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1 A. I thought you were talking about early on. I
2 have no idea who her Neurologist was, if there was one,
3 before me in 2013.

4 Q. You would expect that she would have a
5 Neurologist, wouldn't you?

6 A. Maybe.

7 Q. So when she came to you in 2013, you don't know
8 who her Neurologist was before that?

9 A. I don't know who before. I don't have that
10 information.

11 MS. BARNETT: Pass the witness.

12 MR. SECREST: No further questions.

13 THE COURT: May this witness be excused?

14 MS. BARNETT: Yes.

15 MR. SECREST: Yes, Your Honor.

16 THE COURT: Call your next witness.

17 MS. SECREST: We call Dr. Benia Ogbonnaya

18 **BENIA OGBONAYA,**

19 having been first duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 MS. BARNETT: May I approach, Your Honor?

22 (Bench conference.)

23 MS. BARNETT: Is this witness is being
24 used as an expert?

25 MR. SECREST: You didn't get any notice

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1 because he is not an expert.

2 MS. BARNETT: Okay.

3 THE COURT: Okay.

4 MS. SECREST: May I proceed, Your Honor?

5 THE COURT: You may.

6 **BY MS. SECREST:**

7 Q. Good morning, Doctor. How are you?

8 A. Good. Thank you.

9 Q. Doctor, what kind of physician are you?

10 A. Internal Medicine.

11 Q. Where did you -- tell us a little bit about
12 your educational background?

13 A. Say that again.

14 Q. Could you please tell us a little bit about
15 your educational background?

16 A. I went to high school in Nigeria. I come here
17 in 1976. And I went to the University Clemson. I'm a
18 Clemson tiger. And I did my undergraduate. And I went
19 to College of Medicine in New York city. And then came
20 to Baylor College of Medicine where I did my residency.

21 Q. how long have you been an internist?

22 A. I finished my residency in 1986, and I've been
23 practicing medicine since that time.

24 Q. And Doctor, Where do you practice?

25 A. 9888 Summit. I have my only little practice.

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1 Q. Do you know Sandra Melgar?

2 A. Yes, I do.

3 Q. And did you know her husband, Jaime Melgar?

4 A. Very well.

5 Q. How long have you known the Melgars?

6 A. Since 2001.

7 Q. How did you come to know Sandy and Jim?

8 A. When I started my practice, I was building with
9 with a friend of mine, Dr. Olsen. And one of the ladies
10 working for her referred me to Sandy when I was looking
11 for a billing manager.

12 Q. And did you have her employed as a contractor
13 doing medical billing?

14 A. Yes.

15 Q. And how long did she work for you?

16 A. 2001 until present.

17 Q. So what kind of employee was she?

18 A. I never had issues with her. I trust her so
19 much that I don't even ask her how many patients did you
20 bill. I just give her the patients that I see. And she
21 bills them, and tells me how many they are, and then I
22 pay her.

23 Q. What kind of lady is Sandra Melgar?

24 A. What kind of what?

25 Q. What kind of lady is Sandra?

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1 A. What kind of lady?

2 Q. Yes, sir, what kind of woman is she?

3 A. Professionally, I see her as very cooperative,
4 very gentle, very honest. I've never had issues with
5 her. She's very cordial on a professional level.

6 Q. What kind of gentlemen was Jaime Melgar?

7 A. Jim was a gentlemen, that's what I can tell
8 you. That he did some of my legwork for the computer
9 business. In other words, whenever I needed software or
10 a computer, I relied on him, and he always came and did
11 whatever they do. I'm technology ignorant. He would
12 come to my office and service my computer sometimes.
13 And buy a computer for me, and I reimburse him. Jim was
14 a gentlemen, that's all I can tell you. I've never seen
15 him complain. He did everything with a smile.

16 Q. Okay. And were there times when both Sandy and
17 Jim were at your private practice?

18 A. Oh, yes, often times.

19 Q. How did they seem together?

20 A. I saw no problem. I saw no crack of any
21 problem or misunderstanding. I never saw any sign of
22 it. When they came to my office, I never saw nothing.

23 Q. Doctor, do you have an opinion as to Sandra
24 Melgar being a peaceable person?

25 A. Yes.

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1 Q. What is your opinion?

2 A. What is my?

3 Q. Is she a peaceful person?

4 A. Very peaceful.

5 Sandy, like I said, never had any quarrel
6 with her and my staff felt the same way, never had any
7 issues with her.

8 Q. Do you have an opinion of Sandy as being a
9 non-violent, non-aggressive person.

10 A. Absolutely.

11 Q. And what is your opinion, sir?

12 A. She's never violent, very peaceful. She's
13 never screamed at me, never raised here voice. And
14 whenever they were together at my office, I never saw a
15 window into any problem.

16 Q. And do you have an opinion as to Mr. Melgar
17 being a peaceful non-violent person?

18 A. Absolutely. Very gentle. Actually a gentle
19 giant. If I remember, probably about 6-foot 5. No
20 problem with him.

21 Q. Are you aware of some of Sandy's health issues?

22 A. Yes, ma'am.

23 Q. What health issues are you aware of?

24 A. I'm aware that Sandy had seizures. And if I'm
25 not mistaken, Lupus and arthritis. Again, I know

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1 particularly that she had seizures and Lupus.

2 Q. And you weren't her treating physician; is that
3 correct, Doctor?

4 A. I was what?

5 Q. Not her treating physician?

6 A. No, absolutely not.

7 Q. Were there times which you would see Sandy
8 using a cane?

9 A. Absolutely.

10 Q. Okay. Were you aware that she had to have a
11 double-hip replacement?

12 A. Yes.

13 Q. Okay. Doctor, did you see Sandy and Jaime
14 Melgar on December 21, 2012?

15 A. Yes.

16 Q. Tell us little bit about that?

17 A. They came in my office about -- oh, say
18 mid-afternoon to 4:00 o'clock. And I think they came
19 because I needed Jim to do something that day. I don't
20 recall, but I think it was him because he always drive
21 Sandy sometimes. They were at my office. And I was
22 shocked the next day when I heard what happened.

23 Q. We all were.

24 A. I didn't see no problem at all. And in fact,
25 the first time I saw it was on TV.

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1 Q. Okay. And Doctor, unfortunately we can't talk
2 about what we saw on TV because the rules against
3 hearsay.

4 A. I apologize.

5 Q. No, no, thank you, Doctor.

6 How did Sandy appear to be feeling on
7 December 21, 2012?

8 MS. BARNETT: The Doctor can't speculate
9 to -- I object that calls for speculation about how she
10 felt.

11 THE COURT: Okay. Rephrase your question.

12 Q. (BY MS. SECREST) Doctor, what did you see, as
13 far as Sandy's health, that you personally saw of Sandy
14 on December 21, 2012?

15 A. I would say clinically she was stable. Since
16 I'm not her doctor, I just saw her the way I usually see
17 her so I cannot really say how systemically she felt.
18 But clinically, physically, she was okay.

19 Q. Doctor, I'm going to show you what has
20 previously been admitted into evidence, Defense 2627.

21 Doctor, I'm going to zoom in. The jury
22 has already seen this. When you saw Sandy and Jim on
23 the 21st, did you write a check to a medical billing
24 service company?

25 A. Yes, that's my writing.

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1 THE COURT: And Ms. Secrest, 2627 is not
2 in evidence.

3 MS. SECREST: I will offer it and tender
4 to opposing counsel.

5 THE COURT: Any objection?

6 MS. BARNETT: No.

7 THE COURT: 2627 is admitted.

8 MS. SECREST: We pass the witness, Your
9 Honor.

10 THE COURT: Cross-examination?

11 MS. BARNETT: Yes.

12 **CROSS-EXAMINATION**

13 **BY MS. BARNETT:**

14 Q. How do you pronounce your last name?

15 A. Ogbonnaya.

16 Q. I'll just call you Doctor.

17 All Right. So you say that Sandra Melgar
18 has been working for you since 2001?

19 A. 2001, 2002, yeah.

20 Q. All right. Does she come into the office
21 regularly?

22 A. I would say about once a week, once every two
23 weeks. It depends.

24 Q. Does she do the work at your office, or does
25 she do it at home?

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1 A. She does it at home. Sometimes she does
2 something for me in the office. If I have any trouble
3 having bills paid, she would sit there for hour or two
4 hours. Most of the time her job is done at home.

5 Q. But you would say that she comes into your
6 office -- I'm sorry, how often, sir?

7 A. Every week or two weeks.

8 Q. All right. And apparently you know about her
9 medical problems, I guess? Did she tell them to you?

10 A. Yes, ma'am.

11 Q. Is it something you asked her about? Like, how
12 are you doing, and she would say, I've got this or that?

13 A. Often times, yes.

14 Q. Do you know why she would tell you why she has
15 seizures -- and she has -- let's see what else you said,
16 hip replacement, and she told you she had Lupus? She
17 told you all those things?

18 A. Uh-huh.

19 Q. Was there a reason why?

20 A. I sometimes I saw her limping. One time she
21 explained to me that her doctor was out of town -- the
22 doctor is out of town, I need a prescription for seizure
23 medicine, so that's how I know.

24 Q. All right. And when was that?

25 A. I can't tell you when.

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1 Q. Well her hip replacement was --

2 A. So -- sorry.

3 Q. No, go ahead.

4 A. So it was actually way back before August. I
5 would say two or three years prior to this event.

6 Q. So that's going to be maybe 2010, 2009?

7 A. Somewhere around there.

8 Q. Did you ever see that again?

9 A. See?

10 Q. Her limping again?

11 A. No, always, yeah.

12 Q. She was always limping?

13 A. No, what I'm saying is that I can't tell when
14 exactly, but I do know with the condition she has that
15 there are moments of flareups. So can't tell you
16 exactly.

17 Q. Were there times that you saw her in -- through
18 the course of the times that she would come in, did she
19 ever miss appointments -- let me say that: Did she ever
20 miss appointments from you?

21 A. Oh, yeah.

22 Q. And did you know why she missed them?

23 A. Traffic. Sometimes she's not feeling well. So
24 often times she would tell me she would come, and she
25 doesn't come. Not because of anything particularly.

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1 But just to keep me abreast of what's going on, and if I
2 need her to check some of the bills that were unpaid.

3 Q. I see. So there's times she doesn't show up
4 for various reasons?

5 A. Yes.

6 Q. And how many times -- if you recall, how many
7 times did you see the Melgars together at your place?

8 A. Over the years, I can't even count. Probably
9 20 times.

10 Q. And would you expect to know the status of
11 their marriage really?

12 A. Other than what I see when they come, I don't
13 know that.

14 Q. Of course. And you wouldn't say that you
15 know -- did you socialize with them?

16 A. No.

17 Q. Did you see them in other places outside your
18 office?

19 A. No.

20 Q. Did you ever happen to casually see them maybe
21 at the shopping mall or a restaurant?

22 A. No.

23 Q. So everything that you saw was in regards to
24 them doing their job at your place?

25 A. Yes, ma'am.

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1 Q. So it was all a professional type of
2 relationship that you had?

3 A. That is correct. Except that one time her
4 daughter was sick, and I did visit her in the hospital.
5 So I did have that kind of social relationship. Her
6 daughter Elizabeth was sick, and I did go to -- it
7 was -- the hospital is no longer there, but another
8 city, so I went in to see her.

9 Q. And do you remember when that was?

10 A. Like I said, I wouldn't know. But like I said,
11 the Memorial Herman, in the Missouri City was there.
12 That was the hospital. It was more than 10 years ago.

13 Q. So let's just say in the last 10 year, did you
14 have -- all of your contact with the Melgars was
15 professional?

16 A. Yes, ma'am.

17 Q. And that would have been them coming to your
18 office or her accompanied by her husband to work?

19 A. Yes, ma'am.

20 Q. And certainly you wouldn't expect them to -- if
21 they had any kind of disagreement between themselves or
22 unhappiness to show that to you, right, you wouldn't
23 you?

24 A. I don't know how to answer that. But when I
25 saw them, they were professional, and cordial, and

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1 happy. Other than that, I don't know what else to tell
2 you.

3 Q. Well, we all don't know what goes on behind
4 closed doors, do we?

5 A. No.

6 MS. BARNETT: Pass the witness.

7 THE COURT: Any re-direct?

8 MS. SECREST: Yes, just briefly.

9 **REDIRECT EXAMINATION**

10 **BY MS. SECREST:**

11 Q. Doctor, you testified on cross-examination that
12 there were times that you did prescribe Sandy
13 Phenobarbital; is that correct

14 A. Yes.

15 Q. And did you socialize with the Melgars at your
16 daughter's wedding?

17 A. Yes, I did. They did come to my daughter's
18 wedding in 2009.

19 MS. SECREST: Pass the witness.

20 THE COURT: Any re-cross?

21 MS. BARNETT: No, ma'am.

22 THE COURT: May this witness be excused?

23 MS. BARNETT: Yes, ma'am.

24 MS. SECREST: Yes, Your Honor. Thank you.

25 THE COURT: Sir, you're excused.