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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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CALVIN DONALD OSTLER, as  
personal representative of the Estate of  
Lisa Marie Ostler,

Plaintiff,

v.

HOLLY PATRICE HARRIS, ZACHARY  
PAUL FREDERICKSON, TODD  
ALLAN BOOTH, RONALD PAUL  
SEEWER, JR., BRENT LEE TUCKER,  
and SALT LAKE COUNTY, a political  
subdivision of the State of Utah,

Defendants.

**SHORT FORM MOTION TO  
STRIKE PARAGRAPH B.1. OF  
DEFENDANTS' RULE 26(a)(2)  
EXPERT DISCLOSURES  
AND PARAGRAPH 4  
OF DEFENDANTS'  
DUCivR 26-1(b)(1)(A) EXPERT  
DISCLOSURES [DKT 184];  
PRECLUDE EXPERT  
TESTIMONY OF UNIDENTIFIED  
WITNESSES; AND TO AWARD  
ATTORNEY FEES**

Case No. 2:18-cv-00254-001

Judge Bruce S. Jenkins

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### **CONSULTATION CERTIFICATION**

On December 15, 2019, Plaintiff's counsel identified in an email to Defendants' counsel (Exhibit 1 hereto) the inadequacy of the disclosures at issue. Defendants' counsel, Mses. Romano and Ramos, and Plaintiff's counsel, Messrs. Anderson and Mason, consulted by telephone on December 17, 2019, and made reasonable efforts to reach agreement on the disputed matters.

### **MOTION AND SUPPORTING MEMORANDUM**

Pursuant to Fed. R. Civ. P. 37(c)(1), Plaintiff moves the Court to (1) strike Paragraph B.1. of Defendants' Rule 26(a)(2) Disclosures ("FRCP Disclosures"), a copy of which (without Exhibit A) is attached as Exhibit 2, and Paragraph 4 of Defendants' DUCivR 26-1(b)(1)(A) Expert Disclosures [DKT 184] ("DUCivR Disclosures"), a copy of which is attached as Exhibit 3, and (2) preclude Defendants from offering testimony of expert witnesses who remain unidentified but are simply lumped under the label "Lisa Ostler's Treating Providers," and with respect to whom Defendants simply refer to "disclosures" and "medical records," in violation of Fed. R. Civ. P. 26(a)(2)(A) and (C) and DUCivR 26-1 (b)(1)(A)(i). Plaintiff also moves the Court, pursuant to Fed. R. Civ. P. 37(c)(1)(A), to award Plaintiff attorneys' fees caused by Defendants' unjustifiable and prejudicial failure to comply with Rule 26(a)(2).

Fed. R. Civ. P. 26(a)(2)(A) requires that “a party must disclose to the other parties the identity of any [expert] witness it may use at trial . . . .” Instead of identifying each “non-retained” expert witness, Defendants identify two witnesses, then provide the following designation:

**Lisa Ostler’s Treating Providers.** Any and all of Ms. Lisa Ostler’s treating physicians, including but not limited to, those treating physicians and medical providers identified by Plaintiff in any discovery responses or disclosures and any treating physicians or medical providers identified in any records obtained during the course of discovery in this case . . . .”

Paragraph B.1., Defendants’ FRCP Disclosures, and Paragraph 4, Defendants’ DUCivR Disclosures.

That statement “does not disclose the identity of the proffered expert witnesses,” in violation of Rule 26(a)(2)(A). *Kirkbride v. Terex USA, LLC*, No. 2:10-cv-660-TC-EJF, 2013 WL 4854455, \*1 (D. Utah 2013 Sept. 11, 2013) (unpublished). Defendants’ designation, which includes every treating physician during Lisa’s lifetime, “provides no meaningful disclosure of which witnesses [they] intend[ ] to call as a witness . . . .” *Id.*

Defendants violated Fed. R. Civ. P. 26(a)(2)(C)(i) and (ii) by merely referring to “disclosures” and “corresponding medical records” instead of stating “the subject matter on which [each] witness is expected to present [expert] evidence” and “a summary of the facts and opinions to which the witness is expected to testify.” *Id.*

*See also Schultz v. Ability Ins. Co.*, No. C11-1020, 2012 WL 5285777 (N.D. Iowa Oct. 25, 2012) (unpublished) (holding mere reference to medical records does not satisfy the disclosure requirement of Rule 26(a)(2)(C)); *Brown v. Providence Medical Center*, No. 8:10CV230, 2011 WL 4498824, \*1 (D. Neb. Sept. 27, 2011) (unpublished). Likewise, the mere references to “disclosures” and “corresponding medical records” violate DUCivR 26-1(b)(1)(A)(i), which requires a statement of “each expert’s subject of expertise.”

DATED this 17th day of December 2019:

LAW OFFICES OF ROCKY ANDERSON

/s/ Ross C. Anderson  
Ross C. Anderson  
*Attorney for Plaintiff*