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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

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VANESSA BRYANT,

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Plaintiff,

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vs.

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COUNTY OF LOS ANGELES, et al.,

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Defendants.

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CHRISTOPHER L. CHESTER,

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PLAINTIFF,

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vs.

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COUNTY OF LOS ANGELES, et al.,

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Defendants.

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Case No. 2:20-cv-09582-JFW-E
(Consolidated with 2:20-cv-10844-
JFW-E)

**PLAINTIFF VANESSA BRYANT'S
OFFER OF PROOF REGARDING
PLAINTIFF'S EXPERT RICHARD
J. SHAW, M.D.**

Final Pretrial Conference: August 5,
2022

Trial Date: August 10, 2022

The Honorable John F. Walter

1 Pursuant to the Court’s oral ruling on Plaintiff’s Motion in Limine No. 2 on
2 July 26, 2022, Plaintiff Vanessa Bryant (“Plaintiff”) hereby submits her Offer of
3 Proof regarding Plaintiff’s expert Richard J. Shaw, M.D. Dr. Shaw’s expert report
4 and CV are attached hereto and filed concurrently herewith, as **Exhibits A and B**.

5 Dr. Shaw has not been deposed yet. If he is deposed, Plaintiff will provide
6 the Court with a copy of Dr. Shaw’s deposition transcript as soon as possible
7 thereafter.

8 Plaintiff will offer Dr. Shaw to give the following opinions at trial:

9 **1. Dr. Cohen Violates the Goldwater Rule in Giving Professional**
10 **Opinions Concerning the Mental Health of Mrs. Bryant**

11 Dr. Shaw will testify that Dr. Cohen has violated the Goldwater Rule in
12 giving certain of his opinions. (Ex. A at 11-12.)

13 As part of his opinion, Dr. Shaw will explain the Goldwater Rule and how it
14 applies. And he will explain why some of Dr. Cohen’s opinions violate the
15 Goldwater rule. For example, he will opine that:

- 16 • Some of the opinions expressed by Dr. Cohen are psychiatric opinions
17 concerning the mental health of Mrs. Bryant.
- 18 • Dr. Cohen violates the Goldwater Rule by providing a psychiatric
19 opinion regarding the mental health of Mrs. Bryant, a public figure, without her
20 consent or other authorization, such as a court order; without a face-to-face
21 evaluation of Mrs. Bryant and without reviewing adequate supporting medical
22 records; and by incompletely and inaccurately describing the limitations of his
23 opinion.

24 **2. Dr. Cohen Violated Accepted Standards of Psychiatric Care**

25 Dr. Shaw will testify that by giving psychiatric opinions about Mrs. Bryant,
26 Dr. Cohen departs from established and accepted community standards of
27 psychiatric care. (*Id.* at 12-14.)
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1 As part of his opinion, Dr. Shaw will opine on the standard of care and what it
2 entails. And he will explain how Dr. Cohen has departed from that standard of care.
3 For example he will opine that:

- 4 • Ethical standards and standards of care apply to psychiatrists
5 performing a forensic psychiatric evaluation.
- 6 • The standard of care here would include a personal examination and
7 review and consideration of various information, which Dr. Cohen did not do.
8 Instead, Dr. Cohen relied on information that is outside the standard of care.
- 9 • In the absence of this information, Dr. Cohen has no medical basis to
10 support his opinions, and by offering them anyway he departs from the standard of
11 care.
- 12 • The deposition testimony and text messages that Dr. Cohen reviewed
13 do not provide a basis for his opinions.
- 14 • Dr. Cohen’s inferences that Mrs. Bryant has not been harmed because
15 she is not incapacitated or her fears are irrational are unfounded.

16 **3. Dr. Cohen Incompletely Described the Limitations that Should Be**
17 **Considered When Interpreting His Opinions**

18 Dr. Shaw will testify Dr. Cohen did not completely or accurately describe the
19 limitations that should be considered when interpreting his opinions, as required by
20 ethical and professional standards. (*Id.* at 14-15.)

21 **4. Dr. Cohen Failed to Consider Evidence Presented**

22 Dr. Shaw will testify that he does not agree with Dr. Cohen that there is no
23 evidence of mental harm to Mrs. Bryant from the taking and sharing of photographs
24 of her loved ones’ remains, and that Dr. Cohen failed to acknowledge evidence
25 consistent with such harm in the materials he considered. (*Id.* at 15-16.)
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1 **5. Dr. Cohen Failed to Consider Alternate Sources of Mrs. Bryant’s**
2 **Emotional Harm**

3 Dr. Shaw will testify that Dr. Cohen’s focus on grief over the deaths of her
4 loved ones as a model to explain Mrs. Bryant’s reaction fails to take into
5 consideration other potentially relevant explanations for her emotional distress. (*Id.*
6 at 16-17.)

7 As part of his opinion, for example, Dr. Shaw will opine that:

- 8 • Dr. Cohen fails to consider the possibility of Posttraumatic Stress
9 Disorder (PTSD) as a way to explain the potential psychological impact on Mrs.
10 Bryant of the photographs, although the evidence available to Dr. Cohen clearly
11 raises the possibility of PTSD.
- 12 • The knowledge that images of individual’s loved ones have been
13 shared, and the potential that they may be shared further in the future, could lead to
14 increased symptoms of psychological distress, particularly given the particular
15 circumstances here.

16 **6. Dr. Cohen Inappropriately Speculates about Mrs. Bryant’s Prior**
17 **Mental Health History**

18 Dr. Shaw will testify that Dr. Cohen inappropriately speculates about Mrs.
19 Bryant’s prior psychiatric history and uses incomplete data to suggest that this
20 history has caused her to develop a sense of vulnerability and fear about crash-site
21 photographs. (*Id.* at 17-18.)

22 As part of his opinion, for example, Dr. Shaw will opine that:

- 23 • Having not considered Mrs. Bryant’s entire life history, Dr. Cohen is
24 not in a position to evaluate Mrs. Bryant’s mental health history or what is affected
25 or not affecting her. Dr. Cohen relies on speculation and information that is
26 insufficient to make any reliable conclusion.

1 7. **Dr. Cohen Is Incorrect that Mrs. Bryant Cannot Be Distressed by**
2 **Images She Has Not Seen**

3 Dr. Shaw will testify that he disagrees with Dr. Cohen’s insistence that Mrs.
4 Bryant cannot be distressed by the existence of photographs that she has not seen
5 and that her distress lies solely in what she imagines these images depict. (*Id.* at
6 18-19.)

7 As part of his opinion, for example, Dr. Shaw will opine that:

8 • It is well established that a person’s thoughts and imagination about
9 what occurred, upon learning of some distressing event, can be distressing,
10 traumatic, and anxiety-inducing.

11 • Dr. Cohen ignores testimony by Mrs. Bryant about the impact of these
12 events on her.

13 • It is reasonable to expect that the knowledge that photographs of one’s
14 family member’s human remains were taken for personal use and then shared and
15 treated as a source of entertainment would cause emotional distress, anxiety, and
16 anger on the part of an individual in a similar position.

17 • Dr. Cohen fails to consider how Defendants’ actions may have taken
18 away Mrs. Bryant’s feelings of control, causing her added distress, anger, and
19 anxiety.

20 • Dr. Cohen does not dispute that Mrs. Bryant has a real fear of future
21 dissemination of the photographs. The knowledge that these photographs have
22 existed and may still exist could cause psychological distress and anxiety in an
23 individual who has gone through an experience like this.

24 • It is possible that a person could suffer significant distress and anxiety,
25 potentially for the rest of his or her life, from learning that his or her loved ones’
26 remains were photographed by multiple first responders for personal use, shared
27 among those responders’ acquaintances, and potentially subject to further
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1 distribution in the future, whether or not that person ever sees the photographs
2 himself or herself.

3 **8. Dr. Cohen Draws an Inappropriate Dichotomy between Grief and**
4 **Distress Related to the Photographs**

5 Dr. Shaw will testify that Dr. Cohen’s opinion that the emotional distress
6 from the death of Mrs. Bryant’s husband and daughter is distinct from the emotional
7 distress caused by the taking and sharing of the photographs of her loved ones’
8 remains and from her anxiety about the potential release of those photographs, and
9 Dr. Cohen’s suggestion that grief over the deaths is the true or overwhelming cause
10 of Mrs. Bryant’s emotional distress, are inappropriate. (*Id.* at 19-20.)

11 As part of his opinion, for example, Dr. Shaw will opine that:

12 • Dr. Cohen makes an artificial distinction between emotional distress
13 related to the death of her loved ones and the emotional distress related to the taking,
14 past sharing, and potential future sharing of the remains photographs.

15 • It is reasonable to expect that learning of Defendants’ conduct could
16 complicate Mrs. Bryant’s ability to resolve the loss of her husband and daughter and
17 amplified and perpetuated any emotional distress related to those deaths. The same
18 is true of Mrs. Bryant’s anxiety over future distribution of the photographs. These
19 things could also re-trigger traumatic memories and make it more difficult for Mrs.
20 Bryant to deal with the traumatic nature of her loss.

21 • Without examining Mrs. Bryant or reviewing her medical history, Dr.
22 Cohen is not in a position to assess the extent to which Mrs. Bryant has suffered and is
23 suffering emotional distress from the deaths of her loved ones unrelated to the
24 photographs that were taken and shared, compared to the extent she is suffering
25 emotional distress from Defendant’s conduct.

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