



does not apply, because Dr. Creasman will offer only his opinions as a treating physician about plaintiff's prognosis and future medical costs

Defendants' reply is at docket 35. They argue that Dr. Creasman cannot testify about plaintiff's prognosis and future medical costs because there is no evidence that Dr. Creasman developed his opinions on these points during his treatment of plaintiff.

A treating physician is generally not "retained or specially employed to provide expert testimony," but is instead a "percipient witness of the treatment he rendered and thus not subject to the written report requirement" under Rule 26(a)(2).<sup>1</sup> However, the Ninth Circuit has held that "a treating physician is only exempt from Rule 26(b)(2)(B)'s written report requirement to the extent that his opinions were formed during the course of treatment."<sup>2</sup> If a plaintiff specifically retains treating physicians to review information that they did not review during the course of treatment, then those physicians fall "outside the scope of the 'treating physician' exception insofar as their additional opinions are concerned."<sup>3</sup>

A review of Dr. Creasman's notes suggests that he may have formed some opinion about plaintiff's prognosis because he referred plaintiff to a specialist.<sup>4</sup> However, at this time, it is unclear to the court precisely what relevant opinions, if any, Dr. Creasman may have formed during his treatment of plaintiff.

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<sup>1</sup>*Goodman v. Staples The Office Superstore, LLC*, 644 F.3d 817,824 (9th Cir. 2011).

<sup>2</sup>*Id.* at 826.

<sup>3</sup>*Id.*

<sup>4</sup>Doc. 32-1 at p. 23.

