EXHIBIT 1

EXHIBIT 1

SCCR
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Nevada Bar No. 006618
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Attorneys for Defendant Jean Fenolio

DISTRICT COURT

CLARK COUNTY, NEVADA

JUDY MARSHALL, individually, and RANDY MARSHALL, individually and as Husband and Wife,

Plaintiffs,

vs.

JEAN FENOLIO, individually; DOLLAR RENT A CAR, INC., a Foreign Corporation, DOES I - X; and ROE BUSINESS ENTITIES I - X, inclusive,

Defendants.

CASE NO.: A-11-642376-C
Dept. No.: XXXI

DEFENDANT'S FOURTH SUPPLEMENTAL NRCP 16.1 DISCLOSURE

Pursuant to N.R.C.P. 16.1, Defendant JEAN FENOLIO ("Defendant"), by and through their attorneys of record, LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby supplements the following tangible things or documents which may be introduced into evidence, the identity of non-expert witnesses, and other mandatory early case conference disclosures (**NEW AND/OR AMENDED ITEMS APPEAR IN BOLD**):

I.

DOCUMENTS

A. Answer to Complaint;

B. Traffic Accident Report;

C. Property Damage Estimate of 1997 Dodge BR1500 driven by Judy Marshall;

D. 21 Color copies of photographs of 1997 Dodge BR1500 driven by Judy Marshall;

E. Certified copy of insurance policy;

F. Independent Medical Examination Report dated May 1, 2013, supplemental report dated May 31, 2013 and supplemental report dated July 1, 2013 of Judy Marshall provided by Michael R. Klein, M.D. (previously provided);

G. Curriculum Vitae, Fee Schedule and List of Depositions/Trials of Michael R. Klein, M.D. (previously provided);

H. One Hundred Fifty-Three (153) color copies of photographs taken of Judy Marshall's 1997 Dodge 4x4 truck in June 2012 (previously provided);

I. Plaintiff Judy Marshall's Answers to Defendant Jean Fenolio's Interrogatories dated May 29, 2012 (Bate Stamp Nos. JudyAns2Roggs0001-0013) (to be provided upon request of Plaintiffs);

J. Plaintiff Randy Marshall's Answers to Defendant Jean Fenoiol's Answers to Interrogatories dated May 29, 2012 (Randy Ans2Roggs0001-0008 (to be provided upon request of Plaintiffs);

K. Billing records from St. Rose Dominican Hospital Sienna Camps dated 12/22/08, 6/5/09, 9/26/10, 6/6/11, 4/6/12, 6/19/12 and 911/12 (Bate Stamp Nos. STROSEDOMHOSPSCB0001-00015);

L. Medical and billing records from Primary Care Consultants for DOS: 1216/10-2/22/11 (Bate Stamp Nos. PRIMARYCARECONS0001-00044) and Affidavit of No Films);

M. Medical and billing records from Neck and Back Clinic for DOS: 2/15/10-12/7/11 (Bate Stamp Nos.GREENVLYNKBKCLNIC00001-000100);

N. Prescription records from NDC Pharmacy for DOS: 12/30/10¬8/29/11 (Bate Stamp nos. NDCPHARMACY0001-0002);

0. Billing records from Valley Anesthesiology Consultants for DOS: 7/28/11 (Bate Stamp Nos. VALLEYANESTH0001-0002);

P. Medical and billing records from Conorado Surgery Center far DOS: 7/28/11 (Bate Stamp Nos. CORONADOSURGCNTR0001 -00059);

Q. Medical records from Crovetti Orthopaedic & Sports Medicine (Bate Stamp Nos. CROVETTIORTH0000100049 and CROVETTIORTH00001-00018);

R. Affidavit of No Records from Advanced Urgent Care Las Vegas;

S. Medical records from St. Rose Dominican Hospital for years 2008-2012 (Bate Stamp Nos.STROSEDOMINICANHOSPITAL0001-000761);

T. Medical and billing records from Concentra Medical Center for DOS: 2/9/07

(Bate Stamp Nos. CONCENTRAMEDCENTR0001-00011);

U. Medical and billing records from Southwest Medical Associates for DOS:2007-2009 (Bate Stamp Nos. SWMEDASS000001-000160);

V. Supplemental expert report dated October 17, 2013, authored by Brian Jones, P.E., attached hereto as Exhibit V;

W. Affidavit of Brian Jones, P.E., attached hereto as Exhibit W;

X. Diagram of area of subject accident prepared by Brian Jones, P.E., attaché hereto as Exhibit X.

II.

TANGIBLE ITEMS

Pursuant to N.R.C.P. 16.1(b)(3), Defendant make the following disclosures of tangible things reasonably available and contemplated to be used in the instant action:

None at this time. Discovery is continuing. Defendant reserves the right to supplement this response.

III.

WITNESSES

1. Jean Fenolio, Defendant, c/o LEWIS BRISBOIS BISGAARD & SMITH LLP, Las Vegas, NV, 89118. Defendant is expected to testify regarding the facts and circumstances of the subject automobile accident.

2. Judy Marshall, Plaintiff, c/o Michael A. Kristof, Esq., GLEN J. LERNER & ASSOCIATES, 4795 South Durango Drive, Las Vegas, Nevada 89147. Plaintiff is expected to testify regarding the facts and circumstances of the subject automobile accident and all matters set forth in the Complaint.

3. Randy Marshall, Plaintiff, c/o Michael A. Kristof, Esq., GLEN J. LERNER & ASSOCIATES, 4795 South Durango Drive, Las Vegas, Nevada 89147. Plaintiff is expected to testify regarding the facts and circumstances of the subject automobile accident and all matters set forth in the Complaint.

4. Person Most Knowledgeable (PMK) at Dollar Rental Car, Inc. aka DTG Operations Inc., Defendant, c/o Eric 0. Freeman, Esq., SELMAN BREITMAN, LLP., 3980

Howard Hughes Parkway, Suite 400, Las Vegas, NV 89169. Defendant is expected to testify regarding the facts and circumstances of the subject automobile accident, repair and maintenance of the 2010 Hyundai Sonata, and all matters set forth in the Complaint.

5. Officer J Pikyavit, I.D. # 3949, Las Vegas Metropolitan Police Department, 400 E. Stewart, Las Vegas, NV 89101. The investigating officer is expected to testify regarding the facts and circumstances of the subject accident and investigation.

6. Person Most Knowledgeable, Health Plan of Nevada, P.O. Box 15645, Las Vegas, Nevada 89144. The Person Most Knowledgeable is expected to testify concerning the claims paid on behalf of Plaintiff.

7. Michael J. Crovetti, D.O., Bone & Joint Institute, 2779 W. Horizon Ridge Parkway Henderson, Nevada 89052. Dr. Crovetti is expected to testify regarding the medical treatment he provided to Plaintiff, including, but not limited to, the issues of causation and reasonableness of the treatment provided.

6. HEALTH CARE PROVIDERS. It is expected that all of Plaintiff's Physicians, Health Care Providers, Nurses and/or Technicians, and/or Persons Most Knowledgeable, will testify regarding the injuries of and the care and treatment rendered to Plaintiffs.

7. PERSON(S) MOST KNOWLEDGEABLE/CUSTODIAN OF RECORDS. It is expected that the Person(s) Most Knowledgeable for any and all of Plaintiff's medical providers will testify as to the authenticity of the medical records.

8. MEDICAL EXPERT(S). It is expected that the Medical Expert(s) will testify regarding the Plaintiff's injuries and treatment related to the above-referenced claim.

9. BIOMECHANICAL/HUMAN FACTORS EXPERT(S). It is anticipated that the Biomechanical/Human Factors Expert(s) will testify regarding the Biomechanical/human factors issues surrounding the accident which is the subject of Plaintiff's Complaint in the above- referenced matter.

10. ACCIDENT RECONSTRUCTION EXPERT(S). It is anticipated that the Accident Reconstruction Expert(s) will testify regarding the facts and circumstances

surrounding the subject accident.

IV.

EXPERT AND REBUTTAL EXPERT WITNESSES

1. Michael R. Klein, Jr., M.D., Consultants Medical Group, 3006 South Maryland Parkway, Suite 590, Las Vegas, Nevada 89109, (702) 777-2663. Dr. Klein is an expert witness in the field of Orthopaedic Surgery and is licensed with the American Board of Orthopaedic Surgery and Recertification. Dr. Klein is also licensed with the American College of Surgeons, and is expected to testify regarding his Independent Medical Examinations of Plaintiff, Judy Marshall, his related reports, expert opinions regarding Plaintiff's conditions, injuries and previous medical conditions prior to the subject accident.

2. Brian K. Jones, Biomechanical Engineer, BSME, RE., CXLT, ACTAR, American Bio Engineers, 3606 N. Rancho Dr., Suite 140, Las Vegas, Nevada 89130. Mr. Jones is an expert witness in biomechanical engineering and accident reconstruction and is expected to testify regarding his investigation of this matter, the facts of the accident, his opinions relating to the biomechanics and reconstruction of said accident and other matters related to this accident set forth in his report.

DATED this 24 day of October, 2013

LEWIS BRISBOIS BISGAARD & SMITH LLP

By

DARRELL D. DENNIS
Nevada Bar No. 006618
MICHAEL L. SHIRTS
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Las Vegas, Nevada 89118
Tel. 702.893.3383
Attorneys for Defendant Jean Fenolio

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 25th day of October, 2013, I did cause a true and correct copy of **DEFENDANT'S FOURTH SUPPLEMENTAL NRCP 16.1 DISCLOSURE** to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

Michael A. Kristoff, Esq.
GLEN J. LERNER & ASSOCIATES
4795 S. Durango Drive
Las Vegas, Nevada 89147
Fax No.: 702.877.0110
Attorneys for Plaintiffs

By: Elizabeth Rivera
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT V

AMERICAN BIO ENGINEERS
www.americanbioengineers.com

Accident Reconstruction and Biomechanical Specialists

Brian K. Jones, MSBE, P.E., ACTAR, CXLT

Michael S. Calabro, BSME
Justin Brink, MSBE
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October 17, 2013

Darrell D. Dennis, Esq.
Michael L. Shirts, Esq.
Lewis Brisbois Bisgaard & Smith
6385 South Rainbow Boulevard
Suite #600
Las Vegas, NV 89118-3201

Re: **Subject : Fenolio adv. Marshall**
Date of Accident : 12/01/2010
Court Case No. : A642376
Our File No. : 110508

Dear Mr. Dennis and Mr. Shirts:

Pursuant to your recent request, I have completed a review of the supplemental information concerning the above referenced matter. Specifically, the supplemental information consisted of medical records pertaining to Judy Marshall from: 1) *Advanced Urgent Care,* 2) *Concentra Medical Center,* 3) *Coronado Surgery Center,* 4) *Crovetti Orthopaedic and Sports Medicine,* 5) *NDC Pharmacy,* 6) *Green Valley Neck and Back Clinic,* 7) *Primary Care Consultants,* 8) *Southwest Medical Associates,* 9) *St. Rose Dominican Hospital – Siena Campus,* 10) *Valley Anesthesiology Consultants,* 11) *Clinical Pathology Laboratories,* 12) *Bone and Joint Institute,* and 13) *Michael A. Baron, M.D.* Please allow the following to serve as a supplement to my prior June 4, 2013 written report regarding the subject matter. All opinions contained herein are stated to a reasonable degree of scientific and engineering certainty unless otherwise noted.

Pertinent Medical Records

Judy Marshall (DOB: 05/29/1969; Ht. – 5'4" to 5'5"; Wt. – 152 lbs. to 172 lbs.)

A review of a **January 31, 2007** record from Southwest Medical Associates indicated that Ms. Marshall ***"works lifting quite a bit and over times she has had discomfort of her back, right buttocks and down her right leg consistent with sciatica."***

According to a **February 9, 2007** record from Concentra Medical Center, Ms. Marshall treated for injuries related to an injury date noted as **January 31, 2007.** ***"She says she has been having pain in her right hip for a few months that would sometime go down the leg to her knee and sometimes***

hurt in the right buttock area. Then a few weeks later pain started in her lower back along with the other areas. She didn't fall or trip or slip. She believes it's from the repetitive lifting of boxes at work, but says she can't recall a time when there was pain with any lift. The pain is worse for her at night when trying to sleep or if it was her HPN doctor that told her it was her lifting at work. Denies paresthesias, sensory loss, numbness and weakness." Assessments are noted to be hip/pelvic pain and back pain. Additionally, it is stated that hip X-Rays revealed no fractures; lumbar imaging was pending. Finally, it is noted that, *"the examination today show no medical findings of an injury, which the state of Nevada defines as: a sudden and tangible happening of a traumatic nature, producing an immediate or prompt result which is established by medical evidence."*

According to a **September 13, 2007** record from Southwest Medical Associates, imaging of Ms. Marshall's knees revealed, *"mild bilateral medial compartment narrowing. No significant degenerative changes in either knee."* Additionally, imaging of the cervical spine revealed a normal impression.

A review of an **April 24, 2007** record from Southwest Medical Associates indicated that Ms. Marshall underwent an evaluation for sciatic discomfort. It is indicated that preliminary X-rays revealed *"unilateral spondylosis of lower spine."*

According to a **December 6, 2010** History and Physical record from Primary Care Consultants, Ms. Marshall *"was a restrained driver in a vehicle that was involved in a head on accident. The patient complained initially of headaches, neck pain and left upper extremity and shoulder pain. She did not anticipate the collision. Air bags were not deployed. No previous medical care prior to this visit."* Additionally, past medical history is noted as *"negative. She did have a motor vehicle accident 20 years ago with some mild back pain which did resolve within a two month period and has not had any recurrent problems with that."* Finally, assessments are indicated as, 1) Cervical sprain/strain; 2) Cervical pain; 3) Headaches; 4) Left shoulder pain; 5) Trapezius sprain/strain; and 6) All of the above secondary to the motor vehicle accident.

A review of a **December 6, 2010** Radiology Report from Michael A. Baron, M.D. indicated that X-rays of the left shoulder revealed impressions noted as, *"1) No fracture seen, and 2) Unexpected calcific deposit characteristic of calcific tendonitis."*

A review of a **December 6, 2010** Radiology Report from Michael A. Baron, M.D. indicated that X-rays of the cervical spine revealed impressions noted as, *"1) Mild altered curvature compatible with muscle spasm; 2) Degenerative discogenic changes, C5-6; 3) Facet arthropathy from C3 through C7; 4) No evidence of fracture or instability; and 5) Reduced range of motion also compatible with muscle spasm."*

According to a **December 15, 2010** Initial Evaluation report from Green Valley Neck and Back Clinic, Ms. Marshall was the restrained driver of a Dodge Ram traveling northbound on Rainbow and struck the side of a Hyundai car exiting a parking lot on her right with its front. It is noted that she did not lose consciousness, did not have visual disturbances, her head position *"was to the front"*, her headrest was in the appropriate position behind her, she did not anticipate the accident, and *"airbags were not applicable in accident."* Additionally, it is indicated that *"the patient's primary complaint at this time is of intermittent cervical spine and left shoulder pain. The patient does not report dizziness, nausea or headaches at this time. Aggravating factors include lifting, standing, driving, using cervical spine rotation (left greater than right), playing on her left side, reaching behind her, putting her hand behind her back, or cervical spine flexion."*

She did not report any radiculopathy to either upper extremity. It noted that, ***"the patient had a motor vehicle accident in 1993 with thoracic spine pain that resolved and again in August of 2010 with no problems reported."*** Furthermore, ***"X-rays were taken and they were positive for C5-6 degenerative disc disease and C3 through C7 facet arthropathy."*** Finally, assessments were noted to be 1) Cervical sprain/strain; 2) Cervical pain; 3) Headaches; 4) Thoracic segmental dysfunction; 5) Left shoulder sprain/strain; 6) Left shoulder pain; 7) Insomnia secondary to pain; and 8) All of the above secondary to the motor vehicle accident on 12/01/10.

According to a **January 24, 2011** record from Crovetti Orthopaedic and Sports Medicine, impressions of an MRI of the left shoulder are noted as, ***"1. There is moderate tendinosis of the supraspinatus and infraspinatus tendons. There is moderate thickening and edema diffusely involving the distal 2 cm of the supraspinatus tendon. Minimal articular sided fraying of the distal tendon is noted. 2. Mild subacromial subdeltoid bursitis. 3. The glenoid labrum and long head biceps tendon appear normal."***

A review of a **February 15, 2011** letter from Fredrick Balduini, M.D. to Govind Koka, D.O. revealed that on **January 24, 2011** Ms. Marshall was the driver of a pickup truck that t-boned another vehicle that was coming out of a parking lot. It is indicated that she was restrained, did not lose consciousness, and her airbag did not deploy. ***"Subsequent to that, she has been having difficulty referable to her left shoulder with pain in the posterior aspect of the shoulder when she lies or puts pressure on it and pain in the anterior aspect of the shoulder other times."*** Additionally, it is noted that ***"she denies any history of previous problem referable to the left shoulder."*** Finally, it is indicated that ***"she has full range of motion of the cervical spine and there is no pain in the shoulder associated with that range of motion."***

A review of a **July 27, 2011** Pre-Operative Questionnaire from Coronado Surgery Center revealed that Ms. Marshall indicated experiencing arthritis in her right knee, hip, and lower back.

According to a Coronado Surgery Center Operative Report for surgical arthroscopy of the left shoulder on **July 28, 2011**, a preoperative diagnosis was noted to be ***"partial left rotator cuff tear with subacromial bursitis"*** and a postoperative diagnosis of ***"adhesive capsulitis of the left shoulder with minor fraying of the rotator cuff with subacromial bursitis."*** It is noted that ***"synovial proliferation of the anterior capsule of the shoulder with fairly fibrovascular response"*** was observed during the procedure. Additionally, it is indicated that ***"the rotator cuff tendon had some minor fraying on its undersurface of the supraspinatus."*** Furthermore, it is noted that, ***"the infraspinatus was within normal limits. There was no significant chondral lesions noted at the humeral head or glenoid. The labrum was intact as was the biceps anchor. Having established this, the shaver was directed towards the rotator cuff tendon and utilizing a straight arthroscopic shaver. The undersurface of the supraspinatus was debrided."***

A review of a **January 26, 2012** Discharge Evaluation from Green Valley Neck and Back Clinic indicated clinical impressions were, 1) Cervical sprain/strain, resolved; 2) Cervical pain, resolved; 3) Headaches, resolved; 4) Thoracic segmental dysfunction, resolved; 5) Left shoulder sprain/strain, resolved; 6) Left shoulder pain, minimal residuals; 7) Insomnia secondary to pain, resolved.

Biomechanics

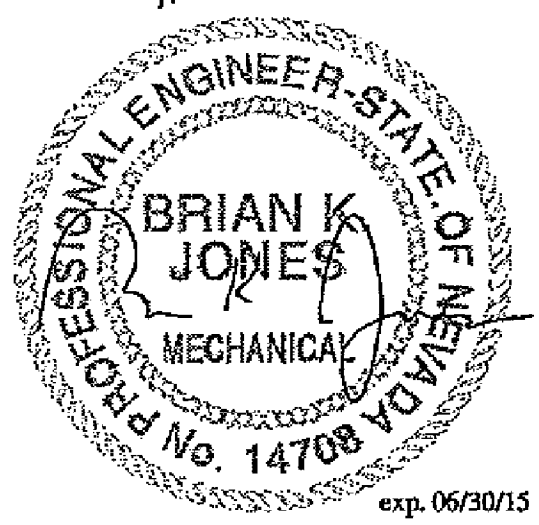
Based on the foundation accident reconstruction presented in the June 4, 2013 written report (i.e., PDOF = 0°-10°, ΔV = 3.2 to 4.2 mph, and Δt = 150 ms), Ms. Marshall would have experienced peak accelerations of approximately **2.2 to 4.8 Gs** at her head. As similarly mentioned in the prior June 4, 2013 report, a review of ***Head Motion in the Coronal Plane During Low-Speed Lateral Impact Collisions,"*** (Heller, et al.; J Biomech, 2007; 40 (S2):S90) and SAE Technical Paper 2006-01-0247, ***"Head Kinematics and Upper Neck Loading During Simulated Low-Speed Rear-End Collisions: A Comparison with Vigorous Activities of Daily Living,"*** (Vijayakumar, et al., 2006) revealed that the previously presented **peak** head acceleration range of 2.2 to 4.8 Gs was **comparable** to the lower end of those experienced in amusement park bumper car rides (i.e., 1.2 to 6.9G) and vigorous, non-injurious activities such as hopping and skipping rope (2.8 to 9.9G). Finally, a review of ***"Simulated "WHIPLASH": Acceleration Perturbations of Daily Living,"*** (Allen, et al., 1992) revealed accelerations at the head of 1.08 to 2.99 Gs for a cough,1.71 to 2.73 Gs for a slap on the back, 1.38 to 1.91 Gs for a crowd jostle, and 3.29 to 5.96 Gs for a plop in a chair. Therefore, since the accelerations at Ms. Marshall's head were comparable to activities of everyday living, the injury mechanism of Ms. Marshall's cervical spine was defeated from a biomechanical engineering perspective.

Additionally, since the majority of evidence indicated that Ms. Marshall did not anticipate the impending contact, no significant compressive load would have occurred at the left shoulder. Regardless, due to the protective mechanoreceptors (i.e., sensory receptor that responds to mechanical pressure) that prevent excessive loading via the arms at the glenohumeral joint and forward inertia of the body, Ms. Marshall's left shoulder girdle most likely did not experience a compressive load great enough to cause a rotator cuff injury or injury to the distal end of the supraspinatus tendon. The aforementioned statement was based on the fact that the forward inertia of the torso creates increased elbow flexion until the shoulder belt locks and "catches" the torso. Subsequently, the greatest forces applied to Ms. Marshall would have been as a result of the lap and shoulder belt. However, since the shoulder belt would apply loading at the approximate center of the left clavicle, a minimal indirect force would have been applied to the left shoulder as a whole with minimal relative motion occurring between the head of the humerus and glenoid fossa. It is important to note that the supraspinatus muscle of the rotator cuff initiates and assists the deltoid in abduction (i.e., moving arm away from the body in a lateral manner). It is also important to note that fraying of the supraspinatus tendon occurs over time with repetitive frictional wear. Therefore, since any motion experienced by Ms. Marshall's left arm in the subject accident would tend not to force the left shoulder into abduction or result in any significant force to the shoulder, the injury mechanism of Ms. Marshall's left shoulder was defeated from a biomechanical engineering perspective.

This will conclude the analysis from the data available at the present time. If additional information is made available, I would appreciate receiving such information for review and reserve my right to amend any of the opinions contained herein. Should you require clarification of any of the material contained herein, please do not hesitate to contact me directly.

Thank you for the opportunity to be of assistance in this matter.

Sincerely,



AMERICAN BIO ENGINEERS, LLC
Brian K. Jones, MSBE, PE, ACTAR, CXLT
bjones@americanbioengineers.com

Brian K. Jones, BSME, P.E.
ACTAR Accredited Accident
Reconstruction Specialist No. 1207

EXHIBIT W

AFFIDAVIT OF BRIAN K. JONES, MSBE, P.E., ACTAR, CXLT IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S EXPERT, BRIAN JONES, IN MARSHALL, ET AL. V. FENOLIO, ET AL.

STATE OF NEVADA }
}SS
COUNTY OF CLARK}

I, BRIAN K. JONES, first being duly sworn, depose and say:

1. I am a professional engineer (mechanical discipline) in the state of Nevada, accredited accident reconstruction specialist (ACTAR), biomechanical engineer, and current president of AMERICAN BIO ENGINEERS LLC.

2. I obtained a Bachelor of Science in Mechanical Engineering from North Carolina State University in 1994 and a Master of Science in Biomedical Engineering (Biomechanics and Human Factors Option) from the University of Nevada, Las Vegas in 2008.

3. I have routinely been involved with motor vehicle impact testing performed with live instrumented volunteers and/or anthropomorphic test devices, studied/analyzed corresponding vehicle dynamics, and associated vehicle specific damage inherent to motor vehicle impacts since 1994.

4. I have been qualified and rendered opinions in the Eighth Judicial District Court of Nevada as an accident reconstructionist and biomechanical engineer on a multitude of occasions or approximately 100 times, if not more, since 1996.

5. I was originally retained by representatives of Jean Fenolio on May 6, 2011 in case number A-642376, currently pending before the Eighth Judicial District Court of Nevada, to perform an **objective** accident reconstruction and biomechanical engineering analysis.

6. My analysis was based primarily on a physical inspection of the Marshall Dodge, photogrammetric analysis (error rate = ±0.15 inches) within *Photomodeler 2013* from 3 provided photographs depicting the post-accident condition of the Fenolio/Dollar RAC Hyundai, provided damage estimate for the Marshall Dodge, and subrogation information pertaining to the Fenolio/Dollar RAC Hyundai.

7. An accurate crush profile of the Fenolio/Dollar RAC vehicle was created and overlaid onto an undamaged exemplar through long standing principles of photogrammetry via the computer program *Photomodeler 2013*. It is important to note that the *Photomodeler* process is an acceptable method for measuring vehicle crush in the field of accident reconstruction. In fact, the undersigned has found that its accuracy in quantifying vehicle crush is greater than that measured by hand as all intricacies of vehicle crush can be documented. Thus, even when inspecting the damaged vehicle, no tape measure is necessary. SAE Technical Papers 1999-01-0451 *"Factors Affecting the Accuracy of Non-Metric Analytical 3-D Photogrammetry, Using Photomodeler"* and 2004-01-1208 *"Determination and Verification of Equivalent Barrier Speeds (EBS) Using Photomodeler as a Measurement Tool"* illustrate its effectiveness and accuracy in the field of accident reconstruction. The undersigned has also independently verified and validated *Photomodeler's* accuracy in the field of accident reconstruction. A Society of Automotive Engineering technical paper SAE 2010-01-0065 *"The Accuracy of Photogrammetry vs. Hands-on Measurement Techniques used in Accident Reconstruction,"* co-authored by the undersigned, is attached hereto in support of the accuracy of photogrammetry when measuring and quantifying vehicle crush damage/profiles.

8. The undersigned has been allowed to testify on numerous occasions in District Court based on the photogrammetric analysis of a vehicle's damage profile performed when the vehicle was unavailable for examination.

9. While the undersigned did not specifically perform an inspection of the accident scene for the subject case, it was not necessary for determination of the coefficient of friction. The aforementioned statement was based on hundreds, if not thousands, of skid tests that have been performed by the undersigned on Las Vegas Valley roadways which time and time again reveal coefficient of frictions between 0.65 to 075. Regardless, the undersigned evaluated a worst case scenario coefficient of friction with regard to the subject accident or one in which the Marshall Dodge would sustain the highest severity of contact (i.e., Delta V)

10. The undersigned absolutely determined the "angle of impact of the vehicles" and in fact stated such via a PDOF (Principal Direction of Force) which was enumerated as (3) at the bottom of page 3 of the June 4, 2013 written report.

11. The undersigned did calculate the effective relative approach velocity between the subject vehicles which is all that is necessary when evaluating the severity of impact (i.e., Delta V) for each vehicle. Regardless, based on the available evidence, the speed of the Fenolio Hyundai at the moment of contact was approximately 0 mph. Thus, the effective speed of the Marshall Dodge would be equal to 3.3 to 4.2 mph or the relative approach velocity.

12. The undersigned absolutely determined how long the vehicles were in contact and stated such (enumerated as (2)) at the bottom of page 3 of the June 4, 2013 written report.

13. The starting position of the vehicles was essentially relayed in the June 4, 2013 report in the introduction section. Thus, the undersigned was aware of the vehicle starting positions as a scale AutoCAD diagram *(see attached diagram)* was prepared based on an aerial photograph obtained from Google Earth. For clarification, the starting position of the vehicles was determined to be approximately 430' south of the south roadway edge of Warm Springs Road within the No. 1 (inside) travel lane of northbound Rainbow Boulevard.

14. Contrary to Plaintiff counsel's assertion, the methodology of the reconstruction was explained on page 3 of the June 4, 2013 written report with specific Society of Automotive Engineers Technical Papers concerning the subject methodology cited.

15. Plaintiff's counsel misrepresented *Levine*, as the expert not only relied on photographs, but also a **non-scale** accident scene diagram produced by **untrained** police officers. Unfortunately, the Nevada Supreme Court ruling in *Levine v. Remolif*, 80 Nev. 168, 390 P.2d 718 **(1964)** was made without specific knowledge of how accident reconstructionists measure crush or utilize crush damage within calculations to determine speeds, etc. As indicated within *Levine*, while the photographs might have **accurately** depicted the outward appearance of the vehicles immediately after the accident they did not disclose the damage to the frames of the vehicles which could only be revealed from an examination of the cars themselves. It is important to note that while laws of physics have not changed in the last 47 years, technology and sophistication in the field of accident reconstruction have (e.g., *Photomodeler*). Regardless, even in 1964, the proper widely accepted methodology for measuring

vehicle crush damage from an accident reconstruction perspective was from an UNDAMAGED OUTSIDE TO DAMAGED OUTSIDE manner. In other words, a baseline equal to the original undamaged outer body of the vehicle is referenced to the damaged outer body of the vehicle to establish an average crush depth. Correspondingly, the depth of crush is directly related to vehicle stiffness properties that encompass all of the vehicle components (i.e., external and internal). Thus, the degree of damage sustained to underlying structures has no meaning specific to crush damage measurements utilized in accident reconstruction calculations. Finally, it is **extremely important to note** that expert Blewett's opinions and testimony were materially based upon a **non-scale** diagram, prepared by inexperienced police officers untrained in accident reconstruction, depicting vehicle distances and departure paths. Therefore, the momentum analysis most likely performed by Blewett, **which absolutely does not depend on vehicle crush damage but rather vehicle entry/departure angles and post-impact speeds**, was most likely erroneous.

16. Plaintiff's counsel is misinterpreting or misconstruing the bottom line opinion in the Nevada Supreme Court ruling *Choat v. McDorman*, 86 Nev. 332, 335, 468 P.2d 354, 356 (1970). Delta V and vehicle speed are two completely separate entities. The ruling in *Choat* clearly stated that an expert witness may not testify as to the **speed** of a vehicle prior to impact based **solely** on the resulting damage to the vehicles involved. The undersigned absolutely agrees with the Nevada Supreme Court on the subject ruling as in order for an accident reconstructionist to determine a speed in the *Choat* case, three components of the calculation would have to be quantified. First, the post-impact distances traveled of each vehicle would have to be utilized in conjunction with appropriate post-impact deceleration rates or drag factors to determine the vehicle post-impact speeds. While post-impact distances were apparently known by the Nevada Highway Patrolman "expert," he was unaware of whether the brakes were set on the McDorman car or if it was in gear when it was struck. Thus, the necessary post-impact deceleration rate or drag factor was not known. Secondly, if a momentum analysis was not performed, then the Delta V or speed loss of the Choat vehicle as a result of the impact would have to be quantified. The Delta V of a vehicle is absolutely and unequivocally related to the severity of damage sustained and vehicle weight. The aforementioned statement is supported by any physics or accident reconstruction text and would not be disputed by any competent physicist, engineer or accident reconstructionist. According to *Choat*, the Nevada Highway Patrolman "expert" did not

know the weights of either vehicle and based his **speed** estimate, not Delta V, essentially on the vehicle damage and his experience as a patrol officer with no calculations performed. Thirdly, the pre-impact skid distance of the Choat vehicle would be utilized with appropriate deceleration rates or drag factors to arrive at an accurate pre-skid speed of the Choat vehicle. As indicated in *Choat*, the Nevada Highway Patrolman "expert" made no measurements of the skid marks deposited by the Choat vehicle and made no measurement of the road grade. Therefore, as presented above, the Nevada Supreme Court ruled appropriately from an engineering and accident reconstruction perspective as the **speed, not Delta V,** of a vehicle cannot be calculated solely from vehicle damage.

17. Nowhere within the *Hallmark* decision is it specifically listed that actual inspections of the vehicles are "pieces of critical information that must be evaluated." Regardless, it is important to note that the actual reasoning behind the inadmissibility of the **biomechanical engineering expert** in *Hallmark v. Eldridge* was primarily due to a lack of accident reconstruction foundation. The expert did not calculate a Delta V, specify a Delta t (i.e., time duration of impact), or angle of impact. As specifically stated in the *Hallmark* decision, the biomechanical engineer's opinion was highly speculative because he did not know 1) the vehicles' starting positions, 2) their speeds at impact, 3) the length of time that the vehicles were in contact during impact, or 4) the angle at which the vehicles collided. The undersigned has performed a sound accident reconstruction essentially quantifying all of the prior aspects Additionally, all methodologies (i.e., Conservation of Energy, Conservation of Momentum, etc.) were absolutely (1) within a recognized field of expertise; (2) testable and have been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community (absolutely determinative); and (5) based on particularized facts rather than assumption, conjecture, or generalization. Due to the voluminous nature of material, the undersigned would be more than happy to provide volumes of textbooks and literature supporting the aforementioned assertion upon request.

18. In summary, my analysis in the subject case has met all of the requirements, as set forth by prior case law within the State of Nevada, and has also been performed in strict accordance with laws of physics and Newtonian mechanics.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

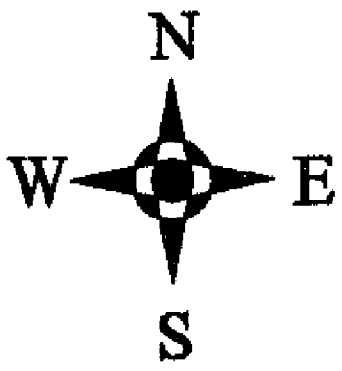
BY _____
BRIAN K. JONES

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 17th DAY
OF OCTOBER 2013

Angela Gail Vinluan
NOTARY PUBLIC in and for
said county and state

ANGELA GAIL VINLUAN
Notary Public-State of Nevada
APPT. NO. 98-2411-1
My App. Expires January 15, 2016

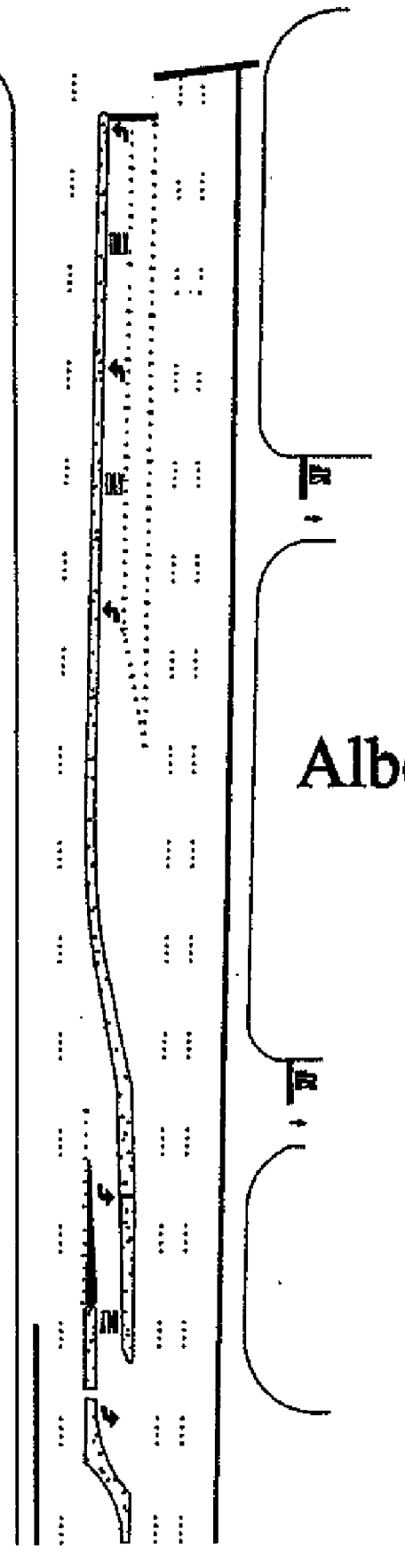
EXHIBIT X

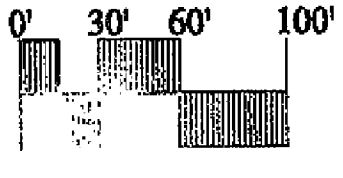


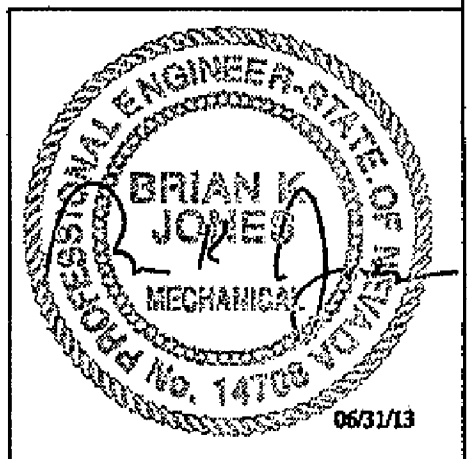
Warm Springs Road

Rainbow Boulevard

Albertson's Parking Lot







Brian K. Jones, BSME, P.E.
ACTAR Accredited Accident
Reconstruction Specialist No. 1207

AMERICAN BIO ENGINEERS

Drawn By: Brian K. Jones, MSBE, PE, ACTAR		
File No.: 110508	Date: 05/31/2013	Scale: 1"= 100'

REGISTER OF ACTIONS

CASE NO. A-11-642376-C

Judy Marshall, Plaintiff(s) vs. Jean Fenolio, Defendant(s)

§
§
§
§
§
§

Case Type: **Negligence - Auto**
Date Filed: **05/31/2011**
Location: **Department 31**
Cross-Reference Case Number: **A642376**

PARTY INFORMATION

		Lead Attorneys
Defendant	**Fenolio, Jean**	**Darrell D. Dennis** *Retained* 7028933383(W)
Plaintiff	**Marshall, Judy**	**Paul D. Powell** *Retained* 702-728-5500(W)
Plaintiff	**Marshall, Randy**	**Paul D. Powell** *Retained* 702-728-5500(W)

EVENTS & ORDERS OF THE COURT

11/07/2013 **All Pending Motions** (9:30 AM) (Judicial Officer Kishner, Joanna S.)

Minutes

11/07/2013 9:30 AM

- PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT...PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' BIOMECHANICAL EXPERT WITNESS PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT: Arguments by counsel. Court finds no genuine issue of material fact and ORDERED, Plaintiffs' Motion for Partial Summary Judgment is GRANTED. PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' BIOMECHANICAL EXPERT WITNESS: RULING DEFERRED; Court to voir dire expert on or before 2/11/13 at a time convenient to the parties, after which a ruling will issue from Chambers. (Counsel to co-ordinate with Law Clerk, Michelle Newman). Plaintiff's counsel to prepare the Order, to include findings of fact and conclusions of law, circulating to Defense counsel for approval as to form and content. Matter SET for Status Check regarding receipt of proposed Order. 11/22/13 STATUS CHECK: ORDER 11/7/13 (CHAMBERS)

Parties Present
Return to Register of Actions

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CLERK OF THE COURT

NOE

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JUDY MARSHALL, individually, and RANDY MARSHALL, individually, as Husband and Wife, Plaintiff, v. JEAN FENOLIO, individually, DOLLAR RENT A CAR, INC., a foreign corporation DOES I - X, and ROE BUSINESS ENTITIES I - X, inclusive, Defendants.	CASE NO: A642376 DEPT. NO. XXXI

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order on Plaintiff's Motion for Partial Summary Judgment in the above-entitled action was entered and filed on the 19th day of December, 2013, a copy of the Stipulation and Order is attached hereto.

GLEN LERNER INJURY ATTORNEYS

Michael A. Kristof, Esq.
Nevada Bar No. 7780
4795 South Durango Drive
Las Vegas, Nevada 89147
Attorneys for Plaintiff

CERTIFICATE OF MAILING

Pursuant to NRCP 5(a), I hereby certify that I am an employee of GLEN LERNER INJURY ATTORNEYS, and on the 3 day of ~~December~~ January, 2013, the foregoing **NOTICE OF ENTRY OF ORDER** was served by depositing a true and correct copy of the Notice in the United States Mail, postage prepaid, addressed as follows, to the following counsel of record:

Darrell D. Dennis, Esq.
LEWIS BRISBOIS BISGAARD & SMITH, LLP.
6385 S. Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant

An Employee of Glen Lerner Injury Attorneys

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

JUDY MARSHALL, individually, and RANDY MARSHALL, individually, as Husband and Wife, Plaintiff, v. JEAN FENOLIO, individually, DOLLAR RENT A CAR, INC., a foreign corporation DOES I - X, and ROE BUSINESS ENTITIES I - X, inclusive, Defendants.	CASE NO. A642376 DEPT. NO. XXXI

ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter, having come before the Court on November 7, 2013, on oral argument, and the Court having considered the papers and pleadings on file herein enters the following Findings of Fact and Conclusions of Law, and GRANTS Plaintiff's Motion for Partial Summary Judgment.

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12-16-13 P03:08 IN

To the extent a Finding of Fact is better classified as a Conclusion of Law, it shall be deemed as such. To the extent a Conclusion of Law is better classified as a Finding of Fact, it shall be deemed as such.

FINDINGS OF FACT

1. Plaintiff and Defendant were involved in an automobile accident on or about December 1, 2010.
2. After the crash, Plaintiff underwent treatment for a left shoulder injury, including but not limited to physical therapy, diagnostic testing, surgery, and post surgical physical therapy.
3. The total amount of medical bills attributable to all treatment for Plaintiff's left shoulder injury is $42,454.00.
4. Defendant retained Dr. Michael Klein to review Plaintiff's medical records and perform a medical examination of Plaintiff.
5. Dr. Klein authored his initial expert report on or about May 1, 2013. In his report, Dr. Klein opines that Plaintiff's shoulder injury was caused by the subject crash, that the treatment obtained by Plaintiff for her left shoulder injury was reasonable and necessary, and that the medical charges were usual and customary in the Las Vegas region.
6. Dr. Klein authored two supplemental reports. In each of the supplemental reports, Dr. Klein indicated that the additional information he reviewed, including additional medical records and the deposition of Plaintiff, did not alter or amend his opinions.
7. Dr. Klein indicated in each of his reports that his conclusions and opinions are to a reasonable degree of medical probability.
8. Defendant also retained Brian Jones, an accident reconstructionist and biomechanical engineer.

9. On June 4, 2013, Mr. Jones issued his initial expert report.

10. On October 17, 2013, after Plaintiff's Motion for Partial Summary Judgment had been filed, Mr. Jones authored another report. The October 17, 2013, report indicates that Mr. Jones had now reviewed Plaintiffs' medical records. Mr. Jones opined that the forces Plaintiff was subjected to in the subject accident were likely insufficient to cause injury.

11. Mr. Jones' October 17, 2013 report did not address the issues of the reasonableness and necessity of treatment or the usual and customary nature of the medical charges.

12. Mr. Jones' opinions were to a reasonable degree of scientific and engineering certainty.

13. Mr. Jones is not a medical doctor.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when there is no genuine issue of material fact, and as a matter of law the moving party is entitled to judgment.

2. The evidence must be viewed in a light most favorable to the non-moving party.

3. In personal injury matters, issues of causation are to be proven to a reasonable degree of medical probability.

4. In personal injury matters, medical treatment is to be proven to be reasonable, necessary, and related to injury caused by the subject injuries event; in this case the accident of December 1, 2010.

5. In personal injury matters, medical charges are to be proven to be usual and customary in the community where those charges were incurred; in this case the Las Vegas community.

6. As a matter of law, Mr. Jones' opinions contained in his reports do not raise a genuine issue of material fact sufficient to defeat summary judgment on the issue of medical causation of Plaintiff's injury because his opinions are not, and cannot be, to a reasonable degree of medical probability.

7. As a matter of law, Mr. Jones, who is not a medical doctor, is not competent to testify to a reasonable degree of medical probability regarding causation of injury.

8. As a matter of law, Mr. Jones, who is not a medical doctor, is not competent to testify regarding the reasonableness and necessity of medical treatment based on what has been disclosed for

9. As a matter of law, Mr. Jones, who is not a medical doctor, is not competent to testify regarding the usual and customary nature of charges of medical treatment in the Las Vegas community based on what was disclosed. JA

10. As a matter of law, the only evidence presented to a reasonable degree of medical probability is: (1) that the December 1, 2010 crash caused Plaintiff's shoulder injury; (2) that the treatment for the shoulder injury was reasonable, necessary, and related to injury caused by the December 1, 2010, motor vehicle accident; and (3) that the medical charges of $42,454.00 were usual and customary charges in the Las Vegas community for the services rendered. For past medical care, JA

11. Based on the papers and pleadings on file herein, as well as the exhibits presented in the moving and opposing papers, Plaintiff has demonstrated that there is no genuine issue of material fact regarding: (1) Plaintiff's left shoulder injury being caused by the December 1, 2010, motor vehicle accident; (2) that Plaintiff's treatment for her left shoulder injury was reasonable, necessary, and related to the December 1, 2010, motor vehicle accident; and (3) the charges of $42,454.00 were usual and customary charges in the Las Vegas region for the treatment Plaintiff received for her left shoulder injury.

Consistent with the Findings of Fact and Conclusion of Law made by this Court, this Court hereby GRANTS Plaintiff's Motion for Partial Summary Judgment as follows: (1) Plaintiff's left shoulder injury was caused by the December 1, 2010, motor vehicle accident; (2) the past treatment for Plaintiff's left shoulder injury was reasonable, necessary, and related to the December 1, 2010,

motor vehicle accident; and (3) the medical specials of $42,454.00 are usual and customary in the Las Vegas region for the services rendered.

The Court makes no ruling on the issues of (1) liability, including comparative fault, if any; (2) other alleged injury; (3) the reasonableness and necessity of treatment not related to the left shoulder; (4) the usual and customary nature of any charges for any treatment not related to the left shoulder; and (5) the totality of Plaintiff's alleged additional special damages or Plaintiff's general damages. Those issues were not before the Court on Plaintiff's Motion, and are the remaining issues to be tried.

DATED this 16 day of December, 2013.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

GLEN LERNER INJURY ATTORNEYS

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4795 South Durango Drive
Las Vegas, NV 89147
Attorneys for Plaintiff

LEWIS BRISBOIS BISGAARD & SMITH

Michael A. Shirts, Esq.
Nevada Bar No. 10223
6385 S. Rainbow Blvd., #600
Las Vegas, NV 89118
Attorneys for Defendant

motor vehicle accident; and (3) the medical specials of $42,454.00 are usual and customary in the Las Vegas region for the services rendered.

The Court makes no ruling on the issues of (1) liability, including comparative fault, if any; (2) other alleged injury; (3) the reasonableness and necessity of treatment not related to the left shoulder; (4) the usual and customary nature of any charges for any treatment not related to the left shoulder; and (5) the totality of Plaintiff's alleged additional special damages or Plaintiff's general damages. Those issues were not before the Court on Plaintiff's Motion, and are the remaining issues to be tried.

DATED this 10 day of December, 2013.

DISTRICT COURT JUDGE

GLEN LERNER INJURY ATTORNEYS

Michael A. Kristof, Esq.
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4795 South Durango Drive
Las Vegas, NV 89147
Attorneys for Plaintiff

LEWIS BRISBOIS BISGAARD & SMITH

Michael A. Shirts, Esq.
Nevada Bar No. 10223
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Attorneys for Defendant

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CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JUDY MARSHALL, individually, and RANDY MARSHALL, individually, as Husband and Wife, Plaintiff, v. JEAN FENOLIO, individually, DOLLAR RENT A CAR, INC., a foreign corporation DOES I - X, and ROE BUSINESS ENTITIES I - X, inclusive, Defendants.	CASE NO. A642376 DEPT. NO. XXXI

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order on Plaintiff's Motion to Strike Defendant's Biomechanical/Accident Reconstructionist Expert in the above-entitled action was entered and filed on the 19th day of December, 2013, a copy of the Stipulation and Order is attached hereto.

GLEN LERNER INJURY ATTORNEYS

Michael A. Kristof, Esq.
Nevada Bar No. 7780
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Las Vegas, Nevada 89147
Attorneys for Plaintiff

CERTIFICATE OF MAILING

Pursuant to NRCP 5(a), I hereby certify that I am an employee of GLEN LERNER INJURY ATTORNEYS, and on the 3 day of December, 2013, the foregoing **NOTICE OF ENTRY OF ORDER** was served by depositing a true and correct copy of the Notice in the United States Mail, postage prepaid, addressed as follows, to the following counsel of record:

Darrell D. Dennis, Esq.
LEWIS BRISBOIS BISGAARD & SMITH, LLP.
6385 S. Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant

An Employee of Glen Lerner Injury Attorneys

Michael A. Kristof, Esq.
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Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

JUDY MARSHALL, individually, and RANDY MARSHALL, individually, as Husband and Wife, Plaintiff, v. JEAN FENOLIO, individually, DOLLAR RENT A CAR, INC., a foreign corporation DOES I - X, and ROE BUSINESS ENTITIES I - X, inclusive, Defendants.	CASE NO. A642376 DEPT. NO. XXXI

ORDER ON PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S BIOMECHANICAL/ACCIDENT RECONSTRUCTIONIST EXPERT

This matter, having come before the Court on Plaintiff's Motion to Strike Defendant's Biomechanical/Accident Reconstruction Expert, and the Court having considered the papers and pleadings herein, and the oral argument of counsel, hereby Orders as follows:

The Court will voir dire Defendant's expert Mr. Jones at a time convenient for the parties, but before February 11, 2013. The Court shall then issue a ruling on Plaintiff's Motion from Chambers.

DATED this 11 day of December, 2013.

JOANNA S. KISHNER

DISTRICT COURT JUDGE

12-16-13 A11:02 IN

GLEN LERNER INJURY ATTORNEYS

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Attorney for Defendants

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of GLEN LERNER INJURY ATTORNEYS, and on the 19 day of December, 2013, the foregoing **ORDER ON PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S BIOCHEMICAL EXPERT/ACCIDENT RECONSTRUCTIONIST EXPERT** was served by depositing a copy in the United States Mail, addressed as follows:

Darrell D. Dennis, Esq.
LEWIS BRISBOIS BISGAARD & SMITH, LLP.
6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89118
Attorney for Defendants

Aurora Rivera

An Employee of Glen Lerner Injury Attorneys

"7"

DISTRICT COURT

CLARK COUNTY, NEVADA

JUDY MARSHALL, individually, and RANDY MARSHALL, individually, as Husband and Wife, Plaintiffs, vs. JEAN FENOLIO, individually, DOLLAR RENT A CAR, INC., a foreign corporation DOES I - X, and ROE BUSINESS ENTITIES I - X, inclusive, Defendants.	)	CASE NO: A642376 DEPT NO: XXXI

DEPOSITION OF JEAN FENOLIO
LAS VEGAS, NEVADA
MONDAY, JULY 15, 2013

REPORTED BY: VANESSA LOPEZ, CCR NO. 902
JOB NO.: 185055

Q. Now, on that stretch of Rainbow, if you're going northbound, the shopping center would be on your right. Is that correct?

A. As far as I know, yes.

Q. How many entrances into that shopping center are there off of Rainbow?

A. Two.

Q. The Starbucks, did you have to park the car and go in or was there a drive-through?

A. Parked the car and went in.

Q. You went in, ordered coffee?

A. Mm-hmm. Yes, sorry.

Q. That's okay. Did you do anything else other than order coffee?

A. No.

Q. Did you go to any other shops or stores located in that shopping area?

A. No.

Q. Are you able to give me an estimate as to how long you were there at the Starbucks before you started to leave and pull out on to Rainbow?

A. I honestly couldn't tell you. I don't really remember.

Q. Had you been to that Starbucks before?

A. Yes.

Q. Was that -- would you call it kind of your typical routine to drop your son off at school and then stop at the Starbucks?

A. I guess, yes.

Q. If you were to give me an estimate, if you can, of how many times a week, when you would drop your son off at school -- would you stop at that Starbucks, get a coffee, and then proceed to wherever it is you needed to go.

A. Two, maybe three times a week.

Q. Why don't you go ahead and tell me what happens from the time you get into your car after getting your coffee up until the time impact happens. Explain to me in as much detail as you can what happened.

A. Okay. I was -- I left the shopping center from the furthest exit from the intersection. I pulled out into traffic into the far right lane, far right straight lane. Proceeded over to the center lane and then proceeded to the far left lane. Traffic had come to a stop. The light had turned red. So when we stopped, I was partially in the far left straight lane. Sat through the light, light turned green, she moved forward and hit the vehicle.

Q. So you came out of the furthest exit from that shopping center. What's the best way to describe this here? If you're traveling northbound on Rainbow, you came out of the very first exit that you could come out of that shopping

center. Is that accurate?

A. Yes.

Q. Would a good way to describe it be it was the exit furthest away from the Rainbow and Warm Springs intersection?

A. Yes.

Q. So there would have been another exit closer to the intersection at Rainbow and Warm Springs?

A. Yes.

Q. Are you able to give me an estimate as to how far back the exit you came out of is from the intersection at Rainbow and Warm Springs, either in feet? Meters? Yards?

A. No.

Q. When you pulled out into the first travel lane of northbound Rainbow, had traffic stopped for you to allow you to pull out?

A. No.

Q. When you pulled into the middle lane, had traffic stopped for you in order for you to pull into that middle lane?

A. It could have.

Q. As we sit here today, is it fair to say you just don't remember?

A. Yes.

Q. When you pulled out from that furthest -- or

strike that.

When you pulled out from that Albertsons shopping center lot, did you pull out and merge into the right-hand lane so that you could travel forward on Rainbow or did you pull out in such a way that you were crossing against that right-hand lane?

A. No, I had actually pulled out into the travel lane.

Q. So your car, when you pulled out into that travel lane -- you would have been looking straight ahead at those lights?

A. Yes.

Q. When I say those lights, I mean the lights at Warm Springs and Rainbow.

A. Yes.

Q. How far did you travel in that first travel lane on Rainbow before you merged into the middle lane?

A. Maybe a car length or two.

Q. And then you were able to completely merge into that center lane?

A. Yes.

Q. When you merged into that center lane, were you still looking straight ahead at those lights at Warm Springs and Rainbow?

A. No, I was probably more on an angle.

Q. How much of an angle would you say you were in?

A. I couldn't even give a good estimate.

Q. When you pulled into that third lane --

A. Mm-hmm.

Q. -- were you straight -- looking straight ahead at those lights or were you at an angle?

A. No, I was more at an angle when I pulled into the third lane.

Q. I want to go back just a little bit and refresh my memory on the answer. You traveled -- when you pulled out of that exit from the Albertsons shopping center and got into that first travel lane on Rainbow, you traveled how far before you moved left?

A. Maybe a car length or two.

Q. And when you say car length or two, what type of car are you using to give me that estimate?

A. A sedan.

Q. A kind of average size car length?

A. Yes.

Q. If we were to give it in feet, an average sedan car length, 10 to 12 feet long?

A. I would assume. I'm not really sure how long an average car is.

Q. What lane were you attempting to eventually get in?

A. I was attempting to get into the far left straight lane. If I could proceed to the left turn lane that would have been fine. However, I was just attempting to get in the far left straight lane so that I could get to the shopping center, if need be, because I was considering stopping at CVS on my way home. I think it's a CVS at that corner.

Q. When you pulled out of the Albertsons shopping center, did you know what your next immediate destination was going to be?

A. I was planning on going home.

Q. When was it that you decided that maybe you would not go home but instead go to the CVS shopping center?

A. When I couldn't get all the way across to the far left turn lane. I decided I could go ahead and stop at the CVS shopping center, because there's a turn lane up ahead past the intersection of Warm Springs and Rainbow.

Q. When you say there's a turn lane up ahead past the intersection of Warm Springs and Rainbow, is that a turn lane that would have allowed you to head home or a turn lane that would have allowed you to go to the CVS?

A. To the CVS shopping center.

Q. And if you were going to go home, would you have needed to get into the left-hand turn lane at Warm Springs and Rainbow?

A. It would have been most convenient, yes.

Q. When you say most convenient, describe that for me. What do you mean by that?

A. Well, you said did I need to. It would have been most convenient to turn left at Warm Springs. That would have been the most direct route to my house. However, it wasn't necessary. I could have just gone to the shopping center and then pulled out from there to Warm Springs to continue on home.

Q. So you could have -- if you were heading home, you could have gotten into the right lane, traveled down Rainbow, gotten into the middle lane, eventually gotten past Warm Springs and gotten into another turn lane and still gotten to your destination?

A. Yes.

Q. It just wouldn't have been as convenient?

A. Yes.

Q. Did you see my client's vehicle at any time before impact?

A. Yes.

Q. About how long? You can give it to me in time increments, I guess. Was it second, minutes? How long a time passed between the time you first saw my client's vehicle and the time of impact?

A. I would have to estimate approximately three to

four minutes.

Q. So you saw my client's vehicle for about three to four minutes?

A. Yes.

Q. And describe that for me. How is it that it was about three to four minutes that you saw her vehicle before the impact happened?

A. Because when we were sitting -- when I was doing my lane change, the light -- the Rainbow light had turned red. Traffic came to a stop. I was in the process of getting into that lane. We all stopped, waited through the red light. When the light turned green, she moved forward.

Q. Did you move forward at all when the light turned green?

A. No.

Q. As you were sitting there waiting for the light to turn green -- as you were sitting there waiting for the light to turn green, had you made up your mind as to what it was you were going to do, CVS or home?

A. Yes, I was just going to go to CVS.

Q. So you would have just went ahead and gone into the far left travel lane on Rainbow. Correct?

A. Yes.

Q. The CVS that you're talking about, how far past Warm Springs and Rainbow is that CVS?

A. It's right at the corner.

Q. Is it on the right-hand side of the street or the left-hand side of the street?

A. If you're traveling northbound, it would be on the left-hand side.

Q. When you came to a stop before impact, were there any cars in front of -- strike that. The best way to ask this . . .

When you came to a stop waiting for that light to turn and you saw my client's truck stopped, were there any cars in-between your car and my client's truck?

A. No.

Q. Were there any cars to the right of you or in front of you?

A. Not that I recall.

Q. What was it then that would have prevented you from making a complete merge into that far left travel lane on Rainbow?

A. Just the traffic backing up from the light stop -- from the light changing red.

Q. How far back was my client's truck from your car when you first noticed it?

A. Half a car length.

Q. Standard car?

A. Standard car. I could see the front end of her

vehicle while I was waiting for the light to change.

Q. So the light eventually turns green. Tell me what happens.

A. Light turns green, everyone starts to move, she moved forward and hit the car.

Q. Were you stopped at the time of impact?

A. Yes.

Q. Did you see my client's vehicle hit the front of your car?

A. Yes.

Q. Are you able to give me any type of estimate as to how fast my client's vehicle was going at the time of impact?

A. Best guess, maybe three to five miles an hour.

Q. Again, I don't want you guessing. Did you have sufficient time to see my client's car move in order to give an estimate? And if you didn't, that's fine. I don't --

A. No.

Q. -- want you to guess. So you didn't have sufficient time to observe it to be able to give a fair estimate?

A. No, light turned green and there was the impact.

Q. At the time of impact, what direction was the front of your car facing? Was it facing north, south, east or west?