VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

KAREN SANTORUM
1101 LANDESET DRIVE
HERNDON, VA 20170

Plaintiff,

vs.

DAVID B. DOLBERG, D.C.
8996 BURKE LAKE ROAD, SUITE 104
BURKE, VA 22015

and

KING'S PARK FAMILY CHIROPRACTIC, P.C.
8996 BURKE LAKE ROAD, SUITE 104
BURKE, VA 22015

At Law No.: 175800

AMENDED MOTION FOR JUDGMENT

Karen Santorum hereby alleges as follows:

PARTIES

1. Plaintiff , Karen Santorum (hereinafter "Plaintiff") is an individual, sui juris, residing in Herndon, Fairfax County, Virginia 20170.

2. At all time pertinent hereto, Defendant David B. Dolberg, D.C. (hereinafter "Dolberg") was a healthcare provider pursuant to Va. Code § 8.01-581.1 duly licensed to practice chiropractics in the Commonwealth of Virginia, and held himself out to the public as an expert in the treatment of individuals with Plaintiff's condition. Upon information and belief, Dolberg was employed by King's Park Family Chiropractic Center, P.C. at 8996 Burke

Lake Road, Suite 104, Burke, VA 22015.

3. At all times pertinent hereto, Defendant King's Park Family Chiropractic Centers, P.C. (hereinafter "Family Chiropractic") was a professional corporation licensed by the Commonwealth of Virginia, and holding itself out to the public as a healthcare provider and an expert in the treatment of individuals with Plaintiff's condition. Family Chiropractic is located at 8996 Burke Lake Road, Suite #104, Burke, VA 22015. The professional corporation provided chiropractic care to Plaintiff through its agents and employees.

4. At all times pertinent hereto, Defendant Family Chiropractic was acting by and through its agents, servants and/or employees who were acting within the scope of their authority and on the business of Family Chiropractic.

5. The Defendants have a duty to exercise that degree of skill, care, attention and diligence necessary under the circumstances and further to conform to the legal standard of care in light of the foreseeable risks.

6. On November 15, 1996, Plaintiff presented to Dolberg with complaints of pain in the lower back, with no radicular pain. Plaintiff also told Dolberg she had given birth "three (3) weeks earlier" to her fourth child, who died shortly after birth.

7. Dolberg performed a limited physical examination and took x-rays of the lower back. Dolberg's diagnosis of Plaintiff was lumbar intervertebral disc syndrome/displacement/ protrusion, disorder of the sacrum, and lumbosacral neuritis or radiculitis.

8. On November 15, 1996, Dolberg administered a violent manipulation to Plaintiff.

9. Within an hour or two of the manipulation, Plaintiff began to develop pain

in the central portion of her low back which radiated into her left buttock and left leg.

10. On November 16, 1996, at approximately 3:00 a.m., the pain in the aforementioned areas became excruciating and Plaintiff's husband telephoned Dolberg's emergency telephone number. Dolberg was advised of Plaintiff's condition and asked whether Plaintiff should be transported to the emergency room. Dolberg advised against emergency medical care, told Plaintiff to take a hot shower, and report to his office at 8:00 a.m.

11. On November 16, 1996, at 8:00 a.m., Plaintiff reported to Dolberg's office and repeated her symptoms to Dolberg. Dolberg again administered a violent manipulation on both sides of Plaintiff's back. Plaintiff began to cry as a result of the excruciating pain. Dolberg then released Plaintiff from his care.

12. On November 23, 1996, Plaintiff presented to the emergency department of Passavant Hospital in Pittsburgh, Pennsylvania, her home state. A lumbar myelogram and CT Scan were ordered which revealed a large midline disc herniation at L5-S1, lateralizing toward the left side. Further, there was compression on the anterolateral aspect of the dural sac on the left side and on the takeoff of the left S1 root sleeve. Extruded disc material extended downward to the level of the upper sacrum on the left.

13. Plaintiff was transferred from Passavant Hospital to the University of Pittsburgh Medical Center a/k/a Presbyterian University Hospital, for emergency surgery on the evening of November 23, 1998 by neurosurgeon Donald W. Marion, M.D.

14. Dr. Marion performed a left L 5-S 1 microdisectomy and also a wide S1 foramenotomy.

COUNT I
(Medical Negligence of Defendant Dolberg)

15. Plaintiff repeats and incorporates by reference, paragraphs 1 through 14 of the Motion for Judgment as though fully set forth herein.

16. The Defendant Dolberg breached the applicable standard of care in his care and treatment of the Plaintiff in the following particulars:

a. In failing to take into consideration, as a complicating factor, Plaintiff's recent pregnancy, labor and delivery prior to administering manipulation on Plaintiff; and/or

b. In failing to order additional tests or perform additional examinations, in particular, but not limited to Magnetic Resonance Imaging (MRI), prior to administering manipulation; and/or

c. In failing to properly perform a manipulation which resulted in a herniated disc; and/or

d. In performing a manipulation on this patient; and/or

e. In failing to diagnose that the manipulation administered by him had caused a herniated disc; and/or

f. In failing or refusing to see, to treat and/or refer Plaintiff when Defendant knew or reasonably should have known of the serious nature of Plaintiff's condition; and/or

g. In failing to exercise reasonable care to prevent further harm to Plaintiff when Defendant knew or should have known that his conduct caused bodily harm to Plaintiff;

h. In failing to possess the requisite degree of knowledge and skill necessary for the proper treatment of the Plaintiff;

17. As a direct and proximate result of the aforementioned negligence and

wrongful conduct of the Defendants and their agents and/or employees, acting solely and/or jointly and severally, Plaintiff has suffered severe and permanent neurologic injuries and other damage; incurred and will continue to incur great pain, suffering, humiliation and embarrassment; loss of earning capacity; and will continue to suffer great expense for medical care.

WHEREFORE, the Plaintiff requests judgment against the Defendants jointly and severally in the sum of Five Hundred Thousand Dollars ($500,000.00) and whatever further relief the Court deems proper and just including pre and post judgment interest. This prayer for relief is made without prejudice to Plaintiff arguing that the Virginia Medial Malpractice Cap is inapplicable in this case.

COUNT II
(Medical Negligence of Defendant Family Chiropractic)

18. Plaintiff repeats and incorporates by reference paragraphs 1 through 17 of the Motion for Judgment.

19. The Defendant Family Chiropractic and/or its agents, servants, and/or employees, acting within the scope of their authority, breached the applicable standard of care in its care and treatment of the Plaintiff in the following particulars:

a. In failing or refusing to see and/or to treat Plaintiff when defendant knew or reasonably should have known of the serious nature of Plaintiff's condition; and/or

b. In abandoning the care and treatment of plaintiff when defendant knew or reasonably should have known that Plaintiff was seriously injured; and/or

c. In failing to adequately, properly and/or timely direct, require or obtain the attention, advice and/or instruction and/or consultation of qualified specialists and/or to refer Plaintiff to another physician or hospital so she could obtain

adequate, proper, complete and timely care and treatment; and/or

d. In failing to adequately or properly provide competent, properly trained personnel to care for and to supervise the care and treatment performed upon Plaintiff; and/or

e. In caring for and/or treating and/or attempting to care for and/or treat Plaintiff when Defendant knew or reasonably should have known that the manner of care and treatment were inadequate and/or improper and/or unwarranted and/or medically contraindicated and/or outmoded and/or unnecessary.

20. As a direct and proximate result of the aforementioned negligence and wrongful conduct of both Defendants and their agents, servants and/or employees, acting solely and/or jointly and severally, Plaintiff has suffered severe and permanent neurologic injuries and other damage; incurred and will continue to incur great pain, suffering, humiliation and embarrassment; loss of earning capacity; and will continue to suffer great expense for medical care.

WHEREFORE, the Plaintiff requests judgment against the Defendants jointly and severally in the sum of Five Hundred Thousand Dollars ($500,000.00) and whatever further relief this Court deems proper and just including pre and post judgment interest. This prayer for relief is made without prejudice to Plaintiff arguing that the Virginia Medical Malpractice Cap is inapplicable in this case.

COUNT III
(Informed Consent)

21. Plaintiff repeats and incorporates by reference paragraphs 1 through 20 of the Motion for Judgment as though fully set forth herein.

22. On November 15, 1996, Defendants Dolberg and Family Chiropractic (by and through its agents) committed an assault and battery on Plaintiff.

23. The assault and battery committed by the Defendants upon the person of Plaintiff was in no manner whatsoever due to any act or failure to act on the part of the Plaintiff.

24. Defendant Dolberg and Family Chiropractic failed to adequately, properly, completely and/or timely obtain the informed consent of Plaintiff.

25. Defendants Dolberg and Family Chiropractic failed to comply with the applicable standard of care in obtaining the informed consent of the Plaintiff as follows:

a. inform Plaintiff of the dangers inherent in the chiropractic treatment and procedures proposed and administered to this particular Plaintiff so as to permit the Plaintiff to provide her informed consent thereto; and/or

b. warn Plaintiff of inherent dangers involved in the chiropractic treatments and/or procedures suggested and administered by Defendants to a patient with this Plaintiff's condition; and/or

c. warn and/or inform Plaintiff of the various risks or unfortunate results or the foreseeable consequences arising from the chiropractic treatment and procedures performed; and/or

d. inform Plaintiff as to reasonable medical alternatives to the chiropractic treatment and procedures performed;

24. Defendants Dolberg and Family Chiropractic allowed and permitted the course of chiropractic treatment and procedures suggested and administered to exceed the limitation of Plaintiff's consent;

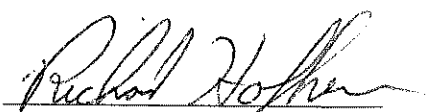
WHEREFORE, the Plaintiff, Karen Santorum requests judgment against the Defendants jointly and severally in the amount of Five Hundred Thousand Dollars ($500,000.00) and whatever further relief as the Court deems proper and just, including pre and post judgment interest. This prayer for relief is made without prejudice to Plaintiff

arguing that the Virginia Malpractice Cap is inapplicable in this case.

JURY TRIAL DEMANDED ON ALL COUNTS

Karen Santorum
Plaintiff
By Counsel

MILES & STOCKBRIDGE P.C.

By: 

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Counsel for Plaintiff

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Plaintiff,

vs.

DAVID B. DOLBERG, D.C.
c/o FAMILY CHIROPRACTIC
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8996 BURKE LAKE ROAD, SUITE 104
BURKE, VA 22015

and

FAMILY CHIROPRACTIC CENTERS, P.C.
8996 BURKE LAKE ROAD, SUITE 104
BURKE, VA 22015

At Law No.: 175800

MOTION TO PLACE ACTION UNDER SEAL

Karen Santorum, through her counsel, Richard Holzheimer and Amy S. Owen, Miles & Stockbridge, hereby move as follows:

PARTIES

1. The Plaintiff , Karen Santorum (hereinafter "Plaintiff") has filed this action for her personal injuries sustained as a result of the defendants' actions.

2. The Plaintiff and her husband, United States Senator Santorum, are public figures.

3. This action contains personal information about the Plaintiff, including but not

limited to medical information involving her pregnancies and her emotional state.

4. Plaintiff requests that this action be placed under seal to protect both her and her husband's privacy.

5. Plaintiff's request is without prejudice to defendants moving to remove the seal if circumstances warrant such removal.

WHEREFORE, Plaintiff Karen Santorum requests that the Court place this action under seal.

Karen Santorum
Plaintiff
By Counsel

MILES & STOCKBRIDGE P.C.

By: _____

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Counsel for Plaintiff

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PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO SET ASIDE VERDICT/MOTION FOR REMITTITUR

COMES NOW, Plaintiff, by and through counsel, Richard Holzheimer, Esquire, and Miles & Stockbridge, P.C. and Heather S. Heidelbaugh, Esquire and Burns, White & Hickton and hereby submits the within Brief in Opposition to Defendants' Motion to Set Aside Verdict/Motion for Remittitur.

DEFENDANTS' MOTION TO SET ASIDE VERDICT/MOTION FOR REMITTITUR SHOULD BE DENIED FORTHWITH SINCE THE JURY VERDICT OF $350,000 IS RATIONALLY RELATED TO THE EVIDENCE OF DAMAGES PUT FORTH BY THE PLAINTIFF AT TRIAL IN THIS MATTER.

The above chiropractic malpractice case went to trial on December 6, 1999. After the jury calmly listened to the evidence for four full days, the jury began its deliberations. The jury deliberated for over six hours and rendered a verdict for the Plaintiff in the amount of $350,000.00. The Defendants are unhappy with the verdict awarded and have filed a Motion to Set Aside the Verdict / Motion for Remittitur. However, there is no basis upon which to grant the same.

> Circumstances which compel setting aside a jury verdict include a damage award that is so excessive that it shocks the conscience of the court, creating the impression that the jury was influenced by passion, corruption, or prejudice; that the jury has misconceived or misunderstood the facts or the law; or, the award is so out of

> proportion to the injuries suffered as to suggest that it is not the product of a fair and impartial decision.

Poulston v. Rock, 251 Va. 254, 258, 467 S.E.2d 479, 482 (1996). Herein, the Defendants have only complained that the verdict was so excessive that it shocks the conscience of the court, creating the impression that the jury was influenced by "sympathy, or the jury being inflamed, and/or some other extraneous factor." *See,* Memorandum in Support of Motion, p. 5.

It is within the province of the jury to measure the quantum of damages in a particular case. *Simmons v. Boyd,* 199 Va. 806, 102 S.E.2d 292 (1958); *Williams Paving Co., Inc. v. Kreidl,* 200 Va. 196, 104 S.E.2d 758 (1958); *Phillips v. Campbell,* 200 Va. 136, 104 S.E.2d 756 (1958); *Lilley v. Simmons,* 200 Va. 791, 108 S.E.2d 254 (1959). However, there is no bright line test for measuring damages in a personal injury case. *Virginia Elec. and Power Co. v. Dungee,* 520 S.E.2d 164 (Va. 1999).

> A precise standard for measuring damages for injury and suffering has not been found. The opinion of a jury, acting on credible evidence and under proper instructions, usually furnishes a reasonable standard, and should not be supplanted by a different opinion [of the court] without a clear showing that it has been formed by improper factors.

Modaber v. Kelley, 232 Va. 60, 384 S.E.2d 233 (1986)(emphasis added); *Translift Equip., Ltd. v. Cunningham,* 234 Va. 84, 360 S.E.2d 183 (1987). "[A] just compensation may vary widely in different cases, even where the physical injury is the same...." *Phillips, supra.* Thus, each case must be reviewed based upon its particular facts. *Simmons, supra.* Typical factors considered by courts in determining whether to deny a motion to set aside a verdict/motion for remittitur include the following: **the age of the plaintiff; the nature and extent and duration of the injury sustained; the effect of the injury on the normal activities of the plaintiff; the nature and extent of the pain, suffering, humiliation and embarrassment; past and future medical**

expenses; costs of special treatment and the jury instructions. *See, Modaber, supra; Simmons, supra; Williams, supra; Phillips, supra; Lilley, supra.*

At the trial in this case, the Plaintiff presented abundant evidence of past and future pain and suffering to support the $350,000.00 verdict. Mrs. Santorum is a 39 year old woman, a nurse and attorney by training, a wife and mother of three children at the time of the injury. (She presently has five children.) Prior to the malpractice and injury, she was very active in her husband's campaigns and enjoyed vigorous exercising. She also enjoyed all of the responsibilities of motherhood, including cleaning the home and caring for her infant and toddler children.

On November 15 and 16, 1996, Mrs. Santorum testified that Dr. Dolberg performed a violent manipulation upon her. Within hours after the first manipulation on November 15, 1996, she began to experience excruciating burning pain radiating into her leg, severe muscle spasms in her back, decreased sensation and diminished strength in her left leg and foot. *See,* Trial testimony of Dr. Marion, pp. 32-33, 57-58. On November 23, 1996, Mrs. Santorum testified that she presented herself to North Hills Passavant Hospital emergency department. *Id.,* pp. 26-31, 57-58. After an exam and radiologic studies confirming a herniated disc at L5-S1, Dr. Donald W. Marion, M.D., a neurosurgeon, recommended an emergency diskectomy and foraminotomy at L5-S1. *Id.,* p. 44.

Following the surgery, Mrs. Santorum had a post-operative recovery period of at least one-month. *Id.,* p. 45, 56. Following the immediate post-operative period, she continued to experience recurring back pain, numbness in both feet and her left leg and exacerbations of pain if she sits. *Id.* She also developed scar tissue as a result of the surgery which causes her additional pain. *Id.,* p. 65. Dr. Marion then testified that the prognosis for her numbness would

probably be permanent and would therefore cause her pain for the rest of her life. *Id.*, p. 66-67. Dr. Marion also testified that Mrs. Santorum would have back and leg pain for the rest of her life. *Id.*, p. 67.

Dr. Marion testified that in the future Mrs. Santorum will benefit from an organized program of physical therapy for her back and legs throughout her life. She will also require over -the-counter and prescription drugs for pain for the rest of her life. *Id.*, p. 68-69. In addition, Mrs. Santorum is now at risk for future similar surgeries because people who have had one ruptured disk are at greater risk for other ruptured disks. *Id.*, p. 68.[1]

Mrs. Santorum testified that in addition to the physical pain and suffering, she has experienced severe mental suffering. Both Mr. and Mrs. Santorum testified that the physical pain restricts her activities with her family life in that she cannot care for her children as she used to and now requires help. As any mother is aware, this is emotionally devastating. The physical pain also restricts her exercise activities and as a result she has gained weight. Mr. and Mrs. Santorum testified she is very conscious of her weight gain and therefore has curtailed many activities. She is also left with an incision scar on her back, which is embarrassing to her. Thus, her injuries are permanent and painful (physically and mentally) and will severely limited her pursuits and activities for the rest of her 41.5 years of life[2].

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[1] The surgery and all related expenses in this case cost $18,083.53. The current rate of inflation is 2.6%. If Mrs. Santorum was required to have one additional surgery five years from now, using the current rate of inflation, the surgery would cost $20,434.39. If she required additional surgeries, the cost obviously would increase.

[2] It was uncontested that Mrs. Santorum has a life expectancy of 41.5 years, and the jury was charged to consider the same in determining damages.

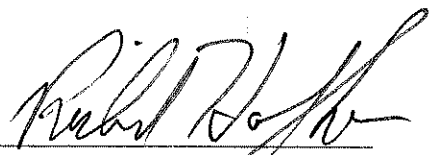
After the trial, the jury was properly charged to fully and fairly compensate Plaintiff only for those damages she sufficiently proved by the greater weight of the evidence that she sustained as a result of the Defendants' negligence, considering the following items:

(1) any bodily injuries she sustained and their effect on Plaintiff's health according to their degree and probable duration;
(2) any physical pain and mental anguish Plaintiff suffered in the past and any that she may be reasonably expected to suffer in the future;
(3) any disfigurement or deformity and any associated humiliation or embarrassment;
(4) any inconvenience caused in the past and any that probably will be caused in the future; and
(5) any medical expenses incurred in the past and any that may be reasonably expected to occur in the future.

The jury deliberated for over six hours and considered her past pain and suffering, past medical bills, her future pain and suffering and medical bills, the permanency of her injury, her scar, her embarrassment, her humiliation and the effect on her normal activities and based on the same rendered a verdict in the amount of $350,000.00.

In sum, it is reasonable to assume the jury concluded that Mrs. Santorum now has five children to raise with permanent back and leg pain, as well as permanent numbness. Thus, contrary to Defendants' assertions, the verdict was based on evidence fairly and competently adduced according to the facts of the case. Nothing in the record suggests, nor do the Defendants point to any evidence, that the jury was motivated by sympathy, prejudice or corruption. Defendants do not point to any "clear" evidence of record to allow this court to set aside or remit the verdict so as to avoid reversal on appeal. Under these circumstances, Plaintiff submits that the amount of the verdict does not shock the conscience or create an impression that the jury acted from improper motives. Consequently, there is no evidence to support setting aside the verdict or to grant a remittitur.

MILES & STOCKBRIDGE, P.C.

By: 

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