

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

CHRISTINE MONTAGUE, :  
Plaintiff, : CIVIL ACTION  
: FILE NO. 17EV003298  
v. :  
: :  
ANN HERRERA, in her representative :  
capacity as Administrator for :  
THE ESTATE OF :  
MELANIE M. NORVELL, :  
Defendant, :

CONSOLIDATED PRE-TRIAL ORDER

The following constitutes the Consolidated Pre-Trial Order entered in the above styled case:

1.

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

Plaintiffs	Steven N. Newton, Esq. Georgia Bar No. 211382 RICHARD D. HOBBS & ASSOCIATES, PC 101 Devant Street, Suite 403 Fayetteville, GA 30214 770-277-1400
	Bethany L. Schneider, Esq. Georgia Bar No. 940713 SCHNEIDER LAW, P.C. 1201 Peachtree St. NE, Suite 2000 Atlanta, GA 30361 404-800-3060
Defendant	W. Curtis Anderson, Esq. James L. Cannella, Jr., Esq. Downey & Cleveland, LLP 288 Washington Avenue Marietta, Georgia 30060

770-422-3233  
anderson@downeycleveland.com  
cannella@downeycleveland.com

Plaintiff and Defendant respectfully request the right to substitute counsel of record to try this case. Such substitution will not delay the trial of this case.

2.

According to the Plaintiff, the estimated time required for trial is two to three days. According to the Defendant, the estimate time required for trial is one and a half to two days (2-3 days).

3.

There are no motions or other matters pending for consideration by the Court except as follows: Plaintiff's Motion to Compel Discovery and Recover Reasonable Attorney's Fees and Costs filed on October 26, 2017 remains pending. Plaintiff respectfully reserves the right to file any motions to challenge the timing of designating an expert and qualifications of any expert designated by the defense, including Daubert Motions.

The Defendant shall have the right to file or submit any additional motions or raise any motion in limine prior to commencement of trial.

4.

Plaintiffs intend to qualify the jury as to the relationship with the following: Plaintiff Christine Montague, Ann Herrera, Esq., Estate of Melanie M. Norvell, any and all attorneys employees of the law office of Downey & Cleveland, LLP, stockholders/employees/policyholders of State Farm Mutual Automobile Insurance Company, and all medical providers identified in discovery. Plaintiff respectfully requests the right to qualify any and all jurors, individually and collectively, pursuant to O.C.G.A. §§ 15-12-133, 15-12-134, Uniform Superior Court Rule 10.1,

*Kim v. Walls*, 275 Ga. 177 (2002), *Mordecai v. Cain*, 338 Ga. App. 526, 542, 790 S.E. 2d (2016) (quoting *Ford Motor Co. v. Conley*, 294 Ga. 530, 550 (3)(b), 757 S.E.2d 20 (2014)).

BY THE DEFENDANT:

- (a) The parties.
- (b) Any person with a contingent interest in the case.

5.

(A). All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial. Furthermore, Defendant reserves the right to take discovery depositions of any health care provider or witness Plaintiff plans to bring live at trial.

(B). Unless otherwise noted, the names of the parties as shown in the caption to this order are correct and complete and there is no question by any party as to the misjoinder or nonjoinder of any parties.

6.

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

This lawsuit arises out of an August 27, 2014 rear-end collision caused by the Defendant, Melanie M. Norvell, at or near the intersection of the Georgia State Highway 400 exit ramp and Northridge Road in Sandy Springs, Fulton County, Georgia. Plaintiff, Christine Montague, was driving a 2002 Toyota Avalon (car) and made a stop to turn right at the traffic light. Defendant, Melanie M. Norvell, was driving on the exit ramp in a 2013 Ford Explorer (SUV). Suddenly and without warning, Defendant's vehicle rear-ended Plaintiff's vehicle in a severe collision.

Plaintiff's vehicle sustained \$4,500 in property damage and was rendered a total loss. Defendant denies liability for causing the collision.

As a result of the collision, Plaintiff sustained head, neck and back injuries. She obtained treatment and diagnostic studies from Dekalb Medical Center, Arrowhead Clinic, Metro Medical, LLC, Regional Medical Group, Onyx Imaging, LLC, Benchmark Rehab, Resurgens Orthopaedics, and Integrative Optimal Health Solutions, Inc. She received conservative treatment from August 2014 until November 2015. From March 2016 until May 2016, she obtained treatment from Resurgens Orthopaedics and received a recommendation for neck surgery. On November 1, 2016, she underwent an anterior cervical discectomy and fusion by Dr. Koch of Resurgens Orthopaedics. As a result of the negligence and negligence per se of the Defendant in causing the collision, Plaintiff suffered injuries, sought medical treatment, and incurred medical expenses of \$84,743.75 for which she seeks special and general damages under the law. Plaintiff also seeks attorneys' fees and costs under O.C.G.A. § 13-6-11.

On March 30, 2017, Defendant gave Notice of Non-Party Fault. The alleged non-party fault was not raised in the answer nor in discovery. Defendant has the burden of proof for any alleged non-party fault of John/Jane Doe. *Sw. Emergency Physicians, P.C. v. Quinney*, 347 Ga. App. 410, 422, 774 S.E.2d 688 (2018). Additionally, Defendant must prove that John/Jane Doe breached a legal duty in tort and said breach was a proximate cause of Plaintiff's injuries claimed herein. *Zaldivar v. Pickett*, 297 Ga. 589, 600-01, 774 S.E.2d 688 (2015).

7.

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

The Defendant denies that she was negligent in any way on the day of the incident. The Defendant came to a stop behind the Plaintiff's vehicle. The light governing the intersection at

issue changed to green, and the Plaintiff began to move forward. The vehicle in front of the Plaintiff, for unknown reasons, came to a sudden and abrupt stop. As a result, the Plaintiff also came to an immediate, sudden, and abrupt stop. Unfortunately, the Defendant made contact with the rear of the Plaintiff's vehicle. Defendant further denies that the incident at issue was the proximate cause of Plaintiff's alleged injuries and damages.

8.

The issues for determination by the jury are as follows:

- (a) Duty;
- (b) Breach of Duty;
- (c) Cause and Proximate cause;
- (d) General and special damages;
- (e) Attorneys' fees and costs.
- (f) Contributory Negligence, if any;
- (g) Apportionment of damages to include the Plaintiff and John Doe.

9.

Specifications of negligence including applicable code sections are as follows:

O.C.G.A. § 40-6-49.

10.

If the case is based on a contract, either oral or written, the terms of the contract are as follows (or, the contract is attached as an Exhibit to this order): Not applicable.

11.

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

By Plaintiff: Pursuant to O.C.G.A. §§ 51-12-2(b), 51-12-3, and 51-12-7, special damages of \$84,743.75, Plaintiff seeks general damages, pursuant to O.C.G.A. § 51-12-2(a), which flow from the Defendant's tortious acts and are determined by the enlightened conscience of an impartial jury. Plaintiff also seeks attorneys' fees and costs under O.C.G.A. § 13-6-11. The

measure of the damages is controlled by each respective statute.

By Defendant: Defendant does not consent to the Plaintiff's allegations of damages.

12.

If the case involves divorce, each party shall present to the Court at the Pre-Trial conference the affidavits required by Rule 24.2.

This case does not involve divorce.

13.

The following facts are stipulated: (1) Plaintiff seeks damages in excess of \$25,000 which requires a twelve-member jury (Pl. Resp. to Def. RFA No. 1). Defendant does not object to this position, but does object to this stipulation being read to the jury.

14.

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

a. By the Plaintiff: Plaintiff does not stipulate at this time to the authenticity of any documents or exhibits as listed by the Defendant in the portion of the Pre-Trial Order to the extent that said documents are responsive to discovery requests and have not been produced. The Plaintiffs, at the discretion of counsel, *may* tender the following:

1. Billing statements and invoices from Plaintiff's treating health care providers: Dekalb Medical Center, Arrowhead Clinic, Metro Medical, LLC, Regional Medical Group, Onyx Imaging, LLC, Benchmark Rehab Partners, Resurgens Orthopaedics, American Anesthesiology Associates, and Integrative Optimal Health Solutions, Inc.;

2. Certified medical records and images from Dekalb Medical Center, Arrowhead Clinic, Metro Medical, LLC, Regional Medical Group, Benchmark Rehab Partners, and Resurgens Orthopaedic;
3. Photographs of vehicles involved in collision;
4. Google Map Photographs of the Scene;
5. 2015 National Vital Statistics Life Table;
6. Documents and demonstratives shown at Dr. Fred Koch's deposition;
7. Documents shown at Dr. Ann Drayton's deposition;
8. Any documents listed by Defendant;
9. Any and all pleadings prepared or filed by any party;
10. Any and all documents identified or referred in discovery by either party;
11. Photographs and/or diagrams depicting the scene of the collision.
12. Photographs depicting any vehicles or other property damage as a result of this collision;
13. Photographs depicting any injury to Plaintiffs caused by the collision;
14. Any and all documents necessary for the purposes of impeachment, cross examination or rebuttal.
15. Plaintiffs respectfully reserves the right to object to any documents not submitted to counsel prior to entry of the Pre-Trial Order.

Pursuant to O.C.G.A. §§ 24-8-803(6), 24-9-902(11), on December 2 and December 20, 2019, Plaintiff efiled and submitted Notices of Intent to Defendant and counsel to introduce certified medical records. On December 2, 2019, Plaintiff efiled and submitted Notice of Intent to Introduce the Medical Narrative of Dr. Roy J. Vogel under O.C.G.A. § 24-8-826. No objection has been filed to date by Defendant regarding the aforementioned Notices. Plaintiffs respectfully request the right to supplement this list upon reasonable notice to opposing counsel prior to trial. Plaintiffs reserves the right to object to the any documentary and physical evidence until such time that the Defendant has laid a proper foundation for its admissibility under the Georgia Rules of Evidence.

b. By Defendant: Defendant may in his discretion tender the following:

1. Selected or complete portions of medical records from any of the Plaintiff's treating health care providers, including but not limited to:
  - a. Plaintiff's medical records and bills from Dekalb Medical Center.
  - b. Plaintiff's medical records and bills from Arrowhead Clinics/Dr. Roy Vogel.
  - c. Plaintiff's medical records and bills from Metro Medical, LLC.

- d. Plaintiff's medical records and bills from Regional Medical Group.
- e. Plaintiff's medical records and bills from Benchmark Physical Therapy.
- f. Plaintiff's medical records and bills from Resurgens Orthopaedics.
- g. Plaintiff's medical records and bills from Walgreens Pharmacy.
- h. Plaintiff's medical records and bills from Walmart Pharmacy.
- i. Plaintiff's medical records and bills from ML Healthcare.
- j. Plaintiff's medical records and bills from Dekalb County Board of Health.
- k. Plaintiff's medical records and bills from CVS Pharmacy.
- l. Plaintiff's medical records and bills from Southside Medical Center.
- m. Plaintiff's medical records and bills from East Hartford Medical Center.
- n. Plaintiff's medical records and bills from Dr. Ann Sheryl Drayton.
- o. Plaintiff's medical records and bills from Dr. Francis Kundi.
- p. Plaintiff's records from Grange Mutual Casualty Company.
- q. Plaintiff's employment records from Walgreens.
- r. Plaintiff's employment records from Georgia Perimeter College.
- 2. Photographs showing the incident scene and/or parties vehicles.
- 3. Selected portions of the Plaintiff's employment records and/or income tax returns.
- 4. Selected portions of any documentary evidence relating to any prior subsequent lawsuits, claims or automobile accidents involving the Plaintiff.
- 5. All documentary and physical evidence listed by the Plaintiff.
- 6. Plaintiff's social media.
- 7. Defendant's Notice of Non-Party at Fault.

Defendant does not stipulate as to the authenticity of any documentary or physical evidence listed by the Plaintiff since Defendant has not been afforded an opportunity to review same. Defendant reserves the right to raise any and all other objections to any documentary and physical evidence listed by the Plaintiff upon the same being properly marked and tendered into evidence.

15.

Special authorities relied upon the Plaintiff relating to peculiar evidentiary or other legal questions are, as follows: Plaintiff is competent testify regarding medical expenses as allowed by O.C.G.A. § 24-9-921. Plaintiff need not prove the medical expenses were reasonable or customary to be admissible; rather, she must demonstrate said medical expenses were incurred as a result of the injuries sustained in the collision, pursuant to O.C.G.A. § 24-9-921. Plaintiff also intends to



offer a medical bill summary and testify to the amount of the medical bills, that said amount is correct, and said amount were incurred in connection with the medical treatment caused by the collision. O.C.G.A. § 24-10-1006; *see also Arnsdorff v. Fortner*, 276 Ga. App. 1, 7, 622 S.E.2d 395, 400 (2005) (summary of medical bills admissible so long as subject to cross-examination). Defendant has the burden of proof for any alleged non-party fault of John/Jane Doe. *Sw. Emergency Physicians, P.C. v. Quinney*, 347 Ga. App. 410, 422, 774 S.E.2d 688 (2018). Additionally, Defendant must prove that John/Jane Doe breached a legal duty in tort and said breach was a proximate cause of Plaintiff's injuries claimed herein. *Zaldivar v. Pickett*, 297 Ga. 589, 600-01, 774 S.E.2d 688 (2015). Plaintiff intends to use the deposition of the deceased Defendant under O.C.G.A. § 9-11-32(a)(1) and (a)(3)(A). Plaintiff may raise peculiar evidentiary issues in a Motion in Limine.

Defendant does not consent to all of the conclusory positions contained in paragraph 15 and will raise such issues with the Court should the issue(s) arise.

16.

Special authorities relied upon by Defendant relating to peculiar evidentiary or other legal questions are as follows: Plaintiff is barred from claiming special damages which are not specifically pled. O.C.G.A. § 9-11-9(g).

17.

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

18.

The testimony of the following persons may be introduced by depositions:

By Plaintiff: Dr. Fred Koch via video deposition; Dr. Ann Drayton via video deposition;

and Defendant, deceased; Plaintiff has exchanged designations for the depositions of Dr. Koch and Dr. Drayton with counsel for the Defendant but has not received a response to date.

Defendant will submit Defendant's designations prior to trial along with any objections Defendant may have to Plaintiff's designations.

By the Defendant:

1. Any of the Plaintiff's treating physicians or health care providers which may be taken prior to trial.
2. The custodian of any medical records of the Plaintiff.
3. The custodian of any employment records and/or income tax returns of the Plaintiff.
4. The custodian of any documentary evidence relating to any prior or subsequent claims or lawsuits or automobile accidents involving the Plaintiff.
5. Any individual listed in paragraph 19(d) who is unable to attend the trial for a legally sufficient reason.
6. Any individual listed by the Plaintiff.
7. The deposition of the Defendant taken on May 19, 2017.

In the event that the Plaintiff intends to introduce any testimony by way of deposition, Defendant reserves the right to call any objections to the depositions or questions or arguments in the depositions to the attention of the Court prior to the reading of the deposition at the time of trial.

Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the Court prior to trial.

19.

The following are lists of witnesses:

- a. Plaintiff will have present at trial: Christine Montague.
- b. Plaintiff may have present at trial: Embry Montague; Vivian Wilson; Nia Montague; and Luther Landrum; any witness listed by Defendant; any witness necessary for purposes of impeachment or rebuttal; anyone necessary to authenticate and/or lay the foundation

for the admissions of records, documents and things; and any before or after witnesses who have knowledge regarding the Plaintiff's injuries from this incident. Plaintiff reserves the right to call witnesses for rebuttal of Defendant's witnesses. Per *Resurgens v. Elliott*, Plaintiff objects and will seek to exclude the Defendant from calling a material witness when such witness(es) should have been identified and disclosed in discovery. 301 Ga. 589, 595-96, 800 S.E.2d 580, 585 (2017).

Defendant objects to the Plaintiff calling any witness not previously identified in Plaintiff's Responses to Defendant's Interrogatories.

- (c) Defendant will have present at trial: None.
- (d) Defendant may have present at trial:
  - 1. Plaintiff.
  - 2. A representative for Ann Herrera, County Administrator.
  - 3. The investigating officer.
  - 4. Physicians and/or health care providers who have treated the Plaintiff.
  - 5. The custodian of any employment records and/or income tax returns of the Plaintiff.
  - 6. Medical record custodian of any facility which rendered care or treatment to the Plaintiff.
  - 7. The custodian of any documentary evidence relating to any prior or subsequent claims or lawsuits or automobile accidents involving the Plaintiff.
  - 8. Any witness listed by the other parties.

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

20.

The form of all possible verdicts to be considered by the jury are as follows:

BY PLAINTIFF:

We, the jury, find for the Plaintiff and award damages as follows:

\$ \_\_\_\_\_ for Plaintiff's medical expenses.

\$ \_\_\_\_\_ for Plaintiff's pain and suffering.

We, the jury, find for the Defendant.

This \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Foreperson (Signature)

\_\_\_\_\_  
Foreperson (Please Print Name)

### **I. Compensatory Damages**

Please place an “X” in the line besides either number 1 or 2 below. If you place an “X” by number 1, enter a dollar amount for damages on the lines that follow, and then continue to section “II”. If you place an “X” by number 2, then sign and return the verdict form.

1. \_\_\_ We find in favor of Plaintiff in the amount of:

- future physical pain and suffering: \$ \_\_\_\_\_
- future mental pain and suffering: \$ \_\_\_\_\_
- future interference with normal living: \$ \_\_\_\_\_
- future medical expenses: \$ \_\_\_\_\_
- past physical pain and suffering: \$ \_\_\_\_\_
- past mental pain and suffering: \$ \_\_\_\_\_
- past interference with normal living: \$ \_\_\_\_\_
- past medical expenses: \$ \_\_\_\_\_

2. \_\_\_ We find in favor of the Defendant.

*If you have found in favor of Plaintiff above, please also consider the following:*

## II. Bad Faith

Please place an "X" in the line besides either number 1 or 2 below.

1. \_\_\_ We find that Defendant has acted in bad faith, been stubbornly litigious and/or caused Plaintiff unnecessary trouble and expense, thereby entitling Plaintiff to award of the expenses of litigation, including but not limited to attorney's fees, pursuant to O.C.G.A. § 13-6-11.

2. \_\_\_ We find that Plaintiff is not entitled to an award of the costs of litigation and attorney's fees pursuant to O.C.G.A. § 13-6-11.

BY DEFENDANT:

Defendant will submit a proposed jury verdict form.

21.

(a) The possibilities of settling the case are unknown.

(b) The parties do want the case reported. Defendant does wish for the entire trial to be reported and for those portions that the Plaintiff does not want reported, Defendant will pay for including but not limited to, voir dire. Plaintiff does not want voir dire taken down.

(c) The cost of take-down will be shared by the parties. Plaintiff will not share in the costs of take down for voir dire.

(d) Other matters: Plaintiff works in Texas and respectfully requests at least one or two days' notice of the trial date. Defendant's list of medical providers and records outlined in Paragraph 14 (b) shall constitute notice that said records may be utilized under O.C.G.A. §§ 24-8-803 and 24-9-902. Defendant does not consent to the venue of this Court, and submits that the correct jurisdiction is Forsyth County.

Respectfully submitted this 16th day of January 2020.

**RICHARD D. HOBBS & ASSOC., P.C. SCHNEIDER INJURY LAW**

/s/ Steven N. Newton

STEVEN N. NEWTON

GA Bar No. 211382

101 Devant Street, Suite 403

Fayetteville, GA 30214

Phone: (770) 716-0200

snewtonlaw@gmail.com

Counsel for Plaintiff

***Counsel for Plaintiff***

/s/ Bethany L. Schneider

BETHANY L. SCHNEIDER

GA Bar No.: 940713

*(Executed and filed with express  
permission by Steven N. Newton, Esq.)*

1201 Peachtree Street NE

Building 400 Ste. 2000

Atlanta, GA 30361

(404) 800-3060 (Telephone)

(404) 920-3302 (Facsimile)

bschneider@schneiderlawpc.com

***Counsel for Plaintiff***

**DOWNEY & CLEVELAND, LLP**

By: /s/W. Curtis Anderson

**W. CURTIS ANDERSON**

Georgia State Bar No.: 018470

anderson@downeycleveland.com

Attorney for Defendant

**ORDER**

IT IS HEREBY ORDERED that the foregoing, including the attachments thereto, constitutes the CONSOLIDATED PROPOSED PRE-TRIAL ORDER in the above case and supersedes the pleadings which may not be further amended except by order of the Court to prevent manifest injustice.

This \_\_\_\_\_ day of \_\_\_\_\_, 2020



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**HON. FRED C. EADY**  
**JUDGE, STATE COURT OF FULTON COUNTY**

