton rejected that request. Fettig then  
19 indicated, through Gross, that she would settle the case for \$85,000. (Harmeyer Decl. ¶¶  
20 5, 6.)

21 The parties and their attorneys then returned to court, and plaintiff's counsel Jared  
22 Gross announced a settlement. The essential terms of the settlement were (1) Hilton  
23 would pay Fettig \$85,000, (2) Fettig would dismiss the complaint with prejudice, and (3)  
24 the parties would mutually release each other of all claims, known and unknown, and

25  
26  
27  
28  
1 Defendants' counsel Jeff Harmeyer predicted Fettig's enthusiasm during his  
opening statement. He stated that Fettig "really likes the attention she's getting. You  
will see that when she testifies. She will be very happy to be in front of you and have  
your full attention."

1 waive any rights under Civil Code section 1542. When the court asked Fettig whether  
2 she agreed to the settlement, she responded: "I feel bound by not being prepared. I'm  
3 horribly upset because of the needs I have in the future." The court then advised Fettig  
4 that unless she unequivocally agreed, there was no settlement. Fettig and Gross then  
5 again spoke privately.

6 Later, the court, Fettig, Gross, defendants' attorney Jeff Harmeyer, and Brown  
7 had the following discussion:

8 "The Court: Would like us to resume the trial?

9 "Mr. Gross: Your Honor, I would like to get this resolved.

10 "The Court: Ms. Fettig, do you need more time?

11 "Ms. Fettig: No.

12 "The Court: Are you sure you don't need more time? Because we can continue  
13 the trial, and you can have overnight to think about it.

14 "Ms. Fettig: No. I don't make good decisions. My family thinks I should go  
15 ahead with .

16 "Mr. Gross: He's looking for a yes or no.

17 "Mr. Fettig: Okay. I'm sorry. What was the question?

18 "The Court: Would you like to wait overnight to think about it? Not a problem.

19 "Ms. Fettig: No. I don't need overnight. Your Honor.

20 "The Court: Okay. So you're 100 percent sure you want to proceed right now?

21 "Ms. Fettig: Yes.

22 "Mr. Gross: Proceed to trial or proceed with settlement?

23 "The Court: Proceed with settlement. Is that right?

24 "Ms. Fettig: I wish they weren't so stingy.

25 "The Court: I'm not hearing a yes. So if it's not yes, it's not a problem. We  
26 can keep going with the trial. But there are no footnotes. There are no asterisks. Either  
27 you agree or you don't. There's only two decisions. There isn't a third way. I have  
28 reservations. I'm hiding something behind my back, and later I'm going to come and

1 challenge this settlement." There is no coming back. This is a permanent, forever fork  
2 in the road that you can never return from if you want to settle it. If you don't want to  
3 settle it, it's not a problem.

4 "Do you understand that?

5 "Ms. Fettig: Yes Sir.

6 "The Court: Apart from any perceived weaknesses in the evidence you provided,  
7 are you under any duress? Has somebody threatened you, for example?

8 "Ms. Fettig: No, Sir.

9 "The Court: Okay. Did someone promise you a side deal. Or do you understand  
10 these are all the terms, and there are no side deals?

11 "Ms. Fettig: Correct, no one has. Your Honor.

12 "The Court: Do you understand that even if tomorrow or tonight you discover  
13 some claim that you think is related to the incident, you can't go back and make that  
14 claim? You're forever giving up all known and unknown claims.

15 "Do you understand that?

16 "Ms. Fettig: Yes, I understand.

17 "The Court: Okay, Okay. Are you of sound mind? Are you on medication that  
18 would prevent you from making a sound decision right now?

19 "Ms. Fettig: No, I'm not on medication. I have a brain injury which, you know -

20 "The Court: Do you think you're capable of making a decision to resolve this?  
21 Are you capable?

22 "Ms. Fettig: Am I capable? Yes.

23 "The Court: And the terms of the deal are - Let's say them again so there's no  
24 ambiguity.

25 "Mr. Gross: Certainly.

26 "Mr. Harmeyer: I could read into the record what will be on the stipulation by  
27 Hilton.

28 "Mr. Gross: Makes perfect sense.

"Mr. Harmeyer: Defendants Hilton Garden Inn's Management, LLC, and Madison [Brown] agree to pay plaintiff Laura Fettig the total amount of \$85,000 in exchange for dismissal of the entire complaint with prejudice and a mutual general release of any and all claims relating to the complaint and a waiver of Civil Code section 1542. The release will include Madison Brown and all related Hilton entities,

“The court shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement in accordance with Code of Civil Procedure section 664.6.”

"The Court: Okay. And you agree to the form of that settlement, Mr. Gross?"

"Mr. Gross: Yes, Your Honor.

"The Court: And, Ms. Fettig, you had an opportunity to talk to your lawyer – without telling me the contents of your conversation, you had an opportunity to talk to your lawyer about this settlement, true?"

"Ms. Fettig: Yes.

"The Court: Okay, Mr. Brown, I assume you agreed to this deal?"

"Mr. Brown: Yes.

"The Court: Okay. And counsel is representing to me that an authorized representative of Hilton has agreed to this deal; true?

"Mr. Harmeyer: Yes, Your Honor. Jeffrey Barker, who is authorized."

## ANALYSIS

Fettig contends that she agreed to the settlement only after attorney Gross made improper threats. She further argues that she did not provide "valid, unambiguous" consent to the agreement because she was under duress and had physical and mental incapacity. Fettig seeks to rescind the agreement under Civil Code section 1689. Alternatively, Fettig requests the court to set aside the settlement pursuant to Code of Civil Procedure section 473 (section 473).

Defendants move the court to enforce the oral settlement agreement pursuant to Code of Civil Procedure section 664.6 (section 664.6). This statute requires the

1 "parties"—not merely their lawyers—to stipulate in writing or orally before court that  
 2 they have settled the case. (*Levy v. Superior Court* (1995) 10 Cal.4th 578, 585.) "The  
 3 litigants' direct participation tends to ensure that the settlement is the result of their  
 4 mature reflection and deliberate assent." (*Ibid.*) In adjudicating a section 664.6 motion,  
 5 the court acts as the trier of fact, and may consult its memory regarding the testimony.  
 6 (*Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1454.)

7       A.     *Fetig Agreed to the Settlement*

8       A settlement agreement is a contract subject to the law governing contracts.  
 9 (*Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 745.) "Mutual assent or consent is  
 10 necessary to the formation of a contract. [Citations.] Mutual assent is determined under  
 11 an objective standard applied to the outward manifestations or expressions of the parties,  
 12 i.e., the reasonable meaning of their words and acts, and not their unexpressed intentions  
 13 or understandings. [Citations.] Mutual assent is a question of fact." (*Alexander v.*  
 14 *Codemasters Group Lmt.* (2002) 104 Cal.App.4th 129, 141, disapproved on other  
 15 grounds by *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 524.)

16       "‘A manifestation of mutual assent may be made even though neither offer nor  
 17 acceptance can be identified and even though the moment of formation cannot be  
 18 determined.’" (*Bundsen v. Workers’ Comp. Appeals Bd.* (1983) 147 Cal.App.3d 106,  
 19 110.) The manifestation "may be partly written and partly oral statements or acts." (1  
 20 Witkin, *Summary of Cal. Law* (11th ed. 2017) Contracts, § 118, p. 159 (Witkin).) The  
 21 test is whether a reasonable person in the position of the parties would have thought they  
 22 had mutual assent. (*Guzman v. Visalia Community Bank* (1999) 71 Cal.App.4th 1370,  
 23 1376 (*Guzman*)).

24       An acceptance of an offer "is not invalidated by the fact that it is ‘grumbling,’ or  
 25 that the offeree makes some simultaneous ‘request.’ [Citation.] Nevertheless, it must  
 26 appear that the ‘grumble’ does not go so far as to make it doubtful that the expression is  
 27 really one of assent. [Citation.]" (*Guzman, supra*, 71 Cal.App.4th at p. 1376; accord  
 28 Witkin, *supra*, at § 185, pp. 216-217.)

1       Turning to the present case, after reviewing the entire record, including the  
2 February 10 discussion in court quoted above, the court finds that Fettig and defendants  
3 objectively agreed to the settlement. The context of the February 10 discussion is  
4 important. After Fettig rested her case but before defendants began to present evidence,  
5 Fettig actively participated in settlement negotiations. The court repeatedly told Fettig  
6 she had to either settle or proceed with the trial. Although she hesitated and grumbled  
7 that defendants were being stingy, she did not seek to go to trial and acquiesced to  
8 resolving the matter based on the clear terms recited in open court. Fettig responded to  
9 questions by the court that were obviously related to the validity of the settlement—  
10 whether there were any side deals, whether she needed more time, whether she was  
11 under duress, whether she was capable of agreeing, whether she understood she was  
12 forever giving up her claims. Fettig's answers indicated she was ready and able to settle  
13 and that she understood she was doing so. When the parties and their lawyers left the  
14 courtroom on February 10, any reasonable person in their shoes would have believed the  
15 case had settled pursuant to the terms stated in open court and that the parties were not  
16 seeking an adjudication by trial.

17       Fettig's reliance on *Johnson v. Department of Corrections* (1995) 38 Cal.App.4th  
18 1700 (*Johnson*) and *Conservatorship of McElroy* (2002) 104 Cal.App.4th 536 (*McElroy*)  
19 is misplaced. In *Johnson*, the plaintiff never personally informed the court that he  
20 agreed to the settlement. In *McElroy*, one of the parties only vaguely nodded in  
21 agreement. The settlements in *Johnson* and *McElroy* were unenforceable under section  
22 664.6 because there was insufficient assent by the parties themselves. In this case, by  
23 contrast, Fettig actively and directly participated in a discussion that clearly set forth the  
24 settlement terms.

25       B.     *Fettig Was Not Physically or Mentally Incapacitated*

26       Fettig claims that her physical and mental condition at the time she entered into  
27 the settlement rendered her incapable of giving assent. In support of this claim, Fettig  
28 filed her own declaration and the declaration of her friend Pamela French. Fettig stated

1 that her "medical condition" and "ability to concentrate" were "utterly compromised" by  
2 Gross's threats and pressure.<sup>2</sup> French stated that Fettig had a "weak physical, mental  
3 and emotional condition" at the time of the settlement and was "very confused and  
4 upset" on the way home from the courthouse.

5 A person has the legal capacity to enter into a contract if she has the ability to  
6 communicate her wishes and understand and appreciate the terms of the contract.  
7 (Witkin, *supra*, at § 51, pp. 99-100.) The vague statements in Fettig's and French's  
8 declarations regarding Fettig's mental and physical condition are insufficient to show  
9 legal incapacity.<sup>1</sup> Further, the court's own observations of Fettig belie this claim. During  
10 her conversation with the court, Fettig had a relatively calm and composed demeanor,  
11 though she clearly had mixed feelings about the settlement and was disappointed she  
12 was not receiving more money pursuant to the deal. At times, Fettig spoke with an  
13 American accent, in contrast to her accent while testifying in front of the jury. She made  
14 eye contact with the court and answered the court's questions coherently. Without  
15 hesitation she told the court she was "capable" of entering into the settlement.

16 At oral argument Fettig's counsel claimed that her ability to agree to the  
17 settlement was impaired by her TBI. But when the court asked counsel to identify any  
18 evidence in the record regarding plaintiff's alleged TBI, he could point to none because  
19 there is no such evidence. Notably Fettig did not present any expert medical testimony  
20 on the matter at trial or in support of her motion. The court cannot conclude that Fettig  
21 lacked legal capacity to settle the case based on Fettig's unsupported allegation she  
22 suffered from TBI.

23  
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25  
26  
27 Fettig describes in her declaration her various alleged medical conditions, including  
28 TBI. In a separate order, however, the court has sustained defendants' objections to this  
testimony on the grounds it constitutes hearsay and Fettig is not qualified to provide  
medical opinions.

**C. Gross's Alleged "Threats" Do Not Support a Duress Defense or Rescission of the Settlement Agreement**

3        Although Fettig flatly denied in open court that she entered into the settlement  
4 under duress, she now seeks to set aside or rescind the agreement on duress grounds.<sup>3</sup>  
5 Fettig claims that during her private conversations with Gross on February 10, he stated  
6 she must settle the case because he could not subpoena key treating physicians to  
7 impeach the defense expert witnesses or use key medical records in rebuttal. Gross also  
8 allegedly said to Fettig, "the defense will take your house for costs and I will not remain  
9 on the case any further." Gross allegedly further said that he "would not be coming back  
10 to trial tomorrow."

A party's assent to a contract is voidable if it was obtained by duress. Duress consists of unlawful confinement of a person or detention of property or certain kinds of improper threats. (Civ. Code, § 1569; 1 Witkin, *supra*, at §§ 310-314, pp. 328-332.) Of relevance here is a threat that results in economic compulsion. "Under this theory, wrongful acts will support a claim of economic duress when 'a reasonably prudent person subject to such an act may have no reasonable alternative but to succumb when the only other alternative is bankruptcy or financial ruin.' " (*Uniwill v. City of Los Angeles* (2004) 124 Cal.App.4th 537, 545; accord Rest.2d Contracts, § 175, subd. (1).

21 The court has considered whether Fettig is judicially estopped from arguing duress  
22 at this time. The doctrine can be applied when the following elements are present: "(1)  
23 the same party has taken two positions; (2) the positions were taken in judicial or quasi-  
24 judicial administrative proceedings; (3) the party was successful in asserting the first  
25 position (i.e., the tribunal adopted the position or accepted it as true); (4) the two  
26 positions are totally inconsistent; and (5) the first position was not taken as a result of  
27 ignorance, fraud, or mistake." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th  
171, 183.) All of the elements are present here. Assuming Fettig's arguments based on  
duress have merit (they do not), the court exercises its equitable discretion in rejecting  
her claims on the ground she is judicially estopped from pursuing them.

1     [“If a party’s manifestation of assent is induced by an improper threat by the other party  
 2     that leaves the victim no reasonable alternative, the contract is voidable by the victim”].

3     1.     *Did Gross’s “Threats” Amount to Duress?*

4     Contrary to Fettig’s assertion, not all of Gross’s alleged statements were  
 5     “threats.” A reasonable attorney in Gross’s position could have assessed Fettig’s  
 6     chances of obtaining a recovery at trial greater than \$85,000 as unlikely. Brown’s  
 7     testimony about how the accident occurred was credible. Defendants made an offer of  
 8     proof they would call an expert witness to provide uncontradicted testimony that  
 9     defendants’ bus did not hit Fettig. There was a substantial possibility of a defense  
 10     verdict. Even if the jury found defendants negligent to some degree, Fettig presented no  
 11     expert testimony regarding the causal nexus, if any, between the incident in question and  
 12     her alleged injuries. While Gross’s alleged statements about the risk of Fettig paying for  
 13     defendants’ costs were hyperbolic and perhaps unnecessarily heavy handed, Gross  
 14     correctly advised Fettig of a very real risk.

15     Gross’s alleged statements that he would not continue representing Fettig were  
 16     different. As a fiduciary, Gross had an obligation to not abandon his client. Unless  
 17     Fettig agreed, he could not withdraw as her lawyer without permission of the court,  
 18     which was unlikely to be given in the middle of the trial. (Code Civ. Proc., § 284;  
 19     *Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 915.) If Gross indeed raised the issue  
 20     of withdrawal, he should have advised Fettig of the necessity of court approval. Gross’s  
 21     alleged statements, however, do not amount threats sufficient to make the settlement  
 22     agreement voidable. There is no evidence indicating that Fettig had no reasonable  
 23     alternative but to succumb to Gross’s threat that he would stop representing her. Indeed,  
 24     Fettig has presented no evidence regarding her financial condition at the time she  
 25     entered into the settlement or at any other time. Plaintiff thus failed to show that she was  
 26     facing financial ruin if she did not accept the settlement.

1        2.    *Can Fettig Rescind or Set Aside the Settlement Based on Gross's Threats?*

2        Assuming, *arguendo*, Gross's statements amounted to threats causing economic  
3 duress, Fettig has no legal basis to rescind or set aside the settlement agreement. If a  
4 party's assent to a contract is induced by an improper threat "by one who is *not a party*  
5 to the transaction, the contract is voidable by the victim unless the other party to the  
6 transaction in good faith and without reason to know of the duress either gives value or  
7 relies materially on the transaction." (Rest.2d Contracts, § 175, subd. (2), italics added;  
8 accord *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 206 [quoting original Restatement of  
9 Contracts].) A contract may be rescinded "[i]f the consent of the party rescinding . . .  
10 was . . . obtained through duress . . . *exercised by or with the connivance of the party as*  
11 *to whom he rescinds.*" (Civ. Code, § 1689, subd. (b)(1), italics added.)

12        Here, Fettig alleges that her consent was obtained through duress exercised by  
13 Gross, not defendants or their attorneys. There is no evidence or even an allegation that  
14 defendants or their counsel connived with Gross to place Fettig under duress or knew  
15 about Gross's alleged threats. Moreover, defendants gave something of value as part of  
16 the settlement, namely \$85,000. At the time, given the relatively weak evidence  
17 presented by Fettig on liability, causation, and damages, defendants' offer was  
18 reasonable and certainly made in good faith. In the court's view, the offer was generous.

19        In *Chan v. Lund* (2011) 188 Cal.App.4th 1159 (*Chan*), the court rejected the same  
20 argument Fettig makes in this case. There, the plaintiff's attorney threatened on the eve  
21 of trial to withdraw from the case if the plaintiff refused to settle the matter. The court  
22 rejected the plaintiff's claim that he could rescind the contract due duress. The court  
23 reasoned that even if the attorney's threat of withdrawal constituted duress, the plaintiff  
24 "presented no legal grounds for rescission" because the attorney was not a party to the  
25 settlement and did not connive with the defendants to pressure plaintiff. (*Id.* at p. 1174.)

26        *Chan* is directly on point: Even assuming Fettig's consent to the settlement was  
27 obtained through duress caused by Gross's conduct, Fettig has presented no legal ground  
28 for rescission.

D. *Fettig is Not Entitled to Relief Under Section 473*

Fettig seeks to set aside the settlement agreement pursuant to section 473 on the ground Jared Gross negligently failed to prepare for trial. She argues that “[r]elief under Section 473 based on an attorney’s affidavit of fault is mandatory where no part of the fault is shown (as here) to be attributable to the attorney’s clients.”

Section 473, subdivision (b) includes provisions for both mandatory and discretionary relief. The mandatory provision states: “[T]he court *shall*, whenever an application for relief is made no more than six months after the entry of judgment, is in proper form, and is accompanied by attorney’s sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney’s mistake, inadvertence, surprise, or neglect.” (§ 473, subd. (b), italics added.)

Fettig cannot obtain relief under the mandatory provision of section 473 for at least two reasons. The first is that the provision only relates to defaults and certain kinds of dismissals. (*Jackson v. Kaiser Foundation Hospitals, Inc.* (2019) 32 Cal.App.5th 166, 173 (*Jackson*)). The present motion relates to a settlement agreement. Additionally, Fettig failed to provide an affidavit by Gross “attesting to his . . . neglect.” This omission precludes Fettig from obtaining mandatory relief under the statute.

Section 473 also provides that the “court *may*, upon any terms as may be just, relieve a party or his or her legal representative from a judgement, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Code Civ. Proc., § 473, subd. (b), italics added.) Fettig cannot obtain relief under this discretionary provision because she seeks to set aside an agreement, not a “judgment, dismissal, order, or other proceeding taken against” her.

Gross’s alleged malpractice, moreover, is not a legal basis for discretionary section 473 relief. A party generally cannot obtain discretionary relief under section 473

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 1. This argument is improper because it was not raised in *Feltig's* moving papers. The court has discretion to disregard arguments raised for the first time in a reply brief because such arguments usually deprive the opposing party of an opportunity to address them. (West, et al., *Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2020)).

2. This argument is improper because it was not raised in *Feltig's* moving papers. The court is chargeable with the negligence of his attorney, and that his address, if any, is against the attorney. (*Watkinson, supra*, 17 Cal.App.2d at p. 644.) It is a general rule that a client failed to meet the standard of care for a lawyer. *Feltig's* remedy is not settling aside the settlement agreement made "orally, before the court" is enforceable.

3. The court makes no findings regarding Cross's alleged malpractice. If indeed Cross because it was not reduced to writing. Under the plain text of section 664.6, however, a settlement agreement made "orally, before the court" is enforceable.

In her reply brief *Feltig* argues that the court should set aside the settlement

#### Reduced to Writing

##### E. The Oral Settlement Agreement is Binding Even Though It Was Not

denies *Feltig* relief under section 473, subdivision (b).  
 predictable result under the facts and circumstances of this case. The court therefore predicitng what would have happened is impossible. An \$83,000 settlement is not an better result than an \$83,000 recovery had the case been tried to verdict. While a subpoenaed additional witnesses, it is far from clear that *Feltig* would have achieved a problems with respect to liability, causation, and damages. Even if Cross had "unreasonably low" and "undervalued" settlement amount, *Feltig's* case had serious Additionally, the court rejects *Feltig's* assertion that \$83,000 was an

#### 174. Internal quotes omitted.)

evince the concept of attorney malpractice." (*Jackson, supra*, 32 Cal.App.3d at p. "would eliminate the express statutory requirement of excusability and effectively alone, usually warrant relief under section 473" (*Watkinson*).<sup>4</sup> Any rule to the contrary that an attorney does not make a skillful presentation of a client's case will not, standing (*Jackson, supra*, 32 Cal.App.3d at p. 174; *Watkinson v. Croll* (1953)) "the mere fact

based on an attorney's conduct that falls below the professional standard of care.

1 Fettig's reliance on *Keithley v. Civil Service Bd.* (1970) 11 Cal.App.3d 443  
2 (*Keithley*) is unpersuasive. The issue in *Keithley* was whether there was substantial  
3 evidence to support an administrative board's finding that a police department coerced a  
4 police officer into resigning his position. The Court of Appeal held that the trial court  
5 erred in its determination that there was no such substantial evidence. The facts and  
6 circumstances of the present case are distinguishable. Unlike the police officer in  
7 *Keithley*, Fettig has not shown that she was under economic duress or other coercion  
8 when she agreed to settle the case. Moreover, unlike the police department in *Keithley*,  
9 defendants Hilton and Brown engaged in no coercive conduct or other wrongdoing in  
10 connection to the settlement. *Keithley* thus lends no support to Fettig's position.

## DISPOSITION

Plaintiff Laura Fettig's motion to set aside settlement is denied.

13 The motion of defendants Hilton Garden Inns Management LLC (erroneously  
14 sued as Hilton Worldwide, Inc.) and Madison Brown to enforee settlement is granted.

IT IS SO ORDERED

Date: June 25, 2020

Armen Tainzarian  
JUDGE OF THE SUPERIOR COURT

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES****Civil Division**

Northeast District, Alhambra Courthouse, Department NE3

**BC596162****LAURA FETTIG VS HILTON WORLDWIDE INC ET AL**June 25, 2020  
8:30 AM

Judge: Honorable Armen Tamzarian  
Judicial Assistant: C. Ho  
Courtroom Assistant: None

CSR: J. Hong-Elsey #11975  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

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For Plaintiff(s): Thomas Mortimer, Esq.; James Orland, Esq.  
For Defendant(s): Timothy Barnes Pickett, Esq.

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**NATURE OF PROCEEDINGS:** Hearing on Motion to Compel Enforcement of Settlement Agreement; Order to Show Cause Re: Dismissal (Settlement)

The matter is called for hearing.

Arguments are made by both sides.

The Court takes the matter under submission.

The OSC Re: dismissal is discharged.

Later:

Having reviewed all documents and oral arguments, the Court rules as follows:

Plaintiff's motion to set aside settlement is denied.

Defendants' motion to enforce settlement is granted.

The order is signed and filed this date, and incorporated herein by reference.

Order to Show Cause Re: judgment/dismissal is scheduled for 08/20/2020 at 08:30 AM in Department NE3 at Alhambra Courthouse.

If a request for dismissal/judgment is filed before the above said date, the Order to Show Cause Re: Judgment/Dismissal is off-calendar/discharged, and no appearances are necessary.

Clerk is to give notice. Certificate of Mailing is attached.

## APPENDIX D

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FILED  
Superior Court of California  
County of Los Angeles

AUG 18 2020

Sheriff R. Owyer, Executive Officer/Clerk  
By \_\_\_\_\_  
Cecilia Ho \_\_\_\_\_ Deputy

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

Laura Fettig, Plaintiff, v. Hilton Garden Inns Management LLC (erroneously sued as Hilton Worldwide, Inc.) and Madison Brown, Defendants. Case No. BC596162 ORDER REGARDING PLAINTIFF LAURA FITTIG'S MOTION FOR RECONSIDERATION Date: August 18, 2020

On February 10, 2020, plaintiff Laura Fettig and defendants Hilton Gardens Inns Management, LLC (Hilton) and Madison Brown entered into a settlement in open court. Subsequently Fettig moved to set aside the settlement and Hilton and Brown moved to enforce it. On June 25, 2020, after holding a hearing, the court entered an order denying plaintiff's motion and granting defendants' motion to enforce the settlement. Fettig now moves for the court to reconsider and vacate that order.

The court may only grant a motion for reconsideration if the moving party shows by affidavit that there are "new or different facts, circumstances, or law." (Code Civ. Proc., § 1008, subd. (a).) A party seeking reconsideration based on alleged new or

1 different facts "must provide not only new evidence but also a satisfactory explanation  
2 for the failure to produce that evidence at an earlier time." (Mink v. Superior Court  
3 (1992) 2 Cal.App.4th 1338, 1343.) The legislative purpose of this "diligence  
4 requirement" is to reduce the number of reconsideration motions that burden the courts  
5 and to provide incentive to the parties to expeditiously marshal their evidence. (Baldwin  
6 v. Home Savings of America (1997) 59 Cal.App.4th 1192, 1199 (Baldwin).) This  
7 diligence requirement is jurisdictional. (Code Civ. Proc., § 1008, subd. (e); Baldwin, at p  
8 1200; Gilberd v. AC Transit (1995) 32 Cal.App.4th 1494, 1499.)

9 In the present case, Fettig's motion for reconsideration is based on the declarations  
10 of Terrence M. Hammer, M.D., Jan H. Merman, M.D., William G. Buxton, M.D., and  
11 attorney Thomas F. Mortimer, Jr. Doctors Hammer, Merman and Buxton state that they  
12 are physicians who have "treated and observed" Fettig "in the past." Doctors Merman  
13 and Hammer also review certain documents prepared by other health care professionals,  
14 namely Dr. George Rederich (neurologist), Dale S. Sherman, Ph.D. (neuropsychologist),  
15 and "emergency room personnel" at Little Company of Mary Medical Center in  
16 Torrance. Doctors Hammer and Merman conclude by stating the "cognitive impairment  
17 displayed by Ms. Fettig's mTBI [mild traumatic brain injury] and shown in Dr.  
18 Sherman's neuropsychological findings affects the executive decision making center and  
19 would have impaired Ms. Fettig's ability to consent to a legal settlement, particularly  
20 while under pressure or duress." Dr. Buxton opined that plaintiff's "sleep apnea and  
21 sleep disturbance and post-traumatic distress would be expected to affect her brain and  
22 cognitive function, including her ability to concentrate, her memory and attention span."

23 Attorney Mortimer attaches to his declaration "true and correct copies" of some of  
24 plaintiff's medical records, including documents prepared by Dr. Rederich and Dr.  
25 Sherman. Mr. Mortimer does not explain why these records and the declarations of  
26 doctors Hammer, Merman, and Buxton were not presented on or prior to the June 25,  
27 2020 hearing on the parties' competing motions regarding settlement.

1 Plaintiff Laura Fettig has failed to satisfy the jurisdictional diligence requirement  
2 of a motion for reconsideration. The affidavits she filed do not provide a satisfactory  
3 explanation--indeed any explanation-- for her failure to timely provide evidence of the  
4 new or different facts upon which she relies. This failure is fatal to Fettig's motion.

5 Fettig's motion also fails on the merits. In its June 25, 2020 order, the court  
6 found, *inter alia*, (1) Fettig agreed to the settlement; (2) Fettig failed to show she lacked  
7 the mental capacity needed to enter into a contract; (3) the alleged threats of Fettig's  
8 former attorney, Jared Gross, did not support a duress defense or rescission of the  
9 settlement; (4) Fettig was judicially estopped from making a duress argument; and (5)  
10 the settlement could not be set aside pursuant to Code of Civil Procedure section 473. In  
11 the present motion, Fettig only seeks a reconsideration of her incapacity argument and  
12 makes no arguments with respect to the court's other findings.

13 Fettig has presented no admissible, persuasive evidence that she lacked the  
14 mental capacity to enter into a settlement on February 10, 2020. The medical records  
15 attached to Mr. Mortimer's declaration constitute inadmissible hearsay and cannot be  
16 used to prove the truth of the matters stated therein. (Evid. Code, § 1200.) The records,  
17 moreover, pertain to examinations of Fettig in 2014 and 2018, and do not relate to her  
18 mental status and capacity to enter into a settlement in 2020. In any case, the records do  
19 not even establish that Fettig lacked the capacity to enter into a settlement agreement in  
20 2014 or 2018. For example, Dr. Rederich's report dated April 18, 2014, states the  
21 following: "*Mental Status*: Characteristics of speech, attention, concentration, and  
22 judgment are normal." (Mortimer Decl. Exh. B.)

23 Likewise, Dr. Buxton's declaration does not state when he last observed or  
24 treated plaintiff or otherwise provide any foundation for his purported knowledge of  
25 plaintiff's mental capacity *on the date she entered into the settlement*. Without this  
26 foundation, Dr. Buxton's opinion does not support an incapacity argument. (*Shaffer v.*  
27 *CBS Corp.* (2015) 240 Cal.App.4th 246, 253 ("An expert's opinion is only as good as  
28 the facts on which it is built").)

1 Dr. Hammer's and Dr. Merman's conclusions stand on two pillars. The first is  
2 their personal observation and treatment of Fettig. These physicians do not, however,  
3 disclose the date(s), purpose or nature of their observation and treatment. By failing to  
4 provide this information, they fail to lay a foundation for their knowledge of Fettig's  
5 mental capacity on the relevant date. Dr. Hammer and Dr. Merman also base their  
6 conclusions on their review of Fettig's 2014 and 2018 medical records. As explained,  
7 however, these records do not support a claim of incapacity on the date of the settlement.  
8 Dr. Hammer's and Dr. Merman's declarations therefore do not constitute admissible  
9 persuasive evidence supporting Fettig's incapacity claim.

10 The declarations of doctors Hammer, Merman, Buxton fall short for an additional  
11 reason. Instead of describing in detail the nature and extent of Fettig's purported mental  
12 incapacity to contract, Dr. Hammer and Dr. Merman vaguely opine that Fettig's injury  
13 "would have impaired" her "ability to consent to a legal settlement." Dr. Buxton offers  
14 no opinion on plaintiff's mental capacity to enter into a contract, and instead merely  
15 claims her sleep condition "would be expected to affect her brain and cognitive  
16 function." Whether a person with impaired mental ability has the requisite mental  
17 capacity to consent to a settlement agreement is a fact specific analysis, wherein the  
18 court must consider overlapping statutes, multiple factors, and the complexity of the  
19 decision being made. (*In re Marriage of Greenway* (2013) 217 Cal.App.4th 628, 639-  
20 642; Prob. Code §§ 811, 812; Civ. Code §§ 38, 39, 1557.) A deficit of mental functions  
21 does not, by itself, render a person incapable to contract, unless it "significantly impairs  
22 the person's ability to understand and appreciate the consequences of" the contract.  
23 (Prob. Code, § 811, subd. (b).) Fettig has not shown that she satisfied this standard.

24 In determining whether Fettig's alleged mild traumatic brain injury (concussion)  
25 in 2014 significantly impaired her ability to understand and appreciate the consequences  
26 of entering into the settlement agreement in 2020, the court examined the totality of  
27 circumstances. Among other factors, the court considered Fettig's lucid responses to the  
28 court's questions regarding the settlement, Fettig's coherent testimony before the jury,

1 the court's observation of Fettig's demeanor, the time that lapsed between Fettig's  
2 alleged injury and the date of the settlement agreement, Fettig's conduct during  
3 settlement negotiations, and the content of the medical records plaintiff's medical  
4 experts rely upon.

5 At oral argument on this motion plaintiff's counsel asserted the "transcript" of the  
6 February 10, 2020, hearing showed plaintiff was unable to coherently respond to the  
7 court's questions. The court need not rely solely on the transcript because it observed  
8 this testimony in person, including plaintiff's tone of voice, facial expression, and  
9 cadence of speech. What the court observed was not confusion, but indecision and  
10 disappointment. Although plaintiff was unhappy with the settlement and hesitated  
11 before finally agreeing to it, she knew what it meant to settle the case with finality. That  
12 is why she struggled with her decision.

13 The ambiguous and conclusory statements in the declarations of doctors Hammer,  
14 Merman, and Buxton are insufficient to persuade the court that Fettig lacked mental  
15 capacity to enter into the settlement agreement. Plaintiff Laura Fettig's motion for  
16 reconsideration is denied.

17  
18 IT IS SO ORDERED  
19

20 Date: August 18, 2020

21   
22 Armen Tamzarian  
23 JUDGE OF THE SUPERIOR COURT

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES****Civil Division**

Northeast Courthouse, Alhambra Courthouse, Department NE3

**BC596162****LAURA FETTIG VS HILTON WORLDWIDE INC ET AL****August 18, 2020  
1:30 PM**

Judge: Honorable Armen Tigranian  
Judicial Assistant: C. Ho  
Courtroom Assistant: None

CSR: S. Guerra #10977 via LACC  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): Thomas M. Murriner, Esq.; James Orland, Esq. via LACC

For Defendant(s): Timothy Barnes Pickett, Esq. via LACC

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**NATURE OF PROCEEDINGS:** Hearing on Motion for Reconsideration

The matter is called for hearing.

Arguments are made by both sides.

The Court takes the matter under submission.

Later:

Having considered all documents and arguments from counsel the Court rules as follows:

The Motion for Reconsideration filed by Laura Fettig on 07/10/2020 is Denied.

The order is signed and filed this date, and incorporated herein by reference.

On the Court's own motion, the Order to Show Cause Re: judgment/dismissal scheduled for 08/20/2020 is advanced to this date and continued to 10/16/2020 at 08:30 AM in Department NE3 at Alhambra Courthouse.

Clerk is to give notice. Certificate of Mailing is attached.

## APPENDIX E

## CONSTITUTIONAL AND STATUTORY PROVISIONS

**United States Constitution, Amendment XIV § 1**

...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**49 United States Code (U.S.C.) § 13906(a)(1)**

The security must be sufficient to pay... for each final judgment against the registrant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles,

**49 U.S.C. 14501(c)(2)(A)**

(a) Motor Carriers of Passengers (1) Limitation on state law. 2) Matters not covered (A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

**Code of Federal Regulations § 387.303(b)(1) - Security for the protection of the public.**

Motor carriers are required to have security for the required minimum limits as follows:  
(ii) Passenger carriers. (A) Any vehicle with a seating capacity of 16 passengers or more (including the driver) - Minimum limits \$5,000,000. (B) Any vehicle designed or used to transport 15 passengers or less (including the driver) for compensation -Minimum limits of 1,500,000.

**28 U.S.C. - Federal Rules of Civil Procedure Rule 60(b)(1)**

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (6) any other reason that justifies relief.

**Cal. Const. Article VI, §13**

No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

**Cal. Const. Article VI, §14**

The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person. Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated.

**Cal. Ins. Code Section 22**

Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event.

**Cal. Ins. Code § 790.03 (h)(2)**

(h) Knowingly committing or performing with such frequency as to indicate a general business practice any of the following unfair claims settlement practices: (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies. (5) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. (7) Attempting to settle a claim by an insured for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application.

**Cal. Vehicle Code § 17150**

Every owner of a motor vehicle is liable and responsible for...injury to person or property resulting from a negligent or wrongful act... in the operation of the motor vehicle, in the business of the owner or otherwise, by any person using or operating the same with the permission, express or implied, of the owner.

**Cal. Vehicle Code § 21950**

- (a) The driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this chapter.
- (c) The driver of a vehicle approaching a pedestrian within any marked or unmarked crosswalk shall exercise all due care and shall reduce the speed of the vehicle or take any other action relating to the operation of the vehicle as necessary to safeguard the safety of the pedestrian.
- (d) Subdivision (b) does not relieve a driver of a vehicle from the duty of exercising due care for the safety of any pedestrian within any marked crosswalk or within any unmarked crosswalk at an intersection.

**Cal. Vehicle Code Section § 34630(a)**

A motor carrier permit shall not be granted to any motor carrier of property until there is filed with the department proof of financial responsibility...

**Cal. Vehicle Code § 34631.5. (a)(1)**

Every motor carrier of property...shall provide adequate protection against liability imposed by law upon those carriers for the payment of damages...not less than...\$750,000 on account of bodily injuries to, or death of, one or more persons...

**Cal. Civil Code § 39**

- (b) A rebuttable presumption affecting the burden of proof that a person is of unsound mind shall exist for purposes of this section if the person is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

**Cal. Civil Code 1431.2**

- (b) (1) For purposes of this section, the term "economic damages" means objectively verifiable monetary losses including medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, loss of employment and loss of business or employment opportunities. (2) For the purposes of this section, the term "non-economic damages" means subjective, non-monetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation.

**Cal. Civil Code, § 1572**

Actual fraud, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto,

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact.
4. A promise made without any intention of performing it; or,
5. Any other act fitted to deceive

**Cal. Civil Code, § 1575**

Undue influence consists: 1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him; 2. In taking an unfair advantage of another's weakness of mind; or, 3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

**Cal. Civil Code, § 1636**

A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

**Cal. Civil Code, § 1638**

The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

**Cal. Civil Code, § 1670.5**

(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract. (b) When it is claimed or appears to the court that the contract may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

### **Cal. Civil Code § 1689**

(b) A party to a contract may rescind the contract in the following cases:

- (1) If the consent of the party rescinding... was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds...
- (5) If the contract is unlawful for causes which do not appear in its terms or conditions, and the parties are not equally at fault.
- (6) If the public interest will be prejudiced by permitting the contract to stand.
- (7) Under the circumstances provided for in Section 39.

### **Cal. Civil Code, § 3281**

Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages.

### **Cal. Civil Code, § 3283**

Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future.

### **California Civil Code, § 3333**

For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

### **Code of Civil Procedure § 128**

(a) Every court shall have the power to do all of the following: (3) To provide for the orderly conduct of proceedings before it, or its officers. (6) To compel the attendance of persons to testify in an action or proceeding pending (8) To amend and control its process and orders so as to make them conform to law and justice. An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement

**Code of Civil Procedure § 473 (b)**

(b) The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.

**Code of Civil Procedure § 575.1**

(a) ...proposed local rules designed to expedite and facilitate the business of the court. ...may provide for the supervision and judicial management of actions from the date they are filed.

**Code of Civil Procedure § 575.2**

(a) Local rules promulgated pursuant to Section 575.1 may provide that if any counsel, fails to comply with any of the requirements thereof, the court on motion of a party or on its own motion ... may order that his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees. (b) It is the intent of the Legislature that if a failure to comply with these rules is the responsibility of counsel and not of the party, any penalty shall be imposed on counsel and shall not adversely affect the party's cause of action or defense thereto.

**Cal. Code of Civ. Proc. § 598**

The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order.

**Code of Civil Procedure § 664.6**

If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

**Standards of Judicial Admin. 2.20 Trial Mgt.**

(a) The trial judge has the responsibility to manage the trial proceedings. The judge should take appropriate action to ensure that all parties are prepared to proceed, the trial commences as scheduled, all parties have a fair opportunity to present evidence, and the trial proceeds to conclusion without unnecessary interruption. When the trial involves a jury, the trial judge should manage proceedings with particular emphasis on the needs of the jury.

**CA Rules of Court, Rule 3.1332(c)**

"The unavailability of an essential expert witness due to illness maybe an indication of good cause;" (rule 3.1332(d)(3) "[t]he length of the continuance requested"; (rule 3.1332(d)(4), "[t]he availability of alternative means to address the problem that gave rise to the motion or application for a continuance"; (rule 3.1332(d)(5)) "[t]he prejudice that parties or witnesses will suffer as a result of the continuance"; and rule 3.1332(d) (10) "[w]hether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance."

**California Rules of Court 5.125**

(b) Submission of proposed order after hearing to the court Within 10 days of the court hearing, the party ordered to prepare the proposed order must: (1) Serve order to other party for approval, (c) Other party approves or rejects order (1) Within 20 days, the other party reviews order to determine if accurately reflects orders made by the court and: (A) Approve by signing; or (B) State objections to the proposed order and prepare an alternate proposed order. (2) the party ordered to prepare the proposed order must submit the proposed order to the court and must include: (A) The date the proposed order was served on the other party; (B) The other party's reasons for not approving the proposed order, if known; (C) The date and results of any attempts to meet and confer, if relevant; and (D) A request that the court sign the proposed order.

**Evidence Code 1271**

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if: (a) The writing was made in the regular course of a business; (b) The writing was made at or near the time of the act, condition, or event; (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

**Restatement Second of Contracts § 175**

(2): If a party's manifestation of assent is induced by one who is not a party to the transaction, the contract is voidable by the victim unless the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction.

## APPENDIX F

## PROCEEDINGS

In sum from writ: The Honorable Judge Rizk, makes a favorable petitioner CCP 598 ruling. The defense file two non-participation motions against petitioner attorney (Gross) who fails to file her evidence or subpoena witness. Gross requested a CRC continuance pre-trial, at the start of trial and when petitioner's expert physician was not available. He was denied. Trial continues with Fettig insisting on taking the stand after lunch after hearing the court state he has no medical bills. An offer comes in five minutes before being due back in court and Gross changes his position to you must settle. He announces a settlement that Fettig does not agree to at any time...

The Court requests the essential terms of the settlement, then asks, "Ms. Fettig, do you agree to those terms?" Fettig replies, "*I feel bound by not being prepared. I'm horribly upset because of future needs.* Failing to assent 18 more times, she states "will I really have my day in court" and "we are not prepared." The court fails to address her concerns, calling them "footnotes and asterisks", (omitted and less important). With the jury waiting, the Court rules on nonsuit motion, stating, "*There is enough liability, although wafer thin. She was in a crosswalk. She got close to the middle. The bus turned left across the crosswalk. She went unconscious, and the bus driver heard a thump.*"

"I don't see any evidence to support a special verdict question regarding medical expenses or loss of earnings." Gross offers 800 and 500 (per month) wage loss as per Fettig's testimony (CT 189: 3-5). Simple calculations find the average at 725 month =  $x 12 = 8700 \times 7 \text{ years (2014-2020)} = 60,900$ . Other income of child support  $1301 \times 12 = 15,612$  a year, to date of trial  $\times 7 = 109,284$ , adding to lost wages of 170,184 to date. With medical bills totaling over 220,000, seizure medicine prescription costs 982 per month, where 'settlement' amount would cover the costs for 86 months or 7.21 years. Plaintiff had these figures in her binder at trial, but her memory failed her.

The trial court breaks from questioning Fettig, who can not answer to settle, and favorably ruled against the defense non-suit motion.

The Court states, "Apart from any perceived weakness in the evidence you provided, are you under duress? Gross tells Fettig, she cannot submit any evidence and writes a letter that he will not take fees and costs, if she settles, and will not appear tomorrow if she does not. The court cuts her off as she's explaining she has a brain injury and asks if she is capable..."

Plaintiff noticed her attorney for rescission the following day. Two days later, the defense prepared Notice of OSC Re: Dismissal (Settlement), indicating pursuant to Ca. Rules of Court Rule 3.1312 the defendants as the prevailing party.

Plaintiff filed ex-parte for motion to rescind with two new attorneys, 25 days later, pursuant to CCP § 473's standard of equity; attorney mistakes; lack of being represented by an attorney; deprivation of trial on merits; extrinsic mistake; and, Civil Code § 1689, consent "by mistake" or duress, fraud, or undue influence; and, also

§1636, noticing no mutual intention was formed and CCP 664.6 lack of non-ambiguous consent. Plaintiff was denied ex-parte relief with order to file the same and for the defense to file motion to enforce agreement forthwith." The court stated he had a feeling this would happen.

Plaintiff summarizes her medically diagnosed catastrophic injuries, accounting for economic and non-economic damages she seeks recovery for. Factors explaining her vulnerability to undue influence that moved her cognitive ability out of homeostasis at trial were addressed, i.e., Her expert physician 'cancelling'; judge's refusal to grant continuances; offer to settle at lunch with five minutes until due in court; new allegations from Gross that she cannot offer her medical bills, reports or bring witnesses; attorney Gross's berating and pressuring her, all while the judge is questioning her. One of two credible witnesses testified Fettig lost her composure, physically shook, was confused and unintelligible.

Plaintiff argues CCP 664.6 failings. She restates instances in the transcript where the court found no voluntary and mutual assent to a settlement and suggest getting something written. She asks the court to rescind the abrupt settlement due to undue influence as in Keithley v. Civil Service Bd. (1970) 11 Cal.App.3d 433, as cited in Chan; where no agreement was signed per Gauss v. GAF Corp. (200) 103 Cal.App.4th 1110 and Hernandez v Schaefer Ambulance Serv. L.A.S.C Case. No. BC45175; and she did not give clear and valid unambiguous consent with a settlement and dismissal. See e.g. *Johnson v. Department of Corrections* (1995) 38 Cal.App.4th 1700

The defense filed their motion to enforce per CCP 664.6 with transcript reading of the stipulation and will comply with the terms upon court order and entry of judgment accordingly. The defense opposition to her motion to rescind, claims Fettig in control of the settlement negotiations based on a mistaken meeting resulting in harmful hearsay that she was calm and composed and in control and told them to increase the settlement amount. They rely on CCP 664.6, absent a defect in the settlement, and clear and unambiguous pursuant to CCP 664.6.

The defense claim plaintiff did not argue the defense contributed the undue influence that CCP 1689; that CCP 473 must be taken against the attorney, and that Leeper v Beltrami (1959) fail and that Chan v. Lund should be precedent. They claim they were prepared for trial and expended tens of thousands of dollars in attorney fees and expert costs and countless hours.

The defense were granted the enforcement. To date, no value has been given to petitioner.

Judge Tamzarian Court Order Regarding Defendants' Motion to Enforce Settlement and Plaintiff Motion To Set Aside Settlement. June 25, 2020.

The trial court Order is itself problematic. It states defense was ordered to prepare a proposed judgment, yet was signed by the judge on the same day as the hearing. (See Cal. Rule 5.125 App 36a)

The Court states, "Plaintiff seeks to rescind under Civil Code § 1689 and CCP § 473. "Defendants move to enforce the oral settlement pursuant to CCP § 664.6 requiring "parties" - not merely their lawyers- to stipulate in writing or orally before the court that they have settled the case." Levy v. Superior Court (1995). The Court misses plaintiff's relief request per CCP § 664.6 for unambiguous assent.

The Order finds, "Fettig agreed to the Settlement, subject to the law governing contracts; with mutual assent; all objectively agreed to the settlement; and although she hesitated and grumbled, she did not seek to go to trial and acquiesced (accept reluctantly but without protest)..."

The Court falsely states, "Fettig was not physically or mentally incapacitated," finding, "Fettig and French's declarations that her mental and physical conditions did not show legal incapacity" and the Court's own observations belie this claim. The Court ignores plaintiff's pleading of her medically diagnosed catastrophic injuries, contained in her complaint, accounting for economic and non-economic damages she seeks recovery for. Factors explaining her vulnerability to undue influence that moved her cognitive ability out of homeostasis at trial were addressed, i.e., Her expert physician 'canceling'; judge's refusal to grant continuances; offer to settle at lunch with five minutes until due in court; new allegations from Gross that she cannot offer her medical bills, reports or bring witnesses; attorney Gross's berating and pressuring her, all while the judge is questioning her. One of two credible witnesses testified Fettig lost her composure, physically shook, was confused and unintelligible and another seeing her crying.

The Court denies Fettig has evidence of TBI in her records or was impaired by her 'alleged' TBI," where her March 18, 2019 pleadings contain evidence of her Brain Scan showing traumatic vessel changes in the brain, also correlating to her speech impediment; a comparison of spinal injuries; and, current stated medical bills exceeding 220,000.

The Court makes the defamatory statement, "at times she spoke with an American accent in contrast to her accent in front of the jury." (See on Speech Impediment below)

The Court denies §473 discretionary relief because she is not seeking relief from judgment and plaintiff's attorneys mistakes were not excusable, with a malpractice action more suitable, per Jackson, *supra*, 174; and, "It is a general rule that a client is chargeable with the negligence of his attorney, and his redress, if any, is against that attorney". *Vartanian v. Croll* (1953) 117 Cal.App.2d at p. 644.

Finally, the Court misapplies Keithley's holding to dismiss Fettig's reliance on *Keithley v. Civil Service Bd.* (1970) The Court ignores Keithley's proper standard of review this court failed to apply.

In his final Disposition, the Court's order is to deny plaintiff Fettig's motion to set aside the settlement and to grant defendants motion to enforce the settlement.

Plaintiff Motioned to Reconsider the above Order of rescission was denied. Aug. 18, 2020.

The Order was also signed by the judge on the same day as the hearing. (See Cal. Rule 5.125 App 36a)

The Court finds Fettig has not satisfied the standard of a mental deficit impairing her ability to contract based on *In re Marriage of Greenway* (2013) 217 Cal.App.4th 628, 639. 642; Prob. Code Sections 811 & 812; Civ. Code Sections 38, 39, 1557. However, Greenway actually supports the petitioner's position, where the husband contemplated his decision for 30 years, Fettig was given five minutes before she was due in court. In Greenway, the court found the mental capacity to enter a contract is at the highest end of the scale, such as in Fettig's case. Generally, "All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights." (Civ.Code, § 1556.) Civil Code Section 39(b) also supports Fettig's position where a person can be found to be of unsound mind "if the person is unable to resist fraud or undue influence." The defense validate that plaintiff has already been unable to resist fraud and undue influence in another court case (CT 237 fn1) and she can attest to other times.

Probate Code 811 states that the criteria for determining if a person lacks capacity to make a decision must be supported by evidence of a deficit in at least one of the following mental functions and the deficit and decision in question are correlated. The functions are: 1) Alertness and attention. Fettig was crying and not able to protect herself with presenting bills in her notebook, her attorney gave to defense totaling over 220,000. 2) Information processing. Fettig stated I don't know what to do; I have a brain injury; not able to directly say no to the judge or take overnight when her attorney pressured her to decide now. 3) Thought processes. Totally relying on her attorney that she has no other alternative than settlement. Thinking resolve meant admission of her evidence. 4) Ability to modulate mood and affect. Fettig was witnesses crying, shaking, loose composure, uncontrollably shake and appear confused when questioned by judge.

The plaintiff appealed the denial for relief and was denied as in the Published Decision below which simply upholds the trial court.

On Fettig's Speech Impairment:

In Sentence Process by McCarthy, Warrington, in *Cognitive Neuropsychology*, 1990. Dynamic Aphasia.

Prosody: Patients may show a deficit in producing the appropriate melody of speech, termed expressive dysprosody. In the absence of variation in pitch or timing, the patient's speech may give the listener the impression of being "computer generated." In other cases timing, pitch, and volume abnormalities may combine together to sound as if the patient is speaking with a "foreign accent (see also Chapter 9)." This syndrome was first convincingly described in a single case (Astrid L.) by Monrad-Krohn (1947). Her speech was characterised by a "broken foreign accent" and a "completely changed

melody of accent." Monrad-Krohn commented that the change in her accent was difficult to describe: "Her melody of language could not be said to be constant; it varied somewhat from time to time. But she never had the natural Norwegian accent when she had to link several words together into a sentence.... Interestingly enough he noted that her musical abilities were normal. Her sense of rhythm was good, and when the examiner hummed she joined in and could continue correctly both as to time and tune. She was never heard to sing a false note or hum out of tune. Indeed it was because of her intact musical abilities that Monrad-Krohn coined the term dysprosody. Fettig speaks with Ellen Spencer, who is on TV explaining she sings in her mind to take away the accent for a time. Fettig notices when she cries, or raises her pitch, her accent can be minimal.

Several studies on impairments at linking several words together; single word levels; prosodic impairments including impressionistic descriptions of spontaneous speech; and, detailed acoustic analyses of pitch and timing have shown an unexpectedly high incidence of deficits in patients with cerebral lesions.

<https://www.sciencedirect.com/topics/neuroscience/dysprosody>

DEPOSITION OF GREGORY HALL, taken by the Defendants

NORMAN SCHALL & ASSOCIATES 1 the south crosswalk of 98th Street. 2 A. Yes. 3 Q. You've testified about the measurements you took 4 at the scene. The call was received at 9:31 a.m. 5 A. Yes. 6 Q. And you arrived at 10:10? 7 A. Yes. 8 Q. Is that an unusually long response? 9 A. No. It's probably a non coded call. I was 10 working West LA division. So I was probably in West LA. 11 At 9:30 in the morning, it was probably pretty heavy 12 traffic on the 405. That's how I would normally get 13 there. So that's probably a pretty good response 14 actually. 15 Q. You say a non coded call. What does that mean? 16 A. Okay. So if -- non coded call -- well, you know 17 what? Honestly, I don't know what code this call is 18 because I don't have a printout. But a non coded call is 19 going to be no emergency response necessary. Code two 20 call is go straight there but still not emergency. A code 21 three call would have been lights and sirens. 22 Again, I probably misspoke there. I don't know 23 if it was a non coded call. Based on the time that it 24 took me to get there, I can't -- honestly, I can't tell 25 you much without a printout; however, I'm assigned -- when <i>(Priority 1: Not Alert / Fainting)</i>	Page 21	NORMAN SCHALL & ASSOCIATES 1 crosswalk. 2 Q. If there had been a good samaritan here rendering 3 aid to the pedestrian, would you have noted that in your 4 report? 5 A. Yes. Well, correction. Sometimes I think -- so 6 only if they witnessed the collision. If someone -- all 7 of the these collisions -- someone shows up later, they 8 don't see things -- we're only going to document witness 9 statements. So I have no recollection of who was at scene 10 when I got there. 11 Our protocol is we're going to identify the 12 parties and witnesses. If people didn't witness what 13 occurred, then we're not going to take their statement. 14 Q. So it's possible there was a good samaritan, but 15 he wouldn't have seen the accident. So you wouldn't have 16 noted it. 17 A. Right. I have no -- I have no idea who was 18 there. So but no one identified themselves as a witness, 19 or I would have taken the statement. 20 MR. WEISBERG: I don't have any further 21 questions. 22 MR. SCOTT: I just have a couple questions. 23 /// 24 /// 25 ///	Page 23
NORMAN SCHALL & ASSOCIATES 1 we have rollcall, we're assigned to the entire west side 2 of Los Angeles. So assigned to West LA, but it's 3 possible -- I don't know what call I was handling before 4 this. I could have been in Hollywood and had to respond. 5 So that's not an unusually long time, though. 6 Q. Do you remember if the paramedics were on scene 7 when you arrived? 8 A. I don't -- I don't recall that. 9 Q. So where does your report indicate the parties' 10 statements? 11 A. That's what they -- that's a paraphrase of what 12 they told me occurred. 13 Q. Can you tell me what they -- summarize what you 14 wrote? 15 A. Yes. The driver of the vehicle said he was 16 westbound on 98th Street, making a left turn onto 17 southbound Airport Boulevard. He had a green light. No 18 traffic was coming eastbound towards him in his direction. 19 He was making his turn when he saw pedestrian P2 westbound 20 98th Street in a south crosswalk. He hit P2 with the left 21 rear side of his shuttle bus as he was completing his 22 turn. 23 Q. What was your conclusion regarding the cause of 24 the accident? 25 A. Failure to yield for a pedestrian crossing in the	Page 22	NORMAN SCHALL & ASSOCIATES 1 EXAMINATION 2 BY MR. SCOTT: 3 Q. Officer Hall -- and it's Greg Hall; right? 4 A. Yes. 5 Q. My name is Kyle Scott. As I told you, I'm the 6 attorney representing Laura Fettig in this matter. 7 Looking at your area of impact -- 8 A. Yes. 9 Q. -- on -- is it Page 3? Page 4. 10 So the area of impact is stated as what? 11 A. 15 feet south of the south curb of 98th Street 12 and 35 feet east of the west curb of Airport Boulevard. 13 Q. And was that area within the marked crosswalk? 14 A. Yes. 15 Q. And in terms of Airport Boulevard, from the west 16 curb to the east curb, do you know what distance that is? 17 A. Oh, I -- I don't know. 18 Q. In terms of the number of lanes for Airport 19 Boulevard, is there an indication whether it's two lanes 20 north and south or more than that? 21 A. No. I -- I don't know right now. I mean I'm not 22 going to guess, but I -- I believe it's -- it's more than 23 one lane each direction. But I don't know how many there 24 are. I don't know if it's four or five or six. 25 Q. So in terms of that area of impact being 35 feet	Page 24

NORMAN SCHALL & ASSOCIATES 1 one is the PAB building; but you say that to most people, 2 they're not going to know what that means. 3 BY MR. SCOTT:	Page 29	NORMAN SCHALL & ASSOCIATES 1 other than the statements. There was no physical evidence 2 to determine which way the pedestrian was crossing the 3 road. So the violation is the same either way. The cause 4 is going to be the same either way. I just went with the 5 <u>driver because he basically said "Yeah, she was in the</u> 6 <u>crosswalk crossing, and I hit her."</u> He said he was going 7 westbound. She said she was going eastbound. There's no 8 way I could have figured that out.	Page 31
4 Q. Okay. 5 A. PAB, Police Administrative Building. Parker 6 Center is closed down. You won't be sent to the wrong 7 place.			
8 Q. Okay. 9 A. It's 100 West First Street. 10 Q. We've got the address. We've got your phone 11 number.			
12 Any plans to be out of the country in late March 13 or early April? 14 A. No.			
15 MR. SCOTT: All right. I don't have any further 16 questions. 17 MR. WEISBERG: Let's go off the record for a 18 moment.			
19 (Discussion held off the record.) 20 MR. WEISBERG: Let's enter into a stipulation 21 under which the original deposition will be sent to 22 Officer Hall at the address he provided. He will have two 23 weeks to review it; and within that two-week period, he 24 will advise us of any corrections, sign it under penalty 25 of perjury, and return it to our office. We'll include a			
NORMAN SCHALL & ASSOCIATES 1 self-addressed, stamped envelope for that purpose. We 2 will maintain custody of the original.	Page 30	NORMAN SCHALL & ASSOCIATES 1 STATE OF CALIFORNIA } ss. 2 COUNTY OF _____ }	Page 32
3 The court reporter will be relieved of her 4 statutory duty to do that, and we will lodge the 5 deposition with the court on demand. Should the original 6 become unavailable or should we not lodge it, a certified 7 copy may be used in lieu thereof for all purposes.		4 I, <u>GREGORY HALL</u> , say I have read the foregoing 5 deposition and declare under penalty of perjury that my 6 answers as indicated are true and correct.	
8 MR. SCOTT: So agreed. And I'll take a copy, and 9 I'm giving the Reporter my card.		7 8 9 (Date)	
10 (Discussion held off the record.) 11 THE WITNESS: So in my collision summary, I put 12 that V1 was westbound 98 Street to southbound Airport 13 Boulevard, collided with P2 westbound south crosswalk at 14 98th Street. There's a discrepancy between the parties' 15 statements about which direction the pedestrian was going. 16 The pedestrian says she was eastbound on 98th Street in 17 the south crosswalk where the driver of the vehicle 18 believes she was going westbound 98th Street.		10 11 12 (Signature) 13 14 15 16 17 18 19 20 21 22 23 24 25	
19 I'm pretty sure that I went with westbound just 20 because the cause of the collision doesn't change 21 whichever way she's walking. <u>So I went with the statement</u> 22 <u>of P1 because, based on his statement, he's admitted to</u> 23 <u>the violation of failing to yield to a pedestrian in a</u> 24 <u>crosswalk.</u>			
25 So I didn't come to that conclusion by anything			

1 BY MR. SCOTT:

2 Q So when you were speaking to the police officer  
3 after he arrived at the scene, what did you tell him your  
4 shuttle bus had hit?

5 A I just told him the lady, she was standing in the  
6 street. I assumed that it was the lady.

7 Q So when you spoke to the officer, you assumed that  
8 you had hit the lady?

9 A Yes.

10 Q Is there any reason that you still don't assume  
11 that you hit the lady?

12 A No.

13 Q Okay. Did you ever speak to the L.A. Fire  
14 Department personnel on the scene?

15 A No.

16 Q Okay. Did you see L.A. Fire Department personnel  
17 on the scene?

18 A Yes.

19 Q Okay. Do you know who they spoke to at the scene,  
20 the L.A. Fire Department personnel?

21 A No.

22 Q Okay. Do you know who told the L.A. Fire  
23 Department personnel that the patient was struck by an LAX  
24 shuttle bus in the crosswalk?

25 A No.

## NARRATIVE/SUPPLEMENTAL

CHP 556 (Rev 7-90) OPI 042

DATE OF INCIDENT/OCCURRENCE 02/08/14		TIME(2400) 0925	NCIC NUMBER 1942	OFFICER I.D. NUMBER 38897	NUMBER 14-14-06812
<input checked="" type="checkbox"/> ONE <input checked="" type="checkbox"/> X Narrative <input type="checkbox"/> Supplemental		<input checked="" type="checkbox"/> ONE <input checked="" type="checkbox"/> X Collision Report <input type="checkbox"/> Other:	TYPE SUPPLEMENTAL (If APPLICABLE) <input type="checkbox"/> BA update <input type="checkbox"/> Fatal <input type="checkbox"/> Hazardous materials <input type="checkbox"/> School bus <input type="checkbox"/> Hit and run update <input type="checkbox"/> Other:		
CITY/COUNTY/JUDICIAL DISTRICT Los Angeles / Los Angeles / Los Angeles			REPORTING DISTRICT/BEAT 1488/8TL35		CITATION NUMBER
Location 98 <sup>th</sup> St/ Airport Bl			STATE HIGHWAY RELATED <input checked="" type="checkbox"/> Yes		<input checked="" type="checkbox"/> No

Cause:

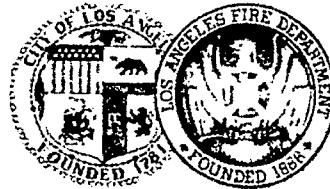
P-1 driving V-1 failed to yield for a pedestrian crossing in the crosswalk in violation of 21950(a) VC. This caused V-1 to collide with P-2.

Statements:

P-1 explained to me that he was driving w/b 98<sup>th</sup> St making a left turn to s/b Airport Bl. He had a green light and no traffic was coming e/b on 98<sup>th</sup> St. He was making his turn when he saw P-2 w/b 98<sup>th</sup> St in the south crosswalk. He hit P-2 with the left rear of his shuttle bus as he was completing his turn.

P-2 explained to me that she was walking e/b 98<sup>th</sup> St in the south crosswalk crossing Airport Bl. She had a white man signaling that she could cross the street. As she was about halfway across the street, V-1 hit her. She did not recall which way V-1 was traveling.

PREPARER'S NAME AND I.D. NUMBER Hall, G. 38897	DATE 02/08/14	REVIEWER'S NAME	DATE
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EMS Record Feb. 8 2014 911 Call

O: Fire Department Paramedic and Operator 25. What is the address of the emergency?  
A: It's airport blvd. And 98th St. and its in the middle of the street in the intersection. A lady got hit.  
O: Okay, Airport and what?  
A: A lady got hit by a a a van.  
O: I heard that. Airport and what?  
A: I'm sorry, airport and 98th St.  
O: And the phone number you are calling from, sir, what is that?  
A: [REDACTED]  
O: Are you there with the patient now?  
A: Yeah, I'm just standing by looking on.  
O: And estimate her age please. How old do you think she is? How old do you think she is sir?  
A: Um 40.  
O: 40. And is she awake.  
A: Yeah  
O: And is she breathing?  
A: Yeah  
O: And so it was a pedestrian hit by a car?  
A: Hit by a van, a, a...  
O: Yeah, uh and is anyone pinned or trapped?  
A: No  
O: Okay, does everyone appear to be completely awake and alert?  
A: Yeah.  
O: Are there any obvious injuries you are seeing, blood, broken bones?  
A: Um, could be because she fell down.  
O: Okay, alright. And is she still in the street?  
A: Yes, she's laying there in the street. They're over her. Three people are over her, kind of.  
O: And is she safe from oncoming traffic at this point?  
A: Yes, she is.  
O: Okay, alright. We don't want to move her, unless she's in any danger. Don't splint any injuries. Don't give her anything to eat or drink, okay? Um, just tell her to be still and wait for help. If it turns out that she is in danger of oncoming traffic, we need to find some way to protect her, either by turning the emergency flashers on in the vehicle or carefully moving her out of the street. But we don't want to move her unless we have to. Okay?  
A: Okay. Will do.  
O: Okay. Help is on the way. We'll be there shortly, just a moment. Okay, LAPD is on the line.  
O: Okay. 425 and your incident? 1461. Okay, I'm 25, my incident's 375. Do you need to talk to him? Uh, sir, is the van still there?  
A: Uh, no. He just pulled over to the side. He's there. He hasn't left. He's an employee of Hilton Honors. But, we have her in the street. She's a...  
O: Okay. Okay. Let's just make sure, make sure she's protected from oncoming traffic. Okay, I'm sorry, I'm going to drop out PD. Thank you sir. Bye.

Attachment(s)

DocRef: 180605002CR95815

Superior Court of California  
County of Los Angeles  
Spring Street, Department 2

FILED  
Superior Court of California  
County of Los Angeles  
DEC 13 2018  
Sherri R. Carter, Executive Officer/Clerk  
By Beth J. Jauregui, Deputy

Fettig, Plaintiff(s),  
v.  
Hilton Worldwide, Inc., et al.,  
Defendant(s).

Case No.: BCS96162

Hearing Date: 12/13/18

**RULING RE:**

Defendants' Motion to Bifurcate Trial

Defendants' Motion to Bifurcate Trial, filed on 11/19/18, is DENIED. Cal. Code Civil Procedure §598. Defendant has not established that bifurcation would promote the ends of justice or the economy and efficiency of handling the litigation.

Bifurcation is appropriate in cases where the "liability issue is resolved against the Plaintiff and bifurcation will avoid the waste of time and money caused by the unnecessary trial of damage questions." Trickey v. Superior Court of Sacramento County (1967) 252 Cal. App. 2d 650, 653. However, the facts of the case must justify it. Foreman & Clark Corp. v. Fallon, (1971) 3 Cal. 3d 875, 888, fn. 8.

Citing the complaint, Defendants argue that Plaintiff was walking in an easterly direction on 98<sup>th</sup> street while the Defendants' bus was traveling south on Airport Boulevard. Motion, 4:12-18. Defendants claim it would have been impossible for Plaintiff to have been struck by the right, rear of the bus as she testified at deposition.

While Defendants refer to the proposed testimony of their expert, no evidence of that opinion is provided to explain how the accident occurred, and why this scenario is "impossible."

In any event, Defendants misstate the allegations of the complaint. The complaint alleges that Plaintiff was walking within the south crosswalk of 98<sup>th</sup> Street. The complaint does not allege in what direction she was traveling. Complaint paragraph 5.

The complaint alleges that Defendants' bus was traveling west on 98th Street (establishing that the south crosswalk flows in an east-west direction) and attempted to make a left turn onto Airport Boulevard at the intersection. Ex. 1, ¶ 5.

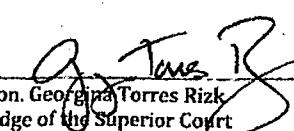
Again, Plaintiff was crossing the south crosswalk of 98<sup>th</sup> Street. Therefore, it is not impossible for Plaintiff to have been struck by the rear driver's side of the bus, in front of the rear tire if the bus made a left turn while Plaintiff was attempting to cross. If the bus traversed the cross walk behind Plaintiff as she traveled east, she could have been struck by the driver's side of the shuttle depending on where Plaintiff was in the crosswalk. There is no particular evidence to establish this, however.

Plaintiff alleges that Defendants violated the Vehicle Code for failing to yield to a pedestrian in a marked crosswalk. Complaint ¶ 5. Thus the lack of liability is not firmly established as Defendant's version of how the accident occurred is not supported by the allegations of the complaint, on which Defendant relies.

Defendants contend that Plaintiff was discharged from the hospital the same day as the accident without evidence of trauma. Motion Ex. 3. This does not support the argument that the damage phase of trial would be 34 days, notwithstanding that Plaintiff identified 92 non-retained, treating physician witnesses. If Plaintiff's injuries were minimal, then the trial testimony of 92 witnesses is unlikely.

Moving party is ordered to give notice.

Dated: **DEC 13 2018**

  
Hon. Georgina Torres Rizk  
Judge of the Superior Court

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1                   THE COURT: IT'S NOT "AT THIS POINT." YOU'VE  
2 RESTED YOUR CASE. THERE ARE NO MEDICAL RECORDS IN THE  
3 CASE.

4                   MR. GROSS: THE TRAFFIC COLLISION REPORT.  
5 I'M HAVING DIFFICULTY THINKING OF ADDITIONAL FACTS,  
6 YOUR HONOR. I'M CERTAINLY NOT PERFECT.

7                   THE COURT: SO THOSE ARE THE FACTS. THOSE  
8 ARE THE FACTS. THEY'RE DRIVING IN OPPOSITE DIRECTIONS.  
9 HE MAKES A LEFT-HAND TURN. I THINK YOU CAN INFER FROM  
10 THE TESTIMONY, IT WAS ACROSS THE CROSSWALK.

11                  MR. GROSS: THAT'S CORRECT.

12                  THE COURT: AND HE HAD PASSED THE CROSSWALK  
13 AT THE TIME, AND THERE WAS A THUMP. HOW CAN WE  
14 DETERMINE FROM THAT HE DIDN'T ACT LIKE A REASONABLE  
15 DRIVER? HOW CAN WE DETERMINE FROM THAT?

16                  GO AHEAD.

17                  MR. GROSS: BECAUSE HE DID ACKNOWLEDGE THAT  
18 THAT PEDESTRIAN WAS IN THE CROSSWALK. AND BASED ON HIS  
19 TESTIMONY, IT CAN BE INFERRED THAT HE FAILED TO GIVE  
20 HER ANY RIGHT OF WAY. CLEARLY SHE WAS IN THE STREET,  
21 IN CROSSWALK. I ASKED HIM AT THAT TIME, YOU KNOW,  
22 WHERE SHE WAS. AND, YOU KNOW, AS A MATTER OF LAW, THE  
23 -- AND THERE'S AN INSTRUCTION ON POINT, THAT THERE HAS  
24 TO BE A -- THAT HE HAS TO TAKE THE UTMOST CARE. I  
25 BELIEVE THAT THE STANDARD IS USUALLY RIGHT OF WAY GOES  
26 TO THE PEDESTRIAN.

27                  THE COURT: OKAY. THAT'S BEST ARGUMENT  
28 YOU'VE GOT. THERE'S ENOUGH EVIDENCE HERE FOR THE JURY

1 TO CONCLUDE SHE WAS IN THE CROSSWALK, THERE WAS A  
2 THUMP, SHE HAS THE RIGHT OF WAY AS A PEDESTRIAN.

3 ISN'T THAT ENOUGH TO GET TO A JURY, COUNSEL?

4 MR. HARMAYER: I WOULD SAY NO BECAUSE THE LAW  
5 IS CLEAR THAT SHE ALSO HAS THE DUTY TO YIELD TO A  
6 VEHICLE THAT'S GOING THROUGH -- THAT'S GOING THROUGH --

7 THE COURT: TRUE. BUT REMEMBER WHERE WE ARE.

8 EVERY INFERENCE, EVERY INFERENCE IS IN FAVOR OF THE  
9 PLAINTIFF. AND ANY EVIDENCE OR ANY ARGUMENT THE  
10 DEFENDANT CAN MAKE IS IGNORED AND SET ASIDE. THEY GET  
11 ALL THEY INFERENCES. SO YOU GOT TO ARGUE IT IN THAT  
12 WAY. WE CAN'T ASSUME SHE DIDN'T YIELD. WE DON'T KNOW.  
13 AND, IN FACT, IF SHE DIDN'T YIELD, THAT'S JUST NOT AN  
14 ISSUE WE'RE HERE TO TALK ABOUT. YOU CAN TALK ALL DAY  
15 TO THE JURY ABOUT THAT. YOU GOT TO MAKE EVERY  
16 INFERENCE.

17 MR. HARMAYER: SO THE INFERENCE IS THE BEST  
18 INFERENCE FOR HER IS THAT SHE SOMEHOW GOT HIT BY THE  
19 BACK OF THE BUS AFTER THE FRONT HAD ALREADY CLEARED  
20 THROUGH THE CROSSWALK. AND THEN --

21 THE COURT: YES.

22 MR. HARMAYER: WHICH WOULD BE SHOWING THAT AS  
23 THE DRIVER, HE IS TO YIELD FOR SOMEONE IN THE  
24 CROSSWALK, WHICH HE APPARENTLY HE DID BECAUSE SHE  
25 DIDN'T GET HIT BY THE FRONT OF THE BUS. SHE IS  
26 ALLEGING THAT SHE GOT HIT BY THE BACK OF THE BUS, WHICH  
27 WOULD REQUIRE HER TO TURN AND WALK BACK INTO THE BUS OR  
28 SOMEHOW NOT ABIDE BY HER DUTY TO AVOID COLLISION WITH

1 THE BUS.

2 THE COURT: OKAY. THE LAST STATEMENT YOU  
3 SAID, RIGHT NOW BASED ON THE EVIDENCE WE HAD, YOU SAID  
4 IT WOULD REQUIRE HER TO TURN AND GO BACK INTO THE BUS.  
5 WHY WOULD I MAKE THAT FINDING AS A MATTER OF LAW,  
6 GIVING EVERY INFERENCE IN HER FAVOR? THAT'S AN  
7 ASSUMPTION I DON'T KNOW WHERE YOU'RE GETTING FROM.  
8 MAYBE BASED ON TESTIMONY YOU ANTICIPATE OCCURRING? BUT  
9 IT HASN'T OCCURRED YET.

10 MR. HARMEYER: THAT'S CORRECT, YOUR HONOR. I  
11 SUPPOSE I DID ANTICIPATE SOME TESTIMONY.

12 THE COURT: I MEAN, I CAN'T ASSUME THAT.  
13 MAYBE THE JURY WILL BUY THAT. MAYBE YOUR EXPERT WILL  
14 TESTIFY THAT WAY, AND THE JURY WILL BELIEVE HIM. BUT  
15 RIGHT NOW, I DON'T KNOW WHERE I CAN SAY AS A MATTER OF  
16 LAW, THE JURY MUST FIND SHE HAD TO TURN BACK INTO THE  
17 BUS.

18 I WILL SAY THIS. IF YOU GET BY THESE  
19 HURDLES, THINK ABOUT THE ODDS. YOU'RE GOING TO HAVE TO  
20 CONVINCE THE JURY ON LIABILITY, AND THEN WHAT'S LEFT OF  
21 YOUR CASE, COUNSEL? WHAT'S LEFT OF YOUR CASE IS IT  
22 HURT A LOT WHEN I GOT HIT BY THE BUS. AND I WANT TO BE  
23 COMPENSATED FOR HOW IT HURT A LOT. I DON'T GET ANY  
24 MEDICAL BILLS. I DON'T GET ANYTHING FOR FOREIGN  
25 ACCENT. I DON'T GET ANYTHING FOR ANY ALLEGED SPINAL  
26 INJURY, WHICH REQUIRES MEDICAL TESTIMONY. WHAT'S LEFT?  
27 WHAT'S LEFT OF YOUR CASE?

28 I MEAN, YOU KNOW, I WANT YOU FOLKS TO THINK

1       ABOUT THIS. IS THIS REALLY THE KIND OF CASE YOU WANT  
2       TO KEEP GOING WITH? BOTH SIDES. I THINK BOTH SIDES  
3       HAVE AN INTEREST IN TALKING HERE. I'M NOT GOING TO  
4       WEIGH IN ANYMORE. BUT, REALLY, I WANT YOU TO FACE THAT  
5       REALITY, THAT IF YOU GET BY LIABILITY -- AND I'M GOING  
6       TO THINK ABOUT IT DURING LUNCH. I'LL HAVE TO THINK  
7       ABOUT ALSO AS FAR AS CAUSATION -- MY TENTATIVE WOULD BE  
8       THERE'S PROBABLY ENOUGH -- IF SOMEHOW YOU GET BY THE  
9       LIABILITY HURDLE, THERE'S PROBABLY ENOUGH TO SEND THE  
10       ISSUE OF NONECONOMIC DAMAGES RELATED TO THE PAIN CAUSED  
11       BY GETTING HIT BY A BUS TO A JURY. THAT'S MY  
12       TENTATIVE. I DON'T KNOW HOW YOU GET ANYTHING ELSE IN  
13       FRONT OF A JURY.

14                    MR. HARMAYER: AND THAT IS VERY IMPORTANT,  
15       YOUR HONOR. I UNDERSTAND EXACTLY WHERE THE COURT IS  
16       GOING. BUT IT MAY, DEPENDING UPON THE PROCESS THAT THE  
17       COURT CHOOSES TO ADMINISTER, THAT PORTION OF THE  
18       RULING, GIVEN CAUSATION ON CERTAIN INJURIES AND TAKING  
19       THEM OUT OF THE CASE, I DON'T NECESSARILY HAVE EXPERTS  
20       WHO ARE GOING TO TESTIFY THAT A BRUISE DOESN'T HURT.

21                    THE COURT: I DON'T THINK YOU CAN HAVE SUCH  
22       AN EXPERT.

23                    MR. HARMAYER: DO YOU SEE WHAT I MEAN? SO  
24       BUT I HAVE A LOT OF EXPERTS WHO WOULD BE TESTIFYING ON  
25       WHAT -- SO I WOULD NEED TO KNOW AFTER LUNCH HOW THE  
26       COURT WOULD EXPECT TO HANDLE THAT, WHICH MAY HAVE A  
27       LARGE IMPACT IN HOW I PRESENT THE REST OF THIS CASE.

28                    THE COURT: THAT MAKES SENSE. I MEAN, I WILL

1 MR. HARMEYER: IS THERE BAD NEWS?

2 MR. GROSS: THE BAD NEWS IS I DON'T THINK  
3 YOU'RE GOING TO HAVE A TRIAL THIS AFTERNOON.

4 THE COURT: WHAT'S THE GOOD NEWS?

5 MR. GROSS: GOOD NEWS IS IT APPEARS THAT  
6 WE'VE REACHED A RESOLUTION.

7 THE COURT: OKAY. DO YOU HAVE IT IN WRITING?

8 MR. HARMEYER: WE DO NOT.

9 MR. GROSS: CONSEQUENTLY, I WAS WONDERING IF  
10 WE -- DO WE WANT IT READ ON THE RECORD?

11 THE COURT: DO YOU WANT -- WELL, THAT'S A BIT  
12 PROBLEMATIC.

13 MR. GROSS: IT'S -- I --

14 THE COURT: I'VE BEEN DOWN THIS PATH, AND I  
15 WANT TO MAKE SURE EVERYTHING STICKS.

16 MR. HARMEYER: YES.

17 MR. GROSS: I'M WITH YOU THERE.

18 THE COURT: I HAVE REALLY BEEN DOWN THIS  
19 PATH.

20 MR. HARMEYER: I'M SURE YOU HAVE.

21 THE COURT: OKAY. SO, NOW, I'M TRYING TO  
22 FIND THE RIGHT STATUTE.

23 IT'S CODE OF CIVIL PROCEDURE 664.6.

24 MR. HARMEYER: YES.

25 MR. GROSS: THAT'S RIGHT.

26 THE COURT: YOU CAN AGREE TO THIS IN WRITING  
27 OR YOU CAN HAVE A SETTLEMENT IN OPEN COURT, STATE IT ON  
28 THE RECORD. HERE'S THE ISSUE. ATTORNEYS CAN STIPULATE

1 PROCEDURAL MATTERS ON BEHALF OF THEIR CLIENTS. WHEN IT  
2 COMES TO SUBSTANTIVE TERMS OF SETTLEMENT, ATTORNEYS  
3 CANNOT DO THAT ON THE RECORD, THE CLIENT HAS TO DO IT.

4 I DON'T SEE HILTON AT THE TABLE. SO IF I WERE TO ALLOW  
5 YOU TO DO THIS, IT WOULDN'T BE BINDING ON HILTON. I  
6 KNOW I'M BRINGING UP ISSUES NOBODY HAS THOUGHT OF, BUT  
7 I DON'T WANT A BUNCH OF LITIGATION LATER ON SOMETHING.  
8 I THINK THAT'S A WASTE OF THE COURT'S TIME AND THE  
9 PARTIES' TIME. I DON'T WANT TO BLOW UP SETTLEMENTS.

10 MR. HARMEYER: I CAN REPRESENT ON THE RECORD,  
11 THAT I HAVE BEEN GIVEN AUTHORITY, BUT I UNDERSTAND THE  
12 COURT SAYING THAT -- IF IT'S OKAY WITH MR. GROSS, THE  
13 PROBLEM THERE WOULD BE THAT HILTON DOES NOT MAKE GOOD  
14 ON THE SETTLEMENT, WHICH I DON'T THINK IS GOING TO BE A  
15 RISK.

16 THE COURT: NO, I AGREE WITH THAT. SO LET'S  
17 THINK OF A PRACTICAL SOLUTION HERE. WHO DID YOU TALK  
18 TO?

19 MR. HARMEYER: I TALKED TO -- THE CLAIM HAS  
20 NOW ESCALATED TO CHUB, WHO HANDLES THE REINSURANCE FOR  
21 HILTON, AND I TALKED TO PHILLIP --

22 THE COURT: WHAT I'M SAYING, DID YOU TALK TO  
23 A REPRESENTATIVE OF HILTON?

24 MR. HARMEYER: YES. AND I ALSO TALKED TO A  
25 REPRESENTATIVE OF HILTON, WHO IS JEFFREY BARKER, WHO IS  
26 THE VICE PRESIDENT OF CLAIMS. SO I COULD REPRESENT  
27 THAT I'VE TALKED TO THOSE TWO PEOPLE WHO HAVE  
28 CONFIRMED.

1           THE COURT: I DON'T DOUBT IT FOR A MINUTE,  
2 AND I DON'T THINK THIS IS GOING TO BE A PROBLEM FOR A  
3 MINUTE, BUT I WANT TO JUST GET IT RIGHT.

4           IS THERE A WAY TO GET SOMETHING IN WRITING  
5 FROM THAT INDIVIDUAL?

6           MR. HARMEYER: SURE. I COULD GET -- I COULD  
7 PROBABLY HAVE AN E-MAIL SENT TO MY OFFICE WITH A  
8 SIGNATURE ON IT FROM HIM.

9           THE COURT: HOW COMPLICATED IS THIS A  
10 AGREEMENT? IS THIS SOMETHING THAT CAN BE SUMMARIZED IN  
11 A FEW SENTENCES?

12           MR. HARMEYER: I THINK I CAN SUMMARIZE IT IN  
13 A SENTENCE:

14           THAT IN EXCHANGE FOR THE PAYMENT, THE  
15 COMPLAINT WOULD BE DISMISSED WITH PREJUDICE. THERE  
16 WILL BE A GENERAL RELEASE AND A WAIVER OF CIVIL CODE  
17 SECTION 1532, AND HILTON AND MADISON BROWN AND ALL  
18 RELATED ENTITIES WILL BE DISMISSED FROM THIS ACTION.

19           I CAN SEE THE WHEELS ARE TURNING, YOUR HONOR.

20           THE COURT: WHY DON'T WE DO BELT AND  
21 SUSPENDERS IN A WAY. I THINK WE SHOULD HAVE THAT  
22 STATEMENT IN OPEN COURT, BOTH SIDES, AND THEN I WOULD  
23 STRONGLY URGE YOU TO HAVE JUST A VERY SHORT SOMETHING  
24 IN WRITING, AND GET IT TO EACH OTHER. GET IT FROM  
25 HILTON ASAP.

26           TO ME, IT IS UNIMAGINABLE THAT HILTON IS NOT  
27 GOING TO BE ON THE HOOK ON THIS. I AGREE.

28           MR. HARMEYER: YES.

1                   THE COURT: IF THEY AGREE TO THAT. BUT I  
2 JUST THINK THE BETTER PRACTICE IS TO GIVE SOMETHING IN  
3 WRITING TO PLAINTIFF TODAY.

4                   MR. HARMEYER: YES.

5                   THE COURT: AND I THINK, THEN, IN THE HIGHLY  
6 UNLIKELY SCENARIO THAT HILTON SOMEHOW DOESN'T GIVE  
7 SOMETHING IN WRITING, THEN PLAINTIFF WOULD HAVE SOME  
8 KIND OF REMEDY.

9                   MR. HARMEYER: YES.

10                  THE COURT: SHE SHOULD BE ABLE TO GET  
11 SOMETHING IN WRITING SIGNED BY A HILTON REPRESENTATIVE.

12                  MR. HARMEYER: YES. I AGREE.

13                  MR. GROSS: OKAY.

14                  MR. HARMEYER: THERE WOULD BE A WRITTEN  
15 AGREEMENT ANYWAY TO BACK UP THE SETTLEMENT ON THE  
16 RECORD NOW BUT WE WOULD GET IT QUICKLY.

17                  THE COURT: I UNDERSTAND. BUT WHAT I'M  
18 SAYING, FOR SOMETHING TO BE ENFORCEABLE UNDER 664.6, IT  
19 HAS TO BE IN AGREEMENT OF THE PARTIES.

20                  MR. HARMEYER: SO HOW WOULD YOU LIKE US TO GO  
21 ABOUT THAT? WOULD YOU LIKE US TO HAVE AN E-MAIL SENT  
22 NOW WITH THAT SIGNATURE? WOULD YOU LIKE US TO GET --  
23 YOU SAID "BELT AND SUSPENDERS," SO I EXPECT WE'RE GOING  
24 TO DO BOTH.

25                  THE COURT: I THINK HERE'S WHAT WE SHOULD DO.  
26 ARE WE CONFIDENT THAT WE HAVE A SETTLEMENT, MR. GROSS,  
27 BEFORE I LET THE JURY GO? I DON'T WANT THEM TO --

28                  MR. GROSS: I HOPE YOU DON'T MIND, BUT I'M

1 GOING TO ASK MY CLIENT TO SPEAK IN COURT.

2 THE COURT: I THINK WHAT WE SHOULD DO IS TELL  
3 THE JURY TO HOLD ON FOR A MOMENT. WE'RE GOING TO SAY  
4 IT'S GOOD NEWS. AND LET'S DO WHAT WE NEED TO DO BEFORE  
5 WE LET THE JURY GO. I ONLY THINK IT WILL TAKE TEN  
6 MINUTES, AND THEN WE'LL DEAL WITH THE WRITING PART.

7 SO, FIRST OF ALL, CAN ONE OF THE LAWYERS  
8 ARTICULATE WHAT THEY THINK THE ESSENTIAL TERMS OF THE  
9 SETTLEMENT ARE?

10 MR. GROSS: THE ESSENTIAL TERMS OF THE  
11 SETTLEMENT ARE THAT HILTON WILL PAY THE AMOUNT OF  
12 \$85,000 IN FULL SATISFACTION OF THE CLAIMS OF  
13 MS. FETTIG AGAINST BOTH MADISON BROWN AND THE HILTON  
14 HOTELS; THAT A 1542 GENERAL WAIVER WILL BE GIVEN IN  
15 CONJUNCTION WITH THAT.

16 THE COURT: CIVIL CODE --

17 MR. GROSS: I'M SORRY. CIVIL CODE SECTION  
18 1542 WAIVER WILL BE GIVEN IN CONJUNCTION WITH THAT,  
19 THUS THE MATTER COULD BE DISMISSED WITH PREJUDICE.

20 THE COURT: DO YOU AGREE THAT THOSE ARE THE  
21 BASIC TERMS OF THE SETTLEMENT?

22 MR. HARMEYER: YES, THOSE ARE THE BASIC  
23 TERMS, OTHER THAN THE RELEASE WOULD ALSO BE A GENERAL  
24 RELEASE WITH A WAIVER OF CIVIL CODE SECTION.

25 MR. GROSS: YES. THANK YOU.

26 THE COURT: OKAY.

27 MR. GROSS: MUTUAL GENERAL. IT WOULD BE --

28 THE COURT: MUTUAL GENERAL RELEASE.

1                   MR. GROSS: IF THAT'S APPROPRIATE TO HILTON,  
2 I'M --

3                   MR. HARMAYER: THAT'S FINE.

4                   THE COURT: ALL RIGHT. WE'LL GOING TO  
5 EXPLAIN THAT IN PLAIN TERMS, TOO.

6                   SO, FIRST OF ALL, MS. FETTIG, DO YOU AGREE TO  
7 THOSE TERMS?

8                   \* MS. FETTIG: I FEEL BOUND BY NOT BEING  
9 PREPARED. I'M HORRIBLY UPSET BECAUSE OF THE NEEDS THAT  
10 I HAVE IN THE FUTURE.

11                  THE COURT: I TAKE THAT AS YOU DON'T AGREE.  
12 WE DON'T HAVE A SETTLEMENT. WE'RE GOING TO START WITH  
13 THE TRIAL. SO I NEED -- WHAT I NEED FROM YOU IS A  
14 CLEAR ANSWER.

15                  YOU CAN SAY, "JUDGE, I DON'T AGREE TO THOSE  
16 TERMS." NOT A PROBLEM. WE'LL CALL THE JURY IN. WE'LL  
17 CONTINUE WITH OUR TRIAL. NO PROBLEM. DOESN'T BOTHER  
18 ME A BIT. OR YOU CAN SAY, "I UNEQUIVOCALLY AGREE,"  
19 WITH NO ASTERISKS, NO FOOTNOTES, UNAMBIGUOUS, 100  
20 PERCENT. I AGREE OR I DON'T AGREE.

21                  THERE ARE ONLY TWO CHOICES. THERE'S NO THIRD  
22 OPTION OF I AGREE WITH FOOTNOTES AND ASTERISKS.

23                  THE WITNESS: YEAH.

24                  THE COURT: I HAVE NO PROBLEM WITH YOU NOT  
25 AGREEING. DOESN'T BOTHER ME A BIT. WE'RE HERE TO DO  
26 JUSTICE. YOU WANT TO TRY YOUR CASE, YOU'LL HAVE YOUR  
27 DAY IN COURT. SO WHICH IS IT?

28                  THE WITNESS: WILL I REALLY HAVE MY DAY IN

1       COURT?

2           THE COURT: SO, COUNSEL, I TAKE THIS AS SHE'S  
3       NOT AGREEING. WE'RE GOING TO CONTINUE WITH THE TRIAL.

4           DO YOU WANT FIVE MINUTES TO TALK TO HER?  
5       BECAUSE WHAT I NEED IS A CLEAR ANSWER.

6           MR. GROSS: HE NEEDS A "YES" OR "NO."

7           THE COURT: IT'S NOT A PROBLEM. YOU WANT TO  
8       TAKE A LITTLE BIT OF TIME TO THINK ABOUT IT? YOU WANT  
9       A LITTLE MORE TIME? WOULD YOU LIKE THAT?

10          MS. FETTIG: I WANTED TO ASK IF I COULD ADD  
11       ONE THING TO THE --

12          MR. GROSS: GIVE US FIVE MINUTES.

13          THE COURT: TAKE FIVE MINUTES.

14          MS. FETTIG: OKAY. THANK YOU.

15          THE COURT: BUT ULTIMATELY, WHAT WE CAN'T  
16       HAVE IS WE CAN'T HAVE, I SORT OF KIND OF AGREE, BUT I  
17       HAVE MY FINGERS CROSSED BEHIND MY BACK, AND I'M SORT OF  
18       AGREEING. THAT'S NOT A SETTLEMENT.

19          YOU EITHER AGREE OR YOU DON'T. IT'S NO  
20       PROBLEM WHATSOEVER IF YOU DON'T WANT TO AGREE, WE WILL  
21       CONTINUE WITH THE TRIAL. NOT A PROBLEM. DOESN'T  
22       BOther ME A BIT. THAT'S WHAT WE'RE HERE FOR.

23          MS. FETTIG: YEAH.

24          THE COURT: BUT YOU CAN'T SAY, I SORT OF KIND  
25       OF AGREE, AND THEN TRY TO CHALLENGE IT LATER. IF YOU  
26       AGREE, YOU WILL FOREVER GIVE UP ANY AND ALL CLAIMS  
27       AGAINST HILTON AND MR. BROWN IN CONNECTION WITH THIS  
28       INCIDENT, WHETHER YOU KNOW OF THE CLAIMS OR DON'T KNOW

1 OF THE CLAIMS, YOU FOREVER GIVE THOSE UP. YOU HAVE TO  
2 UNDERSTAND THAT.

3 I WANT YOU TO HAVE A FULL OPPORTUNITY TO TALK  
4 TO YOUR LAWYER AND MAKE AN INFORMED DECISION, BUT IT  
5 CANNOT BE I AGREE WITH AN ASTERISK AND A FOOTNOTE.  
6 YOU'VE GOT TO CHOOSE.

7 MS. FETTIG: YEAH.

8 THE COURT: YOU WANT SOME MORE TIME TO TALK  
9 TO YOUR LAWYER?

10 MR. GROSS: GIVE US FIVE MINUTES, IF YOU  
11 WOULD BE SO KIND.

12 THE COURT: NOT A PROBLEM.

13 MR. GROSS: AND I'M GOING TO TAKE THREE OF  
14 THOSE MINUTES WITH MY CLIENT, TWO OF THOSE MINUTES WITH  
15 COUNSEL.

16 THE COURT: AND I WOULD SUGGEST TO COUNSEL,  
17 IF YOU HAVE TIME, START WRITING WHATEVER IT IS YOU NEED  
18 TO WRITE AS THE ESSENTIAL TERMS ENFORCEABLE UNDER 664.6  
19 OF THE CCP, AND MAYBE WE CAN GET THAT SIGNED AND SENT  
20 OVER TO THE COURT RIGHT NOW.

21 MR. HARMEYER: I THINK WE CAN. THANK YOU,  
22 YOUR HONOR.

23 (RECESS TAKEN.)

24 THE COURT: MR. GROSS, DOES PLAINTIFF NEED  
25 MORE TIME TO THINK ABOUT THIS, OR ARE YOU READY TO  
26 PROCEED WITH A DISCUSSION IN OPEN COURT? EITHER YOU  
27 NEED MORE TIME OR YOU DON'T.

28 MR. GROSS: YOU TELL ME.

1 THE COURT: AND NEITHER ONE IS A PROBLEM FOR  
2 ME, BUT I NEED TO KNOW WHETHER YOU NEED MORE TIME.

3 MR. GROSS: YOUR HONOR, IT HASN'T BEEN OUR  
4 INTENT TO GO BACK AND FORTH ON THIS EITHER.

5 THE COURT: OKAY. DO YOU NEED MORE TIME?

6 MR. GROSS: I BELIEVE WE'RE THERE.

7 THE COURT: MS. FETTIG, DO YOU NEED MORE TIME  
8 TO THINK ABOUT IT AND TO TALK TO YOUR LAWYER? IF YOU  
9 DO, THAT'S FINE. NO PROBLEM.

10 ALL RIGHT. SO BECAUSE IT'S HARD FOR YOU TO  
11 DECIDE, AND I UNDERSTAND THAT, IT'S A BIG DECISION,  
12 WE'RE GOING TO MARCH ON WITH THE TRIAL, SO I --

13 MS. FETTIG: NO, I SHOULD JUST -- WE'RE NOT  
14 PREPARED.

15 THE COURT: WELL, I HAVE TO -- YOU HAVE TO  
16 UNDERSTAND, WHAT WE CAN'T HAVE, WE CANNOT HAVE  
17 FOOTNOTES AND ASTERISKS. SO I'M GOING TO MARCH ON WITH  
18 THE TRIAL. YOU NEED MORE TIME, IT'S NO PROBLEM.

19 YOU'LL GET THAT AT THE RIGHT MOMENT. BUT WE NEED TO  
20 KEEP DOING BUSINESS. WE HAVE PEOPLE WAITING FOR US.

21 SO HERE'S WHAT I'M GOING TO DO, I'M GOING TO  
22 GO OVER SOME RULINGS, AND THEN WE'LL SEE IF WE NEED THE  
23 JURY FOR THE REST OF THE DAY. OKAY? DO YOU WANT TO GO  
24 FORWARD WITH THE SETTLEMENT NOW, OR DO YOU WANT TO GO  
25 ON WITH THE TRIAL? WHICH IS IT? WE HAVE A BUNCH OF  
26 PEOPLE WAITING FOR US. WE'RE --

27 MS. FETTIG: I THINK I SHOULD GO AHEAD WITH  
28 THE SETTLEMENT.

1                   THE COURT: ARE YOU SURE?

2                   THE WITNESS: I DON'T KNOW WHAT TO DO. I  
3                   DON'T KNOW WHAT TO DO.

4                   THE COURT: ALL RIGHT. SO HERE'S MY RULINGS  
5                   ON THE NONSUIT. HERE'S WHAT I SEE. AS FAR AS  
6                   LIABILITY, I THINK IT'S WAFER THIN, BUT I THINK THERE'S  
7                   ENOUGH IF WE GRANT EVERY INFERENCE IN FAVOR OF THE  
8                   PLAINTIFF FOR IT TO GET TO THE JURY, BUT IT'S THIN.

9                   HERE ARE THE FACTS THAT HELP THE PLAINTIFF.  
10                  SHE WAS IN A CROSSWALK. SHE GOT CLOSE TO THE MIDDLE.  
11                  THE BUS TURNED LEFT ACROSS THE CROSSWALK. SHE WENT  
12                  UNCONSCIOUS, AND THE BUS DRIVER HEARD A THUMP. WE  
13                  DON'T HAVE ANY TESTIMONY FROM AN EXPERT SAYING IT'S  
14                  IMPOSSIBLE FOR THE BACK LEFT REAR TO HIT HER UNLESS SHE  
15                  TURNED BACK.

16                  I KNOW YOU'RE MAKING AN OFFER OF PROOF, BUT  
17                  THERE'S NO EVIDENCE OF THAT AT THIS MOMENT.

18                  MR. HARMAYER: UNDERSTOOD.

19                  THE COURT: SO BASED ON THAT, I THINK IT  
20                  GETS BY.

21                  AS FAR AS THE NONSUIT, WITH THE BEST OF IT, I  
22                  DON'T KNOW WHETHER I CAN TECHNICALLY GRANT A NONSUIT OR  
23                  NOT AS FAR AS PART OF THE CLAIM, BUT I DO KNOW WE HAVE  
24                  TO ADJUST THE JURY INSTRUCTIONS, AND WE HAVE TO ADJUST  
25                  THE VERDICT IF THERE IS NO SUBSTANTIAL EVIDENCE. AND  
26                  AT THIS POINT, I DON'T KNOW WHAT -- MAYBE THE DEFENDANT  
27                  IS GOING TO PRODUCE WITNESSES THAT WILL GIVE THE  
28                  PLAINTIFF SUBSTANTIAL EVIDENCE. I DON'T KNOW. BUT AT

1 THIS POINT, I CAN TELL YOU WHAT I SEE AS FAR AS -- YOU  
2 CAN CALL WHOEVER YOU WANT. IT'S UP TO YOU. BUT AT  
3 THIS POINT, I DON'T SEE ANY EVIDENCE TO SUPPORT A JURY  
4 INSTRUCTION OR A SPECIAL VERDICT QUESTION REGARDING  
5 MEDICAL EXPENSES OR LOSS OF EARNINGS.

6 YOU WANT TO BE HEARD ON THAT, MR. GROSS. IS  
7 THERE ANY EVIDENCE TO SUPPORT THAT?

8 MR. GROSS: THERE WAS DISCUSSION OF WHAT SHE  
9 HAD BEEN GETTING PAID IN TERMS --

10 THE COURT: WELL, LET'S DEAL WITH MEDICAL  
11 EXPENSES FIRST. ANY EVIDENCE ON MEDICAL EXPENSES AT  
12 ALL THAT IS REASONABLE AND INCURRED?

13 MR. GROSS: NO, YOUR HONOR.

14 THE COURT: OKAY. SO AS FAR AS LOSS OF  
15 EARNINGS, WAS THERE ANY EVIDENCE AT ALL THAT SHE LOST  
16 EARNINGS BECAUSE OF THIS ACCIDENT?

17 MR. GROSS: THERE WAS DISCUSSION OF -- THERE  
18 WAS SOME DISCUSSION OF AMOUNTS IN THE \$800 TO \$500  
19 AMOUNT RANGE.

20 THE COURT: THAT SHE WAS EARNING, BUT WHERE  
21 IS THE EVIDENCE THAT SHE LOST IT BECAUSE OF THIS  
22 ACCIDENT?

23 MR. GROSS: YOUR HONOR, I REALIZE THAT WE DO  
24 HAVE PEOPLE WAITING. I REALIZE THAT WE NEED TO MOVE.  
25 I REALLY WOULD LIKE THE TWO MINUTES THAT IT WOULD --

26 THE COURT: YOU WANT SOME MORE TIME WITH YOUR  
27 CLIENT?

28 MR. GROSS: YES, PLEASE.

1 RESERVATIONS. I'M HIDING SOMETHING BEHIND MY BACK, AND  
2 LATER I'M GOING TO COME AND CHALLENGE THIS SETTLEMENT."  
3 THERE IS NO COMING BACK. THIS IS A PERMANENT, FOREVER  
4 FORK IN THE ROAD THAT YOU CAN NEVER RETURN FROM IF YOU  
5 WANT TO SETTLE IT. IF YOU DON'T WANT TO SETTLE IT,  
6 IT'S NOT A PROBLEM.

7 DO YOU UNDERSTAND THAT?

8 MS. FETTIG: YES, SIR.

9 THE COURT: APART FROM ANY PERCEIVED WEAKNESS  
10 IN THE EVIDENCE YOU PROVIDED, ARE YOU UNDER DURESS?  
11 HAS SOMEBODY THREATENED YOU, FOR EXAMPLE?

12 MS. FETTIG: NO, SIR.

13 THE COURT: OKAY. DID SOMEBODY PROMISE YOU A  
14 SIDE DEAL? OR DO YOU UNDERSTAND THESE ARE ALL THE  
15 TERMS, AND THERE ARE NO SIDE DEALS?

16 MS. FETTIG: CORRECT, NO ONE HAS, YOUR HONOR.

17 THE COURT: DO YOU UNDERSTAND THAT EVEN IF  
18 TOMORROW OR TONIGHT YOU DISCOVER SOME CLAIM THAT YOU  
19 THINK IS RELATED TO THE INCIDENT, YOU CAN'T GO BACK AND  
20 MAKE THAT CLAIM? YOU'RE FOREVER GIVING UP ALL KNOWN  
21 AND UNKNOWN CLAIMS.

22 DO YOU UNDERSTAND THAT?

23 MS. FETTIG: YES, I UNDERSTAND.

24 THE COURT: OKAY. OKAY. ARE YOU OF SOUND  
25 MIND? ARE YOU ON MEDICATION THAT WOULD PREVENT YOU  
26 FROM MAKING A SOUND DECISION RIGHT NOW?

27 MS. FETTIG: NO, I'M NOT ON MEDICATION. I  
28 HAVE A BRAIN INJURY WHICH, YOU KNOW --

1                   THE COURT: DO YOU THINK YOU'RE CAPABLE OF  
2                   MAKING A DECISION TO RESOLVE THIS? ARE YOU CAPABLE?

3                   MS. FETTIG: AM I CAPABLE? YES.

4                   THE COURT: AND THE TERMS OF THE DEAL ARE --  
5                   LET'S SAY THEM AGAIN SO THERE'S NO AMBIGUITY.

6                   MR. GROSS: CERTAINLY.

7                   MR. HARMAYER: I COULD READ INTO THE RECORD  
8                   WHAT WILL BE ON THE STIPULATION BY HILTON.

9                   MR. GROSS: MAKES PERFECT SENSE.

10                  MR. HARMAYER: DEFENDANTS HILTON GARDEN INN'S  
11                  MANAGEMENT, LLC, AND MADISON AGREE TO PAY PLAINTIFF  
12                  LAURA FETTIG THE TOTAL AMOUNT OF \$85,000 IN EXCHANGE  
13                  FOR DISMISSAL OF THE ENTIRE COMPLAINT WITH PREJUDICE  
14                  AND A MUTUAL GENERAL RELEASE OF ANY AND ALL CLAIMS  
15                  RELATING TO THE COMPLAINT AND A WAIVER OF CIVIL CODE  
16                  SECTION 1542. THE RELEASE WILL INCLUDE MADISON BROWN  
17                  AND ALL RELATED HILTON ENTITIES.

18                  THE COURT SHALL RETAIN JURISDICTION OVER THE  
19                  PARTIES TO ENFORCE THE SETTLEMENT UNTIL PERFORMANCE IN  
20                  FULL OF THE TERMS OF THE SETTLEMENT IN ACCORDANCE WITH  
21                  CODE OF CIVIL PROCEDURE SECTION 664.6.

22                  THE COURT: OKAY. AND YOU AGREE TO THE FORM  
23                  OF THAT SETTLEMENT, MR. GROSS?

24                  MR. GROSS: YES, YOUR HONOR.

25                  THE COURT: AND, MS. FETTIG, YOU HAD AN  
26                  OPPORTUNITY TO TALK TO YOUR LAWYER -- WITHOUT TELLING  
27                  ME THE CONTENTS OF YOUR CONVERSATION, YOU HAD AN  
28                  OPPORTUNITY TO TALK TO YOUR LAWYER ABOUT THIS

1 (OFF-THE-RECORD DISCUSSION.)

2 THE COURT: I DON'T KNOW WHETHER THIS GOES  
3 BACK TO THE HOME COURT FOR AN OSC RE ENTRY OR JUDGMENT  
4 OR IT STAYS HERE.

5 DO YOU KNOW?

6 THE CLERK: I THINK IT STAYS HERE.

7 THE COURT: IT STAYS HERE. SO HOW MUCH DO  
8 YOU NEED -- I LIKE TO SET OSC'S FAR OUT ENOUGH THAT  
9 IT'S UNLIKELY YOU'LL EVER HAVE TO COME BACK, BUT WE  
10 NEED SOMETHING IN CASE IT DOESN'T GET RESOLVED.

11 IT'S NOT EVEN A JUDGMENT, RIGHT? IT'S A  
12 DISMISSAL? SO IT'S REALLY GOING TO BE AN OSC RE  
13 DISMISSAL. SOMETIME IN MAY, THAT SHOULD GIVE YOU MORE  
14 THAN ENOUGH TIME.

15 MR. HARMAYER: I WAS GOING TO SAY 45 DAYS.

16 THE COURT: LET'S GET A DATE IN MAY. I CAN'T  
17 IMAGINE IT WILL GO THAT LONG. I EXPECT IT WITHIN A  
18 WEEK OR TWO.

19 THE CLERK: MAY 20.

20 THE COURT: MAY 20. CAN BOTH PARTIES WRITE  
21 THAT DOWN? THAT IF FOR SOME REASON A DISMISSAL HAS NOT  
22 BEEN ENTERED, YOU'RE ORDERED TO COME TO DEPARTMENT 3  
23 AND SHOW CAUSE AS TO WHY IT HASN'T.

24 DO BOTH PARTIES UNDERSTAND?

25 MR. HARMAYER: TIME?

26 THE COURT: 8:30 IN THE MORNING.

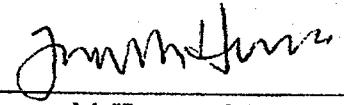
27 MR. HARMAYER: 8:30. THANK YOU.

28 THE COURT: OKAY. DO BOTH PARTIES WAIVE

1 neuropsychological findings affects the executive decision making center and would have impaired  
2 Ms. Fettig's ability to consent to a legal settlement, particularly while under pressure or duress.

3 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
4 knowledge.

5 Executed July 7, 2020 at Rolling Hills, California.

6  
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8  
9 Terrence M. Hammer, M.D.  
10 Declarant

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**DECLARATION OF JAN H. MERMAN, M.D.**

I, Jan H. Merman, do hereby state and declare:

1. I am a neurologist practicing in Los Angeles, California. I have treated and observed Plaintiff Laura Fettig in the past and am generally aware that she was struck by a passenger bus that is the subject of this lawsuit. If called as a witness, I could and would testify to the following:

2. I am aware that following the subject passenger bus accident, Ms. Fettig was examined and diagnosed by Dr. George Rederich, M.D. with a brain stem injury that was causing epileptic seizures. Attached as Exhibits A and B are copies of Dr. Rederich's findings and examinations of Ms. Fettig regarding her brain stem injury and epileptic seizures.

3. I am further aware, and have reviewed, neuropsychological testing from Dale S. Sherman, Ph.D. attached as Exhibit C that concludes Ms. Fettig suffers neurocognitive impairment secondary to mild Traumatic Brain Injury (mTBI). I concur with this finding and that Ms. Fettig suffered a mild Traumatic Brain Injury from the accident based on my observation of Ms. Fettig along with the brain imaging of Ms. Fettig attached as Exhibit D and EEG testing results attached as Exhibit E.

4. Dr. Sherman's testing results of Ms. Fettig also indicate low scores on measures of incidental learning and memory which may indicate possible frontal-subcortical compromise and potential onset of primary progressive aphasia (PPA). PPA can affect a person's concentration and attention span, resulting in cognitive impairment and difficulty concentrating and focusing.

5. I am also aware that Ms. Fettig was diagnosed by emergency room personnel at Little Company of Mary Medical Center in Torrance with a head injury with concussion following the accident as indicated in Exhibit F which would be categorized as an mTBI.

6. The cognitive impairment displayed by Ms. Fettig's mTBI and shown in Dr. Sherman's

George J. Rederich, M.D., Inc.  
Neurology • Clinical Research

Diplomate in Neurology,  
American Board of Psychiatry & Neurology

520 N. Prospect Ave., Suite 309  
Redondo Beach, CA 90277  
(310) 376-9492  
FAX (310) 376-0848

**NEUROLOGICAL CONSULTATION**

**RE:**

**FETTIG, Laura**

**DATE:**

04/18/2014

**REFERRING PHYSICIAN:**

Randy O'Hara, M.D.

**REASON FOR CONSULTATION:**

The patient is referred for neurological changes following trauma.

Dear Randy:

I saw Laura Fettig today, a 52-year-old right-handed woman who had the misfortune on February 8, 2014, to be hit by a transit bus. Apparently it turned a corner and did not see her, and she was knocked unconscious. She came to with someone holding her head.

**History of Present Illness:**

She has had a good deal of musculoskeletal pain from this accident, but more worrisome have been gradual changes in her neurological status. Initially, it was apparently left knee pain, right shoulder pain, cervical and lumbar and even mid-back pain, and also headaches. The headaches have been changing. Initially they were bilateral and predominantly frontal and retro-orbital. The pain on the left side of the head has diminished but has gotten more intense on the right side of the head. There seems to be somewhat permanent allodynia, particularly in the right parieto-occipital region down to the greater occipital nerve territory and cervical region. It is painful for her even to touch it. She is wearing a cervical collar, however. Her gait is different now, and progressively she has become more ataxic. She also now has dysarthria. The left side of her face, in the lower area, looks somewhat frozen. She is having very little trouble swallowing and says she feels clear enough mentally. Her vision has not been changed and she does not have auditory changes. Dizziness is basically more of an ataxia than vertigo or head rushes. She denies bowel or bladder dysfunction.

She has a past history of other injuries going back to age 16, when her car was T-boned by another vehicle. She apparently does have a small posttraumatic syrinx at around T7. She has also had multiple surgical procedures on the lumbar and cervical areas combined. Those seem to be stable presently. However, in early March she did not have the facial asymmetry and her speech was still normal. Gradually, those two things have changed and this, of course, is worrisome to her. Additionally, I believe the ataxia is worse.

Page 3

RE: FETTIG, Laura  
04/18/2014

*Motor Exam:* Motor exam shows no significant lateralizing changes. Reflexes appear to be symmetric bilaterally.

**Assessment:**

Head trauma, but after the trauma and the expected musculoskeletal pain and headaches, she has started to develop worrisome changes in her speech and facial movement, being impaired in the left lower face. She also has eye fluttering, which was also witnessed today. This is symmetric. It is as if there has been a secondary lesion to the brainstem.

**Plan:**

The plan will be to obtain an MRI of the brain once again. I am also going to have her try gabapentin to relieve some of the pain. I will plan to see her back in several weeks.

Thank you, Randy, for the opportunity to assist in her care.

Sincerely,



GEORGE J. REDERICH, M.D.

Neurology

GJR:WO/ch RED330

T: 04/19/2014

cc: Randy O'Hara, M.D. 517-1817  
Kartik Ananth, M.D. 928-7467

Fettig, Laura Jean (MR # 091228420)

Consults Signed by Sherman, Dale S, PHD at 12/31/2014 12:34 PM

Version      Signed

Status:

**CEDARS-SINAI MEDICAL CENTER**

**PATIENT: FETTIG, LAURA**  
MED REC: 091-228-420

**DICTATOR: DALE S. SHERMAN, PH.D.**

**CONSULTATION-NEUROPSYCHOLOGICAL EVALUATION**  
12-18-2014

**CONSULTANT: DALE S. SHERMAN, PH.D.**

**REFERRING PHYSICIAN: Steven Sykes, M.D.**

**REPORT CONSIDERATIONS & EXCEPTIONS:** Please see below for report qualifications regarding the scope of this evaluation and limitations of test findings.

**REASON FOR REFERRAL:** Ms. Laura Fettig was referred for a neuropsychological evaluation to assess her current cognitive and emotional functioning secondary to traumatic brain injury (TBI) and foreign accent syndrome (FAS). The patient was given an explanation of the nature and purpose of the assessment, risks and benefits of the intervention, as well as limits of confidentiality. The patient acknowledged an understanding of the evaluation and gave her consent to proceed.

**HISTORY OF PRESENT ILLNESS:** Ms. Laura Fettig is a 52 year-old right handed, English speaking Caucasian female with 16 years of education who reports she experienced cognitive difficulties secondary to a pedestrian versus automobile accident on 02/08/2014. The patient states she was in the middle of a crosswalk at 92<sup>nd</sup> and Airport Blvd when an airport shuttle bus struck her. The first thing she recalls after the incident was awakening on the ground with someone's hand under her head. The last thing she recalls prior to the accident was placing her phone in her purse while walking in the middle of an intersection, being hit by the bus, then seeing her belongings scattered on the road. The patient estimates she lost consciousness for approximately 8 minutes. She arrived at this estimate as she believes this would be the amount of time required for the bus to come to a stop, passengers to exit, and for an individual to put his hand under her head. Ms. Fettig states police and paramedics were called to the scene and she was transported to Centinela Hospital where x-rays were taken of her stomach, elbow and wrist. She states she declined pain medication initially as she hadn't taken medication for 10 years and didn't want to take medication. Retrospectively, she believes she was in shock as she later began to experience intense pain in the right side of the head and wrists; she rated the pain to be 10/10 (10 being the worst). The patient indicated she did not want to stay and preferred to rest in bed so she left the emergency department.

Presently, Ms. Fettig states she has experienced multiple cognitive, emotional and physical difficulties as a result of the accident. On 02/18/2014, she found that her eyes fluttered while lying in bed, went to the emergency room, a brain CT was taken and she was diagnosed with concussion. The patient reports she was released, instructed to rest, and referred to a neurologist. In addition, Ms. Fettig states there are times which she is unable to speak and becomes mute. On approximately 04/04/2014 (estimated), she began to develop problems with a facial 'palsy', changes in speech and began to speak with a foreign accent (self-described to be Czechoslovakian). She also described an event when she tried to purchase a gift, was unable to lift her arms, and then could not speak. On 11/26/2014, she experienced shortness of breath and went to the emergency department where she was given oxygen and fluids. The patient presents to the neuropsychology service for further evaluation and treatment recommendations.

The current cognitive difficulties reported by the patient include reduction in attention & concentration, speed of information processing, language, and memory. She indicates having difficulty doing more than one thing at a time; she has trouble watching television, reading emails, and multitasking. Emotionally, Ms. Fettig described feeling anxious, depressed, and apathetic. She further explains she has no energy, no motivation, and is unable to "get my businesses going". The patient states "I just want to be normal". She denied internal stimulation, hallucination, delusions or changes in personality. Physical symptoms include headache (daily, rated 8/10; 10 being the worst), nausea (daily), dizziness (3x/week), poor balance (3 falls), right-sided weakness & motor difficulties, pain in the right bicep, as well as pain in the left-upper extremities. She is easily fatigued and has increased sensitivity to touch, sound, and light. She has trouble sleeping and is awakened most nights due to pain in her neck and arms. She denied having seizure(s).

Fettig, Laura Jean (MR # 091228420)

**ALLERGIES:**

1. Drug: Erythromycin, Tetracycline, Gabapentin, Baclofen
2. Food: Cranberry, Aspartame, and Onion.
3. Environmental: Laundry detergents and perfumes

**MEDICATIONS:**

1. Norco
2. Cannabinoid (oil used for pain on arm and the temples of her skull)
3. Herbs

**IMAGING:**

1. **BRAIN SPECT (08/19/2014):** "There is some moderate asymmetry in cortical activity with decreased activity in the right parietal and temporal cortex compared with the left side. In addition there is apparent decreased activity in the medial frontal, parietal and occipital cortex bilaterally. No other focal abnormalities are seen in the cerebral and cerebellar cortex. No definite focal abnormalities are seen in the basal ganglia and thalamic structures. There is no evidence of ventricular dilatation/decreased periventricular activity. Result Impression: Moderate decreased activity in the right parietal and temporal cortex compared to the left side and apparent decreased activity in the mid frontal, parietal and occipital cortex bilaterally in the watershed regions. While findings could represent organic disease seen in association with traumatic and small vessel changes, caution is needed to confirm the diagnosis in view of technical limitation of SPECT scan. Clinical correlation and possible further imaging evaluation with PET/FDG scan, which is more sensitive and specific test, has to be considered."
2. **FDG PET/CT BRAIN (09/24/2014):** "There is evidence of mild decreased activity in the mid frontal, parietal and occipital cortex bilaterally in the watershed regions which appears definitely less marked when compared with recent Spect scan. Distribution of activity is homogeneous in the remaining cerebral and cerebellar cortex and there is no definite visualization in the current study of the asymmetric decreased activity in the right parietal and temporal cortex seen on prior Spect scan. Basal ganglia and thalamic structures are well visualized. There is no evidence of ventricular dilatation/decreased periventricular activity. Result Impression: Mild decreased activity in the watershed regions of the frontal, parietal and occipital cortex bilaterally, definitely less marked when compared with recent Spect scan. Findings are mild and could represent normal variant; possibility of mild traumatic or vasculitic changes cannot be ruled-out. Follow-up scan in 12-18 months could be of help if clinically indicated. A CT scan was performed and was used for attenuation correction and anatomic correlation only."

**PREVIOUS NEUROPSYCHOLOGICAL/PSYCHOLOGICAL ASSESSMENT(S):** None/denies.

**PAST MEDICAL & SURGICAL HISTORY:**

1. Titanium C5-C6, L5-S1 (automobile accident at age 16)
2. Scoliosis (diagnosed 2000; increased curve diagnosed this year)
3. Tonsillectomy (age 16-17)
4. History of Mononucleosis
5. History of Endometriosis
6. History of Sinus Problems

**FAMILY MEDICAL HISTORY:** Thyroid cancer (sister) and diabetes (mother).

**PAST PSYCHIATRIC HISTORY:** Marital/relationship conflict. The patient stated she saw a couple of therapists for one year after the birth of her first child. She was also placed on an antidepressant but only took it for a couple of days (citing developing facial hair as a side effect). There are no psychiatric hospitalizations. The patient denied the presence of schizophrenia, psychotic disorder, obsessive compulsive, major psychiatric illness, or substance abuse.

The patient states she is currently seeing Jennifer O'Sullivan, psychotherapist/psychologist, in Torrance CA one time per week for the past 5 weeks. Ms. Fettig stated the treatment is going well as she likes having someone to talk to, although there has been minimal improvement in her symptoms. The patient states her therapist assists with motivation, sorting out life issues, and to determine why she is feeling the way she is feeling.

**FAMILY PSYCHIATRIC HISTORY:** Alcoholism (uncle; deceased secondary to liver complications).

Fettig, Laura Jean (MR # 091228420)

**SOCIAL HISTORY:** Ms. Fettig was born on September 28, 1962 in Petosky, MI the second child in a family of 3. The patient passed developmental milestones without difficulty. She patient states she experienced [REDACTED]. She denies sexual abuse. The patient has been married once, divorced once, and has one daughter (Erica, age 18). She has been with her current boyfriend, Mitch, for the past year. She states she does not have a good social support network.

**EDUCATION AND EMPLOYMENT HISTORY:** The patient successfully progressed through school and obtained an undergraduate degree in textile and clothing with a minor in psychology. She graduated from Ohio State University in 1990. The patient denied attentional difficulties, a learning disability, or behavioral problems when in school. The patient stated she liked to study and loved to learn. The patient states she came to California to be a buyer, decided to go into manufacturing, and is now national sales manager who "did 3 million the first year". The patient states she last worked in 2013.

**LANGUAGE:** English. In terms of her foreign accent, the patient believes her pronunciation portrays a Czechoslovakian accent, although others tell her she sounds German or Swedish. The patient states she was visited by her Czechoslovakian grandparents at age 5, although she does not recall hearing them. She states she has a remote memory of seeing them only.

**SUBSTANCE ABUSE/ COMPULSIVE BEHAVIOR(S):** The patient drinks alcohol a few times per month. She tried mushrooms and LSD on an experimental basis once during the 1980s. She tried smoking cigarettes 1-2 times in high school then again in college, however, felt she didn't need it and discovered she was allergic to cigarette smoke. Ms. Fettig denies other compulsive/obsessive behaviors, although she notes she "likes to have my house clean". The patient also noted she is very particular about what she eats and has trouble preparing food due to excessive fussiness.

**BELIEF SYSTEM/ RELIGION:** The patient describes herself as a spiritual person.

**LEGAL AND FORENSIC HISTORY:** None/denies. The patient reports submitting disability claim after having back surgery in 2000.

**MILITARY SERVICE:** None/denies.

**ACTIVITIES OF DAILY LIVING:** Mild limitations. Ms. Fettig states she requires assistance with cleaning the house and doing the laundry; Kindred Homecare comes to her home "once every four months". Otherwise, she states she is independent for all activities of daily living including bathing, maintaining self-care, transfers, dressing, feeding/eating, preparing meals; shopping for groceries, managing her finances, using the phone, managing her medication and with driving.

**STRESS & COPING:** Ms. Fettig rates her average level of stress to be 8/10 (10 being the highest). Areas of stress include her boyfriend, family & friends, occupation, house/ home, finances, access to healthcare, medical condition, and legal issues. She rated her difficulty coping with stress to be 4/10 (10 being unable to cope). The activities which help her cope with stress include read, find a solution, talk with her therapist, and her dog.

**BEHAVIOR OBSERVATIONS AND MENTAL STATUS EXAM:** Ms. Fettig is a 52-year-old, right-handed, English speaking Caucasian female, well nourished, who appears her stated age. She is of average height and slight in build. She made good eye contact, was culturally appropriate, and appeared engaged/ motivated during the evaluation. Her activity level was within expectation. She had no difficulty with hearing. An informal vision screen found she was able to read numbers and letters at a 20/20 level. She was able to correctly name basic colors presented in a palette and did not evidence color blindness. There were no other discernible physical traits, scars or physical abnormalities.

The patient was a good historian and appeared to have no difficulty portraying events or communicating details concerning her history and condition accurately. No other individuals were available to provide additional detail regarding her history, details concerning her clinical condition, or current level of functioning. The patient's activity level was adequate, within expectation for her stated age and achievement level.

The patient was oriented x4 (person, place, time and situation). Her affect was generally euthymic; she had no difficulty establishing rapport and there were no inappropriate displays of emotion. Her basic expressive abilities and comprehension were within expectation. Speech was generally normal in tone, volume, and content. There was no evidence of word finding difficulties or paraphasic errors. The patient produced logical and clear sentences. However, she spoke with odd phonology and syntax with annunciation and articulation best described as being analogous to articulation frequently heard in individuals with Down syndrome. Notably, this would be garbled words, periodically hollow in sound, flat or enlarged tongue, and frequently over-raising, emphasizing or over-extending the right corner of her mouth. Attention and concentration for simple information was intact. Thought processes were goal-directed and linear. The patient was able to answer simple questions and provide appropriate elaboration without [REDACTED].

Fettig, Laura Jean (MR # 091228420)

limitation. Her recall of recent events and circumstances was unremarkable. Thought content was focused on the accident and her recovery. Insight, judgment, and abstract thinking were within expectation, although she tended to answer most, if not all questions, in terms of physical functioning. The patient did not display ruminations, thought blocking, or clouding of consciousness. There were no ideas of reference, paranoid thinking, strange or bizarre thought patterns, loose associations, involvement with internal stimulation, hallucinations or delusions evident during the interview.

The patient denied experiencing any suicidal or homicidal ideation or intent.

**RATIONALE FOR NEUROPSYCHOLOGICAL TESTING:** The patient was administered a diagnostic battery to:

1. Accurately establish the nature, scope, and severity of symptoms reported;
2. Provide clarity into the nature of her cognitive and emotional functioning;
3. Identify and/or rule out the presence of any cognitive or emotional disorder as well as elucidate any possible differential diagnoses;
4. Aid in implementation of an effective treatment plan.
5. Establish baseline level of functioning.

**TEST RESULTS & SCORES:** Please see the end of the report for a list of specific measures as well as scores and values from instruments administered.

**SUMMARY & IMPRESSION:** Ms. Laura Fettig is a 52 year-old right handed, English speaking Caucasian female with 16 years of education who reports she experienced cognitive difficulties secondary to a pedestrian versus automobile accident on 02/08/2014. Cognitive difficulties reported by the patient include reductions in attention & concentration, speed of information processing, language, and memory. Emotionally, Ms. Fettig described feeling anxious, depressed, and apathetic.

**FINDINGS ON NEUROPSYCHOLOGICAL MEASURES:** Findings from the neuropsychological assessment revealed relative areas of strength in intelligence, speed of information processing, language, visual-spatial ability, and executive functions. Low scores, areas below expectation, were observed on verbal learning & memory and fine motor control. Suppressed scores, performances somewhat below expectation given her premorbid level of functioning and scores in other areas, were observed in working memory (mental calculation), verbal memory (immediate recall, stories), and figure recall (non-verbal memory). Lower scores were observed, generally, on measures of incidental learning. It should be noted there is, generally, a high degree of variability across scores on neuropsychological instruments and it would not be uncommon for healthy individuals to obtain low scores in some areas. Specific findings across cognitive domains are described as follows:

1. **Mental Status & General Cognitive:** The patient's sensorium and orientation was within expectation.
2. **Motivation & Cooperation – Symptom Validity Indicators:** Adequate/ within expectation. The patient passed 4 of 4 measures used to assess symptom validity/ response bias in testing procedures. In addition, examination of her performance on standard cognitive tests sensitive to inconsistent responding did not evidence scores beyond cutoff; she obtained acceptable scores on the measure administered (0 failures). Some concerns of possible over-reporting were raised on the MMPI-2-RF findings. Please see below.
3. **Intelligence:**
  - a. **Score Range:** Average – High Average Superior
  - b. **Interpretation & Implications:** Scores from intellectual functioning place Ms. Fettig's overall cognitive ability to be in the average range (FSIQ = SS = 106 = 66 percentile = Average; GAI = SS = 104 = 61 percentile = Average). An estimate of premorbid intellectual functioning and memory based on a word reading task estimate her cognitive ability to be in the high average range (ACS-TOPF = SS = 113 = 80 percentile). She obtained the following scores on summary indices;
    - i. **Verbal Comprehension Index (VCI):** Average (VCI = 103; 58 percentile).
    - ii. **Perceptual Reasoning Index (PRI):** Average (PRI = 105; 63 percentile).
    - iii. **Working Memory Index (WMI):** Average (WMI = 92; 30 percentile).
    - iv. **Processing Speed Index (PSI):** Superior (PSI = 120; 91 percentile).
    - v. **Significant Differences:** There were significant differences between her verbal comprehension skills and working memory and processing speed. Significant differences were also noted between her perceptual reasoning and working memory, perceptual reasoning and processing speed as well as between her working memory and processing speed.
  - c. **Comparison with Previous Testing:** Not applicable
4. **Academic Functioning:**
  - a. **Score Range:** Post-Secondary Achievement

Fettig, Laura (MRN 4910227)

Ordering Prov: Ludwig, Barry L.  
 Ordering Prov Phone: 310-794-1500  
 Ordering Prov Fax: 310-794-1517

## UNIVERSITY OF CALIFORNIA, LOS ANGELES

### Imaging Result

Name: <b>Fettig, Laura</b>	DOB: <b>9/28/1962</b>	Patient Class: <b>Outpatient</b>
Procedure(s) Performed: <b>MRI Brain wo Contrast</b>	Exam Date: <b>04/27/2015</b>	Reason for Exam: <b>Injury protocol with swi &amp; dti</b>

#### MRI BRAIN WO CONTRAST

COMPARISON: None available.

CLINICAL DATA: "Injury protocol with swi & dti"

TECHNIQUE: Using a 3 Tesla MR scanner, sagittal T2, axial T1 MP rage, GRE, FLAIR, due to VY, DTI, as tibial I, and OEF images of the brain were acquired. Per technologist note, EMS was called after the scan due to altered mental status.

#### FINDINGS:

There is no abnormal restricted diffusion to suggest recent infarction. The ventricles and sulci are normal in size and configuration for the patient's age. There is no evidence of sequela of prior traumatic injury. There are a few scattered foci of periventricular and subcortical white matter FLAIR signal hyperintensity, which are nonspecific in appearance. The major intracranial vessels demonstrate normal flow voids. Mild paranasal sinus mucosal thickening is seen.

IMPRESSION: No acute infarct, hemorrhage or intracranial mass effect. There is no evidence of prior traumatic injury.

Signed By: Yoo, Bryan Y., MD on 4/27/2015 3:57 PM

## E.E.G.

DOCUMENT NAME:

SERVICE DATE/TIME:

RESULT STATUS:

PERFORM INFORMATION

SIGN INFORMATION:

EEG

6/18/2015 00:00 PDT

Auth (Verified)

Cha, MD, Tim K (6/18/2015 20:16 PDT)

Cha, MD, Tim K (6/22/2015 10:57 PDT)

## ELECTROENCEPHALOGRAM

PATIENT NAME: FETTIG, LAURA

MED. REC. NO: 4245829

ACCT. NO: 50576865

DATE OF BIRTH: 09/28/1962

PHYSICIAN: TIM K. CHA, M.D. (3400)

REFER. PHYS: ()

DATE: 06/18/2015

## ELECTROENCEPHALOGRAM

## PATIENT IDENTIFICATION:

Age: 52

Sex: Female

## EEG NUMBER:

3-6-16

## REQUESTING PHYSICIAN:

Carl Orfuss, M.D.

## MEDICATIONS:

Unknown:

## INDICATIONS:

The patient was referred for an outpatient EEG because of speech and language problems. No further clinical information was provided.

## DESCRIPTION:

Throughout the recording, rhythmic delta activity was noted on the left cerebral hemisphere mostly. At times it spread to the right frontal head regions. Activation hyperventilation was not performed. Photic stimulation produced no occipital driving.

## IMPRESSION:

Very rhythmic delta activity on the left cerebral hemisphere mainly was noted throughout this recording. Whether this left lateralizing delta activity is artifact or left cerebral structural abnormality or not remains uncertain. Therefore, repeat EEG is highly advisable in this patient. No obviously electrographic seizure or epileptiform discharge is noted; however, left lateralizing moderate voltage delta activity is noted. If this is not artifact, it may suggest left cerebral anatomical abnormality, which is not epileptogenic in character. Clinical correlation and brain imaging is warranted. Again, repeat EEG is advisable.



## Patient Care

### Foreign Accent Syndrome

(FAS)

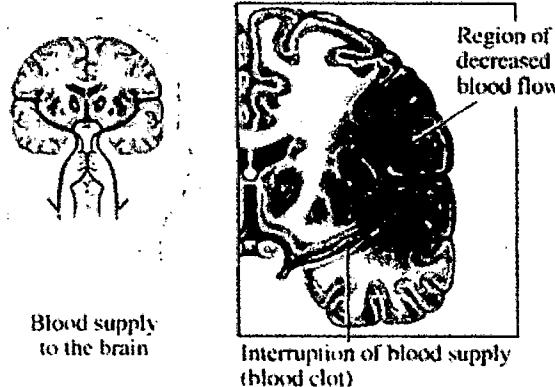
Pronounced: FOR-en AK-sent SIN-drome

[Definition](#) | [Causes](#) | [Risk Factors](#) | [Symptoms](#) | [Diagnosis](#) | [Treatment](#) | [Prevention](#)

#### Definition

Foreign accent syndrome (FAS) is a rare speech disorder. If you have FAS, you adopt what sounds like a foreign accent, even though you may never have traveled to that particular country.

#### Stroke—Common Cause of Foreign Accent Syndrome



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#### Causes

FAS is caused by damage to the part of the brain that controls the rhythm and melody of speech. The damage may be due to:

- Stroke, which is the main cause
- Trauma to the brain, such as a sharp blow to the skull
- Brain hemorrhage
- Multiple sclerosis
- Brain tumor

FAS is also linked to other symptoms, such as:

- Apraxia —a communication disorder that can affect the ability to understand and express language
- Speech apraxia—a speech disorder that affects the ability to make sounds, syllables, and words

#### Risk Factors

Factors that increase your chance of developing FAS include:

- Being at high risk for stroke
- Having aphasia or apraxia

#### Symptoms

Those with foreign accent syndrome speak in a distorted rhythm and tone, such as:

- Making vowel sounds longer and lower such as changing English "yeah" to German "jah"
- Changing sound quality by moving the tongue or jaw differently while speaking
- Substituting words or using inappropriate words to describe something
- Stringing sentences together the wrong way

If you have FAS, you may be able to speak easily and without anxiety. Other people are able to understand you. The accent that you have adopted could be within the same language, such as American-English to British-English.

Symptoms can last for months, years, or may be permanent.

#### Diagnosis

You will be asked about your symptoms and medical history. A physical exam will be done paying particular attention to the muscles used in speech. A psychological evaluation may also be done to rule out psychiatric conditions.

Your language skills will be assessed. This can be done with:

#### FIND A DOCTOR

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Doctors who treat  
this condition

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80a

- Tests to assess reading, writing, and language comprehension
- Use of recordings to analyze speech patterns

Images will be taken of your brain. This can be done with:

- MRI scan
- CT scan
- Single-photon emission computed tomography (SPECT) scan
- PET scan

Your brain activity may be measured. This can be done with an electroencephalogram (EEG).

Since this condition is rare, you will most likely be evaluated by a team of specialists, including:

- Speech-language pathologist
- Neurologist
- Neuropsychologist
- Psychologist

### Treatment

Talk with your doctor about the best treatment plan for you. Treatment options include the following:

- Speech therapy—You may be taught how to better move your lips and jaw during speech.
- Counseling—Since FAS is a rare disorder, you may feel isolated and embarrassed. Counseling can help you and your family better cope with the condition.

### Prevention

Since FAS is closely linked to stroke, follow these guidelines to prevent stroke:

- Exercise regularly.
- Eat a healthful diet.
- If you smoke, talk to your doctor about ways to quit. Also talk to your doctor about how to limit how much alcohol you drink.
- Maintain a healthy weight.
- Check your blood pressure often.
- Take a low dose of aspirin if your doctor says it is safe.
- Keep chronic conditions under control.
- Call for emergency medical services if you have symptoms of a stroke, even if symptoms stop.
- Do not use drugs.

### RESOURCES:

Foreign Accent Syndrome Support—University of Texas at Dallas

<http://www.utdallas.edu/research/FAS>

National Institute on Deafness and Other Communication Disorders

<http://www.nidcd.nih.gov>

### CANADIAN RESOURCES:

Heart and Stroke Foundation of Canada

<http://www.heartandstroke.com>

Speech-Language and Audiology Canada

<http://sac.aac.ca>

### References:

Aboul FAS. Foreign Accent Syndrome (FAS) Support website. Available at:

<http://www.utdallas.edu/research/FAS/about/> Accessed November 23, 2014.

Garst D, Katz W. Foreign accent syndrome. *ASHA Leader*. 2006;11:10-11,31.

Miller N. Foreign accent syndrome. Not such a funny turn. *Inter J Ther & Rehab*. 2007;14:388.

Foreign accent syndrome. American Speech-Language-Hearing Association website. Available at:

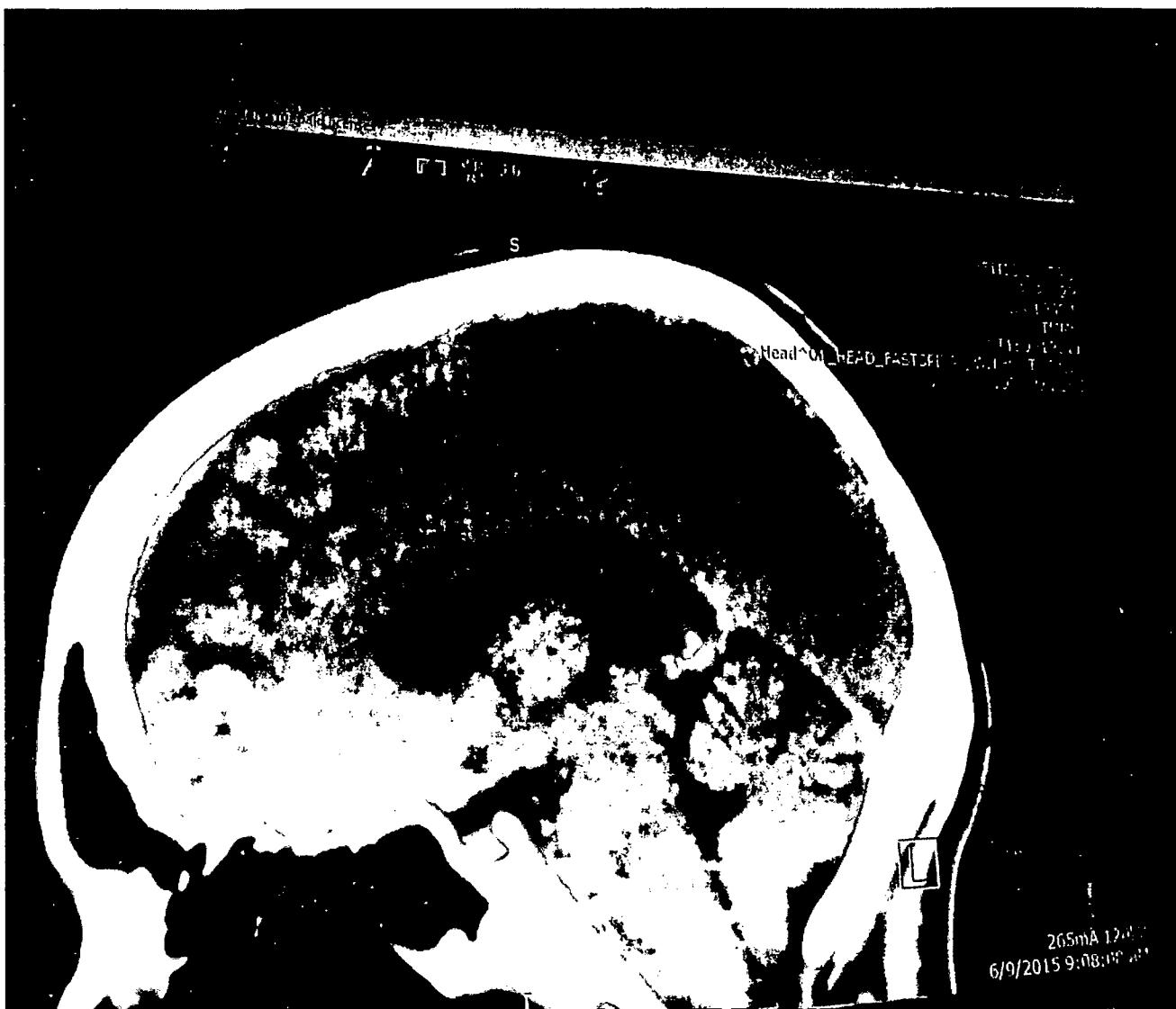
[http://www.asha.org/Publications/leader/2006/060815/060815cf/](http://www.asha.org/Publications/leader/2006/060815/060815cf). Published August 15 2006. Accessed November 23, 2014.

Reeves, R, Burke R, Parker, J. Characteristics of psychotic patients with foreign accent syndrome. *J Neuropsychiatry Clin Neurosci*. 2007;19:70-76.

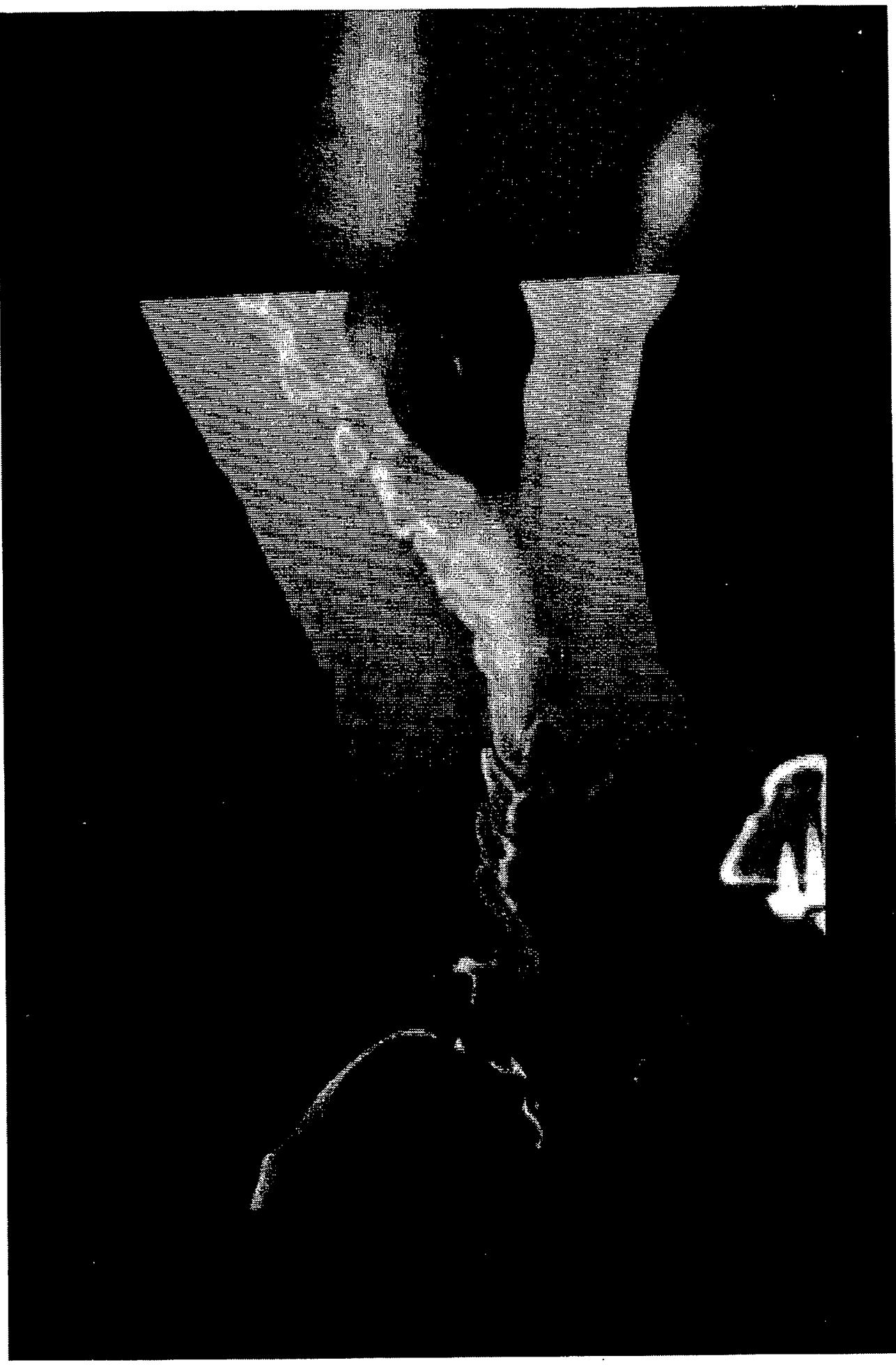
Last reviewed December 2014 by Rimas Lukas, MD

Please be aware that this information is provided to supplement the care provided by your physician. It is neither intended nor implied to be a substitute for professional medical advice. **CALL YOUR HEALTHCARE PROVIDER IMMEDIATELY IF YOU THINK YOU MAY HAVE A MEDICAL EMERGENCY.** Always seek the advice of your physician or other qualified health provider prior to starting any new treatment or with any questions you may have regarding a medical condition.

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HERMOSA BEACH SURGERY CENTER  
555 PIER AVENUE, SUITE #1  
HERMOSA BEACH, CA 90254  
(877)511-9811

Statement Date  
6/18/2015

Page  
1

Chart Number  
FETLA000

LAURA FETTIG  
14903 BURIN STREET  
LAWNDALE, CA 90260

Credit Card	Card Type	<input type="checkbox"/> Visa	<input type="checkbox"/> MasterCard
Card No.	Exp. Date	CSV Code	
Signature	Amount		

Date of Last Payment: Amount: 0.00

Patient: LAURA FETTIG Chart Number: FETLA000 Case: 7/22/14 RT C2C3C4 MED

Dates	Procedure	Procedure	Charge	Amount Paid by Insurance	Paid By Guarantor	Adjustments	Remainder
7/22/14	64490	FACET JOINT INJ CERV	14800.00	0.00		0.00	14,800.00
7/22/14	64491	FACET INJ CERV THORA 2ND	14800.00	0.00		0.00	14,800.00
7/22/14	76499	UNLIS DX RADIOGRAPHIC PX	5400.00	0.00		0.00	5,400.00



Guarantor: LAURA JEAN FETTIG  
Guarantor ID: 500109054

Statement Date: 2/1/2018  
Date Due: 03/03/2018

**PAYMENT OPTIONS**

- Pay Online: California.Providence.org/paymybill
- OR scan the QR code with your smart phone
- Pay by Phone: 866-747-2455
- Pay by Mail

CURRENT AMOUNT DUE	TOTAL BALANCE	PAYMENT AMOUNT
\$75,212.61	\$75,212.61	

**MAKE CHECKS PAYABLE TO:**  
Providence Health & Services

Providence Health & Services  
PO Box 3268  
Portland, OR 97208-3268

Check box if your address has recently changed and complete a form on the back of this coupon.

## Payment Summary Form

Report Number: RMCAN-5-5

Contractor: NGHP

Date: 09/27/2018

9/27/2018

Time: 06:17:01

Page 5 of 42

Beneficiary Name: FETTIG, LAURA J

Case ID: 20142 8109000476

Beneficiary Medicare ID: [REDACTED]

Case Type: 1 - Liability

Date of Incident: 02/08/2014

02/08/2014

Reported Diagnosis Codes: V714

TOS	ICN	Line	Processing	Provider	ICD	**DX	**HCPCS/	From Date	To Date	Total	Reimbursed	Conditional
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TOS	ICN	Line #	Processing Contractor	Provider Name/NPI#	ICD Ind	**DX Codes	**HCPCS/ ORG	From Date	To Date	Total Charges	Reimbursed Amount	Conditional Payment
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<sup>\*\*</sup>II - HCPCS Code, D - DRG Code

<sup>\*\*</sup>Part-A claim Primary Diagnosis Code is denoted in bold font

Sum of Total Charges \$188,909.35

Total Reimbursed Amount \$46,785.78

Total Conditional Payments \$42,575.26

\$188,909.35  
\$46,785.78  
\$42,575.26